

Subpart C—Debarment

§ 24.300 General.

The debarring official may debar a person for any of the causes in § 24.305, using procedures established in §§ 24.310 through 24.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 24.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 24.300 through 24.314 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, 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 the present responsibility of a person.

(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 Octo-

ber 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 24.215 or § 24.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed 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 § 24.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of subpart F of this part, relating to providing a drug-free workplace, as set forth in § 24.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

(e) Debarment of a contractor may be imposed for any of the causes in paragraphs (a), (b), and (d). For purposes of this section, *agreement* is deemed to include *contracts or subcontracts*.

(f) In addition to the causes set forth above, HUD may debar a person from participating in any programs or activities of the Department for material violation of a statutory or regulatory provision or program requirement applicable to a public agreement or transaction including applications for grants, financial assistance, insurance or guarantees, or to the performance of requirements under a grant, assistance award or conditional or final commitment to insure or guarantee.

[53 FR 19182 and 19204, May 26, 1988, as amended at 53 FR 19184, May 26, 1988, 54 FR 4950 and 4957, Jan. 31, 1989; 60 FR 33049, June 26, 1995]

§ 24.310 Procedures.

HUD shall process debarment actions as informally as practicable, consistent with the principles of fundamental

fairness, using the procedures in §§ 24.311 through 24.314.

§ 24.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 24.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

- (a) That debarment is being considered;
- (b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;
- (c) Of the cause(s) relied upon under § 24.305 for proposing debarment;
- (d) Of the provisions of § 24.311 through § 24.314, and any other HUD procedures, if applicable, governing debarment decisionmaking; and
- (e) Of the potential effect of a debarment.

§ 24.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(1) The information and argument should be addressed to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(2) If the respondent does not contest the proposed debarment within the 30 day period, the proposed debarment shall become final.

(3) If the respondent desires a hearing, it shall submit a written request to the Debarment Docket Clerk within the 30-day period following receipt of the notice of proposed debarment.

(4) The parties may agree to engage in an alternative dispute resolution, including informal conference, medi-

ation, conciliation, summary trial with binding decision, minitrial, or use of a settlement judge.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(i) Upon the agreement of the parties, the additional proceedings may be recorded using audiotape without transcription. The audiotape shall be made available at cost to the respondent.

(ii) [Reserved]

[60 FR 33049, June 26, 1995]

§ 24.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(1) The debarring official may, in his or her discretion, refer actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, to a hearing officer or other official for review of the administrative record and appropriate findings. The hearing officer or other official shall issue such findings within 45 days after the referral, and the debarring official shall issue a decision within 15 days after the date of the findings, unless such periods are extended for good cause.

(2) [Reserved]

§ 24.315

24 CFR Subtitle A (4-1-98 Edition)

(b) *Additional proceedings necessary.*

(1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(i) The debarring official may refer disputed material facts and issues of law to a hearing officer for findings of fact and conclusions of law.

(A) No appeal to the Secretary may be taken under §§26.24 through 26.26 of this title with respect to any order or decision by a hearing officer or other official.

(B) The debarring official shall provide the hearing officer or other official with all the information in the administrative record, including any information and argument submitted by the respondent. The administrative record and any documents admitted at the hearing shall constitute the exhibits in evidence.

(ii) Unless the parties mutually agree to extend this period, a proceeding before a hearing officer or other official shall commence within 45 days after referral of the case by the debarring official. The hearing officer or other official shall issue findings of fact within 30 days after the conclusion of such additional proceedings. The time limitations of this subparagraph may be extended upon issuance, by the debarring official, hearing officer or other official, of a written notice describing good cause for such extension.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to the disputed facts.

(i) Such decision shall be made within 15 days after the hearing officer or other official issues findings of fact.

(ii) [Reserved]

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment

must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in §24.215.

(A) Where a debarment is based solely on §24.305(f), the notice of the debarring official's decision shall advise that the debarment is effective for programs or activities of the Department.

(B) [Reserved]

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

[60 FR 33049, June 26, 1995]

§24.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, HUD may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see subpart E).

§24.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of subpart F of this part (see §24.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§24.311 through 24.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

(d) Where respondent's request to reduce the period or scope of debarment is based on reasons set forth in paragraphs (c)(4) or (5) of this section, such request may not be submitted earlier than six months after the final decision to debar. In no event may more than one such request be submitted within any 12-month period.

[53 FR 19182 and 19204, May 26, 1988, as amended at 53 FR 19185, May 26, 1988, 54 FR 4950 and 4957, Jan 31, 1989]

§24.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§24.311 through 24.314).

(3) Debarment of a contractor under these regulations, or by another Federal agency pursuant to 48 CFR subpart 9.4, constitutes debarment of all its divisions and other organizational elements from all Federal procurement, unless the debarment is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements or to specific types of contracts. The debarment may be extended to include any affiliates of the contractor, if they are specifically named, given written notice of the proposed debarment, and provided with an opportunity to respond.

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or

had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(4) The provisions of paragraphs (b)(1) through (3) of this section are also applicable for purposes of imputing conduct to a contractor.

[53 FR 19182 and 19204, May 26, 1988, as amended at 53 FR 19185, May 26, 1988]

Subpart D—Suspension

§ 24.400 General.

(a) The suspending official may suspend a person for any of the causes in § 24.405 using procedures established in §§ 24.410 through 24.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 24.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider 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. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

[53 FR 19182 and 19204, May 26, 1988, as amended at 60 FR 33050, June 26, 1995]

§ 24.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 24.400 through 24.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 24.305(a); or

(2) That a cause for debarment under § 24.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 24.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* HUD shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 24.411 through § 24.413.

[53 FR 19182 and 19204, May 26, 1988, as amended at 60 FR 33050, June 26, 1995]

§ 24.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That the suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 24.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§ 24.411 through 24.413 and any other HUD procedures, if applicable, governing suspension decisionmaking; and