

and the debarment or suspending agency issues a decision rejecting that objection, the suspension thereafter continues in effect by virtue of that decision and not by virtue of the mere initiation of the action.

**Changes:** The final rule provides, in §§ 85.201(a), 668.82(f)(2), and 682.705 that if another agency, using procedures comparable to those under subpart G of Parts 668 or 682, has proposed debarment under the Federal Acquisition Regulation (FAR) or suspended an entity, the Secretary gives effect to that action as suspending the Title IV, HEA participation of a lender, servicer, or institution only after he determines either that the entity has not timely objected to the action, or has objected and received a decision from the agency upholding the action.

In addition, the final regulation has been revised to give finality only to those agency decisions that meet subpart G standards. Sections 668.90, 682.705 and 682.706 have been revised to provide that a debarment or suspension by another agency under procedures that the Secretary determines do not meet these standards does not bar the affected entity from contesting the grounds and justification for the suspension or debarment under subpart G procedures. However, the other agency's decision is at very least strong evidence that debarment or suspension is warranted, and the final regulations now provide that the decision constitutes a *prima facie* case that the comparable action is warranted under Department procedures.

Therefore, although the designated Department official continues to bear the burden of persuasion in actions to debar, terminate, or suspend a lender, servicer, or institution, the fact of suspension or debarment by another agency shifts to the respondent the burden of producing some credible evidence that the action is not warranted with respect to the Title IV, HEA programs. The designated Department official may then introduce rebuttal evidence to sustain his or her burden of proof; that evidence may include the evidence on which the other Federal agency relied in imposing the debarment or suspension.

**Sections 668.90, 682.705, 682.706**  
**Effective Date and Duration of**  
**Suspension or Termination Based on**  
**Suspension or Debarment**

**Comment:** Several commenters urged that the regulations clarify the period for which the suspension or termination taken on the basis of a debarment, suspension or proposed debarment would be effective.

**Discussion:** Subpart G of Part 668, as amended April 29, 1994, 59 FR 22444, provides in § 668.82(f)(2) that a suspension by another agency under procedures comparable to those in subpart G suspends the participation of an institution or third-party servicer for 60 days from the date of that agency's action, unless the Secretary commences a limitation or termination action under subpart G within that period. In other instances, the commencement and duration of a suspension imposed by the Secretary is stated in § 668.85(b), which provides that the suspension commences 20 days after notice of the proposed suspension is mailed, unless the respondent timely objects and requests a hearing, and expires 60 days after it takes effect unless the Secretary commences a limitation or termination action within that period.

The duration of a termination on the basis of a debarment is similarly addressed in current §§ 668.82(f)(1) and 668.96(b)(2), which provide that a debarment under procedures comparable to subpart G procedures is effective as a termination for at least the duration of the debarment or 18 months, whichever is greater, after which the institution or servicer may request reinstatement.

The commencement and duration of suspensions and terminations with respect to lenders and loan servicers are similarly stated in current regulations. 34 CFR §§ 682.705, 682.706, and 682.711. These regulations do not specifically address the commencement and duration of a suspension or termination action taken based on actions pursuant to Executive Order 12549 or the FAR. Generally, current regulations provide and the proposed rule provided that a suspension or termination based on a suspension or debarment by another agency under procedures comparable to those provided under the respective subparts G of 34 CFR Parts 668 and 682 is effective, with respect to Title IV, HEA program transactions, on the date on which the other agency's action is effective. Under the proposed rule, the Secretary would notify the affected party whether that action had been taken under subpart G—type procedures. If the debarment or suspension had been taken under such procedures, the action would have been effective with respect to Title IV, HEA program transactions already taken by the party; if it had not, the Secretary would then bring an action under subpart G to suspend or terminate the party's participation; unless emergency action were taken, Title IV, HEA program transactions by that party

would not be effected until the subpart G proceeding was complete. Under the proposed rule, then, the debarred or suspended party would not know whether it could properly initiate new Title IV, HEA program transactions—awarding and disbursing grant, loan, or work study funds, or certifying new loan applications—after the date of the other agency action until it received notice of the Secretary's determination.

The Secretary has decided to change this outcome so that a debarment or suspension entered by another agency under procedures that meet the standards in § 85.201 will not be effective against an institution or other affected entity until 20 days after the Department mails notice of its determination that the other agency's action would be recognized under Title IV, HEA.

**Changes:** Section 85.201 is amended in the final rule to provide that where the Secretary gives effect to a suspension or debarment pursuant to the action of another agency, the notice of that determination will state the effective date and duration of those actions. The effective date in such instances will be 20 days after the date the notice is mailed. No revision is needed to address the commencement and duration of other actions initiated by the Secretary consistent with subpart G of Part 668. Changes are made in 34 CFR §§ 682.705 and 682.711 to conform the periods of exclusion from FFELP participation to those under Part 668. In addition, the final rule revises §§ 85.201 and 85.220 to clarify the effect of debarment on Title IV, HEA participation by stating that the particular transactions from which a debarred or suspended entity is excluded under Title IV, HEA are the loans, grants, or work study assistance disbursed, awarded, acquired or serviced by that entity. Thus, only those transactions listed in revised § 85.201 are fully subject to debarment and termination. The revised § 85.220 also addresses the effect of the debarment and termination on continuing transactions by referring to current provisions of 34 CFR 668.26, 682.702, and 668.94, which describe the kinds of actions that an affected party may take after the effective date of its termination.

**List of Subjects in 34 CFR Part 85**

Administrative practice and procedure, Contract programs, Grant programs, Grant administration Grant programs—education.

**List of Subjects in 34 CFR Part 668**

Administrative practice and procedure, Colleges and universities,