

information is requested only if it is essential to the appeal and only if it is not available to the Secretary in existing databases. The Secretary will notify institutions of the specific information that must be included in the appeal in the "Pre-Publication Review Booklet" that is sent to institutions when the Secretary provides the institution the opportunity to review its draft FFEL Program cohort default rate data. This information will also be contained in the "Official Cohort Default Rate Guide" which is issued to an institution when the Secretary provides notification of loss of eligibility based on a final FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate.

The Secretary expects to require institutions to submit substantially the same information that is currently requested in the Official Default Rate Guide.

Changes: The Secretary has removed from the regulations the specific description of the information an institution must submit in an appeal. These information submission requirements were contained in the proposed rules in sections 668.17(c)(7)(ii) through (v). The Secretary will inform an institution of the information that is necessary to appeal a loss of eligibility when the Secretary provides an institution the opportunity to verify its cohort default rate data and when he notifies the institution of its final rate.

Section 668.17(d)

Comments: Many commenters suggested that the Secretary should amend the date an SLS loan enters repayment. The commenters suggested that the Secretary should establish in regulations, provisions that would define when an SLS loan enters repayment if that loan is "linked" to a Stafford loan.

Discussion: For purposes of calculating an FFEL Program cohort default rate, Congress has mandated the parameters for establishing the date an SLS loan enters repayment. Those parameters are also contained in the regulations in section 668.17(d)(1)(ii)(D). Consistent with the parameters established by Congress, the Secretary regularly provides guaranty agencies and institutions with the rules for the application of the definition of the date an SLS loan enters repayment for purposes of an FFEL Program cohort default rate. Institutions are now apprised of the rules at least twice annually through the "Pre-Publication Booklet" for cohort default rates and the "Official Cohort Default Rate Guide."

The Secretary has found the dissemination of the rules for the application of the definition of the date an SLS loan enters repayment through the "Pre-Publication Booklet" and the "Official Cohort Default Rate Guide" provides sufficient notice to the institutions, while simultaneously allowing the definition to be refined as needed based on upon Congressional changes to the definition and changes in the information collecting capacity of the Department. The Secretary further believes that it is also appropriate to disseminate the rules for linking SLS loans to Stafford loans through the "Pre-Publication Booklet" and the "Official Cohort Default Rate Guide."

Changes: None

Sections 668.17(e)(1)(ii) and (f)(1)(ii)

Comments: Many commenters objected to the Secretary's inclusion in a Direct Loan Program cohort rate or weighted average cohort rate a loan that is in repayment under the ICR plan if the borrower's scheduled payments on that loan are less than 15 dollars and that 15 dollar payment is less than the interest that is accruing on the loan each month. The commenters argued that it is inappropriate to consider a loan that is not even delinquent as in default for purposes of an institution's Direct Loan Program cohort rate or weighted average cohort rate. Many commenters pointed out that most of the borrowers that choose ICR will be entry-level employees and will start out with low incomes that may result in the borrower having scheduled payments of 15 dollars or less, which may be less than the interest that is accruing on the loans. The commenters suggested that this would unfairly penalize institutions since ICR is a legitimate payment option for all students and an institution cannot control a borrower's selection of a repayment plan.

A commenter pointed out that, under the proposed rules, if a borrower enters into ICR at the end of the fiscal year and that borrower's monthly payment is 15 dollars and that payment is less than the interest that is accruing on the loan, the borrower would be included in the institution's Direct Loan Program cohort rate or weighted average cohort rate. The commenter indicated that it would be more appropriate to include such a borrower in an institution's rate if that borrower was in ICR and had scheduled payments of less than \$15 that are less than the interest accruing on the loan for 270 days; this would more closely mirror a default.

Discussion: The Secretary appreciates the commenters' concerns that many of the borrowers who choose ICR will be

entry level employees and will likely have low payments. However, the Secretary believes that even entry level employees who have received a quality education or training from an institution will be able to obtain employment that will provide them with enough income to pay back at least the interest that is accruing on their loans each month.

The Secretary also appreciates the commenters' concerns regarding the inclusion of a loan in an institution's Direct Loan Program cohort rate or weighted average cohort rate that may not even be delinquent. However, the Secretary believes that this is an appropriate performance-based measure to assess both a borrower's ability to repay a student loan and an institution's quality of training. The Secretary is concerned that, without such a measure, an institution could have a low Direct Loan Program cohort rate or weighted average cohort rate when a large proportion of its former students are making only minimal or no payments on their loans. The Secretary is concerned that this is a potential area for abuse in the Direct Loan Program and believes that it is imperative to protect students and taxpayers from such abuse.

The Secretary agrees with the commenter that, to more closely approximate a default, a borrower should have been, by the end of the fiscal year following the fiscal year the loan entered repayment, for at least 270 days, in repayment under the ICR plan with scheduled payments that were less than 15 dollars per month and those payments result in negative amortization.

Changes: The final regulations have been revised to provide that a loan that is in the ICR plan will not be included in a Direct Loan Program cohort rate or weighted average cohort rate unless, for at least 270 days, the scheduled monthly payments on that loan have been \$15 dollars or less and that payment is less than the monthly interest accruing on the loan.

Section 668.17(f)

Comments: Many commenters did not understand how the proposed weighted average cohort rate would be calculated when the institution had a borrower enter repayment on both a Direct Loan and FFEL Program loan in a fiscal year. The commenters believed that the Secretary should clarify the formula.

Discussion: The weighted average cohort rate is determined by comparing the number of borrowers, both FFEL and Direct Loan, who enter repayment in a fiscal year against those borrowers who default before the end of the following