▶Rick Thomas | Brown & Dunn ▶Ron Holt | Salmon Sims Thomas

You may not understand algorithms (we don't) and you may have hated algebra in high school or college (we strangely enjoyed it). But if you've ever watched the CBS show *Numb3rs*, you know that when you use the right formula with the correct inputs, you get dependable numbers that tell a story. And, if you own or manage a career college, you also know that since 1994, one important number or metric for your institution has been the percentage of the institution's tuition revenues and related payments that come from federal student loans and grants.

Rightly or wrongly, Congress long ago decided that your federal aid percentage tells a story about the quality of education provided by your institution. Until the passage of the Higher Education Opportunity Act (HEOA) last year, if your federal aid percentage in any fiscal year exceeded the limit set by Congress – initially 85 percent and then 90 percent – your institution lost its eligibility for federal aid for at least one year.

This requirement, commonly known as the 90/10 Rule, got something of a mixed makeover from the HEOA. The bad news is that Congress hung onto the 90/10 Rule and also placed in the statute the Secretary of Education's infamous presumption that all federal aid money paid to students is applied to institutional charges not covered by certain funding sources (agencies, state savings plans and qualifying institutional scholarships), even if portions of those funds were paid to students for living expenses. This means you get to count cash payments only if there are unsatisfied school charges after all the federal aid has been applied.

The good news is that Congress changed the 90/10 Rule from an absolute eligibility definition into an administrative capability requirement. So, now an institution can bust the 90 percent limit for one year and not lose Title IV eligibility, but it will be placed on the Department of Education's short leash of provisional certification for 2 years and it will lose eligibility – for 2 years – if it exceeds 90 percent in a second consecutive year. Consequently, institutions should still closely monitor their 90/10 score throughout the year to make sure they have a solid Title IV percentage well under 90 percent.

There are three other helpful, but not entirely clear, changes that the HEOA made to the 90/10 Rule involving types of tuition revenue that can be counted as non-federal funds in the 90/10 calculation:

1. Revenue from ineligible short programs or other licensed or accredited courses
2. The extra $2,000, or part thereof, of unsubsidized loan proceeds that Congress added last year
3. Proceeds from institutional loans

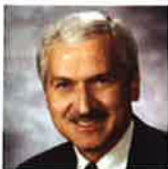
The first item seems to be straightforward. Payments for a Title IV ineligible program can be counted if the program is either approved by the institution's accrediting body or state licensing body or if it leads to a recognized industry certification or credential. The ambiguity involves what kind of accrediting or state approval is

required and what kind of validation will establish that a credential or certification is recognized in an industry. Far less clear are the other two HEOA provisions on institutional loans and the extra $2,000 of unsubsidized loans.

The second item, the extra $2,000 in loans, was provided by the department to supplement the credit crunch in the financial market. The HEOA allows for the additional funding to be classified as non-federal cash in the 90/10 calculation until June 30, 2011. The $2,000, or some part thereof, will be excluded from Title IV receipts. The department's current guidance provides the $2,000 does not overcome the now infamous presumption rule and is treated like a cash payment under 90/10 guidance.

The third change allows for counting institutional loans, which must be set up as true loans that are made and collected on a regular basis, to be counted in the 90/10 until June 30, 2012. The amount counted is the Net Present Value (NPV) of the loan in the period during which the loan is made. The HEOA places many requirements on these loans, including formalities and regular collections, and the determination of NPV is judgmental, using the time value of money, the number of payments expected, cost of collecting and uncollectible amounts or default rate. Institutional loans appear to have many regulatory land mines to maneuver.

Negotiated rulemaking has begun on the 90/10 items. Guidance is needed regarding the handling of the $2,000 as it relates to refunds and excess payments. Definitions also are needed to determine what program revenue to include for previously ineligible courses. Institutional loans have many missing definitions and unanswered questions. So, until final regulations are released, use your best judgment in applying these new components of your 90/10 percentage and put your reasoning in a note to the file. And remember, hang on to your homework until you get past your next audit.



Ron Holt is a shareholder with the Kansas City, Mo., law firm of Brown & Dunn, P.C. (B&D), where he leads the firm's higher education practice and also handles business transactions and business & regulatory litigation. He can be reached at 816.292.7015 by email at rholt@browndunn.com.

Richard S. Thomas, CPA, is an partner in Salmon Sims Thomas and he manages the firm's audit department. Rick has been with the firm since 1988. He's also worked for Ernst & Young on their audit staff. Contact him at 972.739.1264.

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