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

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

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

DATES: These final regulations are effective April 27, 2012. In order for us to consider your comments, we must receive them on or before April 27, 2012.

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

• Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “How To Use This Site.”
• Postal Mail, Commercial Delivery, or Hand Delivery. If you mail or deliver your comments about the final regulations, address them to Alfreda Pettiford, U.S. Department of Education, 400 Maryland Avenue SW., Room 7100, Potomac Center Plaza, Washington, DC 20202–2550.
• Privacy Note: The Department’s policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.


If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

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

During and after the comment period, you may inspect all public comments about this regulatory action by accessing Regulations.gov. You may also inspect the public comments in person at the Department of Education, 550 12th Street SW., Room 7100, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

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

Background

In 2003, the Department joined with 32 other agencies to revise the nonprocurement debarment and suspension regulations that these agencies had adopted jointly in 1998. See 68 FR 66534 (November 26, 2003). The regulations that the agencies adopted were referred to as “the common rule.”
On November 15, 2006, the Office of Management and Budget (OMB) issued final guidance for Governmentwide nonprocurement debarment and suspension (71 FR 66341). This guidance, located in 2 CFR part 180, is substantively the same as the common rule, but is published in a form that each agency can adopt, thus eliminating the need for each agency to publish a separate version of the same rule. The guidance also makes it possible to update Governmentwide requirements without each agency having to re-promulgate its own rules.

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

These final regulations remove 34 CFR part 85 from the CFR, which is the current location for the Department’s nonprocurement debarment and suspension regulations. We also amend the definition of EDGAR in 34 CFR part 77 to remove the reference to part 85. Finally, these final regulations amend 34 CFR parts 668 and 682 to update cross references to the debarment and suspension regulations in 2 CFR parts 180 and 3485.

Waiver of Rulemaking

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

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

Nevertheless, because we intend the new part to make no changes in current policies and procedures, we specifically invite comments on any unintended changes in substantive content that the new 2 CFR part 3485 would make relative to the November 2003 common rule published by the Department on November 26, 2003 (68 FR 66534, 66609–66615).

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

Adoption of OMB Guidance

We add §3485.12 to adopt the OMB guidance on suspension and debarment. Section 3485.12(a) adopts subparts A through I of the guidance in 2 CFR part 180 as a regulation of the Department. The Department’s current debarment and suspension regulations in 34 CFR part 85 contain additional requirements that must be met to make debarment and suspension actions taken by the Department or other agencies apply to participants in the programs authorized under title IV of the HEA. These final regulations place those same modifications in 2 CFR part 3485 so that debarment and suspension actions can be applied to participants in title IV HEA programs. In each section of these final regulations that adopt a requirement in the OMB guidance that must be modified, the section restates the standard OMB guidance and adds one or more paragraphs that contain the needed changes.

General Education Provisions Act Requirements

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

Executive Orders 12866 and 13563

OMB has determined these regulations to be a non-significant regulatory action for the purposes of Executive Order 12866. We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions. Finally, we have reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. As this regulatory action is a recodification of existing regulations without substantive change, the potential costs associated with this regulatory action are only those that result from existing statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

Regulatory Flexibility Act Certification

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

Paperwork Reduction Act of 1995

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

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Assessment of Educational Impact

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

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

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You may also access documents of the Department published in the Federal Register by using the article search feature at http://www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

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

List of Subjects

2 CFR Part 3485
Administrative practice and procedure, Debarment and suspension, Grant programs, Loan programs, Reporting and recordkeeping requirements.

34 CFR Part 77
Definitions, Education Department, Grant programs—education.

34 CFR Part 85
Administrative practice and procedure, Debarment and suspension, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

34 CFR Part 668
Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682
Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.


Arne Duncan,
Secretary of Education.

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

Title 2—Grants and Agreements

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

Chapter XXXIV—Department of Education

PART 3485—NONPROCUREMENT DEBARMENT AND SUSPENSION

§ 3485.12 What does this part do?

§ 3485.22 What policies and procedures must I follow?

Subpart A—General

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

Subpart B—Covered Transactions

§ 3485.220 Are any procurement contracts included as covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

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

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

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

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

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

§ 3485.437 What method do I use to communicate to a participant the requirements described in § 380.435 of this title?

Subpart E—[Reserved]

Subpart F—General Principles Relating to Suspension and Debarment Actions

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

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

Subpart G—Suspension

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

Subpart H—Debarment

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

Subpart I—Definitions

§ 3485.937 ED Deciding Official.

§ 3485.952 HEA.

§ 3485.995 Principal.

§ 3485.1016 Title IV, HEA participant.

§ 3485.1017 Title IV, HEA program.

§ 3485.1018 Title IV, HEA transaction.

Subpart J—[Reserved]

Appendix A to Part 3485—Covered Transactions


§ 3485.12 What does this part do?

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

(2) The table of contents for this part contains only those sections in part 3485 that include supplements to the guidance in part 180 and new sections needed to implement the guidance for the Department’s programs. In those sections of the OMB guidance that are supplemented, the section in part 3485 includes both the text of the OMB guidance that is not affected by the change and any additional paragraphs that need to be added to the OMB guidance. For example, § 180.220 of this title contains only paragraphs (a) and (b). The text of § 3485.220, which supplements § 180.220 to extend lower-tier transactions to certain transactions below the primary tier, includes both the text of paragraph (a) and (b) of § 180.220 and the text of added paragraph (c).

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

(b) The authority for all the provisions in 2 CFR part 180 as adopted in this part
is listed as follows.

Authority: E.O. 12549 (3 CFR 1986 Comp.,
p. 189); E.O. 12689 (3 CFR 1989 Comp., p.
3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082,
1094, 1221e–3, and 3474.

Authority: E.O. 12549 (3 CFR 1986 Comp.,
p. 189); E.O. 12689 (3 CFR 1989 Comp., p.
3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082,
1094, 1221e–3, and 3474.

Subpart A—General
§ 3485.137 May the Department grant an
exception to let an excluded person participate in a covered transaction?

(a) Yes, the Secretary delegates to the
ED Deciding Official the authority under this section to grant an exception
permitting an excluded person to participate in a particular covered
transaction.
(b) If the ED Deciding Official grants
an exception, the exception must be in
writing and state the reason(s) for
defering from the Governmentwide
policy in Executive Order 12549.

Authority: E.O. 12549 (3 CFR 1986 Comp.,
p. 189); E.O. 12689 (3 CFR 1989 Comp., p.
3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082,
1094, 1221e–3, and 3474.

Subpart B—Covered Transactions
§ 3485.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—
(1) Do not include any procurement contracts awarded directly by a Federal
agency; but
(2) Do include some procurement contracts awarded by non-Federal
participants in nonprocurement covered transactions.
(b) Specifically, a contract for goods
or services is a covered transaction if any of the following applies:
(1) The contract is awarded by a
participant or principal in a nonprocurement transaction
that is covered under 2 CFR 180.220(b)
of the Office of Federal Procurement
Policy in Executive Order 12549.
(2) The contract is awarded by a
covered transaction, regardless of tier, that is
awarded in the normal course of business
by a contractor at a tier below a
nonprocurement transaction, as shown in
the Appendix To Part 3485—Covered
Transactions.
(3) The contract is for Federally-
required audit services.
(4) The contract is to perform services
as a third party servicer in connection
with a title IV, HEA program.
(c) In addition to the contracts
covered under 2 CFR 180.220(b) of the
OMB guidance, this part applies to any
contract, regardless of the
OMB guidance, this part applies to any contract, regardless of tier, that is
awarded by a contractor, subcontractor,
supplier, consultant, or its agent or
representative in any transaction, if the
contract is to be funded or provided by
ED under covered nonprocurement
transactions and the amount of the
contract is expected to equal or exceed
$25,000. This extends the coverage of
the nonprocurement suspension and
derbarment requirements to all lower
tiers of subcontracts under covered
nonprocurement transactions, as
permitted under the OMB guidance at 2
CFR 180.220(c) (see optional lower tier
coverage in the figure in Appendix A to
Part 3485—Covered Transactions).

Authority: E.O. 12549 (3 CFR 1986 Comp.,
p. 189); E.O. 12689 (3 CFR 1989 Comp., p.
3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082,
1094, 1221e–3, and 3474.

Subpart C—Responsibilities of
Participants Regarding Transactions
§ 3485.310 What must I do if a Federal
department excludes a person with whom I am
already doing business in a covered
transaction?

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

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

(c) If you are a title IV, HEA
participant, you may not continue a title
IV, HEA transaction with an excluded
person after the effective date of the
exclusion unless permitted by 34 CFR
668.26, 682.702, or 682.94, as
applicable.

Authority: E.O. 12549 (3 CFR 1986 Comp.,
p. 189); E.O. 12689 (3 CFR 1989 Comp., p.
3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082,
1094, 1221e–3, and 3474.

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

(a) You as a participant may continue
to use the services of an excluded
person as a principal under a covered
transaction if you were using the
services of that person in the transaction
before the person was excluded.
However, you are not required to
continue using that person’s services as
a principal. You should make a decision
about whether to discontinue that
person’s services only after a thorough
Subpart F—General Principles Relating to Suspension and Debarment Actions

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

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

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

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

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

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

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

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

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

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

transactions for the duration of the debarment.

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

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

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

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

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

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

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

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

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

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

(2) If a debarment or suspension by another agency prohibits participation in title IV, HEA transactions, that prohibition takes effect 20 days after we mail notice of our action.

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

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

(d) If a title IV, HEA participant is excluded by another agency, we debar, terminate, or suspend the participant—

as provided under this part, 34 CFR part 668, or 34 CFR part 682, as applicable—

that agency followed procedures that gave the excluded party—

(1) Notice of the proposed action;

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

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

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

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

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

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

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


Subpart I—Definitions

§3485.937 ED Deciding Official.

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


§3485.952 HEA.

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


§3485.995 Principal.

Principal means—

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

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

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

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

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

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

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

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

§ 3485.1016 Title IV, HEA participant.

A title IV, HEA participant is—

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

(b) A lender, third-party servicer, or guaranty agency, as those terms are defined in 34 CFR 668.2 or 668.200.


§ 3485.1017 Title IV, HEA program.

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


§ 3485.1018 Title IV, HEA transaction.

A title IV, HEA transaction includes—

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

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

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

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


Subpart J—[Reserved]
Appendix A to Part 3485--Covered Transactions

Covered Transactions for the Department of Education

All Primary Tier Nonprocurement Transactions

All Lower Tier Nonprocurement Transactions

All First Tier Procurement Contracts \( \geq \$25,000 \)

All First Tier Procurement Contracts Subject to Agency Consent

All Third Party Servicer Contracts

Any Person Who Provides the Services Described in 34 CFR 668.2 or 682.200

All Lower Tier Procurement Contracts \( \geq \$25,000 \)

All Lower Tier Procurement Contracts Subject to Agency Consent

BILLING CODE 4000-01-C
Title 34—Education

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

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

Authority: 20 U.S.C. 1001 to 1087, 2085, 1085, and 1092, 1094, 1099c, and 1099d, unless otherwise noted.

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

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

PART 85—[REMOVED]

4. Remove 34 CFR part 85.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

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

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

§ 668.16 Standards of administrative capability.

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

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

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

§ 668.82 [Amended]

7. Section 668.82 is amended by:

a. In paragraph 668.82(1)(1)(B), removing the words “Cause exists under 34 CFR 85.700 or 85.800” and adding, in their place, the words “Cause exists under 2 CFR 180.700 or 180.800, as both sections are adopted at 2 CFR 3485.12.”.

b. In paragraph 668.82(1)(1) introductory text, removing the words “under procedures described in 34 CFR 85.612(d)” and adding, in their place, the words “under the procedures described in 2 CFR 3485.612(d)”.

c. In paragraph 668.82(1)(1) introductory text, removing the words “under procedures described in 34 CFR 85.612(d)” and, adding in their place, the words “under the procedures described in 2 CFR 3485.612(d)”.

d. In paragraph 668.82(1)(1) introductory text, removing the words “under 34 CFR 85.201(b)” and adding, in their place, “under 2 CFR 3485.612(c)”.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

§ 682.200 [Amended]

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

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

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

§ 682.416 [Amended]

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

§ 682.706 [Amended]

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30834; Amdt. No. 3471]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 28, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 28, 2012.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—
1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov