

# Biden Administration Closes the '90/10' Loophole in New Regulations

Under new Department of Education [regulations](#) that implement bipartisan Congressional action, for-profit colleges will be subject to a stricter requirement that they obtain at least 10 percent of their annual revenue from sources outside of the federal government. The new rules will take effect on July 1, 2023, for any colleges' fiscal years beginning on or after January 1, 2023.

## The 90/10 rule led many predatory for-profit colleges to pursue service members and veterans with aggressive recruiting tactics.

- For decades, Congress has [required](#) for-profit colleges to obtain at least 10 percent of their revenue from sources outside the Department of Education's federal financial aid (through Title IV of the Higher Education Act), including Pell Grants and student loans. The goal of the rule was a market viability test to avoid using taxpayer funds to prop up colleges for which no one else would pay. If an institution fails the measure in two consecutive years, it loses access to Title IV aid.
- Some predatory institutions identified a [loophole](#) in the so-called 90/10 Rule and began [filling up](#) the 10-percent side of the calculation with other kinds of federal aid – especially funds from the Department of Defense (DOD) and the Department of Veterans Affairs (VA) – by enrolling student service members and veterans eligible for that aid. Sometimes, [government investigators](#) found, for-profit colleges relied on unethical or illegal recruiting tactics to pursue service members and veterans as students.
  - The Department estimated that about 33 for-profit colleges would have failed the 90/10 rule in Award Year 2018-19 if DOD and VA funds had been counted as federal financial aid, and 17 would have lost Title IV eligibility the next year after failing again.
- Over the years, some for-profit colleges have [employed](#) certain other accounting strategies to further evade accountability under the 90/10 rule.

≥ 10 PERCENT

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## Changes to the 90/10 rule will close the loophole — protecting service members and veterans and increasing accountability for for-profit colleges

- In March 2021, following years of advocacy by the nation's veterans and military service organizations, Congress passed a bipartisan agreement to close the 90/10 loophole by counting **all** federal education assistance funds – including DoD and VA funds – on the 90 percent side of the equation — not just Department of Education funds. The bipartisan agreement was enacted in the [American Rescue Plan Act](#), which also provided pandemic relief funding. This change requires for-profit colleges to obtain at least 10 percent of funds from non-federal sources.
- Under the Department of Education's new regulations, which implement the legislative change, the Department will publish a list – and update it as new federal programs are added or eliminated – of all the federal education programs that must be included in for-profit schools' calculations. **Colleges will be required to include all of those programs in the “federal” side** of their 90/10 calculations, increasing accountability for for-profit colleges through the 90/10 rule.
- The Department also **foreclosed the possibility of for-profit institutions' gaming the metric in other ways** they've seen.
  - For instance, institutions won't be permitted to delay providing Title IV payments to students until the next fiscal year as a strategy to avoid failing the 90/10 in two consecutive years, which would cause them to lose Title IV eligibility altogether.
  - It also means institutions will be subject to careful requirements if they intend to count revenue from institutional loans, income-share agreements, or other alternative financing arrangements, so that revenue from those programs can't be inflated to help the school pass the 90/10 test.
- When a for-profit college fails the 90/10 rule, it will be required not just to notify the Department of the failure, but also to **notify students at the institution directly**.