

1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966—1970, p. 939.

■ 2. Section 1.205 is revised to read as follows:

§ 1.205 Applicability to grants and other funding instruments.

The types of instruments that are subject to the guidance in this subtitle vary from one portion of the guidance to another (note that each part identifies the types of instruments to which it applies). All portions of the guidance apply to grants and cooperative agreements, some portions also apply to other types of financial assistance or

nonprocurement instruments, and some portions also apply to procurement contracts. For example, the:

(a) Guidance on debarment and suspension in part 180 of this subtitle applies broadly to all financial assistance and other nonprocurement transactions, and not just to grants and cooperative agreements.

(b) Cost principles in parts 220, 225 and 230 of this subtitle apply to procurement contracts, as well as to financial assistance, although those principles are implemented for procurement contracts through the Federal Acquisition Regulation in Title

48 of the CFR, rather than through Federal agency regulations on grants and agreements in this title.

■ 3. Section 1.215 is revised to read as follows:

§ 1.215 Relationship to previous issuances.

Although some of the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR. Specifically:

Guidance in . . .	On . . .	Previously was in . . .
(a) Chapter I, part 180	Nonprocurement debarment and suspension	OMB guidance that conforms with the government-wide common rule (see 60 FR 33036, June 26, 1995). OMB Circular A-110.
(b) Chapter II, part 215	Administrative requirements for grants and agreements.	OMB Circular A-21. OMB Circular A-87.
(c) Chapter II, part 220	Cost principles for educational institutions	OMB Circular A-122.
(d) Chapter II, part 225	Cost principles for State, local, and Indian tribal governments.	
(e) Chapter II, part 230	Cost principles for non-profit organizations	
(f) [Reserved].		

[FR Doc. 05-16646 Filed 8-30-05; 8:45 am]
BILLING CODE 3110-01-P

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 180 and 215

Guidance for Governmentwide Debarment and Suspension (Nonprocurement)

AGENCY: Office of Management and Budget.

ACTION: Interim final guidance.

SUMMARY: The Office of Management and Budget (OMB) is updating its guidance on nonprocurement debarment and suspension to conform to the common rule that 33 Federal agencies published on November 26, 2003. The agencies issued that common rule after resolving public comments received in response to a Notice of Proposed Rulemaking. In updating the guidance, the OMB is making two improvements to streamline the policy framework in this area.

First, we are issuing the guidance in a format that is suitable for Federal agency adoption. Agency adoption of the guidance will reduce the volume of Federal regulations on nonprocurement debarment and suspension, making it easier for the affected public to use, and easier and less expensive for the Federal Government to maintain.

Second, we are publishing the guidance in the recently established Title 2 of the Code of Federal Regulations (2 CFR). Locating it in 2 CFR will make it easier to find. Also, the OMB guidance will be co-located in the same title of the CFR as Federal agencies' implementing regulations that adopt the guidance. That is, consistent with the framework put in place when OMB established Title 2, each Federal agency will issue its implementing regulation in its chapter in Subtitle B of 2 CFR. This notice also makes minor changes to the previously issued 2 CFR part 215, to conform that part with the guidance published today.

DATES: The effective date for this interim final guidance is September 30, 2005. To be considered in preparation of the final guidance, comments on the interim final guidance must be received by October 31, 2005.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: ephillip@omb.eop.gov. Please include "OMB suspension and debarment guidance" in the subject line of your e-mail message. Also, please include the full body of your comments in the text of the electronic message, as

well as in an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395-3952.

Comments may be mailed to Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395-3053 (direct) or (202) 395-3993 (main office) and e-mail: ephillip@omb.eop.gov.

SUPPLEMENTARY INFORMATION: *Background.* The guidance updated by this notice originated with Executive Order (E.O.) 12549, "Debarment and Suspension." That Executive order, issued in 1986, gave government-wide effect to each agency's nonprocurement debarment and suspension actions. Section 6 of the Executive order authorized OMB to issue guidance on nonprocurement debarment and suspension. Section 3 directed agencies to issue implementing regulations consistent with the guidance.

The guidance has been revised twice since OMB first issued it in 1987 [52 FR 20360]. In 1988, when the agencies finalized a common rule to implement OMB's 1987 guidance, OMB revised its

guidance [53 FR 19160] to conform with the agencies' rule. The second revision of the OMB guidance occurred in 1995 [60 FR 33036]. That revision conformed the guidance with the Federal agencies' update of the common rule to give reciprocal government-wide effect to both procurement and nonprocurement debarment and suspension actions, an update which implemented E.O. 12689 and section 2455 of the Federal Acquisition Streamlining Act.

Today's notice conforms the guidance with the Federal agencies' November 26, 2003, update to the common rule [68 FR 66534], but does so in a way that will greatly improve the relationship between OMB's guidance and Federal agencies' implementing regulations. In the recent update, the Federal agencies recast the common rule in plain language and made other needed improvements. OMB did not issue a notice at that time to amend the guidance because we were considering two improvements to the approach we had used in the past.

Adoptable guidance. The first improvement to our past approach is to publish the full text of the OMB guidance in a form suitable for agency adoption. The 1988 and 1995 notices amended the guidance to conform with updates to the common rule but the guidance was not published anywhere in full text as an OMB issuance. Thus, the full text of policies and procedures on nonprocurement debarment and suspension had to appear in each of 33 Federal agencies' separate codifications of the common rule. Today's notice, by publishing the OMB guidance in a form that Federal agencies can adopt, eliminates the need for each agency to repeat the full text in its own implementing regulation.

This fundamentally different approach of adoptable guidance has three major advantages over the previous approach of having each agency codify the full-text of a common rule. Specifically, the new approach will:

- Make it easier for recipients of covered transactions or respondents in suspension or debarment actions to discern agency-to-agency variations from the common rule language. When agencies published the common rule on nonprocurement debarment and suspension, each agency was allowed to have some agency-specific additions or exceptions to the government-wide language. Because each agency's variations are embedded in and integrated with the agency's publication of the full-text of the rule, it is difficult for a recipient or respondent that does business with multiple Federal agencies

to identify the agency-to-agency variations in the language. To do so, it either must locate the original **Federal Register** notice in which the agencies published the common rule or carefully read and compare the agencies' separate codifications of the rule. With the new approach, however, each agency's implementation of the guidelines will be a brief rule that: (1) Adopts the guidance, giving it regulatory effect for that agency's activities; and (2) states any agency-specific additions, clarifications, and exceptions to the government-wide policies and procedures contained in the guidance.

- Reduce the volume of Federal regulations in the CFR. The 33 individual agencies' separate codifications of the full text of the common rule currently require about 750 pages in each paper copy of each edition of the Code of Federal Regulations (*i.e.*, about 750,000 pages for every 1,000 paper copies of the CFR that are produced). We estimate that the new approach will reduce this by about six-fold, which reduces both burdens on the public and costs of maintaining the regulations.

- Streamline the process for updating the government-wide requirements on nonprocurement debarment and suspension. The process for updating a common rule is exceedingly complex and time consuming. The 33 Federal agencies must process the same rulemaking document before it can be sent to the OMB and published in the **Federal Register**, which can create long delays in updating the rule. With the new approach, OMB will publish proposed changes to the guidance in the **Federal Register**, with an opportunity for the public to comment. Once agencies have issued their regulations adopting the guidance, the process for future updates will be complete when OMB issues the final guidance.

Agencies will not need to amend their regulations adopting the guidance.

Publication of the guidance in 2 CFR. The second improvement to our past approach is to locate the OMB guidance in Subtitle A of the new Title 2 of the CFR, "Grants and Agreements," that OMB established on May 11, 2004 [69 FR 26276]. Publishing the guidance in the CFR makes it very accessible to the affected public and, when agencies issue their new regulations adopting the guidance, will co-locate the OMB guidance in the same CFR title with the agency rules. We also will maintain a copy of the current guidance at the OMB Web site (<http://www.whitehouse.gov/omb/circulars>), for the benefit of individuals who would prefer to access it there.

Structure and content of the guidance. Our intent is to issue OMB guidance that is substantively unchanged from the common rule issued by the Federal agencies in November 2003. We modified some of the structure and language of the common rule, however, to create a part that reads properly as OMB guidance to agencies rather than an agency regulation.

The most significant structural change is in Sections 180.05 to 180.45 of the document, which precede subpart A. The primary purpose of these sections is to provide OMB guidance to Federal agencies on how to use the guidance in the remainder of the part. Sections 180.20 through 180.35, for example, tell Federal agencies that they must issue regulations to implement the guidance, identify some required and some optional content for those regulations, and specify where and when the agencies must issue the regulations. Most of these early sections have no counterparts in the November 2003 common rule, since it was designed to be an agency rule rather than OMB guidance.

Following section 180.45, in subparts A through I of the part, is the guidance that an agency would adopt to specify its policies and procedures for nonprocurement debarment and suspension. Several sections in subpart A of the guidance have different section numbers than their counterpart sections in the common rule. The changed section numbers are due to the inclusion of the OMB guidance in sections 180.05 through 180.45, which displaced and forced renumbering of sections __.25 to __.75 that preceded subpart A in the November 2003 common rule.

The only other portion of the guidance where section numbers vary from the November 2003 common rule is subpart I, which contains definitions of terms. We replaced the defined term "agency" in the common rule with the term "Federal agency" in the OMB guidelines, which forced a reorganization of the definition sections in subpart I to keep the defined terms in alphabetical order.

In one section of subpart A, we made a wording change to clarify the substance. Section __.135 of the November 2003 common rule stated that an agency, given an appropriate cause for debarment, could take an action to exclude "any person who has been involved, is currently involved, or may reasonably be expected to be involved in a covered transaction." The corresponding language in the OMB guidelines, which is in section 180.150,

is “any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.” The revised language is intended to be more precise than the somewhat vague wording of the common rule.

One language change throughout the guidelines is use of the term “Federal agency” where agency responsibilities, authorities, and procedures are described. The common rule used the personal pronoun “we,” which was appropriate in an agency rule but not in OMB guidance.

We also dropped the references in sections 180.530 and 180.945 of the guidance (which had the same section numbers in the common rule) to the paper version of the list of excluded parties maintained by the General Services Administration (GSA). Section 180.530 of the November 2003 common rule stated that Federal agencies anticipated that the paper version of the list would be discontinued. The paper version no longer is available, so we deleted the references to it.

Other minor wording changes throughout subparts A through I are to make the document read properly as OMB guidance. We have posted a source and destination table at the OMB Web site that shows which section in the OMB guidance corresponds to each section in the common rule and summarizes the more significant changes, none of which we believe to be substantive change.

Invitation to comment. Our intent is to preserve in the OMB guidance the substantive content of the November 2003 common rule. Given that the agencies published the final common rule after an opportunity for public comment, we are publishing these guidelines as interim final guidelines, rather than proposing the substance for comment again. For future updates to this guidance, we will propose substantive changes with an opportunity for public comment, in accordance with § 180.40 of the guidance. In soliciting comments on the interim final guidance, we are not seeking to revisit substantive issues raised by those earlier comments and resolved by the agencies during preparation of their final rule. However, we invite comments on any unintended changes we have made in the guidance relative to the November 2003 common rule.

Next steps. We will finalize the guidance after resolving any comments received on the interim final version published in this notice. Each Federal agency that is a signatory to the common rule on nonprocurement

debarment and suspension will: (1) Establish its chapter in Subtitle B of 2 CFR, consistent with the structure established for that title; (2) issue in that chapter of 2 CFR its brief rule adopting the OMB guidance and stating any additions, clarifications, or exceptions to the policies and procedures contained in the guidance; and (3) remove the November 2003 common rule from its own CFR title. We expect to complete the process in calendar year 2006.

Conforming 2 CFR part 215 (OMB Circular A-110). We also are making the following two changes to 2 CFR part 215, in order to conform the OMB guidance in that part with the guidance on nonprocurement debarment and suspension:

- We dropped the reference in § 215.13 to the common rule on nonprocurement debarment and suspension, in anticipation of agencies adoption of the guidance and removal of the common rule from their titles in the CFR.

- We revised Paragraph 8 in Appendix A to 2 CFR part 215, to correct: (1) The name of the Excluded Parties List System; and (2) the threshold for coverage of procurement contracts awarded by recipients of Federal financial assistance awards.

List of Subjects

2 CFR Part 180

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

2 CFR Part 215

Accounting, Colleges and Universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: August 8, 2005.

Joshua B. Bolten,
Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR, Subtitle A, as follows:

Chapter I—Office of Management and Budget Governmentwide Guidance for Grants and Agreements

- 1. A heading is added to chapter I to read as set forth above.
- 2. Part 180 is added to Chapter I, to read as follows:

PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 180.5 What does this part do?
- 180.10 How is this part organized?
- 180.15 To whom do these guidelines apply?
- 180.20 What must a Federal agency do to implement these guidelines?
- 180.25 What must a Federal agency address in its implementation of these guidelines?
- 180.30 Where does a Federal agency implement these guidelines?
- 180.35 By when must a Federal agency implement these guidelines?
- 180.40 How are these guidelines maintained?
- 180.45 Do these guidelines cover persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart A—General

- 180.100 How are subparts A through I organized?
- 180.105 How is this part written?
- 180.110 Do terms in this part have special meanings?
- 180.115 What do subparts A through I of this part do?
- 180.120 Do subparts A through I of this part apply to me?
- 180.125 What is the purpose of the nonprocurement debarment and suspension system?
- 180.130 How does an exclusion restrict a person's involvement in covered transactions?
- 180.135 May a Federal agency grant an exception to let an excluded person participate in a covered transaction?
- 180.140 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
- 180.145 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
- 180.150 Against whom may a Federal agency take an exclusion action?
- 180.155 How do I know if a person is excluded?

Subpart B—Covered Transactions

- 180.200 What is a covered transaction?
- 180.205 Why is it important to know if a particular transaction is a covered transaction?
- 180.210 Which nonprocurement transactions are covered transactions?
- 180.215 Which nonprocurement transactions are not covered transactions?
- 180.220 Are any procurement contracts included as covered transactions?
- 180.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

- 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 180.305 May I enter into a covered transaction with an excluded or disqualified person?
- 180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 180.315 May I use the services of an excluded person as a principal under a covered transaction?
- 180.320 Must I verify that principals of my covered transactions are eligible to participate?
- 180.325 What happens if I do business with an excluded person in a covered transaction?
- 180.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

- 180.335 What information must I provide before entering into a covered transaction with a Federal agency?
- 180.340 If I disclose unfavorable information required under § 180.335 will I be prevented from participating in the transaction?
- 180.345 What happens if I fail to disclose information required under § 180.335?
- 180.350 What must I do if I learn of information required under § 180.335 after entering into a covered transaction with a Federal agency?

Disclosing Information—Lower Tier Participants

- 180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 180.360 What happens if I fail to disclose information required under § 180.355?
- 180.365 What must I do if I learn of information required under § 180.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

- 180.400 May I enter into a transaction with an excluded or disqualified person?
- 180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 180.410 May I approve a participant's use of the services of an excluded person?
- 180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 180.425 When do I check to see if a person is excluded or disqualified?
- 180.430 How do I check to see if a person is excluded or disqualified?
- 180.435 What must I require of a primary tier participant?

- 180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 180.445 What action may I take if a primary tier participant fails to disclose the information required under § 180.335?
- 180.450 What may I do if a lower tier participant fails to disclose the information required under § 180.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 180.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 180.505 Who uses the EPLS?
- 180.510 Who maintains the EPLS?
- 180.515 What specific information is in the EPLS?
- 180.520 Who places the information into the EPLS?
- 180.525 Whom do I ask if I have questions about a person in the EPLS?
- 180.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 180.600 How do suspension and debarment actions start?
- 180.605 How does suspension differ from debarment?
- 180.610 What procedures does a Federal agency use in suspension and debarment actions?
- 180.615 How does a Federal agency notify a person of a suspension or debarment action?
- 180.620 Do Federal agencies coordinate suspension and debarment actions?
- 180.625 What is the scope of a suspension or debarment?
- 180.630 May a Federal agency impute the conduct of one person to another?
- 180.635 May a Federal agency settle a debarment or suspension action?
- 180.640 May a settlement include a voluntary exclusion?
- 180.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?

Subpart G—Suspension

- 180.700 When may the suspending official issue a suspension?
- 180.705 What does the suspending official consider in issuing a suspension?
- 180.710 When does a suspension take effect?
- 180.715 What notice does the suspending official give me if I am suspended?
- 180.720 How may I contest a suspension?
- 180.725 How much time do I have to contest a suspension?
- 180.730 What information must I provide to the suspending official if I contest the suspension?
- 180.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 180.740 Are suspension proceedings formal?
- 180.745 How is fact-finding conducted?
- 180.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 180.755 When will I know whether the suspension is continued or terminated?
- 180.760 How long may my suspension last?

Subpart H—Debarment

- 180.800 What are the causes for debarment?
- 180.805 What notice does the debarring official give me if I am proposed for debarment?
- 180.810 When does a debarment take effect?
- 180.815 How may I contest a proposed debarment?
- 180.820 How much time do I have to contest a proposed debarment?
- 180.825 What information must I provide to the debarring official if I contest the proposed debarment?
- 180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 180.835 Are debarment proceedings formal?
- 180.840 How is fact-finding conducted?
- 180.845 What does the debarring official consider in deciding whether to debar me?
- 180.850 What is the standard of proof in a debarment action?
- 180.855 Who has the burden of proof in a debarment action?
- 180.860 What factors may influence the debarring official's decision?
- 180.865 How long may my debarment last?
- 180.870 When do I know if the debarring official debars me?
- 180.875 May I ask the debarring official to reconsider a decision to debar me?
- 180.880 What factors may influence the debarring official during reconsideration?
- 180.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 180.900 Adequate evidence.
- 180.905 Affiliate.
- 180.910 Agent or representative.
- 180.915 Civil judgment.
- 180.920 Conviction.
- 180.925 Debarment.
- 180.930 Debarring official.
- 180.935 Disqualified.
- 180.940 Excluded or exclusion.
- 180.945 Excluded Parties List System (EPLS).
- 180.950 Federal agency.
- 180.955 Indictment.
- 180.960 Ineligible or ineligibility.
- 180.965 Legal proceedings.
- 180.970 Nonprocurement transaction.
- 180.975 Notice.
- 180.980 Participant.
- 180.985 Person.
- 180.990 Preponderance of the evidence.
- 180.995 Principal.
- 180.1000 Respondent.
- 180.1005 State.
- 180.1010 Suspending official.
- 180.1015 Suspension.
- 180.1020 Voluntary exclusion or voluntarily excluded.

Appendix to Part 180—Covered Transactions

Authority: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p.189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

§ 180.5 What does this part do?

This part provides Office of Management and Budget (OMB) guidance for Federal agencies on the governmentwide debarment and suspension system for nonprocurement programs and activities.

§ 180.10 How is this part organized?

This part is organized in two segments.

(a) Sections 180.5 through 180.45 contain general policy direction for Federal agencies' use of the standards in subparts A through I of this part.

(b) Subparts A through I of this part contain uniform governmentwide standards that Federal agencies are to use to specify—

(1) The types of transactions that are covered by the nonprocurement debarment and suspension system;

(2) The effects of an exclusion under that nonprocurement system, including reciprocal effects with the governmentwide debarment and suspension system for procurement;

(3) The criteria and minimum due process to be used in nonprocurement debarment and suspension actions; and

(4) Related policies and procedures to ensure the effectiveness of those actions.

§ 180.15 To whom does the guidance apply?

The guidance provides OMB guidance only to Federal agencies. Publication of the guidance in the CFR does not change its nature—it is guidance and not regulation. Federal agencies' implementation of the guidance governs the rights and responsibilities of other persons affected by the nonprocurement debarment and suspension system.

§ 180.20 What must a Federal agency do to implement these guidelines?

As required by Section 3 of E.O. 12549, each Federal agency with nonprocurement programs and activities covered by subparts A through I of the guidance must issue regulations consistent with those subparts.

§ 180.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency implementing regulation:

(a) Must establish policies and procedures for that agency's nonprocurement debarment and suspension programs and activities that are consistent with the guidance. When adopted by a Federal agency, the provisions of the guidance has regulatory effect for that agency's programs and activities.

(b) Must address some matters for which these guidelines give each

Federal agency some discretion.

Specifically, the regulation must—

(1) Identify either the Federal agency head or the title of the designated official who is authorized to grant exceptions under § 180.135 to let an excluded person participate in a covered transaction.

(2) State whether the agency includes as covered transactions an additional tier of contracts awarded under covered nonprocurement transactions, as permitted under § 180.220(c).

(3) Identify the method(s) an agency official may use, when entering into a covered transaction with a primary tier participant, to communicate to the participant the requirements described in § 180.435. Examples of methods are an award term that requires compliance as a condition of the award; an assurance of compliance obtained at time of application; or a certification.

(4) State whether the Federal agency's policy is to restrict participants' collection of certifications to verify that lower-tier participants are not excluded or disqualified (see § 180.300(b)). If it is the policy, the regulation needs to require agency officials, when entering into covered transactions with primary tier participants, to communicate that policy.

(5) State whether the Federal agency specifies a particular method that participants must use to communicate compliance requirements to lower-tier participants, as described in § 180.330(a). If there is a specified method, the regulation needs to require agency officials, when entering into covered transactions with primary tier participants, to communicate that requirement.

(c) May also, at the agency's option:

(1) Identify any specific types of transactions that the Federal agency includes as "nonprocurement transactions" in addition to the examples provided in § 180.970.

(2) Identify any types of nonprocurement transactions that the Federal agency exempts from coverage under these guidelines, as authorized under § 180.330(g)(2).

(3) Identify specific examples of types of individuals who would be "principals" under the Federal agency's nonprocurement programs and transactions, in addition to the types of individuals described at § 180.995.

(4) Specify the Federal agency's procedures, if any, by which a respondent may appeal a suspension or debarment decision.

(5) Identify by title the officials designated by the Federal agency head as debarring officials under § 180.930 or suspending officials under § 180.1010.

(6) Include a subpart covering disqualifications, as authorized in § 180.45.

§ 180.30 Where does a Federal agency implement these guidelines?

Each Federal agency that participates in the governmentwide nonprocurement debarment and suspension system must issue a regulation implementing these guidelines within its chapter in subtitle B of this title of the Code of Federal Regulations.

§ 180.35 By when must a Federal agency implement these guidelines?

Federal agencies must submit proposed regulations to the OMB for review within nine months of the issuance of these guidelines and issue final regulations within eighteen months of these guidelines.

§ 180.40 How are these guidelines maintained?

The Interagency Committee on Debarment and Suspension established by section 4 of E.O. 12549 recommends to the OMB any needed revisions to the guidelines in this part. The OMB publishes proposed changes to the guidelines in the **Federal Register** for public comment, considers comments with the help of the Interagency Committee on Debarment and Suspension, and issues the final guidelines.

§ 180.45 Do these guidelines cover persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

A Federal agency may add a subpart covering disqualifications to its regulation implementing these guidelines, but the guidelines in subparts A through I of this part—

(a) Address disqualified persons only to—

(1) Provide for their inclusion in the EPLS; and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Do not specify the—

(1) Transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order or regulation that caused the disqualification;

(2) Entities to which a disqualification applies; or

(3) Process that a Federal agency uses to disqualify a person. Unlike exclusion under subparts A through I of this part, disqualification is frequently not a discretionary action that a Federal

agency takes, and may include special procedures.

Subpart A—General

audience with special responsibilities, as shown in the following table:

§ 180.100 How are subparts A through I organized?

(a) Each subpart contains information related to a broad topic or specific

In subpart . . .	You will find provisions related to . . .
A	general information about Subparts A through I of this part.
B	the types of transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of Federal agency officials who are authorized to enter into covered transactions.
E	the responsibilities of Federal agencies for entering information into the EPLS
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.
H	debarment actions.
I	definitions of terms used in this part.

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are . . .	See Subpart(s) . . .
(1) a participant or principal in a nonprocurement transaction	A, B, C and I.
(2) a respondent in a suspension action	A, B, F, G and I.
(3) a respondent in a debarment action	A, B, F, H and I.
(4) a suspending official	A, B, E, F, G and I.
(5) a debarring official	A, B, D, F, H and I.
(6) an Federal agency official authorized to enter into a covered transaction	A, B, D, E and I.

§ 180.105 How is this part written?

(a) This part uses a “plain language” format to make it easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed.

(c) The “Covered Transactions” diagram in the appendix to this part shows the levels or “tiers” at which a Federal agency may enforce an exclusion.

§ 180.110 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meaning. Those terms are defined in subpart I of this part. For example, three important terms are—

(a) *Exclusion or excluded*, which refers only to discretionary actions taken by a suspending or debarring official under Executive Order 12549 and Executive Order 12689 or under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified*, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and

Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of a Federal agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible*, which generally refers to a person who is either excluded or disqualified.

§ 180.115 What do Subparts A through I of this part do?

Subparts A through I of this part provide for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provide for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order or other legal authority.

§ 180.120 Do subparts A through I of this part apply to me?

Portions of subparts A through I of this part (see table at § 180.100(b)) apply to you if you are a—

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom a Federal agency has initiated a debarment or suspension action);

(c) Federal agency debarring or suspending official; or

(d) Federal agency official who is authorized to enter into covered transactions with non-Federal parties.

§ 180.125 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ 180.130 How does an exclusion restrict a person's involvement in covered transactions?

With the exceptions stated in §§ 180.135, 315, and 420, a person who is excluded by any Federal agency may not:

(a) Be a participant in a Federal agency transaction that is a covered transaction; or

(b) Act as a principal of a person participating in one of those covered transactions.

§ 180.135 May a Federal agency grant an exception to let an excluded person participate in a covered transaction?

(a) A Federal agency head or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the agency head or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one Federal agency for an excluded person does not extend to the covered transactions of another Federal agency.

§ 180.140 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

If any Federal agency excludes a person under Executive Order 12549 or Executive Order 12689, on or after August 25, 1995, the excluded person is also ineligible for Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

§ 180.145 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in Federal agencies' nonprocurement covered transactions. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

§ 180.150 Against whom may a Federal agency take an exclusion action?

Given a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.

§ 180.155 How do I know if a person is excluded?

Check the Governmentwide Excluded Parties List System (EPLS) to determine whether a person is excluded. The General Services Administration (GSA) maintains the EPLS and makes it available, as detailed in Subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the EPLS.

Subpart B—Covered Transactions

§ 180.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

- (a) The primary tier, between a Federal agency and a person (see appendix to this part); or
- (b) A lower tier, between a participant in a covered transaction and another person.

§ 180.205 Why is it important if a particular transaction is a covered transaction?

The importance of whether a transaction is a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

- (1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 180.310 or § 180.415; or
- (2) A Federal agency official obtains an exception from the agency head or designee to allow you to be involved in the transaction, as permitted under § 180.135.

§ 180.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § 180.970, are covered transactions unless listed in the exemptions under § 180.215.

§ 180.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

- (a) A direct award to—
 - (1) A foreign government or foreign governmental entity;
 - (2) A public international organization;
 - (3) An entity owned (in whole or in part) or controlled by a foreign government; or
 - (4) Any other entity consisting wholly or partially of one or more foreign

governments or foreign governmental entities.

(b) A benefit 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). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that a Federal agency needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate or similar instrument issued as a means to regulate public health, safety or the environment, unless a Federal agency specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if—

- (1) The application of an exclusion to the transaction is prohibited by law; or
- (2) A Federal agency's regulation exempts it from coverage under this part.

§ 180.220 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, 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 this part.

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

(c) A subcontract also is a covered transaction if,—

- (1) It is awarded by a participant in a procurement transaction under a

nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to any additional tier of contracts (see the diagram in the appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract exceeds or is expected to exceed \$25,000.

§ 180.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the Federal agency regulations governing the transaction, the appropriate Federal agency official or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

§ 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking the EPLS; or
- (b) Collecting a certification from that person if allowed by the Federal agency responsible for the transaction; or
- (c) Adding a clause or condition to the covered transaction with that person.

§ 180.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the Federal agency responsible for the transaction grants an exception under § 180.135.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ 180.310 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 the Federal agency responsible for the transaction grants an exception under § 180.135.

§ 180.315 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 the Federal agency responsible for the transaction grants an exception under § 180.135.

§ 180.320 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction.

You may decide the method and frequency by which you do so. You may, but you are not required to, check the EPLS.

§ 180.325 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, the Federal agency responsible for your transaction may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ 180.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

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

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless the regulation of the Federal agency responsible for the

transaction requires you to use specific methods.

(b) 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.

Disclosing Information—Primary Tier Participants

§ 180.335 What information must I provide before entering into a covered transaction with a Federal agency?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the Federal agency office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

- (a) Are presently excluded or disqualified;
- (b) Have been convicted within the preceding three years of any of the offenses listed in § 180.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;
- (c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 180.800(a); or
- (d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 180.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ 180.340 If I disclose unfavorable information required under § 180.335, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 180.335 will not necessarily cause a Federal agency to deny your participation in the covered transaction. The agency will consider the information when it determines whether to enter into the covered transaction. The agency will also consider any additional information or explanation that you elect to submit with the disclosed information.

§ 180.345 What happens if I fail to disclose information required under § 180.335?

If a Federal agency later determines that you failed to disclose information under § 180.335 that you knew at the time you entered into the covered transaction, the agency may—

- (a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or
- (b) Pursue any other available remedies, including suspension and debarment.

§ 180.350 What must I do if I learn of information required under § 180.335 after entering into a covered transaction with a Federal agency?

At any time after you enter into a covered transaction, you must give immediate written notice to the Federal agency office with which you entered into the transaction if you learn either that—

- (a) You failed to disclose information earlier, as required by § 180.335; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.335.

Disclosing Information—Lower Tier Participants**§ 180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?**

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 180.360 What happens if I fail to disclose information required under § 180.355?

If a Federal agency later determines that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, the agency may pursue any available remedies, including suspension and debarment.

§ 180.365 What must I do if I learn of information required under § 180.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

- (a) You failed to disclose information earlier, as required by § 180.355; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.355.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**§ 180.400 May I enter into a transaction with an excluded or disqualified person?**

- (a) You as a Federal agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 180.135.
- (b) You may not enter into any transaction with a person who is

disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As a Federal agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 180.135.

§ 180.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as a Federal agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 180.135.

§ 180.415 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 § 180.135.

§ 180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as a Federal agency official may not approve—

- (a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 180.135; or
- (b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 180.425 When do I check to see if a person is excluded or disqualified?

As a Federal agency official, you must check to see if a person is excluded or disqualified before you—

- (a) Enter into a primary tier covered transaction;
- (b) Approve a principal in a primary tier covered transaction;
- (c) Approve a lower tier participant if your agency's approval of the lower tier participant is required; or
- (d) Approve a principal in connection with a lower tier transaction if your agency's approval of the principal is required.

§ 180.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

- (a) You as a Federal agency official must check the EPLS when you take any action listed in § 180.425.
- (b) You must review information that a participant gives you, as required by § 180.335, about its status or the status of the principals of a transaction.

§ 180.435 What must I require of a primary tier participant?

You as a Federal agency official must require each participant in a primary tier covered transaction to—

- (a) Comply with subpart C of this part as a condition of participation in the transaction; and
- (b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ 180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as a Federal agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ 180.445 What action may I take if a primary tier participant fails to disclose the information required under § 180.335?

If you as a Federal agency official determine that a participant failed to disclose information, as required by § 180.335, at the time it entered into a covered transaction with you, you may—

- (a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 180.450 What action may I take if a lower tier participant fails to disclose the information required under § 180.355 to the next higher tier?

If you as a Federal agency official determine that a lower tier participant failed to disclose information, as required by § 180.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E—Excluded Parties List System

§ 180.500 What is the purpose of the Excluded Parties List System (EPLS)?

The EPLS is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ 180.505 Who uses the EPLS?

(a) Federal agency officials use the EPLS to determine whether to enter into a transaction with a person, as required under § 180.430.

(b) Participants also may, but are not required to, use the EPLS to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under § 180.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The EPLS is available to the general public.

§ 180.510 Who maintains the EPLS?

The General Services Administration (GSA) maintains the EPLS. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement

debarment and suspension system, the agency enters the information about the excluded person into the EPLS.

§ 180.515 What specific information is in the EPLS?

(a) At a minimum, the EPLS indicates—

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The Federal agency and name and telephone number of the agency point of contact for the action; and

(7) The Dun and Bradstreet Number (DUNS), or other similar code approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for the EPLS includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) Agencies disclose the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

§ 180.520 Who places the information into the EPLS?

Federal agency officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into the EPLS:

(a) Information required by § 180.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or

disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

(c) Information about an excluded or disqualified person, generally within five working days, after—

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

§ 180.525 Whom do I ask if I have questions about a person in the EPLS?

If you have questions about a listed person in the EPLS, ask the point of contact for the Federal agency that placed the person's name into the EPLS. You may find the agency point of contact from the EPLS.

§ 180.530 Where can I find the EPLS?

You may access the EPLS through the Internet, currently at <http://epls.arnet.gov> or <http://www.epls.gov>.

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ 180.600 How do suspension and debarment actions start?

When Federal agency officials receive information from any source concerning a cause for suspension or debarment, they will promptly report it and the agency will investigate. The officials refer the question of whether to suspend or debar you to their suspending or debarment official for consideration, if appropriate.

§ 180.605 How does suspension differ from debarment?

Suspension differs from debarment in that—

A suspending official . . .	A debarment official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must— (1) Have <i>adequate evidence</i> that there may be a cause for debarment of a person; and (2) Conclude that <i>immediate action</i> is necessary to protect the Federal interest	Must conclude, based on a <i>preponderance of the evidence</i> , that the person has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension <i>first</i> , and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.	Imposes debarment <i>after</i> giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ 180.610 What procedures does a Federal agency use in suspension and debarment actions?

In deciding whether to suspend or debar you, a Federal agency handles the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, a Federal agency uses the procedures in this subpart and Subpart G of this part.

(b) For debarment actions, a Federal agency uses the procedures in this subpart and Subpart H of this part.

§ 180.615 How does a Federal agency notify a person of a suspension or debarment action?

(a) The suspending or debarment official sends a written notice to the last known street address, facsimile number, or e-mail address of—

- (1) You or your identified counsel; or
- (2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

§ 180.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ 180.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

- (1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or
- (2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarment official—

- (1) Officially names the affiliate in the notice; and
- (2) Gives the affiliate an opportunity to contest the action.

§ 180.630 May a Federal agency impute the conduct of one person to another?

For purposes of actions taken under this part, a Federal agency may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) *Conduct imputed from an organization to an individual, or between individuals.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

§ 180.635 May a Federal agency settle a debarment or suspension action?

Yes, a Federal agency may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§ 180.640 May a settlement include a voluntary exclusion?

Yes, if a Federal agency enters into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ 180.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?

(a) Yes, the Federal agency agreeing to the voluntary exclusion enters information about it into the EPLS.

(b) Also, any agency or person may contact the Federal agency that agreed to the voluntary exclusion to find out the details of the voluntary exclusion.

Subpart G—Suspension**§ 180.700 When may the suspending official issue a suspension?**

Suspension is a serious action. Using the procedures of this subpart and Subpart F of this part, the suspending official may impose suspension only when that official determines that—

- (a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § 180.800(a), or
- (b) There exists adequate evidence to suspect any other cause for debarment listed under § 180.800(b) through (d); and

(c) Immediate action is necessary to protect the public interest.

§ 180.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ 180.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ 180.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

- (a) That you have been suspended;
- (b) That your suspension is based on—
 - (1) An indictment;
 - (2) A conviction;
 - (3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or
 - (4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;
- (c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;
- (d) Of the cause(s) upon which the suspending official relied under § 180.700 for imposing suspension;
- (e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;
- (f) Of the applicable provisions of this subpart, Subpart F of this part, and any other agency procedures governing suspension decisionmaking; and
- (g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

§ 180.720 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 180.725 How much time do I have to contest a suspension?

- (a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.
- (b) The Federal agency taking the action considers the notice to be received by you—
 - (1) When delivered, if the agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;
 - (2) When sent, if the agency sends the notice by facsimile or five days after the

agency sends it if the facsimile is undeliverable; or

- (3) When delivered, if the agency sends the notice by e-mail or five days after the agency sends it if the e-mail is undeliverable.

§ 180.730 What information must I provide to the suspending official if I contest the suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

- (1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;
 - (2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;
 - (3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and
 - (4) All of your affiliates.
- (b) If you fail to disclose this information, or provide false information, the Federal agency taking the action may seek further criminal, civil or administrative action against you, as appropriate.

§ 180.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

- (1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;
- (2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;
- (3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or
- (4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based

on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

- (1) The conditions in paragraph (a) of this section do not exist; and
 - (2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.
- (c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§ 180.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

§ 180.745 How is fact-finding conducted?

- (a) If fact-finding is conducted—
 - (1) You may present witnesses and other evidence, and confront any witness presented; and
 - (2) The fact-finder must prepare written findings of fact for the record.
- (b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 180.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

- (a) The suspending official bases the decision on all information contained in the official record. The record includes—
 - (1) All information in support of the suspending official's initial decision to suspend you;
 - (2) Any further information and argument presented in support of, or opposition to, the suspension; and
 - (3) Any transcribed record of fact-finding proceedings.
- (b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them

to be arbitrary, capricious, or clearly erroneous.

§ 180.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

§ 180.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

Subpart H—Debarment

§ 180.800 What are the causes for debarment?

A Federal agency may debar a person 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 antitrust 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, tax evasion, 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 your present responsibility;

(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;

(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, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 180.135;

(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 § 180.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

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

§ 180.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § 180.800, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 180.615, advising you—

(a) That the debarring official is considering debarring you;

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) Of the cause(s) under § 180.800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, Subpart F of this part, and

any other agency procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and nonprocurement programs and activities.

§ 180.810 When does a debarment take effect?

Unlike suspension, a debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§ 180.815 How may I contest a proposed debarment?

If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 180.820 How much time do I have to contest a proposed debarment?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) The Federal agency taking the action considers the Notice of Proposed Debarment to be received by you—

(1) When delivered, if the agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the agency sends the notice by e-mail or five days after the agency sends it if the e-mail is undeliverable.

§ 180.825 What information must I provide to the debarring official if I contest the proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent your submission to the debarring official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § 180.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations

implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Federal agency taking the action may seek further criminal, civil or administrative action against you, as appropriate.

§ 180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

§ 180.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

§ 180.840 How is fact-finding conducted?

(a) If fact-finding is conducted—
(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 180.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § 180.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 180.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 180.850 What is the standard of proof in a debarment action?

(a) In any debarment action, the Federal agency must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ 180.855 Who has the burden of proof in a debarment action?

(a) The Federal agency has the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ 180.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring

official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Other factors that are appropriate to the circumstances of a particular case.

§ 180.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in § 180.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§ 180.870 When do I know if the debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to § 180.615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ 180.875 May I ask the debarring official to reconsider a decision to debar me?

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

§ 180.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on—

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

§ 180.885 May the debarring official extend a debarment?

(a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and Subpart F of this part, to extend the debarment.

Subpart I—Definitions

§ 180.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ 180.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways a Federal agency may determine control include, but are not limited to—

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

(d) Common use of employees; or

(e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

§ 180.910 Agent or representative.

Agent or representative means any person who acts on behalf of, or who is authorized to commit a participant in a covered transaction.

§ 180.915 Civil judgment.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

§ 180.920 Conviction.

Conviction means—

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of *nolo contendere*; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

§ 180.925 Debarment.

Debarment means an action taken by a debarring official under Subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

§ 180.930 Debarring official.

Debarring official means an agency official who is authorized to impose debarment. A debarring official is either—

(a) The agency head; or
(b) An official designated by the agency head.

§ 180.935 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 276(a));

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

§ 180.940 Excluded or exclusion.

Excluded or exclusion means—

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

§ 180.945 Excluded Parties List System (EPLS).

Excluded Parties List System (EPLS) means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible.

§ 180.950 Federal agency.

Federal agency means any United States executive department, military department, defense agency or any other agency of the executive branch. Other agencies of the Federal government are not considered “agencies” for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive Orders 12549 and 12689.

§ 180.955 Indictment.

Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

§ 180.960 Ineligible or ineligibility.

Ineligible or ineligibility means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

§ 180.965 Legal proceedings.

Legal proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

§ 180.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

- (1) Grants.
- (2) Cooperative agreements.
- (3) Scholarships.
- (4) Fellowships.
- (5) Contracts of assistance.
- (6) Loans.
- (7) Loan guarantees.
- (8) Subsidies.
- (9) Insurances.
- (10) Payments for specified uses.
- (11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

§ 180.975 Notice.

Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § 180. 615.)

§ 180.980 Participant.

Participant means any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.

§ 180.985 Person.

Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

§ 180.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ 180.995 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.

§ 180.1000 Respondent.

Respondent means a person against whom an agency has initiated a debarment or suspension action.

§ 180.1005 State.

(a) *State* means—

(1) Any of the states of the United States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a state.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

§ 180.1010 Suspending official.

(a) *Suspending official* means an agency official who is authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

§ 180.1015 Suspension.

Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

§ 180.1020 Voluntary exclusion or voluntarily excluded.

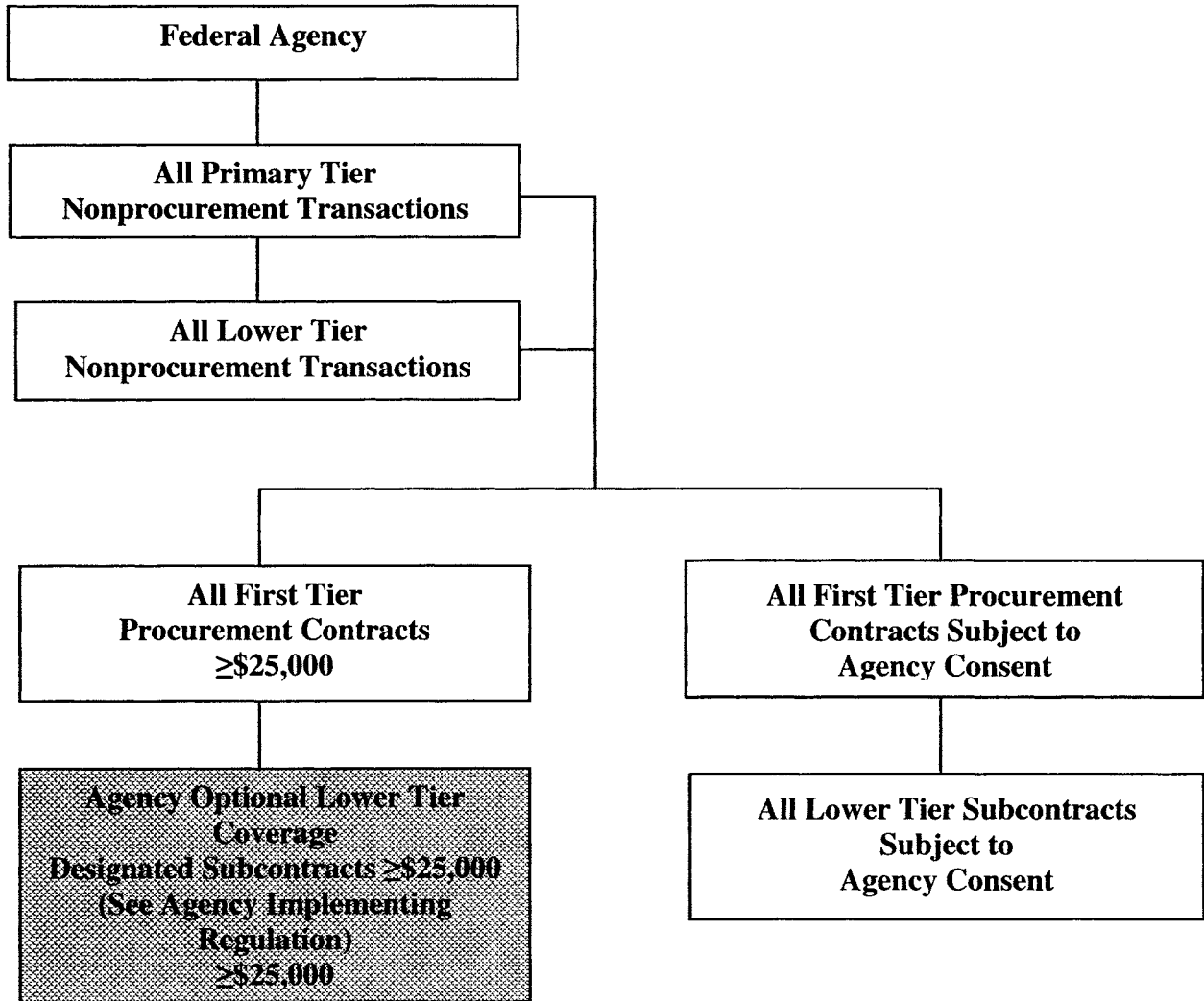
(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

BILLING CODE 3110-01-P

Appendix to Part 180 — Covered Transactions

COVERED TRANSACTIONS



BILLING CODE 3110-01-C

PART 215—[AMENDED]

■ 3. The authority citation for part 215 continues to read as follows:

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966-1970, p. 939.

■ 4. Section 215.13 is revised to read as follows:

§ 215.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with Federal agency regulations implementing E.O.s 12549 and 12689, “Debarment and Suspension.” Under those regulations, certain parties who are debarred, suspended or otherwise excluded may not be participants or principals in Federal assistance awards and subawards, and in certain contracts under those awards and subawards.

■ 5. Paragraph 8 of Appendix A to part 215 is revised to read as follows:

Appendix A to Part 215—Contract Provisions

* * * * *

8. Debarment and Suspension (E.O.s 12549 and 12689)—A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 180.220) shall not be made to parties listed on the government-wide Excluded Parties List System, in accordance with the OMB guidelines at 2 CFR part 180 that implement

E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

[FR Doc. 05-16647 Filed 8-30-05; 8:45 am]

BILLING CODE 3110-01-P

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 215 and 220

Cost Principles for Educational Institutions (OMB Circular A-21)

AGENCY: Office of Management and Budget.

ACTION: Relocation of policy guidance to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating OMB Circular A-21, "Cost Principles for Educational Institutions," to Title 2 in the Code of Federal Regulations (2 CFR), subtitle A, chapter II, part 220. This relocation is part of our broader initiative to create 2 CFR as a single location where the public can find both OMB guidance for grants and agreements and the associated Federal agency implementing regulations. The broader initiative provides a good foundation for streamlining and simplifying the policy framework for grants and agreements, one objective of OMB and Federal agency efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107).

Furthermore, this document makes changes to 2 CFR part 215, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110). The changes will add to part 215 new references to 2 CFR parts 220, 225, and 230 for the cost principles in OMB Circulars A-21, A-87, and A-122, respectively; will update part 215 to include a citation for the Social Security Administration's grant regulation; and will correct part 215 to add the amendatory language of A-110 published on October 8, 1999, and to correct a typographic error.

DATES: This document is effective August 31, 2005. This document republishes the existing OMB Circular A-21, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Gil Tran, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395-3052

(direct) or (202) 395-3993 (main office) and e-mail *Hai.M._Tran@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: On May 10, 2004 [69 FR 25970], we revised the three OMB circulars containing Federal cost principles. The purpose of those revisions was to simplify the cost principles by making the descriptions of similar cost items consistent across the circulars where possible, thereby reducing the possibility of misinterpretation. Those revisions resulted from OMB and Federal agency efforts to implement Public Law 106-107, and were effective on June 9, 2004.

In this document and the two documents immediately following this one, we relocate those three OMB circulars to the CFR, in Title 2 which was established on May 11, 2004 [69 FR 26276] as a central location for OMB and Federal agency policies on grants and agreements. When we established 2 CFR and relocated OMB Circular A-110 in that new title, we stated that we would relocate in the near future the other OMB circulars related to grants and agreements. Today's documents are a significant step toward that end.

Our relocation of OMB Circular A-21 does not change the substance of the circular. Other than adjustments needed to conform to the formatting requirements of the CFR, this notice relocates in 2 CFR the version of OMB Circular A-21 as revised by the May 10, 2004 notice.

Conforming changes to 2 CFR part 215. There is a need for conforming changes to 2 CFR part 215, which contains administrative requirements for grants and other financial assistance agreements with educational institutions and other nonprofit organizations. The amendments to § 215.25(c)(6) and (e), § 215.27, and § 215.29(b) add the new references to 2 CFR parts 220, 225, and 230 for the cost principles in OMB Circulars A-21, A-87, and A-122, respectively.

Update and corrections to 2 CFR part 215. Additional changes to 2 CFR part 215 are needed to update § 215.5 and to correct § 215.36 and § 215.72. The update to § 215.5 adds the CFR citation for the Social Security Administration's (SSA) implementation of the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." The changes to § 215.36 provide the corrections needed to include the amendments to OMB Circular A-110 that were published as final on October 8, 1999 [64 FR 54926] and were inadvertently omitted from our publication of part 215 last year [69 FR 26281]. The change to

§ 215.72 provides correction for a long-standing typo.

List of Subjects

2 CFR Part 215

Accounting, Colleges and universities, Cooperative agreements, Grant programs, Grants administration, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

2 CFR Part 220

Accounting, Colleges and universities, Grant programs, Grant administrations, Reporting and recordkeeping requirements.

Dated: August 8, 2005.

Joshua B. Bolten,
Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR, subtitle A, chapter II, as follows:

PART 215—[AMENDED]

■ 1. The authority citation for part 215 continues to read as follows:

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966-1970, p. 939.

§ 215.5 [Amended]

■ 2. Section 215.5 is amended by adding "20 CFR part 437," following "15 CFR part 24,".

■ 3. Section 215.25 is amended by revising paragraphs (c)(6) and (e) to read as follows:

§ 215.25 Revision of budget and program plans.

* * * * *

(c) * * *

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with any of the following, as applicable:

(i) 2 CFR part 220, "Cost Principles for Educational Institutions (OMB Circular A-21);"

(ii) 2 CFR part 230, "Cost Principles for Non-Profit Organizations (OMB Circular A-122);"

(iii) 45 CFR part 74, Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals;" and

(iv) 48 CFR part 31, "Contract Cost Principles and Procedures."

* * * * *

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this