

Pt. 24

Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

[50 FR 45912, Nov. 5, 1985, as amended at 52 FR 27130, July 17, 1987; 57 FR 20201, May 12, 1992; 61 FR 13280-13281, Mar. 26, 1996]

PART 24—GOVERNMENT DEBARMENT AND SUSPENSION AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A—General

- Sec.
- 24.100 Purpose.
- 24.105 Definitions.
- 24.110 Coverage.
- 24.115 Policy.

Subpart B—Effect of Action

- 24.200 Debarment or suspension.
- 24.205 Ineligible persons.
- 24.210 Voluntary exclusion.
- 24.215 Exception provision.
- 24.220 Continuation of covered transactions.
- 24.225 Failure to adhere to restrictions.

Subpart C—Debarment

- 24.300 General.
- 24.305 Causes for debarment.
- 24.310 Procedures.
- 24.311 Investigation and referral.
- 24.312 Notice of proposed debarment.
- 24.313 Opportunity to contest proposed debarment.
- 24.314 Debarring official's decision.
- 24.315 Settlement and voluntary exclusion.
- 24.320 Period of debarment.
- 24.325 Scope of debarment.

Subpart D—Suspension

- 24.400 General.
- 24.405 Causes for suspension.
- 24.410 Procedures.
- 24.411 Notice of suspension.
- 24.412 Opportunity to contest suspension.
- 24.413 Suspending official's decision.
- 24.415 Period of suspension.
- 24.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

- 24.500 GSA responsibilities.
- 24.505 HUD responsibilities.
- 24.510 Participants' responsibilities.

Subpart F—Drug-Free Workplace Requirements (Grants)

- 24.600 Purpose.

24 CFR Subtitle A (4-1-02 Edition)

- 24.605 Definitions.
- 24.610 Coverage.
- 24.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
- 24.620 Effect of violation.
- 24.625 Exception provision.
- 24.630 Certification requirements and procedures.
- 24.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

Subpart G—Limited Denial of Participation

- 24.700 General.
- 24.705 Causes for a limited denial of participation.
- 24.710 Period and scope of a limited denial of participation.
- 24.711 Notice of limited denial of participation.
- 24.712 Conference.
- 24.713 Opportunity to contest the limited denial of participation.
- 24.714 Reporting of limited denial of participation.

AUTHORITY: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 3535(d); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

SOURCE: 53 FR 19182 and 19204, May 26, 1988, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990, and 60 FR 33036, June 26, 1995.

Subpart A—General

§ 24.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and non-financial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

- (1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of “ineligible” in §24.105), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103-355, sec. 2455, 108 Stat. 3327) by—

(1) Providing for the inclusion in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* all persons proposed for debarment, debarred or suspended under the Federal Acquisition Regulation, 48 CFR part 9, subpart 9.4; persons against which governmentwide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(e) These regulations also:

(1) Prescribe policies and procedures governing the debarment and suspension of contractors and the limited denial of participation of participants and contractors;

(2) Provide for the listing of debarred, suspended and ineligible contractors; and

(3) Set forth the consequences of such listing.

(f) Although this part covers the listing of ineligible contractors, it does

not prescribe policies and procedures governing declarations of ineligibility.

[60 FR 33040, 33048, June 26, 1995, as amended at 60 FR 33048, June 26, 1995]

§ 24.105 Definitions.

The following definitions apply to this part:

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

Agency. Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

Benefits. Money or any other thing of value provided by, or realized because of the Department. *Thing of value* includes insurance or guarantees of any kind.

Civil judgment. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

Contractor. As used in this part, contractor means any individual or other legal entity that:

(1) Submits offers for, or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract (or a subcontract under a Government contract); or

(2) Conducts business with the Government as an agent or representative of another contractor;

§ 24.105

Conviction. A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. An action taken by a debarment official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is *debarred*.

Debarment official. An official authorized to impose debarment. The debarment official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.

Hearing officer. An Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD's Secretary, or by the Secretary's designee, to conduct proceedings under this part.

HUD. Department of Housing and Urban Development.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

Limited denial of participation. An action taken by a HUD official, in accordance with subpart G of these regulations, that immediately excludes or restricts a person from participating in

24 CFR Subtitle A (4-1-02 Edition)

HUD program(s) within a defined geographic area.

List of Parties Excluded from Federal Procurement and Nonprocurement Programs. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Orders 12549 and 12689 and these regulations or 48 CFR part 9, subpart 9.4, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, and those persons who have been determined to be ineligible.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or 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 are:

- (1) Principal investigators;
- (2) Loan officers;
- (3) Staff appraisers and inspectors;
- (4) Underwriters;
- (5) Bonding companies;
- (6) Borrowers under programs financed by HUD or with loans guaranteed, insured or subsidized through HUD programs;
- (7) Purchasers of properties with HUD-insured or Secretary-held mortgages;
- (8) Recipients under HUD assistance agreements;
- (9) Ultimate beneficiaries of HUD programs;
- (10) Fee appraisers and inspectors;
- (11) Real estate agents and brokers;
- (12) Management and marketing agents;
- (13) Accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under a HUD program;
- (14) 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;
- (15) Closing agents;
- (16) Turnkey developers of projects financed by or with financing insured by HUD;
- (17) Title companies;
- (18) Escrow agents;
- (19) Project owners;
- (20) Administrators of nursing homes and projects for the elderly financed or insured by HUD;
- (21) Developers, sellers or owners of property financed with loans insured under title I or title II of the National Housing Act; and
- (22) Employees or agents of any of the above.

Procurement List. A list compiled, maintained, and distributed by the General Services Administration (GSA) (see §24.500(c)), containing the names and other information regarding contractors debarred or suspended or de-

clared ineligible by agencies under the procedures of this part as well as under other statutory or regulatory authority.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

Respondent. A person against whom a debarment or suspension action has been initiated.

(1) A respondent is also a person against whom a limited denial of participation has been initiated.

(2) [Reserved]

State. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

Suspending official. An official authorized to impose suspension. The suspending official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.

Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is *suspended*.

Ultimate beneficiaries. 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 Payments Contracts, by Section 236 Rental Assistance, or by Rent Supplement payments.

Voluntary exclusion or voluntarily excluded. A status of nonparticipation or

§ 24.110

limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

[53 FR 19182 and 19204, May 26, 1988, as amended at 53 FR 19182, May 26, 1988, 53 FR 30051, Aug. 10, 1988; 60 FR 33040, 33048, June 26, 1995]

§ 24.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as *covered transactions*.

(1) *Covered transaction*. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction*. Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(A) Specially designated transactions are:

(1) Transactions regulated by the Interstate Land Sales Act (15 U.S.C. 1701);

(2) Transactions regulated by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401);

(3) Any procurement transaction between HUD and a person.

(ii) *Lower tier covered transaction*. A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or serv-

24 CFR Subtitle A (4-1-02 Edition)

ices, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

- (1) Principal investigators.
- (2) Providers of federally-required audit services.
- (3) Bonding companies;
- (4) Borrowers;
- (5) Purchasers of a property with a HUD-insured or Secretary-held mortgage;
- (6) Recipients under HUD assistance agreements;
- (7) Ultimate beneficiaries of HUD programs;
- (8) Fee appraisers and inspectors;
- (9) Real estate agents and brokers;
- (10) Management and marketing agents;
- (11) Accountants, consultants, investment bankers; architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under a HUD program;
- (12) 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;
- (13) Closing agents;
- (14) Turnkey developers of projects financed with or insured by HUD;
- (15) Title companies;
- (16) Escrow agents;
- (17) Project owners;
- (18) Administrators of nursing homes and projects for the elderly financed or insured by HUD;
- (19) Developers, sellers or owners of property financed with loans insured under title I or title II of the National Housing Act; and

(20) Employees or agents of any of the above.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtler awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits 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);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(3) *Other exceptions.* (i) Sanctions against participants whose only involvement in HUD programs is as ultimate beneficiaries, such as subsidized tenants and subsidized mortgagors, may be taken only upon commission of one of the offenses set forth in §24.305(a), unless the participant has otherwise been debarred or suspended by another Federal agency.

(ii) Sanctions under this part against mortgagees and lenders approved by HUD to participate in Federal Housing Administration programs may be initiated only with the approval of the Mortgagee Review Board.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," §24.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those con-

sequences would obtain only with respect to participants and principals in the covered transactions and activities described in §24.110(a). Sections 24.325, "Scope of debarment," and 24.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* In accordance with E.O. 12689 and section 2455 of Public Law 103-355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

(d) These regulations also apply to all persons who have participated, are currently participating or may reasonably be expected to participate in Federal procurement programs. For purposes of these regulations, such persons will be referred to as *contractors* and such transactions will be referred to as *procurement contracts*. The consequences of a debarment or suspension as set forth in §24.200 apply to contractors in Federal procurement programs, and §§24.325 and 24.420 govern the extent to which a specific contractor or its organizational elements would be included within a debarment or suspension action.

(e) *Retroactivity.* Limitations on participation in HUD programs proposed or imposed prior to the effective date of these regulations under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of

§ 24.115

these regulations (October 1, 1988) regardless of the date of the cause giving rise to the sanction.

[53 FR 19182 and 19204, May 26, 1988, as amended at 53 FR 19183, May 26, 1988, 53 FR 30051, Aug. 10, 1988; 60 FR 33041, 33048, June 26, 1995; 62 FR 20081, Apr. 24, 1997]

§ 24.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

[53 FR 19182 and 19204, May 26, 1988, as amended at 60 FR 33048, June 26, 1995]

Subpart B—Effect of Action

§ 24.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § 24.215.

24 CFR Subtitle A (4–1–02 Edition)

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 24.110(a)(1)(ii)) for the period of their exclusion.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits 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);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

(8) Debarment for any of the causes set forth in § 24.305(f) shall have no governmentwide effect.

(9) Sanctions imposed on an individual participant under this part shall not preclude the participant from selling his or her principal residence to a purchaser using HUD/FHA financing.

(d) *Relationship to HUD administrative sanction procedures*—(1) *Sanctions provided pursuant to contract provisions.* Nothing in this part shall impair or limit the right to impose any sanction provided for by contract, including guaranty agreements with the Government National Mortgage Association.

Office of the Secretary, HUD

§ 24.225

(2) *Other Departmental sanctions.* Where an office of the Department is required by statute, regulation, or Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the requirements of the statute, regulation, or Executive Order shall take precedence. These alternative procedures include, but are not limited to: 24 CFR part 200 Previous Participation Review and Clearance procedures, 24 CFR part 25 Mortgagee Review Board administrative actions, and 24 CFR part 570 Community Development Block Grant corrective and remedial actions.

[60 FR 33041, 33048, June 26, 1995]

§ 24.205 Ineligible persons.

Persons who are ineligible, as defined in § 24.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 24.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 24.315 are excluded in accordance with the terms of their settlements. HUD shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 24.215 Exception provision.

HUD may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 24.200. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 24.505(a).

[60 FR 33041, 33048, June 26, 1995]

§ 24.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determina-

tion of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntarily excluded, except as provided in § 24.215.

[60 FR 33041, 33048, June 26, 1995]

§ 24.225 Failure to adhere to restrictions.

(a) Except as permitted under § 24.215 or § 24.220, a participant shall not knowingly do business under a covered transaction with a person who is—

- (1) Debarred or suspended;
- (2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or
- (3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction (See appendix B of these regulations), unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

[60 FR 33041, 33048, June 26, 1995]

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

(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 either disputed material facts or issues of law, or both to a hearing officer for either findings of fact or conclusions of law, or both.

(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:

24 CFR Subtitle A (4-1-02 Edition)

(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, as amended at 65 FR 38707, June 21, 2000]

§ 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

§ 24.400

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 CFR Subtitle A (4–1–02 Edition)

§ 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

(g) Of the effect of the suspension.

[60 FR 33050, June 26, 1995]

§ 24.412 Opportunity to contest suspension.

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

(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 suspension within the 30 day period, the suspension 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 suspension.

(4) The parties may agree to engage in an alternative dispute resolution, including informal conference, mediation, conciliation, summary trial with binding decision, minitrial, or use of a settlement judge.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witnesses the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment; or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, 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 33050, June 26, 1995]

§ 24.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (see § 24.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to

modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.*

In actions based upon an indictment, conviction, or civil judgment, in which there is no genuine dispute over material facts, or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending 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 suspending official extends this period for good cause.

(1) The suspending official may, in his or her discretion, refer actions based upon an indictment, 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 suspending official shall issue a decision within 15 days after the date of such findings, unless such periods are extended for good cause.

(2) [Reserved]

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

§ 24.415

(3) The suspending official may refer either disputed material facts or issues of law, or both to a hearing officer for either findings of fact or conclusions of law, or both.

(4) 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 disputed material facts and issues of law by the suspending 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 suspending official, other official or hearing officer, of a written notice describing good cause for such extension.

(5) The suspending official's decision shall be made within 15 days after the hearing officer or other official issues findings of fact.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

[60 FR 33050, June 26, 1995, as amended at 65 FR 38707, June 21, 2000]

§ 24.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department

24 CFR Subtitle A (4-1-02 Edition)

an opportunity to request an extension.

[53 FR 19182 and 19204, May 26, 1988, as amended at 60 FR 33051, June 26, 1995]

§ 24.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 24.325), except that the procedures of §§ 24.410 through 24.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ 24.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when 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 each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

(c) In accordance with 48 CFR 9.404, GSA shall compile and distribute a list of contractors who are debarred, suspended or ineligible.

[53 FR 19182 and 19204, May 26, 1988, as amended at 53 FR 19186, May 26, 1988]

§ 24.505 HUD responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which HUD has granted exceptions under § 24.215 permitting participation by debarred,

suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 24.500(b) and of the exceptions granted under § 24.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. —).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

(f) The agency shall notify GSA within 5 working days after modifying or rescinding an action;

(g) The agency shall, in accordance with internal retention procedures, maintain records relating to each suspension or debarment action taken by the agency;

(h) Contracting Officers shall check the Procurement List before entering into any contract or before approving any subcontract to determine whether a contractor is debarred, suspended, ineligible or voluntarily excluded.

[53 FR 19182 and 19204, May 26, 1988, as amended at 53 FR 19186, May 26, 1988]

§ 24.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocure-

ment List for its principals (Tel. —). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. —).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to HUD if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 55 FR 21688, 21695, May 25, 1990, unless otherwise noted.

§ 24.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

§ 24.605

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

§ 24.605 Definitions.

(a) Except as amended in this section, the definitions of § 24.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All *direct charge* employees;

(ii) All *indirect charge* employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

24 CFR Subtitle A (4-1-02 Edition)

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ 24.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 24.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § 24.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A)(a)–(g) and/or (B) of the certification (Alternate I to appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§ 24.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 24.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 24.320(a)(2) of this part).

§ 24.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 24.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time

§ 24.635

certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

24 CFR Subtitle A (4-1-02 Edition)

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ 24.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s)

for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991-0002)

Subpart G—Limited Denial of Participation

SOURCE: 53 FR 19186, May 26, 1988. Redesignated at 54 FR 4950 and 4957, Jan. 31, 1989, unless otherwise noted.

§ 24.700 General.

Officials who may order a limited denial of participation. HUD officials, as designated by the Secretary, are authorized to order a limited denial of participation affecting any participant or contractor and its affiliates, except HUD-FHA approved mortgagees. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a limited denial of participation shall be discretionary and in the best interests of the Government.

[59 FR 18482, Apr. 19, 1994]

§ 24.705 Causes for a limited denial of participation.

(a) *Causes.* A limited denial of participation shall be based upon adequate evidence of any of the following causes:

(1) Approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) Irregularities in a participant's or contractor's past performance in a HUD program;

(3) Failure of a participant or contractor to maintain the prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) Failure to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) Deficiencies in ongoing construction projects;

(7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.305;

(9) Violation of 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) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department.

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

(12) Debarment or suspension by another Federal agency for any cause substantially the same as provided in § 24.305.

(b) *Indictment.* Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions.

(c) *Limited denial of participation.* 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 additional conference or further hearing.

[53 FR 19186, May 26, 1988. Redesignated at 54 FR 4950 and 4957, Jan. 31, 1989, as amended at 60 FR 33051, June 26, 1995]

§ 24.710 Period and scope of a limited denial of participation.

(a) The scope of a limited denial of participation shall be as follows:

(1) A limited denial of participation generally extends only to participation in the program under which the cause arose, except: Where it is based on an indictment, conviction, or suspension or debarment by another agency, it need not be based on offenses against HUD and it may apply to all programs.

(2) 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, notwithstanding any *quid pro quo* given and whether the Department gives anything in return. *Program* may, in the

§ 24.711

discretion of the authorized official, include any or all of the functions within the jurisdiction of an Assistant Secretary.

(3) The sanction may be imposed for a period not to exceed 12 months, is limited to specific HUD programs, 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 a nationwide basis or a more restricted basis.

(b) *Effectiveness.* This sanction shall be effective immediately upon issuance, and shall remain effective up to 12 months thereafter. 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. The imposition of a limited denial of participation shall not affect the right of the Department to suspend or debar any person under this part.

(c) *Affiliates.* 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.

[53 FR 19186, May 26, 1988. Redesignated at 54 FR 4950 and 4957, Jan. 31, 1989, as amended at 57 FR 58339, Dec. 9, 1992; 60 FR 33051, June 26, 1995]

§ 24.711 Notice of limited denial of participation.

A limited denial of participation shall be made effective by advising the participant or contractor, and any specifically named affiliate, by mail, return receipt requested:

(a) That the limited denial of participation is being imposed;

(b) Of the cause(s) under § 24.705 for the sanction;

(c) Of the potential effect of the sanction, including the length of the sanc-

24 CFR Subtitle A (4-1-02 Edition)

tion 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 § 24.712; and

(e) Of the right to contest the limited denial of participation under § 24.713.

[60 FR 33051, June 26, 1995]

§ 24.712 Conference.

Within 30 days after receiving a notice of limited denial of participation, the respondent may request a conference with the official who issued such notice. If the respondent does not request a conference, the respondent shall nevertheless have the right to contest the limited denial of participation under the provisions of § 24.713. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless the respondent waives this time limit. The official who imposed the sanction, or his or her designee, shall preside. At the conference, the respondent 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 by the respondent, the official or designee shall, in writing, advise the respondent 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 the respondent of the opportunity to contest the notice pursuant to § 24.713. If the official or designee does not issue a decision within the 20-day period, the respondent may contest the sanction under § 24.713.

[60 FR 33051, June 26, 1995]

§ 24.713 Opportunity to contest the limited denial of participation.

(a) *Submission in opposition.* (1) The respondent may request a hearing before a hearing officer:

(i) Within 30 days after receipt of a notice of affirmation of all or a portion of the remaining period of exclusion under a limited denial of participation; or

(ii) Within 30 days after receipt of a notice of a limited denial of participation where the respondent elects not to request a conference under §24.712.

(2) The request must be addressed to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(3) If the respondent does not submit the request within the 30-day period, the sanction shall become final.

(b) *Procedures.* The hearing shall be conducted in accordance with the procedures of §§24.313 and 24.314. Within 15 days of the hearing officer's issuance of findings of fact and a recommended decision, the official who issued the limited denial of participation shall issue a decision.

(c) *Effect of suspension or debarment on limited denial of participation.* If a respondent has submitted a request for a hearing pursuant to paragraph (a) of this section, and if the respondent has also received, pursuant to subpart C or D of this part, a notice of proposed debarment or suspension based on the same transaction(s) or conduct as the limited denial of participation, as determined by the debarring or suspending official, the following rules apply:

(1) During the 30 day period after the respondent receives a proposed debarment or suspension during which the respondent may elect to contest the debarment under §24.314(a), or the suspension under §24.412(a), all proceedings in the limited denial or participation, including discovery, are automatically stayed.

(2) If the respondent does not contest the proposed debarment pursuant to §24.313(a), or the suspension pursuant to §24.412(a), the final imposition of the debarment or suspension shall also constitute a final decision with respect to 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.

(3) If the respondent does contest the proposed debarment pursuant to §24.313(a), or the suspension pursuant to §24.412(a), then:

(i) 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, and the debarment or suspension shall be immediately consolidated before the debarring or suspending official;

(ii) Jurisdiction of the hearing officer under 24 CFR part 24, subpart G, 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, shall be divested, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarring or suspending official; and

(iii) The debarring or suspending official shall hear the entire consolidated case under the procedures governing debarments and suspensions, and shall issue a final decision as to both the limited denial of participation and the debarment or suspension.

[60 FR 33051, June 26, 1995, as amended at 65 FR 38707, June 21, 2000]

§24.714 Reporting of limited denial of participation.

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to §24.712 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Participation and Compliance Division in the Office of Housing of the scope of the limited denial of participation.

[60 FR 33051, June 26, 1995]

PART 25—MORTGAGEE REVIEW BOARD

Sec.

- 25.1 Scope of rules in this part.
- 25.2 Establishment of Board.
- 25.3 Definitions.
- 25.4 Operation of the Mortgagee Review Board.
- 25.5 Administrative actions.
- 25.6 Notice of violation.
- 25.7 Notice of administrative action.
- 25.8 Hearings and hearing request.
- 25.9 Grounds for an administrative action.
- 25.10 Publication in FEDERAL REGISTER of actions.
- 25.11 Notification to other agencies.
- 25.12 Civil money penalties.