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§ 24.885 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

§ 24.900 Adequate evidence.

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

§ 24.905 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.

§ 24.910 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.

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§ 24.915 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.

§ 24.920 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).

§ 24.925 Conviction.

Conviction means—

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of *nolo contendere*; or

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

§ 24.930 Debarment.

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

§ 24.935 Debarring official.

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

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

§ 24.940 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).

§ 24.945 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.

§ 24.947 Hearing officer.

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

[68 FR 66596, Nov. 26, 2003]

§ 24.950 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.

§ 24.955 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.

§ 24.960 Ineligible or ineligibility.

Ineligible or ineligibility means that a person or commodity is prohibited

from covered transactions because of an exclusion or disqualification.

§ 24.965 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.

§ 24.970 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.

§ 24.975 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 § 24.615.)

§ 24.980 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.

§ 24.985 Person.

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

§ 24.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to

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the conclusion that the fact at issue is more probably true than not.

§ 24.995 **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.

(c) A person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. Persons who have a critical influence on, or substantive control over, a covered transaction may include, but are not limited to:

(1) Loan officers;

(2) Staff appraisers and inspectors;

(3) Underwriters;

(4) Bonding companies;

(5) Borrowers under programs financed by HUD or with loans guaranteed, insured, or subsidized through HUD programs;

(6) Purchasers of properties with HUD-insured or Secretary-held mortgages;

(7) Recipients under HUD assistance agreements;

(8) Ultimate beneficiaries of HUD programs;

(9) Fee appraisers and inspectors;

(10) Real estate agents and brokers;

(11) Management and marketing agents;

(12) Accountants, consultants, investment bankers, architects, engineers, and attorneys who are in a business relationship with participants in connection with a covered transaction under a HUD program;

(13) Contractors involved in the construction or rehabilitation of properties financed by HUD, with HUD insured loans, or acquired properties, in-

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cluding properties held by HUD as mortgagee-in-possession;

(14) Closing agents;

(15) Turnkey developers of projects financed by or with financing insured by HUD;

(16) Title companies;

(17) Escrow agents;

(18) Project owners;

(19) Administrators of hospitals, nursing homes, and projects for the elderly financed or insured by HUD; and

(20) Developers, sellers or owners of property financed with loans insured under title I or title II of the National Housing Act.

[68 FR 66544, 66594, 66596, Nov. 26, 2003]

§ 24.1000 **Respondent.**

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

§ 24.1005 **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.

§ 24.1010 **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]

§ 24.1015 **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.

§ 24.1017 Ultimate beneficiaries.

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

[69 FR 53978, Sept. 3, 2004]

§ 24.1020 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—Limited Denial of Participation

SOURCE: 68 FR 66597, Nov. 26, 2003, unless otherwise noted.

§ 24.1100 What is a limited denial of participation?

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

§ 24.1105 Who may issue a limited denial of participation?

The Secretary designates HUD officials who are authorized to impose a limited denial of participation, affecting any participant and/or their affiliates, except FHA-approved mortgagees.

§ 24.1110 When may a HUD official issue a limited denial of participation?

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

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

(2) Irregularities in a person's past performance in a HUD program;

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

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

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

(6) Deficiencies in ongoing construction projects;

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

(8) Commission of an offense listed in § 24.800;

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

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

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

(12) Debarment or suspension by another federal agency for any cause substantially the same as provided in § 24.800.

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

(c) Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for