EXECUTIVE OFFICE OF THE PRESIDENT
Office of Management and Budget

Office of the Director

FAX COVER SHEET

DATE: Feb 1, 2010 **PAGES:**

TO: Sen. Grassley **FAX NUM.: 202-228-2131**

FROM:

COMMENTS:

Attached please find a letter from OMB Director Orszag.

Thank you.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

February 1, 2010

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

The Recovery Act is one of the most sweeping economic recovery efforts in our nation's history. By providing immediate tax relief to families and businesses and investing in priorities like health care, education, energy, and infrastructure, it pulled the economy back from the brink of a second depression and has begun to lay a new foundation for long-term economic growth. As we approach the one-year mark of this important legislation, I hope you share my belief that our primary goal is, and should continue to be, putting Americans back to work. Thus, our energies are squarely focused on implementing the Recovery Act in a manner that serves this primary goal most effectively. An open dialogue, focused on solutions and practical steps for making the Act successful, is absolutely critical to these efforts. After numerous and informative Congressional hearings spanning the past year, multiple reports and valued input from GAO and Inspectors General, and a host of public meetings across the country, I believe we have successfully moved beyond the philosophical debates that led up to the Act's passage to a place where we are rolling up our sleeves and actively addressing the specific challenges before us today.

I welcome your participation in this dialogue. With regard to your specific request regarding analysis of unobligated funds, we agree with your objective to make certain that each dollar we spend either creates jobs or protects displaced individuals, and we take very seriously our obligation to track unobligated balances. To that end, we are working to spend Recovery Act funds as expeditiously as possible; however, some programs do take longer than others. Effective program management and financial stewardship requires a continuous review of unobligated balances in all Federal programs and activities. It is through such reviews that we meet our responsibility to maximize the value of every taxpayer dollar.

We anticipate that future obligations, like the ones that have been made to date, will go a long way towards creating jobs and meeting other key program objectives (such as rebuilding the nation's infrastructure). As part of our ongoing review of funds, if we determine that any unobligated funds would better serve taxpayers with alternative uses, we will carefully examine such options before such funds are obligated for their original purpose. Further, we will take careful note of the issues raised in your letter as we work with Congress to achieve the broad objectives of economic recovery and program improvement.

For the Administration, Recovery Act implementation involves an ongoing conversation with Congress that will continue to guide us as we identify and react to new challenges. At each step, we strive to be mindful of our shared objectives -- putting Americans back to work; restoring a healthy level of demand for goods and services; and providing people with resources and services that will help them to weather difficult times. In carrying out that mission, your concerns are of particular value. We look forward to working with you on this and other issues in the future.

Attached is a detailed, point by point response to your letter.

Sincerely,

Peter R. Orszag
Director

Enclosure 1

The following compilation of questions and answers responds to the specific issues raised in your letter, in the format that you requested:

1. **Through conversations with Federal officials with direct involvement in the ARRA program, my staff has been told that recipients of ARRA funds do not have to report their use of the money until it is spent. If this is the case, by what mechanisms does the Federal government oversee the money after it is disbursed but before it is officially spent?**

   OMB's guidance requires Recovery Act grant recipients to begin reporting as soon as an award is issued, regardless of whether any funds have been awarded or disbursed. Recovery Act contract recipients are required to begin reporting as soon they invoice for the first time, which occurs before any funds reach them. These requirements provide early transparency into recipient activity. Moreover, and although not required by statute, OMB set up a detailed financial reporting system that took effect almost immediately after the Recovery Act was passed. On a weekly basis, agencies are required to provide up-to-date details on the funds they have announced or obligated, and on the amount of funds that have been spent. This provides a significant level of detail before funds are ever spent by recipients. Both agency reported data and recipient reported data are available on Recovery.gov.

2. **Please describe what rules or guidance exists regarding interest earned on ARRA funds by State governments and private entities after they are disbursed but before they are spent.**

   OMB guidance, which applies to all grants, including those funded under the Recovery Act, requires that grantees "shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means by the recipients."

   - For State and local governments, expenses and interest earned are computed annually for all Federal programs managed by the States under the Treasury-State CMIA agreements (Cash Management Improvement Act, codified at 31 CFR part 205). Interest earned is remitted to Treasury.

   - For other non-profit organizations (including private universities), interest earned must be remitted annually to DHHS (except for $250 to cover administrative costs) (OMB A-110, 2CFR 215).

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3. **In what ways does the executive branch penalize recipients who do not report on their use of ARRA funds? Are these penalties mandatory or permissive?**

The Recovery Act does not set forth penalties for non-compliance with reporting requirements. However, agencies can use existing terms, conditions, and penalties to achieve compliance. OMB has released multiple rounds of guidance, beginning on February 18, 2009, and as recently as December 18, 2009, that instruct agencies to take necessary actions to bring recipients into compliance with the reporting requirements of their awards. Reporting is a condition of performance. The award terms and conditions provide that non-compliant recipients, including those who are persistently late or negligent in their reporting obligations, are subject to Federal actions, up to and including the termination of Federal funding or the ability to receive Federal funds in the future. These terms and conditions, when coupled with other existing policies and procedures, provide a robust mix of actions available to address non-compliance on a case-by-case basis. Agencies have been tasked to initially work with non-reporters to determine why they failed to report and help them address any challenges, such as technical difficulties, in order to bring them into compliance. The recently released December OMB guidance also tasks agencies to document incidents of non-compliance and describe for the grantees, in plain language, the consequences of current and continued failure to report. Intentional reporting of false information can result in civil and/or criminal penalties.

4. **Is OMB aware of other situations similar to the one mentioned in the DOT-OIG report? If so, how many and what has been done to recover funds granted, loaned, or otherwise given to entities on the S&D list? Please explain in detail.**

This information is tracked by individual Federal agencies. OMB, pursuant to the President's Executive Order on Improper Payments, will be issuing government-wide guidance reminding agencies to initiate the necessary data match procedures so that any funds (whether ARRA or otherwise) are not sent to any entities that have been suspended or debarred.

5. **What safeguards are in place to ensure that tax cheats and/or criminals do not receive ARRA money? Please explain in detail.**

As a result of changes made to the Federal Acquisition Regulation (FAR) in 2008, prospective contractors must certify that they have not, within a three-year period preceding their proposal, been notified of any delinquent Federal taxes in amounts that exceed $3,000, and for which the liability remains unsatisfied. (Taxes are delinquent if the tax liability has been assessed and all judicial appeal rights have been exhausted and the taxpayer has failed to pay the tax liability when full payment was due and required.) If the prospective contractor certifies to a tax delinquency, contracting officers must notify their debarment or suspension

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official prior to proceeding with a contract award, and these statements may be used as grounds for debarment or suspension, subject to due process requirements.

Pursuant to the President's January 20, 2010, Memorandum on contractor tax delinquency, the Internal Revenue Service is conducting a review of contractor certifications and will provide the President with an assessment on the overall accuracy of contractors' certifications by April 20, 2010. Simultaneously, OMB is overseeing a review of actions taken by agency contracting officers, and debarring officials in response to contractors' certifications of serious tax delinquencies. By April 20, 2010, OMB will provide recommendations to the President on process improvements to ensure these contractors are not awarded new contracts. These recommendations will include a plan to make contractor certifications available in the Federal Awardee Performance and Integrity Information System (FAPIIS). FAPIIS will be launched this spring as a "one-stop" database to improve contracting officers' ability to evaluate the business ethics and quality of entities bidding for government contracts. FAPIIS will provide access to a wide range of information, including agency assessments of contractor performance and contractor self-certifications of criminal convictions, civil liability, and adverse administrative actions.

Where an agency determines that debarment or suspension is not appropriate, other tools exist to protect the government's interest. In particular, certain payments made to contractors doing business with the Federal government and disbursed by or administered through the Department of the Treasury's Financial Management Service may be subject to either a 15 percent or 100 percent levy through the Federal Payment Levy Program to pay delinquent tax debt.

Additionally, there is a Justice Department task force in place that specifically monitors criminal activity related to the Recovery Act.

6. **Please answer the following questions regarding S&D Programs:**

a. **Please provide the Committee with a copy of OMB's policies regarding the S&D Program.**

In response to your request, we are including a copy of OMB's Guidance for Governmentwide Debarment and Suspension (Nonprocurement). The guidance may be found at 2 CFR part 180 and 215. In addition, for your reference Guidance in the Federal Acquisition Regulation on the Debarment and Suspension of contractors can be found at 48 CFR Chapter 1 Part 9.4.

b. **Who is charged with monitoring the S&D Program at OMB?**

Within OMB, the Office of Federal Financial Management (OFFM) and the Office of Federal Procurement Policy (OFPP) share responsibility for the development of debarment and suspension policies. OFFM manages non-

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procurement guidance. OFPP manages procurement guidance in coordination with the Federal Acquisition Regulatory Council. In addition, both OFFM and OFPP discuss policy and operational challenges with agency debarment and suspension officials through the Interagency Suspension and Debarment Committee. However, OMB does not oversee agencies' specific execution of suspension/debarments, but rather sets the broad policy.

c. **What has the Federal government done to ensure that EPLS is accurate? Please provide my staff a briefing on EPLS.**

While the system relies on accurate and timely reporting by agency Suspension and Debarment Officials, GSA, as the system manager, has developed a comprehensive plan to improve both the quality of existing data and the accuracy and completeness of future agency inputs through enhanced systems controls and use of authoritative data sources. We will work with your staff to arrange for a briefing on Excluded Parties List System (EPLS), with GSA and OMB.

d. **Please provide a current list of all suspended and debarred parties across the Federal government.**

Information on debarred and suspended parties is available in EPLS at www.epls.gov. For your convenience, we have attached instructions for downloading records in the EPLS database.

7. **What systems are in place to detect or deter conflicts of interest among executive branch officials charged with awarding ARRA grants, loans, and contracts?**

The Administration took careful precautions to avert the sorts of conflicts that you reference, in addition to Congress's action to not include any earmarks in the Recovery Act. As an example, unprecedented transparency is required of all contacts between agency officials and Federally registered lobbyists with respect to ARRA.

In March 2009, the President issued a Memorandum on Ensuring Responsible Spending of Recovery Act Funds. This Memorandum required all oral communications between Federally registered lobbyists and government officials concerning Recovery Act policy to be disclosed on the Internet; barred registered lobbyists from having oral communications with government officials about specific Recovery Act projects or applications and instead required those communications to be in writing; and also required those written communications to be posted on the Internet. That Memorandum instructed the Office of Management and Budget (OMB) to review the initial 60 days of implementation of the stimulus lobbying restrictions, to evaluate the data, and to recommend modifications.

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Following OMB's review, the Administration clarified that the restriction on oral communications covers all persons, not just Federally registered lobbyists, in situations where concerns about merit-based decision-making are greatest –after competitive funding applications are submitted and before awards are made. Once such applications are submitted, the competition should be strictly on the merits of the project. To that end, comments from anyone outside the Federal Government (unless initiated by an agency official) must be in writing and posted on the Internet for every American to see.

The Administration continues to require immediate internet disclosure of all other communications with registered lobbyists. If registered lobbyists have conversations or meetings before an application is filed, a form must be completed and posted to each agency's website documenting the contact.

8. **Please explain the discrepancies in the total ARRA accounting described above.**

The alleged discrepancies referenced in this letter result from an attempt to equate budget authority with obligations to date. As such, the claim in your letter that "it is not clear that there is agreement within the Federal government and even among the agencies regarding how much ARRA money has actually been obligated or even spent" is inaccurate, and based on incorrect assessments of the sources referenced.

For example, the letter asserts that the HUD website, as of 12/22/09, claimed that $13.61 billion in funding was available. In fact, the HUD website says the following:

"The Recovery Act includes $13.61 billion for projects and programs administered by the Department of Housing and Urban Development, nearly 75 percent of which was allocated to state and local recipients on February 25, 2009 – only eight days after President Obama signed the Act into law." (http://portal.hud.gov/portal/page/portal/RECOVERY/about)

The agency's weekly report, posted on the HUD website (and submitted to OMB—and then posted on Recovery.gov by the RAT board), says that: "Of HUD's $13.61 billion Recovery Act funds, $11.38 billion has been obligated and $2.73 billion has been disbursed." (See Dec. 25: http://portal.hud.gov/portal/page/portal/RECOVERY/guidelines)

Similarly, the letter claims that DOE's website broadcast $36.7 billion in available funding. The front page of the www.doe.gov/recovery reveals the following table, which clearly shows the total funding included in the act, not the amount available, to date:

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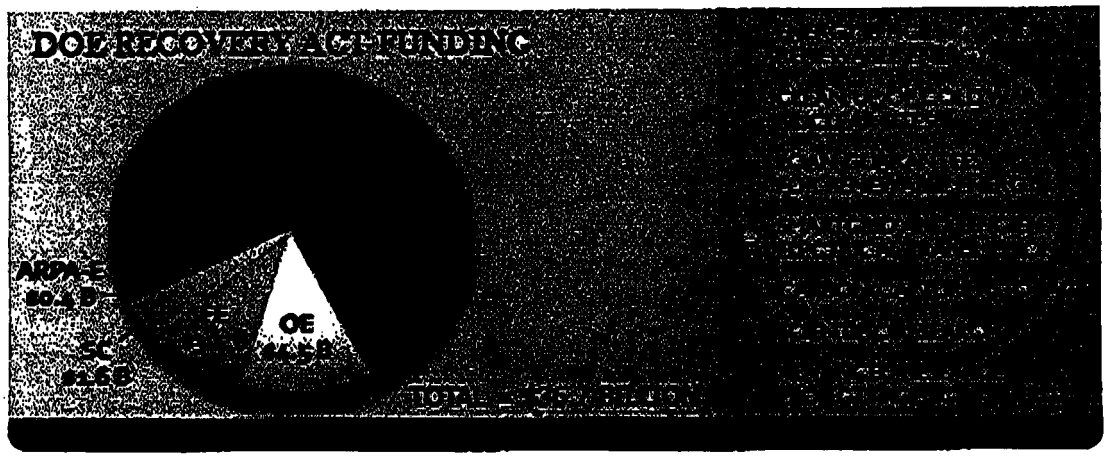

To offer another example, the Department of the Interior's website says that "the $3 billion in funding allocated for the Department of the Interior in President Obama's economic recovery plan could create as many as 100,000 jobs and stimulate business activity in communities across America. Under the American Recovery and Reinvestment Act of 2009, Interior is making an investment in conserving America's timeless treasures—our stunning natural landscapes, our monuments to liberty, the icons of our culture and heritage—while helping working families and their communities prosper again." It does not claim that all of this funding is available.

In short, the differences between these numbers referenced in your letter are the byproduct of incorrect comparisons between amounts appropriated and amounts currently obligated.

9. **Please provide a chart detailing the amount of ARRA money appropriated to each executive branch agency. This chart should include the total amount of ARRA money obligated and the total amount currently been spent by each executive branch agency.**

   Detailed information on agencies' Recovery Act obligations and outlays is available on Recovery.gov (See: http://www.recovery.gov/Transparency/agency/Pages/default2.aspx). This information is updated weekly.

10. **What systems do OMB and the Federal agencies at large have to ensure that sub-recipients of ARRA funds will be monitored to prevent fraud, waste, and abuse? Please describe in detail.**

    Section 1512 of the Recovery Act requires that recipients of Recovery Act funds report on the sub-recipients to whom they distribute their funds. This sub-recipient reporting provides an unprecedented level of detail into government spending that has never before been routinely tracked and made available to the public. OMB

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has issued nine rounds of guidance that provide instructions to Federal agencies and recipients on how to comply with this requirement.

In order to track an additional level of information and help to avoid critical gaps in the auditing trail, OMB's guidance goes above and beyond the statutory requirements and requires recipients to list the vendors who are providing them with goods and services.

Furthermore, OMB's guidance requires agencies to put a number of important measures in place to manage risk, identify and combat fraud, and increase accountability for Recovery Act dollars. The guidance requires agencies to go beyond standard practices with respect to identifying and recovering improper payments made with Recovery Act funding. It also requires agencies to measure Recovery Act program obligations and outlays separately from tracking non-Recovery Act funding, in order to subject these dollars to exceptional scrutiny. Agencies, pursuant to OMB's February 18, 2009, guidance, have risk management plans in place that prioritize internal controls and oversight resources. The guidance recommended specific steps for agencies that include:

- Leveraging their "senior management councils," which already exist under OMB Circular-123, and having those existing bodies focus on Recovery Act performance, including risk management;
- Taking specific, commonsense actions for risk mitigation that include selecting applicants with demonstrated track records, adapting evaluation and review processes to highlight project completion status, and using fixed-price contracts.

OMB continues to work with agencies to make sure that these activities are continuously reviewed and strengthened, and that we learn from mistakes and reinforce our risk management frameworks. When combined with the efforts of the Recovery Board and agency Inspectors General, there is significant emphasis on protecting the integrity or Recovery Act payments.

OMB also continues to offer support to recipients and sub-recipients to make sure that they understand the rules and have the tools that they need to deliver on what is expected of them. This support includes continued guidance, regularly updated publication of frequently asked questions, meetings, phone calls, and other forms of regular correspondence. In order to provide an additional level of support and oversight for the first round of recipient reporting, OMB and the RATB worked with USDA to utilize its National Incident Management System (NIMS) to monitor progress across the country, and to identify and address problems as they arose.

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11. **Does OMB believe the states have adequate ability to protect ARRA money from fraud, waste, and abuse? Please identify any work that has taken place to ensure accountability at the State level, as well as any concerns your office has on this matter.**

OMB is very concerned about States' capacity to protect against waste, fraud, and abuse. That is why OMB issued a Memorandum to the agencies last spring (http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-18.pdf) which allows them to use up to 0.5% of funding to cover the cost of increased auditing. The Administration has also offered its support for bills sponsored by Chairman Towns and Chairman Lieberman that would modify the Recovery Act to provide State and local governments with the flexibility to set aside an additional 0.5% of funds for these practices. The Senate bill (S. 1064/H.R. 2182) has been placed on the calendar, but neither House has taken further action on this measure.

Further, OMB has taken a number of actions with respect to the Single Audits, which serve as a critical tool to protect against waste, fraud, and abuse. These changes are intended to improve the quality and speed with which major ARRA grantees – largely states – are audited.

12. **Regarding the recent change in accounting for jobs saved or created, please explain what led to the change and whether the Administration plans to refer to these new jobs as funded, rather than saved or created.**

Feedback from recipients and data users after the first round of reporting pointed to two aspects of the process as sources of difficulty. First, recipients were asked to make complex judgments about whether a job would have been filled "but for" funding under the Recovery Act. Second, jobs were to be reported as cumulative averages since the beginning of the project under the Act, making it difficult for recipients to aggregate the data and difficult for users to interpret the reports as indications of employment effects at a specific point. Bipartisan Members of Congress offered suggestions to improve the process, and the GAO in November 2009 made a number of recommendations, which OMB has addressed in subsequent guidance.

13. **According to OMB, how many jobs have been saved within the Federal government due to the ARRA program? Please explain in detail.**

14. **According to OMB, how many jobs have been saved within the private sector due to the ARRA program? Please explain in detail.**

15. **According to OMB, how many jobs have been created within the Federal government due to the ARRA program? Please explain in detail.**

16. **According to OMB, how many jobs have been created within the private sector due to the ARRA program? Please explain in detail.**

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This answer addresses questions 13 through 16.

According to reports filed by the Congressional Budget Office (CBO) and the Council of Economic Advisers (CEA), as required by ARRA, approximately 1.5 to 2 million jobs have been created or saved as a result of Recovery Act funding. Further, reports received directly from recipients that cover a portion of ARRA dollars indicate that close to 600,000 jobs were funded by the Act this past quarter alone. These reports do not distinguish between jobs created and jobs saved.

As you know, the purpose of the Recovery Act is not to create Federal jobs, and in almost all cases, much of the Act's implementation is being done by existing agency staff. In some cases, Congress directly appropriated funding to agencies to support administrative activities associated with the Recovery Act (e.g., funding for Inspectors General). The Act also contains direct funding in areas such as the Custom and Border Patrol to enhance border security, and Social Security to get extended benefits to eligible recipients more quickly. Under Section 1512 of the Act, Federal agencies are not recording the information on the funding source of particular job categories.

The most recent quarterly report published by CEA contains additional information about employment impact by sector (see: http://www.whitehouse.gov/sites/default/files/microsites/100113-economic-impact-arra-second-quarterly-report.pdf).

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Enclosure 2

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 180 and 215

Guidance for Governmentwide Debarment and Suspension (Nonprocurement)

AGENCY: Office of Management and Budget

2 CFR Subtitle A -Part 180 OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

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

Subpart A--General

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

Subpart B--Covered Transactions

180.200 What is a covered transaction?
180.205 Why is it important to know if a particular transaction is a covered transaction?
180.210 Which nonprocurement transactions are covered transactions?
180.215 Which nonprocurement transactions are not covered transactions?
180.220 Are any procurement contracts included as covered transactions?

180.210 Which nonprocurement transactions are covered transactions?
180.215 Which nonprocurement transactions are not covered transactions?
180.220 Are any procurement contracts included as covered transactions?
180.225 How do I know if a transaction in which I may participate is a covered transaction?

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

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

Disclosing Information--Primary Tier Participants

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

Disclosing Information--Lower Tier Participants

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

Subpart D--Responsibilities of Federal Agency Officials Regarding Transactions

180.400 May I enter into a transaction with an excluded or disqualified person?
180.405 May I enter into a covered transaction with a participant if a

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principal of the transaction is excluded?
180.410 May I approve a participant's use of the services of an excluded person?
180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
180.425 When do I check to see if a person is excluded or disqualified?
180.430 How do I check to see if a person is excluded or disqualified?
180.435 What must I require of a primary tier participant?
180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
180.445 What action may I take if a primary tier participant fails to disclose the information required under §180.335?
180.450 What may I do if a lower tier participant fails to disclose the information required under §180.355 to the next higher tier?

Subpart E--Excluded Parties List System

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

Subpart F--General Principles Relating to Suspension and Debarment Actions

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

Subpart G--Suspension

180.700 When may the suspending official issue a suspension?
180.705 What does the suspending official consider in issuing a suspension?
180.710 When does a suspension take effect?
180.715 What notice does the suspending official give me if I am suspended?
180.720 How may I contest a suspension?

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

Subpart H--Debarment

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

Subpart I--Definitions

180.900 Adequate evidence.
180.905 Affiliate.
180.910 Agent or representative.
180.915 Civil judgment.
180.920 Conviction.
180.925 Debarment.
180.930 Debarring official.
180.935 Disqualified.
180.940 Excluded or exclusion.

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180.945 Excluded Parties List System (EPLS).
180.950 Federal agency.
180.955 Indictment.
180.960 Ineligible or ineligibility.
180.965 Legal proceedings.
180.970 Nonprocurement transaction.
180.975 Notice.
180.980 Participant.
180.985 Person.
180.990 Preponderance of the evidence.
180.995 Principal.
180.1000 Respondent.
180.1005 State.
180.1010 Suspending official.
180.1015 Suspension.
180.1020 Voluntary exclusion or voluntarily excluded.

Appendix to Part 180 -- Covered Transactions

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

§180.05 What does this part do?

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

§180.10 How is this part organized?

This part is organized in two segments.

(a) Sections 180.05 through 180.45 contain general policy direction for Federal agencies' use of the standards in Subparts A through I of this part.

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

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

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

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

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

§180.15 To whom does the guidance apply?

The guidance provides OMB guidance only to Federal agencies. Publication of the guidance in the CFR does not change its nature--it is guidance and not regulation. Federal agencies' implementation of the

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guidance governs the rights and responsibilities of other persons affected by the nonprocurement debarment and suspension system.

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

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

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

Each Federal agency implementing regulation:

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

(b) Must address some matters for which these guidelines give each Federal agency some discretion. Specifically, the regulation must--

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

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

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

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

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

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

(2) Identify any types of nonprocurement transactions that the Federal agency exempts from coverage under these guidelines, as authorized under § 180.215(g)(2).

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

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

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

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

(7) Include any provisions authorized by OMB.

§180.30 Where does a Federal agency implement these guidelines?

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

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

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

§180.40 How are these guidelines maintained?

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

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

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

(a) Address disqualified persons only to--

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

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

(b) Do not specify the--

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

(2) Entities to which a disqualification applies; or

(3) Process that a Federal agency uses to disqualify a person. Unlike exclusion under Subparts A through I of this part, disqualification is frequently not a discretionary action that a Federal agency takes, and may include special procedures.

Subpart A- General

§180.100 How are Subparts A through I organized?

(a) Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

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

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H.....	debarment actions.
I.....	definitions of terms used in this part.

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

If you are...	See subpart(s)...
(1)a participant or principal in a nonprocurement transaction.....	A, B, C and I.
(2) a respondent in a suspension action.....	A, B, F, G and I.
(3) a respondent in a debarment action....	A, B, F, H and I.
(4) a suspending official.....	A, B, E, F, G and I.
(5) a debarring official.....	A, B, D, F, H and I.

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(6) an Federal agency official authorized to enter into a covered transaction.....	A, B, D, E and I.

§180.105 How is this part written?

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

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

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

§180.110 Do terms in this part have special meanings?

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

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

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

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

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

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

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

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

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

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

(c) Federal agency debarring or suspending official; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subpart B- Covered Transactions

§180.200 What is a covered transaction?

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

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

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

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

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

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

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

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under §180.310 or §180.415; or

(2) A Federal agency official obtains an exception from the agency head or designee to allow you to be involved in the transaction, as permitted under §180.135.

§180.210 Which nonprocurement transactions are covered transactions?

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

§180.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

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(a) A direct award to--

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 et seq., those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

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

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

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

(g) Any other transaction if--

(1) The application of an exclusion to the transaction is prohibited by law; or

(2) A Federal agency's regulation exempts it from coverage under this part.

§180.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part--

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

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

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

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

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

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

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

(1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the

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diagram in the appendix to this part showing that optional lower tier coverage); and

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

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

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

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

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

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

(a) Checking the EPLS; or

(b) Collecting a certification from that person; or

(c) Adding a clause or condition to the covered transaction with that person.

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

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

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

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

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

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under §180.135.

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

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(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Federal agency responsible for the transaction grants an exception under §180.135.

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

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction.
You may decide the method and frequency by which you do so. You may, but you are not required to, check the EPLS.

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

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

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

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

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

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

Disclosing Information- Primary Tier Participants

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

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

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in §180.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

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

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

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

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

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

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

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

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

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

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

(a) You failed to disclose information earlier, as required by §180.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in §180.335.

Disclosing Information- Lower Tier Participants

§180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

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

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

If a Federal agency later determines that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you

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entered into the covered transaction with that person, the agency may pursue any available remedies, including suspension and debarment.

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

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

(a) You failed to disclose information earlier, as required by §180.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in §180.355.

Subpart D- Responsibilities of Federal Agency Officials Regarding Transactions

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

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

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

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

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

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

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

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

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

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(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under §180.135.

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

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

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under §180.135; or

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

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

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

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if your agency's approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if your agency's approval of the principal is required.

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

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

(a) You as a Federal agency official must check the EPLS when you take any action listed in §180.425.

(b) You must review information that a participant gives you, as required by §180.335, about its status or the status of the principals of a transaction.

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

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

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

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

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

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

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

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

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

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

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

Subpart E- Excluded Parties List System

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

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

§180.505 Who uses the EPLS?

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

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

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

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

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

§180.510 Who maintains the EPLS?

The General Services Administration (GSA) maintains the EPLS. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the EPLS.

§180.515 What specific information is in the EPLS?

(a) At a minimum, the EPLS indicates—

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

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

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

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

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

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

§180.520 Who places the information into the EPLS?

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

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

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

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

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

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

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

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

§180.530 Where can I find the EPLS?

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

Subpart F- General Principles Relating to Suspension and Debarment Actions

§180.600 How do suspension and debarment actions start?

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

§180.605 How does suspension differ from debarment?

Suspension differs from debarment in that—

A suspending official . . .	A debarring official . . .

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

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

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

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

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

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

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

(1) You or your identified counsel; or

(2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

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

§180.620 Do Federal agencies coordinate suspension and debarment actions?

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

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

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

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

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(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

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

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

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

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

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

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

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

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

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

§180.640 May a settlement include a voluntary exclusion?

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

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

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

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

Subpart G- Suspension

§180.700 When may the suspending official issue a suspension?

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

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under §180.800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under §180.800(b) through (d); and

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

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

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

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

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

§180.710 When does a suspension take effect?

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

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

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

(a) That you have been suspended;

(b) That your suspension is based on--

(1) An indictment;

(2) A conviction;

(3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or

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(4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) upon which the suspending official relied under §180.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other agency procedures governing suspension decision making; and

(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

§180.720 How may I contest a suspension?

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

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

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

(b) The Federal agency taking the action considers the notice to be received by you--

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

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

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

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

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

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;

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

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(4) All of your affiliates.

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

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

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

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

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

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

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

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

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

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

§180.740 Are suspension proceedings formal?

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

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

§180.745 How is fact-finding conducted?

(a) If fact-finding is conducted--

(1) You may present witnesses and other evidence, and confront any witness presented; and

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

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

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

(a) The suspending official bases the decision on all information contained in the official record. The record includes--

(1) All information in support of the suspending official's initial decision to suspend you;

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

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

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

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

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

§180.760 How long may my suspension last?

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

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

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

Subpart H- Debarment

§180.800 What are the causes for debarment?

A Federal agency may debar a person for--

(a) Conviction of or civil judgment for--

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

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(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as--

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

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

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under §180.640 or of any settlement of a debarment or suspension action; or

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

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

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

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

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

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

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

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other agency procedures governing debarment; and

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

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§180.810 When does a debarment take effect?

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

§180.815 How may I contest a proposed debarment?

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

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

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

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

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

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

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

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

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

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

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

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

(4) All of your affiliates.

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

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

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

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

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

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

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

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

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

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

§180.835 Are debarment proceedings formal?

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

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

§180.840 How is fact-finding conducted?

(a) If fact-finding is conducted--

(1) You may present witnesses and other evidence, and confront any witness presented; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any

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investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

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

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

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

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

(m) Whether your principals tolerated the offense.

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

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

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

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

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

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

§180.865 How long may my debarment last?

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

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

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

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

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

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

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(1) Not to debar you; or

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

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

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

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

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

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

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

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

(a) Newly discovered material evidence;

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

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

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

(e) Other reasons the debarring official finds appropriate.

§180.885 May the debarring official extend a debarment?

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

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

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

Subpart I- Definitions

§180.900 Adequate evidence.

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

§180.905 Affiliate.

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

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

(d) Common use of employees; or

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

§180.910 Agent or representative.

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

§180.915 Civil judgment.

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

§180.920 Conviction.

Conviction means--

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

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

§180.925 Debarment.

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

§180.930 Debarring official.

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

(a) The agency head; or

(b) An official designated by the agency head.

§180.935 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and

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12689) or other authority. Examples of disqualifications include persons prohibited under--

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

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

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

§180.940 Excluded or exclusion.

Excluded or exclusion means--

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

(b) The act of excluding a person.

§180.945 Excluded Parties List System (EPLS).

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

§180.950 Federal agency.

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

§180.955 Indictment.

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

§180.960 Ineligible or ineligibility.

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

§180.965 Legal proceedings.

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

§180.970 Nonprocurement transaction.

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

(1) Grants.

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

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

§180.975 Notice.

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

§180.980 Participant.

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

§180.985 Person.

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

§180.990 Preponderance of the evidence.

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

§180.995 Principal.

Principal means--

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

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

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

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

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

§180.1000 Respondent.

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

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§180.1005 State.

(a) State means--

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

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

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

(5) Any agency or instrumentality of a state.

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

§180.1010 Suspending official.

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

(1) The agency head; or

(2) An official designated by the agency head.

§180.1015 Suspension.

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

§180.1020 Voluntary exclusion or voluntarily excluded.

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

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

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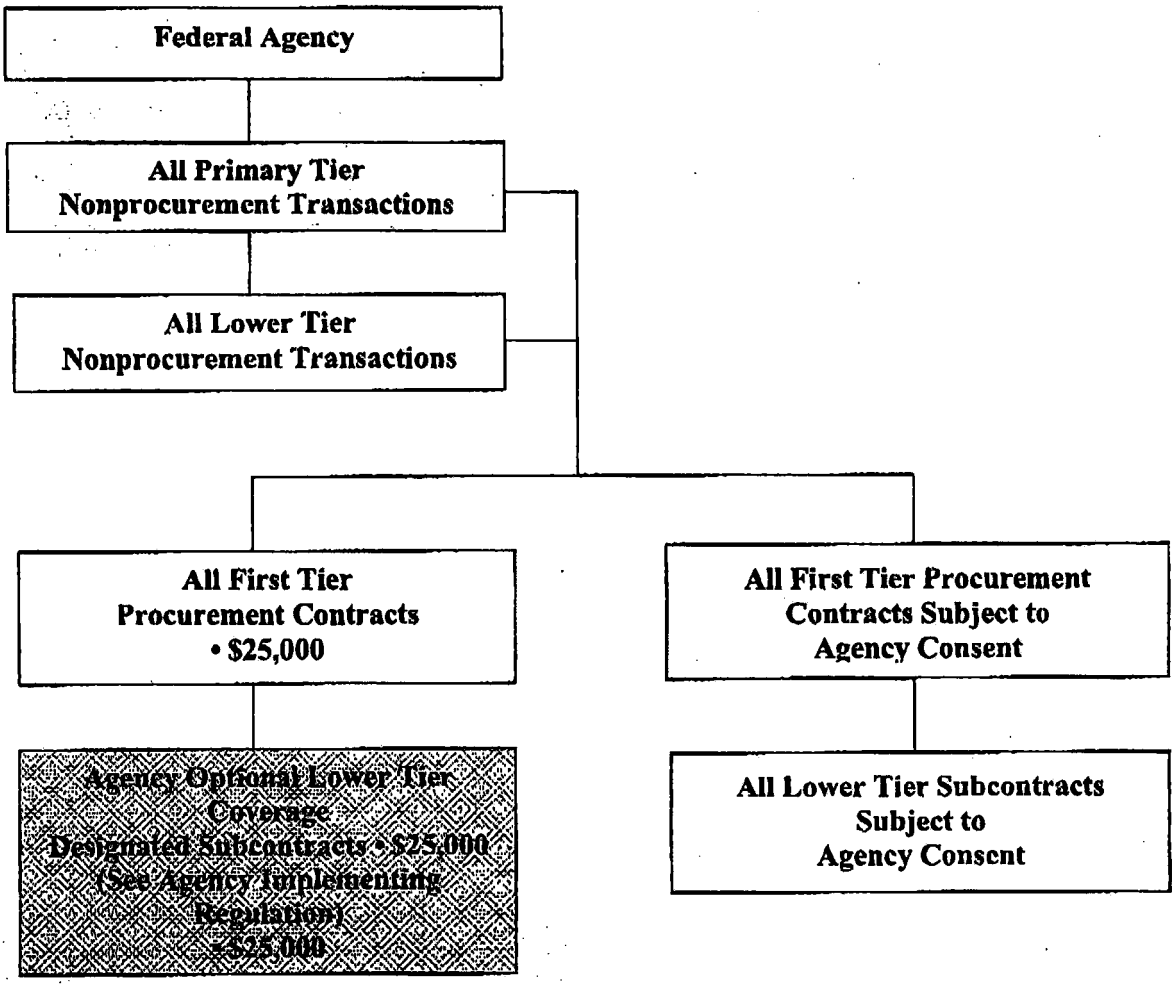
Appendix to Part 180___- Covered Transactions

COVERED TRANSACTIONS



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PART 215- [AMENDED]

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

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

3. Section 215.13 is revised to read as follows:

§ 215.13 Debarment and suspension.

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

4. Paragraph 8 of Appendix A to part 215 is revised to read as follows:
Appendix A to Part 215 - Contract Provisions
* * * * *

8. Debarment and Suspension (E.O.s 12549 and 12689) - A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 2 CFR 180.220) shall not be made to parties listed on the government-wide Excluded Parties List System, in accordance with the OMB guidelines at 2 CFR part 180 that implement E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

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Enclosure 3

Instructions for Downloading Current Records from EPLS

To download all current records in the EPLS database:

1. Open the EPLS web site in your web browser: https://www.epls.gov
2. Once there, on the right side of the screen under the Reports menu, click on the "Advanced Report" link.
3. Read the "Important EPLS Advanced Search Information" box.
4. Check the box to acknowledge the information and click the red "X" in the upper right hand corner of the box.
5. Scroll to the bottom of the "EPLS Advanced Report" window and click on the "Search" button. This action will perform a search and return the results of all the records on the current exclusions list.
6. Scroll to the bottom of this page. In the center section you will see the blue options: Back, New Search, Report, Excel, XML, ASCII, Printer-Friendly.
7. To download a report to view in Microsoft Excel, click on the Excel link. This will initiate the download of a file with the default name of "report.csv". This is actually a text file in 'csv' (Comma Separated Value) format.
8. To download a report in XML format, click on the XML link. This will initiate the download of a file with the default name of "report.xml".

Note: This query is performed in real time which means the records contained in the report are all the records available up to the second you began the Search.