DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, 685, and 690

RIN 1845–AA17

Student Assistance General Provisions, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions, Federal Family Education Loan (FFEL) Program, William D. Ford Federal Direct Loan (Direct Loan) Program, and Federal Pell Grant Program regulations. In these proposed regulations, the requirements for the loan default reduction and prevention measures would be moved to a new subpart and revised for clarity and consistency. The Secretary also proposes to make various substantive changes to these requirements.

DATES: We must receive your comments on or before September 18, 2000.

ADDRESSES: Address all comments about these proposed regulations to Kenneth Smith, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: CDRNPRM@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Kenneth Smith. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Negotiated Rulemaking

Section 492 of the Higher Education Act of 1965, as amended (HEA), requires that, before publishing any proposed regulations for programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions in Washington, D.C., Atlanta, Chicago, and San Francisco. Four half-day sessions were held on September 13 and 14, 1999, in Washington, D.C. In addition, we held three regional sessions in Atlanta on September 17, in Chicago on September 24, and in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting Title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues that each committee would negotiate.

Once the two committees were established, they met to develop proposed regulations over the course of several months, beginning in February. The proposed regulations contained in this NPRM reflect the final consensus of Negotiating Committee I (committee), which was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers
American Association of Cosmetology Schools
American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
American Council on Education
Career College Association
Coalition of Higher Education Assistance Organizations
Consumer Bankers Association
Education Finance Council
Education Loan Management Resources
Legal Services
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Association of Student Loan Administrators
National Council of Higher Education Loan Programs
National Direct Student Loan Coalition
Sallie Mae, Inc.
Student Loan Servicing Alliance
The College Fund/United Negro College Fund

United States Department of Education
United States Student Association
US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document, except for proposed § 668.183(c)(1)(iii), which provides that certain loans being repaid under the Direct Loan Program's income contingent repayment plan are considered to be in default when calculating a proprietary, non-degree-granting institution's cohort default rate.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Revising Cohort Default Rate Regulations for Clarity and Consistency (Subpart M of Part 668)

Statute: The statutory provisions governing the calculation and appeals of cohort default rates and related sanctions in the FFEL and Direct Loan programs are provided in section 435 of the HEA.

Current Regulations: Most of the current regulations for cohort default rates in the FFEL and Direct Loan programs are in § 668.17.

Proposed Regulations: We have moved the requirements in current § 668.17 to a new subpart M of part 668 and revised their text. We have tried to make the regulations easier to read. To do this, the proposed regulations use short paragraphs and sentences, they use personal pronouns (''you'' and ''we''), and they are organized differently than the current regulations.

The following general changes would also be made by these proposed regulations:

• *Submission deadlines.* Currently, the deadlines for challenges, requests for adjustments, and appeals vary, depending upon the particular action involved and the type of submission made. In the current regulations, some deadlines are measured in working days and others are measured in calendar days.

We are proposing to make the deadlines for submitting challenges, requests for adjustments, and appeals as consistent as possible. Revisions to achieve this goal are made throughout the proposed regulations and summarized in the proposed Appendix A to subpart M of part 668.

All deadlines in these proposed regulations are in calendar days. In general, an institution is allowed 15 calendar days to request records or pay a fee and is allowed 30 calendar days to submit its completed request for adjustment or appeal. The only exceptions to this general approach are in the draft cohort default rate process (during which an institution is allowed 45 calendar days to submit its challenge) and in relation to an economically disadvantaged appeal (during which an institution is allowed 30 calendar days to send us its management's written assertion and 60 calendar days to send us its completed appeal). Under the proposed regulations, a data manager is allowed 20 calendar days to respond to a request for records or for information.

• *Electronic processing.* These proposed regulations do not include explicit requirements for the electronic submission and processing of challenges, requests for adjustments, or appeals. Rather, wherever possible in revising these regulations, we have removed language that could be read as restricting our ability to implement efficient processes for issuing and adjudicating cohort default rates.

Reasons: We are proposing to rewrite these regulations so that the requirements for cohort default rates are more clear and consistent. In addition to restructuring and revising the regulatory text, these proposed regulations provide complete information about administrative requirements and make submission deadlines more consistent. Explicit requirements are not provided for electronic processing requirements because they could limit flexibility and make it difficult for us to adapt to changes in technology.

Calculation of Cohort Default Rates for Proprietary, Non-degree-granting Institutions (§ 668.183(c)(1)(iii))

Current Regulations: Under current §§ 668.17(e)(1)(ii) and 668.17(f)(1)(ii), one of the reasons for considering a Direct Loan to be in default, for the purposes of calculating a proprietary, non-degree-granting institution's cohort default rate, is that the loan has been repaid under the income contingent repayment plan for 360 days, with scheduled payments less than 15 dollars per month and less than the amount of interest accruing on the loan, before the end of the fiscal year (FY) following the cohort's fiscal year.

Proposed Regulations: We are not proposing to change the current regulatory requirements. They are included in proposed § 668.183(c)(1)(iii).

Reasons: The inclusion of the current regulatory requirement in these proposed regulations was the subject of extensive discussion among the negotiators. Some non-Federal negotiators felt very strongly that this provision should be changed or dropped. We pointed out, however, that proposed § 668.183(c)(1)(iii) did not make any substantive change in our current regulations and had been presented to the committee only as part of the overall restructuring of the regulations. Because these non-Federal negotiators continued to disagree strongly with proposed § 668.183(c)(1)(iii), the committee agreed to exclude that provision in the call for consensus on the draft regulations.

Several non-Federal negotiators objected to this provision because they felt that it unfairly targets non-degree-granting proprietary institutions. They asked that the special treatment of Direct Loans being repaid under the income contingent repayment plan be removed or be applied to all institutions, not to non-degree-granting proprietary institutions only. These negotiators argued that this provision could provide an incentive for institutions to counsel students to defer repayment, rather than encourage them to repay under the income contingent repayment plan, even if the student might benefit from repayment under this plan. These negotiators also argued that an institution has little control over whether a borrower will choose to repay under the income contingent repayment plan, and the institution should not be held responsible for that choice.

We appreciate the negotiators' concerns but continue to believe that, without this provision, an institution could have a low cohort default rate even though a large proportion of its former students are making only minimal or no payments on their loans. We believe that situation is a potential area for abuse in the Direct Loan Program, and it is imperative to protect students and taxpayers from that potential abuse.

We also continue to believe that this provision should apply to non-degree-granting proprietary institutions only. Our experience and data show that student borrowers at non-degree-granting proprietary institutions are at a higher risk of default than other student borrowers. Non-degree-granting proprietary institutions provide students with education or training needed to secure employment, and a

borrower's repayment under income contingent repayment directly reflects the value of the education or training provided by that institution in the marketplace.

Determining Cohort Default Rates for Institutions That Have Undergone a Change in Status (§ 668.184)

Statute: Under section 435(m)(3) of the HEA, the Secretary must prescribe regulations that will prevent an institution from evading the consequences of cohort default rates by branching, consolidating, changing ownership or control, or by similar devices.

Current Regulations: Current § 668.17(g)(2) provides general requirements for the application of cohort default rates or combined cohort default rates to an institution that has undergone a change in status.

Proposed Regulations: Proposed § 668.184 provides detailed requirements for determining an institution's cohort default rate following three types of institutional restructuring: an institution's acquisition of or merger into a separate institution, an institution's acquisition of a branch or location that was formerly part of a separate institution, or a spin-off of an institution's branch or location to become a separate, new institution.

The requirements proposed for each of the three types of changes in status are summarized in the following paragraphs:

• *Acquisition or merger of institutions.* If an institution acquires another institution or a new institution is created by the merger of two or more institutions, the method for determining its cohort default rate depends on the date of the acquisition or merger and the date of publication of the cohort default rate:

1. *Cohort default rates published before the acquisition or merger.* For cohort default rates that were published before the date of the change in status, the institution's cohort default rate is the rate that was calculated for the predecessor institution with the greatest total number of borrowers entering repayment in the two most recent cohorts that were used to calculate those cohort default rates.

2. *Cohort default rates published after the acquisition or merger.* After the date of the acquisition or merger, the data for the institutions involved in the acquisition or merger would be combined, and the institution's cohort default rate would be calculated based on that combined data (in this preamble, this is referred to as a ''merged rate'').

Example #1. On January 1, 2000, Institution A merges with Institution B to form Institution C. Data and cohort default rates for Institutions A, B, and C, for FY 1996 through FY 2001, are provided in the following table. (In the following table, the ''Borrowers in Cohort'' rows identify the total number of borrowers in each institution's cohort for FY 1996 through FY 2001, and the ''Borrowers in Default'' rows identify the total number of borrowers in each cohort who are considered to be in default for purposes of calculating a cohort default rate.)

Institution			FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
A		Borrowers in Cohort	59	68	63	70	52	45
		Borrowers in Default	8	6	9	9	6	7
		Cohort Default Rate	13.6%	8.8%	14.3%	12.9%	11.5%	15.6%
B		Borrowers in Cohort	35	42	40	39	40	31
		Borrowers in Default	2	1	3	2	2	1
		Cohort Default Rate	5.7%	2.4%	7.5%	5.1%	5.0%	3.2%
C	Actual	Borrowers in Cohort	N/A	N/A	N/A	N/A	6	21
	Actual	Borrowers in Default	N/A	N/A	N/A	N/A	1	2
	Application Method		1. Before		2. After			
	Applied	Borrowers in Cohorts	59	68	63+40+0 = 103	70+39+0 = 109	52+40+6 = 98	45+31+21 = 97
	Applied	Borrowers in Default	8	6	9+3+0 = 12	9+2+0 = 11	6+2+1 = 9	7+1+2 = 10
	Applied	Cohort Default Rate	13.6%	8.8%	11.7%	10.1%	9.2%	10.3%

Since Institution C was created by a merger of Institutions A and B, its data for borrowers in cohorts and in default are separated into ''actual'' data and ''applied'' data. Institution C's ''actual'' data includes only the borrowers who received loans to attend Institution C. Its ''applied'' data and cohort default rates reflect the data for all institutions and the calculations used to determine Institution C's cohort default rate under proposed § 668.184(b).

Institution C was created on January 1, 2000. Since cohort default rates for a fiscal year are generally published before the end of the second subsequent fiscal year (FY 1996's cohort default rates are published before the end of FY 1998, FY 1997's cohort default rates are published before the end of FY 1999, etc.), Institution C was created after the

FY 1997 cohort default rates were published (around September 1999) and before the FY 1998 cohort default rates were published (around September 2000).

As a result, under the proposed regulations, Institution C's cohort default rates would be calculated in the following manner:

1. *Cohort default rates published before the merger.* For cohort default rates that were published before the merger (cohort default rates for FY 1997 and before), Institution C's cohort default rates will be the rates of its predecessor with the greatest total number of borrowers entering repayment in the two most recent cohorts that were used to calculate those cohort default rates (for FY 1996 and FY 1997). The total number of Institution A's borrowers for those 2 fiscal years is 127 (59 + 68 = 127), and the total number of Institution B's borrowers for those 2 fiscal years is 77 (35 + 42 = 77). Since the total for Institution A (127) is greater than the total for Institution B (77), Institution A's cohort default rates for FY 1997 and before apply to Institution C.

2. *Cohort default rates published after the merger.* All of Institution C's cohort default rates that are published after the date of the merger (cohort default rates for FY 1998 and after) are calculated as merged rates. To calculate Institution C's merged rates for FY 1998 and each following fiscal year, totals are calculated for the number of borrowers and defaulted borrowers for Institutions A, B, and C in each fiscal year. For example, for FY 1998, totals are calculated for Institutions A, B, and C's ''Borrowers in Cohort'' (63 + 40 + 0 = 103) and for their ''Borrowers in Default'' (9 + 3 + 0 = 12). Since the total number of borrowers in Institution C's merged cohort is greater than 30 (103), Institution C's merged rate for FY 1998 is 11.7 percent (12 divided by 103 is 0.117). All of Institution C's subsequent cohort default rates are also calculated as merged rates.

• *Acquisition of branches or locations.* If an institution acquires a branch or a location from another institution, the method for determining its cohort default rate depends on the date of the acquisition and the date of publication of the cohort default rate:

1. *Cohort default rates published before the acquisition.* For cohort default rates that were published before the date of the acquisition, the institution's cohort default rate is unchanged. However, the institution's cohort default rate would apply to both the institution and to the newly acquired branch or location.

2. *Three cohort default rates published immediately after the acquisition.* For the three cohort default rates published after the date of the acquisition, the institution's cohort default rate is calculated as a merged rate. The calculations of the merged rates are based on the data for all of the borrowers at the institutions involved in the change in status, including all of their branches and locations. The cohort default rates for the institution from which the location or branch was acquired are not calculated as merged rates.

3. *Cohort default rates published after the third merged rate.* After the institution's third merged rate, its cohort default rate is no longer calculated as a merged rate. Its subsequent cohort default rates no longer include the data for the other institution involved in the change in status.

Example #2. On July 10, 2002, Institution B acquires a location from Institution A. Data and cohort default rates for Institutions A and B, for FY 1998 through FY 2003, are provided in the following table. (In the following table, the ''Borrowers in Cohort'' rows identify the total number of borrowers in each institution's cohort for FY 1998 through FY 2003, and the ''Borrowers in Default'' rows identify the total number of borrowers in each cohort who are considered to be in default for purposes of calculating a cohort default rate.)

Institution			FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
A		Borrowers in Cohort	140	183	200	154	159	213
		Borrowers in Default	13	4	12	20	16	9
		Cohort Default Rate	9.3%	2.2%	6.0%	13.0%	10.1%	4.2%
B	Actual	Borrowers in Cohort	103	140	122	98	135	140
		Borrowers in Default	2	4	12	31	22	19
	Application Method		1. Before		2. Three FY's			3. After
	Applied	Borrowers in Cohorts	Institution B's cohort default rates for FY 1999 and earlier remain unchanged.		200+122 = 322	154+98 = 252	159+135 = 294	Merged rate no longer calculated.
		Borrowers in Default			12+12 = 24	20+31 = 51	16+22 = 38	
		Cohort Default Rate	1.9%	2.9%	7.5%	20.2%	12.9%	13.6%

Since Institution B acquired a location from Institution A, Institution B's data for ''borrowers in cohorts'' and ''borrowers in default'' are separated into ''actual'' data and ''applied'' data. Institution B's ''actual'' data includes only the borrowers who received loans to attend Institution B. Its ''applied'' data and cohort default rates reflect the data for both institutions and the calculations used to determine Institution B's cohort default rate under proposed § 668.184(c).

Institution B acquired the location from Institution A on July 10, 2002. Since cohort default rates for a fiscal year are generally published before the

end of the second subsequent fiscal year (FY 1996's cohort default rates are published before the end of FY 1998, FY 1997's cohort default rates are published before the end of FY 1999, *etc.*), Institution B acquired the location after the FY 1999 cohort default rates were published (around September 2001) and before the FY 2000 cohort default rates were published (around September 2002).

As a result, under the proposed regulations, Institution B's cohort default rates would be calculated in the following manner:

1. *Cohort default rates published before the acquisition.* For cohort default rates that were published before the acquisition (cohort default rates for FY 1999 and before), Institution B's cohort default rates are unchanged.

2. *Three cohort default rates published immediately after the acquisition.* For the three cohort default rates published after the acquisition (FY 2000, FY 2001, and FY 2002), Institution B's cohort default rates are calculated as merged rates. To calculate Institution B's merged rates for FY 2000, FY 2001, and FY 2002, totals are calculated for the number of borrowers and defaulted borrowers for Institutions A and B in each fiscal year. For example, for FY 2001, totals are calculated for Institutions A and B's ''Borrowers in Cohort'' (154 + 98 = 252) and for their ''Borrowers in Default'' (20 + 31 = 51). Since the total number of borrowers in Institution B's merged cohort is greater than 30, Institution B's merged rate for FY 2001 is 20.2 percent (51 divided by 252 is 0.202).

3. *Cohort default rates published after the third merged rate.* After Institution B's third merged rate (for FY 2002), its cohort default rate is no longer calculated as a merged rate. Institution B's cohort default rates for FY 2003 and later no longer include data from Institution A.

• *Branches or locations becoming institutions.* If a branch or location of an institution becomes a separate, new institution, the method for determining its cohort default rate depends on the date of the change in status and the date of publication of the cohort default rate:

1. *Cohort default rates published before the change in status.* For cohort default rates that were published before the date of its change in status, the institution's cohort default rate is the same as the cohort default rate for its former parent institution.

2. *Three cohort default rates published immediately after the change in status.* For the three cohort default rates published after the date of the change in status, the institution's cohort default rate is calculated as a merged rate. The calculations of the merged rates are based on the data for all of the borrowers at the institution and at its former parent institution, including all of their branches and locations. The cohort default rates for the former parent institution are not calculated as merged rates.

3. *Cohort default rates published after the third merged rate.* After the institution's third merged rate, its cohort default rate is no longer calculated as a merged rate. Its subsequent cohort default rates no longer include the data for the former parent institution.

Example #3. On October 5, 2000, a location of Institution A becomes a separate, new Institution B. Data and cohort default rates for Institutions A and B, for FY 1997 through FY 2002, are provided in the following table. (In the following table, the ''Borrowers in Cohort'' rows identify the total number of borrowers in each institution's cohort for FY 1997 through FY 2002, and the ''Borrowers in Default'' rows identify the total number of borrowers in each cohort who are considered to be in default for purposes of calculating a cohort default rate.)

Institution			FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
A		Borrowers in Cohort	35	33	41	32	31	35
		Borrowers in Default	9	10	3	3	6	4
		Cohort Default Rate	25.7%	30.3%	7.3%	9.4%	19.4%	11.4%
B	Actual	Borrowers in Cohort	N/A	N/A	N/A	3	7	31
		Borrowers in Default	N/A	N/A	N/A	2	1	2
	Application Method		1. Before		2. Three FY's			3. After
	Applied	Borrowers in Cohorts	35	33	41+0 = 41	32+3 = 35	31+7 = 38	Merged rate no longer calculated.
		Borrowers in Default	9	10	3+0 = 3	3+2 = 5	6+1 = 7	
		Cohort Default Rate	25.7%	30.3%	7.3%	14.3%	18.4%	6.5%

Since Institution B has undergone a change in status, its data for ''borrowers in cohorts'' and ''borrowers in default'' are separated into ''actual'' data and ''applied'' data. Institution B's ''actual'' data includes only the borrowers who received loans to attend Institution B. Its ''applied'' data and cohort default rates reflect the data for both institutions and the calculations used to determine Institution B's cohort default rate under proposed § 668.184(d).

Institution B became a new institution on October 5, 2000. Since cohort default rates for a fiscal year are generally published before the end of the second subsequent fiscal year (FY 1996's cohort default rates are published before the end of FY 1998, FY 1997's cohort default rates are published before the end of FY 1999, etc.), Institution B

became a new institution after the FY 1998 cohort default rates were published (around September 2000) and before the FY 1999 cohort default rates were published (around September 2001).

As a result, under the proposed regulations, Institution B's cohort default rates would be calculated in the following manner:

1. *Cohort default rates published before the change in status.* For cohort default rates that were published before Institution B became a new institution (cohort default rates for FY 1998 and before), Institution B's cohort default rates are the same as Institution A's.

2. *Three cohort default rates published immediately after the change in status.* For the three cohort default rates published after the change in status (FY 1999, FY 2000, and FY 2001), Institution B's cohort default rates are calculated as merged rates. To calculate Institution B's merged rates for FY 1999, FY 2000, and FY 2001, totals are calculated for the number of borrowers and defaulted borrowers for Institutions A and B in each fiscal year. For example, for FY 2000, totals are calculated for Institutions A and B's ''Borrowers in Cohort'' (32+3=35) and for their ''Borrowers in Default'' (3+2=5). Since the total number of borrowers in Institution B's merged cohort is greater than 30 (35), Institution B's merged rate for FY 2000 is 14.3 percent (5 divided by 35 is 0.143).

3. *Cohort default rates published after the third merged rate.* After Institution B's third merged rate (for FY 2001), its cohort default rate is no longer calculated as a merged rate. Institution B's cohort default rates for FY 2002 and later no longer include data from Institution A.

Example #4. Institution A, as described in the previous example (Example #3), has an FY 1996 cohort default rate of 32.0 percent. When applying prior cohort default rates under § 668.184, Institution A's FY 1996 cohort default rate is applied to Institution B. Thus, Institution B's cohort default rates for FY 1996 through FY 2002 are—

FY 1996: 32.0%
FY 1997: 25.7%
FY 1998: 30.3%
FY 1999: 7.3%
FY 2000: 14.3%
FY 2001: 18.4%
FY 2002: 6.5%

Institution B has 3 consecutive cohort default rates of 25 percent or greater (for FY 1996, FY 1997, and FY 1998), but as we explain below, it is not necessarily subject to a loss of participation based on those cohort default rates.

In example #3, Institution B became a separate, new institution on October 5, 2000. This was after the FY 1998 cohort default rates are published (around September 2000) and before the FY 1999 cohort default rates are published (around September 2001). Therefore all of the consecutive cohort default rates of 25 percent or greater were published before Institution B became a separate, new institution, and Institution A was notified of the loss of participation based on those cohort default rates before Institution B became a separate, new institution.

Proposed § 668.184 addresses only the determination of an institution's cohort default rates after a change in status. Any application of an institution's prior loss of eligibility to another institution under this subpart is subject to the criteria in proposed § 668.188. In the preceding example, unless Institutions A and B meet the criteria described in § 668.188, there would be no action against Institution B based on its FY 1996, FY 1997, and FY 1998 cohort default rates. However, if Institution B's cohort default rate for FY 1999 had been 25 percent or greater (instead of 7.3 percent), Institution B would be subject to an action based on 3 consecutive cohort default rates of 25 percent or greater, under proposed § 668.187.

Reasons: Proposed § 668.184 more clearly describes the manner in which an institution's cohort default rate is determined after a change in status and would reduce the possibility of an institution's evasion of the consequences of high cohort default rates.

A separate proposed § 668.188 also addresses the possibility of an institution's evasion of the consequences of high cohort default rates. That proposed section would apply a loss of eligibility that was previously imposed against one institution to another institution following a change in status. Changes proposed for § 668.188 are discussed later in this preamble, under ''Preventing Evasion of the Consequences of Cohort Default Rates (§ 668.188).''

Participation Rate Index Challenges and Appeals (§§ 668.185(c) and 668.195)

Statute: Under section 435(a)(6) of the HEA, an institution may challenge an anticipated loss of eligibility based on excessive cohort default rates, during the draft cohort default rate process, if its participation rate index is 0.0375 or less for any of the 3 most recent fiscal years for which it has received a cohort default rate. An institution's participation rate index for a fiscal year is derived by multiplying its cohort default rate for that fiscal year by the percentage of its students who received an FFEL or Direct Loan Program loan to attend it during a specified 12-month period.

Current Regulations: Current § 668.17(j)(4) simply tracks the statutory language. Under current § 668.17(c)(1)(ii)(A), an institution may also appeal on the basis of its participation rate index during the official cohort default rate process.

Proposed Regulations: The proposed regulations would make three changes to the current regulatory requirements:

- *Eligibility.* The proposed regulations would allow any institution subject to a loss of participation based on its cohort default rate (including institutions with cohort default rates greater than 40 percent) to submit a participation rate index challenge or appeal. Currently, only an institution subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater may appeal on this basis.
- *Ceiling.* The proposed regulations would use a participation rate index ceiling of 0.06015, rather than 0.0375, for institutions that are subject to a loss of participation based on 1 cohort default rate over 40 percent.
- *Average rates.* The proposed regulations would allow an institution with fewer than 30 borrowers in its cohort for a fiscal year to choose to calculate its participation rate index for that fiscal year using either the data for that fiscal year alone or the data for the 3 fiscal years considered in calculating an average rate for the institution, under proposed § 668.183(d)(2).

Reasons:

- *Eligibility.* In the interests of consistency, we are proposing to allow an institution to submit a participation rate index challenge or appeal to avoid the consequences of a cohort default rate over 40 percent. Additional reasons for this change are discussed later in this preamble, under ''Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1)).''
- *Ceiling.* The proposed regulations include a higher participation rate index ceiling for institutions that are challenging or appealing a loss of eligibility based on 1 cohort default rate over 40 percent because, without this higher ceiling, those institution would be held to a more restrictive standard than other institutions.

An institution's participation rate index for a fiscal year is derived by multiplying its cohort default rate for that fiscal year by the percentage of its students who received an FFEL or Direct Loan Program loan to attend it

during a specified 12-month period. The statutory participation rate index ceiling of 0.0375, which applies to an institution that is challenging or appealing a loss of eligibility based on 3 consecutive cohort default rates of 25 percent or greater, is based on a maximum loan program participation rate of 15 percent. That is, an institution having the lowest default rate for which it could lose participation (25 percent) could meet the 0.0375 ceiling, and avoid the consequences of its three cohort default rates of 25 percent or greater, if 15 percent, at most, of its students received loans (0.25×0.15=0.0375).

If a participation rate index of 0.0375 was used for an institution that is subject to a loss of eligibility based on 1 cohort default rate over 40 percent, that institution would be subject to a participation rate index ceiling that reflected a loan program participation of, at most, about 9.35 percent of that institution's students (0.401×0.0935=0.0374935).

Under the proposed regulations, an institution that is subject to a loss of eligibility based on 1 cohort default rate greater than 40 percent would be able to submit a participation rate index challenge or appeal if its participation rate index for that cohort's fiscal year was equal to 0.06015 or less. That is, an institution having the lowest default rate for which it could lose participation (40.1 percent) could meet the 0.06015 ceiling if 15 percent, at most, of its students received loans (0.401×0.15=0.06015).

We especially request comments on whether it is appropriate to use this higher participation rate index for an institution that is subject to a loss of participation based on 1 cohort default rate greater than 40 percent, or whether it would be more appropriate to use the current participation rate index of 0.0375.

• *Average rates.* The draft cohort default rates that we provide to institutions are calculated using data for 1 fiscal year only. However, if an institution's cohort for a fiscal year includes fewer than 30 borrowers, its official cohort default rate will be calculated as an average rate, based on 3 years of data. Without the changes proposed for participation rate index challenges (which may be based on draft cohort default rates) and appeals (which are based on official cohort default rates), the proposed regulations might cause different participation rate indexes to be calculated for an institution during a challenge and an appeal.

Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1))

Current Regulations: Under current § 668.17(a)(2), we may initiate a proceeding under subpart G of part 668 to limit, suspend, or terminate an institution's participation in the Title IV, HEA programs if the institution's cohort default rate is greater than 40 percent for any fiscal year.

Proposed Regulations: Proposed § 668.187(a)(1) would impose a loss of participation in the FFEL and Direct Loan programs against an institution having a cohort default rate greater than 40 percent. No proceedings under subpart G of part 668 would be needed to impose this loss of participation. The loss would continue for the remainder of the fiscal year in which the institution is notified and for the next 2 fiscal years.

Reasons: The proposed regulations would make the consequences of excessive cohort default rates more consistent. Under the proposed regulations, an institution with a cohort default rate greater than 40 percent and an institution with 3 consecutive cohort default rates of 25 percent or greater would both lose eligibility for the FFEL and Direct Loan programs for the same amount of time. Under the proposed regulations, both types of institutions would also be subject to the same liability for loans made during the adjustment and appeals process, would be required to meet the same criteria to regain participation in the FFEL or Direct Loan programs, and would be permitted to maintain participation in Federal campus-based programs.

Currently, an institution with a cohort default rate greater than 40 percent may be subject to a loss of participation in all Title IV, HEA programs for an indefinite period of time. An institution with 3 consecutive cohort default rates of 25 percent or greater can continue to participate in the Federal campus-based programs during the period that it is ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs, and it is then in a better position to re-establish its eligibility for the loan and Federal Pell Grant programs when its period of ineligibility ends.

During negotiated rulemaking, non-Federal negotiators voiced concerns about making the loss of participation ''automatic'' for an institution with a cohort default rate greater than 40 percent, rather than discretionary with the Secretary. This concern is addressed in these proposed regulations by providing essentially the same challenges, adjustments, and appeals for a loss of participation based on 1 cohort default rate greater than 40 percent as are available to an institution that is subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater. Currently, an institution with a cohort default rate greater than 40 percent has fewer options for appeal than an institution with 3 consecutive cohort default rates of 25 percent or greater.

During the negotiations, the Department agreed to treat institutions with 1 cohort default rate greater than 40 percent differently in one aspect of the appeals process, compared to institutions with 3 cohort default rates of 25 percent or greater. Generally, a loss of eligibility based on 3 consecutive cohort default rates of 25 percent or greater includes loss of participation in the FFEL, Direct Loan, and Federal Pell Grant programs. The Department agreed to propose that a loss of eligibility based on 1 cohort default rate greater than 40 percent would include loss of participation in the FFEL and Direct Loan programs only. It would not affect an institution's ability to participate in the Federal Pell Grant Program.

Some non-Federal negotiators contended that institutions with 1 cohort default rate greater than 40 percent should not be subject to a loss of participation in the Federal Pell Grant Program because they might not have an extended history of excessive rates. We agreed with the non-Federal negotiators. If the institution continues to have excessive cohort default rates, it will have 3 consecutive cohort default rates of 25 percent or greater and will be subject to a loss of participation in the Federal Pell Grant Program, along with an extended loss of participation in the FFEL and Direct Loan programs.

Use of Subpart G of Part 668 to End an Institution's Participation in the FFEL Program (§ 668.187(a)(2))

Current Regulations: Under § 668.17(a)(3), we may initiate a proceeding under subpart G of part 668 to limit, suspend, or terminate an institution's participation in the FFEL Program, if that institution's 3 most recent cohort default rates are 25 percent or greater and 1 or more Direct Loans were used to calculate any of those cohort default rates. However, under § 668.17(b)(2) the same institution, with the same three cohort default rates, would be subject to a loss of eligibility in the Direct Loan Program, without a proceeding under subpart G of part 668.

Proposed Regulations: We are proposing to end an institution's eligibility in the FFEL Program, under proposed § 668.187(a)(2), without initiating a proceeding under subpart G

of part 668, regardless of the inclusion of Direct Loans in the institution's cohort default rates.

Reasons: We believe that it is appropriate to try to provide consistent treatment for all institutions in this area. In every other requirement in § 668.17, an institution that is subject to § 668.17(a)(3) is treated the same as other institutions. Its ability to challenge, request an adjustment, or appeal the consequences of its cohort default rates is the same as any other institution subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater.

Preventing Evasion of the Consequences of Cohort Default Rates (§ 668.188)

Statute: Under section 435(m)(3) of the HEA, the Secretary is directed to prescribe regulations that will prevent an institution from evading the consequences of cohort default rates by branching, consolidating, changing ownership or control, or by similar devices.

Current Regulations: The current regulations, in § 668.17(g)(2), provide general requirements for the application of cohort default rates or combined cohort default rates to an institution that has undergone a change in status. These requirements are intended, in part, to prevent an institution from evading the consequences of its cohort default rates.

Proposed Regulations: Under proposed § 668.188, a loss of participation to which an institution was subject, as the result of 1 cohort default rate greater than 40 percent or 3 consecutive cohort default rates of 25 percent or greater, would be applied to another institution if all 4 of the following criteria are met:

1. *Loss of eligibility.* Before any change in institutional structure or identity occurs, 1 of the 2 institutions is subject to a loss of participation as the result of 1 cohort default rate greater than 40 percent or 3 consecutive cohort default rates of 25 percent or greater.

2. *Change in structure or identity.* Both institutions are parties to a transaction that results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or in part in institutional structure or identity.

3. *Offer program at substantially the same address.* After the change in structure or identity, the currently eligible institution offers an educational program at substantially the same address as the ineligible institution.

In general, an institution would be considered to be offering an educational program at ''substantially the same address'' as an ineligible institution if its site is the same as the ineligible institution's or its site is physically located close enough to the ineligible institution's site to demonstrate that the educational programs that it provides are intended to serve the same population.

As examples, an institution may be considered to be offering an educational program at ''substantially the same address'' as an ineligible institution if its site is located across the street from the ineligible institution's site, on the same block as the ineligible institution's site, or in the same business complex as the ineligible institution's site. However, an institution may be located further away from an ineligible institution's site and still be considered to be offering an educational program at ''substantially the same address'' if its educational program is intended to serve the same population.

4. *Commonality of ownership or management.* There is a commonality of ownership or management between the two institutions. The term ''commonality of ownership or management'' is defined in proposed § 668.188(b). In general, a commonality of ownership or management exists if the same person (an individual, corporation, or partnership) or members of that person's family, directly or indirectly, were or are managers at both institutions or were or are able to affect substantially both institutions' actions.

If all four of these criteria are met, an institution is subject to the same loss of participation to which the ineligible institution is subject. The scope and the duration of the institution's loss of participation under § 668.188 is the same as the scope and duration of the previously ineligible institution's loss of participation. That is, the institution loses its participation in the same programs as the previously ineligible institution and cannot reapply to participate in those programs until the date on which the previously ineligible institution can or would have been able to reapply. An institution would only be able to challenge, request an adjustment, or appeal a loss of participation that is applied to it under proposed § 668.188 under the same requirements that apply to the previously ineligible institution.

The proposed regulations include an exception to the criteria concerning commonality of management. During a teach-out, the institution conducting the teach-out would be allowed 60 days to find replacements for the previous management and to notify us that any commonality of management has ended. If we determine, based on that notice, that the commonality of management has not ended, the institution would be allowed an additional 30 days to make the management changes that we request. As long as the institution conducting the teach-out complies with these requirements, we would not consider a commonality of management to exist, and the institution would not be subject to the previously ineligible institution's loss of eligibility. However, this teach-out exception applies only with respect to the commonality of management criteria. It does not apply to an institution conducting a teach-out if there is a commonality of ownership.

In proposed § 668.188(d), we encourage institutions to contact us if they anticipate a change in status described in § 668.188. By contacting us, an institution can learn the consequences, if any, of a change in status before it occurs and can consider those consequences before implementing the change. If an institution contacts us and gives us the information we request, we will notify it of our initial determination of the anticipated change's effect on the institution's eligibility.

In the following paragraphs, we provide four examples of the manner in which an institution's loss of participation would be applied to another institution under proposed § 668.188:

Example #1. We notify Institution A on September 25, 2001, that its cohort default rate for FY 1999 is 45 percent. After exhausting its administrative appeals, Institution A becomes ineligible to participate in the FFEL and Direct Loan programs on December 10, 2001. On January 5, 2002, Institution A's owner sells it to Institution B, a corporation in which she holds a 25 percent ownership interest and that has a separate identification number for Federal student aid purposes. On the same day, Institution A's managers, students, staff, and equipment move across the street to a new building, and Institution B begins to provide educational programs in the new building.

To determine whether Institution A's loss of eligibility will be applied to Institution B under the proposed regulations, each of the following four questions must be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* Yes. Institution A was notified

of its loss of participation on September 25, 2001, and the change in structure occurred more than 3 months later, on January 5, 2002.

2. *Was there a change in structure or identity?* Yes. As the result of a sale, Institution B took over Institution A's operations.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Though the owner moved the site for the educational programs across the street, Institutions A and B provided an educational program at substantially the same address. They are located close to one another and are intended to serve the same population.

4. *Is there a commonality of ownership or management between both institutions?* Yes. In this example, both a commonality of ownership and a commonality of management exist, and either of those, alone, would suffice to meet the criterion. Because the same individual was able to substantially affect the actions of Institutions A and B, there is a commonality of ownership between those institutions. Since there is no change in management, there is also a commonality of management between the two institutions.

Since Institutions A and B meet all four of the criteria, the loss of eligibility to which Institution A was subject is applied to Institution B. Institution B is ineligible to participate in the FFEL and Direct Loan programs for the same period that would have been applied to Institution A, until October 1, 2003.

Example #2. Institution A is notified on September 25, 2000, that its third consecutive cohort default rate is 25 percent or greater. After exhausting its administrative appeals, Institution A loses its ability to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on January 15, 2001. Institution A closes 2 months later, and on March 20, 2001, Institution B begins providing a teach-out for Institution A's students, at the same site. Institutions A and B are not owned or controlled by the same person, either directly or indirectly, and do not have the same student aid identification number. Institution B replaces all of Institution A's managers and, within 60 days after the change, notifies us that it believes that any commonality of management has ended. We determine that the commonality of management has ended. While conducting the teach-out, Institution B enrolls new students and continues to provide educational programs at that site.

To determine whether Institution A's loss of eligibility will be applied to Institution B, each of the following four questions must first be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* Yes. Institution A was notified of its loss of participation on September 25, 2000, and the change in identity occurred on March 20, 2001, when Institution B began providing the teach-out for Institution A's students.

2. *Was there a change in structure or identity?* Yes. As a result of Institution A's closure, Institution B took over what had previously been Institution A's operations.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Institutions A and B provided the educational programs at the same site.

4. *Is there a commonality of ownership or management between both institutions?* No. There is no indication that the same person, or members of that person's family, had the ability to affect the actions of both Institutions A and B. Though some of Institution A's managers continued to work at Institution B, they were replaced within 60 days, we were notified, and we determined that no commonality of management exists.

Because there is no commonality of ownership or management, the loss of eligibility to which Institution A was subject is not applied to Institution B under § 668.188.

Example #3. Institution A provides educational programs for automobile repair. It is notified on September 27, 2000, that its third consecutive cohort default rate is 25 percent or greater. After exhausting its administrative appeals, Institution A becomes ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on January 6, 2001. Two weeks later, on January 20, 2001, the corporation that owns Institution A transfers the ownership of Institution A to a subsidiary company that owns and operates Institution B. The subsidiary company sells all of the equipment, replaces Institution A's managers and instructors, and begins providing Institution B's educational programs for airplane pilots at the former Institution A's site.

To determine whether Institution A's loss of eligibility will be applied to Institution B, each of the following four questions must first be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* Yes. Institution A was notified of its loss of participation on September 27, 2000. The ownership of Institution A was transferred almost 4 months later, on January 20, 2001.

2. *Was there a change in structure or identity?* Yes. As a result of a transfer of assets, Institution A became part of Institution B.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Institutions A and B provided the educational programs at the same site. The fact that the institutions provided different types of instruction at that site (automobile repair and airplane piloting) is not a factor in making this determination.

4. *Is there a commonality of ownership or management between both institutions?* Yes. Because the same corporation owned both Institution A and the subsidiary company to which its ownership was transferred, it had the ability to affect substantially the actions of both Institutions A and B.

Since Institutions A and B meet all four of the criteria, the loss of eligibility to which Institution A was subject is applied to Institution B: Institution B is ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs for the same period as Institution A.

Example #4. Institution A provides instruction at three locations. Its cohort default rate for FY 1997 is 29 percent and for FY 1998 its cohort default rate is 32 percent. On April 30, 2001, after we notify it that its draft cohort default rate for FY 1999 is 35 percent, Institution A closes one of its locations. On June 2, 2001, Institution B buys the building in which Institution A provided educational programs at that closed location. Institutions A and B are not owned or controlled by the same person, either directly or indirectly, and Institution B does not employ any of the same managers previously employed at Institution A. On September 28, 2001, we notify Institution A that its official cohort default rate for FY 1999 is 34 percent. After exhausting its administrative appeals, Institution A becomes ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on December 12, 2001.

To determine whether Institution A's loss of eligibility will be applied to Institution B, each of the following four questions must first be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* No. Institution B purchased the building from Institution A on June 2, 2001. Institution A was not notified of its loss of participation until almost 4 months later, on September 28, 2001.

2. *Was there a change in structure or identity?* Yes. Institution B purchased the building from Institution A. There was a transfer of assets.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Institutions A and B provided the educational programs at the same site.

4. *Is there a commonality of ownership or management between both*

institutions? No. None of Institution A's managers were employed by Institution B, and there is no indication that the same person, or members of that person's family, had the ability to affect the actions of both Institutions A and B.

Since Institutions A and B do not meet all four of the criteria (only two of the criteria are met), the loss of eligibility to which Institution A was subject is not applied to Institution B.

Reasons: The proposed regulations would revise the requirements to more clearly reflect the intent of the HEA and to reduce the possibility of evasion.

The proposal to allow additional time for an institution conducting a teach-out to end a commonality of management is included in these proposed regulations to provide for an emergency situation in which an institution agrees to provide a teach-out for another institution's students but is unable to immediately replace all of the individuals who held a managerial role at that institution.

Proposed § 668.188 deals exclusively with the attribution of previously imposed sanctions. A separate proposed § 668.184 also addresses the possibility of an institution's evasion of the consequences of high cohort default rates. That proposed section would provide requirements for determining how cohort default rates are calculated and attributed after a change in status. Changes proposed for § 668.184 were discussed earlier in this preamble, under ''Determining Cohort Default Rates for Institutions that Have Undergone a Change in Status (§ 668.184).''

Erroneous Data Appeals (§ 668.192)

Statute: Section 435(a)(2) of the HEA allows an institution to appeal a loss of participation based on excessive cohort default rates if the institution demonstrates to the satisfaction of the Secretary that the calculation of its cohort default rate is not accurate and that a recalculation based on accurate data would reduce its cohort default rate below the applicable percentage.

Current Regulations: Current § 668.17(c)(1)(i) provides requirements for an erroneous data appeal that are consistent with statutory requirements. Under the current regulations, an institution may only submit an erroneous data appeal if it is subject to a loss of participation due to excessive cohort default rates.

Proposed Regulations: In addition to continuing to provide for an erroneous data appeal by an institution that is subject to a loss of participation due to excessive cohort default rates, the proposed regulations would permit an institution that is provisionally certified under § 668.16(m) to submit an erroneous data appeal.

Reasons: During the negotiated rulemaking process, some non-Federal negotiators proposed that all institutions be allowed to submit erroneous data appeals. Alternatively, they proposed that any institution that is provisionally certified under § 668.16(m) should be allowed to appeal on that basis. They argued that, without this change, an institution might not be able to appeal the accuracy of the data on which its cohort default rate is based. They also suggested that these institutions may have proof that data are incorrect but may be unable to get the data changed. In response to these comments, the Department explained that it is extremely costly to process erroneous data appeals, and that the Department does not have the resources to evaluate erroneous data appeals from all institutions. In recognition of these competing but valid concerns, the Department and the non-Federal negotiators agreed to propose to allow institutions that are provisionally certified under § 668.16(m) to submit erroneous data appeals. The proposed regulations would continue to allow institutions that are subject to loss of eligibility based on excessive cohort default rates to submit erroneous data appeals.

Loan Servicing Appeals (§ 668.193)

Statute: Under section 435(a)(3) of the HEA, an institution may appeal the calculation of its cohort default rate on the basis of improper loan servicing or collection if the institution is subject to loss of eligibility due to excessive rates or if its most recent cohort default rate is 20 percent or greater.

Current Regulations: Current § 668.17(h) provides the requirements for a loan servicing appeal.

Proposed Regulations: We are proposing to remove the 20 percent threshold and allow all institutions to appeal their most recent cohort default rate on the basis of improper loan servicing or collection.

Reasons: The proposed regulations would allow more institutions to submit loan servicing appeals and would make the requirements for loan servicing appeals more consistent with the requirements for certain other appeals.

Eligibility for Economically Disadvantaged Appeals (668.194(b)(1)(ii))

Statute: Under section 435(a)(4)(i)(II) of the HEA, one criterion that may be used to determine an institution's eligibility for an economically disadvantaged appeal is the percentage of the institution's students that have an adjusted gross income less than the poverty level. If the student is a dependent student, the student's parents' adjusted gross income is added to the student's adjusted gross income when determining whether the student's income is less than the poverty level.

Current Regulations: Current § 668.17(c)(1)(ii)(B)(*2*)(*ii*) tracks the language of the statute.

Proposed Regulations: The proposed regulations address independent as well as dependent students. In addition to the current criteria for an economically disadvantaged appeal, if an independent student is married, the student's spouse's adjusted gross income is added to the student's adjusted gross income when determining whether the student's income is less than the poverty level.

Reasons: When we published the current regulations, we inadvertently omitted the proposed requirement, which was included in previous regulations. We are proposing to restore the requirement in these proposed regulations because, without it, the calculation of an institution's low income rate during an economically disadvantaged appeal would not provide an accurate measure of its students' income levels.

Submitting Economically Disadvantaged Appeals (§ 668.194(f)(1))

Current Regulations: Current § 668.17(c)(7)(i)(A) requires an institution to notify us, within 30 days of receiving our notice that it is subject to a loss of eligibility, of its intent to submit an economically disadvantaged appeal. The institution submits all other materials within 60 days after receiving our notice.

Proposed Regulations: Under the proposed regulations, if an institution intends to submit an economically disadvantaged appeal, it must send us its management's written assertion within 30 days after receiving our notice of its loss of eligibility. The institution submits the independent auditor's report within 60 days after receiving our notice.

Reasons: During the negotiations, the Department proposed to require institutions to submit all the material for this type of appeal within 30 days after receiving our notice that they are subject to a loss of eligibility. Non-Federal negotiators voiced concerns that a time deadline of 30 days would not be adequate to allow an institution to find an independent auditor and for the independent auditor to provide an opinion. To address these concerns, the Federal and non-Federal negotiators

agreed on the deadlines in the proposed regulations.

Average Rates Appeals (§ 668.196)

Current Regulations: Under current § 668.17(c)(1)(ii)(C), an institution that is subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater may submit an average rates appeal if at least 2 of those cohort default rates were calculated as average rates and if those cohort default rates would have been less than 25 percent if calculated for the fiscal year alone.

Proposed Regulations: In addition to the current regulations' criteria for an average rates appeal, the proposed regulations would allow an institution that is subject to loss of participation based on 1 cohort default rate greater than 40 percent to submit an average rates appeal if that cohort default rate was calculated as an average rate, under proposed § 668.183(d)(2). This proposal would allow an institution to appeal a loss of eligibility based on 1 fiscal year's cohort default rate greater than 40 percent if the institution's cohort for that fiscal year included fewer than 30 borrowers.

Reasons: As discussed previously in this preamble, under ''Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1)),'' the proposed regulations would make requirements for cohort default rates more consistent. This change meets that goal.

Thirty-or-Fewer Borrowers Appeals (§ 668.197)

Current Regulations: Under § 668.17(c)(1)(ii)(D), an institution may appeal a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater if the total number of its borrowers in the 3 most recent cohorts used to calculate those cohorts default rates is 30 or fewer.

Proposed Regulations: The proposed regulations would allow any institution subject to a loss of participation based on its cohort default rate (including institutions with cohort default rates greater than 40 percent) to submit a thirty-or-fewer borrowers appeal.

Reasons: The proposed regulations would make requirements for thirty-or-fewer borrowers appeals more consistent. Additional reasons for these proposed regulations are discussed previously in this preamble, under ''Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1)).''

Special Institutions (§ 668.198)

Statute: Under section 435(a)(5) of the HEA, certain minority institutions (''special institutions'') that are subject to a loss of eligibility due to excessive cohort default rates may be excepted from that loss of eligibility if they submit default management plans that provide reasonable assurance that they will, by July 1, 2002, have cohort default rates that are less than 25 percent. To be excepted, the institution must also engage an independent third party to provide technical assistance and must submit evidence to the Secretary, on an annual basis, of cohort default rate improvement and of the default management plan's successful implementation.

Current Regulations: If a special institution is in compliance with the current § 668.17(k), it is exempt from a loss of eligibility based on 3 cohort default rates of 25 percent or greater. A special institution must send us information that demonstrates that it qualifies for the exception described in that paragraph by July 1, 1999, and it must send us the information we need to determine whether it continues to qualify for that exemption by July 1, 2000 and 2001.

Proposed Regulations: Under the proposed regulations, a special institution that is in compliance with § 668.198 would be exempt from a loss of eligibility based on 3 cohort default rates of 25 percent or greater or 1 cohort default rate greater than 40 percent. It would send us information to demonstrate that it qualifies for the exemption described in that paragraph by July 1 of the first 1-year period that begins after it receives our notice that it has lost eligibility, and it would send us the information we need to determine whether it continues to qualify for that exemption by July 1 of each subsequent 1-year period.

Reasons: We are proposing to exempt certain special institutions from the consequences of 1 cohort default rate greater than 40 percent to provide a consistent application of the statutory exception. Also, since the language of the current requirement does not provide for cases in which an institution becomes eligible for this exception after July 1, 1999, we are proposing to revise and clarify that language.

Appendix D to Part 668, ''Default Reduction Measures''

Current Regulations: Appendix D to part 668, ''Default Reduction Measures,'' describes measures that institutions may take to reduce their cohort default rates. The appendix is currently used only as an example of an acceptable default management plan, in § 668.14(b)(15)(iii), and to help institutions improve the initial and exit counseling they provide to FFEL and Direct Loan program borrowers.

Proposed Regulations: We are proposing to remove the current Appendix D to part 668.

Reasons: The information that Appendix D to part 668 contains is outdated and is no longer used for the primary purposes for which it was developed. The information can be updated more efficiently outside the regulatory process.

Additional Concerns of Non-Federal Negotiators

During the negotiated rulemaking process, non-Federal negotiators expressed concerns about a number of administrative processes that are not reflected in these proposed regulations, and asked us to explain these processes in this preamble. Our explanations are provided in the following paragraphs:

• *Loan record detail reports for merged rates (§ 668.186).* Proposed § 668.186 describes how an institution receives its loan record detail report during the official cohort default rate process. In general, the loan record detail report contains the data used to calculate an institution's cohort default rate. However, if an institution's cohort default rate is calculated under proposed § 668.184, by combining its data with another institution's data (in this preamble, this is referred to as a ''merged rate''), the institution will also need to receive the loan record detail report for the other institution during the official cohort default rate process.

During negotiations, non-Federal negotiators asked us to explain in this preamble how an institution for which a merged rate is calculated would request additional loan record detail reports. An institution may do this in two ways. If an institution's cohort default rate is calculated as a merged rate because it acquired or merged with another institution (under § 668.184(b)), it may use that previous institution's identification number to request that institution's data from the National Student Loan Data System (NSLDS). If the institution's cohort default rate is calculated as a merged rate because it has purchased a branch or location of another institution (under § 668.184(c)) or because it was once a branch or location of another institution and is now a separate, new institution (under § 668.184(d)), then the institution should contact us, and we will provide the relevant data to the institution.

• *Deadline for publishing cohort default rates (§ 668.187(b)).* The HEA directs the Secretary to issue cohort default rates by September 30 of each year. During the negotiated rulemaking process, non-Federal negotiators expressed a concern about the possible consequences for institutions if we issued cohort default rates after the statutory deadline and asked us to repeat the guidance on this issue that we included in a previous Notice of Proposed Rulemaking, published in the **Federal Register** on July 30, 1999 (64 FR 41752).

Under proposed § 668.187(b), an institution's loss of participation in the FFEL, Direct Loan, and Federal Pell Grant programs, based on excessive cohort default rates, continues for the fiscal year in which we notify the institution that it is subject to the loss of eligibility and for the 2 succeeding fiscal years. Some non-Federal negotiators were concerned that institutions might be subject to an additional year of ineligibility if we issued cohort default rates after September 30.

We expect to meet the goal of issuing cohort default rates by September 30 of each year. If, however, cohort default rates are not issued until after that date, an institution's loss of eligibility would continue only for the remainder of the fiscal year in which the cohort default rates are issued and for the following fiscal year. For example, if we issue cohort default rates for FY 1998 on October 2, 2000, then a loss of eligibility that is based on an FY 1998 cohort default rate would continue only for the remainder of FY 2001 (the fiscal year in which the cohort default rates were issued) and to the end of FY 2002.

• *Recalculating cohort default rates (§ 668.189(a)(1)).* Under the proposed regulations, an institution's cohort default rate may be recalculated based on an uncorrected data adjustment, a new data adjustment, an erroneous data appeal, or a loan servicing appeal. During the official cohort default rate process, an institution may submit more than one type of adjustment or appeal, but all of its submissions are considered together before we make our final decision. For example, though an uncorrected data adjustment is not submitted under the same time deadlines as a new data adjustment, an erroneous data appeal, and a loan servicing appeal, we consider its results together with the results of any other adjustments and appeals when we determine an institution's cohort default rate.

During negotiations, non-Federal negotiators asked us to explain in this preamble the effect of the recalculation of an institution's cohort default rate upon its eligibility for an average rates appeal (under § 668.196) and a thirty-or-fewer borrowers appeal (under § 668.197). If an institution's cohort default rate is recalculated under proposed § 668.189(a)(1) and, as a result of that recalculation, the institution meets the criteria for an average rates appeal or for a thirty-or-fewer borrowers appeal, the institution does not lose eligibility under § 668.187.

• *Servicing of loans in income contingent repayment (§ 668.193).* As noted previously in this preamble, under current §§ 668.17(e)(1)(ii) and 668.17(f)(1)(ii), one of the reasons for considering a Direct Loan to be in default, for the purposes of calculating a proprietary, non-degree-granting institution's cohort default rate, is that the loan has been repaid under the income contingent repayment plan for 360 days, with scheduled payments less than 15 dollars per month and less than the amount of interest accruing on the loan, before the end of the fiscal year following the cohort's fiscal year. Under proposed §§ 668.193(d)(1) and 668.193(f)(3), this type of default is excluded from consideration during a loan servicing appeal. Since these loans are being repaid by borrowers, they are not considered to be in default for purposes other than calculating cohort default rates. As a result, they cannot be evaluated meaningfully under the loan servicing or collection criteria in proposed § 668.193(b).

However, non-Federal negotiators were concerned about an institution's ability to dispute the servicing of a loan being repaid under the Direct Loan Program's income contingent repayment plan. Federal negotiators agreed to permit an institution to work with our Direct Loan Servicing Center to determine whether a loan's status is accurate, if the institution believes that a borrower has been incorrectly assigned to the income contingent repayment plan. Institutions will be able to do this as part of an incorrect data challenge (§ 668.185(b)), uncorrected data adjustment (§ 668.190), new data adjustment (§ 668.191), or erroneous data appeal (§ 668.192), as appropriate for the loan.

In general, if a loan is considered to be in default for cohort default rate purposes as the result of a borrower's repayment under the income contingent repayment plan, the institution may, to the extent permitted by the Privacy Act of 1974 (5 U.S.C. 552a), request the loan's payment information from the Direct Loan Servicing Center and may use that payment information in pursuing a challenge or requesting an adjustment if it believes that the borrower was assigned to income contingent repayment incorrectly. Before receiving its draft cohort default rate, an institution may learn about a borrower's repayment under income contingent repayment by reviewing its repayment information report in NSLDS. A more detailed description of the procedures for disputing the servicing of a loan being repaid under income contingent repayment will be provided in the FY 1999 Draft Cohort Default Rate Guide.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

These proposed regulations clarify and streamline provisions discussing institutional cohort default rates and their effect on eligibility to participate in the Title IV, HEA programs. The proposed regulations also make a number of procedural changes to the process by which institutions may challenge or appeal their cohort default rates. In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

• Are the requirements in the proposed regulations clearly stated?

• Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

• Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

• Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, *§ 668.188 Preventing evasion of the consequences of cohort default rates.*)

• Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education and guaranty agencies that participate in Title IV, HEA programs. The U.S. Small Business Administration (SBA) Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000.

A relatively small number of the 6,000 institutions of higher education participating in the Title IV, HEA programs meet the SBA definition of ''small entities.'' Guaranty agencies are State and private nonprofit entities that act as agents of the Federal Government and, as such, are not considered small entities under the Regulatory Flexibility Act.

These proposed regulations clarify and streamline provisions discussing institutional cohort default rates and their effect on eligibility to participate in the Title IV, HEA programs. The proposed regulations also make a number of procedural changes to the process by which institutions may challenge or appeal their cohort default rates. These proposed regulations would not have a significant economic impact on small entities.

Paperwork Reduction Act of 1995

Proposed §§ 668.181 through 668.198 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Student Assistance General Provisions—Subpart M—Cohort default rates.

The proposed regulations would make a number of changes affecting the information collections that institutions are required to submit during the cohort default rate process: an institution would be able to request an initial determination of the consequences of a change in status (§ 668.188); an institution conducting a teach-out after a change in status may need to notify us that a commonality of management has ended (§ 668.188); and more institutions would be eligible to submit erroneous data appeals (§ 668.192), loan servicing appeals (§ 668.193), participation rate index appeals (§ 668.195), average rates appeals (§ 668.196), and thirty-or-fewer borrower appeals (§ 668.197).

Our current estimate for the maximum annual recordkeeping and reporting burden hours for the cohort default rate requirements is 25,477 hours. We do not estimate that this number of burden hours will be increased as a result of these proposed regulations. We do not believe that the additional burden that may be imposed on institutions as a result of these proposed regulations will be substantial enough to merit an increase in our current estimate of the maximum number of burden hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

• Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;

• Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant Program and the State Student Incentive Grant Program are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

The Federal Family Education Loan, Federal Supplemental Loans for Students, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Income Contingent Loan, and William D. Ford Federal Direct Loan programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal**

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Leveraging Educational Assistance Partnership; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

Dated: July 24, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 668, 682, 685, and 690 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. In § 668.14, paragraph (b)(15)(iii) is removed.

3. Section 668.16 is amended—

A. In paragraph (m)(1), by removing ''an FFEL Program cohort default rate, a Direct Loan cohort rate, or where applicable, a weighted average cohort rate'' and adding, in its place, ''a cohort default rate''.

B. In paragraphs (m)(1)(i) and (m)(2)(ii), by removing ''§ 668.17'' and adding, in its place, ''subpart M of this part''.

4. Section 668.17 is removed and reserved.

5. In § 668.26, paragraph (a)(6) is amended by removing ''§ 668.17(c)'' and adding, in its place, ''subpart M of this part''.

6. In § 668.46, paragraph (c)(7) is amended by removing ''Appendix E to this part'', and adding, in its place, ''the Appendix A to this subpart''.

7. Section 668.85 is amended—

A. By revising paragraph (b)(1)(ii).

B. In paragraph (b)(3), by removing the third sentence.

§ 668.85 Suspension proceedings.

* * * * *

(b) * * *

(1) * * *

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

* * * * *

8. Section 668.86 is amended—

A. By revising paragraph (b)(1)(ii).

B. In paragraph (b)(3), by removing the third sentence.

§ 668.86 Limitation or termination proceedings.

* * * * *

(b) * * *

(1) * * *

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

* * * * *

9. In § 668.90, paragraphs (a)(1)(iii)(D) and (a)(3)(iv) are removed; and paragraphs (a)(3)(v), (a)(3)(vi), and (a)(3)(vii) are redesignated as paragraphs (a)(3)(iv), (a)(3)(v), and (a)(3)(vi), respectively.

10. In § 668.171, paragraph (b)(1) is amended by removing ''appendices F and G'' and adding, in its place, ''appendices A and B to this subpart''.

11. Section 668.172 is amended—

A. In the heading for paragraph (a), by removing ''Appendices F and G'', and adding, in its place, ''Appendices A and B''.

B. In paragraph (a), by removing ''appendices F and G to this part'' and adding, in its place, ''appendices A and B to this subpart''.

C. In paragraph (b), by removing ''appendix F'' and adding, in its place, ''appendix A''; and by removing ''appendix G'' and adding, in its place, ''appendix B''.

12. A new subpart M is added to Part 668 to read as follows:

Subpart M—Cohort Default Rates

Sec.

668.181 Purpose of this subpart.
668.182 Definitions of terms used in this subpart.
668.183 Calculating and applying cohort default rates.
668.184 Determining cohort default rates for institutions that have undergone a change in status.
668.185 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.
668.186 Notice of your official cohort default rate.
668.187 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.
668.188 Preventing evasion of the consequences of cohort default rates.
668.189 General requirements for adjusting official cohort default rates and for appealing their consequences.
668.190 Uncorrected data adjustments.
668.191 New data adjustments.
668.192 Erroneous data appeals.
668.193 Loan servicing appeals.
668.194 Economically disadvantaged appeals.
668.195 Participation rate index appeals.
668.196 Average rates appeals.
668.197 Thirty-or-fewer borrowers appeals.
668.198 Relief from the consequences of cohort default rates for special institutions.
Appendix A to Subpart M of Part 668—Summaries of eligibility and submission requirements for challenges, adjustments, and appeals
Appendix B to Subpart M of Part 668—Sample default management plan for special institutions to use when complying with § 668.198

§ 668.181 Purpose of this subpart.

Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL or Direct Loan Programs. This subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a ''challenge'' after you receive your draft cohort default rate, and you request an ''adjustment'' or ''appeal'' after your official cohort default rate is published.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.182 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

(a) *Cohort.* Your cohort is a group of borrowers used to determine your cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.183(b).

(b) *Data manager.* (1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Direct Loan Servicer, as defined in 34 CFR 685.102, is the data manager.

(c) *Days.* In this subpart, ''days'' means calendar days.

(d) *Default.* A borrower is considered to be in default for cohort default rate purposes under the rules in § 668.183(c).

(e) *Draft cohort default rate.* Your draft cohort default rate is a rate we issue, for your review, before we issue your official cohort default rate. A draft cohort default rate is used only for the purposes described in § 668.185.

(f) *Entering repayment.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of ''repayment period'') and in 34 CFR 685.207.

(2) A Federal SLS loan is considered to enter repayment—

(i) At the same time the borrower's Federal Stafford loan enters repayment, if the borrower received a Federal Stafford loan for the same period of enrollment, as defined in 34 CFR 682.200; or

(ii) In all other cases, on the day after the student ceases to be enrolled at your institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if that repayment—

(i) Is made before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section; and

(ii) Is not made to consolidate the loan under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102).

(g) *Fiscal year.* A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

(h) *Loan record detail report.* The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official cohort default rate.

(i) *Official cohort default rate.* Your official cohort default rate is the cohort default rate that we publish for you under § 668.186. Cohort default rates calculated under this subpart are not related in any way to cohort default rates that are calculated for the Federal Perkins Loan Program.

(j) *We.* We are the Department, the Secretary, or the Secretary's designee.

(k) *You.* You are an institution.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.183 Calculating and applying cohort default rates.

(a) *General.* This section describes the four steps that we follow to calculate and apply your cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 30, we also identify the borrowers in your cohorts for the 2 most recent prior fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default. If more than one cohort will be used to calculate your cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your cohort default rate.

(4) Fourth, we apply your cohort default rate to all of your locations—

(i) As you exist on the date you receive the notice of your official cohort default rate; and

(ii) From the date on which you receive the notice of your official cohort default rate until you receive our notice that the cohort default rate no longer applies.

(b) *Identify the borrowers in a cohort.* (1) Except as provided in paragraph (b)(2) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan that they received to attend your institution.

(2) If a student receives a Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan to attend your institution but consolidates that loan before it enters repayment, under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102), the borrower is included in your cohort for the fiscal year in which the consolidation loan enters repayment.

(3) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(c) *Identify the borrowers in a cohort who are in default.* (1) Except as provided in paragraph (c)(2) of this section, for the purposes of this subpart a borrower in a cohort for a fiscal year is considered to be in default if—

(i) Before the end of the following fiscal year, the borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default unless a claim for insurance has been paid on the loan by a guaranty agency or by us);

(ii) Before the end of the following fiscal year, the borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower's failure persists for 360 days (or for 270 days, if the borrower's first day of delinquency was before October 7, 1998);

(iii) You are a proprietary, non-degree-granting institution, and before the end of the following fiscal year, the borrower has been in repayment for 360 days, under the Direct Loan Program's income contingent repayment plan, on a loan used to include the borrower in your cohort (or that repaid a loan that was used to include the borrower in your cohort), with scheduled payments that are less than 15 dollars per month and are less than the amount of interest accruing on the loan; or

(iv) Before the end of the following fiscal year, you or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan that is used to include the borrower in that cohort.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the fiscal year immediately following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) No longer reinsured by us.

(d) *Calculate the cohort default rate.* Except as provided in § 668.184, if there are—

(1) Thirty or more borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is derived by dividing—

(i) The number of borrowers in the cohort who are in default, as determined under paragraph (c) of this section; by

(ii) The number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2) Fewer than 30 borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is derived by dividing—

(i) The total number of borrowers in that cohort and in the two most recent prior cohorts who are in default, as determined for each cohort under paragraph (c) of this section; by

(ii) The total number of borrowers in that cohort and the two most recent prior cohorts, as determined for each cohort under paragraph (b) of this section.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.184 Determining cohort default rates for institutions that have undergone a change in status.

(a) *General.* (1) If you undergo a change in status identified in this section, your cohort default rate is determined under this section.

(2) In determining cohort default rates under this section, the date of a merger, acquisition, or other change in status is the date the change occurs.

(3) If another institution's cohort default rate is applicable to you under this section, you may challenge, request an adjustment, or submit an appeal for the cohort default rate under the same requirements that would be applicable to the other institution under §§ 668.185 and 668.189.

(b) *Acquisition or merger of institutions.* If your institution acquires, or was created by the merger of, one or more institutions that participated independently in the Title IV, HEA programs immediately before the acquisition or merger—

(1) For the cohort default rates published before the date of the acquisition or merger, your cohort default rates are the same as those of your predecessor that had the highest total number of borrowers entering repayment in the two most recent cohorts used to calculate those cohort default rates; and

(2) Beginning with the first cohort default rate published after the date of the acquisition or merger, your cohort default rates are determined by including the applicable borrowers from each institution involved in the acquisition or merger in the calculation under § 668.183.

(c) *Acquisition of branches or locations.* If you acquire a branch or a location from another institution participating in the Title IV, HEA programs—

(1) The cohort default rates published for you before the date of the change apply to you and to the newly acquired branch or location;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and the other institution (including all of its locations) in the calculation under § 668.183;

(3) After the period described in paragraph (c)(2) of this section, your cohort default rates do not include borrowers from the other institution in the calculation under § 668.183; and

(4) At all times, the cohort default rate for the institution from which you acquired the branch or location is not affected by this change in status.

(d) *Branches or locations becoming institutions.* If you are a branch or location of an institution that is participating in the Title IV, HEA programs, and you become a separate, new institution for the purposes of participating in those programs—

(1) The cohort default rates published before the date of the change for your former parent institution are also applicable to you;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and your former parent institution (including all of its locations) in the calculation under § 668.183; and

(3) After the period described in paragraph (d)(2) of this section, your cohort default rates do not include borrowers from your former parent institution in the calculation under § 668.183.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.185 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

(a) *General.* (1) We notify you of your draft cohort default rate before your official cohort default rate is calculated. Our notice includes the loan record detail report for the draft cohort default rate.

(2) Regardless of the number of borrowers included in your cohort, your draft cohort default rate is always calculated using data for that fiscal year alone, using the method described in § 668.183(d)(1).

(3) Your draft cohort default rate and the loan record detail report are not considered public information and may not be otherwise voluntarily released by a data manager.

(4) Any challenge you submit under this section and any response provided by a data manager must be in a format acceptable to us. This acceptable format is described in the ''Cohort Default Rate Guide'' that we provide to you. If your challenge does not comply with the requirements in the ''Cohort Default Rate Guide,'' we may deny your challenge.

(b) *Incorrect data challenges.* (1) You may challenge the accuracy of the data included on the loan record detail report by sending a challenge to the relevant data manager, or data managers, within 45 days after you receive the data. Your challenge must include—

(i) A description of the information in the loan record detail report that you believe is incorrect; and

(ii) Documentation that supports your contention that the data are incorrect.

(2) Within 30 days after receiving your challenge, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation that supports the data manager's position.

(3) If your data manager concludes that draft data in the loan record detail report are incorrect, and we agree, we use the corrected data to calculate your cohort default rate.

(4) If you fail to challenge the accuracy of data under this section, you cannot contest the accuracy of those data in an uncorrected data adjustment, under § 668.190, or in an erroneous data appeal, under § 668.192.

(c) *Participation rate index challenges.* (1)(i) You may challenge an anticipated loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(ii) You may challenge an anticipated loss of eligibility under § 668.187(a)(2), based on 3 cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those 3 cohorts' fiscal years.

(2) For a participation rate index challenge, your participation rate index is calculated as described in § 668.195(b), except that—

(i) The draft cohort default rate is considered to be your most recent cohort default rate; and

(ii) If the cohort used to calculate your draft cohort default rate included fewer than 30 borrowers, you may calculate your participation rate index for that fiscal year using either your most recent draft cohort default rate or the average rate that would be calculated for that fiscal year, using the method described in § 668.183(d)(2).

(3) You must send your participation rate index challenge, including all

supporting documentation, to us within 45 days after you receive your draft cohort default rate.

(4) We notify you of our determination on your participation rate index challenge before your official cohort default rate is published.

(5) If we determine that you qualify for continued eligibility based on your participation rate index challenge, you will not lose eligibility under § 668.187 when your next official cohort default rate is published. A successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility. However, if your successful challenge of a loss of eligibility under paragraph (c)(1)(ii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, we also excuse you from any subsequent loss of eligibility, under § 668.187(a)(2), that would be based on that official cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.186 Notice of your official cohort default rate.

(a) We notify you of your cohort default rate after we calculate it. After we send our notice to you, we publish a list of cohort default rates for all institutions.

(b) If your cohort default rate is 10 percent or more, we include a copy of the loan record detail report with the notice.

(c) If your cohort default rate is less than 10 percent—

(1) You may request a copy of the loan record detail reports that list loans included in your cohort default rate calculation; and

(2) If you are requesting an adjustment or appealing under this subpart, your request for a copy of the loan record detail report or reports must be sent to us within 15 days after you receive the notice of your cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.187 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) *End of participation.* (1) Except as provided in paragraph (f) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate is greater than 40 percent.

(2) Except as provided in paragraphs (e) and (f) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your 3 most recent cohort default rates are each 25 percent or greater.

(b) *Length of period of ineligibility.* Your loss of eligibility under this section continues—

(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and

(2) For the next 2 fiscal years.

(c) *Using a cohort default rate more than once.* The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for—

(1) Any concurrent or subsequent loss of eligibility under this section; or

(2) Any other action by us.

(d) *Special institutions.* If you are a special institution that satisfies the requirements for continued eligibility under § 668.198, you are not subject to any loss of eligibility under this section or to provisional certification under § 668.16(m).

(e) *Continuing participation in Pell.* If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on 3 cohort default rates of 25 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you—

(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;

(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or

(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.

(f) *Requests for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in § 668.189(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (f)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under § 668.189. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under § 668.189.

(4) To avoid liabilities you might otherwise incur under paragraph (g) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(g) *Liabilities during the adjustment or appeal process.* If you continued to participate in the FFEL or Direct Loan Program under paragraph (f)(1) of this section, and we determine that none of your requests for adjustments or appeals qualify you for continued eligibility—

(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;

(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(h) *Regaining eligibility.* If you lose your eligibility to participate in a program under this section, you may not participate in that program until—

(1) The period described in paragraph (b) of this section has ended;

(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us;

(3) You submit a new application for participation in the program;

(4) We determine that you meet all of the participation requirements in effect at the time of your application; and

(5) You and we enter into a new program participation agreement.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.188 Preventing evasion of the consequences of cohort default rates.

(a) *General.* Unless you are a special institution complying with § 668.198, you are subject to a loss of eligibility that has already been imposed against another institution under § 668.187 if—

(1) You and the ineligible institution are both parties to a transaction that

results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or in part in institutional structure or identity;

(2) Following the change described in paragraph (a)(1) of this section, you offer an educational program at substantially the same address at which the ineligible institution had offered an educational program before the change; and

(3) There is a commonality of ownership or management between you and the ineligible institution, as the ineligible institution existed before the change.

(b) *Commonality of ownership or management.* For the purposes of this section, a commonality of ownership or management exists if, at each institution, the same person (as defined in 34 CFR 600.31) or members of that person's family, directly or indirectly—

(1) Holds or held a managerial role; or

(2) Has or had the ability to affect substantially the institution's actions, within the meaning of 34 CFR 600.21.

(c) *Teach-outs.* Notwithstanding paragraph (b)(1) of this section, a commonality of management does not exist if you are conducting a teach-out and—

(1)(i) Within 60 days after the change described in this section, you send us the names of the managers for each facility undergoing the teach-out as it existed before the change and for each facility as it exists after you believe that the commonality of management has ended; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended; or

(2)(i) Within 30 days after you receive our notice that we have denied your submission under paragraph (c)(1)(i) of this section, you make the management changes we request and send us a list of the names of the managers for each facility undergoing the teach-out as it exists after you make those changes; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended.

(d) *Initial determination.* We encourage you to contact us before undergoing a change described in this section. If you contact us and provide the information we request, we will provide an initial determination of the anticipated change's effect on your eligibility.

(e) *Notice of accountability.* (1) We notify you in writing if, in response to your notice or application filed under 34 CFR 600.20 or 600.21, we determine that you are subject to a loss of eligibility, under paragraph (a) of this section, that has been imposed against another institution.

(2) Our notice also advises you of the scope and duration of your loss of eligibility. The loss of eligibility applies to all of your locations from the date you receive our notice until the expiration of the period of ineligibility applicable to the other institution.

(3) If you are subject to a loss of eligibility under this section that has already been imposed against another institution, you may only request an adjustment or submit an appeal for the loss of eligibility under the same requirements that would be applicable to the other institution under § 668.189.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.189 General requirements for adjusting official cohort default rates and for appealing their consequences.

(a) *Remaining eligible.* You do not lose eligibility under § 668.187 if—

(1) We recalculate your cohort default rate, and it is below the percentage threshold for the loss of eligibility as the result of—

(i) An uncorrected data adjustment submitted under this section and § 668.190;

(ii) A new data adjustment submitted under this section and § 668.191;

(iii) An erroneous data appeal submitted under this section and § 668.192; or

(iv) A loan servicing appeal submitted under this section and § 668.193; or

(2) You meet the requirements for—

(i) An economically disadvantaged appeal submitted under this section and § 668.194;

(ii) A participation rate index appeal submitted under this section and § 668.195;

(iii) An average rates appeal submitted under this section and § 668.196; or

(iv) A thirty-or-fewer borrowers appeal submitted under this section and § 668.197.

(b) *Limitations on your ability to dispute your cohort default rate.* (1) You may not dispute the calculation of a cohort default rate except as described in this subpart.

(2) You may not request an adjustment or appeal a cohort default rate, under § 668.190, § 668.191, § 668.192, or § 668.193, more than once.

(3) You may not request an adjustment or appeal a cohort default rate, under § 668.190, § 668.191, § 668.192, or § 668.193, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.187, based entirely or partially on that cohort default rate.

(c) *Content and format of requests for adjustments and appeals.* We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor's opinions, management's written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in the ''Cohort Default Rate Guide'' that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) *Our copies of your correspondence.* Whenever you are required by this subpart to correspond with a party other than us, you must send us a copy of your correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) *Requirements for data managers' responses.* (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) Any correspondence sent to us by a data manager under this subpart should be in a format acceptable to us.

(f) *Our decision on your request for adjustment or appeal.* (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under § 668.190 or § 668.191, or an appeal, under § 668.192 or § 668.193—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision—

(i) If you request an adjustment or appeal because you are subject to a loss of eligibility under § 668.187, within 45 days after we receive your completed request for an adjustment or appeal; or

(ii) In all other cases, except for appeals submitted under § 668.192(a) to avoid provisional certification, before we notify you of your next official cohort default rate.

(5) You may not seek judicial review of our determination of a cohort default rate until we issue our decision on all pending requests for adjustments or appeals for that cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.190 Uncorrected data adjustments.

(a) *Eligibility.* You may request an uncorrected data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if in response to your challenge under § 668.185(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination.* We recalculate your cohort default rate, based on the corrected data, if we determine that—

(1) In response to your challenge under § 668.185(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.191 New data adjustments.

(a) *Eligibility.* You may request a new data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(3) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(4) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request under paragraph (b)(3) of this section.

(5) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(6) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(7) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(7)(i) of this section or in § 668.192(b)(6)(i) or § 668.193(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.192 Erroneous data appeals.

(a) *Eligibility.* Except as provided in § 668.189(b), you may appeal the calculation of a cohort default rate upon which a loss of eligibility, under § 668.187, or provisional certification, under § 668.16(m), is based if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under § 668.185(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed.

(b) *Deadlines for submitting an appeal.* (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your loss of eligibility or provisional certification. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for verification of that loan's data errors. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error. We respond to your request under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or

clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send your completed appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request; or

(ii) If you are also requesting a new data adjustment or filing a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.191(b)(7)(i) or § 668.193(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.193 Loan servicing appeals.

(a) *Eligibility.* Except as provided in § 668.189(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of—

(1) Your most recent cohort default rate; or

(2) Any cohort default rate upon which a loss of eligibility under § 668.187 is based.

(b) *Improper loan servicing.* For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the FFEL Program lender or the Direct Loan Servicer, as defined in 34 CFR 685.102, failed to perform one or more of the following activities, if that activity applies to the loan:

(1) Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan;

(2) Attempt at least one phone call to the borrower;

(3) Send a final demand letter to the borrower;

(4) For a Direct Loan Program loan only, document that skip tracing was performed if the Direct Loan Servicer determined that it did not have the borrower's current address; and

(5) For an FFELP loan only—

(i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and

(ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) *Deadlines for submitting an appeal.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the list of students that we provided to you.

(3) Within 20 days after receiving your request for loan servicing records, the data manager must—

(i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in social security number order, and it must include the number of defaulted loans included in the cohort for each listed borrower);

(ii) Send you and us a description of how your representative sample was chosen; and

(iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

(4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

(5) If the data manager charges a fee for providing copies of loan servicing records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

(6) If the data manager charges a fee for providing copies of loan servicing records, and—

(i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or

(ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your cohort default rate based on the data manager's records. We accept that determination unless you prove that it is incorrect.

(7) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

(8) Within 15 days after receiving incomplete or illegible records, you must send a request for replacement records to the data manager and us.

(9) Within 20 days after receiving your request for replacement records, the data manager must either—

(i) Replace the missing or illegible records; or

(ii) Notify you and us that no additional or improved copies are available.

(10) You must send your appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request for loan servicing records; or

(ii) If you are also requesting a new data adjustment or filing an erroneous data appeal, by the latest of the filing dates required in paragraph (c)(10)(i) of this section or in § 668.191(b)(7)(i) or § 668.192(b)(6)(i).

(d) *Representative sample of records.* (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the cohort default rate you are appealing. However, for the purposes of this paragraph, the data manager does not identify a borrower as defaulted due to repayment under the Direct Loan Program's income contingent repayment plan, under § 668.183(c)(1)(iii).

(2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the cohort default rate due to improper loan servicing or collection.

(e) *Loan servicing records.* Loan servicing records are the collection and payment history records—

(1) Provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or

(2) Maintained by our Direct Loan Servicer that are used in determining your cohort default rate.

(f) *Determination.* (1) We determine the number of loans, included in your representative sample of loan servicing records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of your cohort default rate.

(3) Our recalculation of your cohort default rate does not affect the number of borrowers who are considered to be in default due to payments made under the Direct Loan Program's income contingent repayment plan, under the criteria in § 668.183(c)(1)(iii).

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.194 Economically disadvantaged appeals.

(a) *Eligibility.* As described in this section, you may appeal a notice of a loss of eligibility under § 668.187 if an independent auditor's opinion certifies that your low income rate is two-thirds or more and—

(1) You offer an associate, baccalaureate, graduate, or professional degree, and your completion rate is 70 percent or more; or

(2) You do not offer an associate, baccalaureate, graduate, or professional degree, and your placement rate is 44 percent or more.

(b) *Low income rate.* (1) Your low income rate is the percentage of your students, as described in paragraph (b)(2) of this section, who—

(i) For an award year that overlaps the 12-month period selected under paragraph (b)(2) of this section, have an expected family contribution, as defined in 34 CFR 690.2, that is equal to or less than the largest expected family contribution that would allow a student to receive one-half of the maximum Federal Pell Grant award, regardless of the student's enrollment status or cost of attendance; or

(ii) For a calendar year that overlaps the 12-month period selected under paragraph (b)(2) of this section, have an adjusted gross income that, when added to the adjusted gross income of the student's parents (if the student is a dependent student) or spouse (if the student is a married independent student), is less than the amount listed in the Department of Health and Human Services poverty guidelines for the size of the student's family unit.

(2) The students who are used to determine your low income rate include only students who were enrolled on at least a half-time basis in an eligible program at your institution during any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year.

(c) *Completion rate.* (1) Your completion rate is the percentage of your students, as described in paragraph (c)(2) of this section, who—

(i) Completed the educational programs in which they were enrolled;

(ii) Transferred from your institution to a higher level educational program;

(iii) Remained enrolled and are making satisfactory progress toward completion of their educational programs at the end of the same 12-month period used to calculate the low income rate; or

(iv) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) The students who are used to determine your completion rate include only regular students who were—

(i) Initially enrolled on a full-time basis in an eligible program; and

(ii) Originally scheduled to complete their programs during the same 12-month period used to calculate the low income rate.

(d) *Placement rate.* (1) Except as provided in paragraph (d)(2) of this section, your placement rate is the percentage of your students, as described in paragraphs (d)(3) and (d)(4) of this section, who—

(i) Are employed, in an occupation for which you provided training, on the date following 1 year after their last date of attendance at your institution;

(ii) Were employed for at least 13 weeks, in an occupation for which you provided training, between the date they enrolled at your institution and the first date that is more than a year after their last date of attendance at your institution; or

(iii) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) For the purposes of this section, a former student is not considered to have been employed based on any employment by your institution.

(3) The students who are used to determine your placement rate include only former students who—

(i) Were initially enrolled in an eligible program on at least a half-time basis;

(ii) Were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to calculate the low income rate; and

(iii) Remained in the program beyond the point at which a student would have received a 100 percent tuition refund from you.

(4) A student is not included in the calculation of your placement rate if that student, on the date that is 1 year after the student's originally scheduled completion date, remains enrolled in the same program and is making satisfactory progress.

(e) *Scheduled to complete.* In calculating a completion or placement rate under this section, the date on which a student is originally scheduled to complete a program is based on—

(1) For a student who is initially enrolled full-time, the amount of time specified in your enrollment contract, catalog, or other materials for completion of the program by a full-time student; or

(2) For a student who is initially enrolled less than full-time, the amount of time that it would take the student to complete the program if the student remained at that level of enrollment throughout the program.

(f) *Deadline for submitting an appeal.* (1) Within 30 days after you receive the notice of your loss of eligibility, you must send us your management's written assertion, as described in the Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility, you must send us the independent auditor's opinion described in paragraph (g) of this section.

(g) *Independent auditor's opinion.* (1) The independent auditor's opinion must state whether your management's written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with—

(i) The American Institute of Certified Public Accountant's (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended; and

(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(h) *Determination.* You do not lose eligibility under § 668.187 if—

(1) Your independent auditor's opinion agrees that you meet the requirements for an economically disadvantaged appeal; and

(2) We determine that the independent auditor's opinion and your management's written assertion—

(i) Meet the requirements for an economically disadvantaged appeal; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor's opinion unacceptable.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.195 Participation rate index appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on 3 cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those 3 cohorts' fiscal years.

(b) *Calculating your participation rate index.* (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under § 668.183(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that would be calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(c) *Deadline for submitting an appeal.* You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(d) *Determination.* (1) You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is equal to or less than 0.0375, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under § 668.187(a)(2) that would be based on the official cohort default rate for that fiscal year.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.196 Average rates appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under § 668.183(d)(2).

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on 3 cohort default rates of 25 percent or greater, if at least 2 of those cohort default rates—

(i) Are calculated as average rates under § 668.183(d)(2); and

(ii) Would be less than 25 percent if calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for an average rates appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your average rates appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.187 if we determine that you meet the requirements for an average rates appeal.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.197 Thirty-or-fewer borrowers appeals.

(a) *Eligibility.* You may appeal a notice of a loss of eligibility under § 668.187 if 30 or fewer borrowers, in total, are included in the 3 most recent cohorts of borrowers used to calculate your cohort default rates.

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for a thirty-or-fewer borrowers appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your thirty-or-fewer borrowers appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a thirty-or-fewer borrowers appeal.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.198 Relief from the consequences of cohort default rates for special institutions.

(a) *Eligibility.* You are only eligible for relief from the consequences of cohort default rates under this section if you are a—

(1) Historically black college or university as defined in section 322(2) of the HEA;

(2) Tribally controlled community college as defined in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

(3) Navajo community college under the Navajo Community College Act.

(b) *Applicability of requirements.* We may determine that the loss of eligibility provisions in § 668.187 and the prohibition against full certification in § 668.16(m) do not apply to you for each 1-year period beginning on July 1 of 1999, 2000, or 2001, if you meet the requirements in paragraph (a) of this section and you send us—

(1) By July 1 of the first 1-year period that begins after you receive our notice of a loss of eligibility under § 668.187—

(i) A default management plan; and

(ii) A certification that you have engaged an independent third party, as described in this section; and

(2) By July 1 of each subsequent 1-year period—

(i) Evidence that you have implemented your default management plan during the preceding 1-year period;

(ii) Evidence that you have made substantial improvement in the preceding 1-year period in your cohort default rate; and

(iii) A certification that you continue to engage an independent third party, as described in this section.

(c) *Default management plan.* (1) Your default management plan must provide reasonable assurance that you will, no later than July 1, 2002, have a cohort default rate that is less than 25 percent. Measures that you must take to provide this assurance include but are not limited to—

(i) Establishing a default management team by engaging your chief executive officer and relevant senior executive officials and enlisting the support of representatives from offices other than the financial aid office;

(ii) Identifying and allocating the personnel, administrative, and financial

resources appropriate to implement the default management plan;

(iii) Defining the roles and responsibilities of the independent third party;

(iv) Defining evaluation methods and establishing a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans;

(v) Establishing annual targets for reductions in your cohort default rate; and

(vi) Establishing a process to ensure the accuracy of your cohort default rate.

(2) We will determine whether your default management plan is acceptable, after considering your history, resources, dollars in default, and targets for default reduction in making this determination.

(3) If we determine that your proposed default management plan is unacceptable, you must consult with us to develop a revised plan and submit the revised plan to us within 30 days after you receive our notice that your proposed plan is unacceptable.

(4) If we determine, based on the evidence you submit under paragraph (b)(2) of this section, that your default management plan is no longer acceptable, you must develop a revised plan in consultation with us and submit the revised plan to us within 60 days after you receive our notice that your plan is no longer acceptable.

(5) A sample default management plan is provided in appendix B to this subpart. The sample is included to illustrate components of an acceptable default management plan. Since institutions' family income profiles, student borrowing patterns, histories, resources, dollars in default, and targets for default reduction are different, you must consider your own, individual circumstances in developing and submitting your plan.

(d) *Independent third party.* (1) An independent third party may be any individual or entity that—

(i) Provides technical assistance in developing and implementing your default management plan; and

(ii) Is not substantially controlled by a person who also exercises substantial control over your institution.

(2) An independent third party need not be paid by you for its services.

(3) The services of a lender, guaranty agency, or secondary market as an independent third party under this section are not considered to be inducements under 34 CFR 682.200 or 682.401(e).

(e) *Substantial improvement.* (1) For the purposes of this section, your substantial improvement is determined based on—

(i) A reduction in your most recent draft or official cohort default rate;

(ii) An increase in the percentage of delinquent borrowers who avoid default by using deferments, forbearances, and job placement assistance;

(iii) An increase in the academic persistence of student borrowers;

(iv) An increase in the percentage of students pursuing graduate or professional study;

(v) An increase in the percentage of borrowers for whom a current address is known;

(vi) An increase in the percentage of delinquent borrowers that you contacted;

(vii) The implementation of alternative financial aid award policies and development of financial resources that reduce the need for student borrowing; or

(viii) An increase in the percentage of accurate and timely enrollment status changes that you submitted to the National Student Loan Data System (NSLDS) on the Student Status Confirmation Report (SSCR).

(2) When making a determination of your substantial improvement, we consider your performance in light of—

(i) Your history, resources, dollars in default, and targets for default reduction;

(ii) Your level of effort in meeting the terms of your approved default management plan during the previous 1-year period; and

(iii) Any other mitigating circumstance at your institution during the 1-year period.

(f) *Determination.* (1) If we determine that you are in compliance with this section, the provisions of §§ 668.187 and 668.16(m) do not apply to you for that 1-year period, beginning on July 1 of 1999, 2000, or 2001.

(2) If we determine that you are not in compliance with this section, you are subject to the provisions of §§ 668.187 and 668.16(m). You lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on the date you receive our notice of the determination.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

Appendix A to Subpart M of Part 668—Summaries of Eligibility and Submission Requirements for Challenges, Adjustments, and Appeals

I. Summary of Submission Eligibility

Some types of appeals may be submitted only if you are subject to a loss of eligibility under § 668.187 or to provisional certification under § 668.16(m). These types of appeals are identified in the following table.

		§668	If you meet all other requirements, you may submit... Always	Only if subject to loss of eligibility
Draft Cohort Default Rate	Incorrect Data Challenges	.185(b)	X	
	Participation Rate Index Challenges	.185(c)	X	
Official Cohort Default Rate	Uncorrected Data Adjustments	.190	X	
	New Data Adjustments	.191	X	
	Erroneous Data Appeals	.192		X *
	Loan Servicing Appeals	.193	X	
	Economically Disadvantaged Appeals	.194		X
	Participation Rate Index Appeals	.195		X
	Average Rates Appeals	.196		X
	Thirty-or-Fewer Borrowers Appeals	.197		X

* You may also submit an erroneous data appeal if you are subject to provisional certification under §668.16(m).

II. Summary of Submission Deadlines

The deadlines you must meet when submitting a challenge, requesting an adjustment, or appealing are summarized in the following table. The full, official requirements for these deadlines are in § 668.189 and in the text cited in the table. Also, in the table—

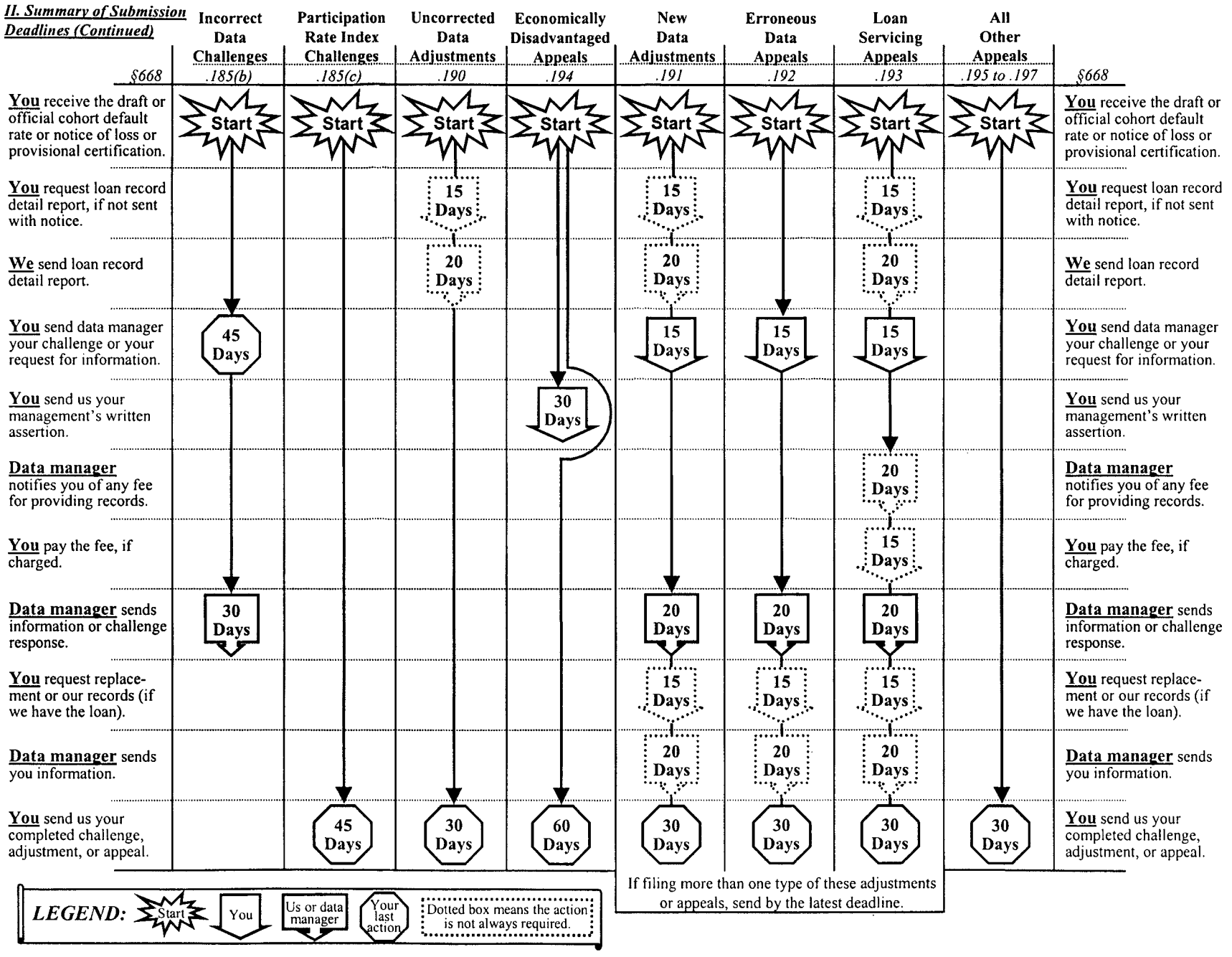
1. ''Days'' means the number of *calendar* days within which the action must be performed.

2. Any timeframe that is directly connected by a line to the ''Start'', at the top of the table, begins when you receive your draft cohort default rate, official cohort default rate, notice of loss of eligibility, or notice of provisional certification. All other timeframes begin when you receive the response to your pending request, except that—

(i) If you are waiting for responses from more than one data manager, your next timeframe begins when you receive the final response from the last data manager; and

(ii) If you do not need to perform an action, the starting date for your next timeframe is based on the last action that was actually performed. (Actions that aren't always required have dotted borders.)

II. Summary of Submission Deadlines (Continued)



Appendix B to Subpart M of Part 668—Sample Default Management Plan for Special Institutions To Use When Complying With § 668.198.

This appendix is provided as a sample plan for those institutions developing a default management plan in accordance with § 668.198. It describes some measures you may find helpful in reducing the number of students that default on federally funded loans. These are not the only measures you could implement when developing a default management plan. In developing a default management plan, you must consider your history, resources, dollars in default, and targets for default reduction to determine which activities will result in the most benefit to your students and to you.

I. Core Default Reduction Strategies (from § 668.198(c)(1))

1. Establish a default management team by engaging your chief executive officer and relevant senior executive officials and enlisting the support of representatives from offices other than the financial aid office.
2. Identify and allocate the personnel, administrative, and financial resources appropriate to implement the default management plan.
3. Define the roles and responsibilities of the independent third party.
4. Define evaluation methods and establish a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans.
5. Establish annual targets for reductions in your rate.
6. Establish a process to ensure the accuracy of your rate.

II. Additional Default Reduction Strategies

1. Enhance the borrower's understanding of his or her loan repayment responsibilities through counseling and debt management activities.
2. Enhance the enrollment retention and academic persistence of borrowers through counseling and academic assistance.
3. Maintain contact with the borrower after he or she leaves your institution by using activities such as skip tracing to locate the borrower.
4. Track the borrower's delinquency status by obtaining reports from data managers and FFEL Program lenders.
5. Enhance student loan repayments through counseling the borrower on loan repayment options and facilitating contact between the borrower and the data manager or FFEL Program lender.
6. Assist a borrower who is experiencing difficulty in finding employment through career counseling, job placement assistance, and facilitating unemployment deferments.
7. Identify and implement alternative financial aid award policies and develop alternative financial resources that will reduce the need for student borrowing in the first 2 years of academic study.
8. Familiarize the parent, or other adult relative or guardian, with the student's debt profile, repayment obligations, and loan status by increasing, whenever possible, the communication and contact with the parent or adult relative or guardian.

III. Defining the Roles and Responsibilities of Independent Third Party

1. Specifically define the role of the independent third party.
2. Specify the scope of work to be performed by the independent third party.
3. Tie the receipt of payments, if required, to the performance of specific tasks.
4. Assure that all the required work is satisfactorily completed.

IV. Statistics for Measuring Progress

1. The number of students enrolled at your institution during each fiscal year.
2. The average amount borrowed by a student each fiscal year.
3. The number of borrowers scheduled to enter repayment each fiscal year.
4. The number of enrolled borrowers who received default prevention counseling services each fiscal year.
5. The average number of contacts that you or your agent had with a borrower who was in deferment or forbearance or in repayment status during each fiscal year.
6. The number of borrowers at least 60 days delinquent each fiscal year.
7. The number of borrowers who defaulted in each fiscal year.
8. The type, frequency, and results of activities performed in accordance with the default management plan.

13. Appendix A to Part 668 is removed.

14. Appendix B to Part 668 is redesignated as Appendix A to Subpart B of Part 668.

15. Appendix C to Part 668 is redesignated as Appendix B to Subpart B of Part 668.

16. Appendix D to Part 668 is removed.

17. Appendix E to Part 668 is redesignated as Appendix A to Subpart D of Part 668.

18. Appendix F to Part 668 is redesignated as Appendix A to Subpart L of Part 668.

19. Appendix G to Part 668 is redesignated as Appendix B to Subpart L of Part 668.

20. Appendix H to Part 668 is removed.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

21. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

22. In § 682.401, paragraph (b)(15) is revised to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(15) *Guaranty agency verification of default data.* A guaranty agency must meet the requirements and deadlines provided for it in subpart M of 34 CFR part 668 for the cohort default rate process.

* * * * *

23. In § 682.410, paragraph (c)(1)(i)(C) is revised to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) Each participating school, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as described in subpart M of 34 CFR part 668, for either of the 2 immediately preceding fiscal years, as defined in 34 CFR 668.182, that exceeds 20 percent, unless the school is under a mandate from the Secretary under subpart M of 34 CFR part 668 to take specific default reduction measures or if the total dollar amount of loans entering repayment in each fiscal year on which the cohort default rate over 20 percent is based does not exceed $100,000; or

* * * * *

24. In § 682.601, paragraph (a)(6) is amended by removing ''§ 668.17'' and adding, in its place, ''subpart M of 34 CFR part 668''.

25. In § 682.603, paragraph (g) is amended by removing ''an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate'' and adding, in its place, ''a cohort default rate''.

26. Section 682.604 is amended—

A. In paragraphs (c)(5)(i), (c)(5)(ii), (c)(10)(i)(B), and (c)(10)(ii), by removing ''an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate'' and adding, in its place, ''a cohort default rate, calculated under subpart M of 34 CFR part 668,''.

B. By removing paragraph (f)(3).

C. By redesignating paragraphs (f)(4) and (f)(5) as paragraphs (f)(3) and (f)(4), respectively.

D. By removing paragraph (g)(3).

E. By redesignating paragraphs (g)(4) and (g)(5) as paragraphs (g)(3) and (g)(4), respectively.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

27. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

28. Section 685.301 is amended—

A. In paragraphs (b)(8)(i)(A)(*2*) and (b)(8)(i)(B), by removing ''a Direct Loan Program cohort rate, FFEL cohort

default rate, or weighted average cohort rate'' and adding, in its place, ''a cohort default rate, calculated under subpart M of 34 CFR part 668,''.

B. In paragraph (b)(8)(ii), by removing ''an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate'' and adding, in its place, ''a cohort default rate, calculated under subpart M of 34 CFR part 668,''.

29. Section 685.303 is amended—

A. In paragraphs (b)(4)(i)(A) and (b)(4)(i)(B), by removing ''a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate'' and adding, in its place, ''a cohort default rate, calculated under subpart M of 34 CFR part 668,''.

B. In paragraph (b)(4)(ii), by removing ''an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate'', and adding, in its place, ''a cohort default rate, calculated under subpart M of 34 CFR part 668,''.

30. Section 685.304 is amended—

A. By removing paragraph (a)(4).

B. By redesignating paragraphs (a)(5), (a)(6), and (a)(7) as paragraphs (a)(4), (a)(5), and (a)(6), respectively.

C. By removing paragraph (b)(5).

D. By redesignating paragraphs (b)(6) and (b)(7) as paragraphs (b)(5) and (b)(6), respectively.

PART 690—FEDERAL PELL GRANT PROGRAM

31. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

32. Section 690.7 is amended—

A. In paragraph (c)(1), by removing ''34 CFR 668.17'' and adding, in its place, ''subpart M of 34 CFR part 668''.

B. In paragraph (c)(2), by removing ''34 CFR 668.17(b)'' and adding, in its place, ''34 CFR 668.187''.

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