



AB 07-03  
Supersedes AB 92-05

# ADMINISTRATIVE BULLETIN

Date: May 9, 2007

Subject: Executive Order 12549 on Debarment and Suspensions, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

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## REQUIREMENTS

All applicants submitting applications to the State Board for funds or other considerations under a Federal nonprocurement program administered by the State Board shall also submit a signed and dated copy of ED Form 80-0014, 9/90, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction" (attached). This certification shall be submitted with the first application submitted under any covered Federal program for funding for a fiscal year.

An applicant only needs to submit one certification per covered program per year. Each party to a joint application shall submit its own certification with the application.

Any applicant that receives a grant award or other consideration from the State Board and itself enters into a transaction (sub-grant) or issues a notice for applications must obtain a signed and dated copy of ED Form 80-0014 from the participant(s) and applicant(s).

## PENALTIES

This certification is required by the regulations [34 C.F.R. Subtitle A (7-6-88), Part 85] implementing presidential Executive Order 12549, "Debarment and Suspension," and can be obtained at the following link: [Certification Regarding Debarment](#). The regulations apply to all applicants for funding under each Federal nonprocurement program administered by the State Board. Applicants failing to submit such certification(s) cannot be considered for funding.

Any applicant that is awarded funds or other considerations is subject to disbarment or suspension if it enters into a covered transaction with a sub-grantee that it knows is either debarred, suspended, ineligible or has voluntarily excluded itself from participation.

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## GUIDE TO THE DEBARMENT CERTIFICATION FORM

This guide has been developed to assist applicants in understanding the requirements of the certification instrument, ED Form 80-0014, 9/90, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion -- Lower Tier Covered Transactions," attached. The guide is neither a substitute for, nor a complete exposition of the provisions contained in the certification instrument. Applicants for funding are, therefore, advised to review the form itself for a complete understanding of the statements therein.

### General

Any applicant for Federal funds or other consideration available under a Federal nonprocurement program administered by the State Board must submit a signed and dated copy of the certification form with its application.

A certificate does not have to be submitted with every individual application. A single annual certification may be submitted for any program under which an application or series of applications are being made. This means one certification per program; a single certification cannot cover more than one program.

### Form Review

Selected definitions and an item-by-item review of the pertinent provisions of the certification are given below.

Item 1. This item and those that follow use a number of terms which are defined in the Regulations. Of interest are the following:

A '*participant*' is "Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant." [34 C.F.R. 85.105(m)]

A '*person*' is "Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities." [34 C.F.R. 85.105(n)]

A '*principal*' is an "Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has critical influence on or substantive control over a covered transaction, whether or not employed by the participant." Persons who have a critical influence on or substantive control over a covered transaction are "Principal investigators" [34 C.F.R. 85.105(p)].

A '*covered transaction*' is "a primarily covered transaction or a lower tier covered transaction. These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as 'covered transactions.' [34 C.F.R. 85.110(a)]. Covered transactions at any tier need not involve the transfer of Federal funds [34 C.F.R. 85.110(a)(1)]."

A '*lower tier participant*' is an applicant applying to somebody other than a Federal agency or department; an applicant in this latter case is called a 'primary' prospective participant.

Therefore, any applicant submitting an application to the State Board is a prospective lower tier participant.

Item 1. Requires an applicant to certify that it is not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in a specific Federal program that is being administered by the State Board.

Item 2. Requires an applicant that cannot certify compliance with one or more of the statements to attach an explanation of why it cannot. This may be required for certification as in some cases of debarment, suspension, or voluntary exclusion, the Federal agency administering the program in question has authority to permit such an applicant to participate in a specific program [34 C.F.R. 85.215].

Item 3. For the purposes of this guide, the 'person' referred to in the second line is the State Board in the case of applications and is a district or other grantee in the case of sub-grants.

Item 4. Definitions of the listed terms are presented under Item 1, above, and in the attached pages from the Rules and Regulations.

Item 5. This item forbids an applicant that enters into a transaction with the State Board or any other participant from itself knowingly entering into a secondary transaction in which it is the grantor or controlling party with an applicant or sub-grantee it knows to be currently debarred, etc.; e.g., a district which receives a grant award from the State Board may not subcontract with a third party that it knows to be disbarred, etc.

Item 6. Any participant that receives a grant award or other consideration from the State Board and itself enters into a transaction or issues a notice for applications *must* provide the participant(s) or potential participants respectively with a copy of this certificate; i.e., grantees are responsible for obtaining certifications from sub-grantees.

Item 7. The Board and funded participants may rely upon signed certifications from potential participants (applicants) as proof that they are not currently disbarred, etc. Applicants and other potential participants are to submit to the administering party a certification for every Act under which they are applying for funds. Such certifications are to be submitted annually along with the annual application(s).

The administering party may not require a participant to determine the eligibility of its own principals; that is the responsibility of the certifying participant.

Item 8. This statement is self-explanatory.

Item 9. If the administering party makes an award to an applicant that it knows to be disbarred, etc., the administering party is itself open to disbarment, etc., for such action.



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

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

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

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

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