

students who do not complete the program or are unable to work.

However, the Secretary agrees with the commenters who suggested that a student who obtains employment in an occupation related to the training he or she is receiving while enrolled at the institution should not be excluded from the former students an institution may consider as successfully placed. The Secretary realizes that students are often able to obtain employment in a field for which they are receiving training while they are still enrolled. This provision was included in the NPRM. However, an institution may not consider a student as successfully placed if the institution is the student's or former student's employer.

*Changes:* None.

*Comments:* None.

*Discussion:* In reviewing the comments received on the placement rate calculation, the Secretary concluded that it is unnecessary to include a student who transferred to a higher level program of study as successfully placed. The Secretary believes that this is unnecessary because the institutions that may appeal under this criteria will not be offering programs that prepare its students for higher level programs.

The Secretary further believes that in order to demonstrate the effectiveness of the training an institution provides, with respect to students obtaining employment, the Secretary has limited the timeframe during which a student or former student must have received employment, or have been employed for at least 13 weeks, in order to be considered successfully placed. Under the proposed rules, a former student would be considered as successfully placed if that student had been employed for at least 13 weeks between his or her last date of attendance and the date the institution submits the appeal, which could generally occur at least two-years after the student left the institution.

*Changes:* The Secretary has removed from the final regulations a provision contained in § 668.17(c)(1)(ii)(B)(2) of the proposed rule that provided that a former student of an institution may be considered successfully placed if that former student transfers to a higher level program at another institution. The final regulations provide that a student or former student may be considered as successfully placed only if the student or former student was employed in an occupation related to the training for at least 13 weeks before, or was employed on, the day after 12 months following the date of the student's last day of attendance.

*Comments:* Many commenters also suggested that students enrolled less than full-time should not be counted in the placement rate calculation. The commenters suggested that students enrolled less than full-time are less likely to complete their programs than full-time students.

*Discussion:* The Secretary does not agree with the commenters that students enrolled less than full-time should be excluded from the institution's placement rate. The Secretary believes that the inclusion of regular students who are enrolled on at least a half-time basis will provide the most complete portrait of the success of an institution's programs. The final regulations have been changed to provide that the placement rate calculation will be based on an institution's regular students who are initially enrolled on at least a half-time basis. This change is addressed in a previous comment.

*Changes:* None.

*Comments:* Many commenters suggested that the Secretary should clarify in the regulations what constitutes a week of employment. The commenters indicated that the requirement that a student be employed for 13 weeks was too vague. The commenters wanted to know if there was a minimum number of days or hours during the week a student must be employed in order to constitute a week of employment.

*Discussion:* The Secretary does not agree with the commenters. The Secretary's experience in working with institutions regarding the placement rate element of an exceptional mitigating circumstances appeal has shown that this issue has not been an area of confusion nor have institutions needed clarification of this issue. Further, the Secretary does not believe that it is necessary to define in regulations what constitutes a week of employment.

*Changes:* None.

*Comments:* Many commenters objected to limiting the use of the completion rate component of the exceptional mitigating circumstances to public and private nonprofit institutions and limiting the use of the placement rate component to proprietary institutions. Many commenters indicated that it is more appropriate for a public vocational institution to appeal a potential loss of eligibility to participate in the FFEL or Direct Loan programs under the placement rate component. The commenters indicated that because these institutions provide training for their students to receive employment in specific occupations, they would more likely be able to meet the placement rate threshold.

Other commenters suggested that proprietary institutions of higher education that offer associate or baccalaureate degrees should be able to appeal under the exceptional mitigating circumstances criteria that include the completion rate component. These commenters argued that it is inappropriate to distinguish the educational programs at these institutions from their public and private nonprofit institution counterparts.

Many commenters suggested that an institution should be able to appeal under any of the exceptional mitigating circumstances.

*Discussion:* The Secretary disagrees with the commenters that an institution should be able to appeal under either the placement rate or completion rate components of the exceptional mitigating circumstances. The Secretary believes that it is appropriate for an institution to appeal under a criterion that is designed to measure the performance of its programs. The Secretary agrees with the commenters that the type of program offered by an institution should determine whether that institution should be able to appeal under the exceptional mitigating circumstances appeal that includes the placement rate or completion rate components. Placement rate is an appropriate measure for those institutions that are non-degree-granting, whereas completion rate is a more appropriate and relevant measure for institutions that offer degrees.

*Changes:* The final regulations have been amended in § 668.17(c)(1)(ii)(B) to permit only a non-degree-granting institution, whether it is a public, private nonprofit, or proprietary institution, to appeal under the exceptional mitigating circumstances criterion that includes the placement rate component. The final regulations have also been amended to permit only a degree-granting institution, regardless of whether it is a public, private nonprofit, or proprietary institution, to appeal under the exceptional mitigating circumstances criterion that includes the completion rate component.

*Comments:* Many commenters objected to some of the data elements that must be submitted to substantiate the percentage of an institution's students that come from disadvantaged economic backgrounds. Many commenters believed that the addresses of such students were not necessary.

*Discussion:* The Secretary is interested in minimizing the burden associated with an appeal and is reexamining the data elements that will be required in an appeal to ensure that