

PART 1940 - GENERAL

SUBPART M - Governmentwide Debarment and Suspension (Nonprocurement) and Requirements for the Drug-Free Workplace Act

TABLE OF CONTENTS

<u>Sec.</u>		<u>Page</u>
1940.601	Purpose.	1
1940.602	Policy and scope.	1
1940.603	Definitions.	2
1940.604	Effect of action.	3
1940.605	Exceptions.	4
1940.606	Actions and responsibilities - Financial Assistance Eligibility	4
1940.607	Actions and responsibilities - Recommending Suspension and/or Debarment Actions.	6
1940.608	Redelegation of authority.	8
1940.609	Appeal of debarment or suspension.	8
1940.610	Rural Development Training Plan and Reporting	8
1940.611	- 1940.650 [Reserved]	
Exhibit A	- Format for submission of the Suspension and/or Debarment Case File (Four Position File Folder)	
Exhibit B	- 2 Code of Federal Regulations(C.F.R) PART 180 OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) and PART 417 Non-Procurement Debarment and Suspension	
Exhibit C	- PART 421 -Requirements for Drug-Free Workplace Act (Financial Assistance)	

oOo

PART 1940 - GENERAL

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

§ 1940.601 Purpose.

Executive Order 12549, signed February 18, 1986, provides that Executive departments and agencies shall participate in a Governmentwide 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 2 Code of Federal Regulations (C.F.R.) parts 180 and 417 and 2 C.F.R. part 421 which are attached as Exhibits B and C of this Instruction, respectively, and provides guidance in actions that are specific to Rural Development (RD). 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 loans (insured and guaranteed) and grants in connection with any program administered by RD. Any action taken under this subpart is for the protection of the public interest. 2 C.F.R. parts 180 and 417 and 2 C.F.R. part 421 are intended to deter fraud, waste, and abuse in Federal nonprocurement transactions. Aside from a case of fraud, waste, or abuse, it is RD's policy not to place delinquent borrower or grantee names on the "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" available through the System for Award Management (SAM) Web site, <https://www.SAM.gov>. RD may, however, debar or suspend borrowers who owe collections only for (unsecured) debts unless the borrower is making scheduled payments on the debt to RD as agreed to by Agency officials or the debt does not meet the criteria for settlement regulations. If, however, RD borrowers'/grantees' names are placed on the list by other agencies, RD may not extend additional loan or grant assistance for the period of debarment or suspension unless an exception pursuant to 2 C.F.R. §§ 180.135 and 417.137 is obtained prior to processing the application for assistance.

DISTRIBUTION: WSAL

LOAN AND GRANT MAKING
GENERAL

RD Instruction 1940-M
§ 1940.602 (Con.)

(a) Any servicing action authorized by the RD loan servicing regulations which do not involve new loan funds is not covered by the Governmentwide Debarment and Suspension provisions pursuant to 2 C.F.R. § 180.310. (Protective advances authorized by RD's loan servicing regulations may be implemented to protect the Government's security interest.)

(b) Typically, in RD loan/grant programs, the loan/grant approval/concurring official, contracting specialists, and/or other staff involved with the acceptance of outside contractors or applicants are responsible for conducting SAM screening. The screening includes, but is not limited to, the applicant and contractors and/or subcontractors that exceed the \$25,000 threshold as outlined in 2 C.F.R. §§ 180.220 and 417.220.

(c) For the Section 502 Single Family Housing Guaranteed Loan Program, the approved lender, or their agent, is responsible for screening the applicant on SAM.gov as part of their eligibility determination of the applicant. The lender will document the eligibility determination in its permanent file. RD staff is not required to rescreen an applicant upon request of a loan guarantee.

§ 1940.603 Definitions

Refer to the definitions in 2 C.F.R. Parts 180 (Subpart I) and 417 (Subpart I) and the following definitions:

Agency. Rural Housing Service (RHS), Rural Business-Cooperative Service, or Rural Utilities Service.

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/Coordinator. The RD Suspension and Debarment Coordinator, of the Program Support Staff (PSS), as designated by the Agency's Administrator, will receive and process all proposed Agency Debarment or Suspension actions. The names of persons debarred or suspended by the Agency's Administrator will be submitted to the GSA by way of the USDA Office of the Chief Financial Officer. GSA is responsible for maintaining the System for Award Management (SAM.gov).

§ 1940.603 (Con.)

List Availability. The Governmentwide SAM exclusion listing is available electronically on the GSA Web site at <https://www.SAM.gov>. SAM is a data resource available now in the Do Not Pay portal. The Improper Payments Elimination and Recovery Improvement Act (IPERIA) mandates a review, as appropriate, before issuance of all payments and awards for all programs through Treasury's system. RD Instruction § 1940.606(b) describes pre-application responsibilities for screening potential clients and applicants.

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 3 years. However, if circumstances warrant, the debarring official may impose a longer period of debarment. The Secretary of Agriculture shall permanently debar from participation in USDA programs those convicted of having knowingly committed fraud in USDA programs. In determining the period of debarment, the debarring official may consider the factors in 2 C.F.R. § 180.860 in Exhibit B 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 5 years. A respondent contesting his or her Notice of proposed debarment is entitled to reconsideration by the debarring official under 2 CFR § 180.875.

§ 1940.604 Effect of action.

(a) Debarment and suspension are actions which may severely affect the economic well being of persons or entities. Any person or entity whose name appears on the debarment site, <https://www.SAM.gov>, along with 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 and other programs shown in Exhibit B.

(b) If the applicant's name appears on <https://www.SAM.gov>, RD will not provide the requested assistance unless it 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 2 C.F.R. §§ 180.135, 417.137 of Exhibit B and 7 C.F.R. § 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 2 C.F.R §§ 180.135, 417.137 of Exhibit B and 2 C.F.R. § 3021.515 of Exhibit C of this Instruction). When an existing borrower's/grantee's name is placed on <https://www.SAM.gov> 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, if the assistance is not provided or such funding is necessary to enable the borrower/grantee to achieve program objectives. An exception can be processed in accordance with 2 C.F.R. §§ 180.135, 417.137 of Exhibit B and 2 C.F.R. § 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/grantee's case file and recommendations to the State Director (see § 1940.608 of this Instruction).

(c) Any exceptions granted shall be reported that same day to the Director, PSS, in the National Office (see 2 C.F.R. §§ 180.135 and 417.137 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) RD loan/grant approval officials, contracting specialists, and/or staff involved with the acceptance of outside contractors or applicants are responsible for reviewing and becoming familiar with the causes for debarment and suspension as shown in Exhibit B, 2 C.F.R. §§ 180.800, 417.800 of this Instruction.

(b) The screening of an outside contractor and/or applicant's name for debarment history can be performed electronically by accessing <https://www.SAM.gov> in accordance with Exhibit B, 2 C.F.R. § 180.430 of this Instruction. Screening should be completed at two points in the loan/grant making process. The first check should be made upon receipt of a pre-application or application for RD financial assistance. The reviewing official must determine whether the contractor and/or applicant's name appears in the current

§ 1940.606(b) (Con.)

<https://www.SAM.gov> in accordance with Exhibit B, 2 C.F.R. § 180.425 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 <https://www.SAM.gov> after an application has been approved in accordance with Exhibit B, 2 C.F.R. § 180.425 of this Instruction. It is imperative that the loan/grant processing official document the case file with the date SAM.gov is checked. A dated printed copy of the query results of a SAM.gov search will suffice in documenting an applicant's screening. If the applicant's name appears in <https://www.SAM.gov>, 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 2 C.F.R. § 180.135 of Exhibit B of this Instruction. If the applicant's name is not in <https://www.SAM.gov>, the loan/grant processing official will:

(1) Obtain the applicant's signature (lender's signature for SFH guaranteed loans on form 3555-16, when applicable) 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 the form (they are especially significant where large construction contracts are awarded). For lower tier transactions outlined in 2 C.F.R. §§ 180.220, 417.220 of Exhibit B - of this Instruction, as they pertain to RD, 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 (guaranteed lenders use 3555-16, when applicable), "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" is used.

(2) Obtain the appropriate certification regarding the Drug-Free Workplace 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.

RD Instruction 1940-M
§ 1940.606(b) (Con.)

(3) Incorporate the applicable foregoing certifications (Forms AD-1047, AD-1048, AD-1049, 3555-16 and AD-1050) and associated documentation (SAM 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 Form RD 410-4, "Uniform Residential Loan Application," and use of the SAM.gov query screen prints prior to loan closing.

(5) For the Section 502 Single Family Housing Guaranteed Loan Program, language from Form 3555-16 incorporated into Form RD 3555-16, "Agreement for Participation in Single Family Housing Guaranteed/Insured Loan Programs of the United States Government" and Form RD 3555-21, "Request for Single Family Housing Loan Guarantee." Compliance with the requirements of this instruction are met when lenders certify on Form RD 3555-16 and applicants acknowledge and execute Form RD 3555-21.

(c) RD has a network of designated field and headquarters staff with secure token-enabled access to perform Do Not Pay (DNP) screenings (which include debarment history via SAM.gov) using the U.S. Treasury's DNP online portal. DNP queries will suffice for the performance of SAM.gov exclusion screenings to comply with the requirements of this Instruction. Such DNP screenings need to be documented in the same way as those using SAM.gov directly.

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

(a) When there is cause for debarment or suspension in the situation of a fact-based case originating from the Agency's field operations, the loan/grant processing official will conduct the necessary investigation and referral as discussed in Exhibit B, 2 C.F.R. § 180.600 of this Instruction. Particular attention should be paid to Exhibit B, 2 C.F.R. §§ 180.800 and 417.800 of this Instruction, when listing the causes for debarment.

§ 1940.607 (Con.)

(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 recommendation is more than 3 years old after the alleged wrongdoing, explanatory documentation must be provided indicating the reason(s) for the delay. If the appropriate Administrator has access to all relevant information during the decision making process, and the information is contained in the appropriate files, the Agency will be more likely to withstand challenges to its decision to impose suspension or debarment.

(c) The materials submitted to the List Officer (PSS), plus documents submitted by the respondents during the administrative process will comprise part of the administrative record. The quality and accuracy of the narrative record can ultimately determine the success or failure of a case appealed to Federal District Court (see Exhibit A of this Instruction).

(d) The Agency must include all documents relating to the relationship between the debarment target and the Agency including, but not limited to, mortgages, notes, contracts, and management or partnership agreements. Care should be exercised in identifying the correct person or entity to be debarred to prevent losing a case on procedural error for failure to provide proper and timely notice.

(e) When the 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 debarred, making determinations about imputing actions to other individuals, and debarring affiliates.

(f) Once the investigation and documentation is completed, send the pertinent information (debarment file) to the applicable Agency Administrator, and the RD Suspension and Debarment Coordinator, c/o RHS/PSS. The Administrator will decide if the debarment is appropriate. If so, the necessary notification will be made to the person/entity against whom/which the action is taken as required in Exhibit B, 2 C.F.R. 180.615 of this Instruction, after the Office of the General Counsel has cleared the notice for legal sufficiency.

RD Instruction 1940-M
§ 1940.607 (Con.)

(g) In addition to the causes outlined in Exhibit B, 2 C.F.R. §§ 180.800 and 417.800 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/grant assistance. For cases where the State Director does not have approval authority, the borrower's/grantee's case file, all pertinent information, and the State Director's recommendations will be forwarded to the Agency's Administrator, and the RD Suspension and Debarment Coordinator, c/o RHS/PSS.

§ 1940.609 Appeal of debarment or suspension.

Appeals of any action under this subpart, are handled pursuant to Federal District Court rules.

§§ 1940.610 Rural Development Training Plan and Reporting.

The Rural Development Suspension and Debarment Coordinator shall be responsible to keep up to date on regulations, requirements and annual training for suspension and debarment actions. Annual training certifications and periodic reports of suspension and debarment actions are required by the Office of the Chief Financial Officer.

§§ 1940.611 - 1940.650 [RESERVED]

Attachments: Exhibits A, B, and C

oOo

**Format For Submission of a Fact-Based 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 starting with the most recent documents.

- State Director's recommendation to the Agency Administrator concerning the action to be taken, including the recommended period for suspension or proposed debarment.
- Transmittal memoranda 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 suspension and/or debarment recommendation.
- Clear, cogent, and concise narrative setting out each person or entity to be suspended and/or debarred, the specific causes for suspension and/or debarment, the specific actions which give rise to each specific cause for suspension and/or debarment, an explanation as to why and how the specific action is a cause for suspension and/or 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 also 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 (including, but not limited to, documentation to establish relationships between the proposed suspended and/or debarred and the Government and/or the transfer of Federal funds);
 4. Record of other Agency contacts with respondents (including printouts of relevant global notes from MortgageServ, if applicable);
 5. Record of visits and copies of running record entries concerning aggrieved parties;
 6. Inspection/Certifications;
 7. Documentation concerning criminal indictments/convictions, Judgments, Settlements and Plea Bargain Agreements; recommendations of Office of the Inspector General investigations;
 8. Documentation to justify lapses in timeliness in the referral or processing of a case as required by 1940.607(b).
- 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

oOo

PARTS 180 and 417 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) and Non-Procurement Debarment and Suspension, respectively

The following hyperlinks may be copied and pasted directly into your address bar:

PART 180

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr180_main_02.tpl

PART 417

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr417_main_02.tpl

oOo

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

The following may be copied and pasted directly into your address bar:

<http://www.gpo.gov/fdsys/pkg/CFR-2012-title7-vol15/xml/CFR-2012-title7-vol15-part3021.xml>

oOo