cohort default rates were calculated based on students and former students entering repayment on FFEL Program loans in fiscal year 1992.

Further, the Fiscal Year 1992 data show that proprietary institutions had default rates of 30.2 percent, twice the national average for all institutions, and that public two-year institutions had rates of 14.5 percent. These data do not support the commenters' arguments that public institutions that offer vocational programs similar to those offered by many proprietary institutions should be treated the same as proprietaries for purposes of calculating Direct Loan Program cohort rates or weighted average cohort rates.

In analyzing this information, the Secretary has concluded that non-degree-granting proprietary institutions present a particular risk to students and taxpayers. The Secretary believes that these institutions would have a particular incentive to encourage their student borrowers to request an ICR plan in an attempt to mask their failure to provide worthwhile training, which results in employment that only allows a borrower to make minimal loan payments while falling further behind on the loan through negative amortization.

Changes: None.

Comments: Many commenters responded to the Secretary's invitation to comment regarding whether the Secretary should implement measures to prevent an institution from evading the proposed rule under which a Direct Loan Program cohort rate and weighted average cohort rate are calculated for non-degree-granting proprietary institutions using an ICR component if such an institution switched to a nonprofit status. The commenters felt that the current Internal Revenue Service requirements to establish nonprofit status are sufficiently rigorous, costly, and lengthy so as to prevent an institution from switching from profit to nonprofit status to avoid the consequences of a high default rate. Commenters argued that this type of decision would more likely be made for business reasons rather than for the purpose of evading regulatory requirements.

Discussion: The Secretary has carefully evaluated the comments received on this issue and believes that further consideration is warranted prior to implementing any regulatory or procedural changes that would prevent an institution from switching from profit to nonprofit status to avoid the consequences of a high default rate.

Changes: None.

Comments: Many commenters responded to the Secretary's request for public comment regarding adding a measure to the default rate definition for borrowers for whom payment has been deferred for an extended period of time under the economic hardship or unemployment deferments, or a forbearance. The commenters argued that including borrowers whose payments had been deferred for an extended period of time in the default rate definition results in "punishing" an institution for informing students of their rights to defer or forbear payments in certain circumstances. Further, some commenters argued that the benefits to students of avoiding defaults through the use of deferments and forbearance would outweigh the potential for abuse by unscrupulous institutions that might try to artificially lower their default rates.

Discussion: The Secretary agrees with the commenters that the use of deferments and forbearances benefit students by preventing defaults. The Secretary believes that this issue warrants further consideration prior to implementing any changes. The Secretary will continue to monitor the use of deferments and forbearances in both the Direct Loan and FFEL Programs to determine if further action is needed.

Changes: None.

Comments: Many commenters suggested that if the Secretary was planning to provide Direct Loan Program institutions with tools, such as reports on delinquent borrowers, access to borrower information on a toll-free servicing telephone number, and free loan counseling materials for entrance and exit counseling, to help it reduce its default rate, similar tools should be provided to the FFEL Program institutions. The commenters stated that the Secretary has obligations to help reduce default rates in the FFEL Program.

Discussion: The Secretary assures these commenters that he is equally concerned about reducing defaults in both the FFEL and Direct Loan programs and agrees that it is in the best interests of institutions, borrowers, and taxpayers to help reduce the incidence of student loan defaults by providing institutions with default prevention tools. The HEA and the FFEL Program regulations provide FFEL institutions with numerous tools to reduce their default rates. The Secretary, guaranty agencies, and various institutional associations have offered institutions training opportunities and information designed to reduce FFEL Program cohort default rates. Direct Loan institutions will be treated similarly. Some commenters

suggested specific measures that could be taken to assist institutions in reducing defaults. The Secretary will carefully consider these suggestions to enhance default prevention techniques in both the FFEL and Direct Loan programs.

Changes: None.

Section 668.17(a)(1)

Comments: Many commenters were concerned that the language in § 668.17(a)(1) implies that an institution will not be notified of its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate if that rate is equal to or less than 20 percent. The commenters suggested that all institutions should be notified of their FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates.

Discussion: The Secretary notes that this language is in current regulations and was originally included in an NPRM published on February 28, 1994 (59 FR 9526, 9572) and that no commenters raised questions about this provision. The Secretary has traditionally provided default rate notices to all institutions and all institutions receive their default rate prior to publication under 34 CFR 668.17(j)(1) (ii) and (iii). However, it is most important that institutions with rates over 20 percent receive notice of their final rates since it is these institutions that may face sanctions based on their rate. The Secretary originally provided that only institutions with rates over 20 percent would be guaranteed to receive a notice because of the possibility that future budget reductions would require cuts in this area. The Secretary agrees with the commenters that, whenever feasible, all institutions should be notified of their FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates. The Secretary plans to notify all institutions of their rates.

Changes: None.

Section 668.17(a)(2)

Comments: Many commenters suggested that the Secretary should not take L, S, and T action against an institution that is appealing its loss of eligibility to participate in the FFEL or Direct Loan programs under exceptional mitigating circumstances until a final decision is made on the appeal. The commenters reasoned that it is unfair to eliminate an institution from participating in all of the Title IV programs before the institution has had a chance to prove to the Secretary that exceptional mitigating circumstances