§ 98.50 How is this part written?

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

(b) Pronouns used within this part, such as "I" and "you," change from subpart to subpart depending on the audience being addressed. The pronoun "we" always is the Department of Labor.

(c) The "Covered Transactions" diagram in the appendix to this part shows the levels or "tiers" at which the Department of Labor enforces an exclusion under this part.

§ 98.75 Do terms in this part have special meanings?

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

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

(b) Disqualification or disqualified, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

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

Subpart A—General

§ 98.100 What does this part do?

This part adopts a governmentwide system of debarment and suspension for Department of Labor nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority. This part satisfies the requirements in section 3 of Executive Order 12549, "Debarment and Suspension" (3 CFR 1986 Comp., p. 189), Executive Order 12689, "Debarment and Suspension" (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 98.105 Does this part apply to me?

Portions of this part (see table at §98.25(b)) apply to you if you are a(n)—
§ 98.140 How do I know if a person is excluded?

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;
(b) Respondent (a person against whom the Department of Labor has initiated a debarment or suspension action);
(c) Department of Labor debarring or suspending official; or
(d) Department of Labor official who is authorized to enter into covered transactions with non-Federal parties.

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

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.
(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.
(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ 98.115 How does an exclusion restrict a person’s involvement in covered transactions?

With the exceptions stated in §§98.120, 98.315, and 98.420, a person who is excluded by the Department of Labor or any other Federal agency may not:
(a) Be a participant in a(n) Department of Labor transaction that is a covered transaction under subpart B of this part;
(b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency’s regulation for debarment and suspension; or
(c) Act as a principal of a person participating in one of those covered transactions.

§ 98.120 May we grant an exception to let an excluded person participate in a covered transaction?

(a) The Secretary of Labor or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Secretary of Labor or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.
(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

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

If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

§ 98.130 Does exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?

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

§ 98.135 May the Department of Labor exclude a person who is not currently participating in a nonprocurement transaction?

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

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

Check the Excluded Parties List System (EPLS) to determine whether a person is excluded. The General Services Administration (GSA) maintains the EPLS and makes it available, as detailed in subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and
§ 98.145

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

§ 98.145 Does this part address persons
who are disqualified, as well as
those who are excluded from non-
procurement transactions?

Except if provided for in Subpart J of
this part, this part—
(a) Addresses disqualified persons
only to—
(1) Provide for their inclusion in the
EPLS; and
(2) State responsibilities of Federal
agencies and participants to check for
disqualified persons before entering
into covered transactions.
(b) Does not specify the—
(1) Department of Labor transactions
for which a disqualified person is ineligi-
able. Those transactions vary on a
case-by-case basis, because they depend
on the language of the specific statute,
Executive order, or regulation that
caused the disqualification;
(2) Entities to which the disqualifica-
tion applies; or
(3) Process that the agency uses to
disqualify a person. Unlike exclusion,
disqualification is frequently not a dis-
cretionary action that a Federal agen-
cy takes.

Subpart B—Covered Transactions

§ 98.200 What is a covered transaction?

A covered transaction is a non-
procurement or procurement trans-
action that is subject to the prohibi-
tions of this part. It may be a trans-
action at—
(a) The primary tier, between a Fed-
eral agency and a person (see appendix
to this part); or
(b) A lower tier, between a partici-
pant in a covered transaction and an-
other person.

§ 98.205 Why is it important if a par-
ticular transaction is a covered
transaction?

The importance of a covered trans-
action depends upon who you are.
(a) As a participant in the trans-
action, you have the responsibilities
laid out in Subpart C of this part.
Those include responsibilities to the
person or Federal agency at the next
higher tier from whom you received
the transaction, if any. They also in-
clude responsibilities if you subse-
quently enter into other covered trans-
actions with persons at the next lower
tier.
(b) As a Federal official who enters
into a primary tier transaction, you
have the responsibilities laid out in
subpart D of this part.
(c) As an excluded person, you may
not be a participant or principal in the
transaction unless—
(1) The person who entered into the
transaction with you allows you to
continue your involvement in a trans-
action that predates your exclusion, as
permitted under §98.310 or §98.415; or
(2) An Department of Labor official
obtains an exception from the Sec-
retary of Labor or designee to allow
you to be involved in the transaction,
as permitted under §98.120.

§ 98.210 Which nonprocurement trans-
actions are covered transactions?

All nonprocurement transactions, as
defined in §98.970, are covered trans-
actions unless listed in §98.215. (See ap-
pendix to this part.)

§ 98.215 Which nonprocurement trans-
actions are not covered trans-
actions?

The following types of nonprocure-
ment transactions are not covered
transactions:
(a) A direct award to—
(1) A foreign government or foreign
governmental entity;
(2) A public international organiza-
tion;
(3) An entity owned (in whole or in
part) or controlled by a foreign govern-
ment; or
(4) Any other entity consisting whol-
ly or partially of one or more foreign
governments or foreign governmental
entities.
(b) A benefit to an individual as a
personal entitlement without regard to
the individual’s present responsibility
(but benefits received in an individu-
als business capacity are not excepted).
For example, if a person receives social
security benefits under the Supple-
mental Security Income provisions of
the Social Security Act, 42 U.S.C. 1390
et seq., those benefits are not covered.