percentage of postsecondary students receiving Pell Grants, the 70 percent threshold would be too high for an institution to meet.

Many commenters also argued that the 70 percent completion rate threshold component of an exceptional mitigating circumstances appeal is too high. The commenters argued that it is inappropriate for the Secretary to require institutions with longer programs to meet a completion rate threshold that is required by the HEA for a program of study that is less than 600 hours in length. The commenters pointed out that institutions offering longer programs of study most likely would not meet this standard.

Discussion: The Secretary does not agree with the commenters that either of these thresholds is too high. The study referenced by the commenters is based on the percentage of Pell Grant recipients across all postsecondary institutions. This study does not appear to be relevant to institutions that generally have high cohort default rates. Based on the Secretary's experience in processing exceptional mitigating circumstances appeals, many institutions will not have any difficulty meeting this threshold. Almost every institution that has applied under the exceptional mitigating circumstances provisions has met the requirement that two-thirds of its students are economically disadvantaged. Further, previous appeals show that the postsecondary institutions most likely to have high FFEL Program cohort default rates are institutions that have higher percentages of low-income students than those institutions with low default rates. Because the Secretary's experience in reviewing exceptional mitigating circumstances appeals has proven that many institutions can meet this standard, the Secretary does not believe that a 70 percent threshold is too high.

In regard to the completion rate threshold, the 70 percent completion rate standard that a short-term program must meet in order to participate in the FFEL Program is a minimum eligibility standard. This standard is unrelated to the institution's FFEL Program cohort default rate. The Secretary has chosen a 70 percent completion rate threshold as a component of an exceptional mitigating circumstance because he believes that an institution that has a high FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate must be able to demonstrate that it is properly serving a large majority of its students, as evidenced by their completion of their academic program, despite having

consecutively high default rates. The Secretary reminds the commenters that the purpose of exceptional mitigating circumstances is to allow institutions to continue to participate in the loan programs even though more than one out of every four students who receive loans have defaulted and that has occurred for at least three years. To protect both students and taxpayers, only institutions that can truly demonstrate unusual circumstances should be allowed to continue to participate in the loan programs.

Changes: None.

Comments: A number of commenters suggested that the completion rate component of the exceptional mitigating circumstances be revised to mirror the proposed Student-Right-to-Know regulations regarding completion rates. These commenters urged the Secretary to issue regulations with as much consistency as possible.

Discussion: The Secretary is committed to reducing regulatory burden and providing consistency in program requirements wherever possible. The Secretary does not believe that using completion rates as calculated under the Student-Right-to-Know provisions is appropriate at this time for establishing exceptional mitigating circumstances for institutions with high cohort default rates. This is because the requirements of Student-Right-to-Know include certain statutory exclusions, specific timeframes, and definitions of which students are included in the calculation. Further, the Student-Right-to-Know provisions offer institutions flexibility in determining their completion rates, which are not appropriate for an institution that is appealing its loss of eligibility due to high FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates.

Changes: None.
Comments: Many commenters
suggested that the completion rate and
placement rate formulas be amended to
include only students who were regular
students. The commenters agreed that
an institution would be unfairly
penalized if its completion or placement
rate included students who initially
enrolled in the institution without the
intention of obtaining a degree or
certificate.

Discussion: After careful consideration of the many comments received on this issue, the Secretary has determined that an institution's completion or placement rate should not include students who are not enrolled for the purpose of obtaining a degree or certificate. The Secretary believes that an institution should not

be held responsible for the completion or placement of a student who did not enroll in the institution with the intent to complete a degree or certificate program.

Change: The completion rate and placement rate formulas in section 668.17(c)(1)(ii)(B) (1) and (2) have been changed. The final regulations provide that the placement and completion rates will be based on the percentage of an institution's students who initially enrolled as regular students.

Comments: Many commenters suggested that the placement rate should only include students who have actually completed their training at the institution. These commenters do not think it is reasonable for an institution to be responsible for the placement of students who do not complete their educational programs. Other commenters suggested that the Secretary should provide a five percent allowance in the placement rate for former students at the institution who are not able to work due to an injury or pregnancy.

Many commenters also suggested that the Secretary should change the placement rate calculation to permit a student who has obtained employment in an occupation for which the training is intended while the student is still enrolled in the institution's program to be considered successfully placed. The commenters indicated that this often occurs with part-time students who work and go to school at the same time. The commenters do not believe that it is fair to exclude such a student from the placement rate calculation.

Discussion: The Secretary expects that a high percentage of an institution's students will receive a job related to the training or educational program undertaken at the institution. The formula under which the placement rate is calculated provides that an institution will meet this standard if only 50 percent of the institution's students receive employment in an occupation that is related to the training they receive. For an institution that is appealing a loss of eligibility to participate in the FFEL or Direct Loan programs on the basis that it places an exceptionally high percentage of its students, the Secretary believes that a 50 percent placement rate is reasonable.

Further, the Secretary does not agree that only students who complete their programs should be included in the placement rate calculation. The Secretary believes that the placement rate formula as written in the proposed rule does not need to provide any extra allowance for an institution's former