Exceptional Mitigating Circumstances Appeals

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 Federal Direct Loan (Direct Loan) Program loans, it may be able to file an exceptional mitigating circumstances appeal based on its **participation rate index**[1].

  Please refer to the "Participation Rate Index Appeal" section beginning on page 231 for more information on submitting an exceptional mitigating circumstances appeal based on a participation rate index.

- If a school is a non-degree-granting school and enrolls at least 66⅔ 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**.[2]

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 and Oversight Office.

If additional assistance is needed in making this determination, please contact the Case Management and Oversight Office at (202) 260-3616.

[1] HEA Section 435(a)(6)(A) and 34 CFR Section 668.17(c)(1)(ii)(A)
[2] HEA Section 435(a)(4)(A)(i) and (iii) and 34 CFR Section 668.17(c)(1)(ii)(B)

Please refer to the "Economically Disadvantaged and Placement Rates Appeal" section beginning on page 251 for more information on submitting an exceptional mitigating circumstances 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**.[3]

Please refer to the "Economically Disadvantaged and Completion Rates Appeal" section beginning on page 289 for more information on submitting an exceptional mitigating circumstances appeal based on economically disadvantaged and completion rates.

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.

- 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 cohort default rates would be less than 25.0 percent if only one year of cohort default rate data was used to calculate the rate, the school may be able to avoid certain cohort default rate sanctions based on an **average cohort default rate** exceptional mitigating circumstances appeal.

Note

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. In addition, if a school's eligible and timely submitted adjustment/appeal results in a change to the school's cohort default rate calculation, the Department will automatically determine if, as a result of the change in the school's cohort default rate calculation, the school meets the criteria associated with an average cohort default rate exceptional mitigating circumstances appeal.

[3] HEA Section 435(a)(4)(A)(i) and (ii) and 34 CFR Section 668.17(c)(1)(ii)(B)

The following chart provides an example of a school that would qualify for a successful average cohort default rate exceptional mitigating circumstances appeal.

Average Cohort Default Rate Exceptional Mitigating Circumstances Appeal Example

Fiscal Year (FY)	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 1998	0	0	100.0%	0.0%
FY 1997	0	0	100.0%	0.0%
FY 1996*	1	1	100.0%	100.0%

* Assume that the school has zero borrowers entering repayment and defaulting in the FY 1995 and FY 1994 cohort default rates.

- If a school has a total of 30 or fewer borrowers entering repayment in its three most recent official cohort default rates, a school may be able to avoid sanctions based on a **low number of borrowers** exceptional mitigating circumstances appeal.

Note

The Department will automatically determine if a school meets the criteria associated with a low number of borrowers exceptional mitigating circumstances appeal **prior** to the release of the official cohort default rates. In addition, if a school's eligible and timely submitted adjustment/appeal results in a change to the school's cohort default rate calculation, the Department will automatically determine if, as a result of the change in the school's cohort default rate calculation, the school meets the criteria associated with a low number of borrowers exceptional mitigating circumstances appeal.

The following chart provides an example of a school that would qualify for a successful low number of borrowers exceptional mitigating circumstances appeal.

Low Number of Borrowers
Exceptional Mitigating Circumstances Appeal Example

Fiscal Year (FY)	Actual Numerator Count	Actual Denominator Count
FY 1998	2	7
FY 1997	4	15
FY 1996	2	5
Total number of borrowers entering repayment		**27**

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

A successful exceptional mitigating circumstances appeal may result in the Department withdrawing its notice that a school is subject to sanctions as a result of its official cohort default rates.

- A successful exceptional mitigating circumstances appeal based on a school's economically disadvantaged and placement rates or economically disadvantaged and completion rates will result in the withdrawal of **ALL cohort default rate based sanctions**.
- Exceptional mitigating circumstances appeals based on a participation rate index, average cohort default rates, and/or low number of borrowers will only result in the withdrawal of a **sanction associated with official cohort default rates that are 25.0 percent or greater for three years**.

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.

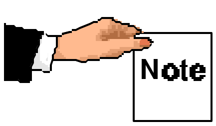
What role does the Department have in a school's exceptional mitigating circumstances appeal?

The Department is responsible for reviewing a school's exceptional mitigating circumstances appeal. In reviewing the appeal –

- If the Department determines that a school **meets** the economically disadvantaged and placement rates and/or economically disadvantaged and completion rates exceptional mitigating circumstances appeals, the Department will withdraw its notification of ALL cohort default rate based sanctions.

- If the Department determines that a school **meets** the participation rate index, average cohort default rates, and/or low number of borrower exceptional mitigating circumstances appeals, the Department will only withdraw its notification that the school is subject to initial and/or extended loss of eligibility to participate in the FFEL Program, Direct Loan Program, and/or Federal Pell Grant Program.

- If the Department determines that a school subject to initial or extended loss of eligibility to participate in the FFEL Program, Direct Loan Program, and/or Federal Pell Grant Program **does not meet** the exceptional mitigating circumstances criteria, and the school does not have any other cohort default rate adjustments/ appeals pending before the Department, the Department will notify the school of the effective date of its loss of eligibility to participate in the FFEL Program, Direct Loan Program, and/or Federal Pell Grant Program and any liabilities the school may have incurred during the adjustment/appeal process.



If a school is subject to initial loss of eligibility to participate in the FFEL Program and/or Direct Loan Program and the school's appeal of that loss is unsuccessful, **the school will be liable for certain costs** associated with FFEL Program loans certified and delivered and Direct Loan Program loans originated and disbursed by the school. A school's period of liability with regard to these costs begins 30 calendar days after the school receives notice that it is subject to initial loss of eligibility to participate in the FFEL Program and/or Direct Loan Program. The period of liability ends upon the earlier of the withdrawal of the school's appeal, the resolution of the school's appeal, or the 45th calendar day after the date the school submitted its completed appeal to the Secretary for review.[4]

- If the Department determines that a school subject to LS&T from all Title IV Student Financial Assistance Programs **does not meet** the exceptional mitigating circumstances criteria, and the school does not have any other cohort default rate adjustments/appeals pending before the Department, the school will be referred to the Department's Administrative Actions and Appeals Division for possible LS&T of all Title IV Student Financial Assistance Programs.

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

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

- participation rate index;

  AND/OR

- economically disadvantaged and placement rates;

  OR

- economically disadvantaged and completion rates,

the school must base the appeal on a 12-month period that ended during the six months immediately preceding the fiscal year which is used to determine the cohort of borrowers on which its cohort default rate is based.[5]

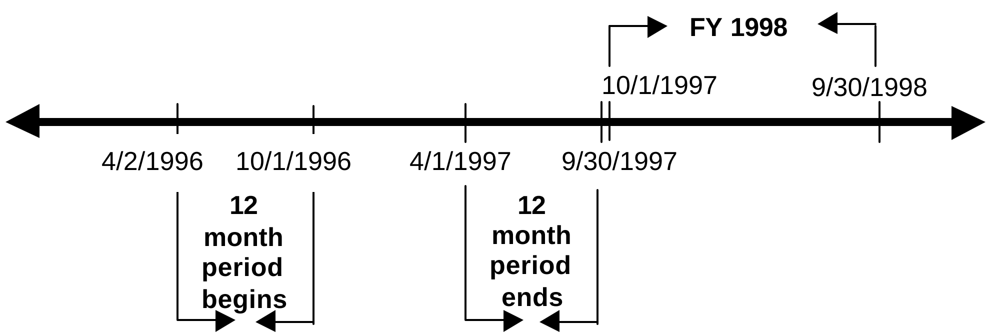
Please refer to the next three pages for a description of acceptable 12-month periods.

[4] HEA Section 435(a)(2)(A) and 34 CFR Section 668.17(b)(6)(ii)
[5] HEA Section 435(a)(4)(A)(i) and 34 CFR Section 668.17(c)(1)(ii)(A) and (B)

A school's FY 1998 economically disadvantaged and placement rates appeal, FY 1998 economically disadvantaged and completion rates appeal, and/or FY 1998 participation rate index appeal must be based on a 12-month period that ends within the six-month period that precedes FY 1998. Since the FY 1998 cohort begins on October 1, 1997, the six-month period preceding FY 1998, is from April 1, 1997 through September 30, 1997. **As a result, the school's 12-month period must end no earlier than April 1, 1997, and no later than September 30, 1997. Therefore, the 12-month period must begin no earlier than April 2, 1996, and no later than October 1, 1996.**

FY 1998 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 the FY 1998 cohort default rate.



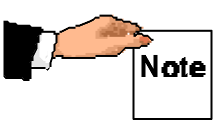
For example:

Acceptable: April **2**, 1996 to April **1**, 1997

Not Acceptable: April **1**, 1996 to March **31**, 1997

Acceptable: October **1**, 1996 to September **30**, 1997

Not Acceptable: October **2**, 1996 to October **1**, 1997

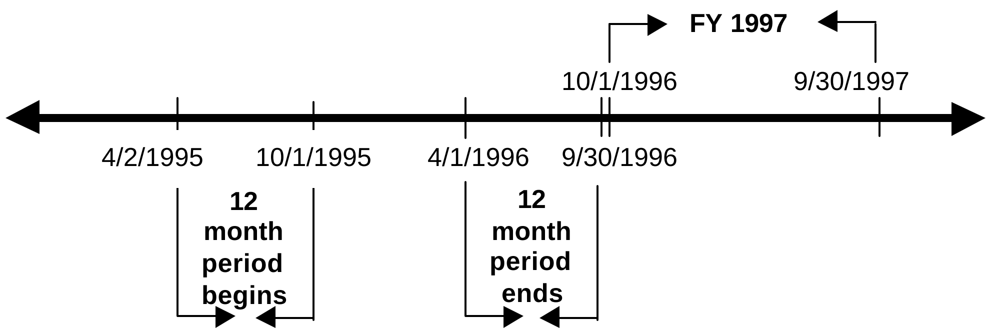


Economically disadvantaged and placement rates appeals and economically disadvantaged and completion rates appeals must be based on a 12-month period associated with the school's most recent official cohort default rate (in this case FY 1998).

A school that chooses to submit an exceptional mitigating circumstances 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 1997 official cohort default rate** must select a 12-month period that ends within the six-month period that precedes FY 1997. Since the FY 1997 cohort begins on October 1, 1996, the six-month period preceding FY 1997 is from April 1, 1996, through September 30, 1996. **As a result, the school's 12-month period must end no earlier than April 1, 1996, and no later than September 30, 1996. Therefore, the 12-month period must begin no earlier than April 2, 1995, and no later than October 1, 1995.**

FY 1997 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 the FY 1997 cohort default rate.



For example:

Acceptable: July **1**, 1995 to June **30**, 1996

Not Acceptable: June **30**, 1995 to July **1**, 1996

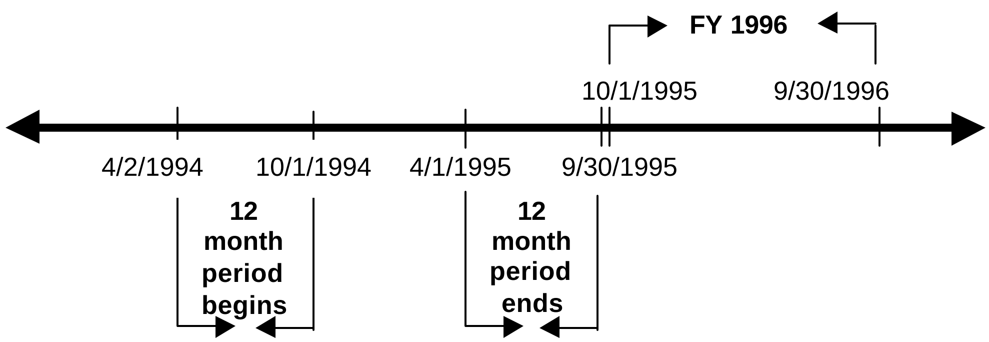
Note

June 30, 1995 to July 1, 1996 is not acceptable because it represents more than a 12-month period. An acceptable 12 month period would be June 30, 1995 through June 29, 1996.

If a school chooses to submit a participation rate index appeal based on its **FY 1996 official cohort default rate**, it must select a 12-month period 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

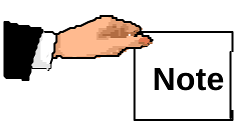
A school should use the following time line to assist it in determining an acceptable 12-month period associated with the FY 1996 cohort default rate.



For example:

Acceptable: June **20**, 1994 to June **19**, 1995

Not Acceptable: June **19**, 1994 to June **19**, 1995



June 19, 1994 through June 19, 1995 is unacceptable because it represents more than a 12-month period. An acceptable 12-month period would be June 19, 1994 through June 18, 1995.

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 school's exceptional mitigating circumstances 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. **Please note that the time frame to submit an exceptional mitigating circumstances appeal is not altered based on a school's request for assistance.**