

## Foreign Service Grievance Board Regulations

## §911.7

### §911.1 Definition.

An implementation dispute is any dispute between the agency and the exclusive representative, as provided in regulations adopted as a result of collective bargaining between the agencies and the employee representatives. Such a dispute, also referred to as an institutional dispute, is one which directly concerns the rights and obligations of an agency and an exclusive representative toward each other or the rights or obligations between an agency and one or more employees as set forth in a collective bargaining agreement.

### §911.2 Filing complaint.

If the dispute is not satisfactorily resolved at the agency level, the moving party may file a complaint within 45 calendar days from the date of the response (or in any case must file within 90 days of filing the implementation dispute) with the Board in writing and with specificity as to the nature of the violation.

### §911.3 Procedure.

Implementation disputes shall be handled by the Board in accordance

with the procedures set forth in parts 901—910 of this chapter.

### §911.4 Effect of Board decision.

The action of the Board shall be final and binding and shall be implemented by the parties, unless an exception is filed with the Foreign Service Labor Relations Board within 30 days after receipt of the Grievance Board action.

### §911.5 Arbitrability of determination.

Questions that cannot be resolved by the parties as to whether a complaint is subject to this procedure may be referred by either party to the Grievance Board for a threshold determination.

### §911.6 Finality of choice.

An alleged violation of an institutional right as reflected in a collective bargaining agreement may be filed under these procedures or as an unfair labor practice, but not both.

### §911.7 Review.

Resolution of disputes under this section shall not be subject to judicial review.



## CHAPTER X—INTER-AMERICAN FOUNDATION

---

<i>Part</i>		<i>Page</i>
1001	Employee responsibilities and conduct .....	285
1002	Availability of records .....	285
1003	Rules safeguarding personal information in IAF records .....	287
1004	Rules for implementing open meetings within the Inter-American Foundation .....	293
1005	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Inter-American Foundation .....	295
1006	Governmentwide debarment and suspension (non-procurement) .....	302
1007	Salary offset .....	324
1008	Governmentwide requirements for drug-free workplace (financial assistance) .....	328



## PART 1001—EMPLOYEE RESPONSIBILITIES AND CONDUCT

AUTHORITY: 5 U.S.C. 7301.

### §1001.1 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Directors and other employees of the Inter-American Foundation should refer to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the Inter-American Foundation regulations at 5 CFR part 7301 which supplement the executive branch standards, and the executive branch financial disclosure regulations at 5 CFR part 2634.

[59 FR 3772, Jan. 27, 1994]

## PART 1002—AVAILABILITY OF RECORDS

Sec.

- 1002.1 Introduction.
- 1002.2 Definitions.
- 1002.3 Access to Foundation records.
- 1002.4 Written requests.
- 1002.5 Records available at the Foundation.
- 1002.6 Records of other Departments and Agencies.
- 1002.7 Fees.
- 1002.8 Exemptions.
- 1002.9 Denial of records; review.

AUTHORITY: 5 U.S.C. 552, and 31 U.S.C. 483(a).

SOURCE: 37 FR 8375, Apr. 26, 1972, unless otherwise noted.

### §1002.1 Introduction.

(a) It is the policy of the Inter-American Foundation that information about its operations, procedures, and records be freely available to the public in accordance with the provisions of the Freedom of Information Act.

(b) The Foundation will make the fullest possible disclosure of its information and identifiable records consistent with the provisions of this Act and the regulations in this part.

### §1002.2 Definitions.

As used in this part, the following words have the meaning set forth below:

*Act.* "Act" means the Act of June 5, 1967, sometimes referred to as the

"Freedom of Information Act" or the Public Information Section of the Administrative Procedure Act, as amended, Pub. L. 90-23, 81 Stat. 54, and codified at 5 U.S.C. 552.

*Foundation.* "Foundation" means the Inter-American Foundation.

*President.* "President" means the President of the Foundation.

*Records.* The word "records" includes all books, papers, or other documentary materials made or received by the Foundation in connection with the transaction of its business which have been preserved or are appropriate for preservation by the Foundation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities, or because of the informational value of data contained therein. Library or other material acquired and preserved solely for reference or exhibition purposes, and stocks of publications and processed documents are not included within the definition of the word "records."

### §1002.3 Access to Foundation records.

Any person desiring to have access to Foundation records should call or apply in person between the hours of 10 a.m. and 4 p.m. on weekdays (holidays excluded) at the Foundation offices at 1515 Wilson Boulevard, Arlington, VA 22209. Requests for access should be made to the Director, Administration and Finance Division (A&F Director) at the Foundation offices. If request is made for copies of any record, the Office of A&F will assist the person making such request in seeing that such copies are provided according to the rules in this part.

### §1002.4 Written requests.

In order to facilitate the processing of written requests, every petitioner should:

- (a) Address his request to:

Director, Administration and Finance Division, Inter-American Foundation, Fifth Floor, 1515 Wilson Boulevard, Arlington, VA 22209.

- (b) Identify the desired record by name or brief description, or number, and date, as applicable. The identification should be specific enough so that a

**§ 1002.5**

record can be readily identified and found;

(c) Include a check or money order to the order of the "Inter-American Foundation" covering the appropriate search and copying fees, or request a determination of fee;

(d) Allow a reasonable amount of time for reply. Furnishing the requested information will involve search and retrieval of records, copying and mailing;

(e) Blanket requests or requests for "the entire file of" or "all matters relating to" a specified subject will not be accepted.

**§ 1002.5 Records available at the Foundation.**

The Administration and Finance Division will make available, to the extent not authorized to be withheld, the following works or classes of information:

(a) A copy of Agency regulations, including a copy of title 22 of the Code of Federal Regulations, or of any other title of the Code in which Agency regulations may have been published;

(b) Final unclassified reports;

(c) Copies of grants, loans, or other agreements in force;

(d) Personnel information affecting the public;

(e) Procurement information affecting the public;

(f) Contracts;

(g) Reimbursable agreements with other agencies.

**§ 1002.6 Records of other Departments and Agencies.**

Requests for records that have been originated by or are primarily the concern of another U.S. Department or Agency will be forwarded to the particular Department of Agency involved, and the petitioner notified. In response to requests for records or publications published by the Government Printing Office or other Government printing activity, the Foundation will refer the petitioner to the appropriate sales office and refund any fee payments therefor which accompany the request.

**22 CFR Ch. X (4-1-05 Edition)**

**§ 1002.7 Fees.**

Except as otherwise specifically provided by the Foundation, a fee will be levied for all searches for, or copies of, records. These fees will be computed so as to recover the full cost of searching and copying.

(a) *Advance payment and deposits.* When the amount of a fee can be readily computed (as, for example, when a specified number of copy pages are requested) advance payment will be required. When the amount cannot be readily computed (as, for example, when an unknown amount of stafftime must be used in complying with a request), the A&F Director may require payment of a reasonable deposit before undertaking to collect the requested records. At the earliest practicable time, the A&F Director will determine the full amount of the fee and, before complying fully with the request, will require payment of any balance due or refund any overpayment.

(b) *Schedule of fees.* The following fees apply for services rendered to the public:

(1) Searching for records and collateral assistance, per hour or fraction thereof .....	\$5.00
(2) Making copies (Xerox or comparable) per page ...	0.40

Should a situation arise which is not covered by the above schedule, the fee to be charged will include all direct and indirect costs of the service, including but not limited to materials, labor, and the like. The amount of the fee including charges, if any, for records printed by contractors or grantees will be determined by the A&F Director.

(c) *Revision of schedule.* The fee schedule will be revised from time to time, without notice, to assure recovery of the cost of rendering information services to any person. The revised schedule will be available without charge.

**§ 1002.8 Exemptions.**

The Act authorizes exemption from disclosure of records and information concerning matters that are:

(a) Specifically required by Executive order to be exempt from disclosure in the interest of the national defense or foreign policy;

## Inter-American Foundation

## § 1003.1

(b) Related solely to the internal personnel rules and practices by the Foundation;

(c) Specifically exempted from disclosure by statute;

(d) Trade secrets and commercial or financial information obtained from any person which is privileged or confidential;

(e) Interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Foundation;

(f) Personnel and medical files and similar files the disclosure of which would constitute an unwarranted invasion of personal privacy;

(g) Investigatory files (including security investigation files and files concerning the conduct of employees) compiled for law enforcement purposes except to the extent available by law to a private party.

The Foundation will not honor requests for exempt records or information.

### § 1002.9 Denial of records; review.

If a request for records is denied, the person who made the request is entitled to have the denial reviewed by the Foundation President as promptly as circumstances permit. If the President determines that the withholding is improper, he will direct in writing that the requested records be made available in accordance with these regulations. If he determines that the withholding is proper, he will so notify such person in writing, and his determination will constitute the final Foundation decision.

## PART 1003—RULES SAFEGUARDING PERSONAL INFORMATION IN IAF RECORDS

Sec.

1003.1 General policies, conditions of disclosure, accounting of certain disclosures, and definitions.

1003.2 Definitions.

1003.3 Access to records.

1003.4 Inter-American Foundation system of records requirements.

1003.5 Access to personal information from Inter-American Foundation records.

1003.6 Administrative review.

1003.7 Judicial review.

1003.8 Exemptions.

1003.9 Mailing lists.

1003.10 Reports.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 41 FR 19211, May 11, 1976, unless otherwise noted.

### § 1003.1 General policies, conditions of disclosure, accounting of certain disclosures, and definitions.

(a) The Inter-American Foundation will safeguard an individual against an invasion of personal privacy. Except as otherwise provided by law or regulation its officials and employees will:

(1) Permit an individual to determine what records pertaining to him or her will be collected, maintained, used, or disseminated by the Inter-American Foundation.

(2) Permit an individual to prevent records pertaining to him or her, obtained by the Inter-American Foundation for a particular purpose, from being used or made available for another purpose without his or her consent.

(3) Permit an individual to gain access to information pertaining to him or her in the Inter-American Foundation records, to have a copy made of all or any portion thereof, and to correct or amend such records.

(4) Collect, maintain, use or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is correct and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(5) Permit exemptions from records requirements provided in 5 U.S.C. 552a only where an important public policy need for such exemption has been determined pursuant to specific statutory authority.

(b) The Inter-American Foundation will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request of or prior written consent of the individual to whom the record pertains unless such disclosure is:

(1) To those officers and employees of the agency which maintains the record and who have a need for the record in the performance of their duties;

§ 1003.1

22 CFR Ch. X (4-1-05 Edition)

- (2) Required under 5 U.S.C. 552;
  - (3) For a routine use of the record compatible with the purpose for which it was collected;
  - (4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to title 13, United States Code;
  - (5) To a recipient who has provided the Inter-American Foundation with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;
  - (6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or designee to determine whether the record has such value;
  - (7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authority by law, and if the head of the agency or instrumentality has made a written request to the Inter-American foundation specifying the particular portion desired and the law enforcement activity for which the record is sought;
  - (8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;
  - (9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;
  - (10) To the Comptroller General, or any authorized representatives in the course of the performance of the duties of the General Accounting Office; or
  - (11) Pursuant to the order of a court of competent jurisdiction.
- (c) With respect to each system of records (i.e., a group of records from which information is retrieved by the name of the individual or by some

identifying number, symbol, or other identifying particular assigned to the individual) under Inter-American foundation control the Inter-American Foundation will (except for disclosures made under paragraph (b) (1) or (2) of this section) keep an accurate accounting as follows:

- (1) For each disclosure of a record to any person or to another agency made under paragraph (b) of this section, maintain information consisting of the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;
  - (2) Retain the accounting made under paragraph (c)(1) of this section for at least 5 years or the life of the record, whichever is longer, after the disclosures for which the accounting is made;
  - (3) Except for disclosures made under paragraph (b)(7) of this section, make the accounting under paragraph (c)(1) of this section available to the individual named in the record at his or her request; and
  - (4) Inform any person or other agency about any correction or notation of dispute made by the agency of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.
- (d) The parent of any minor, or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.
- (e) Section 552a(e), title 5, United States Code, provided that:
- (1) Any officer or employee of the Inter-American Foundation, who by virtue of his or her employment or official position, has possession of, or access to, Inter-American Foundation records which contain individually identifiable information the disclosure of which is prohibited by 5 U.S.C. 552a and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
  - (2) Any officer or employee of the Inter-American Foundation who willfully maintains a system of records

## Inter-American Foundation

## § 1003.3

without meeting the notice requirements of 5 U.S.C. 552a(e)(4) shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Inter-American Foundation under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

### § 1003.2 Definitions.

The following definitions apply:

(a) The term *agency* includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency.

(b) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) The term *maintain* includes maintain, collect, use, or disseminate.

(d) The term *record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her educational, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(e) The term *system of records* means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) The term *statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual except as provided by section 8 of title 13, United States Code.

(g) The term *routine use* means, with respect to the disclosure of a record, the use of such record for a purpose

which is compatible with the purpose for which it was collected.

### § 1003.3 Access to records.

(a) Except as otherwise provided by law or regulation any individual upon request may gain access to his or her record or to any information pertaining to him or her which is contained in any system or records maintained by the Inter-American Foundation. The individual will be permitted, and upon his or her request, a person of his or her own choosing permitted to accompany him or her, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her. The Inter-American foundation will require, however, a written statement from the individual authorizing discussion of that individual's record in the accompanying person's presence.

(b) Any individual may request amendment of any Inter-American Foundation record pertaining to him or her. Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, the Inter-American Foundation will acknowledge in writing such receipt. The Inter-American Foundation will also promptly either:

(1) Correct any part thereof which the individual believes is not accurate, relevant, timely, or complete; or

(2) Inform the individual of the Inter-American Foundation's refusal to amend the record in accordance with his or her request, the reason for the refusal, the procedures by which the individual may request a review of that refusal by the Administrator or designee, and the name and address of such official.

(c) Any individual who disagrees with the Inter-American Foundation's refusal to amend his or her record may request a review of such refusal. The Inter-American Foundation will complete such review not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review and make a final determination unless, for good cause shown, the Administrator extends such 30-day period. If, after review, the Administrator or designee also refuses to

**§ 1003.4**

**22 CFR Ch. X (4-1-05 Edition)**

amend the record in accordance with the request the individual will be advised of the right to file with the Inter-American Foundation a concise statement setting forth the reasons for his or her disagreement with the Inter-American Foundation's refusal, and also advised of the provisions for judicial review of the reviewing official's determination (5 U.S.C. 552a(g)(1)(A)).

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (c) of this section, the Inter-American Foundation will clearly note any part of the record which is disputed and provide copies of the statement (and, if the Inter-American Foundation deems it appropriate, copies also of a concise statement of the Inter-American Foundation's reasons for not making the amendments requested) to persons or other agencies to whom the disputed record has been disclosed.

(e) Nothing in 5 U.S.C. 552a, however, allows an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

[41 FR 19211, May 11, 1976, as amended at 42 FR 37368, July 21, 1977]

**§ 1003.4 Inter-American Foundation system of records requirements.**

(a) The Inter-American Foundation will maintain in its records any such information about an individual as is relevant and necessary to accomplish a purpose of the Inter-American Foundation required to be accomplished by statute or Executive order of the President.

(b) The Inter-American Foundation will collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.

(c) The Inter-American Foundation will inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual of:

(1) The authority (whether granted by statute or Executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to paragraph (d)(4) of this section; and

(4) The effects on him or her, if any, of not providing all or any part of the requested information.

(d) Subject to the provisions of paragraph (k) of this section, the Inter-American Foundation will publish in the FEDERAL REGISTER at least annually a notice of the existence and character of its system of records. This notice will include:

(1) The name and location of the system or systems;

(2) The categories of individuals on whom records are maintained in the system or systems;

(3) The categories of records maintained in the system or systems;

(4) Each routine use of the records contained in the system or systems, including the categories of users and the purpose of such use;

(5) The policies and practices of the Inter-American Foundation regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The title and business address of the Inter-American Foundation official or officials responsible for the system or systems of records;

(7) The Inter-American Foundation procedures whereby an individual can be notified at his or her request if the system or systems of records contain a record pertaining to him or her;

(8) The Inter-American Foundation procedures whereby an individual can be notified at his or her request how he or she can gain access to any record pertaining to him or her contained in the system or systems of records, and how he or she can contest its content; and

(9) The categories of sources of records in the system or systems.

(e) All records used by the Inter-American Foundation in making any

## Inter-American Foundation

## § 1003.5

determination about any individual will be maintained with the accuracy, relevance, timeliness, and completeness reasonably necessary to assure fairness to the individual in the determination.

(f) Before disseminating any record about any individual to any person other than an agency the Inter-American Foundation will make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Inter-American Foundation purposes unless the dissemination is required pursuant to 5 U.S.C. 552.

(g) The Inter-American Foundation will maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(h) The Inter-American Foundation will make reasonable efforts to serve notice on an individual when any record on such individuals is made available to any person under compulsory legal process when such process becomes a matter of public record.

(i) The Inter-American Foundation will establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record. Each such person will be instructed regarding such rules and the requirements of 5 U.S.C. 552a. The instruction will include any other rules and procedures adopted pursuant to 5 U.S.C. 552a, and the penalties it provides for noncompliance.

(j) The Inter-American Foundation will establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(k) At least 30 days prior to the publication of a notice in the FEDERAL REGISTER at least annually regarding the routine use of the records contained in the Inter-American Founda-

tion system or systems of records including the categories of users and the purpose of such use, pursuant to paragraph (d)(4) of this section, the Inter-American Foundation will also:

(1) Publish a notice in the FEDERAL REGISTER of any new use or intended use of the information in the system or systems; and

(2) Provide an opportunity for interested persons to submit written data, views, or arguments to the Inter-American Foundation.

### **§ 1003.5 Access to personal information from Inter-American Foundation records.**

(a) The Inter-American Foundation will promulgate regulations, as necessary, to insure compliance with the provisions of 5 U.S.C. 552a, developed in accordance with the provisions of 5 U.S.C. 553, as applicable.

(b) Any individual will be notified upon request if any Inter-American Foundation system of records named contains a record pertaining to him or her. Such request must be in writing over the signature of the requester. The request must contain a reasonable description of the Inter-American Foundation system or systems of records meant, as described at least annually by notice published in the FEDERAL REGISTER describing the existence and character of the Inter-American Foundation's system or systems of records. The request should be made to the Executive Officer, Inter-American Foundation, 1515 Wilson Boulevard, Rosslyn, Virginia 22209. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8:30 a.m. to 4:00 p.m. Monday through Friday. Identification of the individual requesting the information will be required consisting of name, signature, address, and claim, insurance or other identifying file number, if any, as a minimum.

(c) The department or staff office having jurisdiction over the records involved will establish appropriate disclosure procedures and will notify the individual requesting disclosure of his or her record or information pertaining to him or her of the time, place and conditions under which the Inter-American Foundation will comply to

## § 1003.6

the extent permitted by law and Inter-American Foundation regulation. Special procedures will be established by the department or staff office concerned governing the disclosure to an individual of medical records, including psychological records pertaining to him or her.

(d) The department or staff office having jurisdiction over the records involved will also establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual for making a determination on the request, for an appeal within the Inter-American Foundation of an initial adverse Inter-American Foundation determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his or her rights under 5 U.S.C. 552a.

(e) Fees to be charged, if any, to any individual for making copies of his or her record, excluding the cost of any search for and review of the record, will be as follows:

(1) Photocopy reproductions from all types of copying processes, each reproduction image, \$0.05.

(2) Where the Inter-American Foundation undertakes to perform for a requester or for any other person services which are very clearly not required to be performed under section 552a, title 5, United States Code, either voluntarily or because such services are required by some other law (e.g., the formal certification of records as true copies, attestation under the seal of the Inter-American Foundation, etc.), the question of charging fees for such services will be determined by the official or designee authorized to release the information under § 1.556, in the light of the Federal user charge statute, 31 U.S.C. 483a, and any other applicable law.

### § 1003.6 Administrative review.

(a) Upon denial of a request, the responsible Inter-American Foundation official or designated employee will inform the requester in writing of the denial, cite the reason or reasons and the Inter-American Foundation regulations upon which the denial is based,

## 22 CFR Ch. X (4-1-05 Edition)

and advise that the denial may be appealed to the Administrator.

(b) The final agency decision in such appeals will be made by the Administrator or Deputy Administrator.

### § 1003.7 Judicial review.

Any person may file a complaint against the Inter-American Foundation in the appropriate U.S. district court, as provided in 5 U.S.C. 552a(g), whenever the Inter-American Foundation:

(a) Makes a determination not to amend an individual's record in accordance with his or her request, or fails to make such review in conformity with that section;

(b) Refuses to comply with an individual request;

(c) Fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(d) Fails to comply under any other provision of 5 U.S.C. 552a, or any Inter-American Foundation regulation promulgated thereunder, in such a way as to have an adverse effect on an individual.

### § 1003.8 Exemptions.

No Inter-American Foundation records system or systems as such are exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a (j) and (k).

### § 1003.9 Mailing lists.

An individual's name and address may not be sold or rented by the Inter-American Foundation unless such action is specifically authorized by law. This section does not require the withholding of names and addresses otherwise permitted to be made public.

### § 1003.10 Reports.

(a) The Administrator or designee will provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any Inter-American

## Inter-American Foundation

## § 1004.4

Foundation system or systems of records, as required by 5 U.S.C. 552a(o). This will permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(b) If at any time an Inter-American Foundation system or systems of records is determined to be exempt from the application of 5 U.S.C. 552a in accordance with the provisions of 5 U.S.C. 552a (j) and (k), the number of records contained in such system or systems will be separately listed and reported to the Office of Management and Budget in accordance with the then prevailing guidelines and instructions of that agency.

### PART 1004—RULES FOR IMPLEMENTING OPEN MEETINGS WITHIN THE INTER-AMERICAN FOUNDATION

Sec.

- 1004.1 General policies.
- 1004.2 Definitions.
- 1004.3 Requirement of open meetings.
- 1004.4 Grounds on which meetings may be closed.
- 1004.5 Procedures for announcing meetings.
- 1004.6 Procedures for closing meetings.
- 1004.7 Reconsideration of opening or closing a meeting.
- 1004.8 Transcripts, recording of closed meetings.

AUTHORITY: Pub. L. 91-175, 83 Stat. 821 (22 U.S.C. 290f).

SOURCE: 42 FR 20461, Apr. 20, 1977, unless otherwise noted.

#### § 1004.1 General policies.

The Inter-American Foundation will provide the public with the fullest practical information regarding its decisionmaking processes while protecting the rights of individuals and its abilities to carry out its responsibilities.

#### § 1004.2 Definitions.

The following definitions apply:

(a) The term *agency* includes any executive department, military department, government corporation, govern-

ment controlled corporation or other establishment in the executive branch of the government (including the Executive Office of the President) or any independent regulatory agency, and is headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency. The Inter-American Foundation is a government corporation headed by a 7-member Board of Directors, all of whom are appointed by the President with the advice and consent of the Senate, and is therefore an "agency" under these terms.

(b) The term *meeting* means the deliberation of this Board of Directors where such deliberations determine or result in the joint conduct or disposition of official IAF business.

(c) The term *member* means an individual who belongs to the IAF Board of Directors.

(d) *Public Observation* means attendance at any meeting but does not include participation, or attempted participation, in such meeting in any matter.

#### § 1004.3 Requirement of open meetings.

Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in § 1004.4 every portion of every meeting of the agency shall be open to public observation.

#### § 1004.4 Grounds on which meetings may be closed.

The IAF shall open every portion of every meeting of the agency for public observation except where the agency determines that such portion or portions of its meeting or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practice of the agency;

**§ 1004.5**

**22 CFR Ch. X (4-1-05 Edition)**

(c) Disclose matters specifically exempted from disclosure by statute, provided that such statute:

(1) Requires that the matters be withheld from the public in such manner as to leave no discretion on the issue, or

(2) Established practical criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial of an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information the premature disclosure of which would be likely to significantly guarantee implementation of a proposed agency action. This shall not apply in any instance where the IAF has already disclosed to the public the content or nature of its proposed action or where the IAF is required by law to make such disclosure on its own initiative prior to taking final IAF action on such proposal;

(i) Specifically concern the IAF's issuance of a subpoena, or the IAF's

participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the IAF of a particular case of formal agency adjudication pursuant to the procedures in section 554, of this title or otherwise involving a determination on the record after opportunity for a hearing.

**§1004.5 Procedures for announcing meetings.**

(a) In the case of each meeting, the IAF shall make public, at least one week before the meeting, of the time, place and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the IAF to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the Board of Directors of the IAF determines by a recorded vote that the IAF requires that such a meeting be called at an earlier date, in which case the IAF shall make public announcement of the time, place and subject matter of such meeting and whether open or closed to the public, at the earliest practical time.

(b) Immediately following the public announcement, the IAF will publish it in the FEDERAL REGISTER.

(c) The Foundation shall also make public the announcement in publications whose readers may have an interest in IAF operations.

(d) At least seven days before the meeting, the IAF shall send the announcements to those on a mailing list maintained for those desiring to receive such notices.

**§1004.6 Procedures for closing meetings.**

(a) The closing of a meeting shall occur only when:

(1) A majority of the membership of the IAF Board votes to take such action. That vote shall determine whether or not any portion or portions of a meeting or portions of a series of meetings may be closed to public observation for any of the reasons provided in §1004.4 and whether or not the public interest nevertheless requires that portion of the meeting or meetings remain

open. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Board member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the IAF close such portion to the public for any of the reasons referred to in §1004.4 (e), (f) or (g), the IAF, upon request of any one of its Board members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the IAF shall make publicly available a written copy of such vote reflecting the vote of each member on the question and full written explanation of its action closing the entire or portion of the meeting together with a list of persons expected to attend the meeting and their affiliation.

(c) The IAF shall announce the time, place and subject matter of the meeting at least 8 days before the meeting.

(d) For every closed meeting, the General Counsel of the IAF shall publicly certify prior to a Board of Directors' vote on closing the meeting, that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the IAF.

**§1004.7 Reconsideration of opening or closing a meeting.**

The time or place of a Board meeting may be changed following the public announcement only if the IAF publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of meeting, to the public, may be changed following the public an-

nouncement only if a majority of the Board of Directors determines by a recorded vote that IAF business so requires and that no earlier announcement of the change was possible, and the IAF publicly announces such change and the vote of each member upon such change at the earliest practicable time.

**§1004.8 Transcripts, recording of closed meetings.**

(a) The IAF shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public.

(b) The IAF, after review by the General Counsel shall make promptly available to the public in a place easily accessible to the public, the transcript or electronic recording of the discussion of any time on the agenda, or any item of the testimony of any witness received at the Board meeting, except for such item or items of such discussion or testimony as the IAF determines to contain information which may be withheld under §1004.4. Copies of such transcript, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The IAF shall maintain a complete verbatim copy of the transcript or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any IAF proceeding with respect to which the meeting or portion was held, whichever occurs later.

**PART 1005—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE INTER-AMERICAN FOUNDATION**

Sec.	
1005.101	Purpose.
1005.102	Application.
1005.103	Definitions.
1005.104-1005.109	[Reserved]
1005.110	Self-evaluation.
1005.111	Notice.
1005.112-1005.129	[Reserved]

## § 1005.101

## 22 CFR Ch. X (4-1-05 Edition)

1005.130 General prohibitions against discrimination.  
1005.131-1005.139 [Reserved]  
1005.140 Employment.  
1005.141-1005.148 [Reserved]  
1005.149 Program accessibility: Discrimination prohibited.  
1005.150 Program accessibility: Existing facilities.  
1005.151 Program accessibility: New construction and alterations.  
1005.152-1005.159 [Reserved]  
1005.160 Communications.  
1005.161-1005.169 [Reserved]  
1005.170 Compliance procedures.  
1005.171-1005.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22890, 22896, June 23, 1986, unless otherwise noted.

### § 1005.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### § 1005.102 Application.

This part applies to all programs or activities conducted by the agency.

### § 1005.103 Definitions.

For purposes of this part, the term—  
*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters,

notetakers, written materials, and other similar services and devices.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

*Handicapped person* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or

## Inter-American Foundation

## § 1005.111

physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

*Historic preservation programs* means programs conducted by the agency that have preservation of historic properties as a primary purpose.

*Historic properties* means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

*Qualified handicapped person* means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §1005.140.

*Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

*Substantial impairment* means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

### §§ 1005.104–1005.109 [Reserved]

### § 1005.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

### § 1005.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons

of the protections against discrimination assured them by section 504 and this regulation.

§§ 1005.112–1005.129 [Reserved]

**§ 1005.130 General prohibitions against discrimination.**

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permis-

sibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

## Inter-American Foundation

## § 1005.150

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

### §§ 1005.131–1005.139 [Reserved]

#### § 1005.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

### §§ 1005.141–1005.148 [Reserved]

#### § 1005.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1005.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

#### § 1005.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the pro-

posed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1005.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 1005.150(a) in historic preservation

**§ 1005.151**

programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of §1005.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

- (i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;
- (ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or
- (iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

- (1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;
- (2) Describe in detail the methods that will be used to make the facilities accessible;
- (3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (4) Indicate the official responsible for implementation of the plan.

**22 CFR Ch. X (4-1-05 Edition)**

**§1005.151 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

**§§ 1005.152-1005.159 [Reserved]**

**§ 1005.160 Communications.**

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can

demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1005.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

**§§ 1005.161–1005.169 [Reserved]**

**§ 1005.170 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The General Counsel, Inter-American Foundation, shall be responsible for coordinating implementation of this section. Complaints may be sent to General Counsel, Inter-American Foundation, 1515 Wilson Boulevard, Rosslyn, Virginia 22209.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180

days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §1005.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making

**§§ 1005.171–1005.999**

the final determination may not be delegated to another agency.

[51 FR 22890, 22896, June 23, 1986, as amended at 51 FR 22891, June 23, 1986]

**§§ 1005.171–1005.999 [Reserved]**

**PART 1006—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

1006.25 How is this part organized?

1006.50 How is this part written?

1006.75 Do terms in this part have special meanings?

**Subpart A—General**

1006.100 What does this part do?

1006.105 Does this part apply to me?

1006.110 What is the purpose of the nonprocurement debarment and suspension system?

1006.115 How does an exclusion restrict a person's involvement in covered transactions?

1006.120 May we grant an exception to let an excluded person participate in a covered transaction?

1006.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

1006.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

1006.135 May the Inter-American Foundation exclude a person who is not currently participating in a nonprocurement transaction?

1006.140 How do I know if a person is excluded?

1006.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

1006.200 What is a covered transaction?

1006.205 Why is it important to know if a particular transaction is a covered transaction?

1006.210 Which nonprocurement transactions are covered transactions?

1006.215 Which nonprocurement transactions are not covered transactions?

1006.220 Are any procurement contracts included as covered transactions?

1006.225 How do I know if a transaction in which I may participate is a covered transaction?

**22 CFR Ch. X (4–1–05 Edition)**

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

DOING BUSINESS WITH OTHER PERSONS

1006.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

1006.305 May I enter into a covered transaction with an excluded or disqualified person?

1006.310 What Must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

1006.315 May I use the services of an excluded person as a principal under a covered transaction?

1006.320 I verify that principals of my covered transactions are eligible to participate?

1006.325 What happens if I do business with an excluded person in a covered transaction?

1006.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

DISCLOSING INFORMATION—PRIMARY TIER PARTICIPANTS

1006.335 What information must I provide before a covered transaction with the Inter-American Foundation?

1006.340 If I disclose unfavorable information required under §1006.335, will I be prevented from participating in the transaction?

1006.345 What happens if I fail to disclose the information required under §1006.335?

1006.350 What must I do if I learn of the information required under §1006.335 after entering into a covered transaction with the Inter-American Foundation?

DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

1006.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

1006.360 What happens if I fail to disclose the information required under §1006.355?

1006.365 What must I do if I learn of information required under §1006.355 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of Inter-American Foundation Officials Regarding Transactions**

1006.400 May I enter into a transaction with an excluded or disqualified person?

1006.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

## Inter-American Foundation

Pt. 1006

- 1006.410 May I approve a participant's use of the services of an excluded person?
- 1006.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 1006.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 1006.425 When do I check to see if a person is excluded or disqualified?
- 1006.430 How do I check to see if a person is excluded or disqualified?
- 1006.435 What must I require of a primary tier participant?
- 1006.440 What method do I use to communicate those requirements to participants?
- 1006.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 1006.450 What action may I take if a primary tier participant fails to disclose the information required under §1006.335?
- 1006.455 What may I do if a lower tier participant fails to disclose the information required under §1006.355 to the next higher tier?

### Subpart E—Excluded Parties List System

- 1006.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 1006.505 Who uses the EPLS?
- 1006.510 Who maintains the EPLS?
- 1006.515 What specific information is in the EPLS?
- 1006.520 Who places the information into the EPLS?
- 1006.525 Whom do I ask if I have questions about a person in the EPLS?
- 1006.530 Where can I find the EPLS?

### Subpart F—General Principles Relating to Suspension and Debarment Actions

- 1006.600 How do suspension and debarment actions start?
- 1006.605 How does suspension differ from debarment?
- 1006.610 What procedures does the Inter-American Foundation use in suspension and debarment actions?
- 1006.615 How does the Inter-American Foundation notify a person of a suspension and debarment action?
- 1006.620 Do Federal agencies coordinate suspension and debarment actions?
- 1006.625 What is the scope of a suspension or debarment action?
- 1006.630 May the Inter-American Foundation impute the conduct of one person to another?
- 1006.635 May the Inter-American Foundation settle a debarment or suspension action?

- 1006.640 May a settlement include a voluntary exclusion?
- 1006.645 Do other Federal agencies know if the Inter-American Foundation agrees to a voluntary exclusion?

### Subpart G—Suspension

- 1006.700 When may the suspending official issue a suspension?
- 1006.705 What does the suspending official consider in issuing a suspension?
- 1006.710 When does a suspension take effect?
- 1006.715 What notice does the suspending official give me if I am suspended?
- 1006.720 How may I contest a suspension?
- 1006.725 How much time do I have to contest a suspension?
- 1006.730 What information must I provide to the suspending official if I contest a suspension?
- 1006.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 1006.740 Are suspension proceedings formal?
- 1006.745 How is fact-finding conducted?
- 1006.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 1006.755 When will I know whether the suspension is continued or terminated?
- 1006.760 How long may my suspension last?

### Subpart H—Debarment

- 1006.800 What are the causes for debarment?
- 1006.805 What notice does the debarring official give me if I am proposed for debarment?
- 1006.810 When does a debarment take effect?
- 1006.815 How may I contest a proposed debarment?
- 1006.820 How much time do I have to contest a proposed debarment?
- 1006.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 1006.830 Under what conditions do I get an additional opportunity to challenge the fact on which the proposed debarment is based?
- 1006.835 Are debarment proceedings formal?
- 1006.840 How is fact-finding conducted?
- 1006.845 What does the debarring official consider in deciding whether to debar me?
- 1006.850 What is the standard of proof in a debarment action?
- 1006.855 Who has the burden of proof in a debarment action?
- 1006.860 What factors may influence the debarring official's decision?
- 1006.865 How long may my debarment last?
- 1006.870 When do I know if the debarring official debars me?
- 1006.875 May I ask the debarring official to reconsider a decision to debar me?

**§ 1006.25**

**22 CFR Ch. X (4-1-05 Edition)**

- 1006.880 What factors may influence the debarring official during reconsideration?
- 1006.885 May the debarring official extend a debarment?

- 1006.995 Principal.
- 1006.1000 Respondent.
- 1006.1005 State.
- 1006.1010 Suspending official.
- 1006.1015 Suspension.
- 1006.1020 Voluntary exclusion or voluntarily excluded

**Subpart I—Definitions**

- 1006.900 Adequate evidence.
- 1006.905 Affiliate.
- 1006.910 Agency.
- 1006.915 Agent or representative.
- 1006.920 Civil judgment.
- 1006.925 Conviction.
- 1006.930 Debarment.
- 1006.935 Debarring official.
- 1006.940 Disqualified.
- 1006.945 Excluded or exclusion.
- 1006.950 Excluded Parties List System.
- 1006.955 Indictment.
- 1006.960 Ineligible or ineligibility.
- 1006.965 Legal proceedings.
- 1006.970 Nonprocurement transaction.
- 1006.975 Notice.
- 1006.980 Participant.
- 1006.985 Person.
- 1006.990 Preponderance of the evidence.

**Subpart J [Reserved]**

**APPENDIX TO PART 1006—COVERED TRANSACTIONS**

AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

**§ 1006.25 How is this part organized?**

(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart . . .	You will find provisions related to . . .
A .....	general information about this rule.
B .....	the types of Inter-American Foundation transactions that are covered by the Governmentwide non-procurement suspension and debarment system.
C .....	the responsibilities of persons who participate in covered transactions.
D .....	the responsibilities of Inter-American Foundation officials who are authorized to enter into covered transactions.
E .....	the responsibilities of Federal agencies for the <i>Excluded Parties List System</i> (Disseminated by the General Services Administration).
F .....	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G .....	suspension actions.
H .....	debarment actions.
I .....	definitions of terms used in this part.
J .....	[Reserved]

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are . . .	See subpart(s) . . .
(1) a participant or principal in a non-procurement transaction.	A, B, C, and I.
(2) a respondent in a suspension action	A, B, F, G and I.
(3) a respondent in a debarment action	A, B, F, H and I.
(4) a suspending official .....	A, B, D, E, F, G and I.
(5) a debarring official .....	A, B, D, E, F, H and I.
(6) a (n) Inter-American Foundation official authorized to enter into a covered transaction.	A, B, D, E and I.
(7) Reserved .....	J.

often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed. The pronoun “we” always is the Inter-American Foundation.

(c) The “Covered Transactions” diagram in the appendix to this part shows the levels or “tiers” at which the Inter-American Foundation enforces an exclusion under this part.

**§ 1006.75 Do terms in this part have special meanings?**

This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart I of this part. For example, three important terms are—

**§ 1006.50 How is this part written?**

(a) This part uses a “plain language” format to make it easier for the general public and business community to use. The section headings and text,

## Inter-American Foundation

## § 1006.120

(a) *Exclusion or excluded*, which refers only to discretionary actions taken by a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified*, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible*, which generally refers to a person who is either excluded or disqualified.

### Subpart A—General

#### § 1006.100 What does this part do?

This part adopts a governmentwide system of debarment and suspension for Inter-American Foundation nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

#### § 1006.105 Does this part apply to me?

Portions of this part (see table at § 1006.25(b)) apply to you if you are a(n)—

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom the Inter-American Foundation has initiated a debarment or suspension action);

(c) Inter-American Foundation debarring or suspending official; or

(d) Inter-American Foundation official who is authorized to enter into

covered transactions with non-Federal parties.

#### § 1006.110 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

#### § 1006.115 How does an exclusion restrict a person’s involvement in covered transactions?

With the exceptions stated in §§ 1006.120, 1006.315, and 1006.420, a person who is excluded by the Inter-American Foundation or any other Federal agency may not:

(a) Be a participant in a(n) Inter-American Foundation transaction that is a covered transaction under subpart B of this part;

(b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency’s regulation for debarment and suspension; or

(c) Act as a principal of a person participating in one of those covered transactions.

#### § 1006.120 May we grant an exception to let an excluded person participate in a covered transaction?

(a) The Inter-American Foundation Debarring Official may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Inter-American Foundation Debarring Official grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

**§ 1006.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?**

If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

**§ 1006.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?**

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

**§ 1006.135 May the Inter-American Foundation exclude a person who is not currently participating in a nonprocurement transaction?**

Given a cause that justifies an exclusion under this part, we may exclude any person who has been involved, is currently involved, or may reasonably be expected to be involved in a covered transaction.

**§ 1006.140 How do I know if a person is excluded?**

Check the *Excluded Parties List System (EPLS)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *EPLS* and makes it available, as detailed in subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

**§ 1006.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?**

Except if provided for in Subpart J of this part, this part—

(a) Addresses disqualified persons only to—

(1) Provide for their inclusion in the *EPLS*; and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Does not specify the—

(1) Inter-American Foundation transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which the disqualification applies; or

(3) Process that the agency uses to disqualify a person. Unlike exclusion, disqualification is frequently not a discretionary action that a Federal agency takes.

**Subpart B—Covered Transactions**

**§ 1006.200 What is a covered transaction?**

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

**§ 1006.205 Why is it important if a particular transaction is a covered transaction?**

The importance of a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in Subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you

## Inter-American Foundation

## § 1006.225

have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under §1006.310 or §1006.415; or

(2) A(n) Inter-American Foundation official obtains an exception from the Inter-American Foundation Debarring Official to allow you to be involved in the transaction, as permitted under §1006.120.

### § 1006.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in §1006.970, are covered transactions unless listed in §1006.215. (See appendix to this part.)

### § 1006.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 et seq., those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that the Inter-American Foundation needs to respond

to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the Inter-American Foundation specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.

### § 1006.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part).

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under §1006.210, and the amount of the contract is expected to equal or exceed \$25,000.

(2) The contract requires the consent of a(n) Inter-American Foundation official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for federally-required audit services.

### § 1006.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell

**§ 1006.300**

you that you must comply with applicable portions of this part.

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

DOING BUSINESS WITH OTHER PERSONS

**§ 1006.300 What must I do before I enter into a covered transaction with another person at the next lower tier?**

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking the *EPLS*; or
- (b) Collecting a certification from that person if allowed by this rule; or
- (c) Adding a clause or condition to the covered transaction with that person.

**§ 1006.305 May I enter into a covered transaction with an excluded or disqualified person?**

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the Inter-American Foundation grants an exception under § 1006.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

**§ 1006.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?**

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded

**22 CFR Ch. X (4–1–05 Edition)**

person, unless the Inter-American Foundation grants an exception under § 1006.120.

**§ 1006.315 May I use the services of an excluded person as a principal under a covered transaction?**

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Inter-American Foundation grants an exception under § 1006.120.

**§ 1006.320 Must I verify that principals of my covered transactions are eligible to participate?**

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the *EPLS*.

**§ 1006.325 What happens if I do business with an excluded person in a covered transaction?**

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

**§ 1006.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?**

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

- (a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § 1006.440 requires you to use specific methods.

## Inter-American Foundation

## § 1006.365

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

### DISCLOSING INFORMATION—PRIMARY TIER PARTICIPANTS

#### **§ 1006.335 What information must I provide before entering into a covered transaction with the Inter-American Foundation?**

Before you enter into a covered transaction at the primary tier, you as the participant must notify the Inter-American Foundation office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in §1006.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in §1006.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

#### **§ 1006.340 If I disclose unfavorable information required under § 1006.335, will I be prevented from participating in the transaction?**

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under §1006.335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

#### **§ 1006.345 What happens if I fail to disclose information required under § 1006.335?**

If we later determine that you failed to disclose information under §1006.335

that you knew at the time you entered into the covered transaction, we may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

#### **§ 1006.350 What must I do if I learn of information required under § 1006.335 after entering into a covered transaction with the Inter-American Foundation?**

At any time after you enter into a covered transaction, you must give immediate written notice to the Inter-American Foundation office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by §1006.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in §1006.335.

### DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

#### **§ 1006.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?**

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

#### **§ 1006.360 What happens if I fail to disclose the information required under § 1006.355?**

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we may pursue any available remedies, including suspension and debarment.

#### **§ 1006.365 What must I do if I learn of information required under § 1006.355 after entering into a covered transaction with a higher tier participant?**

At any time after you enter into a lower tier covered transaction with a

**§ 1006.400**

person at a higher tier, you must provide immediate written notice to that person if you learn either that—

- (a) You failed to disclose information earlier, as required by § 1006.355; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 1006.355.

**Subpart D—Responsibilities of Inter-American Foundation Officials Regarding Transactions**

**§ 1006.400 May I enter into a transaction with an excluded or disqualified person?**

- (a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 1006.120.
- (b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

**§ 1006.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?**

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 1006.120.

**§ 1006.410 May I approve a participant's use of the services of an excluded person?**

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 1006.120.

**§ 1006.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?**

- (a) You as an agency official may continue covered transactions with an excluded person, or under which an ex-

**22 CFR Ch. X (4–1–05 Edition)**

cluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

- (b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 1006.120.

**§ 1006.420 May I approve a transaction with an excluded or disqualified person at a lower tier?**

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

- (a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 1006.120; or
- (b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

**§ 1006.425 When do I check to see if a person is excluded or disqualified?**

As an agency official, you must check to see if a person is excluded or disqualified before you—

- (a) Enter into a primary tier covered transaction;
- (b) Approve a principal in a primary tier covered transaction;
- (c) Approve a lower tier participant if agency approval of the lower tier participant is required; or
- (d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

**§ 1006.430 How do I check to see if a person is excluded or disqualified?**

You check to see if a person is excluded or disqualified in two ways:

- (a) You as an agency official must check the *EPLS* when you take any action listed in § 1006.425.
- (b) You must review information that a participant gives you, as required by

## Inter-American Foundation

## § 1006.515

§ 1006.335, about its status or the status of the principals of a transaction.

### § 1006.435 What must I require of a primary tier participant?

You as an agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

### § 1006.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

### § 1006.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

### § 1006.450 What action may I take if a primary tier participant fails to disclose the information required under § 1006.335?

If you as an agency official determine that a participant failed to disclose information, as required by § 1006.335, at the time it entered into a covered transaction with you, you may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

### § 1006.455 What may I do if a lower tier participant fails to disclose the information required under § 1006.355 to the next higher tier?

If you as an agency official determine that a lower tier participant failed to disclose information, as required by § 1006.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

## Subpart E—Excluded Parties List System

### § 1006.500 What is the purpose of the Excluded Parties List System (EPLS)?

The *EPLS* is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

### § 1006.505 Who uses the EPLS?

(a) Federal agency officials use the *EPLS* to determine whether to enter into a transaction with a person, as required under § 1006.430.

(b) Participants also may, but are not required to, use the *EPLS* to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under § 1006.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The *EPLS* is available to the general public.

### § 1006.510 Who maintains the EPLS?

In accordance with the OMB guidelines, the General Services Administration (GSA) maintains the *EPLS*. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

### § 1006.515 What specific information is in the EPLS?

(a) At a minimum, the *EPLS* indicates—

**§ 1006.520**

**22 CFR Ch. X (4-1-05 Edition)**

- (1) The full name (where available) and address of each excluded or disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;
- (2) The type of action;
- (3) The cause for the action;
- (4) The scope of the action;
- (5) Any termination date for the action;
- (6) The agency and name and telephone number of the agency point of contact for the action; and
- (7) The Dun and Bradstreet Number (DUNS), or other similar code approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for the *EPLS* includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) Agencies disclose the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

**§ 1006.520 Who places the information into the *EPLS*?**

Federal officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into the *EPLS*:

- (a) Information required by § 1006.515(a);
- (b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;
- (c) Information about an excluded or disqualified person, generally within five working days, after—
  - (1) Taking an exclusion action;
  - (2) Modifying or rescinding an exclusion action;

- (3) Finding that a person is disqualified; or
- (4) Finding that there has been a change in the status of a person who is listed as disqualified.

**§ 1006.525 Whom do I ask if I have questions about a person in the *EPLS*?**

If you have questions about a person in the *EPLS*, ask the point of contact for the Federal agency that placed the person's name into the *EPLS*. You may find the agency point of contact from the *EPLS*.

**§ 1006.530 Where can I find the *EPLS*?**

(a) You may access the *EPLS* through the Internet, currently at <http://epls.arnet.gov>.

(b) As of November 26, 2003, you may also subscribe to a printed version. However, we anticipate discontinuing the printed version. Until it is discontinued, you may obtain the printed version by purchasing a yearly subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238.

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

**§ 1006.600 How do suspension and debarment actions start?**

When we receive information from any source concerning a cause for suspension or debarment, we will promptly report and investigate it. We refer the question of whether to suspend or debar you to our suspending or debarring official for consideration, if appropriate.

**§ 1006.605 How does suspension differ from debarment?**

Suspension differs from debarment in that—

<p>A suspending official . . .</p> <p>(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.</p>	<p>A debarring official . . .</p> <p>Imposes debarment for a specified period as a final determination that a person is not presently responsible.</p>
---	--

A suspending official . . .	A debarring official . . .
<p>(b) Must—</p> <p>(1) Have <i>adequate evidence</i> that there may be a cause for debarment of a person; and</p> <p>(2) Conclude that <i>immediate action</i> is necessary to protect the Federal interest.</p> <p>(c) Usually imposes the suspension <i>first</i>, and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.</p>	<p>Must conclude, based on a <i>preponderance of the evidence</i>, that the person has engaged in conduct that warrants debarment.</p> <p>Imposes debarment <i>after</i> giving the respondent notice of the action and an opportunity to contest the proposed debarment.</p>

**§ 1006.610 What procedures does the Inter-American Foundation use in suspension and debarment actions?**

In deciding whether to suspend or debar you, we handle the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, we use the procedures in this subpart and subpart G of this part.

(b) For debarment actions, we use the procedures in this subpart and subpart H of this part.

**§ 1006.615 How does the Inter-American Foundation notify a person of a suspension or debarment action?**

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or e-mail address of—

- (1) You or your identified counsel; or
- (2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

**§ 1006.620 Do Federal agencies coordinate suspension and debarment actions?**

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

**§ 1006.625 What is the scope of a suspension or debarment?**

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of

all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official—

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

**§ 1006.630 May the Inter-American Foundation impute conduct of one person to another?**

For purposes of actions taken under this rule, we may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* We may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) *Conduct imputed from an organization to an individual, or between individuals.* We may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or

**§ 1006.635**

reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* We may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

**§ 1006.635 May the Inter-American Foundation settle a debarment or suspension action?**

Yes, we may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

**§ 1006.640 May a settlement include a voluntary exclusion?**

Yes, if we enter into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

**§ 1006.645 Do other Federal agencies know if the Inter-American Foundation agrees to a voluntary exclusion?**

(a) Yes, we enter information regarding a voluntary exclusion into the *EPLS*.

(b) Also, any agency or person may contact us to find out the details of a voluntary exclusion.

**Subpart G—Suspension**

**§ 1006.700 When may the suspending official issue a suspension?**

Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that—

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § 1006.800(a), or

**22 CFR Ch. X (4–1–05 Edition)**

(b) There exists adequate evidence to suspect any other cause for debarment listed under § 1006.800(b) through (d); and

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

**§ 1006.705 What does the suspending official consider in issuing a suspension?**

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

**§ 1006.710 When does a suspension take effect?**

A suspension is effective when the suspending official signs the decision to suspend.

**§ 1006.715 What notice does the suspending official give me if I am suspended?**

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

- (a) That you have been suspended;
- (b) That your suspension is based on—
  - (1) An indictment;
  - (2) A conviction;

(3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or

(4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) upon which we relied under §1006.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other Inter-American Foundation procedures governing suspension decision making; and

(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

**§ 1006.720 How may I contest a suspension?**

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

**§ 1006.725 How much time do I have to contest a suspension?**

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

**§ 1006.730 What information must I provide to the suspending official if I contest a suspension?**

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Inter-American Foundation may seek further criminal, civil or administrative action against you, as appropriate.

**§ 1006.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?**

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's

**§ 1006.740**

initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

**§ 1006.740 Are suspension proceedings formal?**

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

**§ 1006.745 How is fact-finding conducted?**

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Inter-American Foundation agree to waive it in advance. If you want a copy of the

**22 CFR Ch. X (4-1-05 Edition)**

transcribed record, you may purchase it.

**§ 1006.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?**

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

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

**§ 1006.755 When will I know whether the suspension is continued or terminated?**

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

**§ 1006.760 How long may my suspension last?**

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension

## Inter-American Foundation

## § 1006.805

in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

### Subpart H—Debarment

#### § 1006.800 What are the causes for debarment?

We may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State anti-trust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment

by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 1006.120;

(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 § 1006.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

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

#### § 1006.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § 1006.800 of this subpart, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 1006.615, advising you—

(a) That the debarring official is considering debarring you;

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) Of the cause(s) under § 1006.800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other Inter-American Foundation procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and non-procurement programs and activities.

**§ 1006.810**

**22 CFR Ch. X (4-1-05 Edition)**

**§ 1006.810 When does a debarment take effect?**

A debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

**§ 1006.815 How may I contest a proposed debarment?**

If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

**§ 1006.820 How much time do I have to contest a proposed debarment?**

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) We consider the Notice of Proposed Debarment to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

**§ 1006.825 What information must I provide to the debarring official if I contest a proposed debarment?**

(a) In addition to any information and argument in opposition, as a respondent your submission to the debarring official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § 1006.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Inter-American Foundation may seek further criminal, civil or administrative action against you, as appropriate.

**§ 1006.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?**

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

**§ 1006.835 Are debarment proceedings formal?**

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible

## Inter-American Foundation

## § 1006.860

procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

### § 1006.840 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Inter-American Foundation agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

### § 1006.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § 1006.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 1006.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

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

### § 1006.850 What is the standard of proof in a debarment action?

(a) In any debarment action, we must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

### § 1006.855 Who has the burden of proof in a debarment action?

(a) We have the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

### § 1006.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to

**§ 1006.865**

**22 CFR Ch. X (4-1-05 Edition)**

one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the

individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Other factors that are appropriate to the circumstances of a particular case.

**§ 1006.865 How long may my debarment last?**

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in § 1006.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

**§ 1006.870 When do I know if the debarring official debars me?**

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to § 1006.615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

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

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the

## Inter-American Foundation

## § 1006.925

Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

### § 1006.875 May I ask the debarring official to reconsider a decision to debar me?

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

### § 1006.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on—

- (a) Newly discovered material evidence;
- (b) A reversal of the conviction or civil judgment upon which your debarment was based;
- (c) A bona fide change in ownership or management;
- (d) Elimination of other causes for which the debarment was imposed; or
- (e) Other reasons the debarring official finds appropriate.

### § 1006.885 May the debarring official extend a debarment?

(a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F of this part, to extend the debarment.

## Subpart I—Definitions

### § 1006.900 Adequate evidence.

*Adequate evidence* means information sufficient to support the reasonable be-

lief that a particular act or omission has occurred.

### § 1006.905 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. The ways we use to determine control include, but are not limited to—

- (a) Interlocking management or ownership;
- (b) Identity of interests among family members;
- (c) Shared facilities and equipment;
- (d) Common use of employees; or
- (e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

### § 1006.910 Agency.

*Agency* means any United States executive department, military department, defense agency, or any other agency of the executive branch. Other agencies of the Federal government are not considered “agencies” for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive orders 12549 and 12689.

### § 1006.915 Agent or representative.

*Agent or representative* means any person who acts on behalf of, or who is authorized to commit, a participant in a covered transaction.

### § 1006.920 Civil judgment.

*Civil judgment* means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-3812).

### § 1006.925 Conviction.

*Conviction* means—

- (a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction,

**§ 1006.930**

whether entered upon a verdict or plea, including a plea of nolo contendere; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

**§ 1006.930 Debarment.**

*Debarment* means an action taken by a debarment official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

**§ 1006.935 Debarment official.**

(a) *Debarment official* means an agency official who is authorized to impose debarment. A debarment official is either—

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

(b) [Reserved]

**§ 1006.940 Disqualified.**

*Disqualified* means that a person is prohibited from participating in specified Federal procurement or non-procurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 276(a));

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

**§ 1006.945 Excluded or exclusion.**

*Excluded or exclusion* means—

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

**22 CFR Ch. X (4–1–05 Edition)**

**§ 1006.950 Excluded Parties List System**

*Excluded Parties List System (EPLS)* means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible. The *EPLS* system includes the printed version entitled, “List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs,” so long as published.

**§ 1006.955 Indictment.**

*Indictment* means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

**§ 1006.960 Ineligible or ineligibility.**

*Ineligible or ineligibility* means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

**§ 1006.965 Legal proceedings.**

*Legal proceedings* means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801-3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

**§ 1006.970 Nonprocurement transaction.**

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

- (1) Grants.
- (2) Cooperative agreements.
- (3) Scholarships.
- (4) Fellowships.
- (5) Contracts of assistance.
- (6) Loans.
- (7) Loan guarantees.
- (8) Subsidies.
- (9) Insurances.
- (10) Payments for specified uses.
- (11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

**Inter-American Foundation**

**§ 1006.1020**

**§ 1006.975 Notice.**

*Notice* means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § 1006. 615.)

**§ 1006.980 Participant.**

*Participant* means any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.

**§ 1006.985 Person.**

*Person* means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

**§ 1006.990 Preponderance of the evidence.**

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

**§ 1006.995 Principal.**

*Principal* means—

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

**§ 1006.1000 Respondent.**

*Respondent* means a person against whom an agency has initiated a debarment or suspension action.

**§ 1006.1005 State.**

(a) *State* means—

(1) Any of the states of the United States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a state.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

**§ 1006.1010 Suspending official.**

(a) *Suspending official* means an agency official who is authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

**§ 1006.1015 Suspension.**

*Suspension* is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

**§ 1006.1020 Voluntary exclusion or voluntarily excluded.**

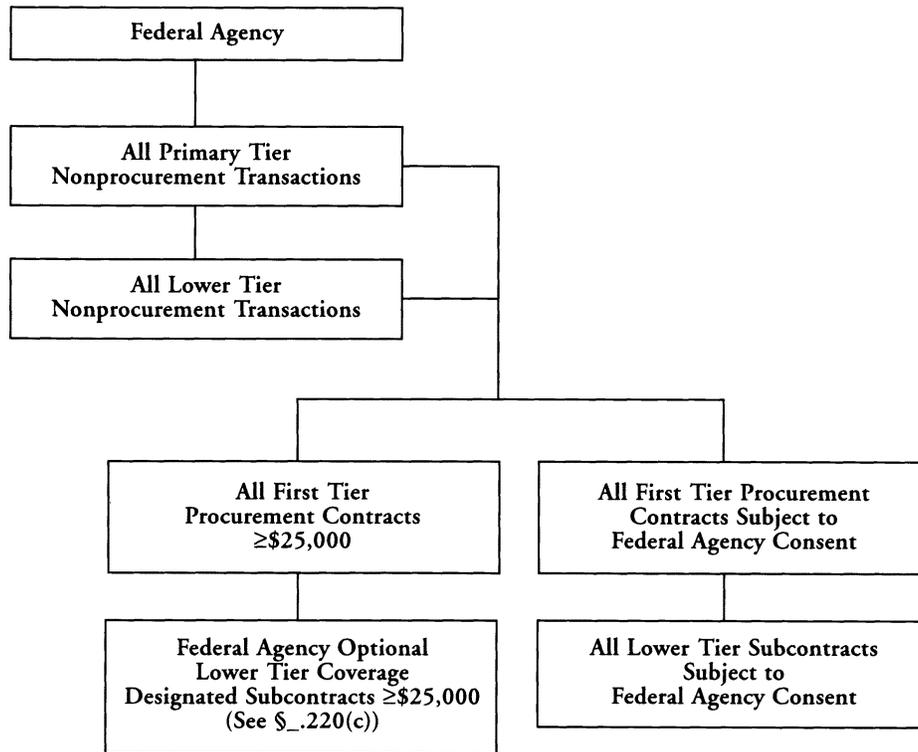
(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

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

**Subpart J [Reserved]**

APPENDIX TO PART 1006—COVERED TRANSACTIONS

COVERED TRANSACTIONS



**PART 1007—SALARY OFFSET**

**§ 1007.1 Purpose and scope.**

- 1007.1 Purpose and scope.
- 1007.2 Definitions.
- 1007.3 Applicability.
- 1007.4 Notice requirements.
- 1007.5 Hearing.
- 1007.6 Written decision.
- 1007.7 Coordinating offset with another Federal agency.
- 1007.8 Procedures for salary offset.
- 1007.9 Refunds.
- 1007.10 Statute of limitations.
- 1007.11 Non-waiver of rights.
- 1007.12 Interest, penalties, and administrative costs.

AUTHORITY: 5 U.S.C. 5514, E.O. 12107, 3 CFR, 1978 Comp., p. 264; 5 CFR part 550, subpart K, and 22 U.S.C. 290f(e)(11).

SOURCE: 57 FR 2837, Jan. 24, 1992, unless otherwise noted.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to all federal employees who owe debts to the Inter-American Foundation (IAF) and to current employees of the Inter-American Foundation who owe debts to other federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

- (1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*;

## Inter-American Foundation

## § 1007.4

(2) The Social Security Act, 42 U.S.C. 301 *et seq.*;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.*, 4 CFR parts 101 through 105, 45 CFR part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

### § 1007.2 Definitions.

For the purposes of the part, the following definitions will apply:

*Agency* means an executive agency as defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

*Creditor Agency* means the agency to which the debt is owed.

*Debt* means an amount owed to the United States from sources which include loans insured or guaranteed by

the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

*Disposable pay* means the amount that remains from an employee's federal pay after the required deductions for social security, federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, federal employment taxes, and any other deductions that are required to be withheld by law.

*Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the President of the Inter-American Foundation.

*Paying Agency* means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

*President* means the President of the Inter-American Foundation or the President's designee.

*Salary offset* means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

### § 1007.3 Applicability.

(a) These regulations are to be followed when:

(1) The Inter-American Foundation is owed a debt by an individual currently employed by another federal agency;

(2) The Inter-American Foundation is owed a debt by an individual who is a current employee of the Inter-American Foundation; or

(3) The Inter-American Foundation employs an individual who owes a debt to another federal agency.

### § 1007.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with

## § 1007.5

## 22 CFR Ch. X (4-1-05 Edition)

written notice, signed by the President, of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 *et seq.*;

(5) The employee's right to inspect, request, and receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

### § 1007.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the President of the Inter-American Foundation stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the President no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

### § 1007.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule.

### § 1007.7 Coordinating offset with another Federal agency.

(a) *The Inter-American Foundation as the creditor agency.* (1) When the President determines that an employee of another federal agency owes a delinquent debt to the Inter-American Foundation, the President shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify to the paying agency in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that Foundation regulations for salary offset have been

## Inter-American Foundation

## § 1007.9

approved by the Office of Personnel Management;

(iii) If collection must be made in installments, the President must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(v) If the employee is in the process of separating, the Foundation must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the Inter-American Foundation. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of 5 CFR 550.1108 have been followed; and

(vi) If the employee has already separated and all the payments due from the paying agency have been paid, the President may request unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *The Foundation as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the Inter-American Foundation has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The Inter-American Foundation shall not review the merits of the creditor agency's determination of the

validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the Inter-American Foundation and before the debt is collected completely, the Inter-American Foundation must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished to the creditor agency with notice of the employee's transfer.

### § 1007.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the President's notice of intention to offset as provided in §1007.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay interval for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payments in accordance with 31 U.S.C. 3716.

### § 1007.9 Refunds.

(a) The Inter-American Foundation will refund promptly any amounts deducted to satisfy debts owed to the IAF when the debt is waived, found not owed to the IAF, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by IAF to satisfy debts owed to the creditor agency when the debt is waived, found

**§ 1007.10**

not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

**§ 1007.10 Statute of limitations.**

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

**§ 1007.11 Non-waiver of rights.**

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutes or contract(s) to the contrary.

**§ 1007.12 Interest, penalties, and administrative costs.**

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

**PART 1008—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 1008.100 What does this part do?
- 1008.105 Does this part apply to me?
- 1008.110 Are any of my Federal assistance awards exempt from this part?
- 1008.115 Does this part affect the Federal contracts that I receive?

**Subpart B—Requirements for Recipients Other Than Individuals**

- 1008.200 What must I do to comply with this part?
- 1008.205 What must I include in my drug-free workplace statement?
- 1008.210 To whom must I distribute my drug-free workplace statement?

**22 CFR Ch. X (4-1-05 Edition)**

- 1008.215 What must I include in my drug-free awareness program?
- 1008.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 1008.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 1008.230 How and when must I identify workplaces?

**Subpart C—Requirements for Recipients Who Are Individuals**

- 1008.300 What must I do to comply with this part if I am an individual recipient?
- 1008.301 [Reserved]

**Subpart D—Responsibilities of Inter-American Foundation Awarding Officials**

- 1008.400 What are my responsibilities as an Inter-American Foundation awarding official?

**Subpart E—Violations of This Part and Consequences**

- 1008.500 How are violations of this part determined for recipients other than individuals?
- 1008.505 How are violations of this part determined for recipients who are individuals?
- 1008.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1008.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 1008.605 Award.
- 1008.610 Controlled substance.
- 1008.615 Conviction.
- 1008.620 Cooperative agreement.
- 1008.625 Criminal drug statute.
- 1008.630 Debarment.
- 1008.635 Drug-free workplace.
- 1008.640 Employee.
- 1008.645 Federal agency or agency.
- 1008.650 Grant.
- 1008.655 Individual.
- 1008.660 Recipient.
- 1008.665 State.
- 1008.670 Suspension.

AUTHORITY: 41 U.S.C. 701 *et seq.*

SOURCE: 68 FR 66590, Nov. 26, 2003, unless otherwise noted.

**Subpart A—Purpose and Coverage**

**§ 1008.100 What does this part do?**

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

**§ 1008.105 Does this part apply to me?**

(a) Portions of this part apply to you if you are either—

(1) A recipient of an assistance award from the Inter-American Foundation; or

(2) A(n) Inter-American Foundation awarding official. (See definitions of award and recipient in §§ 1008.605 and 1008.660, respectively.)

(b) The following table shows the subparts that apply to you:

If you are . . .	see subparts . . .
(1) A recipient who is not an individual .....	A, B and E.
(2) A recipient who is an individual .....	A, C and E.
(3) A(n) Inter-American Foundation awarding official .....	A, D and E.

**§ 1008.110 Are any of my Federal assistance awards exempt from this part?**

This part does not apply to any award that the Inter-American Foundation President or designee determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

tain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 1008.205 through 1008.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 1008.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 1008.230).

**§ 1008.115 Does this part affect the Federal contracts that I receive?**

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 1008.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

**§ 1008.205 What must I include in my drug-free workplace statement?**

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more

**Subpart B—Requirements for Recipients Other Than Individuals**

**§ 1008.200 What must I do to comply with this part?**

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to main-

**§ 1008.210**

than five calendar days after the conviction.

**§ 1008.210 To whom must I distribute my drug-free workplace statement?**

You must require that a copy of the statement described in §1008.205 be given to each employee who will be engaged in the performance of any Federal award.

**§ 1008.215 What must I include in my drug-free awareness program?**

You must establish an ongoing drug-free awareness program to inform employees about—

- (a) The dangers of drug abuse in the workplace;
- (b) Your policy of maintaining a drug-free workplace;

If . . .	then you . . .
(a) The performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more ...	must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the Inter-American Foundation awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

**§ 1008.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?**

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

- (a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by §1008.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must\_\_
  - (1) Be in writing;
  - (2) Include the employee's position title;
  - (3) Include the identification number(s) of each affected award;
  - (4) Be sent within ten calendar days after you learn of the conviction; and
  - (5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

**22 CFR Ch. X (4-1-05 Edition)**

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

**§ 1008.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?**

If you are a new recipient that does not already have a policy statement as described in §1008.205 and an ongoing awareness program as described in §1008.215, you must publish the statement and establish the program by the time given in the following table:

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either\_\_

- (1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or
- (2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

**§ 1008.230 How and when must I identify workplaces?**

(a) You must identify all known workplaces under each Inter-American Foundation award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces\_\_

- (1) To the Inter-American Foundation official that is making the award, either at the time of application or upon award; or

## Inter-American Foundation

## § 1008.505

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by Inter-American Foundation officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Inter-American Foundation awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the Inter-American Foundation awarding official.

### Subpart C—Requirements for Recipients Who Are Individuals

#### § 1008.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a(n) Inter-American Foundation award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Inter-American Foundation awarding official or other designee for each award that you currently have, unless § 1008.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must in-

clude the identification number(s) of each affected award.

#### § 1008.301 [Reserved]

### Subpart D—Responsibilities of Inter-American Foundation Awarding Officials

#### § 1008.400 What are my responsibilities as a(n) Inter-American Foundation awarding official?

As a(n) Inter-American Foundation awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

### Subpart E—Violations of this Part and Consequences

#### § 1008.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Inter-American Foundation President or designee determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

#### § 1008.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Inter-American Foundation President or designee determines, in writing, that—

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

**§ 1008.510 What actions will the Federal Government take against a recipient determined to have violated this part?**

If a recipient is determined to have violated this part, as described in § 1008.500 or § 1008.505, the Inter-American Foundation may take one or more of the following actions—

- (a) Suspension of payments under the award;
- (b) Suspension or termination of the award; and
- (c) Suspension or debarment of the recipient under 22 CFR part 1006, for a period not to exceed five years.

**§ 1008.515 Are there any exceptions to those actions?**

The Inter-American Foundation may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Inter-American Foundation determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

**Subpart F—Definitions**

**§ 1008.605 Award.**

*Award* means an award of financial assistance by the Inter-American Foundation or other Federal agency directly to a recipient.

(a) The term award includes:

- (1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.
- (2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule [Agency-specific CFR citation] that implements OMB Circular A-102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

- (1) Technical assistance that provides services instead of money.
- (2) Loans.
- (3) Loan guarantees.
- (4) Interest subsidies.
- (5) Insurance.
- (6) Direct appropriations.

(7) 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).

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Inter-American Foundation.

**§ 1008.610 Controlled substance.**

*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.

**§ 1008.615 Conviction.**

*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.

**§ 1008.620 Cooperative agreement.**

*Cooperative agreement* means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 1008.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

**§ 1008.625 Criminal drug statute.**

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

**§ 1008.630 Debarment.**

*Debarment* means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and

## Inter-American Foundation

## § 1008.670

the common rule, Government-wide Debarment and Suspension (Non-procurement), that implements Executive Order 12549 and Executive Order 12689.

### § 1008.635 Drug-free workplace.

*Drug-free workplace* means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

### § 1008.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

- (1) All direct charge employees;
- (2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (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).

### § 1008.645 Federal agency or agency.

*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.

### § 1008.650 Grant.

*Grant* means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

### § 1008.655 Individual.

*Individual* means a natural person.

### § 1008.660 Recipient.

*Recipient* means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

### § 1008.665 State.

*State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

### § 1008.670 Suspension.

*Suspension* means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Non-procurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.