equal to or less than 0.0375, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under §668.187(a)(2) that would be based on the official cohort default rate for that fiscal year.

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

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

§ 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)

[65 FR 65638, Nov. 1, 2000, as amended at 74 FR 55651, Oct. 28, 2009]

§ 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