

PART 1940 - GENERAL

SUBPART M - Governmentwide Debarment and Suspension (Nonprocurement) and Requirements for Drug-Free Work Place

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

Exhibit B - PART 3017 - Governmentwide Debarment and Suspension (Nonprocurement)

Exhibit C - PART 3021 - Governmentwide Requirements for Drug-Free Work Place

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PART 1940 - GENERAL

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

§ 1940.601 Purpose.

Executive Order 12549, signed February 18, 1986, provides that Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. The Drug-free Workplace Act of 1988 also placed new requirements on all recipients of government grants; it does not affect applicants for loans only. This subpart implements the 7 Code of Federal Register (CFR) parts 3017 & 3021 which are attached as Exhibits B & C of this Instruction, respectively and provides guidance in actions that are specific to Rural Development. These administrative provisions are only a supplement to the information contained in Exhibits B & C, and do not constitute information that would be of benefit to the public.

§ 1940.602 Policy and scope.

This subpart applies to both individual and group-type loans (insured and guaranteed) and grants in connection with any program administered by Rural Development. Any action to be taken under this subpart is for the protection of the public interest. 7 CFR parts 3017 and 3021 are intended to deter fraud, waste, and abuse in Federal nonprocurement transactions. Aside from a case of fraud, waste, or abuse, it is Rural Development's policy that delinquent borrowers' names will not be placed on the "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" (EPLS). Rural Development may however, debar or suspend borrowers who owe collections only for (unsecured) debts unless the borrower is making payments on the debt according to a schedule to Rural Development as agreed to by Agency officials or the debt does not meet the criteria for settlement regulations. If, however, Rural Development borrowers' names are placed on the list by other agencies, Rural Development may not extend additional loan or grant assistance to them for the period of debarment or suspension unless an exception pursuant to Exhibit B § 3017.120 of this Instruction is obtained prior to processing the application for assistance.

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LOAN AND GRANT MAKING
GENERAL

RD Instruction 1940-M
§ 1940.602 (Con.)

(a) Any servicing action authorized by the Rural Development loan servicing regulations which do not involve new loan funds is not covered by the Governmentwide Debarment and Suspension provisions pursuant to Exhibit B § 3017.310 of this Instruction. (Protective advances authorized by Rural Development's loan servicing regulations may be made to protect the Government's security interest.)

(b) Typically, in the Rural Development loan/grant making programs, the loan approval/concurring official, contracting specialists and/or staff involved with the acceptance of outside contractors or applicants are responsible for conducting EPLS screening. The screening includes but is not limited to; applicant, contractors and/or subcontractors that exceed the \$25,000 threshold as outlined in § 3017.220 of Exhibit B of this Instruction

§ 1940.603 Definitions

Refer to those in § 3017.900 of Exhibit B subpart I and Exhibit C subpart F of this Instruction except in those specific cases which follow:

Agency. Rural Housing Service, Rural Business-Cooperative Service and Rural Utilities Service, with the exception of the Electric and Telecommunications programs as appropriate.

Debarring or Suspending Official. Agency Administrator.

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

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

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

§ 1940.603 (Con.)

Period of Debarment. Will be determined based on the severity of the case's impact on affected borrowers, programs, or operations. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment. In determining the period of debarment, the debarring official may consider the factors in Exhibit B § 3017.860 of this Instruction. If a suspension has preceded a debarment, the debarring official must consider the time of the suspension. If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, the period of debarment may not exceed five years.

§ 1940.604 Effect of action.

(a) Debarment and suspension are drastic actions which may severely affect the economic well being of the persons debarred or suspended. Any person or organization whose name appears on the debarment list referenced in § 1940.603(d), along with their affiliates as defined in Exhibit B of this Instruction, will not be permitted to participate either directly or indirectly, in Government programs except Social Security or others shown in Exhibit B.

(b) If the applicant's name is on the debarment list referenced in § 1940.603(d), Rural Development will not provide the requested assistance unless the type of assistance requested is listed in § 1940.602 of this Instruction, or an exception can be made under one of the provisions listed in § 1940.605 of this Instruction or § 3017.120 of Exhibit B and § 3021.515 of Exhibit C of this Instruction. This action is not appealable.

§ 1940.605 Exceptions.

(a) Exceptions may be granted, but only infrequently (see § 3017.120 of Exhibit B and § 3021.515 of Exhibit C of this Instruction). When an existing borrower's name is placed on the list by another Federal agency, subsequent assistance may be provided when it is determined that without an exception, the Government's interest would be adversely affected or such funding is necessary to enable the borrower to achieve program objectives. An exception can be processed in accordance with § 3017.120 of Exhibit B and § 3021.515 of Exhibit C of this Instruction.

(b) When there is cause for an exception, the loan/grant processing official will investigate the reason(s), develop the documentation stating the reason(s) for deviating from the President's policy and send the information with the borrower's case file and recommendations to the State Director (see § 1940.608 of this Instruction). Making an exception is a discretionary act and any decision is not appealable.

RD Instruction 1940-M
§ 1940.605 (Con.)

(c) Any exceptions granted shall be reported that same day to the Director, PSS, in the National Office (see § 3017.520 of Exhibit B of this Instruction).

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

§ 1940.606 Actions and responsibilities - Financial Assistance Eligibility.

(a) Rural Development loan/grant approval officials, contracting specialists and/or staff involved with the acceptance of outside contractors or applicants are responsible for reviewing and becoming totally familiar with the causes for debarment and suspension as shown in Exhibit B, § 3017.800 of this Instruction.

(b) The screening of an outside contractor and/or applicant's name for debarment history can be performed electronically by accessing the GSA Web site <http://epls.arnet.gov> in accordance with Exhibit B, § 3017.430 of this Instruction. Screening should be completed at 2 points in the loan/grant making process. The first check should be upon receipt of a pre-application or application for Rural Development financial assistance, the reviewing official must determine whether the contractor and/or applicant's name appears on the current debarment list in accordance with Exhibit B, § 3017.425 of this Instruction. The second check should occur immediately before the loan closing or grant award to prevent granting assistance to applicants that could subsequently appear on the list after an application has been approved in accordance with Exhibit B, § 3017.425 of this Instruction. It is imperative that the loan/grant processing official document the case file with the date of the Nonprocurement List checked. A dated printed copy of the query results of a search on the GSA Web site will suffice in documenting an applicant's screening. If the applicant's name is on the list, assistance will be denied unless the type of assistance requested is listed in § 1940.602 of this subpart or an exception is processed in accordance with § 1940.605 of this subpart or § 3017.120 of Exhibit B of this Instruction. If the applicant's name is not on the list, the loan/grant-processing official will:

§ 1940.606(b) (Con.)

(1) Obtain the applicant's signature (lender's signature for guaranteed loans) on certification Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions." Copies or facsimiles are acceptable. Inform the certifying party of the significance of lower tier certifications outlined on the back of form; they are especially significant where large construction contracts are awarded. For lower tier transactions outlined in § 3017.220 of Exhibit B of this Instruction as they pertain to Rural Development including such persons or entities as builders, contractors, dealers, suppliers, manufacturers, real estate brokers or agents, lenders, sureties, insurance companies, engineers, architects, inspectors, appraisers, auditors, loan closing agents or other attorneys, Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" is used.

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

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

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

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

(a) When there is cause for debarment or suspension, the loan processing official will conduct the necessary investigation and referral as discussed in Exhibit B, § 3017.600 of this Instruction. Particular attention should be paid to Exhibit B, § 3017.800 of this Instruction, when listing the causes for debarment.

(b) Due to potentially serious consequences resulting from a suspension or debarment action and the possibility of a challenge to the Agency action, it is important that all recommendations for these actions be fully supported with documentation. If the appropriate Administrator has access to all relevant information during the decision making process, and this information is contained in the appropriate files, the Agency will be more likely to withstand any challenge of its decision to impose suspension or debarment.

(c) All recommendations must be supported with documentation justifying the request. The materials submitted to the PSS, plus documents submitted by the respondents during the administrative process will comprise part of the administrative record. The quality and accuracy of this narrative record can ultimately determine the success or failure of a case if the case is appealed to an Administrative Law Judge. (see Exhibit A of this Instruction.

(d) In order for the Agency to be successful in its suspension and/or debarment actions, the case file must be fully documented. The Agency must include all documents relating to the relationship between the suspension/debarment target and the Agency. These include, but are not limited to, mortgages, notes, contracts, and management or partnership agreements. Experience suggests that we should exercise care in identifying the correct person or entity to be suspended or debarred to prevent the possibility of losing a case on procedural error for failure to provide proper and timely notice to the right person or entity.

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

(f) Once the investigation and documentation is completed, send the pertinent information (suspension or debarment file) to the applicable Agency Administrator, Attention: Director of Program Support Staff. The Administrator will decide if debarment or suspension is appropriate. If so, the necessary notification will be made to the person against whom the action is taken as required in Exhibit B, § 3017.615 of this Instruction, after the Office of the General Counsel has cleared the notice for legal sufficiency. (Revised 03-15-06, PN 396.)

RD Instruction 1940-M
§ 1940.607 (Con.)

(g) In addition to the responsibilities outlined in Exhibit B, § 3017.800 of this Instruction, it is imperative to compile debarment case files in accordance with the standards outlined in Exhibit A of this Instruction.

§ 1940.608 Redelegation of authority.

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

§ 1940.609 Appeal of debarment or suspension.

Appeals of any action under this subpart are handled pursuant to Exhibit B
§ 3017.890 of this Instruction.

§§ 1940.610 - 1940.650 [Reserved].

Attachments: Exhibits A, B and C

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

POSITIONS 1 & 2

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

POSITION 3

Documentary Evidence From The State Office In Chronological
Order With The Most Recent Documents On Top

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

3. Copies of any articles of incorporation, loan agreements, by-laws or partnership agreements;
 4. Record of other Agency contacts with respondents (including printouts of relevant global notes from MortgageServ, if applicable); (Revised 01-09-08, PN 417.)
 5. Record of visits and copies of running record entries;
 6. Inspection/Certifications;
 7. Criminal indictments, Judgments, Settlements and Plea Bargain Agreements;
- Construction Matters:
 - Contract and all written Agreements
 - Subcontracts
 - Amendments and Change Orders
 - Plans and Specifications
 - Warranty Documents
 - Payment Information
 - Release of Claims, Lien Waivers
 - Mechanics or Suppliers Liens and Judgments
 - Application Matters:
 - Application
 - Verification of Employment
 - Interest Credit or Subsidy Repayment Agreements
 - Conditional Commitment

POSITION 4

OIG and Other Investigation Reports

PART 3017 - Governmentwide Debarment And Suspension (Nonprocurement)

[2004 CFR Title 7, Volume 15](#) if this hyperlink does not work the following may be copied and pasted directly into your address bar:

http://www.access.gpo.gov/nara/cfr/waisidx_04/7cfr3017_04.html

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

[2004 CFR Title 7, Volume 15](#) if this hyperlink does not work the following may be copied and pasted directly into your address bar:

http://www.access.gpo.gov/nara/cfr/waisidx_04/7cfr3021_04.html

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