(f) **Deadline for submitting an appeal.**

(1) Within 30 days after you receive the notice of your loss of eligibility, you must send us your management’s written assertion, as described in the Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility, you must send us the independent auditor’s opinion described in paragraph (g) of this section.

(g) **Independent auditor’s opinion.**

(1) The independent auditor’s opinion must state whether your management’s written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor’s opinion must be an examination-level compliance attestation engagement performed in accordance with—

(i) The American Institute of Certified Public Accountant’s (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended (these standards may be obtained by calling the AICPA’s order department, at 1–888–777–7077); and

(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(h) **Determination.** You do not lose eligibility under §668.187 if—

(1) Your independent auditor’s opinion agrees that you meet the requirements for an economically disadvantaged appeal; and

(2) We determine that the independent auditor’s opinion and your management’s written assertion—

(i) Meet the requirements for an economically disadvantaged appeal; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor’s opinion unacceptable.

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

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

§ 668.195 Participation rate index appeals.

(a) **Eligibility.** (1) You may appeal a notice of a loss of eligibility under §668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort’s fiscal year is equal to or less than 0.66015.

(2) You may appeal a notice of a loss of eligibility under §668.187(a)(2), based on three cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those three cohorts’ fiscal years.

(b) **Calculating your participation rate index.** (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort’s fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under §668.183(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that would be calculated for the fiscal year alone using the method described in §668.183(d)(1).

(c) **Deadline for submitting an appeal.**

You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(d) **Determination.** (1) You do not lose eligibility under §668.187 if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is
§ 668.196 Average rates appeals.

(a) Eligibility. (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under § 668.183(d)(2).

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on three cohort default rates of 25 percent or greater, if at least two of those cohort default rates—

(i) Are calculated as average rates under § 668.183(d)(2); and

(ii) Would be less than 25 percent if calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(b) Deadline for submitting an appeal. (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for an average rates appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your average rates appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) Determination. You do not lose eligibility under § 668.187 if we determine that you meet the requirements for an average rates appeal.

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

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

§ 668.197 Thirty-or-fewer borrowers appeals.

(a) Eligibility. You may appeal a notice of a loss of eligibility under § 668.187 if 30 or fewer borrowers, in total, are included in the 3 most recent cohorts of borrowers used to calculate your cohort default rates.

(b) Deadline for submitting an appeal. (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for a thirty-or-fewer borrowers appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your thirty-or-fewer borrowers appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) Determination. You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a thirty-or-fewer borrowers appeal.

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

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

Subpart N—Cohort Default Rates

SOURCE: 74 FR 55651, Oct. 28, 2009, unless otherwise noted.

§ 668.200 Purpose of this subpart.

(a) General. Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV, HEA programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL and Direct Loan Programs. This subpart applies solely to cohorts, as defined in §§ 668.201(a) and 668.202(b), for fiscal years 2009 and later. For these cohorts, this subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a “challenge” after you receive your draft cohort default rate, and you request an “adjustment” or “appeal” after your official cohort default rate is published.

(b) Cohort Default Rates. Notwithstanding anything to the contrary in this subpart, we will issue annually