

November 3, 2021

Brian Schelling
U.S. Department of Education
400 Maryland Ave. SW, Room 2C188
Washington, DC 20202

Docket ID: ED-2021-OPE-0077

Dear Mr. Schelling,

On behalf of state higher education leaders, I am writing in response to the October 4, 2021, notice in the *Federal Register* of the U.S. Department of Education's intent to establish a negotiated rulemaking committee pertaining to the 90/10 rule in the Higher Education Act of 1965, as amended (HEA). This negotiated rulemaking process provides an excellent opportunity to advance a stronger consumer protection framework for students attending proprietary colleges and universities. As a policy organization representing one leg of the regulatory triad with expertise in consumer protection, SHEEO welcomes the opportunity to participate in the negotiated rulemaking process.

Founded in 1954, the State Higher Education Executive Officers Association (SHEEO) serves the chief executives of statewide governing, policy, and coordinating boards of postsecondary education and their staffs. SHEEO is committed to promoting an environment that values higher education and its role in ensuring the equitable education of all Americans, regardless of race/ethnicity, gender, or socioeconomic factors. SHEEOs are charged with making college more affordable, and advancing state educational attainment, equity, and workforce development goals.

State higher education leaders have a stake in ensuring that postsecondary institutions operating in their state are high-quality and provide value to their students. States are pursuing ambitious educational attainment goals linked to workforce needs, and it is imperative that the degrees and credentials provided by all colleges and universities within their state equip students with the knowledge and skills needed to succeed. States have historically played a key role in consumer protection in higher education by fulfilling state authorization responsibilities and acting against institutions that have engaged in predatory or fraudulent behavior.

States, however, cannot act alone in protecting students. The federal government is a key partner in creating a higher education marketplace that provides quality educational opportunities for students and value for taxpayers. The 90/10 rule is a key provision in helping the marketplace work for students and taxpayers. This rule states that at least 10% of tuition and fee revenues each fiscal year at proprietary colleges must come from sources other than federal education assistance funds or be subject to sanctions. This serves as one barometer for market viability, as these institutions should have a portion of their revenue come from students who are willing to pay the market price absent federal financial assistance.

SHEEO was pleased to see reforms to the 90/10 rule in the American Rescue Plan of 2021 (ARP) and hopes to see continued legislative efforts to strengthen this law. Prior to the ARP, non-Title IV federal educational assistance funds, including veterans' education benefits, were not counted toward the 10% revenue minimum. This created a strong incentive for proprietary colleges to recruit veterans, leading to high-pressure and predatory recruiting practices. The loophole was eliminated in the ARP, which included all federal educational assistance funds in the 10% calculation. We hope Congress builds on the momentum of the ARP by replacing 90/10 with the 85/15 rule originally approved in the 1992 reauthorization of the Higher Education Act.



We applaud the U.S. Department of Education for quickly initiating the negotiated rulemaking process and working to get this new law implemented as soon as possible. We hope the Department rigorously enforces the new law, and we welcome the opportunity to partner in a broader effort to provide students with access to a marketplace of high-quality college opportunities while protecting taxpayer investment in higher education.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Anderson", written over a horizontal line.

Robert E. Anderson, Ph.D.
President
State Higher Education Executive Officers Association