

§ 85.205

on the 35th day after the notice of suspension was issued by that agency. The suspension lasts for a period of 60 days, beginning on the effective date specified in the notice, unless the suspended entity and the Secretary agree to an extension or 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) If an institution, lender, or a third party servicer is suspended by ED or another Federal agency, the Secretary determines whether grounds exist for the initiation of an emergency action against the entity under 34 CFR part 668, subpart G, or part 682, subpart G, as applicable.

(c) An institution, lender, or third-party servicer that is debarred or suspended by another agency, or proposed for debarment under 48 CFR part 9, subpart 9.4 by another Federal agency, is debarred, terminated or suspended, as provided under this part, 34 CFR part 668, and 34 CFR part 682, as applicable, if that agency took this action under procedures that afforded the excluded party the following:

(1) Notice of the proposed action;

(2) An opportunity to submit and have considered evidence and argument in opposition to the proposed action;

(3) An opportunity to obtain a hearing on its objection—

(i) At which the agency bears the burden of persuasion, by a preponderance of the evidence;

(ii) Conducted by an impartial person who does not also exercise prosecutorial or investigative responsibilities with respect to that action;

(iii) At which the entity may, unless the hearing official determines that no genuine dispute of material fact exists, present testimony and secure the attendance of those agency witnesses with personal knowledge of material facts whose testimony the hearing official determines to be needed, in light of other available evidence and witnesses; and

(iv) Of which a transcribed record is available upon request; and

(4) A written decision stating findings of fact and conclusions of law on which the decision is rendered.

34 CFR Subtitle A (7–1–02 Edition)

(d) The title IV, HEA programs are those programs listed in 34 CFR 668.1(c).

(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 33056, June 26, 1995]

§ 85.205 Ineligible persons.

Persons who are ineligible, as defined in § 85.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

(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)

§ 85.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 85.315 are excluded in accordance with the terms of their settlements. ED shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

(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)

§ 85.215 Exception provision.

ED may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 85.200. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 85.505(a).

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

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

§ 85.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency and

except as provided in § 85.201, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntarily excluded, except as provided in § 85.215.

(c) An educational institution, lender, or servicer may continue a title IV, HEA transaction after the effective date of a debarment as determined under § 85.201 only as provided in 34 CFR 668.26, 682.702, or 668.94, as applicable.

(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 33057, June 26, 1995]

§ 85.225 Failure to adhere to restrictions.

(a) Except as permitted under § 85.215 or § 85.220, a participant shall not knowingly do business under a covered transaction with a person who is—

- (1) Debarred or suspended;
- (2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction (See appendix B of these regulations), unless it knows that the certification is erro-

neous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

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

Subpart C—Debarment

§ 85.300 General.

The debarring official may debar a person for any of the causes in § 85.305, using procedures established in §§ 85.310 through 85.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

(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)

§ 85.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 85.300 through 85.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State anti-trust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;