

§ 85.115

sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 85.110(a). Sections 85.325, “Scope of debarment,” and 85.420, “Scope of suspension,” govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* In accordance with E.O. 12689 and section 2455 of Public Law 103-355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

(Authority: E.O.s 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327)

[53 FR 19191 and 19204, May 26, 1988, as amended at 60 FR 33042, 33056, June 26, 1995]

§ 85.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government’s protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

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(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(Authority: E.O.s 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327)

Subpart B—Effect of Action

§ 85.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law and subject to § 85.201, Treatment of title IV HEA participation, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment, suspension or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, ED shall not enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § 85.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law and subject to § 85.201, Treatment of title IV HEA participation, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 85.110(a)(1)(ii)) for the period of their exclusion. Such persons shall also be excluded from all contracts to provide federally-required audit services, regardless of contract amount.

(c) *Exceptions.* Debarment or suspension does not affect a person’s eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

(Authority: E.O.s 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327)

[60 FR 33041, 33056, June 26, 1995]

§ 85.201 Treatment of title IV, HEA participation.

(a)(1) The debarment of an educational institution, lender, or third party servicer under E.O. 12549 by an agency other than the Department pursuant to procedures described in paragraph (c) of this section terminates the eligibility of the entity to enter into transactions under any student financial assistance program authorized by title IV of the Higher Education Act of 1965, as amended, for the duration of the debarment.

(2)(i) The suspension of an educational institution, lender, or servicer under E.O. 12549 or pursuant to a proposed debarment under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4, by an agency other than the Department under procedures described in paragraph (c) of this section suspends the eligibility of the entity to enter into transactions under any student financial assistance program authorized by title IV of the Higher Education Act of 1965, as amended.

(ii) The suspension of title IV eligibility as a result of a suspension de-

scribed in paragraph (a)(2) of this section lasts for a period of 60 days, beginning on the later of the date of the decision of the suspending official of the other agency in response to an objection to the suspension or, if no objection to that suspension was raised, on the 35th day after the notice of suspension was issued by that agency. The suspension described here does not expire on the 60th day if the suspended entity and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the entity under 34 CFR part 668, subpart G, or part 682, subpart G, as applicable, prior to the 60th day.

(3) A transaction under a title IV, HEA program includes—

(i) The disbursement or delivery of funds provided under a title IV, HEA program to a student or borrower;

(ii) The certification by an educational institution of eligibility for a loan under a title IV, HEA program;

(iii) The acquisition of a loan made under a title IV, HEA program; and

(iv) The acquisition of any servicing responsibility for a grant, loan, or work study assistance under a title IV, HEA program.

(b)(1) The Secretary notifies the institution, lender, or servicer that has been debarred or suspended by another Federal agency whether the debarment or suspension takes effect in accordance with paragraph (a) of this section and states the effective date and duration of that action.

(2)(i) If the Secretary proposes to give effect to a suspension or debarment against an educational institution, lender, or third-party servicer that does not meet the standards in paragraph (c) of this section, the Secretary initiates a debarment or suspension proceeding under § 85.316 or § 85.414, respectively, against that entity.

(ii) The effective date of a debarment or suspension that takes effect under paragraph (a) of this section shall be 20 days after the date the notice is mailed. The Secretary gives effect to a suspension described in paragraph (a)(2) of this section only after the suspending official of the other agency has issued a decision in response to an objection to the suspension or, if no objection to that suspension was raised,