

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:** Final regulations.

SUMMARY: The Secretary amends 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 final regulations, the requirements for the loan default reduction and prevention measures are moved to a new subpart and revised for clarity and consistency. The Secretary also makes various substantive changes to these requirements.

DATES: These regulations are effective July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Kenneth Smith, U.S. Department of Education, 400 Maryland Avenue, SW., ROB-3, room 3045, Washington, DC 20202-5447. 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.

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SUPPLEMENTARY INFORMATION: On August 2, 2000, we published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions, FFEL Program, Direct Loan Program, and Federal Pell Grant Program in the *Federal Register* (65 FR 47590). In the preamble to the NPRM, we discussed on pages 47591 through 47601 the major changes proposed in that document. That discussion will not be repeated here. To fully understand the changes, we strongly encourage a review of the preamble of the NPRM. The following list summarizes those major changes:

- Moving the regulations governing the calculation of cohort default rates and challenges to those rates that were in previous § 668.17 to a new subpart M of part 668, revising the regulations for clarity and consistency, and removing Appendix D to part 668.
- In § 668.184, providing detailed regulations for determining an

institution's cohort default rate after certain types of institutional restructuring.

- In §§ 668.185(c) and 668.195, amending certain regulations for a participation rate index challenge or appeal.
- In § 668.187(a)(1), imposing a loss of participation from the FFEL and Direct Loan programs against an institution having a cohort default rate greater than 40 percent, without requiring the use of a proceeding under subpart G of part 668.
- In § 668.187(a)(2), imposing a loss of participation in the FFEL Program against an institution with three consecutive cohort default rates of 25 percent or greater, even if Direct Loans are included in those cohort default rates, without the use of a proceeding under subpart G of part 668.
- In § 668.188, providing for the application of an institution's loss of eligibility to a related or successor institution when certain criteria are met, to prevent an institution from evading the consequences of cohort default rates.
- In § 668.192, allowing an institution that is provisionally certified under § 668.16(m) to submit an erroneous data appeal.
- In § 668.193, allowing all institutions to appeal their most recent cohort default rates on the basis of improper loan servicing or collection.
- In § 668.194, restoring certain eligibility criteria, inadvertently omitted in previous regulations, and revising submission requirements for an economically disadvantaged appeal.
- In § 668.196, providing for the submission of an average rates appeal by an institution that is subject to loss of participation based on a cohort default rate greater than 40 percent.
- In § 668.197, providing for the submission of a thirty-or-fewer borrowers appeal by an institution that is subject to loss of participation based on a cohort default rate greater than 40 percent.
- In § 668.198, exempting a special institution that is in compliance with this section from a loss of eligibility based on a cohort default rate greater than 40 percent.

These final regulations contain several significant changes from the NPRM. We fully explain these changes in the Analysis of Comments and Changes elsewhere in this preamble.

Effect of Regulations on Rights or Obligations

These final regulations will be a new subpart M of part 668 of the Department's regulations. This new subpart is a reorganization of provisions

governing the cohort default rate calculation and challenge process, which are currently in 34 CFR 668.17. As discussed elsewhere in this preamble, a few of these provisions have also been revised. Generally, these changes do not affect procedural or substantive rights of any party. However, there are a few instances in which those rights have been modified. To the extent that an institution has or had a right or obligation under § 668.17 before the effective date of these regulations, the institution's exercise or failure to exercise that right or meet that obligation is binding after the effective date of these regulations. These final regulations govern all rights and obligations that may apply to an institution or other party after their effective date.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the Higher Education Act of 1965, as amended (HEA) requires that, before publishing any proposed regulations to implement 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.

These regulations were published in proposed form on August 2, 2000, following the completion of the negotiated rulemaking process. The Secretary invited comments on the proposed regulations by September 18, 2000, and 17 comments were received. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make.

General

Comments: In general, the commenters supported the proposed regulations and commended us for our efforts to make the requirements for cohort default rates clearer and more consistent. One commenter specifically supported the removal of the previous Appendix D to part 668, stating that it is important to give institutions the flexibility they need to manage cohort default rates.

Discussion: We appreciate the commenters' support for the proposed

regulations and the work of the members of the negotiated rulemaking committee that resulted in the proposed regulations.

Changes: None.

Provisional Certification
(§ 668.16(m)(2)(i))

Comments: None.

Discussion: As we stated in the preamble to the NPRM (65 FR 47599), during negotiated rulemaking we agreed to change the regulations to allow institutions to submit erroneous data appeals to contest provisional certification under § 668.16(m). We have subsequently reviewed the processes for implementing this new appeal and have determined that there is no need to provisionally certify every institution that has one cohort default rate that falls between 25 percent and 40 percent. In some cases, it may be just as effective to apply other current safeguards to address this issue at the institution and to protect the Federal Government's interest. Improved reporting practices, a holistic case management approach, the availability of technical assistance, and other current safeguards may be adequate to address, in some cases, issues associated with an excessive cohort default rate.

Changes: We have revised § 668.16(m)(2)(i) to provide for the Secretary's discretion in provisionally certifying an institution under that paragraph.

Submission Deadlines (§ 668.182(c))

Comments: Three commenters agreed with our use of a consistent definition for "days" throughout these regulations, instead of using "calendar days" as a measure for some requirements and "working days" as a measure for other requirements. One commenter agreed with our proposal to define "days" as "calendar days" because "calendar days" is easier to understand, while the concept of a "working day" may lend itself to different interpretations and is more difficult to monitor.

However, one commenter questioned whether the change from calendar days to working days would allow institutions less time to comply with the regulations. Another commenter recommended that the regulations define "days" as "working days" because it would allow institutions more time to submit requests and appeals during the cohort default rate process. This commenter stated that requiring an institution to submit a completed appeal within 30 calendar days may place an undue burden on institutions that are also trying to perform the other administrative

functions required for participation in the Title IV, HEA programs.

Discussion: In general, these regulations allow institutions the same amount of time, or more, to submit challenges, requests for adjustments, or appeals, when compared to previous regulations. The only exception is if an institution has to pay a fee to a data manager during a loan servicing appeal, under § 668.193(c)(5). Previously, an institution had 15 working days to pay this fee; under the new regulations, an institution has 15 calendar days to pay this fee.

We do not agree that the term "days" should mean "working days" in subpart M of part 668. We also do not agree that it is unreasonable to require an institution to submit a completed appeal within 30 calendar days. In fact, it is our experience that almost every institution meets the deadline.

Changes: None.

Entering Repayment on Federal Supplemental Loans for Students (SLS) Program Loans (§ 668.182(f)(2))

Comments: One commenter stated that there were inaccuracies in proposed § 668.182(f)(2) in the definition of the date that a Federal SLS loan enters repayment for the purposes of calculating a cohort default rate.

Proposed § 668.182(f)(2)(i) stated that a Federal SLS loan is considered to enter repayment at the same time as the borrower's Federal Stafford loan enters repayment, if the borrower received a Federal Stafford loan for the same loan period. The commenter noted that 34 CFR 682.200 and 682.209(a)(2)(iii) do not require that the borrower receive the Federal SLS and Federal Stafford loans for the same loan period. Instead, under those sections, the Federal SLS and Federal Stafford loans must be obtained during the same period of continuous enrollment, which may include one or more loan periods, for the Federal SLS loan to enter repayment at the same time as the Federal Stafford loan.

In addition, under proposed § 668.182(f)(2)(ii), for all other purposes, a Federal SLS loan would be considered to enter repayment on the day after the student ceased to be enrolled at the institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential. The commenter stated that loans do not enter repayment because a student ceases to be enrolled at least half-time at a particular institution; they enter repayment because the student ceases to be enrolled at least half-time. A student might continue his or her studies at another institution, and the loans would

not enter repayment until the student ceased to be enrolled at least half-time at that second institution.

Discussion: We agree with the commenter.

Changes: We have revised § 668.182(f)(2) to correct the errors the commenter described.

Entering Repayment on Consolidation Loans (§ 668.183(b))

Comments: None.

Discussion: After further review, we have concluded that the language in proposed §§ 668.182(f)(3)(ii) and 668.183(b)(2), which describes the inclusion of loans made under the Federal Consolidation Loan Program and the Federal Direct Consolidation Loan Program in the calculation of cohort default rates, is unnecessarily complex.

Changes: We have removed proposed §§ 668.182(f)(3)(ii) and 668.183(b)(2) and revised § 668.183(b)(1) to clarify the inclusion of consolidation loans in the calculation of a cohort default rate.

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

Comments: Under § 668.183(c)(1)(iii), certain loans that are repaid under the Direct Loan Program's income contingent repayment plan are considered to be in default for the purpose of calculating a non-degree-granting proprietary institution's cohort default rate. As noted in the preamble to the NPRM (65 FR 47591), this provision does not make any change to current regulations and was presented to the negotiating committee only as part of the overall restructuring of the regulations.

One commenter agreed that these regulations are appropriate and stated that degree-granting institutions with historically low default rates should not be subject to this regulatory provision. Seven commenters argued that these regulations are inappropriate. They claimed that these regulations unfairly target non-degree-granting proprietary institutions. Several commenters argued that if these requirements are appropriate for non-degree-granting proprietary institutions, then they should be appropriate for, and applied to, all types of institutions.

The commenters believed that there is not a significant risk that 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 under the income contingent repayment plan. They did not believe that this risk is an adequate reason for the special

treatment of loans being repaid through income contingent repayment included in the proposed regulations. They noted that, since this requirement applies only to borrowers who are repaying Direct Loans, it may make some institutions reluctant to participate in the Direct Loan Program or to counsel borrowers to apply for Direct Consolidation Loans.

The commenters also argued that this provision is contrary to the purpose of the Direct Loan Program's income contingent repayment plan. They contended that this repayment plan was designed to help students repay their loans, even if the students are starting new careers or are unable to work full time, and that this repayment plan is a legitimate option for all eligible borrowers.

Discussion: We appreciate the commenters' concerns, but continue to believe that this is a potential area for abuse. 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. Though an institution cannot require all its borrowers to choose one repayment plan, it can, through its counseling, increase the likelihood of a borrower's choosing to repay under the Direct Loan Program's income contingent repayment plan.

We also continue to believe that this provision should apply only to non-degree-granting proprietary institutions. As we stated in the preamble to the NPRM, 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. The cohort default rates of non-degree-granting proprietary institutions are, on average, consistently higher than those of other institutions. Since non-degree-granting proprietary institutions provide students with education or training needed to secure employment, a borrower's ability to make substantial payments on a loan reflects the value of the education or training provided by the institution in the marketplace.

Changes: None.

Reinsurance and Default (§ 668.183(c)(2)(ii))

Comments: None.

Discussion: Proposed

§ 668.183(c)(2)(ii) stated that a borrower is not considered to be in default based on a loan that is no longer reinsured by us. This statement is not correct. A loan that is no longer reinsured by us is removed from the cohort completely: the borrower is neither counted in the cohort nor considered to be a defaulter.

However, this is not the situation that we intended to address in this paragraph, and since it is inherent in the cohort default rate process that a loan must be reinsured by us to be included in the calculation, it does not need to be stated explicitly in regulations.

We had intended for § 668.183(c)(2)(ii) to address situations in which a lender repurchases a loan, before the end of the fiscal year immediately following the fiscal year in which it entered repayment, having recognized that the lender's claim for insurance on the loan was submitted or paid in error. In those situations, the loan is not considered to be in default.

Changes: We have revised § 668.183(c)(2)(ii) to provide that, for the purposes of calculating a cohort default rate, a borrower is not considered to be in default on certain repurchased loans.

Change in Status and Change in Institutional Structure or Identity (§ 668.184(a)(3))

Comments: None.

Discussion: Section 668.184 describes how an institution's cohort default rate is determined after certain changes in institutional structure or identity. Under § 668.188, a loss of eligibility imposed against one institution is also applied to one or more other institutions, in certain circumstances, following a change in institutional structure or identity. Because these separate provisions both deal with changes in institutional structure or identity, we believe that, without clarification, there may be confusion about whether both provisions could apply to the same institution based on the same circumstance.

The application of one of these sections to an institution does not preclude the application of the other section to that same institution based on the same circumstance. The sections are separate requirements. A determination of an institution's cohort default rate under § 668.184 does not preclude the application of a loss of eligibility under § 668.188, and the application of a loss of eligibility under § 668.188 does not preclude the determination of an institution's cohort default rate under § 668.184.

Changes: We have renumbered proposed § 668.184(a)(3) as § 668.184(a)(4) and added a new § 668.184(a)(3) to clarify that a change of status that affects the calculation of an institution's cohort default rate under § 668.184 may also affect that institution's eligibility to participate in Title IV, HEA programs under § 668.187 or § 668.188.

Data Manager's Ability To Deny a Challenge, Request for Adjustment, or Appeal (§§ 668.185(a)(4) and 668.189(c))

Comments: Three commenters noted that proposed §§ 668.185(a)(4) and 668.189(c) state that the Department may deny a school's challenge, request for adjustment, or appeal if an institution does not comply with the requirements in the Cohort Default Rate Guide. The commenters suggested that guarantors, as data managers, should have the same latitude to deny non-compliant challenges and appeals as the Department.

Discussion: Only the Secretary may deny an institution's challenge, request for adjustment, or appeal. Data managers do not have the authority to make this determination. If a data manager receives an institution's request for information during the cohort default rate process but is unable to respond because the request lacks necessary information or is not in the required format, then the data manager must ask the institution to submit the missing information or to submit the request in the required format. However, there is no change to the timeframe for the institution's submission; the institution must send its corrected request for information to the data manager within the original timeframe.

Changes: None.

Request for Loan Record Detail Report (§ 668.186(c)(1))

Comments: None.

Discussion: In proposed

§ 668.186(c)(1), awkward language could have been read to mean that an institution could not request less than two loan record detail reports at a time. Most institutions will only need to request one loan record detail report at a time.

Changes: We have revised § 668.186(c)(1) to clarify that an institution may request any loan record detail report that lists loans included in its cohort default rate calculation.

Loss of Participation for Institutions With Cohort Default Rates Exceeding 40 Percent (§ 668.187(a)(1))

Comments: One commenter supported changes in § 668.187(a)(1), stating that the new regulations would provide institutions that have one cohort default rate over 40 percent with the same opportunities to challenge, request an adjustment, or appeal as those afforded to institutions with three consecutive cohort default rates of 25 percent or more. The commenter stated that the new regulations provide a more

equitable process for schools with one cohort rate over 40 percent.

Discussion: We agree with the commenter.

Changes: None.

Preventing Evasion of the Consequences of Cohort Default Rates (§ 668.188(a)(2))

Comments: In the preamble to the NPRM (65 FR 47597), we stated that, in general, an institution is offering an educational program at “substantially the same address” as an ineligible institution if its site is the same as the ineligible institution’s site or is physically located close enough to the ineligible institution’s site to demonstrate that the educational programs it provides are intended to serve the same population.

Four commenters felt that this statement was an overly broad interpretation of the regulatory criterion, and they asked us to revise our interpretation in this preamble. Some commenters contended that this interpretation would be impossible to apply consistently, because it would require an extensive analysis of the population served by the institutions. The commenters also noted that the statement in the preamble to the NPRM could be read to suggest that we will treat institutions that are located miles apart as being located at “substantially the same address.” Three commenters stated that, as distance learning becomes more accepted for all or parts of a program, any school that uses computerized instruction over the internet could be considered to be serving the same population.

The commenters argued that “substantially the same address” should refer to the same building, an adjacent building, the same block, across the street, etc. They stated that these were the examples offered during negotiated rulemaking, to gain consensus for this requirement, and that the consensus achieved during negotiated rulemaking did not include the broad interpretation they believed was reflected in the preamble to the NPRM.

Discussion: The purpose of § 668.188 is to keep institutions from evading the consequences of their cohort default rates through the use of measures such as branching, consolidation, change of ownership or control, or any similar devices. Limiting the interpretation of “substantially the same address” to the specific locations the commenters suggest would not be appropriate for many circumstances. An institution that was able to relocate outside those specific parameters while continuing to serve the same population of students could, in effect, continue to function as

the same institution and evade the consequences of its cohort default rates.

For example, after Institution A becomes ineligible to participate in the FFEL and Direct Loan programs, its owner changes Institution A’s name to Institution B and moves it 10 blocks away from Institution A’s site. Institutions A and B are located in a small city, where no other institutions provide the same type of educational programs, and they serve the same population of students. One week after Institution A becomes ineligible, Institution B opens for business with the same owner and staff. Under the interpretation that the commenters suggest, Institution A’s prior loss of eligibility would not be applied to Institution B because their sites are located 10 blocks apart rather than in adjacent buildings, on the same block, across the street, etc.

This result does not serve the goals of section 435(m)(3) of the HEA, which these regulations are intended to implement. In the example, Institution B was created from Institution A merely by changing the name and location. The institutions are owned by the same person, and since they are located in a small city, they provided the same educational programs to the same population of students. It is clear that the change in status was instituted in order to evade the consequences of Institution A’s cohort default rates, and also that Institution A is continuing to function as Institution B. In this case, limiting the interpretation of “substantially the same address” to the specific locations the commenters mention would only prompt the owner to locate Institution B at least one building beyond that narrowly-defined area. It would not prevent Institution B from evading the consequences of Institution A’s cohort default rates.

During the negotiated rulemaking discussions, we did not intend to limit the interpretation of this provision to a specific geographical area. If we had intended to create a narrowly-defined rule, we would have defined that geographical area specifically in the regulatory language, rather than using the more general term, “substantially the same address.” The statement included in the preamble to the NPRM was intended to provide an explanation of the circumstances under which that term could extend further than a narrowly-defined geographical area.

We recognize that this approach may result in some uncertainty among institutions contemplating various changes in status. For this reason, a procedure is included in these regulations for institutions to make

inquiries to us. If an institution is undergoing a change in institutional structure or identity and is unsure whether its site is located at “substantially the same address” as another institution’s site, it may contact us for an initial determination under § 668.188(d).

Changes: None.

Initial Determination of the Effect of an Anticipated Change on an Institution’s Eligibility (§ 668.188(d))

Comments: None.

Discussion: Proposed § 668.188(d) encourages an institution to contact us for an initial determination of the effect of an anticipated change on the institution’s eligibility. As written, the proposed regulations did not specify the format for the institution’s request or for our response. To ensure that an initial determination is adequately documented, both the institution’s request for the initial determination and our response need to be in writing.

Changes: We have revised § 668.188(d) to require institutions’ requests for initial determinations and our responses to be in writing.

Requirements for Data Managers’ Responses (§ 668.189(e)(2))

Comments: None.

Discussion: Proposed § 668.189(e)(2) stated that correspondence sent to us by a data manager as part of the cohort default rate process “should” be in a format acceptable to us. On further consideration, however, we have determined that the use of the word “should” created an ambiguity. The paragraph did not specify whether it required or merely encouraged data managers to send us correspondence in a format acceptable to us. This ambiguity needs to be resolved.

The word “should” was added to § 668.189(e)(2) during negotiations. Non-Federal negotiators asked us to change proposed language, which provided that the data “must be in a format acceptable to us,” to “should be in a format acceptable to us.” They made this request so the requirement for data managers would be less rigid and more similar to requirements for institutions, under § 668.189(c), which state that we “may” (instead of “will”) deny an institution’s request for adjustment or appeal if it does not meet certain requirements.

On further consideration, however, we have determined that changing the language did not make the provisions similar, since an institution risks the denial of its appeal if its request is not in an acceptable format. In contrast, a guaranty agency would not be subject to

any consequence for not providing data in an acceptable format.

Changes: We have revised § 668.189(e)(2) to clarify the requirement for data managers by making it more similar to the corresponding requirement for institutions, under § 668.189(c). The revised regulations allow guaranty agencies some flexibility, but they also allow the Secretary to require a guaranty agency to provide data in a specified format.

Submission of Erroneous Data Appeals (§ 668.192(a)(2))

Comments: None.

Discussion: Proposed § 668.192(a)(2) did not fully explain the circumstances under which an institution may submit an erroneous data appeal. The proposed regulations stated that an institution may submit an erroneous data appeal if a comparison of its loan record detail reports, for the draft and official cohort default rates, shows that certain data have been newly included, excluded, or otherwise changed. However, in order for an institution to submit an erroneous data appeal for that new data, it must also dispute the data's accuracy. Though this requirement is included in § 668.192(c), as it relates to our determination on an erroneous data appeal, it also needs to be clearly stated for institutions in § 668.192(a)(2).

Changes: We have revised § 668.192(a)(2) to more clearly reflect the criteria for an erroneous data appeal.

Requirements for Submitting Loan Servicing Appeals (§ 668.193(c)(2))

Comments: None.

Discussion: Under proposed § 668.193(c)(2), an institution that is requesting loan servicing records would send the data manager the "list of students that we provided to you." This phrase refers to the "loan record detail report," which is defined in § 668.182(h). To avoid confusion, we have decided to use the term "loan record detail report" in § 668.193(c)(2).

Changes: In § 668.193(c)(2), we have changed "list of students that we provided to you" to "loan record detail report."

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

Comments: After the NPRM was published, we sent a formatted copy of the proposed Appendix A to a focus group comprised of eight representatives of the financial aid community. We asked for their comments on the usefulness and

understandability of the tables in Appendix A. Three commenters responded to our request. Although the commenters appeared to generally understand the tables, their responses identified certain areas in which the tables and their introductions need to be improved.

Discussion: We appreciate the commenters' help and have accepted most of their suggestions.

Changes: We have revised the first table, under "I. Summary of Submission Eligibility," so that it contains a "Yes" or a "No" in each cell, and we have reformatted the table so that its information is arranged and identified more consistently. In the second table, under "II. Summary of Submission Deadlines," we have made several minor formatting and text changes and have rewritten the introductory language to more clearly specify the starting date for each timeframe described in the table, including the starting dates for timeframes when an action is not always required (identified in the table by a dotted border).

However, we did not make all of the changes that the commenters suggested:

- Instead of removing the information associated with the draft cohort default rate process from the first table and adding a separate table for that information, we have specified within the first table that sanctions are never based on draft cohort default rates.

- We have not included page numbers with citations. It would be impossible to keep the page numbers updated so that they would always identify the text as it is first printed in the **Federal Register** and subsequently printed in each year's version of the *Code of Federal Regulations*.

- We have not re-ordered the columns in the second table so that challenges, adjustments, and appeals are presented in the order of their appearance in the regulations. When printed in the *Code of Federal Regulations*, this table will be divided in half and printed on facing pages. If the columns were arranged in the order of the requirements' appearance in the regulations, the columns for §§ 668.191 and 668.192 would be printed on different pages, and it would not be possible to note their common submission requirements.

- We have not included definitions of the terms "you", "we", and "data manager" in Appendix A. This appendix will be published in the Code of Federal Regulations as part of subpart M of part 668. It will not be separated from this subpart by other regulations or appendices, so there is no need to repeat these definitions.

- Instead of explaining in the second table the reason that a school would not receive a loan record detail report with its cohort default rate, we have included this information as an example in the introductory language for the table. There is no space in the table to insert this explanation.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

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

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (65 FR 47590).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant Program and the Leveraging Educational Assistance Partnership 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 by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide 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, 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

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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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: October 24, 2000.

Richard W. Riley,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends 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 is amended to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.14 [Amended]

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 paragraph (m)(1)(i), by removing “As defined in § 668.17” and adding, in its place, “Calculated under subpart M of this part”.

C. By revising paragraph (m)(2).

§ 668.16 Standards of administrative capability.

* * * * *

(m) * * *

(2)(i) However, if the Secretary determines that an institution’s administrative capability is impaired solely because the institution fails to comply with paragraph (m)(1) of this section, the Secretary allows the institution to continue to participate in the Title IV, HEA programs but may provisionally certify the institution in accordance with § 668.13(c); and

(ii) The institution may appeal the loss of full participation in a Title IV, HEA program under paragraph (m)(1) of this section by submitting an erroneous data appeal in writing to the Secretary in accordance with and on the grounds specified in subpart M of this part;

* * * * *

§ 668.17 [Removed and reserved]

4. Section 668.17 is removed and reserved.

§ 668.26 [Amended]

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

§ 668.46 [Amended]

6. In § 668.46, paragraph (c)(7) is amended by removing “Appendix E to this part”, and adding, in its place, “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;

* * * * *

§ 668.90 [Amended]

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.

§ 668.171 [Amended]

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”.

§ 668.172 [Amended]

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, HEA programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL and 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.

(Approved by the Office of Management and Budget under control number 1845–0022)

(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 the Federal SLS loan and the Federal Stafford loan during the same period of continuous enrollment; or

(ii) In all other cases, on the day after the student ceases to be enrolled at an 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 the loan is paid in full before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section.

(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.

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(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) 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, or on the portion of a loan made under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102) that is used to repay those loans.

(2) 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) Repurchased by a lender because the claim for insurance was submitted or paid in error.

(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.

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(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) A change in status may affect your eligibility to participate in Title IV, HEA programs under § 668.187 or § 668.188.

(4) 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.

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(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 three 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 three 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.

(Approved by the Office of Management and Budget under control number 1845-0022)

(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 any loan record detail report that lists 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.

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(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 three 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 three 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.

(Approved by the Office of Management and Budget under control number 1845–0022)

(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 under a teach-out agreement as defined in 34 CFR 602.3 and administered in accordance with 34 CFR 602.24(c), 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 write to us, providing the information we request, we will provide a written 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.

(Approved by the Office of Management and Budget under control number 1845–0022)

(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) If a data manager sends us correspondence under this subpart that is not in a format acceptable to us, we may require the data manager to revise that correspondence's format, and we may prescribe a format for that data manager's subsequent correspondence with 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.

(Approved by the Office of Management and Budget under control number 1845-0022)

(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.

(Approved by the Office of Management and Budget under control number 1845-0022)

(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.

(Approved by the Office of Management and Budget under control number 1845-0022)

(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, and you dispute the accuracy of that data.

(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.

(Approved by the Office of Management and Budget under control number 1845-0022)

(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 loan record detail report.

(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).

(Approved by the Office of Management and Budget under control number 1845-0022)

(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 (these standards may be obtained by calling the AICPA's order department, at 1-888-777-7077); 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.

(Approved by the Office of Management and Budget under control number 1845-0022)

(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 three 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 three 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.

(Approved by the Office of Management and Budget under control number 1845-0022)

(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 three cohort default rates of 25 percent or greater, if at least two 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.

(Approved by the Office of Management and Budget under control number 1845-0022)

(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.

(Approved by the Office of Management and Budget under control number 1845-0022)

(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.

(Approved by the Office of Management and Budget under control number 1845-0022)

(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. Submission deadlines are described in the paragraphs and sections that are cited in the table. For example, although you may submit an uncorrected data adjustment, new data adjustment, or loan servicing appeal if you are subject to provisional certification, the deadlines for those submissions are based on the date you receive your cohort default rate, not the date you receive the notice of your provisional certification.

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	May you submit this type of challenge, adjustment, or appeal...	... if you are subject to...		
		No sanction?	Loss of eligibility?	Provisional certification?
Draft Cohort Default Rate	Incorrect Data Challenges (§668.185(b))	Yes	Sanctions are never based on draft cohort default rates.	
	Participation Rate Index Challenges (§668.185(c))	Yes		
Official Cohort Default Rate	Uncorrected Data Adjustments (§668.190)	Yes	Yes	Yes
	New Data Adjustments (§668.191)	Yes	Yes	Yes
	Erroneous Data Appeals (§668.192)	No	Yes	Yes
	Loan Servicing Appeals (§668.193)	Yes	Yes	Yes
	Economically Disadvantaged Appeals (§668.194)	No	Yes	No
	Participation Rate Index Appeals (§668.195)	No	Yes	No
	Average Rates Appeals (§668.196)	No	Yes	No
	Thirty-or-Fewer Borrowers Appeals (§668.197)	No	Yes	No

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II. Summary of Submission Deadlines

1. *General.* The deadlines you must meet when submitting a challenge, a request for adjustment, or an appeal are summarized in the following table. The full, official requirements for these deadlines are in § 668.189 and in the sections and paragraphs cited in the table.

2. *Timeframes.* The timeframes provided in the table ("30 Days", "15 Days", etc.) identify the number of calendar days within which

that action must be performed. Timeframes begin on the date that the previous action (connected to that timeframe with an arrowed line) is completed:

(i) For *your first action* (and for both actions, during an economically disadvantaged appeal), the timeframe begins on the date that you receive your draft cohort default rate, official cohort default rate, notice of loss of eligibility, or notice of provisional certification.

(ii) For *all other actions*, the timeframe begins on the date you receive the response

to your pending request. If you are waiting for responses from more than one data manager, the timeframe begins on the date that you receive the final response from the last data manager.

3. *Dotted borders.* Some actions identified in the table are required only in certain circumstances. For example, if we don't send you a loan record detail report, because your cohort default rate is less than 10 percent, you must request one before you can request an adjustment or appeal. Timeframes for

actions that aren't always required are identified in the table by dotted borders:

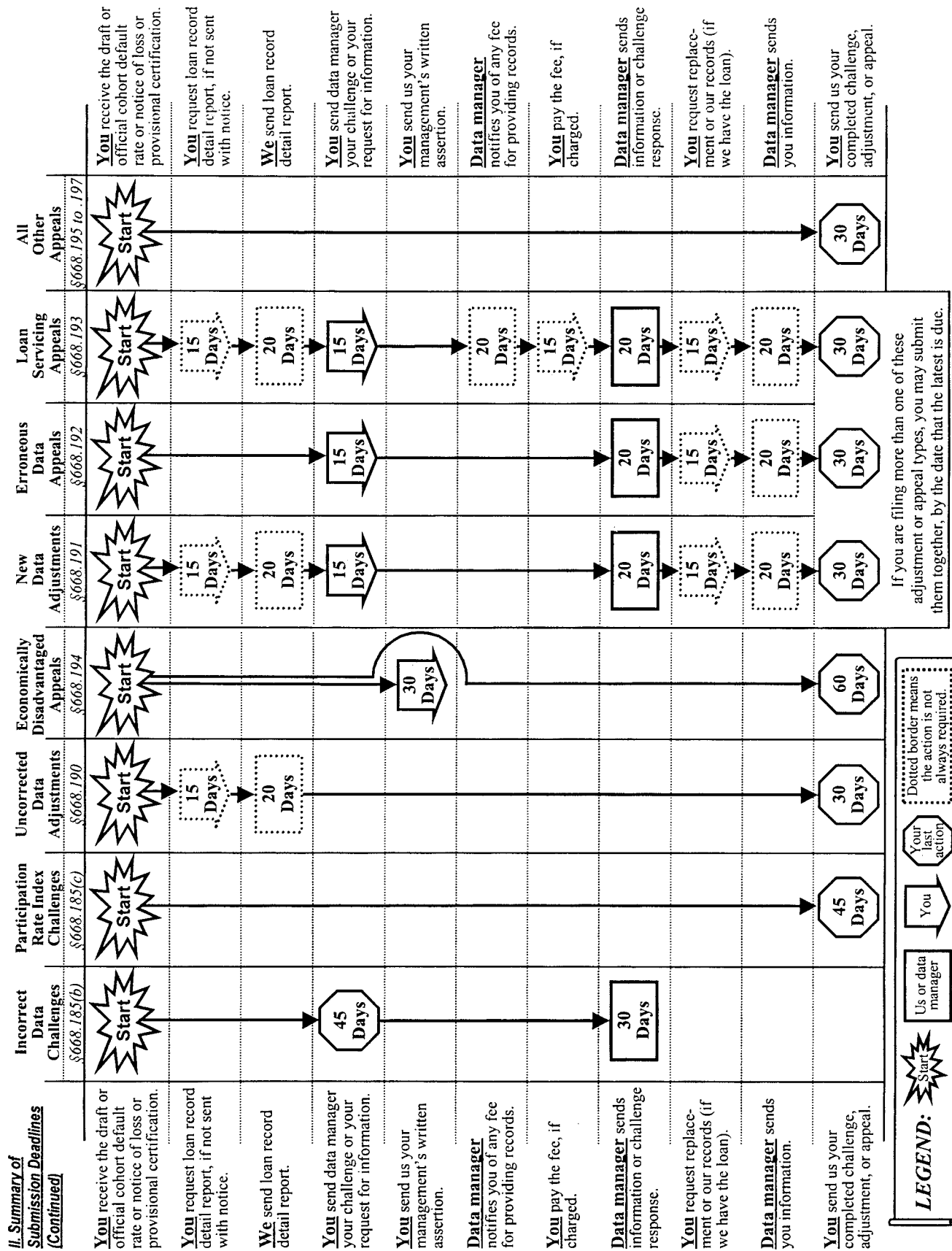
(i) If you *are* required to perform that action, the timeframes begin on the same

dates that they would if the timeframe borders were not dotted.

(ii) If you *are not* required to perform that action, the timeframe for your next required action is determined as if the timeframes

with the dotted borders were not there. The timeframe for your next required action begins on the date that the last required action was completed.

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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.

Appendix A to Part 668 [Removed]

13. Appendix A to Part 668 is removed.

Appendix B to Part 668 [Redesignated as Appendix A to Subpart B of Part 668]

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

Appendix C to Part 668 [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.

Appendix D to Part 668 [Removed]

16. Appendix D to Part 668 is removed.

Appendix E to Part 668 [Redesignated as Appendix A to Subpart D of Part 668]

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

Appendix F to Part 668 [Redesignated as Appendix A to Subpart L of Part 668]

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

Appendix G to Part 668 [Redesignated as Appendix B to Subpart L of Part 668]

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

Appendix H to Part 668 [Removed]

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

* * * * *

§ 682.601 [Amended]

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”.

§ 682.603 [Amended]

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”.

§ 682.604 [Amended]

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.

§ 685.301 [Amended]

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,”.

§ 685.303 [Amended]

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,”.

§ 685.304 [Amended]

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.

§ 690.7 [Amended]

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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