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## I. PURPOSE

- A. The Department of Education participates in a government-wide system for nonprocurement debarment and suspension. This directive establishes procedures for the conduct and processing of nonprocurement debarment and suspension actions and for excluding debarred, suspended, or voluntarily excluded persons from financial and nonfinancial assistance and benefits under Federal programs and activities. The Directive also establishes procedures for providing information about actions described above and information about persons determined to be ineligible under other Department procedures to the General Services Administration (GSA) for inclusion on the "Parties Excluded From Nonprocurement Programs" list (the nonprocurement portion of the government-wide Lists Of Parties Excluded from Federal Procurement or Nonprocurement Programs.)

## II. POLICY

It is Department policy that:

- A. The functions of the "Debarring/Suspending Official" (DSO) are divided between a notice official, a fact-finding official and a deciding official as designated as VI.D. below.
1. There shall be three notice officials for nonprocurement debarment and suspension in the Department:
    - a. One for actions against lenders, guarantee agencies, institutions of higher education, or a person who is a principal of a lender, guarantee agency or institution of higher education (so-called "Title IV – related cases");
    - b. One for actions against Certified Public Accountants (CPAs), CPA professional corporations, CPA firms or partnerships; and
    - c. One for all other actions.
  2. There is one fact-finding official for nonprocurement debarment and suspension in the Department.
  3. There are three deciding officials for nonprocurement debarment and suspension in the Department:
    - a. One for actions against lenders, guarantee agencies, institutions of higher education, or a person who is a principal of a lender, guarantee agency or institution of higher education;
    - b. One for actions against CPAs, CPA professional corporations, CPA firms or partnerships; and

- c. One for all other actions.
- B. These procedures do not apply to actions conducted under 34 CFR 85.316 and 85.414 and 34 CFR Part 668, Subpart G, against an institution of higher education that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (so-called “Title IV actions”), or actions conducted under 34 CFR Part 682 against a lender that participates in those programs.
- C.
1. The Department may initiate action to debar or suspend an institution of higher education from participating in all nonprocurement programs, except the Title IV, Higher Education Act programs, under the procedures contained in this directive prior to, or in lieu of, conducting a proceeding under 34 CFR 85.316 and 85.414 and 34 CFR Part 668, Subpart G; or
  2. Alternatively, the Department may conduct a single proceeding under 34 CFR 85.316 and 85.414 and 34 CFR Part 668, Subpart G, to suspend or debar an institution of higher education from participating in all nonprocurement programs, including the Title IV, Higher Education Act program.
  3. The Department may initiate action to debar or suspend a lender from participating in all nonprocurement programs, except the Title IV, Higher Education Act programs, under the procedures contained in this directive prior to, or in lieu of, conducting a proceeding under 34 CFR Part 682, Subpart G.
- D. Certifications forms must be provided to all applicants for Department of Education financial and nonfinancial assistance and benefits under covered transactions.
- E.
1. Department staff authorized to award covered financial and nonfinancial assistance and benefits shall obtain required certification forms and check the “Parties Excluded From Nonprocurement Programs” list (the nonprocurement portion of the government-wide Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs) before making an award, to ensure that prospective participants and principals are not debarred, suspended, ineligible, or voluntarily excluded.
  2. Regarding participation in Title IV, Higher Education Act programs, Department staff shall obtain required certification forms on a regular basis as part of the process for determining initial allocations for participating institutions.

### III. AUTHORIZATION

This directive establishes procedures in accordance with Executive Order (E.O.) 12549, “Debarment and Suspension,” published in the Federal Register on February 21, 1986 (51 FR 6370), and with the Department’s implementing regulations at 34 CFR Part 85,

“Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).”

#### IV. APPLICABILITY

- A. This directive applies to all Department employees who participate in departmental debarment and suspension proceedings, obtain applicant certifications, check the “Parties Excluded From Nonprocurement Programs” list (the nonprocurement portion of the government-wide Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs) or provide information to be included on the “Parties Excluded From Nonprocurement Programs” list.
- B. The transaction under which a person may be debarred or suspended from participation are specified in 34 CFR 85.110 or 85.610. Covered transactions under 85.110 are either primary transactions (85.110(a)(1)(i)) or lower tier transactions (85.110(a)(1)(ii)). Transactions excluded from the coverage of 85.110 are specified at 85.110(a)(2).

#### V. DEFINITIONS

- A. 1. “Institution of higher education,” as used in this directive, includes the institution defined at 34 CFR 600.4, 600.5, 600.6, and 600.7.
2. The terms defined at 34 CFR 85.105 and 85.110(a)(1) also apply to this directive and are listed below:

Debarment  
 Ineligible  
 Lower tier covered transaction  
 Nonprocurement List  
 Notice  
 Participant  
 Person  
 Primary covered transaction  
 Principal  
 Respondent  
 Suspension  
 Voluntary exclusion or voluntarily excluded.

- B. Certification forms – The “Certifications Regarding Lobbying: Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements” (ED-80-0013), and the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions” (ED80-0014) required of prospective participants at the time an application or proposal is submitted.
- C. Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs – The government-wide document published monthly and updated weekly by the

General Services Administration (GSA), containing, name, address, and other information about persons who have been debarred, suspended, or voluntarily excluded under E.O. 12549 and implementing regulations, and those who have been determined to be ineligible. The Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs includes two lists: “Parties Excluded From Procurement Programs” and “Parties Excluded From Nonprocurement Programs” (Nonprocurement List).

- D. **Material Facts** – Material facts are facts that will directly support or refute the Notice DSO’s stated causes for proposing debarment or imposing suspension. The Deciding DSO determines what facts are material.

## VI. RESPONSIBILITIES

- A. The Director, Grants and Contracts Service (GCS) – The administrative functions of the Department that include managing the uniform system of nonprocurement debarment and suspension are delegated to the Director, GCS. The Director, GCS, delegates to the Policy and Support Staff, Grants Division, GCS, responsibility for:
1. Providing GSA with current information concerning debarments, suspensions, determinations of ineligibility, and voluntary exclusions taken by the Department;
  2. Providing GSA and the Office of Management and Budget (OMB) with information concerning all transactions in which the Department has granted exceptions under 34 CFR 85.215 or 85.625 to permit participation by debarred, suspended, or voluntarily excluded persons;
  3. Responding to inquiries about listed persons; and
  4. Coordinating the distribution and use of the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs within the Department.
- B. Principal Officers – Principal Officers, or their designees, are responsible for the following functions, as applicable:
1. Designating a person responsible for receiving the Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs and for directing inquiries concerning persons placed on the Nonprocurement List to the Policy and Support Staff, Grants Divisions, GCS;
  2. Ensuring that the Nonprocurement List is checked before entering into, renewing, or extending grants, loans, and other primary covered transactions (other than no-cost time extensions, 34 CFR 75.261) or lower tier covered transactions that require Department approval, to determine whether participants or principals are debarred, suspended, ineligible, or voluntarily excluded;

3. Submitting a written request to the appropriate Deciding DSO when an exception allowing the Department to do business with a person debarred, suspended, or voluntarily excluded is believed to be in the best interest of the Government;
  4. Ensuring that certification forms are included in all application packages and other materials provided to applicants for Department of Education financial and nonfinancial assistance and benefits; and
  5. Referring to the appropriate Notice DSO information from a Principal Officer, or his or her designee, concerning the apparent existence of a cause for debarment or suspension, as set forth at 34 CFR 85.305 or 85.405, as appropriate.
- C. The Assistant Secretary, Office of Postsecondary Education (OPE) – The Assistant Secretary, OPE, or his or her designees, are responsible for all functions listed in VI.B. above, and for the following actions:
1. Reviewing the Nonprocurement List to ascertain whether lenders or institutions of higher education are debarred, suspended, ineligible, or voluntarily excluded by any other Federal agency;
  2. Investigating debarments and suspensions of institutions of higher education identified under VI.C.1. above to determine if procedures that comply with formal adjudication requirements under the Administrative Procedure Act (5 U.S.C. 554-557) were used, and taking a Title IV action against the institution of higher education as required at 34 CFR 85.201, as appropriate; and
  3. Conducting a program review or requesting that an audit be conducted by a lender that has been debarred or suspended by any other Federal agency to determine whether grounds exist for the initiation of a Title IV action against the lender as required at 85.201, as appropriate.
- D. Debarring/Suspending Official (DSO)
1. Notice DSO
    - a. Cases Involving Lenders, Guarantee Agencies, or Institutions of Higher Education – The functions of the Notice DSO are delegated to the Director of the Audit and Program Review Division, Student Financial Assistance Programs, Office of Postsecondary Education for proposing debarments, issuing suspensions, and entering into a proposed settlement agreements, including those containing a voluntary exclusion, in actions against lenders, guarantee agencies, or institutions of higher education, or a person who is a principal of a lender, guarantee agency, or institution of higher education.
    - b. CPA Cases – The functions of the Notice DSO are delegated to the Assistant Inspector General for Audit Services, Office of Inspector General, for

proposing debarments, issuing suspensions, and entering into proposed settlement agreements, including those containing a voluntary exclusion, in actions against Certified Public Accounts (CPAs), CPA professional corporations, or CPA firms or partnerships.

- c. All Other Cases – The functions of the Notice DSO are delegated to the Director, Grants and Contracts Service, Office of Management, for proposing debarments, issuing suspensions, and entering into proposed settlement agreements, including those containing a voluntary exclusion, in all actions not delegated under paragraphs VI.D.1.a. and b. above.

## 2. Fact-finding DSO

The functions of the Fact-finding DSO are delegated to the Director of the Office of Hearings and Appeals, Office of Intergovernmental and Interagency Affairs, or his or her designee, for making findings of material fact in any action where material facts are determined to be in dispute by the Deciding DSO.

## 3. Deciding DSO

- a. Cases Involving Lenders, Guarantee Agencies, or Institutions of Higher Education – The functions of the Deciding DSO are delegated to the Deputy Assistant Secretary for Student Financial Assistance, OPE, for imposing debarments, affirming suspensions, and making decisions on request for approval of proposed settlement agreements, including those containing a voluntary exclusion, in actions against lenders, guarantee agencies, and institutions of higher education, or a person who is a principal of a lender, guarantee agency, or institution of higher education.
- b. CPA Cases – The functions of the Deciding DSO are delegated to the Assistant Inspector General for Policy, Planning, and Management Services, Office of Inspector General, for imposing debarments, affirming suspensions, and making decisions on requests for approval of proposed settlement agreements, including those containing a voluntary exclusion, in actions against CPAs, CPA professional corporations, or CPA firms or partnerships.
- c. All Other Cases – The functions of the Deciding DSO are delegated to the Deputy Under Secretary for Management, Office of Management, for imposing debarments, affirming suspensions, and making decisions on requests for approval of proposed settlement agreements, including those containing a voluntary exclusion, in all actions not delegated under VI.D.3.a. and b. above.

- E. The General Counsel – The General Counsel, or his or her designees, are responsible for reviewing, prior to issuance, all decisions issued by a Deciding DSO and all notices issued by a Notice DSO, except for notices of proposed debarment and notices of suspension related to CPA cases.



## VII. DEBARMENT PROCEDURES

- A. Investigation and Referral – Information from a Principal Officer, or his or her designee, concerning the existence of a cause for debarment must be promptly reported and referred to the appropriate Notice DSO for consideration. If the Notice DSO determines that a cause for debarment exists (see 34 CFR 85.305), the Notice DSO sends a Notice of Proposed Debarment to the respondent. Except for notices of proposed debarment related to CPA cases, the Notice DSO sends each Notice of Proposed Debarment to the General Counsel, or his or her designee, for review prior to issuance.
- B. Notice of Proposed Debarment
1. A debarment proceeding is initiated by notice from the appropriate Notice DSO to the respondent containing:
    - a. The information required by 34 CFR 85.312;
    - b. A copy of the U.S. Department of Education Nonprocurement Debarment and Suspension Procedures as set forth at VII. through X. of this directive (Appendix A); and
    - c. The title and address of the Deciding DSO to whom information and argument in opposition to the proposed debarment must be submitted.
  2. The Notice of Proposed Debarment must be mailed to the respondent by certified mail, return receipt requested, or hand delivered to the respondent. The Notice DSO assigns the debarment action a case number, opens an official case file on the proposed action, and forwards the official case file containing the referral, the Notice, and all documents included with the Notice to the Deciding DSO.
  3. The Deciding DSO places in the case file: all documents submitted by either the respondent, the Notice DSO, or the Fact-finding DSO, if the case is referred to the Fact-finding DSO; transcripts of recorded testimony, if any; and any other relevant materials receiving during the proceedings, including information submitted by interested third parties, if permitted and determined to be relevant by the Fact-finding DSO, or the Deciding DSO, as applicable.
- C. Failure to Respond to Notice – If the respondent fails to respond to the Notice of Proposed Debarment within 30 calendar days after receipt, the Deciding DSO shall make his or her decision whether to impose debarment based upon the Notice of Proposed Debarment and the material in the case file, and close the official case file. (See VII.G., below.)

#### D. Opportunity to Contest Proposed Debarment

1. In order to contest a proposed debarment, the respondent must make a reply to the Deciding DSO within 30 calendar days after receipt of the Notice of Proposed Debarment.
  - a. A respondent may contest the proposed debarment by:
    1. Submitting written argument; or
    2. Presenting an oral argument.
  - b. A response may be made by the respondent or a representative.
2. **Written Submission in Opposition to the Proposed Debarment**
  - a. Within 30 calendar days after receipt of the Notice of Proposed Debarment, the respondent may transmit to the Deciding DSO a written submission opposing debarment. The respondent's submission must set forth all of the respondent's grounds for opposing debarment and identify all material facts that the respondent believes are in dispute. The respondent may include in its submission any relevant documents or materials in support of its position.
  - b. Upon receipt of the respondent's submission, the Deciding DSO forwards the respondent's submission to the Notice DSO for comment.
  - c. Within 10 calendar days after receiving the respondent's submission from the Deciding DSO, the Notice DSO, or his or her representative, shall file a written response with the Deciding DSO and forward to the respondent a copy of the written response.
  - d. If necessary to facilitate his or her decision, the Deciding DSO may request additional submissions from both parties.
3. **Oral Argument in Opposition to the Proposed Debarment**
  - a. Within 30 calendar days after receipt of the Notice of Proposed Debarment, the respondent may respond to the Deciding DSO by making a written request to appear before him or her to make an oral argument in opposition to the proposed debarment.
  - b. The Deciding DSO shall notify the Notice DSO when a respondent's request to appear is received, and schedule an oral argument to commence within 10 calendar days after receiving the respondent's request. At oral argument, both the respondent and the Notice DSO, or their representatives, may present argument in support of their respective positions in regard to the proposed debarment action. The respondent must set forth all of its grounds for opposing debarment and identify all material facts that the respondent

believes are in dispute. Documentary materials may be presented by either party for inclusion in the case file; however, witnesses may not be presented. A transcribed record of the argument will not be made unless requested by both parties.

E. No Material Facts in Dispute

1. In actions based upon a conviction or a civil judgment, or if the Deciding DSO determines that the respondent's written or oral submissions have not raised a dispute over material facts that must be resolved before a decision can be made, the Deciding DSO makes his or her decision whether to impose debarment based upon the Notice of Proposed Debarment, the material in the case file, and the submissions and arguments of the respondent, the Notice DSO, and interested third parties, if applicable, and closes the official case file (See VII.G. below).
2. The Deciding DSO need not forward a case for fact-finding if there are one or more grounds for debarment that do not involve disputed material facts, even if there are other grounds for debarment that do involve disputes material facts. However, no decision to debar may be based upon grounds for debarment that involved disputed material facts, unless the disputed material facts were referred to the Fact-finding DSO for resolution.

F. Proceedings as to Disputed Material Facts

1. In actions not based upon a conviction or a civil judgment, if the Deciding DSO finds that the respondent's written or oral submission in opposition to debarment raises a genuine dispute over material facts supporting the debarment, and resolution of the disputed material facts are necessary for the Deciding DSO to make his or her decision, the Deciding DSO forwards the case file to the Fact-finding DSO, together with an order specifying which material facts the Deciding DSO has found to be in dispute. The order directs the Fact-finding DSO to conduct proceedings to review those specific facts.
2. The Fact-finding DSO shall schedule proceedings as to disputed facts to commence within 20 calendar days after receiving the Deciding DSO's order specifying which materials facts the Deciding DSO has found to be in dispute.
3. For the sole purpose of resolving those disputed material facts identified in the Deciding DSO's order, both the respondent and the Notice DSO, or their representatives, may appear before the Fact-finding DSO to resolve disputed material facts. In accordance with a schedule established by the Fact-finding DSO, each party may submit documentary evidence, present witnesses, and confront any opposing witnesses.
4. Proceedings under this section are not subject to the requirements of the Administrative Procedure Act or Federal rules of evidence or civil procedure. Discovery of documentary materials and the right to compel witnesses to appear are not available under these proceedings. Written motions or written briefs are

not permitted. Each party is allowed to articulate its view of material facts in dispute, call witnesses and present documentary information to support its position, question witnesses presented by the opposing party and challenge documentary evidence submitted by the opposing party. The Fact-finding DSO may also ask questions or call or recall witnesses offered by either the Notice DSO or the respondent to clarify or supplement the record. Legal arguments by either party about the propriety of the debarment action are not permitted during the fact-finding proceeding.

5. A transcribed record of these proceedings is made available at cost to the respondent, upon request, unless the respondent and the Department, by mutual agreement, waive the requirement for a transcript. The cost of a transcribed record includes both the reporter's fee and the cost for reproducing the transcript. If a transcript is not made, the Fact-finding DSO makes a brief written summary of the proceedings.
6. In the interest of economical and expeditious resolution of these cases, the Fact-finding DSO should encourage the parties to agree to have disputed material facts determined on the basis of written submissions rather than oral presentations.
7. After each party has submitted its evidence and made its final argument as to material facts in dispute, the Fact-finding DSO reviews the final record, prepares written findings of material fact and transmits the entire case file, including the written findings of material fact, to the Deciding DSO.
8. Unless the Deciding DSO specifically determines that the facts as found by the Fact-finding DSO are arbitrary and capricious, or clearly erroneous, the Deciding DSO bases his or her decision on the facts as found by the Fact-finding DSO and on other materials in the case file. The Deciding DSO may order the Fact-finding DSO to make additional findings of material fact, if necessary to making a decision.
9. The Fact-finding DSO completes all proceedings, prepares written findings of fact, and forwards the case file to the appropriate Deciding DSO within 30 calendar days after the proceedings are concluded.

#### G. Deciding DSO's Decision

1. The deciding DSO makes the decision whether to debar on the basis of all the information in the case file, including any submissions, evidence, testimony or argument presented by the respondent, and applicable law and regulations. Prior to issuing a decision, the Deciding DSO sends the decision to the General Counsel, or his or her designee, for review.
  - a. In actions where the respondent fails to respond to a Notice of Proposed Debarment, the Deciding DSO shall make his or her decision within 20 calendar days after the last date the respondent could have replied to the Notice.

- b. In actions where the respondent makes a response but fact-finding proceedings are not necessary, the Deciding DSO shall make his or her decision within 20 calendar days after receiving the respondent's final submission or argument, but not later than 45 calendar days after receiving the respondent's submission in opposition to the Notice of Proposed Debarment.
  - c. In actions in which additional proceedings are necessary to determine disputed material facts, the Deciding DSO shall make his or her decision within 20 calendar days after receiving the case file from the Fact-finding DSO.
  - d. The Deciding DSO may extend any internal timeframe stated in Section VII. of this Directive for good cause. In addition, the Deciding DSO may extend the 45-day limit established at 34 CFR 85.314(a) for cases not involving disputed material facts, for good cause. However, the Deciding DSO must make every effort to comply with the stated deadline. Failure to meet the deadline does not terminate or otherwise invalidate the debarment action.
2. If the Deciding DSO decides to impose debarment, he or she shall issue to the respondent prompt notice of the basis and terms of debarment in accordance with requirements of 34 CFR 85.314(d)(1).
  3. If the Deciding DSO decides not to impose debarment, he or she shall issue to the respondent prompt notice of that decision in accordance with the requirements of 34 CFR 85.314(d)(2).
  4. The Deciding DSO also promptly notified the Notice DSO and, if applicable, the Fact-finding DSO, of his or her decision, and returns the complete case file to the Notice DSO for appropriate filing and maintenance.

#### VIII. SUSPENSION PROCEDURES

A. Investigation and Referral – Information from a Principal Officer, or his or her designee, concerning the existence of a cause for suspension must be promptly reported and referred to the appropriate Notice DSO for consideration. If the Notice DSO determines that a cause for suspension exists (see 34 CFR 85.405), the Notice DSO sends a Notice of Suspension to the respondent. Except for notices of suspension related to CPA cases, the Notice DSO sends each Notice of Suspension to the General Counsel, or his or her designee, for review prior to issuance.

#### B. Notice of Suspension

1. When the appropriate Notice DSO determines that a cause for suspension exists, the Notice DSO immediately issues a notice to the respondent containing:
  - a. The information required by 34 CFR 85.411;

- b. A copy of the U.S. Department of Education Nonprocurement Debarment and Suspension Procedures as set forth at VII. through X. of this directive (Appendix A); and
  - c. The title and address of the Deciding DSO to whom information and argument in opposition to suspension must be submitted.
2. The Notice of Suspension must be mailed to the respondent by certified mail, return receipt requested, or hand delivered to the respondent. The Notice DSO assigns the suspension action a case number, opens an official case file on the proposed action, and forwards the official case file containing the referral, the Notice, and all documents included with the Notice to the Deciding DSO.
  3. The Deciding DSO places in the case file: all document submitted by either the respondent, the Notice DSO, or the Fact-finding DSO, if the case is referred to the Fact-finding DSO; transcripts of recorded testimony, if any; and any other relevant materials received during the proceedings, including information submitted by interested third parties, if permitted by the Fact-finding DSO, if the materials are determined to be relevant by the Deciding DSO.
- C. Failure to Respond to Notice – If the respondent fails to respond to the Notice of Suspension within 30 calendar days after receipt, the decision of the Notice DSO is automatically affirmed. No further notice will be issued to the respondent.
- D. Opportunity to Contest Suspension
1. In order to contest a suspension, the respondent must make a reply to the Deciding DSO within 30 calendar days after receipt of the Notice of Suspension.
    - a. A respondent may contest the suspension by:
      1. Submitting written argument; or
      2. Presenting oral argument.
  2. Written Submission in Opposition to Suspension
    - a. Within 30 calendar days after receipt of the Notice of Suspension, the respondent may transmit to the Deciding DSO its submission opposing the suspension. The respondent's submission must set forth all of the respondent's grounds for opposing suspension and identify all material facts that the respondent believes are in dispute. The respondent may include in its submission any relevant documents or materials in support of its position.
    - b. Upon receipt of the respondent's submission, the Deciding DSO forwards the respondent's submission to the Notice DSO for comment.

- c. Within 10 calendar days after receiving the respondent's submission from the Deciding DSO, the Notice DSO, or his or her representative, shall file a written response with the Deciding DSO and forward to the respondent a copy of the written response.
  - d. If necessary to facilitate his or her decision, the Deciding DSO may request additional submissions from both parties.
3. Oral Argument in Opposition to Suspension
- a. Within 30 calendar days after receipt of the Notice of Suspension, the respondent may respond to the Deciding DSO by making a written request to appear before him or her to make an oral argument in opposition to suspension.
  - b. The Deciding DSO shall notify the Notice DSO when a respondent's request to appear is received, and schedule an oral argument to commence within 10 calendar days after receiving the respondent's request. At oral arguments, both the respondent and the Notice DSO, or their representatives, may present argument in support of their respective positions in regard to the suspension action.

The respondent must set forth all of its grounds for opposing suspension and identify all material facts that the respondent believes are in dispute. Documentary materials may be presented by either party for inclusion in the case file; however, witnesses may not be presented. A transcribed record of the arguments is not made unless it is requested by both parties.

E. No Material Facts in Dispute

1. (1) In actions based upon an indictment, conviction, or a civil judgment, or (2) when a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be compromised, or (3) if the Deciding DSO determines that the respondent's written or oral submissions have not raised a dispute over material facts that must be resolved before a decision can be made, the Deciding DSO makes his or her decision whether to affirm the suspension based upon the Notice of Suspension, the material in the case file, and the submissions and arguments of the respondent, and the Notice DSO, and interested third parties, if applicable, and closes the official case file (See VIII.G., below.)
2. The Deciding DSO need not forward a case for fact-finding if there are one or more grounds for suspension that do not involve disputed material facts, even if there are other grounds for suspension that do involve disputed material facts. However, no decision to affirm the suspension may be based upon grounds for suspension that involved disputed material facts, unless the disputed material facts were referred to the Fact-finding DSO for resolution.

F. Proceedings as to Disputed Material Facts

1. The Deciding DSO forwards the case file to the Fact-finding DSO, together with an order specifying which material facts the Deciding DSO has found to be in dispute and directing the Fact-finding DSO to conduct proceedings to review those specific facts, if:
  - a. The Deciding DSO finds that the respondent's written or oral submission in opposition to suspension raises a genuine dispute over material facts supporting the suspension, and
  - b. Resolution of the disputed material facts is necessary for the Deciding DSO to make his or her decision.
2. The Deciding DSO shall not forward the case file to the Fact-finding DSO if:
  - a. The case is based upon an indictment, conviction, or a civil judgment, or
  - b. The Deciding DSO determines, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be comprised.
3. The Fact-finding DSO shall schedule proceedings as to disputed facts to commence within 20 calendar days after receiving the Deciding DSO's order specifying which material facts the Deciding DSO has found to be in dispute.
4. For the sole purpose of resolving those disputed material facts identified in the Deciding DSO's order, both the respondent and the Notice DSO, or their representatives, may appear before the Fact-finding DSO to resolve disputed material facts. In accordance with a schedule established by the Fact-finding DSO, each party may submit documentary evidence, present witnesses, and confront any opposing witnesses.
5. Proceedings under this section are not subject to the requirements of the Administrative Procedure Act or Federal rules of evidence or civil procedure. Discovery of documentary materials and the right to compel witnesses to appear are not available under these proceedings. Written motions or written briefs are not permitted. Each party is allowed to articulate its view of material facts in dispute, call witnesses and present documentary information to support its position, question witnesses presented by the opposing party and challenge documentary evidence submitted by the opposing party. The Fact-finding DSO may also ask questions or call or recall witnesses offered by either the Notice DSO or the respondent to clarify or supplement the record. Legal arguments by either party about the propriety of the suspension action are not permitted during the fact-finding proceeding.



6. A transcribed record of these proceedings is made available at cost to the respondent, upon request, unless the respondent and the Department, by mutual agreement, waive the requirement for a transcript. The cost of a transcribed record includes both the reporter's fee and the cost for reproducing the transcript. If a transcript is not made, the Fact-finding DSO makes a brief written summary of the proceedings.
7. In the interest of economical and expeditious resolution of these cases, the Fact-finding DSO should encourage the parties to agree to have disputed material facts determined on the basis of written submissions rather than oral presentations.
8. After each party has submitted its evidence and made its final argument as to material facts in dispute, the Fact-finding DSO reviews the final record, prepares written findings of material fact, and transmits the entire case file, including the written findings of material fact to the Deciding DSO.
9. Unless the Deciding DSO specifically determines that the facts as found by the Fact-finding DSO are arbitrary and capricious, or clearly erroneous, the Deciding DSO bases his or her decision on the facts as found by the Fact-finding DSO. The Deciding DSO may order the Fact-finding DSO to make additional findings of material fact, if necessary for making a decision.
10. The Fact-finding DSO completes all proceedings, prepares written findings of fact, and forwards the case file to the appropriate Deciding DSO within 30 calendar days after the proceedings are concluded.

G. Deciding DSO's Decision

1. In actions where the respondent makes a response, the Deciding DSO makes the decision whether to affirm the suspension on the basis of all the information in the case file, including any submissions, evidence, testimony or argument presented by the respondent, and applicable law and regulations. Prior to issuing a decision, the Deciding DSO sends his or her decision to the General Counsel, or his or her designee, for review.
  - a. In actions where fact-finding proceedings are not necessary, the Deciding DSO shall make his or her decision within 20 calendar days after receiving the final submission or argument, but not later than 45 calendar days after receiving the respondent's submission in opposition to the Notice of Suspension.
  - b. In actions in which additional proceedings are necessary to determine disputed material facts, the Deciding DSO shall make his or her decision within 20 calendar days after receiving the case file from the Fact-finding DSO.
  - c. The Deciding DSO may extend any internal timeframe stated in Section VIII. of this directive for good cause. In addition, the Deciding DSO may extend the 45-day limit established at 34 CFR 85.413(a) for cases not involving

disputed material facts, for good cause. However, the Deciding DSO must make every effort to comply with the stated deadlines. Failure to meet a deadline does not terminate or otherwise invalidate the suspension action.

2. If the Deciding DSO decides to affirm the suspension, he or she shall issue to the respondent prompt notice that the suspension has been affirmed in accordance with the requirements of 34 CFR 85.413(c).
3. If the Deciding DSO decides to modify or terminate the suspension, he or she shall issue to the respondent prompt notice of that decision in accordance with the requirements of 34 CFR 85.413(c).
4. The Deciding DSO also promptly notifies the Notice DSO and, if applicable, the Fact-finding DSO, or his or her decision, and returns the complete case file to the Notice DSO for appropriate filing and maintenance.

#### IX. COMBINED SUSPENSION AND PROPOSED DEBARMENT PROCEDURES

If both a suspension and proposed debarment are at issue, the procedures at VII. and VIII. are combined. If applicable, one hearing will be afforded to the respondent to contest both actions.

#### X. SETTLEMENT AND VOLUNTARY EXCLUSIONS

At any time during a proceeding, the respondent and Notice DSO may agree to enter into a proposed settlement of a debarment or suspension action. The Notice DSO and respondent may agree, as part of the proposed settlement, to a voluntary exclusion. The Notice DSO and respondent shall file a request with the Deciding DSO to approve all proposed settlements, including those containing a voluntary exclusion. If necessary to consider the request, the Deciding DSO may extend, for good cause, any internal or regulatory timelines. All settlement agreements, including those containing a voluntary exclusion, are not effective unless entered as a final decision of the Deciding DSO.

#### XI. CERTIFICATION REQUIREMENTS

##### A. Inclusion of Certification Forms in Application Packages and Other Materials Provided to Applicants

1. Principal Officers shall ensure that all application packages and other materials provided to applicants for Department of Education financial and nonfinancial assistance and benefits contain the standard form ED 80-0013, "Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements" (Appendix B).
2. Principal Officers shall ensure that, where appropriate, application packages and other materials provided to applicants for Department of Education financial and nonfinancial assistance and benefits contain the standard form ED 80-0014,

“Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions” (Appendix C).

B. Receipt and Review of Certifications

1. Principal Officers shall ensure that responsible Principal Office staff consider information included on the applicants’ completed ED 80-0013 during all covered assistance application and eligibility review processes. When Principal Office staff receives adverse information on an ED 80-0013, the Principal Officer’s designee contacts the Policy and Support Staff, Grants Division, GCS, to ascertain the current status of the prospective participant. The Principal Officer may not enter into a covered transaction or, for discretionary grants, make a recommendation to the Grants Officer to enter into a covered transaction, if the prospective participant or principal is debarred, suspended, or otherwise excluded from participation, unless the appropriate Deciding DSO, or the Secretary, for Drug-Free Workplace Violations, grants an exception. (See XIII. below)
2. Where a prospective participant under a primary covered transaction fails to furnish an ED 80-0013 or explanation of why it cannot certify to one or more of the statements on the certification, the Principal Office staff proceeds with review of the application.
3. The Grants Officer, for discretionary grants, or the awarding official, for transactions other than discretionary grants, is responsible for ensuring that a signed certification, or written explanation from the prospective participant as to why it is unable to certify to one or more of the statements on the certification, is obtained prior to issuing any award.

XII. REQUIREMENTS FOR CHECKING THE “PARTIES EXCLUDED FROM NONPROCUREMENT PROGRAMS” LIST (NONPROCUREMENT LIST) (Appendix D)

A. Principal Office Requirements

1. Principal Office staff checks the Nonprocurement List before making funding recommendations to GCS, or, for transactions other than discretionary grants, before entering into grants, loans, and other primary covered transactions as set forth at 34 CFR 85.110, to determine whether a prospective participant in a primary covered transaction is debarred, suspended, ineligible, or voluntarily excluded;
2. Principal Office staff checks the Nonprocurement List before approving prospective principals, participants in primary covered transactions, and participants in lower tier covered transactions where Department approval is required;
3. When Principal Office staff finds a prospective principal, participant in a primary covered transaction, or participant in a lower tier covered transaction that requires

Departmental approval on the Nonprocurement List, the Principal Officer's designee contacts the Policy and Support Staff, Grants Division, GCS, to ascertain the current status of the prospective participant principal; and

4. If the Policy and Support Staff, Grants Division, GCS, confirms that a prospective participant or principal is currently debarred, suspended, or otherwise excluded from participation, and Principal Office staff believes it is in the best interest of the Government to do business with the prospective participant or principal, the cognizant Principal Officer submits a written request for exception to the appropriate Deciding DSO, or, for persons excluded for violating the Drug-Free Workplace, to the Secretary.
- B. OPE Requirements – In addition to the requirements listed in XI.A. above, the Assistant Secretary, OPE, or his or her designee, reviews the Nonprocurement List, on a regular basis, to ascertain whether lenders or institutions of higher education, or their principals, are debarred, suspended, ineligible, or voluntarily excluded by another Federal agency, and takes a Title IV action as required at 34 CFR 85.201, as appropriate.
- C. GCS Requirements – GCS staff checks the Nonprocurement List immediately prior to issuing each discretionary grant award, to determine whether a prospective participant is debarred, suspended, ineligible or voluntarily excluded. If the exclusionary action is determined to be in current effect, GCS does not make an award and so informs the cognizant Principal Officer, or his or her designee.

### XIII. EXCEPTION DECISIONS PERMITTING PARTICIPATION BY DEBARRED OR SUSPENDED PERSONS

The Deciding DSO, or, for persons excluded for violating the Drug-Free Workplace Act, the Secretary, considers requests for exception according to procedures set forth at 34 CFR 85.215 or 85.625, as appropriate, and promptly informs the requesting Principal Officer in writing of the decision regarding the request for exception.

### XIV. REQUIREMENTS FOR REPORTING TO THE GENERAL SERVICES ADMINISTRATION (GSA)

- A. To meet the requirements for reporting to GSA, the Notice DSO, Deciding DSO, or other Department official, as appropriate, notifies the Policy and Support Staff, Grants Division, GCS, within one working day, of:
1. Each debarment, suspension, determination of ineligibility, and voluntary exclusion final decision taken under 34 CFR 85.314 and 85.315 or 34 CFR 85.413;
  2. Each debarment, suspension, determination of ineligibility, and voluntary exclusion final decision taken under 34 CFR 85.316 or 85.414;
  3. Any reversal of or modification to a previously reported decision;

4. Any final action taken under 34 CFR Part 668 or Part 682 to suspend, limit, or terminate an institution of higher education or lender; and
  5. Any exception granted under 34 CFR 85.215 or 34 CFR 85.625 permitting participation by a debarred, suspended, or voluntarily excluded person.
- B. Notifications of each action must be in writing and must include a copy of the notice(s) to the excluded participant(s) and:
1. The name and complete address of the excluded participant(s), in alphabetical order. The position title of the individual must not be included, and the name of the organization with which the individual is affiliated shall not be included unless the organization itself is included in the action. Participants should be grouped together if more than one participant is involved in a single action;
  2. The type of action (i.e., debarment, suspension, voluntary exclusion, or ineligibility);
  3. The cause or basis for the action (citing the appropriate Cause and Treatment Code from the Nonprocurement List); and
  4. The termination date. This is the date on which the effect of the exclusionary action ends. If the period or effect is determined to be indefinite, it should be stated as such.
- C. The Policy and Support Staff, Grants Division, GCS, notifies GSA within five working days after any actions specified in XIV.A.1. through 5. above.

## XV. INQUIRIES CONCERNING LISTED PERSONS

- A. Inquiries from Department employees concerning persons debarred, suspended, voluntarily excluded, or determined to be ineligible by the Department or another Federal agency are directed through the cognizant Principal Officer's designee to the Policy and Support Staff, Grants Division, GCS.
- B. The Policy and Support Staff, Grants Division, GCS, directs inquiries concerning CPA cases, lenders, guarantee agencies, or institutions of higher education determined to be ineligible by the Department, to the appropriate Notice DSO or other Department Official, as appropriate. The Policy and Support Staff, Grants Division, GCS, responds directly to inquiries concerning all other actions taken by the Department. For inquiries concerning actions taken by any other Federal agency, the Policy and Support Staff, Grants Division, GCS, contacts the appropriate Federal agency official(s) and reports current status back to the Principal Officer's designee.

APPENDIX AU.S. DEPARTMENT OF EDUCATION  
NONPROCUREMENT DEBARMENT AND SUSPENSION PROCEDURESI. DEBARMENT PROCEDURES

- A. Investigation and Referral – Information from a Principal Officer, or his or her designee, concerning the existence of a cause for debarment must be promptly reported and referred to the appropriate Notice Debarring/Suspending Official (DSO) for consideration. If the Notice DSO determines that a cause for debarment exists (see 34 CFR 85.305), the Notice DSO sends a Notice of Proposed Debarment to the respondent. Except for notices of proposed debarment related to CPA cases, the Notice DSO sends each Notice of Proposed Debarment to the General Counsel, or his or her designee, for review prior to issuance.
- B. Notice of Proposed Debarment
1. A debarment proceeding is initiated by notice from the appropriate Notice DSO to the respondent containing:
    - a. The information required by 34 CFR 85.312;
    - b. A copy of the U.S. Department of Education Nonprocurement Debarment and Suspension of Procedures; and
    - c. The title and address of the Deciding DSO to whom information and argument in opposition to the proposed debarment must be submitted.
  2. The Notice of Proposed Debarment must be mailed to the respondent by certified mail, return receipt requested, or hand delivered to the respondent. The Notice DSO assigns the debarment action a case number, opens an official case file on the proposed action, and forwards the official case file containing the referral, the Notice, and all documents included with the Notice to the Deciding DSO.
  3. The Deciding DSO places in the case file: all documents submitted by either the respondent, the Notice DSO, or the Fact-finding DSO, if the case is referred to the Fact-finding DSO; transcripts of recorded testimony, if any; and any other relevant materials received during the proceedings, including information submitted by interested third parties, if permitted and determined to be relevant by the Fact-finding DSO, or the Deciding DSO, as applicable.
- C. Failure to Respond to Notice – If the respondent fails to respond to the Notice of Proposed Debarment within 30 calendar days after receipt, the Deciding DSO shall make his or her decision whether to impose debarment based upon the

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Notice of Proposed Debarment and the material in the case file, and close the official case file. (See I.G., below.)

D. Opportunity to Contest Proposed Debarment

1. In order to contest a proposed debarment, the respondent must make a reply to the Deciding DSO within 30 calendar days after receipt of the Notice of Proposed Debarment.
  - a. A respondent may contest the proposed debarment by:
    1. Submitting written argument; or
    2. Presenting oral argument.
  - b. A response may be made by the respondent or a representative.
2. Written Submission in Opposition to the Proposed Debarment
  - a. Within 30 calendar days after receipt of the Notice of Proposed Debarment, the respondent may transmit to the Deciding DSO a written submission opposing debarment. The respondent's submission must set forth all of the respondent's grounds for opposing debarment and identify all material facts that the respondent believes are in dispute. The respondent may include in its submission any relevant documents or materials in support of its position.
  - b. Upon receipt of the respondent's submission, the Deciding DSO forwards the respondent's submission to the Notice DSO for comment.
  - c. Within 10 calendar days after receiving the respondent's submission from the Deciding DSO, the Notice DSO, or his or her representative, shall file a written response with the Deciding DSO and forward to the respondent a copy of the written response.
  - d. If necessary to facilitate his or her decision, the Deciding DSO may request additional submissions from both parties.
3. Oral Argument in Opposition to the Proposed Debarment
  - a. Within 30 calendar days after receipt of the Notice of Proposed Debarment, the respondent may respond to the Deciding DSO by making a written request to appear before him or her to make an oral argument in opposition to the proposed debarment.

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- b. The Deciding DSO shall notify the Notice DSO when a respondent's request to appear is received, and schedule an oral argument to commence within 10 calendar days after receiving the respondent's request. At oral argument, both the respondent and the Notice DSO, or their representatives, may present argument in support of their respective positions in regard to the proposed debarment action. The respondent must set forth all of its grounds for opposing debarment and identify all material facts that the respondent believes are in dispute. Documentary materials may be presented by either party for inclusion in the case file; however, witnesses may not be presented. A transcribed record of the arguments will not be made unless requested by both parties.

E. No Material Facts in Dispute

1. In actions based upon a conviction or a civil judgment, or if the Deciding DSO determines that the respondent's written or oral submissions have not raised a dispute over material facts that must be resolved before a decision can be made, the Deciding DSO makes his or her decision whether to impose debarment based upon the Notice of Proposed Debarment, the material in the case file, and the submissions and arguments of the respondent, the Notice DSO, and interested third parties, if applicable, and closed the official case file. (See I.G. below.)
2. The Deciding DSO need not forward a case for fact-finding if there are one or more ground for debarment that do not involve disputed material facts, even if there are other grounds for debarment that do involve disputed material facts. However, no decision to debar may be based upon grounds for debarment that involved disputed material facts, unless the disputed material facts were referred to the Fact-finding DSO for resolution.

F. Proceedings as to Disputed Material Facts

1. In actions not based upon a conviction or a civil judgment, if the Deciding DSO finds that the respondent's written or oral submission in opposition to debarment raises a genuine dispute over material facts supporting the debarment, and resolution of the disputed material facts are necessary for the Deciding DSO to make his or her decision, the Deciding DSO forwards the case file to the Fact-finding DSO, together with an order specifying which material facts the Deciding DSO has found to be in dispute. The order directs the Fact-finding DSO to conduct proceedings to review those specific facts.
2. The Fact-finding DSO shall schedule proceedings as to disputed facts to commence within 20 calendar days after receiving the Deciding DSO's order specifying which material facts the Deciding DSO has found to be in dispute.



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3. For the sole purpose of resolving those disputed material facts identified in the Deciding DSO's order, both the respondent and the Notice DSO, or their representatives, may appear before the Fact-finding DSO to resolve disputed material facts. In accordance with a schedule established by the Fact-finding DSO, each party may submit documentary evidence, present witnesses, and confront any opposing witnesses.
4. Proceedings under this section are not subject to the requirements of the Administrative Procedure Act or Federal rule of evidence or civil procedure. Discovery of documentary materials and the right to compel witnesses to appear are not available under these proceedings. Written motions or written briefs are not permitted. Each party is allowed to articulate its view of material facts in dispute, call witnesses and present documentary information to support its position, question witnesses presented by the opposing party and challenge documentary evidence submitted by the opposing party. The Fact-finding DSO may also ask questions or call or recall witnesses offered by either the Notice DSO or the respondent to clarify or supplement the record. Legal arguments by either party about the propriety of the debarment action are not permitted during the fact-finding proceeding.
5. A transcribed record of these proceedings is made available at cost to the respondent, upon request, unless the respondent and the Department, by mutual agreement, waive the requirement for a transcript. The cost of a transcribed record includes both the reporter's fee and the cost for reproducing the transcript. If a transcript is not made, the Fact-finding DSO makes a brief written summary of the proceedings.
6. In the interest of economical and expeditious resolution of these cases, the Fact-finding DSO should encourage the parties to agree to have disputed material facts determined on the basis of written submissions rather than oral presentations.
7. After each party has submitted its evidence and made its final argument as to material facts in dispute, the Fact-finding DSO reviews the final record, prepares written findings of material fact and transmits the entire case file, including the written findings of material fact, to the Deciding DSO.
8. Unless the Deciding DSO specifically determines that the facts as found by the Fact-finding DSO are arbitrary and capricious, or clearly erroneous, the Deciding DSO bases his or her decision on the facts as found by the Fact-finding DSO and on other materials in the case file. The Deciding DSO may order the Fact-finding DSO to make additional findings of material fact, if necessary for making a decision.
9. The Fact-finding DSO completes all proceedings, prepares written findings of fact, and forwards the case file to the appropriate Deciding DSO within 30 calendar days after the proceedings are concluded.

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10. The Fact-finding DSO completes all proceedings, prepares written findings of fact, and forwards the case file to the appropriate Deciding DSO within 30 calendar days after the proceedings are concluded.

G. Deciding DSO's Decision

1. The Deciding DSO makes the decision whether to debar on the basis of all the information in the case file, including any submissions, evidence, testimony or argument presented by the respondent, and applicable law and regulations. Prior to issuing a decision, the Deciding DSO sends the decision to the General Counsel, or his or her designee, for review.
  - a. In actions where the respondent fails to respond to a Notice of Proposed Debarment, the Deciding DSO shall make his or her decision within 20 calendar days after the last date the respondent could have replied to the Notice.
  - b. In actions where the respondent makes a response but fact-finding proceedings are not necessary, the Deciding DSO shall make his or her decision within 20 calendar days after receiving the respondent's final submission or argument, but not later than 45 calendar days after receiving the respondent's submission in opposition to the Notice of Proposed Debarment.
  - c. In actions in which the additional proceedings are necessary to determine disputed material facts, the Deciding DSO shall make his or her decisions within 20 calendar days after receiving the case file from the Fact-finding DSO.
  - d. The Deciding DSO may extend any internal timeframe stated in Section VII. of this Directive for good cause. In addition, the Deciding DSO may extend the 45-day limit established at 34 CFR 85.314(a) for cases not involving disputed material facts, for good cause. However, the Deciding DSO must make every effort to comply with the stated deadline. Failure to meet the deadline does not terminate or otherwise invalidate the debarment action.
2. If the Deciding DSO decides to impose debarment, he or she shall issue to the respondent prompt notice of the basis and terms of debarment in accordance with the requirements of 34 CFR 85.314(d)(1).
3. If the Deciding DSO decides not to impose debarment, he or she shall issue to the respondent prompt notice of that decision in accordance with the requirements of 34 CFR 85.314(d)(2).

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4. If the Deciding DSO decides not to impose debarment, he or she shall issue to the respondent prompt notice of that decision in accordance with the requirements of 34 CFR 85.314(d)(2).
5. The Deciding DSO also promptly notifies the Notice DSO and, if applicable, the Fact-finding DSO, of his or her decision, and returns the complete case file to the Notice DSO for appropriate filing and maintenance.

**II. SUSPENSION PROCEDURES**

- A. Investigation and Referral – Information from a Principal Officer, or his or her designee, concerning the existence of a cause for suspension must be promptly reported and referred to the appropriate Notice DSO for consideration. If the Notice DSO determines that a cause for suspension exists (see 34 CFR 85.405), the Notice DSO sends a Notice of Suspension to the respondent. Except for notices of suspension related to CPA cases, the Notice DSO sends each Notice of Suspension to the General Counsel, or his or her designee, for review prior to issuance.
- B. Notice of Suspension
  1. When the appropriate Notice DSO determines that a cause for suspension exists, the Notice DSO immediately issues a notice to the respondent containing:
    - a. The information required by 34 CFR 85.411;
    - b. A copy of the U.S. Department of Education Nonprocurement Debarment and Suspension Procedures; and
    - c. The title and address to the Deciding DSO to whom information and argument in opposition to suspension must be submitted.
  2. The Notice of Suspension must be mailed to the respondent by certified mail, return receipt requested, or hand delivered to the respondent. The Notice DSO assigns the suspension action a case number, opens an official case file on the proposed action, and forwards the official case file containing the referral, the Notice, and all documents included with the Notice to the Deciding DSO.
  3. The Deciding DSO places in the case file: all documents submitted by either the respondent, the Notice DSO, or the Fact-finding DSO, if the case is referred to the Fact-finding DSO; transcripts of recorded testimony, if any; and any other relevant materials received during the proceedings, including information submitted by interested third parties, if permitted by the Fact-finding DSO, if the materials are determined to be relevant by the Deciding DSO.

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- C. Failure to Respond to Notice – If the respondent fails to respond to the Notice of Suspension within 30 calendar days after receipt, the decision of the Notice DSO is automatically affirmed. No further notice will be issued to the respondent.
- D. Opportunity to Contest Suspension
1. In order to contest a suspension, the respondent must make a reply to the Deciding DSO within 30 calendar days after receipt of the Notice of Suspension.
    - a. A respondent may contest the suspension by:
      1. Submitting written argument; or
      2. Presenting oral argument.
    - b. A response may be made by the respondent or a representative.
  2. Written Submission in Opposition to Suspension
    - a. Within 30 calendar days after receipt of the Notice of Suspension, the respondent may transmit to the Deciding DSO its submission opposing the suspension. The respondent's submission must set forth all of the respondent's grounds for opposing suspension and identify all material facts that the respondent believes are in dispute. The respondent may include in its submission any relevant documents or materials in support of its position.
    - b. Upon receipt of the respondent's submission, the Deciding DSO forwards the respondent's submission to the Notice DSO for comment.
    - c. Within 10 calendar days after receiving the respondent's submission from the Deciding DSO, the Notice DSO, or his or her representative, shall file a written response with the Deciding DSO and forward to the respondent a copy of the written response.
    - d. If necessary to facilitate his or her decision, the Deciding DSO may request additional submissions from both parties.
  3. Oral Argument in Opposition to Suspension
    - a. Within 30 calendar days after receipt of the Notice of Suspension, the respondent may respond to the Deciding DSO by making a written request to appear before him or her to make an oral argument in opposition to suspension.

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- b. Within 30 calendar days after receipt of the Notice of Suspension, the respondent may respond to the Deciding DSO by making a written request to appear before him or her to make an oral argument in opposition to suspension.
- c. The Deciding DSO shall notify the Notice DSO when a respondent's request to appear is received, and schedule an oral argument to commence within 10 calendar days after receiving the respondent's request. At oral argument, both the respondent and the Notice DSO, or their representatives, may present argument in support of their respective positions in regard to the suspension action. The respondent must set forth all of its grounds for opposing suspension and identify all material facts that the respondent believes are in dispute. Documentary materials may be presented by either party for inclusion in the case file; however, witnesses may not be presented. A transcribed record of the arguments is not made unless it is requested by both parties.

E. No Material Facts in Dispute

1. (1) In actions based upon an indictment, conviction, or a civil judgment, or (2) when a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be compromised, or (3) if the Deciding DSO determines that the respondent's written or oral submissions have not raised a dispute over material facts that must be resolved before a decision can be made, the Deciding DSO makes his or her decision whether to affirm the suspension based upon the Notice of Suspension, the material in the case file, and the submissions and arguments of the respondent, the Notice DSO, and interested third parties, if applicable, and closes the official case file. (See II.G., below.)
2. The Deciding DSO need not forward a case for fact-finding if there are one or more grounds for suspension that do not involve disputed material facts, even if there are other grounds for suspension that do involve disputed material facts. However, no decision to affirm the suspension may be based upon grounds for suspension that involved disputed material facts, unless the disputed material facts were referred to the Fact-finding DSO for resolution.

F. Proceedings as to Disputed Material Facts

1. The Deciding DSO forwards the case file to the Fact-finding DSO, together with an order specifying which material facts the Deciding DSO has found to be in dispute and directing the Fact-finding DSO to conduct proceedings to review those specific facts, if:

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- a. The Deciding DSO finds that the respondent's written or oral submission in opposition to suspension raises a genuine dispute over material facts supporting the suspension, and
  - b. Resolution of the disputed material facts is necessary for the Deciding DSO to make his or her decision.
2. The Deciding DSO shall not forward the case file to the Fact-finding DSO if:
    - a. The case is based upon an indictment, conviction, or a civil judgment, or
    - b. The Deciding DSO determines, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be compromised.
  3. The Fact-finding DSO shall schedule proceedings as to disputed facts to commence within 20 calendar days after receiving the Deciding DSO's order specifying which material facts the Deciding DSO has found to be in dispute.
  4. For the sole purpose of resolving those disputed material facts identified in the Deciding DSO's order, both the respondent and the Notice DSO, or their representatives, may appear before the Fact-finding DSO to resolve disputed material facts. In accordance with a schedule established by the Fact-finding DSO, each party may submit documentary evidence, present witnesses, and confront any opposing witnesses.
  5. Proceedings under this section are not subject to the requirements of the Administrative Procedure Act or Federal rules of evidence or civil procedure. Discovery of documentary materials and the right to compel witnesses to appear are not available under these proceedings. Written motions or written briefs are not permitted. Each party is allowed to articulate its view of material facts in dispute, call witnesses and present documentary information to support its position, question witnesses presented by the opposing party and challenge documentary evidence submitted by the opposing party. The Fact-finding DSO may also ask questions or call or recall witnesses offered by either the Notice DSO or the respondent to clarify or supplement the record. Legal arguments by either party about the propriety of the suspension action are not permitted during the fact-finding proceeding.
  6. A transcribed record of these proceedings is made available at costs to the respondent, upon request, unless the respondent and the Department, by mutual agreement, waive the requirement for a transcript. The cost of a transcribed record includes both the reporter's fee and the cost for reproducing the transcript. If a transcript is not made, the Fact-finding DSO makes a brief written summary of the proceedings.

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7. In the interest of economical and expeditious resolution of these cases, the Fact-finding DSO should encourage the parties to agree to have disputed material facts determined on the basis of written submissions rather than oral presentations.
8. After each party has submitted its evidence and made its final argument as to material facts in dispute, the Fact-finding DSO reviews the final record, prepares written findings of material fact, and transmits the entire case file, including the written findings of material fact to the Deciding DSO.
9. Unless the Deciding DSO specifically determines that the facts as found by the Fact-finding DSO are arbitrary and capricious, or clearly erroneous, the Deciding DSO bases his or her decision on the facts as found by the Fact-finding DSO. The Deciding DSO may order the Fact-finding DSO to make additional findings of material fact, if necessary for making a decision.
10. The Fact-finding DSO completes all proceedings, prepares written findings of fact, and forwards the case file to the appropriate Deciding DSO within 30 calendar days after the proceedings are concluded.

G. Deciding DSO's Decision

1. In actions where the respondent makes a response, the Deciding DSO makes the decision whether to affirm the suspension on the basis of all the information in the case file, including any submissions, evidence, testimony, or argument presented by the respondent, and applicable law and regulations. Prior to issuing a decision, the Deciding DSO sends his or her decision to the General Counsel, or his or her designee, for review.
  - a. In actions where fact-finding proceedings are not necessary, the Deciding DSO shall make his or her decision within 20 calendar days after receiving the final submission or argument, but not later than 45 calendar days after receiving the respondent's submission in opposition to the Notice of Suspension.
  - b. In actions in which additional proceedings are necessary to determine disputed material facts, the Deciding DSO shall make his or her decision within 20 calendar days after receiving the case file from the Fact-finding DSO.
  - c. The Deciding DSO may extend any internal timeframe stated in Section VIII. of this directive for good cause. In addition, the Deciding DSO may extend the 45-day limit established at 34 CFR 85.413(a) for cases not involving disputed material facts, for good cause. However, the Deciding DSO must make every effort to comply with the stated deadlines. Failure to meet a deadline does not terminate or otherwise invalidate the suspension action.

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2. If the Deciding DSO decides to affirm the suspension, he or she shall issue to the respondent prompt notice that the suspension has been affirmed in accordance with the requirements of 34 CFR 85.413(c).
3. If the Deciding DSO decide to modify or terminate the suspension, he or she shall issue to the respondent prompt notice of that decision in accordance with the requirements of 34 CFR 85.413(c).
4. The Deciding DSO also promptly notifies the Notice DSO and, if applicable, the Fact-finding DSO, of his or her decision, and returns the complete case file to the Notice DSO for appropriate filing and maintenance.

**III. COMBINED SUSPENSION AND PROPOSED DEBARMENT PROCEDURES**

If both a suspension and proposed debarment are at issue, the procedures at I. and II. are combined. If applicable, one hearing will be afforded to the respondent to contest both actions.

**IV. SETTLEMENT AND VOLUNTARY EXCLUSIONS**

At any time during a proceeding, the respondent and Notice DSO may agree to enter into a proposed settlement of a debarment or suspension action. The Notice DSO and respondent may agree, as part of the proposed settlement, to a voluntary exclusion. The Notice DSO and respondent shall file a request with the Deciding DSO to approve all proposed settlements, including those containing a voluntary exclusion. If necessary to consider the request, the Deciding DSO may extend, for good cause, any internal or regulatory timelines. All settlement agreements, including those containing a voluntary exclusion, are not effective unless entered as a final decision of the Deciding DSO.



## APPENDIX B

### CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certification shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

#### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

#### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Section 85.105 and 85.110-

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

#### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Section 85.605 and 85.610-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(a) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

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(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantees may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check if there are workplaces on file that are not identified here.

**As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.**

|   |                                     |
|---|-------------------------------------|
| NAME OF APPLICANT                                   | PR/AWARD NUMBER AND/OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE |                                     |
| SIGNATURE   | DATE                                |

**ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)**

**APPENDIX C**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions**

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized

- by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

|   |                                     |
|---|-------------------------------------|
| NAME OF APPLICANT                                   | PR/AWARD NUMBER AND/OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE |                                     |
| SIGNATURE   | DATE                                |

## APPENDIX D

# PARTIES EXCLUDED FROM NONPROCUREMENT PROGRAMS

## Definitions of Terms and Cause and Treatment Codes

### TERMS

The following definitions apply to actions taken pursuant to agency regulations implementing Executive Order 12549, which went into effect on October 1, 1988.

### PARTICIPANT

Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

### PERSON

Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government-owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

### PRINCIPAL

Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant.

### COVERED TRANSACTION

A covered transaction is a primary covered transaction or lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

**(a) Primary covered transaction** – Except as noted below, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

**(b) Lower tier covered transaction** – A lower tier covered transaction is:

(1) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(2) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at

10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$25,000) under a primary covered transaction.

(3) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Individual agency regulations contain designations of such persons.

(c) **Exceptions** – The following transactions are not covered:

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

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

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

(4) Federal employment

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

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

(7) Other transactions where the application of the non-procurement debarment and suspension regulations would be prohibited by law.

## CODES

### C

### CAUSE

Debarred by the Comptroller General for violation of the David-Bacon Act, 40 U.S.C. 276a-2(a).

## TREATMENT

The person, or any firm, corporation, partnership, or association in which the person has an interest, is ineligible to receive any contract or subcontract of the United States or District of Columbia, and any contract or subcontract subject to the labor standards provisions of the statutes listed in 29 CFR 5.1 (See Code G). Debarment is for a three-year period to terminate on the date shown.

## APPENDIX D – Page 2

### E

#### CAUSE

Debarred by an agency for violation of the Buy American Act, 41 U.S.C. 10b(b).

#### TREATMENT

Exclusions are limited to federally funded construction projects subject to the Buy American Act. Offers shall not be solicited from, nor contracts or subcontracts for the construction, alteration, or repair of public buildings or works be awarded to, the listed person. The person may be solicited for offers and awarded contracts for other than construction, alteration, or repair of public buildings or works. Debarment will terminate on the date shown.

### G

#### CAUSE

Declared ineligible by the Secretary of Labor under the authority granted in Reorganization Plan No. 14 of 1950 and based on a violation of one or more of the labor standards provisions of one or more of the following Federal statutes: Contract Works Hours and Safety Standards Act, 40 U.S.C. 327, et seq.; Copeland Act, 40 U.S.C. 276c; Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964, 42 U.S.C. 291e(a)(5); United States Housing Act of 1937, as amended, 42 U.S.C. 1437j; National Housing Act, 12 U.S.C. 1715c, as amended; Housing Act of 1949, 42 U.S.C. 1459; Housing Act of 1961, 42 U.S.C. 1500c-3; Housing and Urban Development Act of 1965, 42 U.S.C. 3107; Federal-Aid Highway Act, 23 U.S.C. 113; Federal Water Pollution Control Act, L33 U.S.C.1372; Postal Reorganization Act, 39 U.S.C. 410(b)(4)(c); Public Works and Economic Development Act of 1965, 42 U.S.C. 3222; Housing and Community Development Act of 1974, 42 U.S.C. 5310; Health Professions Educational Assistance Act, 42 U.S.C. 293a(c)(7); Appalachian Regional Development Act of 1965, 40 U.S.C. App. 402; Urban Mass Transportation Act of 1964, 40 U.S.C. App. 402; Urban Mass Transportation Act of 1964, 40 U.S.C. 1609; Housing Act of 1950, 12 U.S.C. 1749a(f); Housing Act of 1959, 12 U.S.C. 1701q(c)(3); Commercial Fisheries Research and Development Act of 1964, 16 U.S.C. 779e; National Technical Institute for the Deaf Act, 20 U.S.C. 684 (b)(5); National Foundation on the Arts and Humanities Act of 1965, 20 U.S.C. 954(j); Elementary and Secondary Education Act of 1965, as amended by Elementary and Secondary and other Educational Amendments of 1969, 20 U.S.C. 1232(b); Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e; Indian Health Care Improvement Act, 25 U.S.C. 1633(b); Rehabilitation Act of 1973 29 U.S.C. 776(b)(5); Job Training Act, 29 U.S.C. 1501 et seq; Veteran Nursing Home Care Act of 1964, 38 U.S.C. 5035(a)(8); National Visitors Center Facilities Act of 1966, 40 U.S.C. 808; Health Services Research, Health Statistics, and Medical Libraries Act of 1974, 42 U.S.C. 242m(h)(2); Nurse Training Act of 1964, 42 U.S.C. 296a(b)(5); Heart Disease, Cancer, and Stroke Amendments of 1965, 42 U.S.C. 299d(b)(4); Safe Drinking Water Act, 42 U.S.C. 300j-9(e); National Health Planning and Resources Act, 42 U.S.C. 300 o-3(b)(1)(H); Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437(j); Defense Housing and Community Facilities Land Services Act of 1951, 42 U.S.C. 1592i; Special Health Revenue Sharing Act of 1975, 42 U.S.C. 2689j(a)(5); Economic Opportunity Act of 1964, 42 contract or subcontract of the United States or District of Columbia, and any contract or subcontract subject to the labor standards provisions of the statutes listed in 29 CFR 5.1 (see Code

4B). Debarment is for a three-year period to terminate on the date shown.  
U.S.C. 2947; Headstart, Economic Opportunity and Community Partnership Act of 1974, 42 U.S.C. 2992a; Older Americans Act of 1965, 42 U.S.C. 3041a(a)(4); Juvenile Delinquency Prevention Act, 42 U.S.C. 3884; New Communities Act of 1968, 42 U.S.C. 3909; Urban Growth and New Community Development Act of 1970, 42 U.S.C. 4529; Domestic Volunteers Service Act of 1973, 42 U.S.C. 5046; Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6042(4); 42 U.S.C. 6063(b)(19); National Energy Conservation Policy Act, 42 U.S.C. 6371j; Public Works Employment Act of 1976, 42 U.S.C. 6708; 42 U.S.C. 6728; Energy Conservation and Production Act, 42 U.S.C 6881(h); Solid Waste Disposal Act, 42 U.S.C 6979; Rail Passenger Service Act of 1970, 45 U.S.C. 565(d)); Highway Speed Ground Transportation Study, 49 U.S.C. 1636(b); Airport and Airway Development Act of 1970, 49 U.S.C. 1722(b); Federal Civil Defense Act of 1950, 50 U.S.C App. 2281i; National Capital Transportation Act of 1965, 40 U.S.C. 682(b)(4); Delaware River Basin Compact (Sec. 15.1, 75 Stat. 714, Pub. L. 87-328); Energy Security Act, 42 U.S.C. 8701 note.

#### TREATMENT

The person, or any firm, corporation, partnership, or association in which the person has a substantial interest, is ineligible to receive any contract or subcontract for work subject to the labor standards provisions of any of the listed statutes. Debarment is for a period determined by the Secretary of Labor, not to exceed three years, to terminate on the date shown.

### H (1 or 2)

#### CAUSE

Facility declared ineligible by the Administrator of the Environmental Protection Agency pursuant to the Section 306 of the Clean Air Act, 42 U.S.C. 7606, or Section 508 of the Clean Water Act, 33 U.S.C 1368, and Executive Order 11738. Ineligibility is based on noncompliance with clean air or water standards resulting in a conviction under 113(c)(1) of the Clean Air Act of 309(c) or the Clean Water Act (listed as "H1") or other action (listed as "H2").

#### TREATMENT

No agency or participant shall enter into, renew, or extend any nonexempt grant, loan, or contract or subcontract thereunder, where a listed facility would be used for such a grant, loan, contract, or subcontract. Ineligibility is for an indefinite period until terminated by the Administrator. Therefore, termination will be listed as "Indefinite." Such a grant, loan, contract, or subcontract is exempt from the ineligibility determination if it does not exceed \$100,000, or if its principal purpose is to assist a facility to comply with any law or regulation relating to environmental pollution. However, these exemptions do not apply where the facility is listed as "H1". See 40 CFR 15.5 for additional information concerning exemptions.

### P

#### CAUSE

Debarment by any Federal agency pursuant to Executive Order 12549 for violations of the Drug-Free Workplace Act of 1988, Pub. L. 100-690.

**APPENDIX D – Page 3****TREATMENT**

Listed persons are excluded as participants or principals in all primary and lower tier covered transactions of all agencies. Further, agencies and participants shall not renew or otherwise extend the duration of covered transactions or consent to lower tier covered transactions with such persons. Exceptions to this treatment require a written determination by the head of the Federal agency or designee stating the reasons for entering into the transaction. Debarments are for a specified term as determined by the debarring agency and as indicated by the listing.

**Q****CAUSE**

Suspension by any Federal agency pursuant to Executive Order 12549 for violations of the Drug-Free Workplace Act of 1988, Pub. L. 100-690.

**TREATMENT**

Same as Code P, except that suspensions are temporary actions. Therefore, the termination date will be listed as "Indefinite."

**R****CAUSE**

Debarment by any Federal agency pursuant to Executive Order 12549 and the agency implementing regulations for one or more of the following causes: (a) conviction or a civil judgment for fraud, violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, false claims, or other offense indicating a lack of business integrity or honesty; (b) violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program; or (c) other causes specified in the agency implementing regulations, or such other cause of a serious or compelling nature affecting responsibility.

**TREATMENT**

Listed persons are excluded as participants or principals in all primary and lower tier covered transactions of all agencies. Further, agencies and participants shall not renew or otherwise extend the duration of covered transactions or consent to lower tier covered transactions with such persons. Exceptions to this treatment require a written determination by the head of the Federal agency or designee stating the reasons for entering into the transaction. Debarments are for a specified term as determined by the debarring agency and as indicated by the listing.

**S****CAUSE**

Suspension by any Federal agency pursuant to Executive Order 12549 and the agency implementing regulations based on an indictment or other adequate evidence (a) to suspect the

commission of an offense that is a cause for debarment or (b) that other causes for debarment under the agency regulations may exist.

**TREATMENT**

Same as Code R, except that suspensions are temporary actions and the period of suspension is indefinite. Therefore, the termination date will be listed as "indefinite."

**NOTE**

Debarments and suspensions taken in accordance with agency regulations issued pursuant to Executive Order 12549, which become effective on October 1, 1988, are effective throughout the Executive Branch.

**T****CAUSE**

Acceptance of a voluntary exclusion in accordance with the terms of an agreement with a Federal agency. In accordance with Executive Order 12549 and the agency implementing regulations, these persons are excluded in accordance with the terms of their settlements. Agencies must contact the agency taking the action to ascertain the extent of the exclusion, or the limit on the person's participation, in covered transactions.

**U****CAUSE**

Declared ineligible by Secretary of Labor in accordance with Executive Order No. 11246, as amended (30 Fed. Reg. 12319, September 28, 1965; 32 Fed. Reg. 14303, October 13, 1967; 43 Fed. Reg. 46501, October 5, 1978), and based on the contractor's or subcontractor's failure to satisfy its obligations under the Equal Opportunity Clause of a federally assisted construction contract.

**TREATMENT**

The contractor or subcontractor and its offices, agents, successors, divisions, and subsidiaries are ineligible for the award of any federally assisted construction contract or subcontract, or for the extension or modification of existing federally assisted construction contracts or subcontracts. Debarment is for an indefinite period of time pending the contractor's or subcontractor's compliance with Executive Order 11246 and its implementing regulations. Therefore, termination date will be listed as "Indefinite."

**V****CAUSE**

Terminated from eligibility by the Secretary of Education under the authority of the Higher Education Act of 1965, as amended; and 34 CFR Part 668, Subpart G; and 34 CFR Part 682, Subpart G.

**APPENDIX D – Page 4****TREATMENT**

The educational institution or lender is ineligible to participate in Federal student aid programs. This action is only applicable to Department of Education programs authorized under Title IV of the Higher Education Act of 1965, as amended. Ineligibility under a termination is for a period of 18 months, to terminate on the date show.

**W****CAUSE**

Suspended for the same cause as V, above.

**TREATMENT**

Same as V, except that the period of ineligibility is 60 days, which may be extended by agreement or by the initiation of other proceedings. Contact the Department of Education liaison shown under the heading "For Further Information" in the front of this issue to determine if the suspension date has been extended.

**X****CAUSE**

Debarment, suspension, or equivalent exclusion by an agency prior to the October 1, 1988, effective date for the agency's rule implementing Executive Order 12549. These actions will generally be effective only in the Nonprocurement programs of the agency taking the action.

**TREATMENT**

Applicable to all Nonprocurement programs of the agency taking the action. When used by other agencies, such listings are for informational purposes only, but should be considered by program officials as reflecting acts, or circumstances, which may have a bearing on the person's responsibility, and which may serve as a basis for debarment or suspension of the person by the agency. For further information, contact the liaison of the agency taking the action.

**Y****CAUSE**

Debarment, suspension, or equivalent exclusion by an agency prior to the October 1, 1988, effective date for the agency's rule implementing Executive Order 12549. Authority for the actions generally limit the effects of the action to a specific Nonprocurement program within the agency. These actions will generally be effective in only specific Nonprocurement programs of the agency taking the action.

**TREATMENT**

Applicable only to specified Nonprocurement programs of the agency taking the action. When used by other agencies, such listings are for informational purposes only, but should be considered by program officials as reflecting acts, or circumstances, which may have a bearing on the person's responsibility, and which may serve as a basis for debarment or suspension of the person by the agency. For specific information on the nature of the action and scope of the exclusion, contact the liaison of the agency taking the action.

**Z****CAUSE**

Excluded from participation in Title XVIII (Medicare), Title XIX (Medicaid), Title V (Maternal and Child Health Program) and Title XX (Block Grants to States for Social Services Programs) of the Social Security Act under the authority of Title XI of that Act.

**TREATMENT**

Exclusions are limited to the four specific health care programs referred to above. The effect of an exclusion is that payment may not be made by the programs for any items or services furnished (except an emergency item or service) by an excluded party. If the party is a physician, no payment may be made for any items or services furnished, ordered or prescribed. Contact the Health and Human Services liaison shown under the heading "For Further Information" in the front of this issue if you need specific information concerning listed parties.

**PP****CAUSE**

Denial of ALL Federal benefits by a sentencing judge pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 on the basis of a conviction(s) for a Federal or State offense relating to the distribution or possession of controlled substances.

**TREATMENT**

Listed persons shall not be issued any grant, contract, loan, professional license, commercial license, provided by an agency of the United States or by appropriate funds of the United States. The denial DOES NOT include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. Veterans benefits include all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Services of the United States. The denial shall terminate on the date shown. Persons convicted for a third offense relating to distribution of controlled substances after the effective date of the Act shall be denied benefits permanently. Therefore, the termination date for such denials shall be listed as "permanent" (Perm).

**APPENDIX D – Page 5****QQ****CAUSE**

PARTIAL denial of Federal benefits by a sentencing judge pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 on the basis of a conviction(s) for a Federal or State offense relating to the distribution or possession of controlled substances.

**TREATMENT**

Listed persons shall not be issued grants, contracts, loans, and/or professional or commercial licenses as specified by the sentencing judge which are provided by an agency of the United States or by appropriated funds of the United States. Contact the U.S. Department of Justice's Denial of Federal Benefits Project liaison shown under the heading "For Further Information" in the front of the issue. The denial DOES NOT include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. Veterans' benefits include all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Services of the United States. The denial shall terminate on the date shown. Persons convicted for at third offense relating to distribution of controlled substances after the effective date of the Act shall be denied benefits permanently. Therefore, the termination date for such denials shall be listed as "permanent" (Perm.).

**NOTE**

A denial of benefits under Section 5301 of the Anti-Drug Abuse Act of 1988 does not include benefits relating to long-term drug treatment programs for addiction for any person who declares himself an addict, provides a reasonable body of evidence to substantiate this declaration, and submits to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services. The denial of benefits may also be suspended on the basis of the person's participation or good faith effort to participate in a supervised rehabilitation program. Contact the U.S. Department of Justice's Denial of Federal Benefits Project liaison shown under the heading "For Further Information" in the front of this issue to verify any assertions that the denial of benefits does not apply, or has been waived or suspended on this basis.

**RR****CAUSE**

Declared ineligible by the Secretary of Education in accordance with the Higher Education Act of 1965, 20 U.S.C. 1145g, and the Drug-Free Schools and Communities Act of 1986, 20 U.S.C. 3224a, based upon a failure to submit a certification of adoption and implementation of a drug prevention program.

**TREATMENT**

Listed institutions of higher education, local education agencies and State educational agencies are ineligible to receive funds or any other form of financial assistance under any Federal program. An institution or agency remains ineligible until it submits the drug prevention program certification. Therefore, the termination date will be listed as "Indefinite." Contact the Department of Education liaison if you need specific information concerning listed parties.

**SS****CAUSE**

Excluded by the Secretary of Education as required by the Higher Education Act of 1965, 20 U.S.C. 1145g, and the Drug-Free Schools and Communities Act of 1986, 20 U.S.C. 3224a, based on a violation of a certification of adoption and implementation of a drug prevention program.

**TREATMENT**

Listed institutions of higher education, local educational agencies and State education agencies are ineligible to receive funds or any other form of financial assistance under any Federal program. An institution or agency must comply with the requirements and procedures for reinstatement of eligibility applicable to any Federal program under which it desires to receive Federal financial assistance. Therefore, the termination date for such denials will be listed as "Indefinite." Contact the Department of Education liaison if you need specific information concerning listed parties.



**APPENDIX D – Page 6**

July 1991

A-1 – Adigun

**A**

**A-1 Construction**, Caldwell, ID (Also Wentzel, David; Wentzel, Frank; Wentzel, Gary) Y, VA, **Indef.**

**A-Builders, Inc.**, Montgomery, AL (Also Pierce, Paul H; Pierce, Providence S.) Y, VA, **Indef.**

**A.A. and E. Company, Incorporated**, Thomasville, AL (Also Alford, James; Allday, Earl G.; Fendley, William E.) Y, VA, **Indef.**

**A.A. Swinks Construction Company, Inc.**, Decatur, GA (Also Swinks, A.A., Jr.; Swinks, A.A., Sr.) Y, VA, **Indef.**

AA1 Realty (See **Sundae, Laxman S.**)

AAA Broward, 9508 Sea Turtle Dr., Plantation, FL 33324 (See **Goldstein, Elias**)

**A and B Roofing, Inc.**, 1238 South Canosa Court, Denver, CO 80219 (Also Medina, Anthony) C. GAO, **9-26-91**, 06-970-9277

A and C Investments, Inc. (See **Coughlin, Michael**)

A and C Properties (See **Johnson, Cecil Ray, Jr.**)

**A and M Construction Company**, 3 Edge Ct., Willingboro, NJ 08046 (Also Mitchell, Clifton) G, DOL, **7-1-94**

A and P Arora Limited Partnership (See **Arora, Ajay K.**)

**A and V Brothers, Inc.**, 5707 East Liberty Blvd., Pittsburgh, PA 15206 (Also DiStazio, Antonio; DiStazio, Vittorio) G, DOL, **10-27-92**

A Back and Accident Chiroprac, 2973 East Chestnut Expressway, Springfield, MO 65802 (See **Hopkins Chiropractic Clinic**)

**Abadi, Joseph**, 4139 Suffield Court, Skokie, IL 60076, Z, HHS, **Indef.**

**Abdullah, Essa**, 5826 Glow Dr., Cross Lanes, WV 25313, Z, HHS, **Indef.**

**Abell, Vincent L.**, 610 Bennington Dr., Silver Spring, MD 20910, R, HUDP, **7-11-92**

Abild, Robert (See **Atlantic Steel Erectors, LTD.**)

Ablebuilt Construction Company, Inc. (See **Hartman, Michael A.**)

Ablebuild Homes, Inc. (See **Hartman, Michael A.**)

Abney and Houck Industries (See **Abney, Kirby Lynn**)

**Abney, Kirby Lynn**, 2128 Southwest 61<sup>st</sup> St., Oklahoma City, OK 73159 (Also Abney and Houck Industries; Joshua and Suzanne Industries; K and R Properties, Inc.) R, HUDP, **Indef.**

**Above, Asseres**, 181 Central Ave., Englewood, NJ 07631, Z, HHS, **Indef.**

**Abraham and Associates, Inc.**, Columbia, SC (Also, Abraham, Henry B.) Y, VA, **Indef.**

Abraham, Henry B. (See **Abraham and Associates, Inc.**)

**Abrams, Lee**, 22 Brighton Rd., West Hartford, CT 06117, Z, HHS, **Indef.**

**Abrams, Leslie**, 198 Bennett St., Oceanside, NY 11572 (Also Sufrin, Marcel) Z, HHS, **Indef.**

**Abrottami, David**, 14 Lakeview, West Orange, NY 07052, X, HUDC, **8-7-91**

Abundant Life Center, Inc., 30 South Broadway, Baltimore, MD 21231 (See **Babatürk, Hidir**)

**Academia de Belleza Borinquen**, Avenida Ponce de Leon, 1652 Parada 24 1/2, Santurce, PR 00912, V, ED, **10-24-92**

Academy Abstract Company (See **Seitz, Carl W.**)

**Accaputo, Anthony, Jr.**, 685 Oak St., Brockton, MA 02401 (Also Mary Murphy Nursing Home; Middlesex Manor Nursing Home; Rockview, Inc.; Walter M Inc.) Z, HHS, **Indef.**

**Ace Ceiling Company**, 32 Ashfield Dr., Brockton, MA 02402 (Also Robing, William) C, G, GAO, DOL, **7-26-93**

**Achalla, Lakshmi N. Murty**, P.O. Box 330, Box 45, Wingdale, NY 12594, Z, HHS, **Indef.**

**Achusim, Philip**, 2629 East 74<sup>th</sup> St., Apt. 1, Chicago, IL 60649, Z, HHS, **Indef.**

**Aconi Contractors, Inc.**, 1933 Northwest 21<sup>st</sup> Ter., Miami, FL 33142 (Also Idrovo, John; Kandavanam, Thevarajah; Padilla, William) G, DOL, **3-26-93**

**Acosta, Felix**, 126 Stanwood Ave., Providence, RI 02907, Z, HHS, **Indef.**

**Acquafredda, Patrick J.**, 91 Neilly Ct., Old Bridge, NJ 08857, R, HUDC, **5-28-92**

**Acquaviva, Amleto**, 1112 South Mill St., New Castle, PA 16101, Z, HHS, **Indef.**

**Acquaviva, Frederick Dennis**, 118 Kingsbury Circle, Grass Valley, CA 95949, Z, HHS, **Indef.**

**Action Industries, Inc.**, Columbia, TN (Also, McGee, Jimmy) Y, VA, **Indef.**

Action Pharmacy (See **Axenfield, Myron**)

**Action Realty and Insurance**, Spring Lake, NC (Also Cagle, Thomas T.; Maxey, Robert L.) Y, VA, **Indef.**

Action Rental Sales Company, 18401 Van Dyke Ave., Detroit, MI 48234 (See **Aronoff, Larry**)

**Adair, Ken**, Route 3, Box 515-A, Vernon, AL 35592, PP, DOJ, **9-19-95**

Adam Construction Company (See **Dimario, Alan**)

Adams Management Associates (See **Tully, B. Joseph**)

**Adams Red Carpet Realty**, Inglewood, CA (Also Tucker, Frederick L.) Y, VA, **Indef.**

**Adams, Allen K.**, P.O. Box 214, Springfield, OH 45501 (Also ARA Psychological Services) Z, HHS, **Indef.**

Adams, Bonnie, Odgen, UT (See **Westcom, Incorporated**)

Adams, David W. (See **Westcom, Incorporated**)

**Adams, Diane S.**, 8201 Yardley Ave., North, St. Petersburg, FL 33710, Z, HHS, **Indef.**

**Adams, Eileen O'Farrell**, P.O. Box 820, Highway 44, Crystal River, FL 32629, Z, HHS, **Indef.**

Adams, Gerry E. (See **April Construction Company**)

**Adams, Henry Jerome**, 1602 South 35<sup>th</sup> St., Temple, TX 76501 (Also Temple's Medicine Chest) Z, HHS, **Indef.**

**Adams, Jerry**, Fairburn, GA, Y, VA, **Indef.**

**Adams, Judy**, P.O. Box 1409, Atmore, AL 36502, Z, HHS, **Indef.**

**Adams, Larry Dean**, 4800 Lamonte Lane, Apt. 3505, Houston, TX 77092, PP, DOJ, **6-5-95**

**Adams, Leah Karen**, P.O. Box 728, Micanopy, FL 32667, Z, HHS, **Indef.**

**Adam, Lula**, 211 North Mason Ave., Chicago, IL 60644, R, HUDC, **7-12-92**

**Adams, Marion**, P.O. Box 600, Elgin AFB, FL, Z, HHS, **Indef.**

Adams, Pamela N. (See **April Construction Company**)

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**Adams, Roger**, 370 Houston St., Washington, PA 15301, Z, HHS, **Indef.**

**Adams, Steven L., Sr.**, 6209 Lee Highway, Chattanooga, TN 37421, Z, HHS, **Indef.**

**Adams, Teri**, Alderson, WV 24910, R, ED, **3-29-94**

**Adams, Veleyas Marie**, P.O. Box 2687, Ponca City, OK 74604, Z, HHS, **Indef.**

**Adams, Wendell B.**, Brandon, FL (Also Management Associates, Inc; Wendell B. Adams Construction) Y, VA, **Indef.**

Adams, William H., Odgen, UT (See **Westcom, Incorporated**)

Adamstown Area Medial Center, P.O. Box 515, Jefferson Rd., Adamstown, PA 19501 (See **Lovell, Kenneth F.**)

Adaptive Living Center of Central Texas (See **Adaptive Living Center of Texas, Inc.**)

**Adaptive Living Center of Texas, Inc.**, 1916 Seley, Waco, TX 76705 (Also adaptive Living Center of Central Texas; L.T. Industries, Inc.) Z, HHS, **Indef.**

**Addison, Lawrence, W.**, 1806 Second Ave., Decatur, GA 30032, Z, HHS, **Indef.**

**Addy Corporation**, 1570 Northwest 14<sup>th</sup> St., Miami, FL 33125, Z, HHS, **Indef.**

**Aden, Gary C.**, 2403 Corona Ct., La Jolla, CA, Z, HHS, **Indef.**

**Adigun, Adetunji**, Mt. Morris, MI (Also Adigun, Ajibade) X, HUDP, **9-27-91**