

PART 1940 - GENERAL

SUBPART M - Governmentwide Debarment and Suspension (Nonprocurement) And Requirements for Drug-Free Workplace

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Exhibit A - Format for submission of the Suspension and/or Debarment Case File (Four Position File Folder)

Exhibit B 2 Code of Federal Regulations(C.F.R) PARTS 180 and 417
- Governmentwide Debarment and Suspension (Nonprocurement)

Exhibit C - PART 3021 - Governmentwide Requirements for Drug-Free Workplace

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PART 1940 - GENERAL

SUBPART M - Governmentwide Debarment and Suspension (Nonprocurement) And Requirements for Drug-Free Workplace

§ 1940.601 Purpose.

Executive Order 12549, signed February 18, 1986, provides that Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. The Drug-Free Workplace Act of 1988 also placed new requirements on all recipients of government grants; it does not affect applicants for loans only. This subpart implements 2 Code of Federal Regulations (C.F.R.) parts 180 and 417 and 7 C.F.R. part 3021 which are attached as Exhibits B & C of this Instruction, respectively, and provides guidance in actions that are specific to Rural Development. These administrative provisions are only a supplement to the information contained in Exhibits B & C, and do not constitute information that would be of benefit to the public.

§ 1940.602 Policy and scope.

This subpart applies to both individual and group-type loans (insured and guaranteed) and grants in connection with any program administered by Rural Development. Any action taken under this subpart is for the protection of the public interest. 2 C.F.R. parts 180 and 417 and 7 C.F.R. part 3021 are intended to deter fraud, waste, and abuse in Federal nonprocurement transactions. Aside from a case of fraud, waste, or abuse, it is Rural Development's policy not to place delinquent borrowers' or grantees' names on the "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" (EPLS). Rural Development may however, debar or suspend borrowers who owe collections only for (unsecured) debts unless the borrower is making scheduled payments on the debt to Rural Development as agreed to by Agency officials or the debt does not meet the criteria for settlement regulations. If, however, Rural Development borrowers'/grantees' names are placed on the list by other agencies, Rural Development may not extend additional loan or grant assistance for the period of debarment or suspension unless an exception pursuant to Exhibit B 2 C.F.R. §§ 180.135, 417.137 of this Instruction is obtained prior to processing the application for assistance.

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§ 1940.602 (Con.)

(a) Any servicing action authorized by the Rural Development loan servicing regulations which do not involve new loan funds is not covered by the Governmentwide Debarment and Suspension provisions pursuant to 2 C.F.R. § 180.310 of Exhibit B of this Instruction. (Protective advances authorized by Rural Development's loan servicing regulations may be made to protect the Government's security interest.)

(b) Typically, in Rural Development loan/grant programs, the loan/grant approval/concurring official, contracting specialists and/or other staff involved with the acceptance of outside contractors or applicants are responsible for conducting EPLS screening. The screening includes, but is not limited to the applicant, and contractors and/or subcontractors that exceed the \$25,000 threshold as outlined in 2 C.F.R. §§ 180.220, 417.220 of Exhibit B of this Instruction.

(c) For the Section 502 Single Family Housing Guaranteed Loan Program, the approved lender, or their agent, is responsible for screening the applicant on the U.S. General Services Administration (GSA) EPLS as part of their eligibility determination of the applicant. The lender will document their permanent file. Rural Development staff is not required to rescreen an applicant upon request of a loan guarantee.

§ 1940.603 Definitions.

Refer to those in 2 C.F.R. Parts 180 and 417 of Exhibit B subpart I and Exhibit C subpart F of this Instruction except in those specific cases which follow:

Agency. Rural Housing Service, Rural Business-Cooperative Service and Rural Utilities Service.

Debarring or Suspending Official. Agency Administrator.

Debarring or Suspending Officer. The individual designated by the State Director for receiving, processing and coordinating all debarment or suspension activities within the State.

List Officer. The Director of the Program Support Staff (PSS), as designated by the Agency's Administrator, will receive and process all proposed Debarment or Suspension actions. The names of persons debarred or suspended by the Agency's Administrator will be submitted to the General Services Administration (GSA), which is responsible for maintaining the Governmentwide List of Parties Excluded from Federal Procurement and Nonprocurement Programs (EPLS).

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List Availability. The Governmentwide EPLS is available electronically on the GSA website at <http://www.epls.gov>. RD Instruction § 1940.606(b) describes pre-application responsibilities for screening potential clients and applicants.

Period of Debarment. Will be determined based on the severity of the case's impact on affected borrowers, programs, or operations. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment. The Secretary of Agriculture shall permanently debar from participation in USDA programs those convicted of having knowingly committed fraud in USDA programs. In determining the period of debarment, the debarring official may consider the factors in 2 C.F.R. § 180.860 in Exhibit B of this Instruction. If a suspension has preceded a debarment, the debarring official must consider the time of the suspension. If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, the period of debarment may not exceed five years.

§ 1940.604 Effect of action.

(a) Debarment and suspension are actions which may severely affect the economic well being of persons or entities. Any person or entity whose name appears on the debarment EPLS, along with affiliates as defined in Exhibit B of this Instruction, will not be permitted to participate, either directly or indirectly, in Government programs except Social Security and other programs shown in Exhibit B.

(b) If the applicant's name appears on EPLS, Rural Development will not provide the requested assistance unless it is listed in § 1940.602 of this Instruction, or an exception can be made under one of the provisions listed in § 1940.605 of this Instruction or 2 C.F.R. §§ 180.135, 417.137 of Exhibit B and 7 C.F.R. § 3021.515 of Exhibit C of this Instruction. This action is not appealable.

§ 1940.605 Exceptions.

(a) Exceptions may be granted, but only infrequently (see 2 C.F.R §§ 180.135, 417.137 of Exhibit B and 7 C.F.R. § 3021.515 of Exhibit C of this Instruction). When an existing borrower's/grantee's name is placed on EPLS by another Federal agency, subsequent assistance may be provided when it is determined that without an exception, the Government's interest would be adversely affected or such funding is necessary to enable the borrower/grantee to achieve program objectives. An exception can be processed in accordance with 2 C.F.R. §§ 180.135, 417.137 of Exhibit B and 7 C.F.R. § 3021.515 of Exhibit C of this Instruction.

(b) When there is cause for an exception, the loan/grant processing official will investigate the reason(s), develop the documentation stating the reason(s) for deviating from the President's policy and send the information with the borrower's/grantee's case file and recommendations to the State Director (see § 1940.608 of this Instruction).

(c) Any exceptions granted shall be reported that same day to the Director, PSS, in the National Office (see 2 C.F.R. §§ 180.135, 417.137 of Exhibit B of this Instruction).

(d) Only the Secretary of Agriculture may grant an exception under the Drug-Free Workplace Act.

§ 1940.606 Actions and responsibilities - Financial Assistance Eligibility.

(a) Rural Development loan/grant approval officials, contracting specialists and/or staff involved with the acceptance of outside contractors or applicants are responsible for reviewing and becoming familiar with the causes for debarment and suspension as shown in Exhibit B, 2 C.F.R. §§ 180.800, 417.800 of this Instruction.

(b) The screening of an outside contractor and/or applicant's name for debarment history can be performed electronically by accessing the GSA Website <http://www.epls.gov> in accordance with Exhibit B, 2 C.F.R. § 180.430 of this Instruction. Screening should be completed at two points in the loan/grant making process. The first check should be made upon receipt of a pre-application or application for Rural Development financial assistance. The reviewing official must determine whether the

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contractor and/or applicant's name appears in the current EPLS in accordance with Exhibit B, 2 C.F.R. § 180.425 of this Instruction. The second check should occur immediately before the loan closing or grant award to prevent granting assistance to applicants that could subsequently appear on EPLS after an application has been approved in accordance with Exhibit B, 2 C.F.R. § 180.425 of this Instruction. It is imperative that the loan/grant processing official document the case file with the date EPLS is checked. A dated printed copy of the query results of an EPLS search will suffice in documenting an applicant's screening. If the applicant's name appears in EPLS, assistance will be denied unless the type of assistance requested is listed in § 1940.602 of this subpart or an exception is processed in accordance with § 1940.605 of this subpart or 2 C.F.R. § 180.135 of Exhibit B of this Instruction. If the applicant's name is not in EPLS, the loan/grant processing official will:

(1) Obtain the applicant's signature (lender's signature for guaranteed loans) on certification Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions." Copies or facsimiles are acceptable. Inform the certifying party of the significance of lower tier certifications outlined on the back of the form (they are especially significant where large construction contracts are awarded). For lower tier transactions outlined in 2 C.F.R. §§180.220, 417.220 of Exhibit B-of this Instruction as they pertain to Rural Development including such persons or entities as builders, contractors, dealers, suppliers, manufacturers, real estate brokers or agents, lenders, sureties, insurance companies, engineers, architects, inspectors, appraisers, auditors, loan closing agents or other attorneys, Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" is used.

(2) Obtain the appropriate certification regarding the Drug-Free Work Place for all grant recipients just prior to grant approval. Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I - For Grantees Other Than Individuals" or Form AD-1050, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative II - For Grantees Who Are Individuals" will be used. Copies or facsimiles are acceptable.

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(3) Incorporate the applicable foregoing certifications (Forms AD-1047, AD-1048, AD-1049, and AD-1050) and associated documentation (EPLS query screens) into the official case file.

(4) For the Direct Section 502 and 504 Loan and Grant Programs, compliance with the requirements of this Instruction will be met with certifications on Form RD 410-4, "Uniform Residential Loan Application," and use of the EPLS query screen prints prior to loan closing. (Revised 09-27-06, PN 402.)

(5) For the Section 502 Single Family Housing Guaranteed Loan Program, language from Forms AD-1047 and AD-1048 are incorporated into Form RD 1980-16, "Agreement for Participation in Single Family Housing Guaranteed/Insured Loan Programs of the United States Government" and Form RD 1980-21, "Request for Single Family Housing Loan Guarantee." Compliance with the requirements of this instruction are met when lenders certify on Form RD 1980-16 and applicant acknowledge and execute Form RD 1980-21.

§ 1940.607 Actions and Responsibilities - Recommending Suspension and/or Debarment Actions.

(a) When there is cause for debarment or suspension, the loan/grant processing official will conduct the necessary investigation and referral as discussed in Exhibit B, 2 C.F.R. § 180.600 of this Instruction. Particular attention should be paid to Exhibit B, 2 C.F.R. §§ 180.800, 417.800 of this Instruction, when listing the causes for debarment.

(b) Due to potentially serious consequences resulting from a suspension or debarment action and the possibility of a challenge to the Agency action, it is important that all recommendations for these actions be fully supported with documentation. If the recommendation is more than three years old after the alleged wrongdoing, explanatory documentation must be provided indicating the reason(s) for the delay. If the appropriate Administrator has access to all relevant information during the decision making process, and the information is contained in the appropriate files, the Agency will be more likely to withstand challenges to its decision to impose suspension or debarment.

§ 1940.607 (Con.)

(c) The materials submitted to the List Officer (PSS), plus documents submitted by the respondents during the administrative process will comprise part of the administrative record. The quality and accuracy of the narrative record can ultimately determine the success or failure of a case appealed to federal district court. (see Exhibit A of this Instruction).

(d) The Agency must include all documents relating to the relationship between the debarment target and the Agency including, but not limited to, mortgages, notes, contracts, and management or partnership agreements. Care should be exercised in identifying the correct person or entity to be debarred to prevent losing a case on procedural error for failure to provide proper and timely notice.

(e) When the debarment may extend to partners or affiliates, any partnership agreements or articles of incorporation must be included to establish the relationship between parties. These documents are necessary to assist in correctly identifying the person or entity to be debarred, making determinations about imputing actions to other individuals and debarring affiliates.

(f) Once the investigation and documentation is completed, send the pertinent information (debarment file) to the applicable Agency Administrator, Attention: Director of Program Support Staff. The Administrator will decide if the debarment is appropriate. If so, the necessary notification will be made to the person/entity against whom/which the action is taken as required in Exhibit B, 2 C.F.R. 180.615 of this Instruction, after the Office of the General Counsel has cleared the notice for legal sufficiency.

(g) In addition to the causes outlined in Exhibit B, 2 C.F.R. §§ 180.800, 417.800 of this Instruction, it is imperative to compile debarment case files in accordance with the standards outlined in Exhibit A of this Instruction.

§ 1940.608 Redelegation of authority.

The Agency's Administrator may delegate authority to the State Director to approve exceptions under § 1940.605 of this subpart for subsequent loan/grant assistance. For cases where the State Director does not have approved authority, the borrower's/grantee's case file, all pertinent information, and the State Director's recommendations will be forwarded to the Agency's Administrator, Attention: Director of Program Support Staff.

§ 1940.609 Appeal of debarment or suspension.

Appeals, of any action under this subpart, are handled pursuant to federal district court rules.

§§ 1940.610 - 1940.650 [Reserved].

Attachments: Exhibits A, B and C

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**Format For Submission of the Suspension and/or Debarment Case File
(Four Position File Folder)**

POSITIONS 1 & 2

(National Office Is Responsible For Position Numbers 1 & 2)

POSITION 3

Documentary Evidence From The State Office In Chronological Order Starting With The Most Recent Documents.

- State Director's recommendation, to the Agency Administrator, concerning the action to be taken, including the recommended period for suspension or proposed debarment.
- Transmittal memorandums from the Local and Area Offices.
- Executive Summary, consisting of a brief history and background of events and the specific act(s) that were responsible for the debarment recommendation.
- Clear, cogent, and concise narrative setting out each person or entity to be debarred, the specific causes for debarment, the specific actions which give rise to each specific cause for debarment, an explanation as to why and how the specific action is a cause for debarment, (i.e., violation of Builders Warranty, Loan Note Guarantee, etc.) and any weak points or extenuating circumstances which may be involved. Specific citations of each regulation at issue must also be included.
- Include the following documents that are applicable plus any additional information that will support the State Office's recommendation and assist the Administrator in the decision making process:
 1. Agency letters to the respondents and their responses;Borrower complaint letters to respondents and their responses;

3. Copies of any articles of incorporation, loan agreements, by-laws or partnership agreements (including, but not limited to, documentation to establish relationships between proposed debarees and the government and/or the transfer of federal funds);
4. Record of other Agency contacts with respondents (including printouts of relevant global notes from MortgageServ, if applicable); (Revised 01-09-08, PN 417.)
5. Record of visits and copies of running record entries concerning aggrieved parties;
6. Inspection/Certifications;
7. Documentation concerning criminal indictments/convictions, Judgments, Settlements and Plea Bargain Agreements; recommendations of OIG investigations.
8. Documentation to justify lapses in timeliness in the referral or processing of a case as required by 1940.607(b).

- Construction Matters:

- Contract and all written Agreements
- Subcontracts
- Amendments and Change Orders
- Plans and Specifications
- Warranty Documents
- Payment Information
- Release of Claims, Lien Waivers
- Mechanics or Suppliers Liens and Judgments

- Application Matters:

- Application
- Verification of Employment
- Interest Credit or Subsidy Repayment Agreements
- Conditional Commitment

POSITION 4

OIG and Other Investigation Reports

PARTS 180 and 417 - Governmentwide Debarment And Suspension (Nonprocurement)

The following hyperlinks may be copied and pasted directly into your address bar:

PART 180

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=117c3713d21189f42dff3ac22cc916ac&rgn=div5&view=text&node=2:1.1.1.8.13&idno=2>

PART 417

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title02/2cfr417_main_02.tpl

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PART 3021 - Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)

the following may be copied and pasted directly into your address bar:

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title07/7cfr3021_main_02.tpl

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