UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

JUN - 7 2010

THE ASSISTANT SECRETARY

The Honorable George Miller
Chairman
Committee on Education and Labor
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Section 487 (d)(4) of the Higher Education Act of 1965 (HEA), as amended, requires the Secretary to submit a report to Congress containing information regarding the amount and percentage of the each proprietary institution's revenues from Title IV sources and non-Title IV sources as provided by the institution in its audited financial statements. The purpose of this letter is to transmit this information, which relates to the requirement that for-profit institutions of postsecondary education must derive at least 10 percent of their revenues from non-Title IV sources (the 90/10 Rule), to Congress.

Currently, this information is only identified in the disclosures of the institution's financial statements and not captured systemically. The Department currently captures the revenue only on an accrual basis of accounting. These data are used to determine an institution's financial responsibility. The ratio used in the 90/10 Rule, however, is calculated using a cash basis of accounting. The Department is in the process of developing a system that will permit us to collect information both ways in order to accommodate the submission requirements in the law. The Department expects to have this capability in 2011.

The 90/10 Rule was moved by the Higher Education Opportunity Act (HEOA) from Title I of the HEA to the Program Participation Agreement provisions of Title IV. As a result, an institution that violates the 90/10 Rule for one year would no longer lose its eligibility to participate in the Title IV programs. Instead, the institution's participation would become provisional for two fiscal years. However, if the institution does not satisfy the 90/10 Rule for two consecutive fiscal years, it would lose its eligibility to participate in the Title IV programs for at least two fiscal years.

If an institution fails to satisfy the 90/10 Rule, the Department is required to disclose this information on the College Navigator Web site (http://nces.ed.gov/collegenavigator/), including information on the extent to which the institution failed to satisfy the rule. In addition, in calculating the revenue percentage, the HEOA provides that any Title IV program funds that are disbursed or delivered to or on behalf of a student are presumed to pay the student's tuition, fees, or other institutional charges, unless the tuition, fees, or other charges are satisfied by:

- grant funds from non-Federal public agencies or private sources independent of the institution;

- funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals in need of that training;
- funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code; and
- institutional scholarships that count toward the 10 percent revenue requirement.

The HEOA specifies other sources of revenue that count toward the 10 percent requirement after applying the presumption that Title IV funds are used to pay the student's tuition, fees, and other institutional charges. Among the sources an institution may count toward the 10 percent requirement are:

- revenue earned from a non-Title IV program of study, as long as the program is approved by the State, accredited, or provides an industry-recognized credential or certificate;
- institutional aid to students. For loans made to students by the institution from July 1, 2008, but before July 1, 2012, the net present value of the loans made during a fiscal year if the loans are evidenced by promissory notes, issued at intervals related to the institution's enrollment periods, and are subject to regular loan repayments and collections. For loans made on or after July 1, 2012, only the amount of loan repayments the institution receives during a fiscal year, excluding repayment on any loans for which the institution previously used the net present value in its 90/10 calculation. For scholarships, only those provided by the institution in the form of monetary aid or tuition discounts based on the academic achievements or financial need of students, as long as the scholarships are disbursed during each fiscal year from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or income earned on those funds; and
- the proceeds of Unsubsidized Stafford Loans that exceed the loan limits which were in effect on May 6, 2008, the day before the enactment of the Ensuring Continued Access to Student Loans Act of 2008. This provision applies to any Unsubsidized Stafford Loan received by a student on or after July 1, 2008, but before July 1, 2011.

The HEOA specifies the types or amounts of funds that are excluded from revenues under the 90/10 calculation. Excluded from revenues are:

- the amount of funds the institution received under the Federal Work Study Program, unless it used those funds to pay for a student's institutional charges;
- the amount of funds the institution received under the Leveraging Educational Assistance Partnership;
- the amount of funds provided by the institution as matching funds under the Title IV programs;
- the amount of funds provided by the institution for a Title IV program that is required to be refunded or returned; and
- the amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

The report attached to this letter provides the revenue percentage provided for each institution by its independent auditor for the most recently completed institutional fiscal year along with the funding levels for the most recent two fiscal years. Table 1 provides a summary of this information. All schools on this list, as seen in Table 1 and the attached report, fall within the compliance parameters; i.e., Title IV money is within 90 percent or less and non-Title IV money is at 10 percent or higher. These data do show that there are a number of schools that are very close to the compliance thresholds, including 209 institutions that are between 85 and 90 percent and need to be monitored closely.

Table 1 **Proprietary School 90/10 Revenue Percentages from Financial Statements with Fiscal Year Ending Dates Between 7/1/2007 and 6/30/2008** Source: eZ-Audit as of 9/30/2009	
Title IV Revenue Percentage	**Number of Schools**
Between 0 and 10	85
Greater than 10 and up to 20	38
Greater than 20 and up to 30	55
Greater than 30 and up to 40	105
Greater than 40 and up to 50	164
Greater than 50 and up to 60	271
Greater than 60 and up to 70	341
Greater than 70 and up to 80	373
Greater than 80 and up to 85	248
Greater than 85 and up to 90	209
Total Number of Schools	**1889**

Should you have any questions about this report, please contact Cynthia Hammond in the Office of Congressional and Legislative Affairs by e-mail at Cynthia.Hammond@ed.gov or by phone at (202) 401-0031.

Sincerely,

Daniel T. Madzelan
Delegated the Authority to Perform
the Functions and Duties of the
Assistant Secretary for
Postsecondary Education