

PRESIDENT OBAMA'S FY16 BUDGET AND THE 90/10 RULE

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Abstract

The higher education community, and more specifically the for-profit college sector, remains a highly regulated industry. One regulation designed to restrict the for-profit college sector's access to federal financial aid and acts as a quality-control measure, the 90/10 rule, currently omits military and veteran benefits as federal aid. President Obama's FY16 Budget proposes to capture military and veteran education benefits in the 90/10 rule similar to current financial aid programs administered by the Department of Education. Through an analysis of policy papers, government records, and other academic publications, this policy memo reveals the detrimental impact of including military and veteran benefits into the rule. Specifically, the promotion of perverse incentives under 90/10 is discussed: discrimination of the military community; restricting enrollment; and raising tuition prices. For-profit colleges, however, face increased scrutiny for questionable recruiting practices, high tuition prices, and subpar student outcomes. This memo proposes alleviating the regulatory burden and the cultivation of perverse incentives by providing an exemption clause for military and veteran benefits under the 90/10 rule. This memo also acknowledges recent criticisms of the sector. It further recommends that for-profit institutions comply with tuition caps and previously established guidelines created to support the military community in exchange for an exemption.

Policy Memo

TO: The Honorable Lamar Alexander, Chairman, Senate Committee on Health, Education, Labor and Pensions (HELP); The Honorable John Kline, Chairman, House Committee on Education and the Workforce

FM: Michael Dakduk

RE: President Obama's FY16 Budget and the 90/10 Rule

Action Forcing Event

President Barack Obama's 2016 budget proposes to limit the flow of military and veteran education benefits to for-profit colleges.¹ A clause in the budget calls for including the Post-9/11 GI Bill benefits—among other types of military and veteran education benefits—in the 90/10 rule. As a means to judge institutional quality, the rule dictates that for-profit colleges receive at least 10 percent of its revenues from sources other than federal financial aid. However, military and veteran education benefits are not considered federal financial aid. Kelly Field of *The Chronicle of Higher Education* called the proposal the “only real surprise” in the higher education portion of the president's budget.² Other media outlets including *Fortune* magazine, *Inside Higher Ed* and *National Public Radio* (NPR) separately ran pieces on the president's plan.³

¹ The White House Office of Management and Budget, *Fiscal Year 2016 Analytical Perspectives of the U.S. Government* (Washington, DC: Government Printing Office, 2015), 138, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/spec.pdf> (accessed February 3, 2015).

² Kelly Field, “Obama's 2016 Budget: a Focus on College Cost, and an Uphill Climb in Congress,” *The Chronicle of Higher Education*, February 3, 2015.

³ Claire Zillman, “Obama's budget aims to eliminate for-profit colleges' GI Bill loophole,” *Fortune Magazine*, February 3, 2015, <http://fortune.com/2015/02/03/gi-bill-for-profit-colleges-2/>; Michael Stratford, “Obama Seeks Funding Boost,” *Inside Higher Ed*, February 3, 2015 <https://www.insidehighered.com/news/2015/02/03/obama-seeks-boost-higher-education-spending-and-proposes-some-loan-reforms-have>;

Statement of the Problem

Overregulation of the higher education industry has created barriers to student access and questionable protections of federal funds.⁴ One regulation specific to the for-profit college sector, the 90/10 rule, may be exacerbating the aforementioned problems.⁵ Though the 90/10 rule itself has been deemed a poor measure of institutional quality by financial aid experts and policy makers alike, the president's proposal introduces additional challenges for the military and veteran communities to access higher education. First, it encourages for-profit colleges to discriminate against future student-veterans and student-servicemembers. Second, it incentivizes for-profit institutions to raise tuition and fees. Finally, the proposal contradicts the president's prior executive action.

Including veteran benefits into the 90 percent portion of the rule may incite schools to limit the number of veterans they accept. If enacted, for-profit colleges could be incentivized to discriminate against enrolling veterans and servicemembers in order to remain compliant with the 90/10 rule.⁶ A violation of anti-discrimination laws becomes more apparent given the student populations captured in the 90/10 rule. Minority students disproportionately contribute to a higher percentage of federal financial aid revenue

"White House May Close Loophole That Sends Billions To For-Profit Schools," *National Public Radio*, February 2, 2015, <http://www.npr.org/2015/02/02/383346101/white-house-may-close-loophole-that-sends-billions-to-for-profit-schools>.

⁴ "Recalibrating Regulations of Colleges and Universities: Report of the Task Force on Federal Regulations of Higher Education," *U.S. Senate Health, Education, Labor and Pensions Committee*, accessed March 01, 2015, http://www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf.

⁵ Mark Kantrowitz, "Consequences of the 90/10 Rule," *Edvisors.com*, August 19, 2013, 2, <https://www.edvisors.com/media/files/student-aid-policy/20130819-90-10-rule.pdf>.

⁶ Daniel M. Dellinger, "Letter From the National Commander To the Chairman and Ranking Member of the Senate Appropriations Subcommittee on Defense Regarding the 90/10 Rule and Military Benefits," *The American Legion*, June 24, 2014.

(78%) compared to white students (56%) at for-profit colleges.⁷ The incentive to discriminate against minority students arguably already exists.⁸ In the event military and veteran benefits are captured in the 90/10 rule, a culture of discrimination against the military community may manifest among for-profit colleges.

Ironically, the incentive to comply with the 90/10 rule may also position for-profit institutions against current laws including Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.⁹ The Civil Rights Act of 1964 “prohibits discrimination on the basis of race, color, or national origin” and Section 504 of the Rehabilitation Act of 1973 “prohibits discrimination on the basis of disability.” Specific to veterans is the Vocational Rehabilitation and Employment (VR&E) program. The VR&E benefit, exclusive to disabled veterans, may be used for educational purposes. A for-profit institution nearing or exceeding the 90 percent threshold of federal financial aid revenues—inclusive of military and veteran benefits—may reasonably conclude that limiting the enrollment of minority students or disabled veterans will increase the potential for compliance with the rule.

An alternative to denying enrollments is to increase tuition prices. Institutions do not have discretion in limiting student access to federal student aid. Therefore, “institutions must either enroll at least some students who are not completely dependent on federal aid

⁷ Kantrowitz, “Consequences of the 90/10 Rule,” 9.

⁸ Ibid, 10.

⁹ “Regulations Enforced by the Office for Civil Rights,” *Department of Education*, accessed March 05, 2015, <http://www2.ed.gov/policy/rights/reg/ocr/index.html>.

or charge tuition that is higher than the limits of federal aid.”¹⁰ Essentially, evidence shows a strong correlation between compliance with the 90/10 rule and increased tuition and fees.¹¹

Lastly, the incentive to discriminate against veterans runs contrary to the president’s prior executive action. In Executive Order 13607, section 2(b) requires educational institutions to

inform students who are eligible to receive Federal military and veterans educational benefits of the availability of Federal financial aid and have in place policies to alert those students of their potential eligibility for that aid before packaging or arranging private student loans or alternative financing programs.¹²

Advising student-veterans and student-servicemembers about their Title IV eligibility, while the right thing to do, increases the flow of federal financial aid to for-profit colleges. Subsequently, this increases the likelihood of exceeding the 90 percent threshold. The premise of adding veteran and military education benefits to the 90 side of the rule, meanwhile, is to limit the amount of federal financial aid acquired by for-profit institutions.

¹⁰ Daniel L. Bennett, Adam R. Lucchesi and Richard K. Vedder, “For-Profit Higher Education: Growth, Innovation and Regulation,” *Center for College Affordability and Productivity*, July 2010, http://heartland.org/sites/all/modules/custom/heartland_migration/files/pdfs/29010.pdf.

¹¹ Kantrowitz, “Consequences of the 90/10 Rule,” 22.

¹² “Executive Order -- Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members,” *The White House Office of the Press Secretary*, April 27, 2012, <http://www.whitehouse.gov/the-press-office/2012/04/27/executive-order-establishing-principles-excellence-educational-instituti>.

History

The 90/10 rule was introduced in the Higher Education Amendments of 1998.¹³ The rule modified a preexisting 85/15 rule which was first captured in the Higher Education Amendments of 1992.¹⁴ The modification was a compromise reached between the Republican controlled House and Democrat controlled Senate.¹⁵ That same year, a similar—but separate—rule was introduced for veteran benefits: the 85/15 rule. Both the 90/10 rule and the 85/15 rule trace its roots back to the Korean-era GI Bill.¹⁶ Unlike the 90/10 rule, though, the Department of Veterans Affairs (VA) 85/15 rule is applicable to all eligible institutions of higher education.¹⁷ Additionally, the VA’s 85/15 rule only covers veterans’ benefits and still remains law.

The major trade association representing for-profit colleges, then the Career College Association (CCA), made several attempts at dismissing the 85/15 rule through the courts.¹⁸ Previous legal rulings found the 85/15 final regulation “reasonable.”¹⁹ The courts dismissed the CCA’s challenge by stating: “To the extent that there may be, as the

¹³ Rebecca R. Skinner, “Institutional Eligibility and the Higher Education Act: Legislative History of the 90/10 Rule and Its Current Status,” *CRS Report for Congress*, updated January 19, 2005.

¹⁴ The 85/15 rule applied only to for-profit institutions and stipulated that for-profit schools receive at least 15 percent of their revenues from sources other than Title IV federal funds. This rule was borrowed from a Veterans’ Administration rule, also known as 85/15 and one that still remains in effect, preventing all institutions from profiting solely from veteran education benefits.

¹⁵ “H. Rept. 105-750 Higher Education Amendments of 1998,” *Congress.gov*, accessed March 20, 2015, <https://www.congress.gov/congressional-report/105th-congress/house-report/750/1>.

¹⁶ Kantrowitz, “Consequences of the 90/10 Rule,” 4.

¹⁷ Note: The 85/15 rule places a cap on number of veterans enrolled at all eligible institutions while the 90/10 rule caps the amount of federal financial aid for-profit institutions receive.

¹⁸ Skinner, “Institutional Eligibility.”

¹⁹ *Career College Association, Appellant, v. Richard W. Riley, et al., Appellees*, 70 F.3d 637 (D.C. Cir. 1995), accessed March 20, 2015, <http://law.justia.com/cases/federal/appellate-courts/F3/70/637/600485/>.

appellants contend, some tension between the goals of the different provisions, it is the inevitable result of Congress's separate enactments and not our concern.”²⁰

Since 1998, the 90/10 rule has not changed significantly. Lawmakers remain divided on the issue as well. Republicans have attempted to repeal the law and block efforts to make 90/10 more stringent. Democrats have put forth legislation and amendments to include military tuition assistance and veteran education benefits into the rule. Some have even called for it being rolled back to the original 85/15 ratio.²¹ This historical review of major actions—including key congressional leaders and their respective legislative efforts—will reveal prior attempts at modifying the 90/10 rule and alternative efforts to protect student-servicemembers and student-veterans.

During the 108th Congressional Session, two bills were introduced to repeal the 90/10 rule. First, Rep. Tom Cole (R-OK) introduced the Expanding Opportunities in Higher Education Act of 2003 (H.R. 3039), striking the provision in law covering the 90/10 rule. The following year, then chairman of the House Committee on Education and the Workforce, John Boehner (R-OH), introduced the College Access and Opportunity Act of 2004 (H.R. 4283).²² Both bills were solely cosponsored by Republican lawmakers. Subsequently, both pieces of legislation died before a vote was held.

²⁰ Ibid.

²¹ Found by searching legislation with keyword “90/10 rule” on Congress.gov, accessed February 18, 2015, <https://www.congress.gov/search?q=%7B%22source%22%3A%22legislation%22%2C%22search%22%3A%22%5C%2290%2F10%20rule%5C%22%22%7D>; See Protecting Our Students and Taxpayers (POST) Act and POST Act of 2013, S. 2032 and S. 1659 respectively.

²² “H.R.4283 - College Access and Opportunity Act of 2004,” *Congress.gov*, accessed April 13, 2015, <https://www.congress.gov/bill/108th-congress/house-bill/4283/all-actions>.

The following session, Rep. Boehner was more successful. The House passed the College Access and Opportunity Act of 2006 (H.R. 609).²³ The language in the bill, however, was significantly different than the previous attempt. Instead of fully repealing the 90/10 rule, this bill expanded the rule to public and nonprofit colleges and universities.²⁴

A companion bill, the Higher Education Amendments of 2005 (S. 1614), was introduced in the Senate by Sen. Michael Enzi (R-WY).²⁵ According to a report, the language in his bill “removed [90/10] as an institutional eligibility requirement for proprietary schools, but the requirement is retained as condition of participation in the student financial assistance programs, and made applicable to all types of institutions.”²⁶ The bill never passed the Senate.

The 90/10 rule did see some changes in the 110th Congressional Session. With the Democrats in control of both chambers, chairman of the House Education and the Workforce Committee, George Miller (D-CA), passed the Higher Education Opportunity Act (H.R. 4137).²⁷ Markedly different from Rep. Boehner’s legislation, Rep. Miller’s bill

²³ “H.R.609 - College Access and Opportunity Act of 2006,” *Congress.gov*, accessed April 13, 2015, <https://www.congress.gov/bill/109th-congress/house-bill/609?q=%7B%22search%22%3A%5B%22%5C%2290%5C%5C%5C%2F10+rule%5C%22%22%5D%7D>.

²⁴ *Ibid.*

²⁵ “S.1614 - Higher Education Amendments of 2005,” *Congress.gov*, accessed April 13, 2015, <https://www.congress.gov/bill/109th-congress/senate-bill/1614/actions>.

²⁶ “S. Rept. 109-218 - HIGHER EDUCATION AMENDMENTS OF 2005,” *Congress.gov*, accessed April 13, 2015, <https://www.congress.gov/congressional-report/109th-congress/senate-report/218>.

²⁷ “H.R.4137 - Higher Education Opportunity Act,” *Congress.gov*, accessed April 13, 2015, <https://www.congress.gov/bill/110th-congress/house-bill/4137?q=%7B%22search%22%3A%5B%22%5C%2290%5C%5C%5C%2F10+rule%5C%22%22%5D%7D>.

made some modifications to the rule; the ratio, though, remained unchanged.²⁸ His bill passed both houses and was ultimately signed into law (P.L. 110-315).²⁹

It was not until the 112th Congress, and thereafter, that military and veteran education benefits became a major topic of concern related to the 90/10 rule. Between the 112th and 113th Congressional Sessions, six bills from five different Democratic lawmakers were introduced to include military and veterans' education benefits into the 90/10 rule.

Separately, Sen. Richard Durbin (D-IL) twice introduced legislation to not only include military and veteran benefits into the rule, but to also roll it back to 85/15.³⁰ A companion bill was introduced in the House by Rep. Steve Cohen (D-TN).³¹

While numerous hearings occurred throughout this timespan on for-profit colleges, then chairman of the Senate Committee on Homeland Security and Governmental Affairs, Sen. Carper, hosted one hearing in 2013 exclusively on the topic of military and veteran education benefits and the 90/10 rule.³²

²⁸ Ibid.

²⁹ Ibid.

³⁰ Found by searching legislation with keyword "90/10 rule" on Congress.gov, accessed February 18, 2015, [https://www.congress.gov/search?q=%7B%22source%22%3A%22legislation%22%2C%22search%22%3A%22%5C%2290%2F10%20rule%5C%22%22%7D](https://www.congress.gov/search?q=%7B%22source%22%3A%22legislation%22%2C%22search%22%3A%22%5C%2290%2F10%20rule%5C%22%22%7D;);

See Protecting Our Students and Taxpayers (POST) Act and POST Act of 2013, S. 2032 and S. 1659 respectively.

³¹ "H.R.3496 - POST Act of 2013," *Congress.gov*, accessed April 13, 2015, <https://www.congress.gov/bill/113th-congress/house-bill/3496?q=%7B%22search%22%3A%5B%22%5C%2290%5C%5C%2F10+rule%5C%22%22%5D%7D>.

³² "The 90/10 Rule: Improving Educational Outcomes For Our Military and Veterans," *GPO, Hearing Before the Committee on Homeland Security and Governmental Affairs, U.S. Senate* (113th Congress), July 23, 2013.

Separately, Senator Durbin leveraged his position in 2013 as chair of the Senate Defense Appropriations Committee to attempt to modify the 90/10 rule. A letter sent from House Republican leaders to House appropriators in 2013 further illustrates the partisan divide on this issue:

As the *Fiscal Year 2014 Department of Defense Appropriations Act* moves through the legislative process, we write to oppose sections 8103 and 8104 of the Senate bill. While intended to punish bad actors from accessing higher education, both provisions harm low-income and veteran students and their colleges and fail to increase financial or institutional accountability.³³

Language in section 8104 called for including military education benefits in the 90 side of the 90/10 rule. A similar attempt was made the following year.³⁴

Legislative efforts also persisted through the amendment process. Sen. Durbin offered an amendment to capture military Tuition Assistance in the rule through the National Defense Authorization Act for Fiscal Year 2014 (S. 1197).³⁵ This language was similar to the wording found in his defense appropriations bill.

Prior to retiring at the end of 113th Congressional Session, Sen. Harkin released his proposal to reauthorize the Higher Education Act. In it he called for rolling back the

³³ Reps. John Kline, Howard McKeon, Jeff Miller and Bill Flores, "Congressional Letter Addressed to Reps. Harold Rogers, Bill Young, Nita Lowey and Pete Visclosky, RE: FY 14 Defense Appropriations Act Section 8103 and 8104 of the Senate Bill," *U.S. House of Representatives*, September 23, 2013.

³⁴ "FY15 Defense Full Committee Markup Bill Summary," *U.S. Senate Committee on Appropriations website*, July 17, 2014, <http://www.appropriations.senate.gov/news/fy15-defense-full-committee-markup-bill-summary>.

³⁵ "S.Amdt.2280 to S.1197," *Congress.gov*, accessed April 13, 2015, <https://www.congress.gov/amendment/113th-congress/senate-amendment/2280/text>.

90/10 rule to 85/15.³⁶ He also proposed capturing military and veteran education benefits in the rule.³⁷

In all previous attempts, Congress chose not to advance legislation to include military and veteran education benefits into the 90 side of the rule or to roll it back to 85/15.

Background

High numbers of servicemembers are transitioning into a civilian society that increasingly values postsecondary credentials.³⁸ Access to postsecondary education has become paramount to social mobility.³⁹ Moreover, the demand for postsecondary credentials by America's workforce has increased.⁴⁰ But this demand is not fully being met by today's higher education system.⁴¹

A complex regulatory environment is a key factor to limiting student access. The 90/10 rule qualifies as a prime example of a well-intended regulation that now exists as a barrier to access. While legislation to both increase and decrease the influence of the rule

³⁶ "HELP Chairman Harkin Unveils Bill to Reauthorize Higher Education Act," *U.S. Senate Committee on Health Education Labor and Pensions website*, accessed April 13, 2015, <http://www.help.senate.gov/newsroom/press/release/?id=6bee060b-42c5-4a23-a185-6b8798a1b0f5>.

³⁷ "The Higher Education Affordability Act of 2014: Section-by-Section Analysis," *U.S. Senate Committee on Health Education Labor and Pensions website*, accessed April 13, 2015, <http://www.help.senate.gov/imo/media/doc/HEAA%20-%20Section-by-Section.pdf>

³⁸ "Veterans Affairs: Better Understanding Needed to Enhance Services to Veterans Readjusting to Civilian Life," *Government Accountability Office*, September 10, 2014, <http://www.gao.gov/products/GAO-14-676>.

³⁹ Michael Greenstone, Adam Looney, Jeremy Patashnik, and Muxin Yu, "Thirteen Economic Facts about Social Mobility and the Role of Education," *Brookings-The Hamilton Project*, June 2013 Report, accessed April 13, 2015, <http://www.brookings.edu/research/reports/2013/06/13-facts-higher-education>.

⁴⁰ Anthony P. Carnevale, Nicole Smith and Jeff Strohl, "Help Wanted: Projections of Job and Education Requirements Through 2018," *Georgetown University Center on Education and Workforce*, June 2010, <https://cew.georgetown.edu/wp-content/uploads/2014/12/HelpWanted.ExecutiveSummary.pdf>

⁴¹ Ibid.

has failed repeatedly, the president's recent proposal and the impending reauthorization of the Higher Education Act have revived the issue.

In this section, divided into two parts, the following will be discussed. The first part will address how the inclusion of military and veteran education benefits in the 90/10 rule will remove educational access for student populations most in need of postsecondary education. Additionally, Part I will explore current policy alternatives to including military and veteran education benefits in the rule. Part II will identify the positions of different stakeholders including key elected officials, veteran groups, consumer advocacy organizations, bureaucrats and other thought leaders.

Part I

A. Access: Critics contend that including military and veteran education benefits in the 90/10 rule will curb aggressive recruiting techniques at for-profit colleges.

Contrary to recent criticism, military veterans and servicemembers are accessing for-profit colleges based on a set of rational factors.⁴² Veterans enrolled at for-profit colleges identified a focus on “adult-oriented, career-focused programs with flexible schedules,”⁴³ as a primary reason for enrolling. In testimony before Congress, higher education researcher Jennifer Steele explained:

While some public two-year and four-year colleges also offer flexible schedules and online courses, students attending such institutions frequently expressed frustration with the immaturity of their peers. One student in a public two-year

⁴² Jennifer L. Steele, “Submission For The Record of Ms. Jennifer L. Steele, The RAND Corporation: Hearing on Examining Executive Order #13607 and Its Impact on Schools and Veterans,” *House Committee on Veterans’ Affairs*, May 16, 2012, <https://veterans.house.gov/submission-for-the-record/ms-jennifer-l-steele>.

⁴³ Ibid.

college said that disruptive students made her classes feel “like an extension of high school.” Indeed, some students in for-profit institutions mentioned that they had deliberately sought an environment that catered to working adults. They were also drawn to the career-focused curricula of the for-profits and the ability to avoid broad-based requirements and electives that did not pertain directly to their career plans.⁴⁴

Another factor in choosing for-profit colleges was the transferability of military experience and learning for academic credits.⁴⁵ This is important as veterans seek to maximize their benefits and complete their degrees faster. A separate study reinforced this sentiment:

[For-profit colleges] had a larger proportion of students completing both associate-level and baccalaureate-level degrees faster. This suggests that those who initially enroll in a proprietary school and earn a degree do so more quickly than those who initially enroll at a public or private nonprofit institution.⁴⁶

More recent evidence shows that the military community is not experiencing major issues at for-profit colleges. The consumer complaint system—an interagency effort between the Departments of Defense, Education and Veterans Affairs—was launched in 2014 precisely to identify violations of regulations and other initiatives in higher education.⁴⁷ In testimony before Congress, a senior VA official explained that roughly “half of the

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Chris Cate, “Million Records Project: Research from Student Veterans of America,” *Student Veterans of America*, accessed April 13, 2015, http://www.studentveterans.org/images/Reingold_Materials/mrp/download-materials/mrp_Full_report.pdf.

⁴⁷ “GI Bill® Feedback System,” *Department of Veterans Affairs—Veterans benefits Administration Report*, January 2015, accessed April 13, 2015, http://www.benefits.va.gov/GIBILL/docs/Overview_GI%20Bill_Feedback%20System_CY14.pdf.

complaints are benefits issues that VA controls.”⁴⁸ Meanwhile, many of the other issues were resolved at the school level.⁴⁹

Implementing the president’s proposal may force some for-profit institutions to limit access to veterans and other student populations.⁵⁰ This comes at a time when demand for higher levels of education exceeds supply. According to a 2011 study, “By 2018, we will need 22 million new workers with college degrees—but will fall short of that number by at least 3 million postsecondary degrees.”⁵¹

Furthermore, access to a diverse set of postsecondary credentials has become vital to social mobility in America.⁵² Denigrating and overregulating for-profit colleges may ultimately hurt our economic vitality. Citing recent criticisms of for-profit colleges, Op-Ed columnist for *The New York Times*, Joe Nocera, summarized the importance of the sector:

All of this obscures what really ought to be the most important fact about the industry: the country can’t afford to put it out of business. On the contrary, America needs it — and needs it to succeed — desperately.⁵³

⁴⁸ Found by accessing House Committee on Veterans’ Affairs YouTube site. Forward to the 1:15:00 mark for remarks, accessed April 13, 2015, <https://www.youtube.com/watch?v=m-pYRqRVxeM>.

⁴⁹ Ibid.

⁵⁰ Kantrowitz, “Consequences of the 90/10 Rule,” 1.

⁵¹ Anthony P. Carnevale, Nicole Smith and Jeff Strohl, “Help Wanted: Projections of Jobs and Education Requirements Through 2018,” *Georgetown Center on Education and the Workforce*, June 2010, <https://cew.georgetown.edu/report/help-wanted/>.

⁵² Michael Greenstone, Adam Looney, Jeremy Patashnik, and Muxin Yu, “Thirteen Economic Facts about Social Mobility and the Role of Education,” *Brookings/The Hamilton Project*, June 2013, <http://www.brookings.edu/research/reports/2013/06/13-facts-higher-education>.

⁵³ Joe Nocera, “Why We Need For-Profit Colleges,” *The New York Times Magazine*, September 16, 2011, http://www.nytimes.com/2011/09/18/magazine/why-we-need-for-profit-colleges.html?pagewanted=all&_r=0.

B. Current Policies: In the absence of modifying the 90/10 rule, other actions have been taken by the president and legislators to combat the use of deceptive and misleading recruiting practices. President Obama responded by issuing Executive Order 13607 in 2012—*Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members*.⁵⁴ The order addresses this issue head on:

Since the Post-9/11 GI Bill became law, there have been reports of aggressive and deceptive targeting of service members, veterans, and their families by some educational institutions ... To ensure our service members, veterans, spouses, and other family members have the information they need to make informed decisions concerning their well-earned Federal military and veterans educational benefits, I am directing my Administration to develop Principles of Excellence to strengthen oversight, enforcement, and accountability within these benefits programs.⁵⁵

The president's executive order was reinforced that same year when the Improving Transparency of Education Opportunities for Veterans Act of 2012 (H.R. 4057)⁵⁶ passed Congress and ultimately became law (P.L 112-249).⁵⁷ In one section of the law it requires the creation of "a centralized mechanism for tracking and publishing feedback from students and State approving agencies regarding the quality of instruction, recruiting practices, and post-graduation employment placement of institutions of higher

⁵⁴ "Executive Order -- Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members," *White House Office of the Press Secretary*, April 27, 2012, <http://www.whitehouse.gov/the-press-office/2012/04/27/executive-order-establishing-principles-excellence-educational-instituti>.

⁵⁵ Ibid.

⁵⁶ "Bill Text Versions, 112th Congress, H.R. 4057," *The Library of Congress THOMAS*, accessed April 28, 2015, <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.4057:>.

⁵⁷ "COMPREHENSIVE VETERANS EDUCATION INFORMATION POLICY (Public Law 112-249)," *Government Printing Office*, accessed April 28, 2015, <http://www.gpo.gov/fdsys/pkg/PLAW-112publ249/html/PLAW-112publ249.htm>.

learning.”⁵⁸ Similarly, the president’s executive order calls for an interagency collaboration for the creation of a consumer complaint system.⁵⁹

These policy ideas were universally heralded by veteran leaders and higher education stakeholders.⁶⁰ Now, the president has owned a hyper-partisan policy proposal even after winning praise from multiple—and often at odds—constituencies on alternative efforts.

Part II

There exists a clear divide, at least generally, on this issue politically. Liberals want to see the president’s proposal adopted. They are strongly in favor of strengthening regulations against the for-profit higher education sector. In contrast, conservatives have sought to repeal the rule. Advocacy groups, academics and policy researchers remain divided on the issue. This section will analyze recent positions of various stakeholders in higher education and in the military community.

With Sen. Harkin’s retirement, Sen. Durbin has become the leading critic of the for-profit college industry. He quickly issued a statement praising President Obama’s proposal to further regulate for-profit colleges under the 90/10 rule.⁶¹ He claims the proposal, if enacted, will “eliminate a loophole” to curb aggressive and misleading recruiting

⁵⁸ Ibid.

⁵⁹ “Executive Order -- Establishing Principles of Excellence,” *White House Office of the Press Secretary*.

⁶⁰ “VFW Builds Coalition to Support Student-Veteran Success,” *Veterans of Foreign Wars (VFW)*, February 10, 2012, <http://thevfw.blogspot.com/2012/02/vfw-builds-coalition-to-support-student.html>.

⁶¹ “Durbin: Obama Budget Proposal Would Finally Close For-Profit College Loophole, Save Taxpayers Billions,” *Senator Dick Durbin’s Press Room webpage*, February 02, 2015, <http://www.durbin.senate.gov/newsroom/press-releases/durbin-obama-budget-proposal-would-finally-close-for-profit-college-loophole-save-taxpayers-billions>.

tactics.⁶² Curiously, critics in the House—namely Reps. Takano and Davis—were mum on the proposal. However, their past actions suggest they are supportive of the president’s concept.

In contrast, the two leading Republican lawmakers for veterans’ issues voiced their dissatisfaction with the proposal. Rep. Jeff Miller, chairman of the House Veterans Affairs Committee, reportedly called the 90/10 rule arbitrary and an inadequate measure of quality of for-profit institutions.⁶³ His colleague in the Senate, Sen. Johnny Isakson, implied that the proposal will limit access to higher education.⁶⁴

The progressive interest group The Institute for College Access and Success (TICAS), a vocal critic of the for-profit college sector, was pleased to see the president’s proposal. In a statement issued after the release of the president’s budget, TICAS said, “the budget also closes the 90-10 loophole that has led unscrupulous for-profit colleges to aggressively and deceptively recruit veterans, servicemembers, and their families to enroll in high-priced, low-quality programs.”⁶⁵ TICAS has long advocated for tightening regulations, including 90/10, on for-profit colleges.

⁶² Ibid.

⁶³ Bryant Jordan, “Budget Proposal Restricts GI Bill Funding to For-Profit Colleges,” *Military.com*, February 11, 2015, <http://www.military.com/daily-news/2015/02/11/budget-proposal-restricts-gi-bill-funding-to-for-profit-colleges.html>.

⁶⁴ Ibid.

⁶⁵ “President’s FY16 Budget Prioritizes College Affordability and Reduced Student Debt Burdens,” *The Institute for College Access and Success*, February 02, 2015, http://ticas.org/sites/default/files/pub_files/ticas_nr_on_potus_fy16_budget.pdf.

Veteran advocacy groups, however, remain divided on the issue. The most prominent group in favor of including military and veteran education benefits in the 90/10 rule is Iraq and Afghanistan Veterans of America (IAVA). They consider the absence of the benefits in the rule a loophole that incentivizes for-profit colleges to aggressively recruit veterans.⁶⁶ Meanwhile, the nation's largest veterans' organization, The American Legion, is opposed to including GI Bill benefits into the rule. In a letter to defense appropriators last year, The American Legion wrote that including the GI Bills in the rule will create "an environment where servicemembers and veterans could possibly be discriminated against."⁶⁷

Federal bureaucrats have been mostly supportive of this idea. In testimony before Congress in 2013, a senior Consumer Financial Protection Bureau (CFBP) official was supportive of placing military and veteran education benefits into the rule. She said, "This has given some for-profit colleges an incentive to see servicemembers as nothing more than dollar signs in uniform, and to use some very unscrupulous marketing techniques to draw them in."⁶⁸ The VA representative was not as firm on the issue though:

While VA defers to the Department of Education on the 90/10 calculation, we recognize the argument for including post-9/11 G.I. Bill in the 90 percent limit on Federal funding. Modifications to the 90/10 calculation could assist in protecting some veteran students.

⁶⁶ "Letter from IAVA CEO to Senator Carper on 90/10," *Senator Carper's Website*, September 12, 2014, http://www.carper.senate.gov/public/_cache/files/7dd99d32-f963-4725-8307-73a1ddf0f50a/iava-letter-of-support.pdf.

⁶⁷ Congressional Letter from the American Legion National Commander opposing the inclusion of the GI Bill into the 90/10 Rule, Addressed to Chairman Durbin and Ranking Member Cochran, June 23, 2014.

⁶⁸ "THE 90/10 Rule: Improving Educational Outcomes for our Military and Veterans," *Hearing before the Committee on Homeland Security and Governmental Affairs*, June 23, 2013, <http://www.gpo.gov/fdsys/pkg/CHRG-113shrg82744/pdf/CHRG-113shrg82744.pdf>.

However, such a change could cause some schools to exceed the 90 percent threshold and be at risk of losing eligibility. Our concern is to ensure that veterans are not adversely affected by any proposed changes or, if so, to mitigate them to the extent possible. VA is happy to work collaboratively with the Department of Education and the Committee as it considers changes in this area.⁶⁹

The VA representatives concern for veterans' access in discussing the potential modification of the 90/10 rule is a legitimate concern. Financial aid expert Mark Kantrowitz released a policy paper discussing the discriminatory incentives embedded in the 90/10 rule saying that it could "preclude some veterans from enrolling in [for-profit] colleges."⁷⁰

Competing views on the issue have surfaced in separate law review journals. Anthony J. Guida, Jr. and David Figuli published a paper in *The University of Chicago Law Review* citing the 90/10 rule as being at odds with another federal regulation, the Gainful Employment rule.⁷¹ In *The George Washington Law Review*, Daniel J. Riegel argues that Congress should convert the 90/10 rule to a 55/45 ratio with military and veteran benefits included on the 55 side.⁷² Separately, Jaclyn Patton published a paper in the *South Texas Law Review* recommending that the GI Bills be counted in the 90 side as a means of protecting students and taxpayers.⁷³

⁶⁹ Ibid.

⁷⁰ Kantrowitz, "Consequences of the 90/10 Rule," 1.

⁷¹ Anthony J. Guida Jr. and David Figuli, "Higher Education's Gainful Employment and 90/10 Rules: Unintended "Scarlet Letters" for Minority, Low-Income, and Other At-Risk Students," *The University of Chicago Law Review*, Vol. 79, Winter 2012, 133.

⁷² Daniel J. Riegel, "Closing the 90/10 Loophole in the Higher Education Act: How to Stop Exploitation of Veterans, Protect American Taxpayers, and Restore Market Incentives to the For-Profit College Industry," *The George Washington Law Review* 81 (2013): 269, http://www.gwlr.org/wp-content/uploads/2013/01/Riegel_81_1.pdf.

⁷³ Jaclyn Patton, "Encouraging Exploitation of the Military By For-Profit Colleges: The New GI Bill and the 90/10 Rule," *South Texas Law Review* 54 (2012-13).

The 90/10 issue remains divisive across party lines. Notably, though, only a handful of Democratic lawmakers have outright expressed support for the rule. Key Republicans appear to be united in opposition to this issue, especially among their leadership. Outside of Congress, interest groups generally fall in line based on progressive or conservative roots. The exception is with the veteran advocacy organizations.

Policy Proposal

The reauthorization of the Higher Education Act (HEA) is the primary legislative vehicle for addressing the 90/10 rule. Sen. Alexander, chairman of the HELP Committee, has already expressed a willingness to see the HEA renewed in this Congressional session.⁷⁴ His counterpart in the House, Chairman Kline, has not been as forthcoming. However, last year he attempted a legislative piecemeal approach aimed at addressing bipartisan issues in the HEA.⁷⁵ Regardless of when reauthorization occurs, modifications to 90/10 will likely be deferred to this process.

The following proposal calls for minimizing the regulatory burden of the president's 90/10 plan by inserting exemption language in the HEA bill. The president's budget, however, suggests that including veteran and military benefits in the 90/10 rule will

⁷⁴ Michael Stratford, "With Deregulatory Slant, A Higher Ed Act Push," *Inside Higher Ed*, February 25, 2015, <https://www.insidehighered.com/news/2015/02/25/alexander-says-congress-will-pass-higher-ed-act-year-backs-plan-cut-regulations>.

⁷⁵ Lauren Camera, "Congress Making Headway on Higher Education Act," *Education Week*, August 19, 2014, <http://www.edweek.org/ew/articles/2014/08/20/01hea.h34.html>.

partially result in \$72 million of mandatory savings over 10 years; this number could decrease substantially with an exemption clause.⁷⁶

Institutional exemption provided to for-profit colleges will be incumbent upon preexisting regulatory compliance and tuition caps. It is important to note that the savings sought by the president may be accomplished through tuition caps. This language will be included in the HEA by amending Section 487(A) (20 U.S.C. 1094(a)).⁷⁷ The new provision will take place one year after becoming law in order to provide institutions with the adequate time to comply with other initiatives. The agencies responsible for this process will be the Departments of Veterans Affairs and Defense.

Specifically, this proposal would exempt military and veteran education benefits from the 90 side of the rule after institutions verifiably participate in some combination of the following:

1. **Sign the DOD MOU:** The Department of Defense MOU (DOD MOU) is a voluntary agreement between education institutions and the DOD.⁷⁸ By agreeing to the MOU, institutions are eligible to enroll student-servicemember using military Tuition Assistance (TA).⁷⁹ Certain provisions in the DOD MOU address

⁷⁶ "Fiscal Year 2016 Analytical Perspectives of the US Government," *Government Printing Office*, ISBN 978-0-16-092680-8, accessed March 25, 2015, <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/spec.pdf>.

⁷⁷ "HIGHER EDUCATION OPPORTUNITY ACT (Public Law 110-315)," *Government Printing Office*, accessed March 30, 2015, <http://www.gpo.gov/fdsys/pkg/PLAW-110publ315/html/PLAW-110publ315.htm>.

⁷⁸ "Department of Defense Voluntary Education Partnership Memorandum of Understanding Website," *DODMOU.com*, accessed April 28, 2015, <http://www.dodmou.com/>.

⁷⁹ *Ibid.*

many of the concerns that critics allege plague the for-profit college industry.

These include a ban on inducements “for the purpose of securing enrollments of Service members or obtaining access to TA funds”; refraining from “high-pressure recruitment tactics such as making multiple unsolicited contacts”; and participating in a “Third Party Education Assessment process when requested” in order to verify compliance.⁸⁰

2. Agree to the Principles of Excellence: The Principles of Excellence (POE), born from the president’s executive order and already being enforced, is a set of guidelines that education institutions subscribe to in support of student-veterans. Different from the DOD MOU, though, the POE is not a prerequisite to receive funding. Since the DOD MOU borrows themes found in the POE, institutions that sign on to the POE agree to similar items. These include ending “fraudulent and aggressive recruiting techniques and misrepresentations”; providing “a point of contact to provide academic and financial advice”; and providing “educational plans for all military and Veteran education beneficiaries.”⁸¹

3. Establish Military/Veteran Tuition Caps: Financial aid expert Mark Kantrowitz recommended waiving the 90/10 rule for institutions that offer below-average tuition rates.⁸² Similar to his proposal, for-profit colleges will offer tuition rates at or below the benefit threshold for servicemembers and veterans. For veterans using the Post-9/11 GI Bill at private institutions, the current national maximum is

⁸⁰ “Template of DOD MOU Between DOD Office of the USD(P&R) and Educational Institution and Service-Specific Addendums (DoDI 1322.25),” *Department of Defense*, March 15, 2011, http://www.dodmou.com/Documents/DODMOU%203%20SAMPLE%20July_7_2014.pdf.

⁸¹ “Principles of Excellence,” *Department of Veterans Affairs Education and Training Webpage*, accessed April 28, 2015, http://www.benefits.va.gov/gibill/principles_of_excellence.asp.

⁸² Kantrowitz, “Consequences of the 90/10 Rule,” 3.

set at \$20,235 per academic year.⁸³ For servicemembers using TA benefits, the benefit is valued at \$250 per credit hour with an annual maximum of \$4,500 per fiscal year.⁸⁴ A number of for-profit colleges are already doing this. For example, American Military University, a for-profit institution, offers an undergraduate tuition rate of \$250 per credit hour—the maximum amount covered per semester hour by the military services.⁸⁵ ECPI University, a for-profit institution, set their tuition below the Post-9/11 GI Bill maximum for undergraduate credential.⁸⁶ For private institutions with tuition that exceeds this maximum, there is an optional public-private program that allows institutions to cover the difference. The Yellow Ribbon Program (YRP) allows institutions to partner with the VA in a dollar-for-dollar matching scholarship.⁸⁷ Through the YRP, institutions with tuition and fees that exceed the maximum may make up the difference in costs that exceed the GI Bill national maximum.

This proposal calls for institutions complying with the tuition cap and at least one other recommendation in addition to offering a tuition cap. For example, institutions that exclusively enroll servicemembers will also comply with the DOD MOU. By

⁸³ “Post-9/11 GI Bill (Chapter 33) Payment Rates For 2014 Academic Year (August 1, 2014 - July 31, 2015),” *Department of Veterans Affairs Education and Training Webpage*, accessed April 28, 2015, http://www.benefits.va.gov/GIBILL/resources/benefits_resources/rates/ch33/ch33rates080114.asp.

⁸⁴ “Tuition Assistance,” *US Army MyArmyBenefits Webpage*, accessed April 28, 2015, http://myarmybenefits.us.army.mil/Home/Benefit_Library/Federal_Benefits_Page/Tuition_Assistance_%28TA%29.html?serv=147.

⁸⁵ “Tuition and Fees Webpage,” *American Military University*, accessed April 28, 2015, <http://www.amu.apus.edu/tuition-and-financing/tuition-and-fees/>; “Tuition Assistance,” *US Army MyArmyBenefits Webpage*.

⁸⁶ “Tuition and Fees,” *ECPI University Webpage*, accessed April 28, 2015, <http://www.ecpi.edu/admissions/tuition-fees>.

⁸⁷ “Yellow Ribbon Program,” *Department of Veterans Affairs Education and Training Webpage*, accessed April 28, 2015, http://www.benefits.va.gov/GIBILL/yellow_ribbon.asp.

comparison, veteran-serving institutions would comply with the POE recommendation. Institutions that serve both military and veteran students will comply with all of the above items. Verification of compliance—by the VA, DOD or both—will exempt for-profit colleges from calculating military and veterans in the 90 side of the rule.

Policy Analysis

This proposal minimizes an additional regulatory burden placed on for-profit colleges and is administratively feasible to implement. More specifically, this proposal protects quality for-profit institutions from being negatively impacted by the 90/10 rule; exempts certain for-profit institutions from a portion of a rule that is not currently applied equally to other colleges and universities; places minimal administrative burdens on the agencies involved; and eliminates duplicative efforts already in place by the VA.

However, two important weaknesses do exist in this proposal. First, while verifying a for-profit college's eligibility for exemption is not a major burden administratively, this proposal falls short in offering an oversight function. For-profit colleges in violation of the POE or the DOD MOU may go unnoticed for some time. Second, this proposal ignores student outcomes. For-profit colleges, generally speaking, are notorious for poor outcome measures.

This section will further analyze arguments for and against the exemption proposal.

Supporting Argument 1: Ineffective Measure of Quality

Opponents of the 90/10 rule have long maintained that the rule is not a measure of institutional quality.⁸⁸ Supporters of the rule contend that if a for-profit college has quality programs, students and others will be willing to pay some portion of the cost of attendance.⁸⁹ This is labeled “skin in the game”. However, research shows that those for-profit colleges nearing violation of the rule tend to educate high-risk students, or those most in need of federal financial aid.⁹⁰ Instead of measuring educational quality, the 90/10 rule “depends heavily on the demographics of each college’s student population, measuring ability to pay more than willingness to pay.”⁹¹ In other words, many at-risk students may not have the financial means to put “skin in the game”.

Since military and veteran students are somewhat different given these benefits are based on a contractual exchange—in simple terms benefits granted in exchange for service in the military—their education benefits would constitute skin in the game. Many Title IV aid programs like Pell Grants and Direct Loans are need-based. Military and veteran education benefits, in contrast, are not provided to students based on need. Education benefits for the troops and veterans are provided after meeting strict service requirements. Marines, for example, must serve for at least two years, be eligible for promotion and

⁸⁸ “APSCU CEO Testifies at Senate Hearing on Improving Educational Outcomes for Military and Veterans,” APSCU, July 23, 2013, <http://www.career.org/news-and-media/press-releases/zapscu-testifies-at-senate-hearing-on-veterans-edu.cfm>.

⁸⁹ “For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success,” *Senate HELP Committee*, July 30, 2012, http://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf.

⁹⁰ Kantrowitz, “Consequences of the 90/10 Rule,”

⁹¹ *Ibid*, 2.

meet other requirements prior to being eligible for Tuition Assistance.⁹² Veterans eligible for 100% of the Post-9/11 GI Bill must serve 36 months on active-duty after September 10, 2001.⁹³ An exemption clause in the 90/10 rule protects quality for-profit institutions from being adversely penalized.

Supporting Argument 2: Unequal, Unfair

Building on the previous argument, the notion that the 90/10 rule is a sound measure of institutional quality falls short in practice. After all, the rule is not uniformly applied to all colleges and universities. According to one researcher focused on California higher education issues, “Proponents of a 90/10 reform have spoken largely about for-profits, but this policy could be applied to all colleges in the state. In fact, all colleges should pass this competitive test.”⁹⁴ After factoring in federal and state support, though, most public colleges will fail the 90/10 rule.⁹⁵ Specifically, community colleges will have a 90/10 percentage of 98%.⁹⁶ By applying policy unequally under the guise of quality control, the federal government is picking winners and losers in the higher education industry. An exemption clause protects quality for-profit colleges from being adversely impacted by a rule that is not being equally applied to all institutions of higher education.

⁹² “TUITION ASSISTANCE (TA) GUIDELINES UPDATE,” *US Marine Corps MARADMIM Webpage*, September 11, 2013, <http://www.marines.mil/News/Messages/MessagesDisplay/tabid/13286/Article/149668/tuition-assistance-ta-guidelines-update.aspx>.

⁹³ “Post-9/11 GI Bill Pamphlet,” *Department of Veterans Affairs Education Webpage*, accessed April 29, 2015, http://www.benefits.va.gov/gibill/docs/pamphlets/ch33_pamphlet.pdf.

⁹⁴ Su Jin Jez, “The Role of For-Profit Colleges in Increasing Postsecondary Completions,” *California Journal of Politics and Policy* 4, no. 2 (2012): 157.

⁹⁵ Kantrowitz, “Consequences of the 90/10 Rule,” 2.

⁹⁶ *Ibid*, 14.

Supporting Argument 3: Limits Administrative Challenges

The Departments of Veterans Affairs and Defense already have the necessary information and systems to accomplish the exemption process. The VA maintains a publicly available database of institutions that have committed to the Principles of Excellence.⁹⁷ Another section of their website shows the amount of money and number of veterans slots allocated under the Yellow Ribbon Program.⁹⁸ The DOD is no different. It maintains a website dedicated to the DOD MOU with regular updates and a searchable database of participating institutions.⁹⁹ Lastly, discovering tuition prices for the tuition cap concept will not be challenging. This information is already gathered and maintained at the federal level. The Department of Education's (ED) College Navigator website, a public-facing consumer information tool, provides tuition and fees on colleges in the U.S.¹⁰⁰ Moreover, the president's recent executive order calls on the VA, DOD and ED to work collaboratively in support of veterans and servicemembers. Interagency cooperation is already underway. This exemption proposal poses little challenge administratively.

Supporting Argument 4: Eliminates Redundancy and Inefficiency

Perhaps the least discussed counterpoint to including military and veterans benefits in the 90/10 rule is the redundant nature of the concept. The 90/10 rule was spawned from the VA's 85/15 rule. The VA's 85/15 rule, notably applied to all colleges and universities, requires 15% of an institution's student body to be other than VA education

⁹⁷ "GI Bill Comparison Tool," *Department of Veterans Affairs*, accessed April 29, 2015, <http://department-of-veterans-affairs.github.io/gi-bill-comparison-tool/>.

⁹⁸ "Yellow Ribbon Program Information 2014 – 2015," *Department of Veterans Affairs*, accessed April 29, 2015, http://www.benefits.va.gov/GIBILL/yellow_ribbon/yrp_list_2014.asp.

⁹⁹ "Department of Defense Voluntary Education," *DODMOU.com*.

¹⁰⁰ "College Navigator," *Department of Education National Center for Education and Statistics*, accessed April 29, 2015, <https://nces.ed.gov/collegenavigator/>.

beneficiaries.¹⁰¹ Similar to 90/10, the 85/15 rule leverages free-market principles that proponents insist are necessary to curb fraud and abuse. Other than applying to all types of institutions, the 85/15 rule distinguishes itself by calculating number of students rather than revenues. Stacking military and veteran benefits into the 90/10 rule while simultaneously enforcing the 85/15 rule appears highly inefficient. Moreover, the proposal to include military and veteran benefits into the 90/10 rule raises questions as to the effectiveness and relevance of the VA's 85/15 rule. An exemption clause will at least remove the challenge of redundancy with two near-identical rules.

Opposing Argument 1: Weak Oversight

The Department of Veterans Affairs relies on State Approving Agencies (SAA) and internal mechanisms for compliance oversight. Established after the 1944 GI Bill was signed into law, SAAs were created that and have subsequently “evolved to become the primary source of assuring institutional accountability” for the GI Bill programs.¹⁰² However, their oversight role has diminished over time. Under current law, the Department of Veterans Affairs conducts oversight of GI Bill-approved colleges through compliance surveys at institutions with over 300 veterans enrolled.¹⁰³ The SAA's play a supporting role in this process, but veteran advocates have complained that this is “an impossible mission, and one that neglects institutions that may face significant

¹⁰¹ “Veterans’ Benefits (1976) Pub. L. No. 94–502, 90 Stat. 2387,” *Government Printing Office*, accessed April 29, 2015, <http://www.gpo.gov/fdsys/pkg/STATUTE-90/pdf/STATUTE-90-Pg2383.pdf>.

¹⁰² “Witness Testimony of Dr. Joseph W. Wescott, President, National Association of State Approving Agencies,” *House Committee on Veterans’ Affairs, Subcommittee on Economic Opportunity*, November 19, 2014, <https://veterans.house.gov/witness-testimony/dr-joseph-w-wescott>.

¹⁰³ “Title 38 U.S. Code § 3693 - Compliance surveys,” *Cornell University Legal Information Institute*, accessed April 29, 2015, <https://www.law.cornell.edu/uscode/text/38/3693>.

compliance issues.”¹⁰⁴ According to the Veterans of Foreign Wars (VFW), one of the largest veteran service organizations (VSO), some institutions go years without completing a compliance survey.¹⁰⁵ The American Legion has also weighed in on this topic finding “it problematic that SAAs have been removed from a large portion of the approval process.”¹⁰⁶

The Department of Defense (DOD) is in a similar situation. In 2011, the Government Accountability Office (GAO) made five recommendations to increase oversight of the Tuition Assistance program:

- (1) Improve accountability for recommendations made by third-party quality reviews, (2) develop a centralized process to track complaints against schools, (3) conduct a systemic review of its oversight processes, (4) take actions to ensure TA funds are used only for accreditor-approved courses and programs, and (5) require and verify state authorization for all schools.¹⁰⁷

While some of these recommendations have been improved by the DOD—like the consumer complaint system—others remain to be seen. It is entirely plausible for institutions to violate the POE or DOD MOU initiatives without great concern for consequences.

¹⁰⁴ “Witness Testimony of Ryan M. Gallucci, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States,” *House Committee on Veterans’ Affairs, Subcommittee on Economic Opportunity*, November 19, 2014, <http://docs.house.gov/meetings/VR/VR10/20141119/102727/HHRG-113-VR10-Wstate-GallucciR-20141119.pdf>.

¹⁰⁵ Ibid.

¹⁰⁶ “Witness Testimony of Mr. Steve Gonzalez, Assistant Director, National Veteran Employment and Education Division, The American Legion,” *House Committee on Veterans’ Affairs, Subcommittee on Economic Opportunity*, November 19, 2014, <http://docs.house.gov/meetings/VR/VR10/20141119/102727/HHRG-113-VR10-Wstate-GonzalezS-20141119.pdf>

¹⁰⁷ “DOD Education Benefits: Increased Oversight of Tuition Assistance Program Is Needed,” *Government Accountability Office*, March 01, 2011, <http://www.gao.gov/products/GAO-11-300>.

Opposing Argument 2: Ignores Student Outcome Measures

One of the most formidable arguments against the for-profit college sector is their low graduation rates. According to the Department of Education, the average six-year graduation rate (Fall 2006) at four-year degree-granting institutions in the for-profit sector was 32 percent.¹⁰⁸ The national average, meanwhile, was 57 percent.¹⁰⁹ One study revealed, through analysis of Department of Education data, that the top ten enrolling for-profit institutions graduated only one in five bachelor degree-seeking students.¹¹⁰ While the current method for tracking graduation rates has been regularly disputed by higher education stakeholders, gathering accurate information has been problematic:

Consistent and comprehensive institutional-level information tracking for-profit college student retention and graduation rates is not regularly available. The colleges themselves do not voluntarily disclose this information, and the measurements that the Department of Education collects and publishes are lacking...¹¹¹

Regardless, the information that is available shows low graduation rates and high cost-of-attendance at for-profit colleges.

Additionally, virtually all for-profit students (96%) take out a loan to finance their education.¹¹² While for-profit colleges only enroll around 12 percent of the total student population in higher education, they account for nearly half of all federal student loan

¹⁰⁸ "Fast Facts," *Department of Education National Center for Education Statistics*, <https://nces.ed.gov/fastfacts/display.asp?id=40>.

¹⁰⁹ Ibid.

¹¹⁰ Mami Lynch, Jennifer Engle, and Jose L. Cruz, "Subprime Opportunity: The Unfulfilled Promise of For-Profit Colleges and Universities," *The Education Trust*, November 2010, http://www.accessandequity.org/PDFs/subprime_report.pdf.

¹¹¹ "For Profit Higher Education," *Senate HELP Committee*, 72.

¹¹² Ibid, 112.

defaults.¹¹³ Many former students are faced with high loan debt without a postsecondary credential to show for their efforts. This proposal falls short of addressing the problem of poor student success rates at for-profit colleges.

Political Analysis

The challenge with this proposal is that it may be viewed by for-profit college proponents as an attack on the sector. This is largely attributed to the proposal only providing an exemption to certain for-profit institutions instead of fully repealing the 90/10 rule. In contrast, critics of for-profit higher education may claim that for-profit colleges are getting a pass with an exemption clause. This section will explore competing attitudes toward the proposal.

Republican leaders in Congress have already expressed an interest in fully eliminating the 90/10 rule. In remarks on the House floor, Speaker Boehner — then chairman of the House Committee on Education and the Workforce — said this regarding legislation he sponsored to eliminate the 90/10 rule:

The bill will repeal the unfair 90-10 rule, a requirement imposed only on proprietary schools. The 90-10 rule was implemented as a safeguard, yet there is no evidence it reduces fraud and abuse and significant evidence that it may reduce access for the neediest students by forcing schools to raise tuition or move out of inner cities where many students are receiving full federal funding.¹¹⁴

¹¹³ “Durbin, Harkin, Cohen: Congress Should End Loophole That Encourages For-Profit Colleges To Target Veterans & Servicemembers,” *Senator Dick Durbin Press Room Webpage*, November 06, 2013, <http://www.durbin.senate.gov/newsroom/press-releases/durbin-harkin-cohen-congress-should-end-loophole-that-encourages-for-profit-colleges-to-target-veterans-and-servicemembers>.

¹¹⁴ “Introduction of the College Access and Opportunity Act (Extension of Remarks),” *Congressional Record from Congress.gov*, 108th Congress, 2nd Session, Issue: Vol. 150, No. 61, May 05, 2004, <https://www.congress.gov/congressional-record/2004/05/05/extensions-of-remarks-section/article/E755-3>.

For-profit sector advocates have called for repealing the rule in exchange for a common set of metrics that apply to all institutions, regardless of an institution's tax status.¹¹⁵

Even ardent critics of the for-profit sector acknowledge that the quality of for-profit institutions will be better judged by a set of common outcome measures. During a Senate hearing focused on the 90/10 rule, an advocate from Iraq and Afghanistan Veterans of America (IAVA) was asked by Senator Coburn about tracking outcomes as an alternative to the rule. The representative responded by saying:

...I absolutely agree. I think we should have outcomes-based. I think that should be the first thing. The problem is, is that we should be talking largely about how the Department of Education does not measure graduation rates properly. There is a large argument about community colleges having a low graduation rate. That is because community colleges have five different types of students, from guys who take adult education to people who get vocational and transfer degrees. Not one of those 2 students are technically graduates. According to the Department of Education, I have dropped out of college twice because I deployed to Bosnia and transferred from community college to the University of California.

The question of how to measure institutional quality is not new in higher education, but the political scrutiny challenging the quality of for-profit colleges may be lost on the general public. One research group found that most students and employers are ambivalent to the policy discussions and scrutiny surrounding for-profit colleges.¹¹⁶ The group's recent research goes on to say that "current and former students are satisfied with the quality of their schools."¹¹⁷ A separate poll also suggests that the public recognizes

¹¹⁵ "Recommendations for the Reauthorization of the Higher Education Act," *APSCU White Paper*, accessed April 29, 2015, http://www.career.org/policy-and-issues/federal-issues/hea/upload/APSCU-HEA-Reauthorization-Policy-Paper_2015_Final.pdf.

¹¹⁶ "Profiting Higher Education: What Students, Alumni and Employers Think About For-Profit Colleges," *A Report by Public Agenda*, February 2014, <http://www.publicagenda.org/pages/profitting-higher-education>.

¹¹⁷ *Ibid.*

the flexibility offered by for-profit colleges.¹¹⁸ Approximately 81% of respondents “were convinced that online for-profit colleges and universities offer students the flexibility they need to be successful and earn a college degree.”¹¹⁹

Political pressure and heightened media attention on for-profit colleges, however, has created immense pressure on the sector. Allegations of misleading and deceptive recruiting practices have been spotlighted by the lawmakers and media alike. In June 2011, PBS Frontline aired a story revealing questionable recruiting practices by select for-profit colleges.¹²⁰ In an interview with then Senator and Chairman of the Health, Education, Labor and Pensions Committee, Tom Harkin stated, “there was a huge spike-up in the amount of military money going to these schools, a 600 percent increase in just a couple of years — huge increase.”¹²¹ Daniel Golden, a reporter known for investigating the for-profit college sector, said that veterans’ education expenditures nearly doubled from 2009 to 2010, “and a lot of that is driven by for-profit colleges and their wooing of veterans.”¹²² Critics of the industry contend that the solution is closing a suggested loophole in the 90/10 rule by capturing military and veteran benefits in the 90 side of the ratio.¹²³

¹¹⁸ “For-Profit Education Good for Economy, Poll Finds,” *Career College Central*, accessed April 29, 2015, http://www.careercollegcentral.com/news/For-Profit_Education_Good_for_Economy,_Poll_Finds.

¹¹⁹ Ibid.

¹²⁰ “Educating Sergeant Pantzke,” *PBS Frontline*, June 28, 2011, <http://www.pbs.org/wgbh/pages/frontline/educating-sergeant-pantzke/>.

¹²¹ “Transcript: Educating Sgt. Pantzke,” *PBS Frontline*, June 28, 2011, <http://www.pbs.org/wgbh/pages/frontline/educating-sergeant-pantzke/etc/transcript.html>.

¹²² “Interview with Daniel Golden,” *PBS Frontline*, April 15, 2011, <http://www.pbs.org/wgbh/pages/frontline/educating-sergeant-pantzke/dan-golden/>.

¹²³ “Q&A on the For-Profit College ‘90-10 Rule’,” *The Institute for College Access and Success*, November 26, 2014, http://ticas.org/sites/default/files/pub_files/90-10_QA_Nov_26_2014.pdf.

Herein lays the dilemma with the proposal. Defenders of for-profit colleges have strong arguments against the 90/10 rule in its entirety. Opponents of the sector consider the rule imperative to solving deceptive marketing efforts for education of questionable quality. They too have solid points against the profit-driven model—one that potentially incentivizes overly aggressive marketing efforts — inherent to the sector. However, recent efforts by the White House and evidence from a new consumer complaint system may provide an avenue for compromise on this policy proposal.

Recommendation

This policy proposal should be accepted for four reasons: 1) an exemption clause removes the unfair punishment of quality for-profit institutions that deliver education to the military community; 2) the tracking of veteran and servicemember outcomes as a means to measure quality—a viable alternative to including military/veteran benefits into 90/10 rule— is currently underway; 3) recent legislation and agency improvements have been established to strengthen oversight of military and veteran benefits; and 4) new information gathered by government agencies reveals few complaints in the education of military and veteran students in the for-profit sector.

First, quality for-profit institutions that genuinely support the education of the military community should not be penalized based on an archaic rule. Institutions in other sectors of higher education will also violate this rule, calling into question the fairness and standard of quality of the rule. According to Rep. Brad Wenstrup (R-OH), the chair of the House committee responsible for oversight of the GI Bill programs, “We can’t have one

set of rules for one set of schools and a different set of rules for another simply because we don't like their business model.”¹²⁴

Second, the president's Executive Order 13607 calls for an interagency effort to track veteran and servicemember outcomes.¹²⁵ The Departments of Veterans Affairs, Defense and Education have publicly listed a set of proposed outcome measures under four categories: during school, graduation/completion, post-graduation, and outcomes for future exploration.¹²⁶ A viable alternative to including military and veterans into the 90/10 rule is currently being implemented. Those for-profit colleges that gain exemption from the rule, but provide questionable education programs, may be appropriately judged based on the measured success of their students through the tracking of student outcomes.

Third, the House Committee on Veterans' Affairs—Subcommittee on Economic Opportunity recently marked up and forwarded legislation to the full committee that will strengthen the role of State Approving Agencies (SAAs).¹²⁷ As mentioned before, SAAs have a primary role of oversight for all institutions enrolling GI Bill beneficiaries. Furthermore, this legislation is supported by leading veteran service organizations and the

¹²⁴ “Markup of H.R. 473, H.R. 475, H.R. 476, H.R. 1382, H.R. 456, H.R. 474, H.R. 643, H.R. 1038, H.R. 1141, H.R. 1187, H.R. 1313,” *House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity*, Found by accessing committee YouTube channel, remarks at 16:30, accessed April 29, 2015, <https://www.youtube.com/watch?v=haeChRE7RjU&feature=youtu.be>.

¹²⁵ “Executive Order -- Establishing Principles of Excellence,” *The White House Office of the Press Secretary*.

¹²⁶ “Postsecondary Education Outcome Measures: ED, DOD, and VA,” *Department of Education National Center for Education Statistics*, accessed April 29, 2015, <http://nces.ed.gov/statprog/outcomemeasures/>.

¹²⁷ “Markup of H.R. 473, H.R. 475, etc.,” *House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity*.

National Association of State Approving Agencies.¹²⁸ Separately, DOD has identified an institutional quality-assurance triad for military education beneficiaries. It consists of the DOD MOU, which is required of all colleges seeking to enroll servicemembers using tuition assistance; an outside third party review; and a feedback system, otherwise known as the complaint system.¹²⁹ This is all pieced together through an interagency collaborative that consists of the Departments of Defense, Veterans Affairs, Education, Justice, the Consumer Financial Protection Bureau, and the Federal Trade Commission. Collectively, the enforcement structure is in place and weaknesses are being addressed through the legislative process.

Finally, the results from a new consumer complaint system for servicemembers and veterans show few complaints on aggressive marketing and recruiting techniques compared to financial issues.¹³⁰ This may be attributed to increased scrutiny and focus on the sector. Additionally, less than one percent of all student-veterans and servicemembers attending for-profit colleges have filed a complaint.¹³¹

The number of veterans attending a Principles of Excellence (POE) institution is also a key factor for promoting this proposal. Recall, the POE calls for a commitment to end deceptive marketing and recruiting techniques. An analysis of data collected by the VA

¹²⁸ "Legislative Hearing on H.R.456; H.R.473; H.R. 474; H.R.475; H.R.476; H.R.643; H.R.1038; H.R.1141; H.R.1187; H.R. 1313; H.R. 1382," *House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity*, March 24, 2015, <https://veterans.house.gov/hearing/legislative-hearing-0>.

¹²⁹ Dr. Tom Langdon, "Department of Defense Voluntary Education Brief," *Department of Defense presentation at the APSCU 2015 Annual Symposium/Hill Day Event*, March, 2015.

¹³⁰ "GI Bill© Feedback System," *Department of Veterans Affairs*.

¹³¹ Found by taking the number of complaints and dividing by the estimated total number of veterans and servicemembers enrolled at for-profit colleges: 394/350,000=~.1%

reveals that over 90 percent of veterans are attending for-profit colleges covered by the POE.¹³² Additionally, the new version of the DOD MOU incorporates language from the president's executive order. The president may be more willing to accept this exemption proposal knowing it relies on compliance with other initiatives promoted by his administration. For this reason, and those outlined before it, this proposal is politically feasible.

¹³² Found by analyzing publicly available data on the Department of Veterans Affairs GI Bill Comparison Tool Website. Excels spreadsheets downloaded in early 2015 on this webpage: http://www.benefits.va.gov/gibill/comparison_tool/about_this_tool.asp.

Curriculum Vitae

Michael Dakduk has an extensive background advocating on behalf of military troops, veterans and nontraditional students with a focus on postsecondary education and employment. Prior to his current role as Vice President of Military and Veterans Affairs for the Association of Private Sector Colleges and Universities (APSCU), Michael was the executive director of the national nonprofit organization Student Veterans of America (SVA).

During his leadership at SVA, he spearheaded a public-private partnership between the Department of Veterans Affairs, the National Student Clearinghouse and SVA to begin the first-ever national look at post-9/11 student veteran outcomes in higher education. Additionally, he was a key partner in the campaign for in-state tuition for veterans between The American Legion, Veterans of Foreign Wars (VFW) and SVA. Michael was also appointed by former VA Secretary Eric Shinseki to the Advisory Committee on Veterans Education and the Advisory Committee on Minority Veterans. More recently, *Military Transition News* recognized him on the “Top 40 Under 40 Military” list. His service in the Marine Corps, two combat deployments to Iraq and Afghanistan, and transition out of the service in 2008 during the height of the economic crisis provides Michael with a unique perspective on the issues facing transitioning servicemembers.

Michael earned the President Harry S. Truman Scholarship and was named a Horatio Alger Military Scholar during his undergraduate studies. He graduated with his B.S. from the University of Nevada Las Vegas.