period for the placement rate or completion rate than the one used for the percentage of the institution's student body that comes from disadvantaged economic backgrounds.

Direct Loan Program Cohort Rate and Weighted Average Cohort Rate

The final regulations have been changed in §§ 668.17(e)(1)(ii) and 668.17(f)(1)(ii) to provide that a Direct Loan borrower who is in the income-contingent repayment (ICR) plan on his or her loan and, for 270 days, had scheduled monthly payments that are less than $15 and less than the interest that is accruing on the loan each month will be included in an institution's Direct Loan Program cohort rate or weighted average cohort rate. Under the proposed rules, such a borrower would be included in the Direct Loan Program cohort rate or weighted average cohort rate only if such conditions existed at the end of the fiscal year following the fiscal year the borrower entered repayment on the loan.

L, S, and T

The final regulations have been revised in § 668.17(a)(5) so that the Secretary will cease any L, S, and T action taken against an institution solely on the basis of its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate if the institution successfully appeals under the exceptional mitigating circumstances. The proposed rules provided that the Secretary would withdraw an L, S, and T action against an institution's participation only in the FFEL Program if the institution successfully appeals under exceptional mitigating circumstances.

The final regulations have been revised in § 668.17(c)(1)(ii)(A) to provide that an institution with an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that exceeds 40 percent will not be eligible to appeal a loss of eligibility to participate in the FFEL or Direct Loan programs under the participation rate index.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 150 parties submitted comments on the proposed regulations. An analysis of the comments and the changes follows. Major issues are grouped according to subject, with references to the appropriate sections of the regulation. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, generally are not addressed.

General

Comments: Many commenters argued that the HEA requires that these regulations be subject to a negotiated rulemaking process.

Discussion: The Secretary does not agree with the commenters. Section 457 of the HEA requires the Secretary, to the extent practicable, to promulgate regulations that implement the provisions of Part D of the HEA (which authorizes the Direct Loan Program) through a negotiated rulemaking process. Although these rules will affect Direct Loan institutions, these regulations do not directly implement any provisions contained in Part D of the HEA. The HEA does not require the Secretary to institute a negotiated rulemaking process for every regulation that has an affect on the Direct Loan Program. Moreover, the HEA does not require negotiated rulemaking for amendments to existing regulations. In any case, it was not practicable to conduct negotiated rulemaking for these amendments.

Changes: None.

Comments: Many commenters believed that the comment period for this proposed rule was too short, especially due to the fact that the Secretary published six proposed rules during the same week. The commenters indicated that it would be more appropriate for the Secretary to provide a longer comment period to allow them to provide more complete responses to the proposed rules.

Discussion: In the six sets of proposed rules mentioned above, the Secretary proposed numerous improvements and necessary changes to the Student Financial Assistance Programs. The ''Master Calendar'' provisions contained in section 482 of the HEA require that regulations be published in final form by December 1 prior to the start of the award year for which they will become effective. Because of the importance of implementing these changes and improvements for the award year beginning July 1, 1996, the Secretary established a comment period that allows publication of these final regulations by December 1, 1995, as required by the ''Master Calendar'' timeframe. The Secretary always endeavors to provide as long a comment period as possible.

Changes: None.

Comment: A number of commenters representing proprietary institutions questioned the Secretary's decision to distinguish between non-degree-granting proprietary and public or private nonprofit institutions for purposes of calculating Direct Loan Program cohort rates and weighted average cohort rates. These commenters argued that there was no basis for this distinction because proprietary institutions offer the same programs as public institutions (such as community colleges), which offer job training in a broader educational context. These commenters criticized the proposal to include in the cohort default rate calculation for proprietary non-degree granting institutions, Direct Loans repaid through an ICR plan under which the borrower makes payments less than $15 a month and that payment results in negative amortization. Other commenters representing other types of educational institutions supported the distinctions included in the draft regulations.

Discussion: The Secretary believes it is appropriate to distinguish between different types of institutions in calculating cohort default rates. First, numerous reports by congressional committees (including the Senate's Permanent Subcommittee on Investigations) and the General Accounting Office, as well as the Department's own reviews of individual institutions, have concluded that many proprietary institutions (particularly non-degree-granting institutions) use promises of job training and placement to entice students to enroll and then the institutions fail to provide worthwhile services. Second, those commenters who urged the Secretary not to distinguish between different types of institutions are asking the Secretary to ignore the overwhelming evidence that student loan default rates (and the associated costs to students and taxpayers) are much higher in the proprietary sector than in any other sector of higher education. For example, among the institutions for whom cohort default rates were calculated for Fiscal Year 1992 (which are the most recent final rates available), 444 institutions were subject to loss of FFEL eligibility for the first time based on default rates over 25 percent for the three most recent fiscal years. Of those institutions, 396 (89 percent) were proprietary institutions. Similarly, of the 205 institutions whose loss of eligibility was extended based on excessive default rates, 186 (91 percent) were proprietary; and of the 376 institutions subject to limitation, suspension or termination from participation in all Title IV programs based on excessive default rates, 324 (86 percent) were proprietary. Propreitary institutions represented 44 percent of all institutions for whom