

January 22, 2025

The Honorable Secretary-Designate Linda McMahon  
Secretary of Education  
400 Maryland Ave SW  
Washington, D.C. 20202

Dear Secretary-Designate McMahon,

As the Executive Director of the Veterans Education Project (“VEP”), I write today to encourage the Department to remove “90/10 Rule” preamble language that excludes revenue from online and hybrid non-Title IV programs from being counted in the formula. This action exceeds Congressional intent and the bipartisan agreement that was achieved through the negotiated rulemaking process.

As you know, the 90/10 Rule sets a limit on the amount of revenue that a proprietary institution of higher education may earn from funds provided by the federal government. Up to 90 percent of a proprietary institution’s revenue (the “90% Category”) may come from federal sources. At least 10 percent (the “10% Category”) must come from other sources, such as out-of-pocket payments by students, employer reimbursement, or certain other educational services offered by proprietary institutions for which students cannot pay using federally sourced dollars.

On March 11, 2021, Congress passed the American Rescue Plan Act of 2021 (“ARPA”). In the relevant part, the ARPA altered the 90/10 Rule by requiring proprietary institutions to include all revenues earned via “Federal funds” in the calculation of their 90% Category. The legislative history reflects Congress’s emphasis on discouraging certain recruiting tactics aimed at service members and veterans, and the policy debate revolved around moving VA and DOD funds from the 10 side of the 90/10 calculation to the 90 side. As required by ARPA, the U.S. Department of Education conducted a negotiated rulemaking and promulgated new regulations on 90/10. Many leading veteran service organizations built a broad coalition to enact ARPA and reach consensus through the negotiated rulemaking process.

Unfortunately, the Final Rule goes far beyond the intended goal of protecting veterans and further exceeds the statutory authority directed by Congress by seeking to exclude the revenue from online and hybrid non-Title IV programs. In amending the 90/10 Rule, Congress did not intend to target distance education programs, which provide valuable benefits to veteran students. The provision to exclude certain programs offered by distance education was added in extraneous preamble language and is inconsistent with the ARPA and the consensus regulatory language agreed to by public and federal negotiators. VEP supports thoughtful, appropriate regulation of the postsecondary education sector and supports Congressional efforts to ensure protections for veteran students, but the Final Rule as drafted exceeds Congressional intent, and is not a lawful, well-considered, or reasoned regulatory intervention.

We encourage the Department to amend this extraneous preamble language and return to the broad-based and bipartisan consensus reached through the negotiated rulemaking process in-line with the statutory intent made clear through Congressional legislation, and look forward to working with the Department moving forward in the service of Veteran and military students.

Sincerely,  
Donald Franklin  
Executive Director

## Veterans Education Project