

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 85.215 or § 85.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 85.315 or of any settlement of a debarment or suspension action

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § 85.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

(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 54 FR 4950 and 4960, Jan. 31, 1989]

§ 85.310 Procedures.

ED shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 85.311 through 85.314.

(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)

§ 85.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

(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)

§ 85.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 85.305 for proposing debarment;

(d) Of the provisions of §§ 85.311 through 85.314, and any other ED procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

(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)

§ 85.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.