

Department of Education

§ 3485.22

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Subpart J [Reserved]

APPENDIX A TO PART 3485—COVERED TRANSACTIONS

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

SOURCE: 77 FR 18673, Mar. 28, 2012, unless otherwise noted.

§ 3485.12 What does this part do?

(a)(1) The Department of Education (the “Department” or “ED”) adopts subparts A through I of the Office of Management and Budget guidance in 2 CFR 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 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR part 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

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

tains only paragraphs (a) and (b). The text of §3485.220, which supplements §180.220 to extend lower-tier transactions to certain transactions below the primary tier, includes both the text of paragraph (a) and (b) of §180.220 and the text of added paragraph (c).

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

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

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

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

§ 3485.22 Does this part apply to me?

This part applies to you if you are—

(a) A participant or principal in a “covered transaction” (see subpart B of this part and the definition of “non-procurement transaction” in §180.970 of this title).

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

(c) An ED deciding official; or

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

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

§ 3485.32

§ 3485.32 What policies and procedures must I follow?

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

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

Subpart A—General

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

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

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

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

Subpart B—Covered Transactions

§ 3485.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

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

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

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

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

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

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

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

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

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