§ 668.186 Notice of your official cohort default rate.

(a) We electronically notify you of your cohort default rate after we calculate it, by sending you an eCDR notification package to the destination point you designate. After we send our notice to you, we publish a list of cohort default rates calculated under this subpart for all institutions.

(b) If you have one or more borrowers entering repayment or are subject to sanctions, or if the Department believes you will have an official cohort default rate calculated as an average rate, you will receive a loan record detail report as part of your eCDR notification package.

(c) You have five business days, from the transmission date for eCDR notification packages as posted on the Department’s Web site, to report any problem with receipt of the electronic transmission of your eCDR notification package.

(d) Except as provided in paragraph (e) of this section, timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the transmission date for eCDR notification packages that is posted on the Department’s Web site.

(e) If you timely report a problem with the receipt of the electronic transmission of your eCDR notification package under paragraph (c) of this section and the Department agrees that the problem with transmission was not caused by you, the Department will extend the challenge, appeal and adjustment deadlines and timeframes to account for a retransmission of your eCDR notification package after the technical problem is resolved.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

[74 FR 55649, Oct. 28, 2009]

§ 668.187 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) End of participation. (1) Except as provided in paragraph (e) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate is greater than 40 percent.

(2) Except as provided in paragraphs (d) and (e) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your three most recent cohort default rates are each 25 percent or greater.

(b) Length of period of ineligibility. Your loss of eligibility under this section continues—
(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and
(2) For the next 2 fiscal years.
(c) Using a cohort default rate more than once. The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for—
(1) Any concurrent or subsequent loss of eligibility under this section; or
(2) Any other action by us.
(d) Continuing participation in Pell. If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on three cohort default rates of 25 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you—
(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;
(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or
(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.
(e) Requests for adjustments and appeals. (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in §668.189(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.
(2) Eligibility continued under paragraph (e)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under §668.189. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.
(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under §668.189.
(4) To avoid liabilities you might otherwise incur under paragraph (f) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.
(f) Liabilities during the adjustment or appeal process. If you continued to participate in the FFEL or Direct Loan Program under paragraph (e)(1) of this section, and we determine that none of your requests for adjustments or appeals qualify you for continued eligibility—
(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;
(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;
(3) We notify you of the estimated amount; and
(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—
(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or
(ii) We permit a longer repayment period.
(g) Regaining eligibility. If you lose your eligibility to participate in a program under this section, you may not participate in that program until—
(1) The period described in paragraph (b) of this section has ended;
(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us;
(3) You submit a new application for participation in the program;
(4) We determine that you meet all of the participation requirements in effect at the time of your application; and
§ 668.188 Preventing evasion of the consequences of cohort default rates.

(a) General. You are subject to a loss of eligibility that has already been imposed against another institution as a result of cohort default rates if—

(1) You and the ineligible institution are both parties to a transaction that results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or in part in institutional structure or identity;

(2) Following the change described in paragraph (a)(1) of this section, you offer an educational program at substantially the same address at which the ineligible institution had offered an educational program before the change; and

(3) There is a commonality of ownership or management between you and the ineligible institution, as the ineligible institution existed before the change.

(b) Commonality of ownership or management. For the purposes of this section, a commonality of ownership or management exists if, at each institution, the same person (as defined in 34 CFR 600.31) or members of that person’s family, directly or indirectly—

(1) Holds or held a managerial role; or

(2) Has or had the ability to affect substantially the institution’s actions, within the meaning of 34 CFR 600.21.

(c) Teach-outs. Notwithstanding paragraph (b)(1) of this section, a commonality of management does not exist if you are conducting a teach-out under a teach-out agreement as defined in 34 CFR 602.3 and administered in accordance with 34 CFR 602.24(c), and—

(1)(i) Within 60 days after the change described in this section, you send us the names of the managers for each facility undergoing the teach-out as it existed before the change and for each facility as it exists after you believe that the commonality of management has ended; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended; or

(2)(i) Within 30 days after you receive our notice that we have denied your submission under paragraph (c)(1)(i) of this section, you make the management changes we request and send us a list of the names of the managers for each facility undergoing the teach-out as it exists after you make those changes; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended.

(d) Initial determination. We encourage you to contact us before undergoing a change described in this section. If you write to us, providing the information we request, we will provide a written initial determination of the anticipated change’s effect on your eligibility.

(e) Notice of accountability. (1) We notify you in writing if, in response to your notice or application filed under 34 CFR 600.20 or 600.21, we determine that you are subject to a loss of eligibility, under paragraph (a) of this section, that has been imposed against another institution.

(2) Our notice also advises you of the scope and duration of your loss of eligibility. The loss of eligibility applies to all of your locations from the date you receive our notice until the expiration of the period of ineligibility applicable to the other institution.

(3) If you are subject to a loss of eligibility under this section that has already been imposed against another institution, you may only request an adjustment or submit an appeal for the...