

1 **Issue 8**

2 **Amendatory Language**

3 **Team II - School-based Loan Issues**

4 x. Section 668.16 is amended by:

5 A. Revising paragraph (m).

6 B. Revising the authority citation at the end of the
7 section.

8 The revisions read as follows:

9 §668.16 Standards of administrative capability.

10 * * * * *

11 (m) (1) Has a cohort default rate--

12 (i) That is less than 25 percent for each of the three
13 most recent fiscal years during which rates have been issued, to
14 the extent those rates are calculated under subpart M of this
15 part;

16 (ii) That is less than 30 percent for at least two of the
17 three most recent fiscal years during which the Secretary has
18 issued rates for the institution under subpart N of this part;
19 and

20 (iii) As defined in 34 CFR 674.5, on loans made under the
21 Federal Perkins Loan Program to students for attendance at that
22 institution that does not exceed 15 percent.

23 (2) (i) However, if the Secretary determines that an
24 institution's administrative capability is impaired solely

1 because the institution fails to comply with paragraph (m)(1) of
2 this section, and the institution is not subject to a loss of
3 eligibility under §§668.187(a) or 668.206(a), the Secretary
4 allows the institution to continue to participate in the Title
5 IV, HEA programs. In such a case, the Secretary may
6 provisionally certify the institution in accordance with
7 §668.13(c) except as provided in paragraphs (m)(2)(ii) and
8 (m)(2)(iii) of this section.

9 (ii) An institution that fails to meet the standard of
10 administrative capability under paragraph (m)(1)(ii) based on
11 two cohort default rates that are greater than or equal to 30
12 percent but less than 40 percent is not placed on provisional
13 certification under paragraph (m)(2)(i) of this section--

14 (A) If it has timely filed a request for adjustment or
15 appeal under §§668.209, 668.210, or 668.212 with respect to the
16 second such rate, and the request for adjustment or appeal is
17 either pending or succeeds in reducing the rate below 30
18 percent; or

19 (B) If it has timely filed an appeal under §§668.213 or
20 668.214 after receiving the second such rate, and the appeal is
21 either pending or successful.

22 (iii) The institution may appeal the loss of full
23 participation in a Title IV, HEA program under paragraph
24 (m)(2)(i) of this section by submitting an erroneous data appeal

1 in writing to the Secretary in accordance with and on the
2 grounds specified in §§668.192 or 668.211 as applicable;

3 * * * * *

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

5 x. Revise the subpart heading of subpart M to read as
6 follows:

7 Subpart M--Two Year Cohort Default Rates

8 x. Section 668.181 is revised to read as follows:

9

10 §668.181 Purpose of this subpart.

11 (a) General. Your cohort default rate is a measure we use
12 to determine your eligibility to participate in various Title
13 IV, HEA programs. We may also use it for determining your
14 eligibility for exemptions, such as those for certain
15 disbursement requirements under the FFEL and Direct Loan
16 Programs. This subpart applies solely to cohorts, as defined in
17 §§668.182(a) and 668.183(b), for fiscal years through 2011. For
18 these cohorts, this subpart describes how cohort default rates
19 are calculated, some of the consequences of cohort default
20 rates, and how you may request changes to your cohort default
21 rates or appeal their consequences. Under this subpart, you
22 submit a "challenge" after you receive your draft cohort default
23 rate, and you request an "adjustment" or "appeal" after your
24 official cohort default rate is published.

1 (b) Cohort Default Rates. Notwithstanding anything to the
2 contrary in this subpart, we will issue annually two sets of
3 draft and official cohort default rates for fiscal years 2009,
4 2010, and 2011. For each of these years, you will receive one
5 set of draft and official cohort default rates under this
6 subpart and another set of draft and official cohort default
7 rates under subpart N of this part.

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

9 x. Section 668.185(a)(3) is revised to read as follows:

10 §668.185 Draft cohort default rates and your ability to
11 challenge before official cohort default rates are issued.

12 (a) * * *

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

17 * * * * *

18 x. Section 668.186 is revised to read as follows:

19 §668.186 Notice of your official cohort default rate.

20 (a) We electronically notify you of your cohort default
21 rate after we calculate it, by sending you an eCDR notification
22 package to the destination point you designate. After we send
23 our notice to you, we publish a list of cohort default rates
24 calculated under this subpart for all institutions.

1 (b) If you have one or more borrowers entering repayment
2 or are subject to sanctions, or if the Department believes you
3 will have an official cohort default rate calculated as an
4 average rate, you will receive a loan record detail report as
5 part of your eCDR notification package.

6 (c) You have five business days, from the transmission
7 date for eCDR notification packages as posted on the
8 Department's Website, to report any problem with receipt of the
9 electronic transmission of your eCDR notification package.

10 (d) Except as provided in paragraph (e) of this section,
11 timelines for submitting challenges, adjustments, and appeals
12 begin on the sixth business day following the transmission date
13 for eCDR notification packages that is posted on the
14 Department's Website.

15 (e) If you timely report a problem with the receipt of the
16 electronic transmission of your eCDR notification package under
17 paragraph (c) of this section and the Department agrees that the
18 Department caused the problem with the transmission, the
19 Department will extend the challenge, appeal and adjustment
20 deadlines and timeframes to account for a retransmission of your
21 eCDR notification package after the technical problem is
22 resolved.

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

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

2 x. Section 668.187 is revised to read as follows:

3 §668.187 Consequences of cohort default rates on your ability
4 to participate in Title IV, HEA programs.

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

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

15 (b) Length of period of ineligibility. Your loss of
16 eligibility under this section continues--

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

19 (2) For the next 2 fiscal years.

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

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

1 (2) Any other action by us.

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

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

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

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

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

20 (2) Eligibility continued under paragraph (g)(1) of this
21 section ends if we determine that none of the requests for
22 adjustments and appeals you have submitted qualify you for
23 continued eligibility under §668.189. Loss of eligibility takes

1 effect on the date that you receive notice of our determination
2 on your last pending request for adjustment or appeal.

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

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

11 (f) Liabilities during the adjustment or appeal process.

12 If you continued to participate in the FFEL or Direct Loan
13 Program under paragraph (d)(1) of this section, and we determine
14 that none of your requests for adjustments or appeals qualify
15 you for continued eligibility—

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

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

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

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

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

8 (ii) We permit a longer repayment period.

9 (g) Regaining eligibility. If you lose your eligibility
10 to participate in a program under this section, you may not
11 participate in that program until—

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

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

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

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

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

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

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

1 x. In §668.188, the introductory text in paragraph (a) is
2 revised to read as follows:

3 §668.188 Preventing evasion of the consequences of cohort
4 default rates.

5 (a) General. You are subject to a loss of eligibility
6 that has already been imposed against another institution as a
7 result of cohort default rates if--

8 * * * * *

9 x. Section 668.190 is revised to read as follows:

10 §668.190 Uncorrected data adjustments.

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

17 (b) Deadlines for requesting an uncorrected data
18 adjustment. You must send us a request for an uncorrected data
19 adjustment, including all supporting documentation, within 30
20 days after you receive your loan record detail report from us.

21 (c) Determination. We recalculate your cohort default
22 rate, based on the corrected data, and electronically correct
23 the rate that is publicly released, if we determine that--

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

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

6 (3) We agree that the data are incorrect.

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

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

10 x. Section 668.191 is revised to read as follows:

11 §668.191 New data adjustments.

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

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

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

21 (b) Deadlines for requesting a new data adjustment.

22 (1) You must send to the relevant data manager, or data
23 managers, and us a request for a new data adjustment, including

1 all supporting documentation, within 15 days after you receive
2 your loan record detail report from us.

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

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

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

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

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

18 (5) Within 20 days after receiving your request for
19 replacement records or clarification of data, the data manager
20 must--

21 (i) Replace the missing or illegible records;

22 (ii) Provide clarifying information; or

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

1 (6) You must send us your completed request for a new data
2 adjustment, including all supporting documentation--

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

5 (ii) If you are also filing an erroneous data appeal or a
6 loan servicing appeal, by the latest of the filing dates
7 required in paragraph (b) (7) (i) of this section or in
8 §668.192(b) (6) (i) or §668.193(c) (10) (i).

9 (c) Determination. If we determine that incorrect data
10 were used to calculate your cohort default rate, we recalculate
11 your cohort default rate based on the correct data and
12 electronically correct the rate that is publicly released.

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

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

16 x. Section 668.192(c) is revised to read as follows:

17 §668.192 Erroneous data appeals.

18 * * * * *

19 (c) Determination. If we determine that incorrect data
20 were used to calculate your cohort default rate, we recalculate
21 your cohort default rate based on the correct data and
22 electronically correct the rate that is publicly released.

23 * * * * *

24 x. Section 668.198 is removed.

- 1 x. Amend part 668, subpart M, by:
- 2 A. Removing appendix A.
- 3 B. Redesignating appendix B as appendix A.
- 4 x. Add new subpart N to part 668 to read as follows:

5 Subpart N --Cohort Default Rates

6 Sec.

- 7 668.200 Purpose of this subpart.
- 8 668.201 Definitions of terms used in this subpart.
- 9 668.202 Calculating and applying cohort default rates.
- 10 668.203 Determining cohort default rates for institutions that
- 11 have undergone a change in status.
- 12 668.204 Draft cohort default rates and your ability to
- 13 challenge before official cohort default rates are issued.
- 14 668.205 Notice of your official cohort default rate.
- 15 668.206 Consequences of cohort default rates on your ability to
- 16 participate in Title IV, HEA programs.
- 17 668.207 Preventing evasion of the consequences of cohort
- 18 default rates.
- 19 668.208 General requirements for adjusting official cohort
- 20 default rates and for appealing their consequences.
- 21 668.209 Uncorrected data adjustments.
- 22 668.210 New data adjustments.
- 23 668.211 Erroneous data appeals.
- 24 668.212 Loan servicing appeals.
- 25 668.213 Economically disadvantaged appeals.
- 26 668.214 Participation rate index appeals.
- 27 668.215 Average rates appeals.
- 28 668.216 Thirty-or-fewer borrowers appeals.
- 29 668.217 Default prevention plans.
- 30 Appendix A to Subpart N of Part 668--Sample Default Prevention
- 31 Plan

32

33 Subpart N --Cohort Default Rates

34 §668.200 Purpose of this subpart.

- 35 (a) General. Your cohort default rate is a measure we use
- 36 to determine your eligibility to participate in various Title
- 37 IV, HEA programs. We may also use it for determining your

1 eligibility for exemptions, such as those for certain
2 disbursement requirements under the FFEL and Direct Loan
3 Programs. This subpart applies solely to cohorts, as defined in
4 §§668.201(a) and 668.202(b), for fiscal years 2009 and later.
5 For these cohorts, this subpart describes how cohort default
6 rates are calculated, some of the consequences of cohort default
7 rates, and how you may request changes to your cohort default
8 rates or appeal their consequences. Under this subpart, you
9 submit a "challenge" after you receive your draft cohort default
10 rate, and you request an "adjustment" or "appeal" after your
11 official cohort default rate is published.

12 (b) Cohort Default Rates. Notwithstanding anything to the
13 contrary in this subpart, we will issue annually two sets of
14 draft and official cohort default rates for fiscal years 2009,
15 2010, and 2011. For each of these years, you will receive one
16 set of draft and official cohort default rates under this
17 subpart and another set of draft and official cohort default
18 rates under subpart M of this part.

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

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

22 §668.201 Definitions of terms used in this subpart.

23 We use the following definitions in this subpart:

1 (a) Cohort. Your cohort is a group of borrowers used to
2 determine your cohort default rate. The method for identifying
3 the borrowers in a cohort is provided in §668.202(b).

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

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

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

9 (c) Days. In this subpart, "days" means calendar days.

10 (d) Default. A borrower is considered to be in default
11 for cohort default rate purposes under the rules in §668.202(c).

12 (e) Draft cohort default rate. Your draft cohort default
13 rate is a rate we issue, for your review, before we issue your
14 official cohort default rate. A draft cohort default rate is
15 used only for the purposes described in §668.204.

16 (f) Entering repayment. (1) Except as provided in
17 paragraphs (f)(2) and (f)(3) of this section, loans are
18 considered to enter repayment on the dates described in 34 CFR
19 682.200 (under the definition of "repayment period") and in 34
20 CFR 685.207.

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

22 (i) At the same time the borrower's Federal Stafford loan
23 enters repayment, if the borrower received the Federal SLS loan

1 and the Federal Stafford loan during the same period of
2 continuous enrollment; or

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

7 (3) For the purposes of this subpart, a loan is considered
8 to enter repayment on the date that a borrower repays it in
9 full, if the loan is paid in full before the loan enters
10 repayment under paragraphs (f) (1) or (f) (2) of this section.

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

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

17 (i) Official cohort default rate. Your official cohort
18 default rate is the cohort default rate that we publish for you
19 under §668.205. Cohort default rates calculated under this
20 subpart are not related in any way to cohort default rates that
21 are calculated for the Federal Perkins Loan Program.

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

24 (k) You. You are an institution.

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

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

4 §668.202 Calculating and applying cohort default rates.

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

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

13 (2) Second, under paragraph (c) of this section, we
14 identify the borrowers in the cohort (or cohorts) who are
15 considered to be in default by the end of the second fiscal year
16 following the fiscal year those borrowers entered repayment. If
17 more than one cohort will be used to calculate your cohort
18 default rate, we identify defaulted borrowers separately for
19 each cohort.

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

22 (4) Fourth, we apply your cohort default rate to all of
23 your locations--

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

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

6 (b) Identify the borrowers in a cohort. (1) Except as
7 provided in paragraph (b) (3) of this section, your cohort for a
8 fiscal year consists of all of your current and former students
9 who, during that fiscal year, entered repayment on any Federal
10 Stafford loan, Federal SLS loan, Direct Subsidized loan, or
11 Direct Unsubsidized loan that they received to attend your
12 institution, or on the portion of a loan made under the Federal
13 Consolidation Loan Program or the Federal Direct Consolidation
14 Loan Program (as defined in 34 CFR 685.102) that is used to
15 repay those loans.

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

19 (3) A TEACH Grant that has been converted to a Federal
20 Direct Unsubsidized Loan is not considered for the purpose of
21 calculating and applying cohort default rates.

22 (c) Identify the borrowers in a cohort who are in default.

23 (1) Except as provided in paragraph (c) (2) of this section, a
24 borrower in a cohort for a fiscal year is considered to be in

1 default if, before the end of the second fiscal year following
2 the fiscal year the borrower entered repayment--

3 (i) The borrower defaults on any FFELP loan that was used
4 to include the borrower in the cohort or on any Federal
5 Consolidation Loan Program loan that repaid a loan that was used
6 to include the borrower in the cohort (however, a borrower is
7 not considered to be in default unless a claim for insurance has
8 been paid on the loan by a guaranty agency or by us);

9 (ii) The borrower fails to make an installment payment,
10 when due, on any Direct Loan Program loan that was used to
11 include the borrower in the cohort or on any Federal Direct
12 Consolidation Loan Program loan that repaid a loan that was used
13 to include the borrower in the cohort, and the borrower's
14 failure persists for 360 days (or for 270 days, if the
15 borrower's first day of delinquency was before October 7, 1998);
16 or

17 (iii) You or your owner, agent, contractor, employee, or
18 any other affiliated entity or individual make a payment to
19 prevent a borrower's default on a loan that is used to include
20 the borrower in that cohort.

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

1 (i) Rehabilitated under 34 CFR 682.405 or 34 CFR
2 685.211(e); or

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

5 (d) Calculate the cohort default rate. Except as provided
6 in §668.203, if there are--

7 (1)(i) Thirty or more borrowers in your cohort for a
8 fiscal year, your cohort default rate is the percentage that is
9 calculated by--

10 (ii) Dividing the number of borrowers in the cohort who
11 are in default, as determined under paragraph (c) of this
12 section by the number of borrowers in the cohort, as determined
13 under paragraph (b) of this section.

14 (2)(i) Fewer than 30 borrowers in your cohort for a fiscal
15 year, your cohort default rate is the percentage that is
16 calculated by--

17 (ii) Dividing the total number of borrowers in that cohort
18 and in the two most recent prior cohorts who are in default, as
19 determined for each cohort under paragraph (c) of this section
20 by the total number of borrowers in that cohort and the two most
21 recent prior cohorts, as determined for each cohort under
22 paragraph (b) of this section.

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

1 (Authority: 20 U.S.C. 1070g, 1082, 1085, 1094, 1099c)
2 §668.203 Determining cohort default rates for institutions that
3 have undergone a change in status.

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

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

10 (3) A change in status may affect your eligibility to
11 participate in Title IV, HEA programs under §668.206 or
12 §668.207.

13 (4) If another institution's cohort default rate is
14 applicable to you under this section, you may challenge, request
15 an adjustment, or submit an appeal for the cohort default rate
16 under the same requirements that would be applicable to the
17 other institution under §§668.204 and 668.208.

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

22 (1) For the cohort default rates published before the date
23 of the acquisition or merger, your cohort default rates are the
24 same as those of your predecessor that had the highest total

1 number of borrowers entering repayment in the two most recent
2 cohorts used to calculate those cohort default rates; and

3 (2) Beginning with the first cohort default rate published
4 after the date of the acquisition or merger, your cohort default
5 rates are determined by including the applicable borrowers from
6 each institution involved in the acquisition or merger in the
7 calculation under §668.202.

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

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

14 (2) Beginning with the first cohort default rate published
15 after the date of the change, your cohort default rates for the
16 next 3 fiscal years are determined by including the applicable
17 borrowers from your institution and the other institution
18 (including all of its locations) in the calculation under
19 §668.202;

20 (3) After the period described in paragraph (c) (2) of this
21 section, your cohort default rates do not include borrowers from
22 the other institution in the calculation under §668.202; and

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

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

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

11 (2) Beginning with the first cohort default rate published
12 after the date of the change, your cohort default rates for the
13 next 3 fiscal years are determined by including the applicable
14 borrowers from your institution and your former parent
15 institution (including all of its locations) in the calculation
16 under §668.202; and

17 (3) After the period described in paragraph (d)(2) of this
18 section, your cohort default rates do not include borrowers from
19 your former parent institution in the calculation under
20 §668.202.

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

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

1 §668.204 Draft cohort default rates and your ability to
2 challenge before official cohort default rates are issued.

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

7 (2) Regardless of the number of borrowers included in your
8 cohort, your draft cohort default rate is always calculated
9 using data for that fiscal year alone, using the method
10 described in §668.202(d)(1).

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

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

21 (b) Incorrect data challenges. (1) You may challenge the
22 accuracy of the data included on the loan record detail report
23 by sending a challenge to the relevant data manager, or data

1 managers, within 45 days after you receive the data. Your
2 challenge must include--

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

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

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

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

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

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

15 (4) If you fail to challenge the accuracy of data under
16 this section, you cannot contest the accuracy of those data in
17 an uncorrected data adjustment, under §668.209, or in an
18 erroneous data appeal, under §668.211.

19 (c) Participation rate index challenges. (1)(i) You may
20 challenge an anticipated loss of eligibility under
21 §668.206(a)(1), based on one cohort default rate over 40
22 percent, if your participation rate index for that cohort's
23 fiscal year is equal to or less than 0.06015.

1 (ii) You may challenge an anticipated loss of eligibility
2 under §668.206(a)(2), based on three cohort default rates of 30
3 percent or greater, if your participation rate index is equal to
4 or less than 0.0625 for any of those three cohorts' fiscal
5 years.

6 (iii) You may challenge a potential placement on
7 provisional certification under §668.16(m)(2)(i), based on two
8 cohort default rates that fail to satisfy the standard of
9 administrative capability in §668.16(m)(1)(ii), if your
10 participation rate index is equal to or less than 0.0625 for
11 either of the two cohorts' fiscal years.

12 (2) For a participation rate index challenge, your
13 participation rate index is calculated as described in
14 §668.214(b), except that--

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

17 (ii) If the cohort used to calculate your draft cohort
18 default rate included fewer than 30 borrowers, you may calculate
19 your participation rate index for that fiscal year using either
20 your most recent draft cohort default rate or the average rate
21 that would be calculated for that fiscal year, using the method
22 described in §668.202(d)(2).

1 (3) You must send your participation rate index challenge,
2 including all supporting documentation, to us within 45 days
3 after you receive your draft cohort default rate.

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

7 (5) If we determine that you qualify for continued
8 eligibility or full certification based on your participation
9 rate index challenge, you will not lose eligibility under
10 §668.206 or be placed on provisional certification under
11 §668.16(m)(2)(i) when your next official cohort default rate is
12 published. A successful challenge that is based on your draft
13 cohort default rate does not excuse you from any other loss of
14 eligibility or placement on provisional certification. However,
15 if your successful challenge under paragraph (c)(1)(ii) or
16 (c)(1)(iii) of this section is based on a prior, official cohort
17 default rate, and not on your draft cohort default rate, we also
18 excuse you from any subsequent loss of eligibility, under
19 §668.206(a)(2) or placement on provisional certification, under
20 §668.16(m)(2)(i), that would be based on that official cohort
21 default rate.

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

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

1 §668.205 Notice of your official cohort default rate.

2 (a) We electronically notify you of your cohort default
3 rate after we calculate it, by sending you an eCDR notification
4 package to the destination point you designate. After we send
5 our notice to you, we publish a list of cohort default rates for
6 all institutions.

7 (b) If you had one or more borrowers entering repayment in
8 the fiscal year for which the rate is calculated, or are subject
9 to sanctions, or if the Department believes you will have an
10 official cohort default rate calculated as an average rate, you
11 will receive a loan record detail report as part of your eCDR
12 notification package.

13 (c) You have five business days, from the transmission
14 date for eCDR notification packages as posted on the
15 Department's Website, to report any problem with receipt of the
16 electronic transmission of your eCDR notification package.

17 (d) Except as provided in paragraph (e) of this section,
18 timelines for submitting challenges, adjustments, and appeals
19 begin on the sixth business day following the announced
20 transmission date.

21 (e) If you timely report a problem with transmission of
22 your eCDR notification package under paragraph (c) of this
23 section and the Department agrees that the Department caused the
24 problem with the transmission, the Department will extend the

1 challenge, appeal and adjustment deadlines and timeframes to
2 account for a retransmission of your eCDR notification package
3 after the technical problem is resolved.

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

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

7 §668.206 Consequences of cohort default rates on your ability to
8 participate in Title IV, HEA programs.

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

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

19 (b) Length of period of ineligibility. Your loss of
20 eligibility under this section continues--

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

23 (2) For the next 2 fiscal years.

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

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

6 (2) Any other action by us.

7 (d) Continuing participation in Pell. If you are subject
8 to a loss of eligibility under paragraph (a)(2) of this section,
9 based on three cohort default rates of 30 percent or greater,
10 you may continue to participate in the Federal Pell Grant
11 Program if we determine that you--

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

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

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

20 (e) Requests for adjustments and appeals. (1) A loss of
21 eligibility under this section does not take effect while your
22 request for adjustment or appeal, as listed in §668.208(a), is
23 pending, provided your request for adjustment or appeal is
24 complete, timely, accurate, and in the required format.

1 (2) Eligibility continued under paragraph (e)(1) of this
2 section ends if we determine that none of the requests for
3 adjustments and appeals you have submitted qualify you for
4 continued eligibility under §668.208. Loss of eligibility takes
5 effect on the date that you receive notice of our determination
6 on your last pending request for adjustment or appeal.

7 (3) You do not lose eligibility under this section if we
8 determine that your request for adjustment or appeal meets all
9 requirements of this subpart and qualifies you for continued
10 eligibility under §668.208.

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

15 (f) Liabilities during the adjustment or appeal process.

16 If you continued to participate in the FFEL or Direct Loan
17 Program under paragraph (e)(1) of this section, and we determine
18 that none of your requests for adjustments or appeals qualify
19 you for continued eligibility--

20 (1) For any FFEL or Direct Loan Program loan that you
21 certified and delivered or originated and disbursed more than 30
22 days after you received the notice of your cohort default rate,
23 we estimate the amount of interest, special allowance,

1 reinsurance, and any related or similar payments we make or are
2 obligated to make on those loans;

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

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

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

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

13 (ii) We permit a longer repayment period.

14 (g) Regaining eligibility. If you lose your eligibility
15 to participate in a program under this section, you may not
16 participate in that program until--

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

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

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

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

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

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

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

6 §668.207 Preventing evasion of the consequences of cohort
7 default rates.

8 (a) General. You are subject to a loss of eligibility
9 that has already been imposed against another institution as a
10 result of cohort default rates if--

11 (1) You and the ineligible institution are both parties to
12 a transaction that results in a change of ownership, a change in
13 control, a merger, a consolidation, an acquisition, a change of
14 name, a change of address, any change that results in a location
15 becoming a freestanding institution, a purchase or sale, a
16 transfer of assets, an assignment, a change of identification
17 number, a contract for services, an addition or closure of one
18 or more locations or branches or educational programs, or any
19 other change in whole or in part in institutional structure or
20 identity;

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

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

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

9 (1) Holds or held a managerial role; or

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

12 (c) Teach-outs. Notwithstanding paragraph (b)(1) of this
13 section, a commonality of management does not exist if you are
14 conducting a teach-out under a teach-out agreement as defined in
15 34 CFR 602.3 and administered in accordance with 34 CFR
16 602.24(c), and--

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

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

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

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

8 (d) Initial determination. We encourage you to contact us
9 before undergoing a change described in this section. If you
10 write to us, providing the information we request, we will
11 provide a written initial determination of the anticipated
12 change's effect on your eligibility.

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

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

23 (3) If you are subject to a loss of eligibility under this
24 section that has already been imposed against another

1 institution, you may only request an adjustment or submit an
2 appeal for the loss of eligibility under the same requirements
3 that would be applicable to the other institution under
4 §668.208.

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

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

8 §668.208 General requirements for adjusting official cohort
9 default rates and for appealing their consequences.

10 (a) Remaining eligible. You do not lose eligibility under
11 §668.206 if--

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

15 (i) An uncorrected data adjustment submitted under this
16 section and §668.209;

17 (ii) A new data adjustment submitted under this section
18 and §668.210;

19 (iii) An erroneous data appeal submitted under this
20 section and §668.211; or

21 (iv) A loan servicing appeal submitted under this section
22 and §668.212; or

23 (2) You meet the requirements for--

1 (i) An economically disadvantaged appeal submitted under
2 this section and §668.213;

3 (ii) A participation rate index appeal submitted under
4 this section and §668.214;

5 (iii) An average rates appeal submitted under this section
6 and §668.215; or

7 (iv) A thirty-or-fewer borrowers appeal submitted under
8 this section and §668.216.

9 (b) Limitations on your ability to dispute your cohort
10 default rate. (1) You may not dispute the calculation of a
11 cohort default rate except as described in this subpart or in
12 §668.16(m) (2).

13 (2) You may not request an adjustment or appeal a cohort
14 default rate, under §668.209, §668.210, §668.211, or §668.212,
15 more than once.

16 (3) You may not request an adjustment or appeal a cohort
17 default rate, under §668.209, §668.210, §668.211, or §668.212,
18 if you previously lost your eligibility to participate in a
19 Title IV, HEA program, under §668.206, or were placed on
20 provisional certification under §668.16(m) (2) (i), based entirely
21 or partially on that cohort default rate.

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

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

7 (2) Your completed request for adjustment or appeal must
8 include--

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

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

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

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

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

6 (f) Our decision on your request for adjustment or appeal.

7 (1) We determine whether your request for an adjustment or
8 appeal is in compliance with this subpart.

9 (2) In making our decision for an adjustment, under
10 §668.209 or §668.210, or an appeal, under §668.211 or §668.212--

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

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

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

22 (4) We notify you of our decision--

23 (i) If you request an adjustment or appeal because you are
24 subject to a loss of eligibility under §668.206 or potential

1 placement on provisional certification under §668.16(m)(2)(i) or
2 file an economically disadvantaged appeal under §668.213(a)(2),
3 within 45 days after we receive your completed request for an
4 adjustment or appeal; or

5 (ii) In all other cases, except for appeals submitted
6 under §668.211(a) following placement on provisional
7 certification, before we notify you of your next official cohort
8 default rate.

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

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

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

16 §668.209 Uncorrected data adjustments.

17 (a) Eligibility. You may request an uncorrected data
18 adjustment for your most recent cohort of borrowers, used to
19 calculate your most recent official cohort default rate, if in
20 response to your challenge under §668.204(b), a data manager
21 agreed correctly to change the data, but the changes are not
22 reflected in your official cohort default rate.

23 (b) Deadlines for requesting an uncorrected data
24 adjustment. You must send us a request for an uncorrected data

1 adjustment, including all supporting documentation, within 30
2 days after you receive your loan record detail report from us.

3 (c) Determination. We recalculate your cohort default
4 rate, based on the corrected data, and electronically correct
5 the rate that is publicly released if we determine that--

6 (1) In response to your challenge under §668.204(b), a
7 data manager agreed to change the data;

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

11 (3) We agree that the data are incorrect.

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

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

15 §668.210 New data adjustments.

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

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

23 (2) You identify errors in the data described in paragraph

24 (a)(1) of this section that are confirmed by the data manager.

1 (b) Deadlines for requesting a new data adjustment. (1)

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

6 (2) Within 20 days after receiving your request for a new
7 data adjustment, the data manager must send you and us a
8 response that--

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

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

12 (3) Within 15 days after receiving a guaranty agency's
13 notice that we hold an FFELP loan about which you are inquiring,
14 you must send us your request for a new data adjustment for that
15 loan. We respond to your request as set forth under paragraph
16 (b) (2) of this section.

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

21 (5) Within 20 days after receiving your request for
22 replacement records or clarification of data, the data manager
23 must--

24 (i) Replace the missing or illegible records;

1 (ii) Provide clarifying information; or
2 (iii) Notify you and us that no clarifying information or
3 additional or improved records are available.

4 (6) You must send us your completed request for a new data
5 adjustment, including all supporting documentation--

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

8 (ii) If you are also filing an erroneous data appeal or a
9 loan servicing appeal, by the latest of the filing dates
10 required in paragraph (b) (7) (i) of this section or in
11 §668.211(b) (6) (i) or §668.212(c) (10) (i).

12 (c) Determination. If we determine that incorrect data
13 were used to calculate your cohort default rate, we recalculate
14 your cohort default rate based on the correct data and make
15 electronic corrections to the data that is publicly released.
16 (Approved by the Office of Management and Budget under control
17 number 1845-0022)
18 (Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)
19 §668.211 Erroneous data appeals.

20 (a) Eligibility. Except as provided in §668.208(b), you
21 may appeal the calculation of a cohort default rate upon which a
22 loss of eligibility, under §668.206, or provisional
23 certification, under §668.16(m), is based if--

1 (1) You dispute the accuracy of data that you previously
2 challenged on the basis of incorrect data, under §668.204(b); or

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

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

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

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

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

21 (3) Within 15 days after receiving a guaranty agency's
22 notice that we hold an FFELP loan about which you are inquiring,
23 you must send us your request for verification of that loan's
24 data errors. Your request must include a description of the

1 information in the cohort default rate data that you believe is
2 incorrect and all supporting documentation that demonstrates the
3 error. We respond to your request as set forth under paragraph
4 (b)(2) of this section.

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

8 (5) Within 20 days after receiving your request for
9 replacement records or clarification of data, the data manager
10 must--

11 (i) Replace the missing or illegible records;

12 (ii) Provide clarifying information; or

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

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

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

19 (ii) If you are also requesting a new data adjustment or
20 filing a loan servicing appeal, by the latest of the filing
21 dates required in paragraph (b)(6)(i) of this section or in
22 §668.210(b)(6)(i) or §668.212(c)(10)(i).

23 (c) Determination. If we determine that incorrect data
24 were used to calculate your cohort default rate, we recalculate

1 your cohort default rate based on the correct data and
2 electronically correct the rate that is publicly released.
3 (Approved by the Office of Management and Budget under control
4 number 1845-0022)

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

6 §668.212 Loan servicing appeals.

7 (a) Eligibility. Except as provided in §668.208(b), you
8 may appeal, on the basis of improper loan servicing or
9 collection, the calculation of-

10 (1) Your most recent cohort default rate; or

11 (2) Any cohort default rate upon which a loss of
12 eligibility under §668.206 is based.

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

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

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

23 (3) Send a final demand letter to the borrower.

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

4 (5) For an FFELP loan only--

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

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

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

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

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

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

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

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

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

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

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

19 (i) You pay the fee in full and on time, the data manager
20 must send you, within 20 days after it receives your payment, a
21 copy of all loan servicing records for each loan in your
22 representative sample (the copies are provided to you in hard
23 copy format unless the data manager and you agree that another

1 format may be used), and it must send us a copy of its cover
2 letter indicating that the records were sent; or

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

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

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

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

19 (i) Replace the missing or illegible records; or

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

22 (10) You must send your appeal to us, including all
23 supporting documentation--

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

4 (ii) If you are also requesting a new data adjustment or
5 filing an erroneous data appeal, by the latest of the filing
6 dates required in paragraph (c)(10)(i) of this section or in
7 §668.210(b)(6)(i) or §668.211(b)(6)(i).

8 (d) Representative sample of records. (1) To select a
9 representative sample of records, the data manager first
10 identifies all of the borrowers for whom it is responsible and
11 who had loans that were considered to be in default in the
12 calculation of the cohort default rate you are appealing.

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

21 (e) Loan servicing records. Loan servicing records are
22 the collection and payment history records--

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

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

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

10 (2) Based on our determination, we use a statistically
11 valid methodology to exclude the corresponding percentage of
12 borrowers from both the numerator and denominator of the
13 calculation of your cohort default rate, and electronically
14 correct the rate that is publicly released.

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

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

18 §668.213 Economically disadvantaged appeals.

19 (a) General. As provided in this section you may appeal--

20 (1) A notice of a loss of eligibility under §668.206; or

21 (2) A notice of a second successive official cohort
22 default rate calculated under this subpart that is equal to or
23 greater than 30 percent but less than or equal to 40 percent,
24 potentially subjecting you to provisional certification.

1 (b) Eligibility. You may appeal under this section if an
2 independent auditor's opinion certifies that your low income
3 rate is two-thirds or more and--

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

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

10 (c) Low income rate. (1) Your low income rate is the
11 percentage of your students, as described in paragraph (c)(2) of
12 this section, who--

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

20 (ii) For a calendar year that overlaps the 12-month period
21 selected under paragraph (c)(2) of this section, have an
22 adjusted gross income that, when added to the adjusted gross
23 income of the student's parents (if the student is a dependent
24 student) or spouse (if the student is a married independent

1 student), is less than the amount listed in the Department of
2 Health and Human Services poverty guidelines for the size of the
3 student's family unit.

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

9 (d) Completion rate. (1) Your completion rate is the
10 percentage of your students, as described in paragraph (d)(2) of
11 this section, who--

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

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

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

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

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

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

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

6 (e) Placement rate.(1) Except as provided in paragraph
7 (e)(2) of this section, your placement rate is the percentage of
8 your students, as described in paragraphs (e)(3) and (e)(4) of
9 this section, who--

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

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

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

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

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

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

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

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

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

14 (f) Scheduled to complete. In calculating a completion or
15 placement rate under this section, the date on which a student
16 is originally scheduled to complete a program is based on--

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

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

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

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

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

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

16 (i) The American Institute of Certified Public
17 Accountant's (AICPA) Statement on Standards for Attestation
18 Engagements, Compliance Attestation (AICPA, Professional
19 Standards, vol. 1, AT sec. 500), as amended (these standards may
20 be obtained by calling the AICPA's order department, at 1-888-
21 777-7077); and

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

1 (i) Determination. You do not lose eligibility under
2 §668.206, and we do not provisionally certify you under
3 §668.16(m)(2)(i), if--

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

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

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

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

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

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

17 §668.214 Participation rate index appeals.

18 (a) Eligibility. (1) You may appeal a notice of a loss
19 of eligibility under §668.206(a)(1), based on one cohort default
20 rate over 40 percent, if your participation rate index for that
21 cohort's fiscal year is equal to or less than 0.06015.

22 (2) You may appeal a notice of a loss of eligibility under
23 §668.206(a)(2), based on three cohort default rates of 30
24 percent or greater, if your participation rate index is equal to

1 or less than 0.0625 for any of those three cohorts' fiscal
2 years.

3 (3) You may appeal potential placement on provisional
4 certification under §668.16(m) (2) (i) based on two cohort default
5 rates that fail to satisfy the standard of administrative
6 capability in §668.16(m) (1) (ii) if your participation rate index
7 is equal to or less than 0.0625 for either of the two cohorts'
8 fiscal years.

9 (b) Calculating your participation rate index. (1)

10 Except as provided in paragraph (b) (2) of this section, your
11 participation rate index for a fiscal year is determined by
12 multiplying your cohort default rate for that fiscal year by the
13 percentage that is derived by dividing--

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

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

22 (2) If your cohort default rate for a fiscal year is
23 calculated as an average rate under §668.202(d) (2), you may
24 calculate your participation rate index for that fiscal year

1 using either that average rate or the cohort default rate that
2 would be calculated for the fiscal year alone using the method
3 described in §668.202(d)(1).

4 (c) Deadline for submitting an appeal. You must send us
5 your appeal under this section, including all supporting
6 documentation, within 30 days after you receive--

7 (i) Notice of your loss of eligibility; or

8 (ii) Notice of a second cohort default rate that exceeds
9 30 percent but is less than 40 percent and that, in combination
10 with an earlier rate, potentially subjects you to provisional
11 certification under §668.16(m)(2)(i).

12 (d) Determination. (1) You do not lose eligibility under
13 §668.206 and we do not place you on provisional certification,
14 if we determine that you meet the requirements for a
15 participation rate index appeal.

16 (2) If we determine that your participation rate index for
17 a fiscal year is equal to or less than 0.06015 or 0.0625, under
18 paragraph (d)(1) of this section, we also excuse you from any
19 subsequent loss of eligibility under §668.206(a)(2) or placement
20 on provisional certification under §668.16(m)(2)(i) that would
21 be based on the official cohort default rate for that fiscal
22 year.

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

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

2 §668.215 Average rates appeals.

3 (a) Eligibility. (1) You may appeal a notice of a loss
4 of eligibility under §668.206(a)(1), based on one cohort default
5 rate over 40 percent, if that cohort default rate is calculated
6 as an average rate under §668.202(d)(2).

7 (2) You may appeal a notice of a loss of eligibility under
8 §668.206(a)(2), based on three cohort default rates of 30
9 percent or greater, if at least two of those cohort default
10 rates--

11 (i) Are calculated as average rates under §668.202(d)(2);
12 and

13 (ii) Would be less than 30 percent if calculated for the
14 fiscal year alone using the method described in §668.202(d)(1).

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

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

1 (c) Determination. You do not lose eligibility under
2 §668.206 if we determine that you meet the requirements for an
3 average rates appeal.

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

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

7 §668.216 Thirty-or-fewer borrowers appeals.

8 (a) Eligibility. You may appeal a notice of a loss of
9 eligibility under §668.206 if 30 or fewer borrowers, in total,
10 are included in the 3 most recent cohorts of borrowers used to
11 calculate your cohort default rates.

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

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

22 (c) Determination. You do not lose eligibility under
23 §668.206 if we determine that you meet the requirements for a
24 thirty-or-fewer borrowers appeal.

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

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

4 §668.217 Default prevention plans.

5 (a) First year. (1) If your cohort default rate is equal
6 to or greater than 30 percent you must establish a default
7 prevention task force that prepares a plan to--

8 (i) Identify the factors causing your cohort default rate
9 to exceed the threshold;

10 (ii) Establish measurable objectives and the steps you
11 will take to improve your cohort default rate;

12 (iii) Specify the actions you will take to improve student
13 loan repayment, including counseling students on repayment
14 options; and

15 (iv) Submit your default prevention plan to us.

16 (2) We will review your default prevention plan and offer
17 technical assistance intended to improve student loan repayment.

18 (b) Second year. (1) If your cohort default rate is
19 equal to or greater than 30 percent for two consecutive fiscal
20 years, you must revise your default prevention plan and submit
21 it to us for review.

22 (b) We may require you to revise your default prevention
23 plan or specify actions you need to take to improve student loan
24 repayment.

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

2 Appendix A to Subpart N of Part 668--Sample Default Prevention
3 Plan

4 This appendix is provided as a sample plan for those
5 institutions developing a default prevention plan in accordance
6 with §668.199(a)(1). It describes some measures you may find
7 helpful in reducing the number of students that default on
8 federally funded loans. These are not the only measures you
9 could implement when developing a default prevention plan.

10 I. Core Default Reduction Strategies

11 1. Establish your default prevention team by engaging your
12 chief executive officer and relevant senior executive officials
13 and enlisting the support of representatives from offices other
14 than the financial aid office. Consider including individuals
15 and organizations independent of your institution that have
16 experience in preventing title IV loan defaults.

17 2. Consider your history, resources, dollars in default,
18 and targets for default reduction to determine which activities
19 will result in the most benefit to you and your students.

20 3. Define evaluation methods and establish a data
21 collection system for measuring and verifying relevant default
22 prevention statistics, including a statistical analysis of the
23 borrowers who default on their loans.

1 4. Identify and allocate the personnel, administrative,
2 and financial resources appropriate to implement the default
3 prevention plan.

4 5. Establish annual targets for reductions in your rate.

5 6. Establish a process to ensure the accuracy of your
6 rate.

7 II. Additional Default Reduction Strategies

8 1. Enhance the borrower's understanding of his or her loan
9 repayment responsibilities through counseling and debt
10 management activities.

11 2. Enhance the enrollment retention and academic
12 persistence of borrowers through counseling and academic
13 assistance.

14 3. Maintain contact with the borrower after he or she
15 leaves your institution by using activities such as skip tracing
16 to locate the borrower.

17 4. Track the borrower's delinquency status by obtaining
18 reports from data managers and FFEL Program lenders.

19 5. Enhance student loan repayments through counseling the
20 borrower on loan repayment options and facilitating contact
21 between the borrower and the data manager or FFEL Program
22 lender.

1 6. Assist a borrower who is experiencing difficulty in
2 finding employment through career counseling, job placement
3 assistance, and facilitating unemployment deferments.

4 7. Identify and implement alternative financial aid award
5 policies and develop alternative financial resources that will
6 reduce the need for student borrowing in the first 2 years of
7 academic study.

8 III. Statistics for Measuring Progress

9 1. The number of students enrolled at your institution
10 during each fiscal year.

11 2. The average amount borrowed by a student each fiscal
12 year.

13 3. The number of borrowers scheduled to enter repayment
14 each fiscal year.

15 4. The number of enrolled borrowers who received default
16 prevention counseling services each fiscal year.

17 5. The average number of contacts that you or your agent
18 had with a borrower who was in deferment or forbearance or in
19 repayment status during each fiscal year.

20 6. The number of borrowers at least 60 days delinquent
21 each fiscal year.

22 7. The number of borrowers who defaulted in each fiscal
23 year.

1 8. The type, frequency, and results of activities
2 performed in accordance with the default prevention plan.