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DEPARTMENT OF EDUCATION

2 CFR Part 3485

34 CFR Parts 77, 85, 668, and 682

Docket ID: ED-2012-OS-0007

RIN 1890-AA17

Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: Department of Education.

ACTION: Final regulations and request for technical comments.

SUMMARY: The Secretary of the Department of Education (Department) establishes a new part in 2 CFR that adopts the Office of Management and Budget's (OMB's) guidance, as supplemented by this new part, as the Department's regulations for nonprocurement debarment and suspension. The Secretary removes regulations that contain the Department's current implementation of the Governmentwide common rule on nonprocurement debarment and suspension. The Secretary also amends regulations to correct citations as appropriate. The new part will serve the same purposes as, and is substantively identical to, the nonprocurement suspension and debarment common rule published in the Federal Register on November 26, 2003.

On August 31, 2005, OMB established interim final guidance that was substantively identical to the common rule and directed Federal agencies to adopt those guidelines as regulations. On November 15, 2006, OMB published final guidance.

These final regulations adopt the OMB guidance as regulations of the Department. In addition, the Department adds those requirements that describe how the Department implements suspension and debarment requirements in the context of Title IV of the Higher Education Act of 1965, as amended (HEA). This regulatory action is an administrative simplification that makes no substantive change in the Department's policy or procedures for nonprocurement debarment and suspension. We do not intend any substantive changes to the Department's debarment and suspension regulations. To be sure we achieved that objective, we ask for technical comments about whether the new regulations are substantively different than the existing regulations.

DATES: These final regulations are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

In order for us to consider your comments, we must receive them on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID and the term "Nonprocurement Debarment and Suspension" at the top of your comments.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."

- Postal Mail, Commercial Delivery, or Hand Delivery. If you mail or deliver your comments about the final regulations, address them to Alfreida Pettiford, U.S. Department of Education, 400 Maryland Avenue, SW., room 7100, Potomac Center Plaza, Washington, DC 20202-2550.

- Privacy Note: The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be

careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Alfreida Pettiford, U.S. Department of Education, 400 Maryland Avenue, SW., room 7100, Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-6110.

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SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding these final regulations to assist us in complying with the specific requirements of Executive Order 12866 and Executive Order 13563 and their overall requirement of reducing regulatory burden that might result from these final regulations.

During and after the comment period, you may inspect all public comments about this regulatory action by accessing Regulations.gov. You may also inspect the public comments in person at the Department of Education, 550 12<sup>th</sup>

Street, SW., room 7100, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Background:

In 2003, the Department joined with 32 other agencies to revise the nonprocurement debarment and suspension regulations that these agencies had adopted jointly in 1998. See 68 FR 66534 (November 26, 2003). The regulations that the agencies adopted were referred to as "the common rule."

On November 15, 2006, the Office of Management and Budget (OMB) issued final guidance for Governmentwide nonprocurement suspension and debarment (71 FR 66431). This guidance, located in 2 CFR part 180, is substantively the same as the common rule, but is published in a form

that each agency can adopt, thus eliminating the need for each agency to publish a separate version of the same rule. The guidance also makes it possible to update Governmentwide requirements without each agency having to re-promulgate its own rules.

The Department's current regulations on nonprocurement debarment and suspension are found in 34 CFR part 85. In accordance with OMB's guidance, these final regulations establish the Department's nonprocurement debarment and suspension regulations in subtitle B of title 2 of the CFR. The new 2 CFR part 3485 adopts the OMB guidelines with the same additions and clarifications that the Department made to the Governmentwide common rule on this subject issued on November 26, 2003 (68 FR 66609). The substance of the Department's nonprocurement debarment and suspension regulations is unchanged.

These final regulations remove 34 CFR part 85 from the CFR, which is the current location for the Department's nonprocurement debarment and suspension regulations. We also amend the definition of EDGAR in 34 CFR part 77 to remove the reference to part 85.

Finally, these final regulations amend 34 CFR parts 668 and 682 to update cross references to the debarment and suspension regulations in 2 CFR parts 180 and 3485.

Waiver of Rulemaking:

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule.

However, we are waiving the notice-and-comment rulemaking requirements under the APA. Section 553(b) of the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The Secretary has determined that it is unnecessary to conduct notice-and-comment rulemaking because these regulatory amendments to 2 CFR are an administrative simplification that do not make substantive changes to the Department's policy or procedures for nonprocurement debarment and suspension. The Department is therefore publishing the revisions as final regulations and not as proposed regulations.

Nonetheless, because we intend the new part to make no changes in current policies and procedures, we specifically invite comments on any unintended changes in substantive content that the new 2 CFR part 3485 would make relative to

the November 2003 common rule published by the Department on November 26, 2003 (68 FR 66534, 66609 - 66615).

If the Department receives comments that result in any changes to the final regulation, we will make timely publication of those changes in the Federal Register.

#### Adoption of OMB Guidance

We add §3485.12 to adopt the OMB guidance on suspension and debarment. Section 3485.12(a) adopts subparts A through I of the guidance in 2 CFR part 180 as a regulation of the Department.

The Department's current debarment and suspension regulations in 34 CFR part 85 contain additional requirements that must be met to make debarment and suspension actions taken by the Department or other agencies apply to participants in the programs authorized under title IV of the HEA. These final regulations place those same modifications in 2 CFR part 3485 so that debarment and suspension actions can be applied to participants in title IV HEA programs. In each section of these final regulations that adopt a requirement in the OMB guidance that must be modified, the section restates the standard OMB guidance and adds one or more paragraphs that contain the needed changes.

#### General Education Provisions Act Requirements

Section 437(b) of the General Education Provisions Act (GEPA) requires that immediately following each substantive provision of the Department's regulations, the Department must provide the citations to the particular section or sections of statutory law or other legal authority on which that provision is based. The substantive provision in these final regulations that adopts the guidance in 2 CFR part 180 is 2 CFR 3485.12. Because the authority citations for all of the sections adopted by the Department are the same, the Department provides the authority citation for all of the adopted guidance in paragraph (d) of §3485.12. Other sections in part 3485 that supplement the guidance in part 180 or relate to the effectiveness of debarment and suspension actions against participants in the title IV, HEA programs list the authority citations for those sections at the end of each of those sections.

Executive Orders 12866 and 13563

OMB has determined these regulations to be a non-significant regulatory action for the purposes of Executive Order 12866. We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions. Finally, we have reviewed these regulations under Executive Order 13563, which supplements and

explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. As this regulatory action is a recodification of existing regulations without substantive change, the potential costs associated with this regulatory action are only those that result from existing statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Regulatory Flexibility Act Certification:

The Secretary certifies that this regulatory action will not have a significant adverse impact on a substantial number of small entities. The Secretary makes this certification because the action recodifies existing regulations without substantive change.

Paperwork Reduction Act of 1995:

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Federalism (Executive Order 13132):

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It

will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Assessment of Educational Impact:

In accordance with section 444 of the General Education Provisions Act (GEPA), 20 U.S.C. 1221e-4, when the Department published the notice of proposed rulemaking for the debarment and suspension common rule on January 23, 2002 (67 FR 3272 and 3328), we requested comments on whether those proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

We did not receive any comments in response to that request and, based on our own review, have determined that these final regulations do not require such a transmission of information.

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(Catalog of Federal Domestic Assistance Number does not apply.)

#### List of Subjects

##### 2 CFR Part 3485

Administrative practice and procedure, Debarment and suspension, Grant programs, Loan programs, Reporting and recordkeeping requirements.

##### 34 CFR Part 77

Definitions, Education Department, Grant programs—education.

##### 34 CFR Part 85

Administrative practice and procedure, Debarment and suspension, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

##### 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: March 22, 2012

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Arne Duncan,  
Secretary of Education.

For the reasons discussed in the preamble, under the authority of 20 U.S.C. 1221e-3 and 3474, the Secretary amends Title 2, subtitle B, and Title 34, parts 77, 85, 668, and 682 of the Code of Federal Regulations as follows:

Title 2--Grants and Agreements

1. Add Chapter XXXIV, consisting of part 3485, to Subtitle B of Title 2 to read as follows:

Chapter XXXIV – Department of Education

PART 3485--NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

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3485.995 Principal.

3485.1016 Title IV, HEA participant.

3485.1017 Title IV, HEA program.

3485.1018 Title IV, HEA transaction.

Subpart J [Reserved]

Appendix A to Part 3485--Covered Transactions

Authority: E.O. 12549 (3 CFR 1986 Comp., p.189); E.O. 12689 (3 CFR 1989 Comp., p.235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474, unless otherwise noted.

§3485.12 What does this part do?

(a) (1) The Department of Education (the "Department" or "ED") adopts subparts A through I of the Office of Management and Budget guidance in 2 CFR 180. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department. This part satisfies the requirements in section 3 of Executive Order 12549, "Debarment and Suspension" (3 CFR 1986 Comp., p. 189), Executive Order 12689, "Debarment and Suspension" (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

(2) The table of contents for this part contains only those sections in part 3485 that include supplements to the guidance in part 180 and new sections needed to implement the guidance for the Department's programs. In those sections of the OMB guidance that are supplemented, the section in part 3485 includes both the text of the OMB

guidance that is not affected by the change and any additional paragraphs that need to be added to the OMB guidance. For example, §180.220 of this title contains only paragraphs (a) and (b). The text of §3485.220, which supplements §180.220 to extend lower-tier transactions to certain transactions below the primary tier, includes both the text of paragraph (a) and (b) of §180.220 and the text of added paragraph (c).

(3) In those sections in part 180 that do not have paragraph designations and that the Department supplements, the section in this part implementing the OMB guidance designates the undesignated paragraph from part 180 as paragraph (a) and the first supplemental paragraph as paragraph (b). For example, 2 CFR 180.330 includes an undesignated lead in paragraph and two subparagraphs designated (a) and (b). In §3485.330, the undesignated paragraph in 2 CFR 180.330 is designated paragraph (a) and the two subparagraphs are designated paragraphs (1) and (2). The added paragraphs are designated paragraph (b) and (c).

(b) The authority for all the provisions in 2 CFR part 180 as adopted in this part is listed as follows. Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-

355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474, unless otherwise noted.)

§3485.22 Does this part apply to me?

This part applies to you if you are--

(a) A participant or principal in a "covered transaction" (see subpart B of this part and the definition of "nonprocurement transaction" in §180.970 of this title).

(b) A respondent in a suspension or debarment action of the Department.

(c) An ED deciding official; or

(d) An ED officer authorized to enter into any type of nonprocurement transaction that is a covered transaction.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

§3485.32 What policies and procedures must I follow?

The Department's policies and procedures that you must follow are the policies and procedures specified in this

part and in Subparts A through I of 2 CFR part 180. The contracts that are covered transactions, for example, are specified in §3485.220. Section 180.205 of this title does not require supplementation, so it is not included in the table of contents for this part and is not separately stated in this part.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

#### Subpart A—General

#### §3485.137 May the Department grant an exception to let an excluded person participate in a covered transaction?

(a) Yes, the Secretary delegates to the ED Deciding Official the authority under this section to grant an exception permitting an excluded person to participate in a particular covered transaction.

(b) If the ED Deciding Official grants an exception, the exception must be in writing and state the reason(s) for deviating from the Governmentwide policy in Executive Order 12549.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-

355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

Subpart B—Covered Transactions

§3485.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part--

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions.

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under §180.210 of this title, and the amount of the contract is expected to equal or exceed \$25,000.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the Appendix To Part 3485 - Covered Transactions.

(3) The contract is for Federally-required audit services.

(4) The contract is to perform services as a third party servicer in connection with a title IV, HEA program.

(c) In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by ED under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the ED nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in Appendix A to Part 3485 - Covered Transactions).

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

Subpart C—Responsibilities of Participants Regarding  
Transactions

§3485.310 What must I do if a Federal agency excludes a  
person with whom I am already doing business in a covered  
transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless another Federal agency responsible for the transaction grants an exception under §180.135 of this title or ED grants an exception under §3485.137.

(c) If you are a title IV, HEA participant, you may not continue a title IV, HEA transaction with an excluded person after the effective date of the exclusion unless permitted by 34 CFR 668.26, 682.702, or 668.94, as applicable.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

§3485.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless another Federal agency responsible for the transaction grants an exception under §180.135 of this title or, if ED took the action, an ED deciding official grants an exception under §3485.137.

(c) If you are a title IV, HEA participant--

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded

person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

§3485.330 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

(a) Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to--

(1) Comply with this subpart as a condition of participation in the transaction. You must do so using the method specified in paragraph (b) of this section; and

(2) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

(b) To communicate the requirements in this part to a participant, you must include a term or condition in the transaction that requires the participant's compliance with part 180, subpart C, of this title, as adopted at §3485.12, and requires the participant to include a similar term or condition in lower-tier covered transactions.

(c) The failure of a participant to include a requirement to comply with Subpart C of 2 CFR part 180 in the agreement with a lower tier participant does not affect the lower tier participant's responsibilities under this part.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

Subpart D—Responsibilities of the Department's Officials  
Regarding Transactions

§3485.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as a Federal agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was

excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under §3485.137.

(c) Title IV, HEA transactions. If you are a title IV, HEA participant--

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-

355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

§3485.437 What method do I use to communicate to a participant the requirements described in §180.435 of this title?

To communicate the requirements in this part to a participant, you must include a term or condition in the transaction that requires the participant's compliance with part 180, subpart C, of this title, as adopted at §3485.12 and requires the participant to include a similar term or condition in lower-tier covered transactions.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

Subpart E—[Reserved]

Subpart F—General Principles Relating to Suspension and Debarment Actions

§3485.611 What procedures do we use for a suspension or debarment action involving a title IV, HEA transaction?

(a) If we suspend a title IV, HEA participant under Executive Order 12549, we use the following procedures to ensure that the suspension prevents participation in title IV, HEA transactions:

(1) The notification procedures in §180.715 of this title.

(2) Instead of the procedures in §§180.720 through 180.760 of this title, the procedures in 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, as applicable.

(3) In addition to the findings and conclusions required by 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, the suspending official, and, on appeal, the Secretary determines whether there is sufficient cause for suspension as explained in §180.700 of this title.

(b) If we debar a title IV, HEA participant under E.O. 12549, we use the following procedures to ensure that the debarment also precludes participation in title IV, HEA transactions:

(1) The notification procedures in §§180.805 and 180.870 of this title.

(2) Instead of the procedures in §§180.810 through 180.885 of this title, the procedures in 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, as applicable.

(3) On appeal from a decision debarring a title IV, HEA participant, we issue a final decision after we receive any written materials from the parties.

(4) In addition to the findings and conclusions required by 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, the debarring official, and, on appeal, the Secretary determines whether there is sufficient cause for debarment as explained in §180.800 of this title.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

§3485.612 When does an exclusion by another agency affect the ability of the excluded person to participate in a title IV, HEA transaction?

(a) If a title IV, HEA participant is debarred by another agency under E.O. 12549, using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the debarment.

(b) (1) If a title IV, HEA participant is suspended by another agency under E.O. 12549 or under a proposed debarment under the Federal Acquisition Regulation (FAR) (48 CFR part 9, subpart 9.4), using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the suspension.

(2)(i) The suspension of title IV, HEA eligibility as a result of suspension by another agency lasts for at least 60 days.

(ii) If the excluded party does not object to the suspension, the 60-day period begins on the 35th day after that agency issues the notice of suspension.

(iii) If the excluded party objects to the suspension, the 60-day period begins on the date of the decision of the suspending official.

(3) The suspension of title IV, HEA eligibility does not end on the 60th day if--

(i) The excluded party agrees to an extension; or

(ii) Before the 60th day we begin a limitation or termination proceeding against the excluded party under 34 CFR part 668, subpart G, or part 682, subpart D or G.

(c)(1) If a title IV, HEA participant is debarred or suspended by another Federal agency--

(i) We notify the participant whether the debarment or suspension prohibits participation in title IV, HEA transactions; and

(ii) If participation is prohibited, we state the effective date and duration of the prohibition.

(2) If a debarment or suspension by another agency prohibits participation in title IV, HEA transactions, that

prohibition takes effect 20 days after we mail notice of our action.

(3) If the Department or another Federal agency suspends a title IV, HEA participant, we determine whether grounds exist for an emergency action against the participant under 34 CFR part 668, subpart G, or part 682, subpart D or G, as applicable.

(4) We use the procedures in §3485.611 to exclude a title IV, HEA participant excluded by another Federal agency using procedures that did not meet the standards in paragraph (d) of this section.

(d) If a title IV, HEA participant is excluded by another agency, we debar, terminate, or suspend the participant--as provided under this part, 34 CFR part 668, or 34 CFR part 682, as applicable--if that agency followed procedures that gave the excluded party--

(1) Notice of the proposed action;

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

(3) An opportunity to present its objection at a hearing--

(i) At which the agency has the burden of persuasion by a preponderance of the evidence that there is cause for the exclusion; and

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

(4) An opportunity to present witness testimony, unless the hearing official finds that there is no genuine dispute about a material fact;

(5) An opportunity to have agency witnesses with personal knowledge of material facts in genuine dispute testify about those facts, if the hearing official determines their testimony to be needed, in light of other available evidence and witnesses; and

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

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

#### Subpart G—Suspension

#### §3485.711 When does a suspension affect title IV, HEA transactions?

(a) A suspension under §3485.611(a) takes effect immediately if the Secretary takes an emergency action under 34 CFR part 668, subpart G, or 34 CFR part 682,

subpart D or G, at the same time the Secretary issues the suspension.

(b) (1) Except as provided under paragraph (a) of this section, a suspension under §3485.611(a) takes effect 20 days after those procedures are complete.

(2) If the respondent appeals the suspension to the Secretary before the expiration of the 20 days under paragraph (b) (1) of this section, the suspension takes effect when the respondent receives the Secretary's decision.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

Subpart H—Debarment

§3485.811 When does a debarment affect title IV, HEA transactions?

(a) A debarment under §3485.611(b) takes effect 30 days after those procedures are complete.

(b) If the respondent appeals the debarment to the Secretary before the expiration of the 30 days under paragraph (a) of this section, the debarment takes effect when the respondent receives the Secretary's decision.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

Subpart I—Definitions

§3485.937 ED Deciding Official.

The ED Deciding Official is an officer of the Department who has delegated authority under the procedures of the Department of Education to decide whether to affirm a suspension or enter a debarment.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

§3485.952 HEA.

HEA means the Higher Education Act of 1965, as amended.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

§ 3485.995 Principal.

Principal means--

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who--

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or

(3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

(c) For the purposes of Department of Education title IV, HEA transactions--

(1) A third-party servicer, as defined in 34 CFR 668.2 or 682.200; or

(2) Any person who provides services described in 34 CFR 668.2 or 682.200 to a title IV, HEA participant, whether or not that person is retained or paid directly by the title IV, HEA participant.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p.189); E.O. 12689 (3 CFR 1989 Comp., p.235); sec. 2455, Pub. L. 103-

355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

§3485.1016 Title IV, HEA participant.

A title IV, HEA participant is--

(a) An institution described in 34 CFR 600.4, 600.5, or 600.6 that provides postsecondary education; or

(b) A lender, third-party servicer, or guaranty agency, as those terms are defined in 34 CFR 668.2 or 682.200.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p.189); E.O. 12689 (3 CFR 1989 Comp., p.235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

§3485.1017 Title IV, HEA program.

A title IV, HEA program includes any program listed in 34 CFR 668.1(c).

(Authority: E.O. 12549 (3 CFR 1986 Comp., p.189); E.O. 12689 (3 CFR 1989 Comp., p.235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

§3485.1018 Title IV, HEA transaction.

A title IV, HEA transaction includes--

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

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

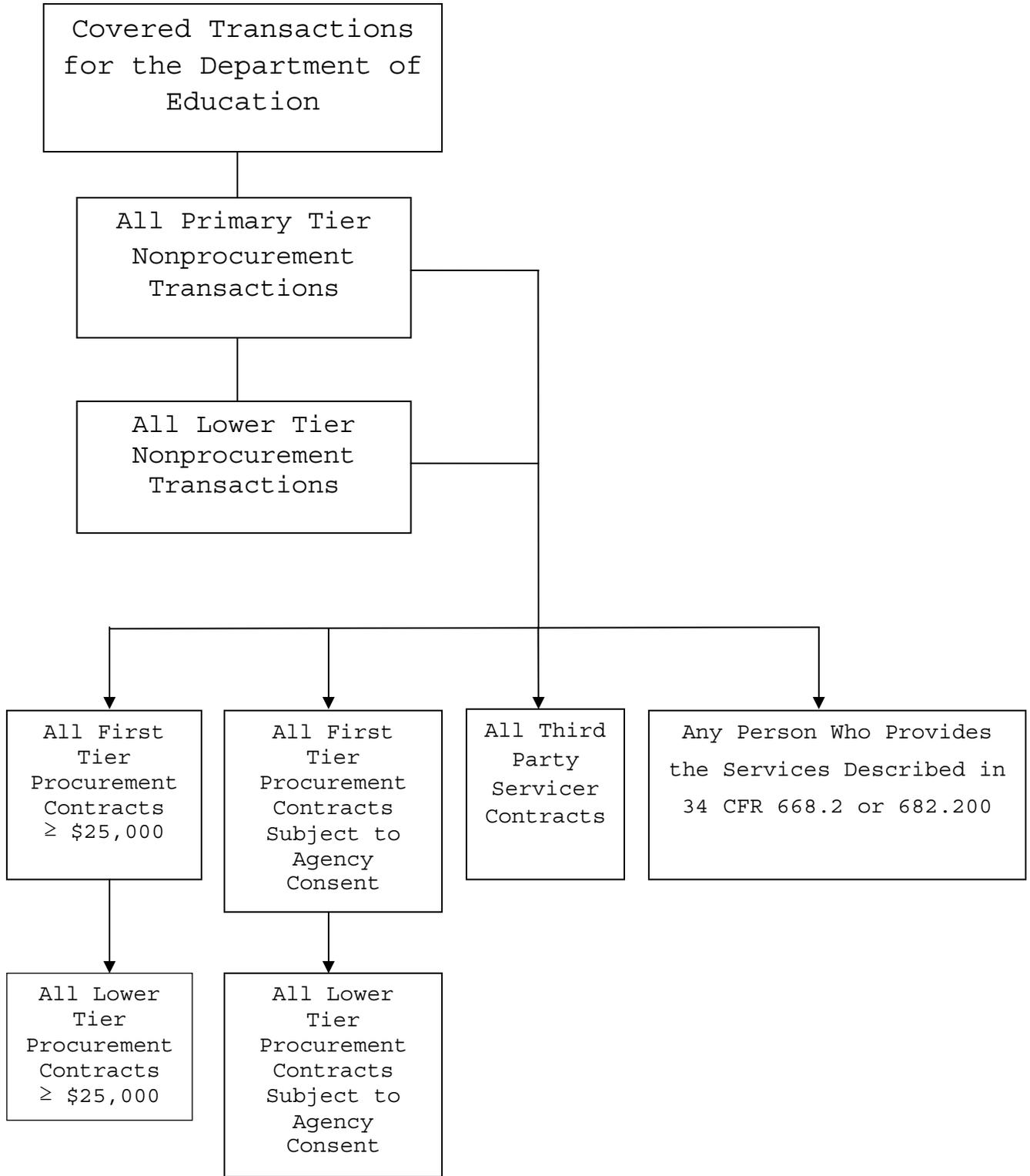
(c) Guaranteeing a loan made under a title IV, HEA program; and

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

(Authority: E.O. 12549 (3 CFR 1986 Comp., p.189); E.O. 12689 (3 CFR 1989 Comp., p.235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

Subpart J - [Reserved]

Appendix A to Part 3485--Covered Transactions



Title 34- EDUCATION

PART 77-DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

2. The authority citation for part 77 is added to read as follows:

Authority: 20 U.S.C. 1221e-3, 2831(a), 2974(b), and 3474.

3. Section 77.1(c) is amended by revising the definition of "EDGAR" to read as follows:

§77.1 Definitions that apply to all Department programs.

\* \* \* \* \*

(c) \* \* \*

EDGAR means the Education Department General Administrative Regulations (34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99).

\* \* \* \* \*

Part 85 [Removed]

4. Remove 34 CFR part 85.

PART 668--STUDENT ASSISTANCE GENERAL PROVISIONS

5. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

6. Section 668.16 is amended by revising paragraph (k) to read as follows:

§668.16 Standards of administrative capability.

\* \* \* \* \*

(k) Is not, and does not have any principal or affiliate of the institution (as those terms are defined in 2 CFR parts 180 and 3485) that is--

(1) Debarred or suspended under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(2) Engaging in any activity that is a cause under 2 CFR 180.700 or 180.800, as adopted at 2 CFR 3485.12, for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4;

\* \* \* \* \*

§668.82 [Amended]

7. Section 668.82 is amended by:

a. In paragraph (e)(1)(i)(B), removing the words "Cause exists under 34 CFR 85.700 or 85.800" and adding, in their place, the words "Cause exists under 2 CFR 180.700 or 180.800, as both those sections are adopted at 2 CFR 3485.12,".

b. In paragraph (f)(1) introductory text, removing the words "under procedures described in 34 CFR 85.612(d)" and adding, in their place, the words "under the procedures described in 2 CFR 3485.612(d)".

c. In paragraph (f)(2)(i) introductory text, removing the words "under procedures described in 34 CFR 85.612(d)" and, adding in their place, the words "under the procedures described in 2 CFR 3485.612(d)".

d. In paragraph (f)(2)(ii) introductory text, removing the words "under 34 CFR 85.201(b)" and adding, in their place, "under 2 CFR 3485.612(c)".

PART 682--FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

8. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

§682.200 [Amended]

9. In §682.200, paragraph (b), the definition of "Lender" is amended by:

a. In paragraph (6)(i), removing the words "(as those terms are defined in 34 CFR part 85)" and adding, in their place, the words "(as those terms are defined in 2 CFR parts 180 and 3485)".

b. In paragraph (6)(ii), removing the words "as defined in 34 CFR part 85" and adding, in their place, the words "as defined in 2 CFR parts 180 and 3485".

§682.416 [Amended]

10. Section 682.416(d)(1)(ii)(B) is amended by removing the words "cause under 34 CFR 85.700 or 85.800" and adding, in their place, the words "cause under 2 CFR 180.700 or 180.800, as those sections are adopted at 2 CFR 3485.12".

§682.706 [Amended]

11. Section 682.706(b)(7) is amended by removing the words "meet the standards described in 34 CFR 85.201(c)" and adding, in their place, the words "meet the standards described in 2 CFR 3485.612(d)".

[FR Doc. 2012-7358 Filed 03/27/2012 at 8:45 am; Publication Date: 03/28/2012]