

# Exceptional Mitigating Circumstances Appeal

## GENERAL INFORMATION

### What types of exceptional mitigating circumstances appeals may a school submit?

There are five types of exceptional mitigating circumstances appeals.

- If a school certifies relatively few Federal Family Education Loan (FFEL) Program and/or William D. Ford Direct Loan (Direct Loan) Program loans, it may be able to file an exceptional mitigating circumstances appeal based on its **participation rate index**<sup>1</sup>.

Please refer to the "Participation Rate Index Appeal" section beginning on page 151 for more information on submitting an exceptional mitigating circumstance appeal based on a participation rate index.

- If a school is a non-degree-granting school and enrolls at least 66<sup>2</sup>/<sub>3</sub> percent of its students from economically disadvantaged backgrounds AND has a job placement rate of at least 44.0 percent, it may be able to file an exceptional mitigating circumstances appeal based on its **economically disadvantaged and placement rates**.<sup>2</sup>

<sup>1</sup> HEA § 435(a)(6)(A)

<sup>2</sup> HEA § 435(a)(4)(A)(i) and (iii)

**Q** . What if a school does not know if it is classified as a degree-granting or non-degree granting school?

**A** . A school should refer to its Eligibility and Certification Approval Report generated by the Department's Case Management Division.

If additional assistance is needed in making this determination, please contact the Case Management Division at (202) 205-0183.

Please refer to the "Economically Disadvantaged and Placement Rate Appeal" section beginning on page 167 for more information on submitting an exceptional mitigating circumstance appeal based on economically disadvantaged and placement rates.

- If a school is a degree-granting school that enrolls at least 66  $\frac{2}{3}$  percent of its students from economically disadvantaged backgrounds AND has a program completion rate of 70.0 percent or more, it may be able to file an exceptional mitigating circumstances appeal based on its **economically disadvantaged and completion rates.**<sup>3</sup>

Please refer to the "Economically Disadvantaged and Completion Rate Appeal" section beginning on page 201 for more information on submitting an exceptional mitigating circumstance appeal based on economically disadvantaged and completion rates.

- If at least two of a school's three most recent official cohort default rates are average cohort default rates, and at least two of the rates would be equal to or less than 24.9 percent if only one year of data was used to calculate the rate, the school will qualify under the **average cohort default rate** exceptional mitigating circumstances criteria.

**Q** . What is an average cohort default rate?

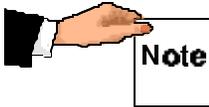
**A** . An average cohort default rate is the cohort default rate that the Department calculates for a school with 29 or fewer borrowers entering repayment in a given fiscal year.

### Average Cohort Default Rate Example

Cohort Period	Actual Numerator Count	Actual Denominator Count	Official Average Cohort Default Rate Based on Three Years of Data	Non-Average Cohort Default Rate Based on One Year of Data
FY 1997	0	0	100.0%	0.0%
FY 1996	0	0	100.0%	0.0%
FY 1995*	1	1	100.0%	100.0%

\* Assume that the school has zero borrowers entering repayment and defaulting during the FY 1994 and FY 1993 cohort periods.

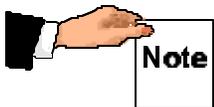
<sup>3</sup> HEA § 435(a)(4)(A)(i) and (ii)



The U.S. Department of Education (Department) will automatically determine if a school meets the criteria associated with an average cohort default rate exceptional mitigating circumstances appeal prior to the release of the official cohort default rates. Schools that meet this criteria will not be subject to initial or extended loss of eligibility to participate in the FFEL Program and/or Direct Loan Program and Federal Pell Grant Program.

- If a school has a total of 30 or fewer borrowers entering repayment in its three most recent official cohort default rates, the school will qualify under the **low number of borrowers** exceptional mitigating circumstances criteria.

Low Number of Borrowers Example		
Cohort Period	Actual Numerator Count	Actual Denominator Count
FY 1997	2	7
FY 1996	4	15
FY 1995	2	5
<b>Total number of borrowers entering repayment</b>		<b>27</b>



The Department will automatically determine if a school has a total of 30 or fewer borrowers entering repayment in its three most recent cohort default rates prior to the release of the official cohort default rates. Schools that meet this criteria will not be subject to initial or extended loss of eligibility to participate in the FFEL Program and/or Direct Loan Program and Federal Pell Grant Program.

## **What are the benefits associated with a successful exceptional mitigating circumstances appeal?**

If the Department determines that a school qualifies under the following exceptional mitigating circumstances criteria:

- economically disadvantaged and placement rates;
- OR
- economically disadvantaged and completion rates,

the Department will withdraw its notification of:

- initial loss of eligibility to participate in the FFEL Program and/or Direct Loan Program and Federal Pell Grant Program;
- extended loss of eligibility to participate in the FFEL Program and/or Direct Loan Program and Federal Pell Grant Program;
- AND/OR
- limitation, suspension, or termination of all Title IV Student Financial Assistance Programs.

If the Department determines that a school qualifies under the following exceptional mitigating circumstances criteria:

- participation rate index;
- average cohort default rate;
- AND/OR
- low number of borrowers,

the Department will withdraw its notification of:

- initial loss of eligibility to participate in the FFEL Program and/or Direct Loan Program and Federal Pell Grant Program;
- OR
- extended loss of eligibility to participate in the FFEL Program and/or Direct Loan Program and Federal Pell Grant Program.

### **What role does a guaranty agency or Direct Loan servicer have in a school's exceptional mitigating circumstances appeal?**

None. Neither a guaranty agency nor the Direct Loan servicer has a role in a school's exceptional mitigating circumstances appeal. Exceptional mitigating circumstances appeals are submitted directly to the Department for review and consideration.

### **What role does the Department have in a school's exceptional mitigating circumstances appeal?**

The Department is responsible for determining whether schools meet the established exceptional mitigating circumstances criteria.

- If the Department determines that a school meets the exceptional mitigating circumstances criteria, the Department will withdraw its notification that the school is subject to loss of participation in certain student financial assistance programs.
- If the Department determines that a school does not meet the exceptional mitigating circumstances criteria, and the school does not have any other cohort default rate appeals pending before the Department, the Department will notify the school of the effective date of its loss of eligibility to participate in the relevant student financial assistance programs.

In addition, the school will be liable for the amount of interest and special allowance, reinsurance, and other related or similar payments the Secretary is (or could be) obligated to pay as a result of any FFEL Program and Direct Loan Program loans certified/delivered and originated/disbursed beginning 30 calendar days after the school received notification of its cohort default rate until it withdraws the cohort default rate appeal or receives notification that the cohort default rate appeal was unsuccessful.

### **Are exceptional mitigating circumstances appeals based on a specific period of time?**

Yes, if a school chooses to submit an exceptional mitigating circumstance appeal based on its:

- participation rate index;
  - economically disadvantaged and placement rates;
- OR
- economically disadvantaged and completion rates,

the school must base the appeal on “a 12-month period that has ended during the six months immediately preceding the fiscal year for which the cohort of students used to calculate the institution’s rate is determined.”<sup>4</sup>

Please refer to the next three pages for a description of acceptable 12-month periods.

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<sup>4</sup> HEA § 435(a)(4)(A)(i) and 435(a)(6)(A)



A school that chooses to submit an exceptional mitigating circumstance appeal based on its participation rate index may choose to base its participation rate index on any of its three most recent official cohort default rates.

Therefore, a school that chooses to submit a participation rate index appeal based on its **FY 1996 official cohort default rate** must select a 12-month period that has a start date that ends within the six-month period that precedes FY 1996. Since the FY 1996 cohort begins on October 1, 1995, the six-month period preceding FY 1996 is from April 1, 1995 through September 30, 1995. **As a result, the school's 12-month period must end no earlier than April 1, 1995 and no later than September 30, 1995. Therefore, the 12-month period must begin no earlier than April 2, 1994 and no later than October 1, 1994.**

**FY 1996 Cohort Default Rate 12-Month Period**

A school should use the following time line to assist it in determining an acceptable 12-month period associated with FY 1996.

← | 4/2/94 | 10/1/94 | 4/1/95 | 9/30/95 | 10/1/95 | 9/30/96 | →

**Note** All 12-month periods associated with the FY 1996 cohort period must begin no earlier than April 2, 1994 and no later than October 1, 1994 and must end no earlier than April 1, 1995 and no later than September 30, 1995.

For example:

**Acceptable:** July 1, 1994 to June 30, 1995

**Not Acceptable:** June 30, 1994 to July 1, 1995

**Note** June 30, 1994 to July 1, 1995 is not acceptable because it represents more than a 12-month period. An acceptable 12 month period would be June 30, 1994 through June 29, 1995.

If a school chooses to submit a participation rate index appeal based on its FY 1995 official cohort default rate, it must select a 12-month period that has a start date that ends within the six-month period that precedes FY 1995. Since the FY 1995 cohort begins on October 1, 1994, the six-month period preceding FY 1995 is from April 1, 1994 through September 30, 1994. **As a result, the school's 12-month period must end no earlier than April 1, 1994 and no later than September 30, 1994. Therefore, the 12-month period must begin no earlier than April 2, 1993 and no later than October 1, 1993.**

**FY 1995 Cohort Default Rate 12-Month Period**

A school should use the following time line to assist it in determining an acceptable 12-month period associated with FY 1995.

← | 4/2/93 | 10/1/93 | 4/1/94 | 9/30/94 | 10/1/94 | 9/30/95 | →

**Note** All 12-month periods associated with the FY 1995 cohort period must begin no earlier than April 2, 1993 and no later than October 1, 1993 and must end no earlier than April 1, 1994 and no later than September 30, 1994.

For example:

**Acceptable:** June 20, 1993 to June 19, 1994

**Not Acceptable:** June 19, 1993 to June 19, 1994

**Note** June 19, 1993 through June 19, 1994 is unacceptable because it represents more than a 12-month period. An acceptable 12-month period would be June 19, 1993 through June 18, 1994.

## **What happens if a school selects an unacceptable 12-month period?**

If a school selects an unacceptable 12-month period, the Department will not review any portion of the school's data and the appeal will be denied.

To discuss whether the school has selected an acceptable 12-month period, contact the Department's Default Management Division at 202-708-9396 or at OSFA\_IPOS\_Default\_Management\_Division@ed.gov.