

Subpart B—Covered Transactions

§ 76.200 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.

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

The importance of 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 § 76.310 or § 76.415; or

(2) A(n) HHS official obtains an exception from the HHS Debarring/Suspension Official to allow you to be involved in the transaction, as permitted under § 76.120.

§ 76.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § 76.970, are covered transactions unless listed in § 76.215. (See appendix to this part.)

§ 76.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

- (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 the HHS 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 the HHS specifically designates it to be a covered transaction.
- (f) An incidental benefit that results from ordinary governmental operations.
- (g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.

§ 76.220 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