

fiscal year. Each borrower and each default is counted only once even if a borrower has both FFEL and Direct Loan program loans entering repayment in a fiscal year. This has been the Secretary's practice when a borrower with multiple FFEL Program loans enters repayment on those loans in a fiscal year. The Secretary does not believe that the regulations need to be clarified in this area.

Changes: None.

Section 668.17(h)

Comments: Many commenters suggested that institutions should be able to appeal their Direct Loan Program cohort rates or weighted average cohort rates on the basis of improper servicing. The commenters argued that the appeal criteria should be parallel to the FFEL Program. In addition the commenters believed that a loan that is improperly serviced should not be included in an institution's Direct Loan Program cohort rate or weighted average cohort rate and that an institution should be given a chance to verify that such a loan is not included in its rate.

Discussion: In the FFEL Program, Congress chose to provide high default rate institutions with an appeal from the loss of eligibility to participate in that program based on loan servicing. That decision was based, in large measure, on the existence of detailed Departmental regulations governing loan servicing by lenders and a number of instances in which large lenders failed to comply with those requirements with a demonstrable effect on institutional default rates. In the Direct Loan Program, those detailed servicing rules do not exist; instead, loan servicing is controlled by contracts between the Department and its contractors. Moreover, there is no history of abuse in the Direct Loan Program and the Department's contractors do not have the same incentive or opportunity to hide non-compliance as FFEL Program lenders. Accordingly, the Secretary does not believe it is appropriate or necessary to provide a loan servicing appeal for a Direct Loan Program cohort rate or weighted average cohort rate.

Changes: None.

Section 668.90

Comments: Many commenters objected to the removal of an institution's ability to demonstrate that it has diligently administered the provisions contained in appendix D of the Student Assistance General Provisions regulations as a defense to loss of eligibility. The commenters argued that the measures contained in appendix D have been proven effective

in reducing defaults. Other commenters suggested that the use of appendix D as the only defense to an L, S, and T action provides a very powerful incentive to an institution that has a high cohort default rate to take action to reduce its default rate.

Discussion: The Secretary agrees with the commenters that the measures contained in appendix D, if diligently implemented by an institution, are effective in reducing the incidence of default. However, many of the most effective measures in appendix D have become specific regulatory requirements for most institutions. Moreover, the Secretary's experience has shown that the reviews of claims of appendix D compliance are very time-consuming and rarely helpful. In fact, the Secretary believes that the removal of the use of appendix D as a defense will provide a more powerful incentive for an institution to try to keep its cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate low.

Changes: None.

Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the title IV, HEA programs effectively and efficiently.

In assessing the potential costs and benefits, both quantitative and qualitative, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: Analysis of Comments and Changes.

Assessment of Educational Impact

In the NPRM published on September 21, 1995, the Secretary requested comment on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from

any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Stafford Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program; and 84.226 Income Contingent Loan Program; 84.268, William D. Ford Federal Direct Loan Program)

Dated: November 24, 1995.

Richard W. Riley,
Secretary of Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1148, unless otherwise noted.

2. Section 668.17 is amended by redesignating paragraphs (f), (g), and (h) as paragraphs (h), (i) and (j) respectively, revising paragraphs (a) through (e), and adding new paragraphs (f) and (g) to read as follows:

§ 668.17 Default reduction and prevention measures.

(a) *Default rates.* (1) If the FFEL Program cohort default rate, Direct Loan Program cohort rate, or if applicable, weighted average cohort rate for an institution exceeds 20 percent for any fiscal year, the Secretary notifies the institution of that rate.

(2) The Secretary may initiate a proceeding under subpart G of this part to limit, suspend, or terminate the participation of an institution in the Title IV, HEA programs, if the institution has an FFEL Program cohort default rate, Direct Loan Program cohort rate, or a weighted average cohort rate that exceeds 40 percent for any fiscal year.