

## PARTS 100–179 [RESERVED]

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### 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.

SOURCE: 70 FR 51865, Aug. 31, 2005, unless otherwise noted.

#### § 180.5 What does this part do?

This part provides Office of Management and Budget (OMB) guidance for Federal agencies on the government-wide 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 180.5 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 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—

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(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.

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

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(7) Include any provisions authorized by OMB.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006]

### **§ 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 Fed-

eral 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:

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.
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.
(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

### § 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 debarment or suspending official; or

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

### § 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

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(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?

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:

- (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—

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- (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 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.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006]

### **§ 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

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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.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006]

#### **§ 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?**

(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;

(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

**§ 180.345**

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.

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**§ 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 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.

(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.

**§ 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—

## § 180.450

(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

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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;

(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 . . .
<p>(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.</p> <p>(b) Must—</p> <ul style="list-style-type: none"> <li>(1) Have <i>adequate evidence</i> that there may be a cause for debarment of a person; and</li> <li>(2) Conclude that <i>immediate action</i> is necessary to protect the Federal interest</li> </ul> <p>(c) Usually imposes the suspension <i>first</i>, and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.</p>	<p>Imposes debarment for a specified period as a final determination that a person is not presently responsible.</p> <p>Must conclude, based on a <i>preponderance of the evidence</i>, that the person has engaged in conduct that warrants debarment.</p> <p>Imposes debarment <i>after</i> giving the respondent notice of the action and an opportunity to contest the proposed debarment.</p>

**§ 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:

## § 180.630

(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—

(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 oc-

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curred 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 government-wide 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.

(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
  - (4) Conduct of another person that has been imputed to you, or your affili-

ation 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 decisionmaking; 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

(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.

**§ 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 anti-trust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(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

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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 non-procurement programs and activities.

### **§ 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 debar-

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ring 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?**

(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.

(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 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.

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(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—

(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.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the

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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.

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**§ 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 non-procurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 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.
- (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.

**§ 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

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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

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ensue. A person so excluded is suspended.

**§ 180.1020 Voluntary exclusion or voluntarily excluded.**

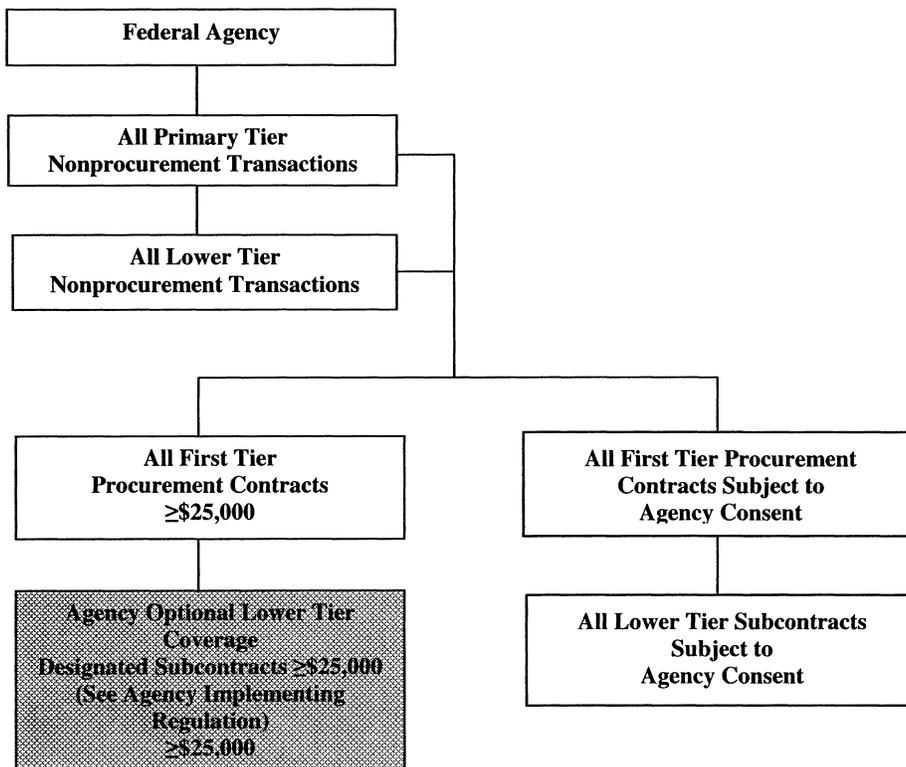
(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

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

APPENDIX TO PART 180—COVERED  
TRANSACTIONS

Appendix to Part 180\_\_\_ - Covered Transactions

COVERED TRANSACTIONS



PARTS 181-199 [RESERVED]

subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 1000*

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 1003*

Alaska, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Reporting and recordkeeping requirements.

*24 CFR Part 1005*

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

*24 CFR Part 1006*

Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Hawaiian Natives, Low and moderate income housing, Reporting and recordkeeping requirements.

*24 CFR Part 3282*

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

*24 CFR Part 3500*

Consumer protection, Housing, Mortgages, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons discussed in the preamble, HUD amends 2 CFR part 2424 and 24 CFR parts 5, 6, 8, 15, 21, 24, 25, 26, 84, 85, 91, 92, 103, 107, 135, 200, 202, 203, 206, 245, 291, 401, 402, 570, 572, 585, 941, 954, 982, 983, 1000, 1003, 1005, 1006, 3282, and 3500 to read as follows:

**TITLE 2—GRANTS AND AGREEMENTS**

**SUBTITLE B—FEDERAL AGENCY REGULATIONS FOR GRANTS AND AGREEMENTS**

**PART 2424—NONPROCUREMENT DEBARMENT AND SUSPENSION; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

■ 1. Under the authority of 42 U.S.C. 3535(d), add Chapter XXIV consisting of part 2424 to Subtitle B to read as follows:

**CHAPTER XXIV—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**PART 2424—NONPROCUREMENT DEBARMENT AND SUSPENSION**

Sec.

2424.10 What does this part do?

2424.20 Does this part apply to me?

2424.30 What policies and procedures must I follow?

**Subpart A—General**

2424.137 Who in HUD may grant an exception to let an excluded person participate in a covered transaction?

**Subpart B—Covered Transactions**

2424.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

**Subpart C—Responsibilities of Participants Regarding Transactions**

2424.300 What must I do before I enter into a covered transaction with another person at the next lower tier (HUD supplement to governmentwide definition at 2 CFR 180.300)?

2424.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

2424.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

**Subpart E—[Reserved]**

**Subpart F—[Reserved]**

**Subpart G—Suspension**

2424.747 Who conducts fact finding for HUD suspensions?

**Subpart H—Debarment**

2424.842 Who conducts fact finding for HUD debarments?

**Subpart I—Definitions**

2424.952 Hearing officer.

2424.970 Nonprocurement transaction (HUD supplement to governmentwide definition at 2 CFR 180.970).

2424.995 Principal (HUD supplement to governmentwide definition at 2 CFR 180.995).

2424.1017 Ultimate beneficiary.

**Subpart J—Limited Denial of Participation**

2424.1100 What is a limited denial of participation?

2424.1105 Who may issue a limited denial of participation?

2424.1110 When may a HUD official issue a limited denial of participation?

2424.1115 When does a limited denial of participation take effect?

2424.1120 How long may a limited denial of participation last?

2424.1125 How does a limited denial of participation start?

2424.1130 How may I contest my limited denial of participation?

2424.1135 Do Federal agencies coordinate limited denial of participation actions?

2424.1140 What is the scope of a limited denial of participation?

2424.1145 May HUD impute the conduct of one person to another in a limited denial of participation?

2424.1150 What is the effect of a suspension or debarment on a limited denial of participation?

2424.1155 What is the effect of a limited denial of participation on a suspension or a debarment?

2424.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?

2424.1165 How is a limited denial of participation reported?

**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.

**§ 2424.10 What does this part do?**

In this part, HUD adopts, as HUD policies, procedures, and requirements for nonprocurement debarment and suspension, the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by this part. This adoption thereby gives regulatory effect for HUD to the OMB guidance, as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

**§ 2424.20 Does this part apply to me?**

This part and, through this part, pertinent portions of subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)), apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970, as supplemented by § 2424.970 of this part);

(b) Respondent in a HUD suspension or debarment action;

(c) HUD debarment or suspension official; or

(d) HUD grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

**§ 2424.30 What policies and procedures must I follow?**

The HUD policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts

A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220), as supplemented by section 220 in this part (i.e., § 2424.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, HUD policies and procedures are those in the OMB guidance.

#### Subpart A—General

##### § 2424.137 Who in HUD may grant an exception to let an excluded person participate in a covered transaction?

The Secretary or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Secretary or a 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.

#### Subpart B—Covered Transactions

##### § 2424.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by HUD under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the HUD nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the Appendix to 2 CFR part 180).

#### Subpart C—Responsibilities of Participants Regarding Transactions

##### § 2424.300 What must I do before I enter into a covered transaction with another person at the next lower tier (HUD supplement to governmentwide definition at 2 CFR 180.300)?

(a) You, as a participant, are responsible for determining whether you are entering into a covered transaction with an excluded or disqualified person. You may decide the method by which you do so.

(i) You may, but are not required to, check the Excluded Parties List System (EPLS).

(ii) You may, but are not required to, collect a certification from that person.

(b) In the case of an employment contract, HUD does not require employers to check the EPLS prior to making salary payments pursuant to that contract.

##### § 2424.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

To communicate the requirements to lower-tier participants, you must include a term or condition in the transaction requiring compliance with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

#### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

##### § 2424.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant to: comply with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and include a similar term or condition in lower-tier covered transactions.

#### Subpart E—[Reserved]

#### Subpart F—[Reserved]

#### Subpart G—Suspension

##### § 2424.747 Who conducts fact finding for HUD suspensions?

In all HUD suspensions, the official who shall conduct additional proceedings where disputed material facts are challenged shall be a hearing officer.

#### Subpart H—Debarment

##### § 2424.842 Who conducts fact finding for HUD debarments?

In all HUD debarments, the official who shall conduct additional proceedings where disputed material facts are challenged shall be a hearing officer.

#### Subpart I—Definitions

##### § 2424.952 Hearing officer.

*Hearing Officer* means an Administrative Law Judge or Office of

Appeals Judge authorized by HUD's Secretary or by the Secretary's designee to conduct proceedings under this part.

##### § 2424.970 Nonprocurement transaction (HUD supplement to governmentwide definition at 2 CFR 180.970).

In the case of employment contracts that are covered transactions, each salary payment under the contract is a separate covered transaction.

##### § 2424.995 Principal (HUD supplement to governmentwide definition at 2 CFR 180.995).

A person who has a 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 may include, but are not limited to:

- (a) Loan officers;
- (b) Staff appraisers and inspectors;
- (c) Underwriters;
- (d) Bonding companies;
- (e) Borrowers under programs financed by HUD or with loans guaranteed, insured, or subsidized through HUD programs;
- (f) Purchasers of properties with HUD-insured or Secretary-held mortgages;
- (g) Recipients under HUD assistance agreements;
- (h) Ultimate beneficiaries of HUD programs;
- (i) Fee appraisers and inspectors;
- (j) Real estate agents and brokers;
- (k) Management and marketing agents;
- (l) Accountants, consultants, investment bankers, architects, engineers, and attorneys who are in a business relationship with participants in connection with a covered transaction under a HUD program;
- (m) Contractors involved in the construction or rehabilitation of properties financed by HUD, with HUD-insured loans or acquired properties, including properties held by HUD as mortgagee-in-possession;
- (n) Closing agents;
- (o) Turnkey developers of projects financed by or with financing insured by HUD;
- (p) Title companies;
- (q) Escrow agents;
- (r) Project owners;
- (s) Administrators of hospitals, nursing homes, and projects for the elderly financed or insured by HUD; and
- (t) Developers, sellers, or owners of property financed with loans insured under Title I or Title II of the National Housing Act.

**§ 2424.1017 Ultimate beneficiary.**

Ultimate beneficiaries of HUD programs include, but are not limited to, subsidized tenants and subsidized mortgagors, such as those assisted under Section 8 Housing Assistance Payment contracts, by Section 236 Rental Assistance, or by Rent Supplement payments.

**Subpart J—Limited Denial of Participation****§ 2424.1100 What is a limited denial of participation?**

A limited denial of participation excludes a specific person from participating in a specific program, or programs, within a HUD field office's geographic jurisdiction, for a specific period of time. A limited denial of participation is normally issued by a HUD field office, but may be issued by a Headquarters office. The decision to impose a limited denial of participation is discretionary and based on the best interests of the federal government.

**§ 2424.1105 Who may issue a limited denial of participation?**

The Secretary designates HUD officials who are authorized to impose a limited denial of participation, affecting any participant and/or their affiliates, except mortgagees approved by the Federal Housing Administration (FHA).

**§ 2424.1110 When may a HUD official issue a limited denial of participation?**

(a) An authorized HUD official may issue a limited denial of participation against a person, based upon adequate evidence of any of the following causes:

- (1) Approval of an applicant for insurance would constitute an unsatisfactory risk;
- (2) There are irregularities in a person's past performance in a HUD program;
- (3) The person has failed to maintain the prerequisites of eligibility to participate in a HUD program;
- (4) The person has failed to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;
- (5) The person has failed to satisfy, upon completion, the requirements of an assistance agreement or contract;
- (6) The person has deficiencies in ongoing construction projects;
- (7) The person has falsely certified in connection with any HUD program, whether or not the certification was made directly to HUD;
- (8) The person has committed any act or omission that would be cause for debarment under 2 CFR 180.800;

(9) The person has violated any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(10) The person has made or procured to be made any false statement for the purpose of influencing in any way an action of the Department; or

(11) Imposition of a limited denial of participation by any other HUD office.

(b) Filing of a criminal Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions. The Indictment or Information need not be based on offenses against HUD.

(c) Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for an additional conference or further hearing.

(d) An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

**§ 2424.1115 When does a limited denial of participation take effect?**

A limited denial of participation is effective immediately upon issuance of the notice.

**§ 2424.1120 How long may a limited denial of participation last?**

A limited denial of participation may remain in effect up to 12 months.

**§ 2424.1125 How does a limited denial of participation start?**

A limited denial of participation is made effective by providing the person, and any specifically named affiliate, with notice:

- (a) That the limited denial of participation is being imposed;
- (b) Of the cause(s) under § 2424.1110 for the sanction;
- (c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;

(d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 2424.1130; and

(e) Of the right to contest the limited denial of participation under § 2424.1130.

**§ 2424.1130 How may I contest my limited denial of participation?**

(a) Within 30 days after receiving a notice of limited denial of participation, you may request a conference with the official who issued such notice. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless you waive this time limit. The official or designee who imposed the sanction shall preside. At the conference, you may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed-upon extension of time for submission of additional materials, the official or designee shall, in writing, advise you of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise you of the opportunity to contest the notice and to request a hearing before a Departmental Hearing Officer. You have 30 days after receipt of the notice of affirmation to request this hearing. If the official or designee does not issue a decision within the 20-day period, you may contest the sanction before a Departmental Hearing Officer. Again, you have 30 days from the expiration of the 20-day period to request this hearing. If you request a hearing before the Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., B-133 Portals 200, Washington DC 20410-0500.

(b) You may skip the conference with the official and you may request a hearing before a Departmental Hearing Officer. This must also be done within 30 days after receiving a notice of limited denial of participation. If you opt to have a hearing before a Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., B-133 Portals 200, Washington DC 20410-0500. The hearing before the Departmental Hearing Officer is more formal than the conference before the sanctioning official described above. The Departmental Hearing Officer will

conduct the hearing in accordance with 24 CFR part 26, subpart A. The Departmental Hearing Officer will issue findings of fact and make a recommended decision. The sanctioning official will then make a final decision, as promptly as possible, after the Departmental Hearing Officer's recommended decision is issued. The sanctioning official may reject the recommended decision or any findings of fact, only after specifically determining that the decision or any of the facts are arbitrary, capricious, or clearly erroneous.

(c) In deciding whether to terminate, modify, or affirm a limited denial of participation, the Departmental official or designee may consider the factors listed at 2 CFR 180.860. The Departmental Hearing Officer may also consider the factors listed at 2 CFR 180.860 in making any recommended decision.

**§ 2424.1135 Do Federal agencies coordinate limited denial of participation actions?**

Federal agencies do not coordinate limited denial of participation actions. As stated in § 2424.1100, a limited denial of participation is a HUD-specific action and applies only to HUD activities.

**§ 2424.1140 What is the scope of a limited denial of participation?**

The scope of a limited denial of participation is as follows:

(a) A limited denial of participation generally extends only to participation in the program under which the cause arose. A limited denial of participation may, at the discretion of the authorized official, extend to other programs, initiatives, or functions within the jurisdiction of an Assistant Secretary. The authorized official, however, may determine that where the sanction is based on an indictment or conviction, the sanction shall apply to all programs throughout HUD.

(b) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts.

(c) The sanction may be imposed for a period not to exceed 12 months, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by an Assistant Secretary or Deputy Assistant Secretary, in which case the sanction may be imposed on either a nationwide or a more restricted basis.

**§ 2424.1145 May HUD impute the conduct of one person to another in a limited denial of participation?**

For purposes of determining a limited denial of participation, HUD may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* HUD 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.* HUD 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 participated in, had knowledge of, or had reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* HUD 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.

**§ 2424.1150 What is the effect of a suspension or debarment on a limited denial of participation?**

If you have submitted a request for a hearing pursuant to § 2424.1130 of this subpart, and you also receive, pursuant to subpart G or H of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or the same conduct as the limited denial of participation, as determined by the debarring or suspending official, the following rules shall apply:

(a) During the 30-day period after you receive a notice of proposed debarment or suspension, during which you may elect to contest the debarment under 2 CFR 180.815, or the suspension

pursuant to 2 CFR 180.720, all proceedings in the limited denial of participation, including discovery, are automatically stayed.

(b) If you do not contest the proposed debarment pursuant to 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation, to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(c) If you contest the proposed debarment pursuant to 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, then:

(1) Those parts of the limited denial of participation and the debarment or suspension based on the same transaction(s) or conduct, as determined by the debarring or suspending official, shall be immediately consolidated before the debarring or suspending official;

(2) Proceedings under the consolidated portions of the limited denial of participation shall be stayed before the hearing officer until the suspending or debarring official makes a determination as to whether the consolidated matters should be referred to a hearing officer. Such a determination must be made within 90 days of the date of the issuance of the suspension or proposed debarment, unless the suspending/debarring official extends the period for good cause.

(i) If the suspending or debarring official determines that there is a genuine dispute as to material facts regarding the consolidated matter, the entire consolidated matter will be referred to the hearing officer hearing the limited denial of participation, for additional proceedings pursuant to 2 CFR 180.750 or 180.845.

(ii) If the suspending or debarring official determines that there is no dispute as to material facts regarding the consolidated matter, jurisdiction of the hearing officer under 2 CFR part 2424, subpart J, to hear those parts of the limited denial of participation based on the same transaction[s] or conduct as the debarment or suspension, as determined by the debarring or suspending official, will be transferred to the debarring or suspending official, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarring or suspending official.

(3) The suspending or debarring official shall hear the entire consolidated case under the procedures

governing suspensions and debarments, and shall issue a final decision as to both the limited denial of participation and the suspension or debarment.

**§ 2424.1155 What is the effect of a limited denial of participation on a suspension or a debarment?**

The imposition of a limited denial of participation does not affect the right of the Department to suspend or debar any person under this part.

**§ 2424.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?**

If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it.

**§ 2424.1165 How is a limited denial of participation reported?**

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to § 2424.1130 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Compliance Division in the Departmental Enforcement Center of the scope of the limited denial of participation.

**TITLE 24—HOUSING AND URBAN DEVELOPMENT**

*SUBTITLE B—REGULATIONS  
RELATING TO HOUSING AND URBAN DEVELOPMENT*

**PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

■ 2. The authority citation for part 5 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 3. Revise § 5.105(c) and (d) to read as follows:

**§ 5.105 Other federal requirements.**

\* \* \* \* \*

(c) Debarred, suspended, or ineligible contractors and participants. The prohibitions at 2 CFR part 2424 on the use of debarred, suspended, or ineligible contractors and participants.

(d) Drug-Free Workplace. The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations at 24 CFR part 21.

**PART 6—NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES RECEIVING ASSISTANCE UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1978**

■ 4. The authority citation for part 6 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d); 42 U.S.C. 5309

■ 5. Revise § 6.12(a)(4) to read as follows:

**§ 6.12 Procedure for effecting compliance.**

(a) \* \* \*

(4) Take such other actions as may be provided by law, including, but not limited to, the initiation of proceedings under 2 CFR part 2424 or any applicable proceeding under State or local law.

\* \* \* \* \*

**PART 8—NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

■ 6. The authority citation for part 8 continues to read as follows:

**Authority:** 29 U.S.C. 794; 42 U.S.C. 3535(d) and 5309.

■ 7. Revise § 8.57(a)(2) to read as follows:

**§ 8.57 Procedure for effecting compliance.**

(a) \* \* \*

(2) The initiation of debarment proceedings pursuant to 2 CFR part 2424; and

\* \* \* \* \*

**PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES**

■ 8. The authority citation for part 15 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d). Subpart A also issued under 5 U.S.C. 552. Section 15.107 also issued under E.O. 12958, 60 FR 19825, 3 CFR Comp., p. 333. Subparts C and D also issued under 5 U.S.C. 301.

■ 9. Revise § 15.109(d) to read as follows:

**§ 15.109 How will HUD respond to a request for information from form HUD-92410 (Statement of Profit and Loss)?**

\* \* \* \* \*

(d) What sanctions are available for improper disclosure of such information? An eligible potential purchaser or a potential investor (who

has received the information from a potential purchaser and has been notified by that entity of its obligations under paragraph (b) of this section), who discloses information from form HUD-92410 in violation of this section, may be subject to sanctions under 2 CFR part 2424.

**PART 21—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)**

■ 10. The authority citation for part 21 continues to read as follows:

**Authority:** 41 U.S.C. 701; 42 U.S.C. 3535(d).

■ 11. Revise § 21.510(c) to read as follows:

**§ 21.510 What actions will the Federal government take against a recipient determined to have violated this part?**

\* \* \* \* \*

(c) Suspension or debarment of the recipient under 2 CFR part 2424, for a period not to exceed five years.

■ 12. Revise § 21.605(a)(2) to read as follows:

**§ 21.605 Award.**

\* \* \* \* \*

(a) \* \* \*

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the governmentwide rule 24 CFR part 85 that implements OMB Circular A-102 and specifies uniform administrative requirements.

\* \* \* \* \*

■ 13–14. Revise Part 24 to read as follows:

**PART 24—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

**Authority:** 42 U.S.C. 3535(d).

**§ 24.1 Debarment and Suspension (Nonprocurement).**

The policies, procedures, and requirements for debarment, suspension, and limited denial of participation are set forth in 2 CFR part 2424.

**PART 25—MORTGAGEE REVIEW BOARD**

■ 15. The authority citation for part 25 continues to read as follows:

**Authority:** 12 U.S.C. 1708(c), 1708(d), 1709(s), 1715(b) and 1715(f)–14; 42 U.S.C. 3535(d).

**§ 25.2 [Amended]**

- 16. In § 25.2, revise the reference to “part 24 of this subtitle A” to read “2 CFR part 2424.”
- 17. Revise § 25.9(n) to read as follows:

**§ 25.9 Grounds for an administrative action.**

\* \* \* \* \*

- (n) Employing or retaining:
  - (1) An officer, partner, director, or principal at such time when such person was suspended, debarred, ineligible, or subject to a limited denial of participation under 2 CFR part 2424 or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition;
  - (2) An employee who is not an officer, partner, director, or principal and who is or will be working on HUD/FHA program matters at a time when such person was suspended, debarred, ineligible, or subject to a limited denial of participation under 2 CFR part 2424 or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition;

\* \* \* \* \*

**PART 26—HEARING PROCEDURES**

- 18. The authority citation for part 26 continues to read as follows:  
**Authority:** 42 U.S.C. 3535(d).
- 19. Revise § 26.1 to read as follows:

**§ 26.1 Purpose.**

This part sets forth rules of procedure in certain proceedings of the Department of Housing and Urban Development presided over by a hearing officer. These rules of procedure apply to hearings with respect to determinations by the Multifamily Participation Review Committee pursuant to 24 CFR part 200, subpart H, to hearings conducted pursuant to referrals by debarring or suspending officials under 2 CFR part 2424, and to hearings conducted pursuant to referrals by a hearing official under 24 CFR part 25, unless such regulations at 2 CFR part 2424, 24 CFR parts 25 or 200 provide otherwise. They also apply in any other case where a hearing is required by statute or regulation, to the extent that rules adopted under such statute or regulation are not inconsistent.

- 20. Revise § 26.9 to read as follows:

**§ 26.9 Notice of administrative action.**

In every case, there shall be a notice of administrative action. The notice shall be in writing and inform the party

of the determination. The notice shall state the reasons for the proposed or imposed action, except where general terms are permitted by 2 CFR part 2424. The notice shall inform the party of any right to a hearing to challenge the determination, and the manner and time in which to request such a hearing. A supplemental notice may be issued, at the discretion of the initiating official, to add to or modify the reasons for the action.

**PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

- 21. The authority citation for part 84 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d).

- 22. In § 84.2, revise the definition of “*Suspension*” to read as follows:

**§ 84.2 Definitions.**

\* \* \* \* \*

*Suspension* means an action by HUD that temporarily withdraws HUD sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by HUD. Suspension of an award is a separate action from suspensions under HUD regulations implementing E.O. 12549 and E.O. 12689, “Debarment and Suspension,” at 2 CFR part 2424.

\* \* \* \* \*

- 23. Revise § 84.13 to read as follows:

**§ 84.13 Debarment and suspension; Drug-Free Workplace.**

(a) Recipients and subrecipients shall comply with the governmentwide nonprocurement debarment and suspension requirements in 2 CFR part 2424. These governmentwide requirements restrict subawards and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

(b) Recipients and subrecipients shall comply with the requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), as set forth at 24 CFR part 21.

- 24. Revise § 84.44(d) to read as follows:

**§ 84.44 Procurement procedures.**

\* \* \* \* \*

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the

proposed procurement. Consideration shall be given to such matters as contractor integrity; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); record of past performance; and financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by implementation of Executive Orders 12549 and 12689, “Debarment and Suspension,” at 2 CFR part 2424.

\* \* \* \* \*

- 25. Revise § 84.62(d) to read as follows:

**§ 84.62 Enforcement.**

\* \* \* \* \*

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under HUD’s regulations at 2 CFR part 2424 (see § 84.13).

- 26. Revise § 84.84(e)(4) to read as follows:

**§ 84.84 Procurement standards.**

\* \* \* \* \*

(e) \* \* \*

(4) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); record of past performance; and financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted, as set forth at 2 CFR part 2424.

\* \* \* \* \*

- 27. Revise § 84.86(b)(4) to read as follows:

**§ 84.86 Termination and enforcement.**

\* \* \* \* \*

(b) \* \* \*

(4) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under HUD’s regulations at 2 CFR part 2424 (see § 84.13).