determined, 70 percent or more of the institution's regular students, as defined in 34 CFR 600.2, are individuals from disadvantaged economic backgrounds, as established by documentary evidence submitted by the institution. Such evidence must relate to either qualification by those students for an expected family contribution (EFC) of zero for any award year that generally coincides with the 12-month period, or attribution to those students of an adjusted gross income of the student and his or her parents or spouse, if applicable, reported for any award year that generally coincides with the 12month period, of less than the poverty level, as determined under criteria established by the Department of Health and Human Services; and,

(1) For a degree-granting institution, 70 percent or more of the institution's regular students who were initially enrolled on a full-time basis and were scheduled to complete their programs during the same 12-month period the institution has chosen to determine the percentage of its students that come from disadvantaged economic backgrounds under paragraph (c)(1)(ii)(B) of this section, completed the educational programs in which they were enrolled. This rate is calculated by comparing the number of regular students who were classified as fulltime at their initial enrollment in the institution and were originally scheduled, at the time of enrollment, to complete their programs within the relevant 12-month period, with the number of these students who received a degree from the institution; transferred from the institution to a higher level educational program; or, at the end of the 12-month period, remained enrolled and were making satisfactory academic progress toward completion of their educational programs; or

(2) For a non-degree-granting institution, the institution had a placement rate of 50 percent or more with respect to its former regular students who remained in the program beyond the point the students would have received a 100 percent tuition refund from the institution. A student or former student may not be considered successfully placed if the institution is the student's or former student's employer. This rate is based on those regular students who were initially enrolled on at least a half-time basis and were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period the institution has chosen to determine the percentage of its students that come from disadvantaged economic backgrounds

under paragraph (c)(1)(ii)(B) of this section. This rate does not include those students who are still enrolled and making satisfactory progress in the educational programs in which they were originally enrolled on the date following 12 months after the date of the student's last day of attendance. This rate is calculated by determining the percentage of all those former regular students who;

(*i*) are employed in an occupation for which the institution provided training on the date following 12 months after the date of their last day of attendance at the institution; or

(*ii*) were employed in an occupation for which the institution provided training for at least 13 weeks before the date following 12 months after the date of their last day of attendance at the institution.

(2) For purposes of the completion rate and placement rate described in paragraph (c)(1)(ii)(B)(1) and (2) of this section, a student is originally scheduled, at the time of enrollment, to complete the educational program on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" for a student who is initially enrolled full-time is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the original date of enrollment and the anticipated graduation date appearing on the student's loan application, if any, whichever is less. The "amount of time normally required to complete the program" for a student who is initially enrolled less than full-time is the amount of time it would take that student to complete the program if the student remained enrolled at that level of enrollment.

(3) The Secretary issues a decision on the institution's appeal within 45 calendar days after the institution submits a complete appeal that addresses the applicable criteria in paragraph (c)(1) (i) or (ii) of this section to the Secretary.

(4) The Secretary's decision is based on the consideration of written material submitted by the institution. No oral hearing is provided.

(5) The Secretary withdraws the notification of loss of participation in the FFEL Program or Direct Loan Program sent to an institution under paragraph (b) (1) or (2) of this section, if he determines that the institution's appeal satisfies one of the exceptional mitigating circumstances specified in paragraph (c)(1) (i) or (ii) of this section.

(6) An institution must include in its appeal a certification, under penalty of perjury, by the institution's chief executive officer that all information provided by the institution in support of its appeal is true and correct.

(7) An institution that appeals on the grounds that it meets the exceptional mitigating circumstances criteria contained in paragraph (c)(1)(ii) of this section must include in its appeal an opinion from an independent auditor on management's assertions that the information contained in the appeal is complete, accurate, and determined in accordance with the requirements of this section. The examination level engagement will be performed in accordance with Statement on Standards for Attestation Engagements #3. This opinion must be received by the Secretary within 60 days following the date the institution receives notification of its loss of eligibility under paragraph (b) of this section.

(8) An institution that appeals under paragraph (c)(1)(i) of this section will not lose its eligibility to continue to participate during the appeal process due to a guaranty agency's failure to comply with 34 CFR 682.401(b)(14) which requires the agency to respond to an institution's request for verification of data within 15 working days, provided the institution:

(i) requested such verification within 10 working days from the date it received notification of its loss of eligibility under paragraph (b) of this section; and

(ii) provided a copy of the request for verification of data to the Secretary at the same time it requested such verification by the relevant guaranty agency(ies).

(d) *FFEL Program Cohort Default Rate.* (1)(i) For purposes of the FFEL Program, except as provided in paragraph (d)(1)(ii) of this section, the term FFEL Program cohort default rate means—

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program or Direct Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who default before the end of the following fiscal year; or

(B) For any fiscal year in which fewer than 30 of the institution's current and