**Issue 1 – 90/10 Rule**

**34 CFR § 668.28 - Non-title IV revenue (90/10)**

**§ 668.28 Non-title IV revenue (90/10).**

**(a)** ***General*** -

**(1)** ***Calculating the revenue percentage.*** A proprietary institution meets the requirement in [§ 668.14(b)(16)](https://www.law.cornell.edu/cfr/text/34/668.14#b_16) that at least 10 percent of its revenue is derived from sources other than Title IV, HEA program funds by using the formula in appendix C of this subpart to calculate its revenue percentage for its latest complete fiscal year.

A proprietary institution meets the requirement in § 668.14 (b) (16) that at least 10 percent of its revenue is derived from sources other than Title IV, HEA program funds by using the formula in appendix C of this subpart to calculate its revenue percentage for its latest complete fiscal year. (2) Cash basis accounting.

**(2)** ***Cash basis accounting.*** Except for institutional loans made to students under [paragraph (a)(5)(i)](https://www.law.cornell.edu/cfr/text/34/668.28#a_5_i) of this section, the institution must use the cash basis of accounting in calculating its revenue percentage.

**(3)** ***Revenue generated from programs and activities.*** The institution must consider as revenue only those funds it generates from -

**(i)** Tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in [§ 668.8](https://www.law.cornell.edu/cfr/text/34/668.8);

**(ii)** Activities conducted by the institution that are necessary for the education and training of its students provided those activities are -

**(A)** Conducted on campus or at a facility under the institution's control;

**(B)** Performed under the supervision of a member of the institution's faculty; and

**(C)** Required to be performed by all students in a specific educational program at the institution; and

**(iii)** Funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible under [§ 668.8](https://www.law.cornell.edu/cfr/text/34/668.8) if the program -

**(A)** Is approved or licensed by the appropriate State agency;

**(B)** Is accredited by an accrediting agency recognized by the Secretary under [34 CFR part 602](https://www.law.cornell.edu/cfr/text/34/part-602);

**(C)** Provides an industry-recognized credential or certification, or prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party;

**(D)** Provides training needed for students to maintain State licensing requirements; or

**(E)** Provides training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in that field.

**(4)** ***Application of funds.*** The institution must presume that any Title IV, HEA program funds it disburses, or delivers, to or on behalf of a student will be used to pay the student's tuition, fees, or institutional charges, regardless of whether the institution credits the funds to the student's account or pays the funds directly to the student, except to the extent that the student's tuition, fees, or other charges are satisfied by -

**(i)** Grant funds provided by non-Federal public agencies or private sources independent of the institution;

**(ii)** 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 who need that training;

**(iii)** Funds used by a student from a savings plan for educational expenses established by or on behalf of the student if the saving plan qualifies for special tax treatment under the [Internal Revenue Code of 1986](https://www.law.cornell.edu/topn/internal_revenue_code_of_1954); or

**(iv)** Institutional scholarships that meet the requirements in [paragraph (a)(5)(iv)](https://www.law.cornell.edu/cfr/text/34/668.28#a_5_iv) of this section.

**(5)** ***Revenue generated from institutional aid.*** The institution must include the following institutional aid as revenue:

**(i)** For loans made to students and credited in full to the students' accounts at the institution on or after July 1, 2008 and prior to July 1, 2012, include as revenue the net present value of the loans made to students during the fiscal year, as calculated under [paragraph (b)](https://www.law.cornell.edu/cfr/text/34/668.28#b) of this section, if the loans -

**(A)** Are bona fide as evidenced by standalone repayment agreements between the students and the institution that are enforceable promissory notes;

**(B)** Are issued at intervals related to the institution's enrollment periods;

**(C)** Are subject to regular loan repayments and collections by the institution; and

**(D)** Are separate from the enrollment contracts signed by the students.

**(ii)** For loans made to students before July 1, 2008, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

**(iii)** For loans made to students on or after July 1, 2012, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

**(iv)** For scholarships provided by the institution in the form of monetary aid or tuition discount and based on the academic achievement or financial need of its students, include as revenue the amount disbursed to students during the fiscal year. The scholarships must be disbursed from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

**(6)** ***Revenue generated from loan funds in excess of loan limits prior to the***[***Ensuring Continued Access to Student Loans Act of 2008***](https://www.law.cornell.edu/topn/ensuring_continued_access_to_student_loans_act_of_2008)***(ECASLA).*** For each student who receives an unsubsidized loan under the FFEL or Direct Loan programs on or after July 1, 2008 and prior to July 1, 2011, the amount of the loan disbursement for a payment period that exceeds the disbursement for which the student would have been eligible for that payment period under the loan limit in effect on the day prior to enactment of the ECASLA is included and deemed to be revenue from a source other than Title IV, HEA program funds but only to the extent that the excess amount pays for tuition, fees, or institutional charges remaining on the student's account after other Title IV, HEA program funds are applied.

**(7)** ***Funds excluded from revenues.*** For the fiscal year, the institution does not include -

**(i)** The amount of Federal Work Study (FWS) wages paid directly to the student. However, if the institution credits the student's account with FWS funds, those funds are included as revenue;

**(ii)** The amount of funds received by the institution from a State under the LEAP, SLEAP, or GAP programs;

**(iii)** The amount of institutional funds used to match Title IV, HEA program funds;

**(iv)** The amount of Title IV, HEA program funds refunded or returned under [§ 668.22](https://www.law.cornell.edu/cfr/text/34/668.22). If any funds from the loan disbursement used in the return calculation under [§ 668.22](https://www.law.cornell.edu/cfr/text/34/668.22) were counted as non-title IV revenue under [paragraph (a)(6)](https://www.law.cornell.edu/cfr/text/34/668.28#a_6) of this section, the amount of Title IV, HEA program funds refunded or returned under § 668.22 is considered to consist of pre-ECASLA loan amounts and loan amounts in excess of the loan limits prior to ECASLA in the same proportion to the loan disbursement; or

**(v)** The amount the student is charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

**(b)** [Reserved]

**(c)** ***Sanctions.*** If an institution does not derive at least 10 percent of its revenue from sources other than Title IV, HEA program funds -

**(1)** For two consecutive fiscal years, it loses its eligibility to participate in the Title IV, HEA programs for at least two fiscal years. To regain eligibility, the institution must demonstrate that it complied with the State licensure and accreditation requirements under [34 CFR 600.5](https://www.law.cornell.edu/cfr/text/34/600.5)(a)(4) and (a)(6), and the financial responsibility requirements under [subpart L](https://www.law.cornell.edu/cfr/text/34/part-668/subpart-L) of this part, for a minimum of two fiscal years after the fiscal year it became ineligible; or

**(2)** For any fiscal year, it becomes provisionally certified under [§ 668.13(c)(1)(ii)](https://www.law.cornell.edu/cfr/text/34/668.13#c_1_ii) for the two fiscal years after the fiscal year it failed to satisfy the revenue requirement. However, the institution's provisional certification terminates on -

**(i)** The expiration date of the institution's program participation agreement that was in effect on the date the Secretary determined the institution failed this requirement; or

**(ii)** The date the institution loses its eligibility to participate under [paragraph (c)(1)](https://www.law.cornell.edu/cfr/text/34/668.28#c_1) of this section; and

**(3)** It must notify the Secretary no later than 45 days after the end of its fiscal year that it failed to meet this requirement.