

Issue 8
Proposed Regulatory Language
Team II - School-based Loan Issues

Origin: HEOA section 436

Issue: Cohort Default Rate Calculation,
Institutional Eligibility, and Default
Prevention Plans

Statutory cites: Sections 435(a) and (m) of the HEA

Regulatory cites: §§668.183, 668.187, 668.189, and
668.195

DCL GEN-08-12 cite: Page 131

Summary of issue: *Cohort Default Rate Calculation.* The HEOA increases the period used to calculate the cohort default rate from 2 to 3 years. Under the new calculation, the cohort default rate is the percentage of borrowers who default on their FFEL or Direct Loans before the end of the *second fiscal year* (instead of the first fiscal year) following the fiscal year in which those borrowers entered repayment. The new calculation is effective for cohort default rates calculated for fiscal year 2009 and subsequent years. In addition, the HEOA provides for a transition period during which sanctions will be continue to be imposed based on rates calculated using the 2-year methodology, until rates based on the 3-year rate have been calculated for 3 consecutive years.

Institutional Eligibility: Beginning with cohort default rates calculated for fiscal year 2012, the HEOA increases the threshold default percentage from 25 percent to 30 percent. An

institution may lose its eligibility to participate in the Pell, FFEL, and Direct Loan programs if its cohort default rate is equal to or greater than the threshold percentage for 3 successive years.

The HEOA changes the provisions for default rate appeals from 3 year rates. If the institution files a timely appeal and the Secretary determines that the institution is successful in bringing an appeal from a 3 year rate under the exceptional mitigating circumstances criteria specified in the statute, the Secretary may not subject the institution to provisional certification based solely on its default rate.

In addition, effective October 1, 2011, the HEOA increases the *participation rate index* for appeal purposes from 0.0375 to 0.0625. An institution's participation rate index is calculated by:

(a) Dividing the total number of borrowers in a 12-month period by the total number of regular students enrolled on at least a half-time basis in the 12-month period, and

(b) Multiplying the result in (a) by the institution's cohort default rate.

An institution may avoid sanctions based on three consecutive years of cohort default rates that are 30% or higher if its participation rate index for any of the three years is 0.0625 or lower.

Default Prevention Plans: The HEOA requires an institution whose cohort default rate is greater than or equal to the 30% threshold for any fiscal year to establish a default prevention task force to prepare a default prevention plan to:

- Identify the factors causing the institution's rate to exceed the threshold;
- Establish measurable objectives and the steps to be taken to improve the institution's default rate; and
- Specify actions the institution can take to improve student loan repayment, including appropriate counseling regarding loan repayment options.

The institution must submit its default prevention plan to the Department. The Department is required to review the plan and provide technical assistance to the institution to promote improved student loan repayment.

If the institution's cohort default rate exceeds the threshold percentage for two consecutive fiscal years, its default prevention plan must be reviewed and revised by the task force and resubmitted to the Department. The Department is required to review the revised plan and may require the institution to amend the plan to include actions with measurable objectives that the Department determines will promote student loan repayment.

Regulatory language:

34 CFR 668.16(m) Standards of administrative capability

(m) (1) Has a cohort default rate—

(i) ~~Calculated under subpart M of this part, t~~That is less than 25 percent for each of the three most recent fiscal years, **to the extent rates for those years are calculated under 34 CFR Part 668, Subpart M;** ~~for which the Secretary has determined the institution's rate; and~~

(ii) That is less than 30 percent for at least two of the three most recent fiscal years for which the Secretary has determined the institution's rate under 34 CFR Part 668 Subpart N; and

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

(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, and none of the institution's three most recent cohort default rates subject the institution to sanctions under Subpart M or N of this Part, the Secretary allows the institution to continue to participate in the Title IV, HEA programs. In such a case, the Secretary ~~but~~ may provisionally certify the institution in accordance with §668.13(c) unless the institution has two successive rates calculated under Subpart N that equal or exceed 30 percent and the institution either has taken a successful economically disadvantaged appeal under 34 CFR 668.213, or has timely submitted such an appeal and that appeal is pending.

(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;

Subpart M—Two Year Cohort Default Rates

Source: 65 FR 65638, Nov. 1, 2000, unless otherwise noted.

§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 **applies solely to cohorts, as defined in §§668.182(a) and 668.183(b), for fiscal years through 2011. For those cohorts, 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.

Notwithstanding this subpart, we will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. You will receive one set under this Subpart and set under Subpart N.

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§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-, except that we will publish life cohort default rates, including rates for the second and third fiscal year after students enter repayment.

§668.186 Notice of your official cohort default rate.

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

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

If your school has one or more borrowers entering repayment or is subject to sanctions, or if the Department believes your school will have an official cohort default rate calculated as an average rate, you will receive a loan record detail report with your electronic 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.~~

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

(d) Timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the announced transmission date.

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

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

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§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 (~~e~~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~~d) and (~~f~~e) 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).~~

(de) *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.

(ef) *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~~g) (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 (~~f~~g) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(~~f~~g) *Liabilities during the adjustment or appeal process.* If you continued to participate in the FFEL or Direct Loan Program under paragraph (~~e~~d) (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.

~~(g)~~ *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)

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

(a) *General.* ~~Unless you are a special institution complying with § 668.198, y~~You are subject to a loss of eligibility that has already been imposed against another institution as a result of cohort default rates if-

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§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)

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Delete § 668.198

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Delete Part 668, Subpart M, Appendix A; Re- letter Appendix B as Appendix A

Subpart N --Cohort Default Rates

§ 668.200. 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 applies solely to cohorts, as defined in §§ 668.201(a) and 668.202(b), for fiscal years 2009 and later. For those cohorts,** ~~t~~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.

Notwithstanding this subpart, we will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. You will receive one set under this Subpart and set under Subpart M.

~~Except as provided in §668.200, the provisions in this subpart are effective for cohorts, as defined in §§668.182(a) and 668.183(b), for fiscal year 2009 and subsequent fiscal years.~~

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

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

§668.201182 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 §668.183202(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 §668.202183(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 §668.205186. 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. (Approved by the Office of Management and Budget under control number 1845-0022)

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

S668.202183 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 **by the end of the second fiscal year following the fiscal year those borrowers entered repayment.** If more than one cohort will be used to calculate your cohort default rate, we identify defaulted borrowers separately for each cohort.

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

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

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

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

(b) *Identify the borrowers in a cohort.* (1) Except as provided in paragraph (b) (3) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan that they received to attend your institution, 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.

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

(c) *Identify the borrowers in a cohort who are in default.* (1) (1) Except as provided in paragraph (c) (2) of this section, a borrower in a cohort for a fiscal year is considered to be in default if, before the end of the ~~following~~ second fiscal year following the fiscal year the borrower entered repayment--

(i) ~~t~~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,~~ tThe 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); or

(iii) ~~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 second 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 §668.203~~184~~, if there are—

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

(i) Dividing ~~†~~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) (i) Fewer than 30 borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is **calculated** ~~derived by dividing~~

(ii) Dividing ~~the~~ 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~~ 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.

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

(Authority: 20 U.S.C. 1070g, 1082, 1085, 1094, 1099c)

[65 FR 65638, Nov. 1, 2000, as amended at 67 FR 67075, Nov. 1, 2002; 73 FR 35494, June 23, 2008]

§668.203-184 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 §668.206-187 or §668.188-207.

(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.~~204185~~ and 668.~~189~~208.

(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.~~202183~~.

(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.~~202183~~;

(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.~~202183~~; 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.~~202183~~; 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~~202.

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

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

§668.~~204185~~ 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.~~202183~~202183(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, **except that we will publish life cohort default rates, including rates for the second and third fiscal year after students enter repayment.**

(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.~~209190~~, or in an erroneous data appeal, under §668.~~192~~211.

(c) *Participation rate index challenges.* (1) (i) You may challenge an anticipated loss of eligibility under §668.~~206187~~(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.~~206187~~(a) (2), based on three cohort default rates of ~~25~~30 percent or greater, if your participation rate index is equal to or less than ~~0.0375~~ 0.0625 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.~~214195~~(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.~~202183~~(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.~~206187~~—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.~~206187~~(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.~~205186~~ Notice of your official cohort default rate.

(a) We **electronically** notify you of your cohort default rate after we calculate it, **by sending you an eCDR notification package to the destination point you designate.** 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.~~
If your school had one or more borrowers entering repayment in the fiscal year for which the rate is calculated, or is subject to sanctions, or if the Department believes your school will have an official cohort default rate calculated as an average rate, you will receive a loan record detail report with your electronic 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.~~ **You have five business days, from the transmission date for eCDR packages as posted on the Department's website, to report any problem with the electronic transmission of your eCDR package.**

(d) Timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the announced transmission date.

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

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

§668.206187 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~~e) 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 ~~(de)~~ and ~~(ef)~~ 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~~ 30 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).~~

~~(ed) *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 30 ~~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~~208(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph ~~(ef)~~ (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~~208. 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~~208.

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

~~(ef)~~ *Liabilities during the adjustment or appeal process.* If you continued to participate in the FFEL or Direct Loan

Program under paragraph (~~fe~~) (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.

~~(g)~~ *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)

§ 668.207188 Preventing evasion of the consequences of cohort default rates.

(a) *General.* ~~Unless you are a special institution complying with §668.198, y~~You are subject to a loss of eligibility that has already been imposed against another institution **as a result of cohort default rates** 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~~208.

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

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

§668.~~208189~~ General requirements for adjusting official cohort default rates and for appealing their consequences.

(a) *Remaining eligible.* You do not lose eligibility under §668.~~206~~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.~~209~~¹⁹⁰;

(ii) A new data adjustment submitted under this section and §668.~~210~~¹⁹¹;

(iii) An erroneous data appeal submitted under this section and §668.~~192~~²¹¹; or

(iv) A loan servicing appeal submitted under this section and §668.~~212~~¹⁹³; or

(2) You meet the requirements for—

(i) An economically disadvantaged appeal submitted under this section and §668.~~213~~¹⁹⁴;

(ii) A participation rate index appeal submitted under this section and §668.~~195~~²¹⁴;

(iii) An average rates appeal submitted under this section and §668.~~196~~²¹⁵; or

(iv) A thirty-or-fewer borrowers appeal submitted under this section and §668.~~216~~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.~~209~~¹⁹⁰, §668.~~191~~²¹⁰, §668.~~192~~²¹¹, or §668.~~212~~¹⁹³, more than once.

(3) You may not request an adjustment or appeal a cohort default rate, under §668.~~209~~¹⁹⁰, §668.~~210~~¹⁹¹, §668.~~192~~²¹¹, or §668.~~193~~²¹², if you previously lost your eligibility to participate in a Title IV, HEA program, under §668.~~206~~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.~~209~~¹⁹⁰ or §668.~~191~~²¹⁰, or an appeal, under §668.~~211~~¹⁹² or §668.~~212~~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.~~206~~¹⁸⁷ **or bring an economically disadvantaged appeal under §668.213(a) (2)**, 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.~~211-192~~(a) ~~to~~ **related 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.~~209-190~~ *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~~**204**(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.~~204~~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)

§668.210~~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.~~211~~¹⁹²(b) (6) (i) or §668.~~212~~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)

~~§668.211~~¹⁹²— *Erroneous data appeals.*

(a) *Eligibility.* Except as provided in §668.~~189~~²⁰⁸(b), you may appeal the calculation of a cohort default rate upon which a loss of eligibility, under §668.~~206~~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.~~204~~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.~~210-191~~(b) (7) (i) or §668.~~193-212~~(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.

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

§668.~~212-193~~ Loan servicing appeals.

(a) *Eligibility.* Except as provided in §668.~~208-189~~(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.~~206-187~~ 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.~~210-191~~(b) (7) (i) or §668.~~192~~211(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.

(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.

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

[65 FR 65638, Nov. 1, 2000, as amended at 67 FR 67075, Nov. 1, 2002]

§668.213194 Economically disadvantaged appeals.

(a) ~~*Eligibility*~~ **General**. As **provided in this section** ~~described in this section,~~ you may appeal—

(1) ~~a~~ notice of a loss of eligibility under §668.**206187;**

or

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

(b) Eligibility. You may appeal under this section 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)(c) *Low income rate.* (1) Your low income rate is the percentage of your students, as described in paragraph **(b)(c)** (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.

(ed) *Completion rate.* (1) Your completion rate is the percentage of your students, as described in paragraph (ed) (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.

(de) *Placement rate.* (1) Except as provided in paragraph (de) (2) of this section, your placement rate is the percentage

of your students, as described in paragraphs ~~(e)~~ (3) and ~~(e)~~ (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~~f) *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~~g) *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~~h) *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~~i) *Determination.* You do not lose eligibility under §668.~~206~~187, **and we do not provisionally certify you under 34 CFR 668.16(m)**, 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.~~214~~195 *Participation rate index appeals.*

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under §668.~~206~~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.~~206~~¹⁸⁷(a) (2), based on three cohort default rates of ~~25~~ 30 percent or greater, if your participation rate index is equal to or less than ~~0.0375~~ 0.0625 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~~²⁰²(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.~~202~~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~~206 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~~ 0.06015 or 0.0625, under paragraph (d) (1) of this section, we also excuse you from any subsequent loss of eligibility under §668.~~206~~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.~~215~~196 Average rates appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under §668.~~187~~206(a) (1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under §668.~~202~~183(d) (2).

(2) You may appeal a notice of a loss of eligibility under §668.~~206~~187(a) (2), based on three cohort default rates of ~~25~~ 30 percent or greater, if at least two of those cohort default rates—

(i) Are calculated as average rates under §668.~~202~~183(d) (2); and

(ii) Would be less than ~~25~~ 30 percent if calculated for the fiscal year alone using the method described in §668.~~202~~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~~206 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.~~216~~197 Thirty-or-fewer borrowers appeals.

(a) *Eligibility.* You may appeal a notice of a loss of eligibility under §668.~~206~~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.~~206~~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 through 2003, 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, 2004, 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).~~

~~(c) 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 through 2003.~~

~~(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, 1099e)~~

~~{65 FR 65638, Nov. 1, 2000, as amended at 69 FR 12276, Mar. 16, 2004}~~

§668.218 Default prevention plans.

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

(1) Identify the factors causing your cohort default rate to exceed the threshold;

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

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

(4) Submit your default prevention plan to us. We will review your plan and offer technical assistance intended to improve student loan repayment.

(b) Second year. If your cohort default rate is equal to or greater than 30 percent for two consecutive fiscal years, you must revise your default prevention plan and submit it to us for review. We may require you to revise your plan or specify actions you need to take to improve student loan repayment.

~~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.~~

		May you submit this type of challenge, adjustment, or appeal...	... if you are subject to...		
			No sanction?	Loss of eligibility?	Prov certification?
Draft Cohort	Default Rate	Incorrect Data Challenges (§668.185(b))	Yes	Sanctions are not based on draft default rates	
		Participation Rate Index Challenges (§668.185(c))	Yes		
		Uncorrected Data Adjustments (§668.190)	Yes	Yes	Y
		New Data Adjustments (§668.191)	Yes	Yes	Y
Official Cohort	Default Rate	Erroneous Data Appeals (§668.192)	No	Yes	Y
		Loan Servicing Appeals (§668.193)	Yes	Yes	Y
		Economically Disadvantaged Appeals (§668.194)	No	Yes	N
		Participation Rate Index Appeals (§668.195)	No	Yes	N
		Average Rates Appeals (§668.196)	No	Yes	N
		Thirty-or-Fewer Borrowers Appeals (§668.197)	No	Yes	N

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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:~~

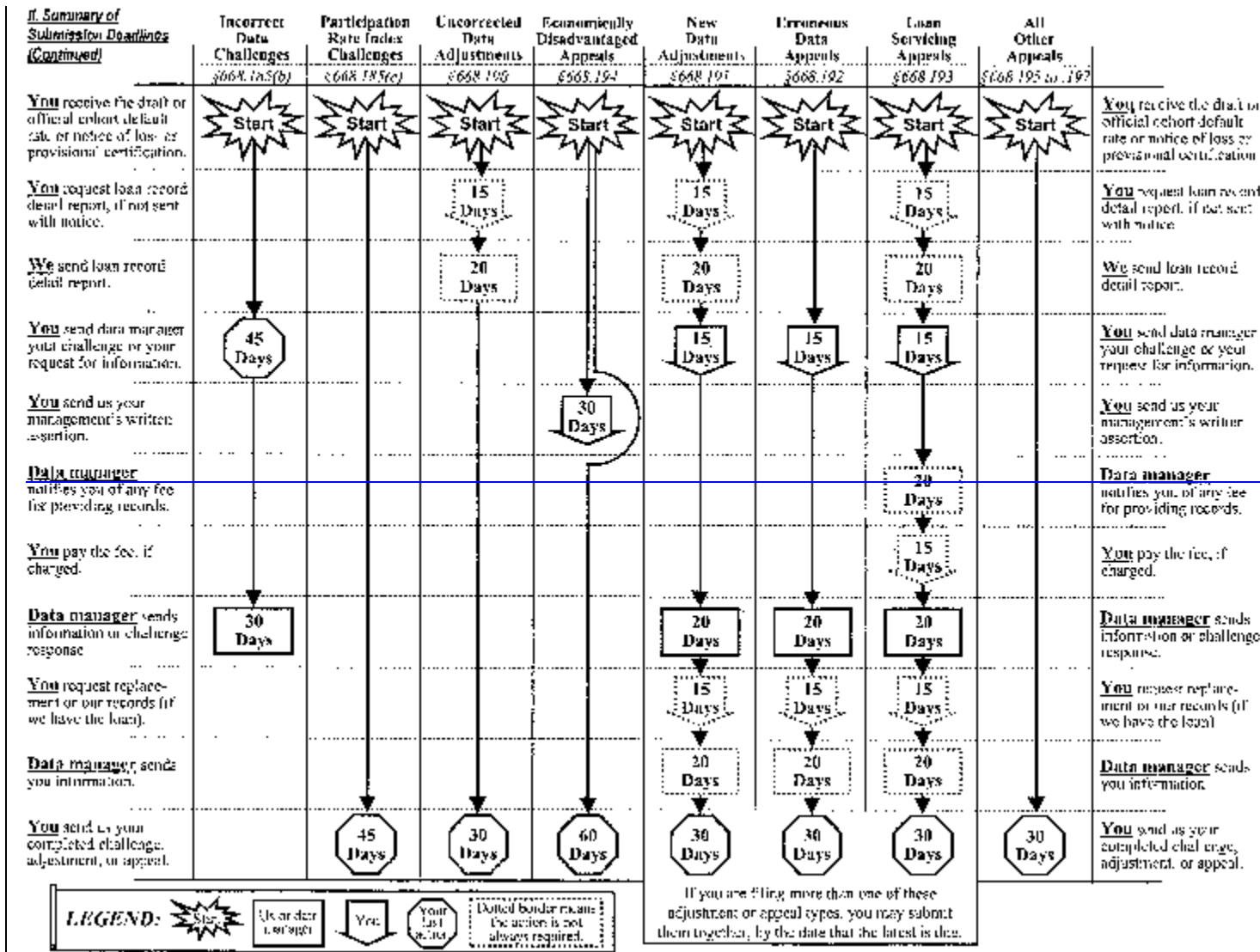
~~(i) For your first action (and for both actions, during an economically disadvantaged appeal), the timeframe begins on the date that you receive your draft cohort default rate, official cohort default rate, notice of loss of eligibility, or notice of provisional certification.~~

~~(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 AB to Subpart NM of Part 668—Sample Default Management Prevention 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 prevention plan in accordance with §668.198 **199(a)(1)**. 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 prevention 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 your default management prevention 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. Consider including individuals independent of your institution that have experience in preventing title IV loan defaults.

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

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

2(4). Identify and allocate the personnel, administrative, and financial resources appropriate to implement the default management prevention 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.~~

IIIV. 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 prevention plan.