Forest Service Handbook
National Headquarters - Washington Office
Washington, DC

Forest Service Handbook 1509.11 – Grants, Cooperative Agreements, and Other Agreements Handbook
Chapter 80 - Debarment and Suspension

Amendment: 1509.11-2011-1

Effective date: April 27, 2011

Duration: This amendment is effective until superseded or removed.

Superseded Directive: 1509.11_80, Amendment 1509.11-2009-1, October 20, 2009

Approved by: Barbara L. Cooper, Acting Associate Deputy Chief, OPS

Date approved: April 20, 2011

Responsible Staff:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

80: Changes chapter title from "Termination and Suspension and Debarment" to "Debarment and Suspension."

80.1: Adds Title 2, Code of Federal Regulations, section 417 to authority.

80.2 & 80.5: Adds cross reference to FSM 1581.02 and FSM 1581.05, respectively.

80.4: Adds responsibilities for program managers and Grants and Agreements specialists.

82: Changes caption from "Causes for Suspension and Debarment [Reserved]" to "Causes for Debarment or Suspension," and sets forth new direction for debarment and suspension to previously reserved code.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

83: Changes caption from “Suspension and Debarment Investigation and Referral Process [Reserved]” to “Debarment or Suspension Investigation and Referral Process,” and sets forth new direction to previously reserved code.

84: Changes caption from “Opportunity to Contest Suspension and/or Proposed Debarment [Reserved]” to “Opportunity to Debarment and/or Proposed Suspension,” and sets forth new direction to previously reserved code.

86: Changes caption from “Period of Suspension and Debarment [Reserved]” to “Period of Debarment and Suspension,” and sets forth new direction to previously reserved code.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

Table of Contents

80.1 - Authority 4
80.2 - Objective 5
80.4 - Responsibilities 5
80.41 - Pre-Award Roles and Responsibilities 5
80.41a - G&A Specialists 5
80.41b - Recipient/Cooperator 6
80.5 - Definitions 6
81 - Termination, and Recipient/Cooperator Performance and High Risk 7
81.1 - Termination 7
81.2 - Recipient/Cooperator Performance 8
81.3 - Standards and Procedures for Imposing Conditions on a Cooperator 9
82 - Causes for Debarment or Suspension 11
82.1 - Debarment 11
82.11 - Causes (2 CFR §417.800) 11
82.12 - Notice of Proposed Debarment 12
82.13 - Contesting Debarment 13
82.14 - Decision to Debar 13
82.15 - Length of Debarment 14
82.2 - Suspension 14
82.21 - Causes 14
82.22 - Notice of Suspension 15
82.23 - Contesting Suspension 15
82.24 - Decision to Suspend 16
82.25 - Length of Suspension 16
82.3 - Notice of Proposed Debarment and/or Suspension 16
83 - Debarment or Suspension Investigation and Referral Process 16
83.1 - Referral Record 19
83.2 - Transmittal Letter 20
83.3 - Notice of Proposed Debarment and/or Suspension 23
84 - Opportunity to Debarment and/or Proposed Suspension 24
85 - Settlement and Voluntary Exclusion 25
86 - Period of Debarment and Suspension 25
86.1 - Period of Debarment 25
86.2 - Period of Suspension 26
86.3 - Scope of Debarment or Suspension 26
86.4 - Request for Reconsideration and Appeal 27
87 - General Services Administration (GSA) Excluded Parties List System (EPLS) 27
87.1 - Pre-Award EPLS Inspection 27
87.2 - Post-Award Reporting Requirements 28

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

80.1 - Authority

1. Executive Order 12549. States Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. Debarments and suspensions are serious administrative actions taken to assure that the Government only conducts business with responsible persons.

2. Title 2, Code of Federal Regulations, section 417. Contains the Common Rules for U.S. Department of Agricultures's (USDA's) Governmentwide based system covering nonprocurement activities. These regulations are used to suspend and/or debar individuals, organizations, or other entities, including awardees and cooperators. This debarment and suspension system covers all federal financial assistance awards and other FSM 1580 agreements with persons as defined in 2 CFR 417.20. See also 2 CFR 417.222 coverage exceptions. These regulations provide for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulations (FAR). They also provide for the consolidated listing of all persons who are excluded, or disqualified by statute, Executive order, or other legal authority.

3. Title 7, Code of Federal Regulations, section 301. Contains the Common Rules for USDA's Governmentwide based system covering nonprocurement activities and is incorporated into 2 CFR, Chapter I, part 180. These regulations are used to suspend and/or debar individuals, organizations, or other entities, including recipients and cooperators. This debarment and suspension system covers all Federal financial assistance awards and other FSM 1580 agreements with persons as defined in 7 CFR 3017.105. See also 7 CFR.3017.110 (a)(ii)(c)(2), coverage exceptions. These regulations provide for reciprocal exclusion of parties that have been excluded under the Federal Acquisition Regulations (FAR). They also provide for the consolidated listing of all parties that are excluded, or disqualified by statute, Executive order, or other legal authority.

4. Executive Order 12689 and the Federal Acquisition Streamlining Act (31 U.S.C. 6101 note). Any debarment, suspension, proposed debarment under 48 CFR 9.4, or other Governmentwide exclusion initiated under the Federal Acquisition Regulations must be recognized by and be in effect for Executive Branch agencies and participants in programs administered by those agencies, as an exclusion under 7 CFR part 3017. Similarly, any debarment and suspension or other Governmentwide exclusion initiated under 7 CFR part 3017 must be recognized by and be effective for those agencies as a debarment or suspension under the FAR. In other words, debarment and suspension of a participant in a program by one agency has a Governmentwide effect (7CFR 3017.110(c)).

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

80.2 - Objective

For objective statement see FSM 1580.

80.4 - Responsibilities

The Deputy Chief, National Forest System and the Associate Deputy Chief, National Forest System have been designated by the Chief, Forest Service as the debarring or suspending official, and as such, may debar pursuant to 7 CFR 3017.800 or suspend pursuant to 7 CFR 3017.700. The G&A specialist shall coordinate referral of cases for possible debarment or suspension to the debarring and/or suspending official with the Washington Office G&A policy analyst, consistent with stated policies and procedures, upon being made aware of information concerning the existence of a cause for debarment or suspension listed at 7 CFR §§3017.800 and 3017.700, and the party has been, is, or may reasonably be expected to be a participant in a covered transaction (7 CFR 3017.110).

Forest Service suspensions and debarments under 7 CFR 3017 apply only to grants, cooperative agreements, and other FSM 1580 agreements. Recipients or cooperators who have been suspended, debarred, proposed for debarment under 48 CFR 9.4, declared ineligible, or voluntarily excluded may continue to operate any existing project(s) they have under a grant or agreement unless the grants and agreements (G&A) specialist determines the existing grant or agreement should be terminated (7 CFR §3017.415(a)). Existing grants or agreements may only be extended pursuant to the terms of a modified grant or agreement (7 CFR §3017.415(b)).

The G&A specialist and program manager have responsibility for protecting the Forest Service's interest in projects funded or non-funded by the agency. Similarly, the program manager has responsibility for encouraging grantee high performance and ensuring that grantees achieve successful outcomes.

80.41 - Pre-Award Roles and Responsibilities

80.41a - G&A Specialists

Upon receipt of a request for Federal financial or other than financial assistance transactions (excluding Interagency transactions) from a program manager, the G&A specialist shall search the Excluded Parties List System maintained by the General Services Administration (GSA) at www.epls.gov to determine whether a prospective recipient/cooperator or any principals thereof are included. If no listing is found, the G&A specialist shall retain a copy of the search listing in the grant or other agreement document file, and proceed with executing the grant or agreement. Conversely, if a prospective recipient/cooperator or any principals are found on the listing, the G&A specialist shall immediately inform the program manager, retain a copy of the search listing in the grant or agreement document file, and temporarily cease with executing the award. The G&A specialist shall coordinate with the program manager and inform the prospective recipient/cooperator of the finding.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

Upon receipt of supplemental information provided by the prospective recipient/cooperator, the G&A specialist shall review and consider any supporting documentation. Following the review, the G&A specialist shall make a determination on whether to proceed with the award.

80.41b - Recipient/Cooperator

The prospective recipient/cooperator (and any specifically named sub-contractors) shall be afforded the opportunity to submit, in person, writing, or through a representative, information and argument in opposition to the search finding.

80.5 - Definitions

For additional definitions, see FSM 1581.05.

Definitions for the following terms are for the purposes of this chapter, unless noted otherwise.

> Agreement. Both Federal financial assistance awards and FSM 1580 instruments not considered Federal financial assistance transactions.
>
> Award. Unless noted otherwise, the term means either the awarding document for a grant or cooperative agreement, or another FSH 1580 instrument used to formalize a relationship with a cooperator (for example, a Participating Agreement or Challenge Cost-share Agreement, which are sometimes referred to as non-Federal financial assistance transactions in this chapter).
>
> Federal financial assistance. All grants and cooperative agreements as defined under the Federal Grants and Cooperative Agreements Act (see chapter 20 of this handbook), and any other FSM 1580 agreements with persons (that is, cooperators) as defined in 7 CFR 3017.105 (in this chapter, sometimes referred to as non-Federal financial assistance). See also 7 CFR.3017.110 (a)(ii)(c)(2), coverage exceptions. For example, Partnership Agreements are typically covered, unless (in a rare case) with another Federal entity.

The terms “award” and “agreement” mean the awarding document/instrument and any attachments or pertinent documents that demonstrate the intent of the parties to agree to certain terms and conditions in performance of the project. Attachments and pertinent documents may include, but are not limited to, a scope of work, financial plans, modifications, advance agreements, and all communications regarding the project pre- and post-award including letters, and emails. These documents often record significant agreement with the recipient/cooperator or direction from the Forest Service to the recipient/cooperator. When monitoring for compliance, the Forest Service may consider all relevant and pertinent documentation to determine the totality of the agreement, which constitutes the understanding between the parties about what will be accomplished during the project.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

81 - Termination, and Recipient/Cooperator Performance and High Risk

81.1 - Termination

An award/instrument may be terminated, in whole or part, as follows:

1. When the Forest Service and recipient/cooperator mutually agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

2. When the recipient/cooperator chooses to terminate, in whole or in part.

3. When the Forest Service determines, at any time prior to the expiration of the agreement that the cooperator fails to materially comply with the instruments terms and conditions.

4. If at any time Forest Service determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance would not be in the national interest of the United States or would be in violation of an applicable law, then Forest Service may, following notice to the recipient/cooperator, suspend or terminate the award in whole or part and prohibit the recipient/cooperator from incurring additional obligations to the award other than those costs specified in the notice of suspension during the period of suspension.

5. In the case of a partial termination in paragraphs 1 through 4, above, if the Forest Service determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the Forest Service may terminate the award in its entirety.

When the Forest Service terminates, the Forest Service shall give the recipient written notification with an effective date; defining the deficiencies, if any; requesting a "cure" of these deficiencies, and the submission of a corrective plan of action within a reasonable amount of time, for example, 30-60 days, if applicable. If no plan of corrective action is submitted by the recipient within the timeframe established in the notification, then termination may be initiated.

When the recipient/cooperator terminates, the recipient/cooperator shall give the Forest Service 30-days written notification setting forth the reasons for termination, effective date, and in the case of partial termination, the portion to be terminated. If the Forest Service decides that the remaining portion of the grant/agreement does not accomplish the purpose for which the grant/agreement was made, the Forest Service may terminate the entire award/agreement upon 30 days written notice.

Upon termination of a grant or cooperative agreement, the recipient shall not incur any new obligations after the effective date, and shall cancel as many outstanding obligations as

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

possible, refunding any excess funds to the Forest Service. If payments were made on a cost-reimbursement basis, then the Forest Service should deobligate the excess funds. The Forest Service may allow full credit to the recipient for their share of the obligations that cannot be cancelled and that were properly incurred prior to termination.

81.2 - Recipient/Cooperator Performance

1. The G&A specialist and program manager have responsibility for protecting the Forest Service's interest in projects funded by the agency as well as projects receiving no agency funding (for example, MOUs.) Similarly, the program manager has responsibility for encouraging recipient/cooperator high performance and ensuring that recipients/cooperators achieve successful outcomes. A recipient/cooperator may experience minor problems with its agreement that can usually be resolved with intervention from the program manager. If the program manager discovers that a recipient/cooperator is experiencing a performance, management, or financial problem that affects the conduct of an agreement, the program manager shall inform the G&A specialist, who shall form a panel to evaluate whether the recipient/cooperator is in fact high risk. The panel shall consist of the G&A specialist, program manager, and the G&A specialist's supervisor, that is, region, station, and Area G&A lead. Other panel members may include: Law Enforcement and Investigations, Office of the General Counsel, Washington Office AQM, and regional AQM staff. If a panel is formed, the program manager may engage in informal discussions with the recipient/cooperator to determine if the problem may be remedied without taking formal action, resulting in closer monitoring. Based upon the information collected, the panel shall decide whether the recipient/cooperator is or is not "high risk." If there is a preponderance of evidence for a high risk, the panel shall also determine the level of immediate risk to the project/agreement. Factors that may be considered in determining whether a recipient/cooperator is high-risk, pursuant to 7 CFR 3016.12, are if the recipients/cooperators:

a. Has a history of unsatisfactory performance;

b. Is not financially stable;

c. Has a financial management system which does not meet the Federal management standards, when applicable to Grants and Cooperative Agreements, as described in OMB Circular A-110. See Standards for Financial Management Systems; or

d. Has not conformed to terms and conditions of previous awards/agreements.

2. Additionally, if it is determined that the recipient/cooperator is "high risk," then the program manager shall provide the recipient/cooperator with a corrective action plan and/or technical assistance to overcome the problem. The G&A specialist and program manager shall incorporate the corrective action plan into the recipient/cooperator's

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

agreement, and the G&A specialist shall enter the "high risk" status into I-Web. Placing a recipient/cooperator on special condition, high risk status, or restriction may result in the following actions:

a. Payment on a reimbursement basis;

b. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

c. Requiring additional, more detailed financial reports;

d. Additional project monitoring;

e. Requiring the recipients/cooperators or subrecipients/cooperators to obtain technical or management assistance; or

f. Establishing additional prior approvals.

3. Should the designation of high risk be warranted, pursuant to 7 CFR 3016.12, the G&A specialist shall notify the recipient/cooperator as early as possible, in writing, of;

a. The nature of the special conditions/restrictions;

b. The reason(s) for imposing them;

c. The corrective actions which must be taken before they will be removed, and the time allowed for completing the corrective actions; and

d. The method of requesting reconsideration of the conditions/restrictions imposed.

4. By contrast, if the panel decides the recipient/cooperator is not "high risk," no further action is necessary. All documentation related to the recipient's/cooperator's high risk status may be maintained in the official file by the G&A specialist. Upon following the "high risk" procedures above and the recipient/cooperator remains non-compliant with the terms and conditions of the agreement, the program manager shall inform the G&A specialist, who shall initiate the procedures to debar or suspend the recipient/cooperator.

81.3 - Standards and Procedures for Imposing Conditions on a Cooperator

A cooperator may experience minor problems with their agreement that can usually be resolved with intervention from the program manager. If the program manager discovers that a cooperator is experiencing a performance, management, or financial problem that affects the overall conduct of an agreement, the program manager shall inform the G&A specialist, who shall form a panel to evaluate whether the cooperator is in fact high risk. The panel must consist of the G&A specialist, program manager, and the G&A specialist's supervisor, that is,

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

area lead. Other panel members may include: Law Enforcement and Investigations, Office of the General Counsel, Washington Office Acquisition Management (AQM), regional AQM staff, and so forth.

If a panel is formed, the program manager may engage in informal discussions with the cooperator to determine if the problem can be remedied without taking formal action, resulting in closer monitoring. Based upon the information collected, the panel must decide whether the cooperator is or is not "high risk." If there is a preponderance of evidence for a high risk, the panel must also determine the level of immediate risk to the project/agreement. Factors that may be considered in determining whether a cooperator is high-risk, pursuant to 2 CFR 215.14, are if the cooperator:

1. Has a history of unsatisfactory performance,

2. Is not financially stable,

3. Has a management system which does not meet the federal management standards,

4. Has not conformed to terms and conditions of previous awards/agreements, or

5. Is otherwise not responsible.

Additionally if it is determined the cooperator is “high risk,” the program manager shall provide the cooperator with a corrective action plan and/or technical assistance to overcome the problem. The G&A specialist and program manager shall incorporate the corrective action plan into the cooperator’s agreement and the G&A specialist shall enter the "high risk" status into IWeb under the Notes tab or other appropriate tab. This information and designation must be readily available for review by other program managers and G&A specialists especially when entering into new agreements is a consideration. Placing a cooperator on special condition, high risk status, or restriction may result in the following actions:

1. Payment on a reimbursement basis;

2. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

3. Requiring additional, more detailed financial reports;

4. Additional project monitoring;

5. Requiring the cooperator to obtain technical or management assistance; or

6. Establishing additional prior approvals.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

Should the designation of high risk be warranted, pursuant to 2 CFR 215.14, the G&A specialist shall notify the cooperator as early as possible, in writing, of;

1. The nature of the special conditions/restrictions;

2. The reason(s) for imposing them;

3. The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

4. The method of requesting reconsideration of the conditions/restrictions imposed.

By contrast, if the panel decides the cooperator is not "high risk," no further action is necessary. All documentation related to the awardees'/cooperator's high risk status must be maintained in the official file by the G&A specialist.

If, after following the "high risk" procedures above, the cooperator remains non-compliant with the terms and conditions of the agreement, the program manager shall inform the G&A specialist, who shall initiate the procedures to debar or suspend the cooperator.

82 - Causes for Debarment or Suspension

82.1 - Debarment

82.11 - Causes (2 CFR §417.800)

A Federal agency may debar an entity for:

1. Conviction of or civil judgment for:

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

   b. Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

   c. 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

   d. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects entity's present responsibility.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

2. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

a. A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

b. A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

c. A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

3. Any of the following causes:

a. 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;

b. Knowingly doing business with an ineligible person, except as permitted under 2 CFR §180.135;

c. 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;

d. Violation of a material provision of a voluntary exclusion agreement entered into under 2 CFR 180.640 or of any settlement of a debarment or suspension action; or

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

4. Any other cause of so serious or compelling a nature that it affects entity's present responsibility.

82.12 - Notice of Proposed Debarment

After consideration of the causes in 2 CFR 417.800, if the debarring official proposes to debar the entity, the official sends the entity a Notice of Proposed Debarment, pursuant to 2 CFR §417.615, advising entity:

1. That the debarring official is considering debarment;

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

2. Of the reasons for proposing to debar in terms sufficient to put the entity on notice of the conduct or transactions upon which the proposed debarment is based;

3. Of the cause(s) under 2 CFR §417.800 upon which the debarring official relied for proposing debarment;

4. Of the applicable provisions of this subpart and any other agency procedures governing debarment; and

5. Of the Governmentwide effect of a debarment from procurement and nonprocurement programs and activities.

82.13 - Contesting Debarment

Unlike a suspension, 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.

If the respondent wishes to contest a proposed debarment, the respondent or representative must provide the debarring official with information in opposition to the proposed debarment. This may be done orally or in writing, but any information provided orally that is considered important must also be submitted in writing for the official record.

Respondent must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after receipt of the Notice of Proposed Debarment.

82.14 - Decision to Debar

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.

The debarring official sends the respondent written notice, pursuant to 2 CFR §417.615 that the official decided, either:

1. Not to debar; or

2. To debar. In this event, the notice:

   a. Refers to the Notice of Proposed Debarment;

   b. Specifies the reasons for debarment;

   c. States the period of debarment, including the effective dates; and

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

d. Advises respondent that debarment is effective for covered transactions and contracts that are subject to the 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.

The respondent may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, the request must be in writing and supported with appropriate documentation.

The debarring official may reduce or terminate debarment based on:

1. Newly discovered material evidence;

2. A reversal of the conviction or civil judgment upon which debarment was based;

3. A bona fide change in ownership or management;

4. Elimination of other causes for which the debarment was imposed; or

5. Other reasons the debarring official finds appropriate.

82.15 - Length of Debarment

1. If the debarring official decides to debar, the period of debarment is based on the seriousness of the cause(s) for debarment. Generally, debarment should not exceed 3 years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

2. In determining the period of debarment, the debarring official may consider the factors in 2 CFR 417.860. If a suspension has preceded debarment, the debarring official must consider the time the party was suspended.

3. 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.

82.2 - Suspension

82.21 - Causes

Suspension is a serious action. The suspending official may impose suspension only when that official determines that:

1. There exists an indictment for, or other adequate evidence to suspect, an offense listed under 2 CFR 417.800(a); or

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

2. There exists adequate evidence to suspect any other cause for debarment listed under
2 CFR 417.800(b) through (d); and

3. Immediate action is necessary to protect the public interest.

82.22 - Notice of Suspension

A suspension is effective when the suspending official signs the decision to suspend. After deciding to suspend, the suspending official promptly sends the entity a Notice of Suspension advising:

1. That the entity has been suspended;

2. That suspension is based on:

a. An indictment;

b. A conviction;

c. Other adequate evidence that the entity has committed irregularities which seriously reflect on the propriety of further Federal Government dealings with the entity; or

d. Conduct of another person that has been imputed to the entity, or entity's affiliation with a suspended or debarred person;

3. Of any other irregularities in terms sufficient to put the entity on notice without disclosing the Federal Government's evidence;

4. Of the cause(s) upon which the suspending official relied under 2 CFR 417.700 for imposing suspension;

5. That suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

6. Of the applicable provisions of this subpart and any other agency procedures governing suspension decision-making; and

7. Of the Governmentwide effect of the party's suspension from procurement and nonprocurement programs and activities.

82.23 - Contesting Suspension

If the respondent wishes to contest a suspension, the respondent or representative shall provide the suspending official with information in opposition to the suspension. This may be

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

done orally or in writing, but any information provided orally that is considered important must also be submitted in writing for the official record. The respondent or representative shall either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after receipt of the Notice of Suspension.

82.24 - Decision to Suspend

The suspending official shall make a written decision whether to continue, modify, or terminate 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.

82.25 - Length of Suspension

1. If legal or debarment proceedings are initiated at the time of, or during the entity's suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

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

3. 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.

82.3 - Notice of Proposed Debarment and/or Suspension

The debarring or suspending official shall determine the best way to protect the interest of the Government, determine a party's present responsibility to do business with the Government, consider the seriousness of the party's acts or omissions, consider any mitigating factors, and decide whether to impose suspension and/or debarment based on the factual information in the official record.

For direction on the opportunity to contest proposed debarment and/or suspension, see section 84.

83 - Debarment or Suspension Investigation and Referral Process

Information concerning the existence of a cause for debarment or suspension from any source must immediately be brought to the attention of either the program manager or G&A specialist. Upon being informed of a possible cause to debar or suspend, the G&A specialist shall prepare the required report, make referral for investigation, and prepare the necessary

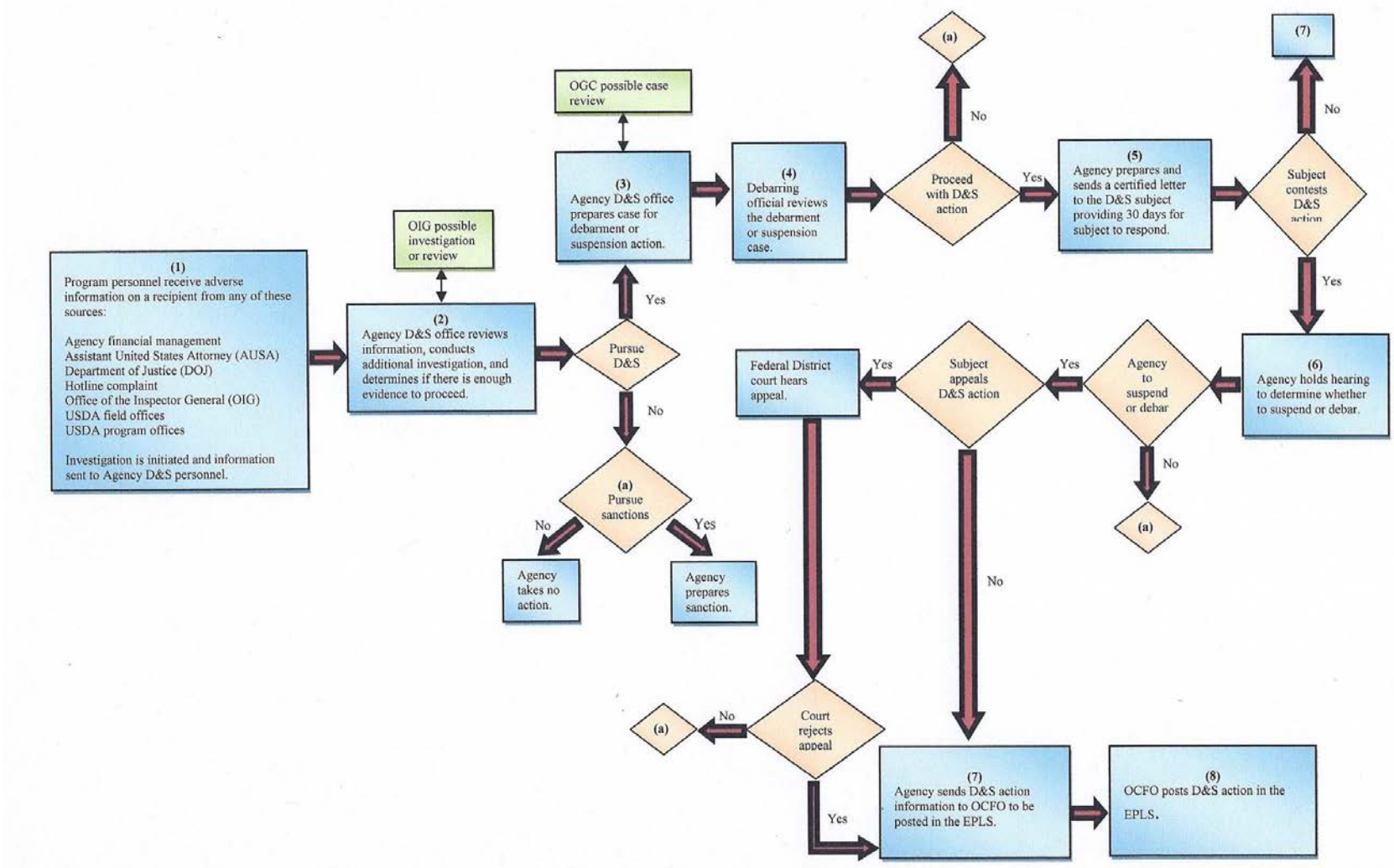
Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

paperwork for the debarring or suspending official's (sec. 83.1-83.2) review and consideration (2 CFR 417.930, 2 CFR 180.600). See exhibit 01 for a flow chart of the debarment and suspension process.

The G&A specialist, in consultation with the program manager and OGC, may decide to utilize agency personnel, that is, law enforcement, the Office of Inspector General (OIG), or other appropriate resources to conduct the investigation and develop the documentation required for the referral.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

83 - Exhibit 01
D&S Process Flow Chart



Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

83.1 - Referral Record

The G&A specialist shall assemble the referral record in reverse chronological order, with the most current information first. Include an index of the documents as ordered in the record. A comprehensive referral record is essential for the debarring or suspending official to make a decision. The referral record includes, but is not limited to:

1. The name of the specific respondent(s) against whom the action is being proposed or taken;

2. The reason(s) for proposing the debarment (2 CFR 417.800), and if suspension is recommended, why immediate action is needed to protect the public interest (2 CFR 417.700);

3. The specific cause(s) for debarment as set out in section 82.11 (2 CFR 417.800);

4. A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the need to debar or suspend;

5. The recommended time period for the debarment (2 CFR 417.865) or suspension (2CFR 180.760), including the rationale for the time period recommended;

6. Mitigating and/or aggravating factors that may affect the decisions to debar or suspend, and length of debarment (2 CFR §417.860 and 2 CFR 180.800) and suspension (2 CFR 417.700 and 2 CFR 180.700);

7. Copies of any relevant supporting documentation including but not limited to:

   a. Detailed evidence of specific cause(s) warranting a debarment or suspension.

   b. Lists of affiliates and evidence documenting the affiliation including information provided by the respondent.

   c. Relevant facts showing the person's responsibility with respect to future dealings with the Forest Service.

   d. G&A performance reports documenting deficient or exemplary performance.

   e. G&A signature pages from the award, if cause is based on a conviction or civil judgment. Otherwise, include the entire covered transaction.

   f. Correspondence between Forest Service personnel and the respondent documenting deficient or exemplary performance.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

g. If failure to make payments or to make timely payments is cited as a cause, include copies of unpaid bills, late payments, demand letters, and a summary of the current status of payments including the most recent statement of account and synopsis.

h. The G&A specialist's decision on such items as a default on a grant or agreement. Include any claims submitted by the respondent.

i. Business records of the respondent obtained from the State or cooperator, such as Articles of Incorporation, or Statement of Officers.

j. Copies of any indictments, court settlements, court convictions, and/or violation notices.

k. Copies of law enforcement investigative reports (such reports may be redacted, in coordination with the Office of the General Counsel to protect privileged material).

l. Correspondence showing delegation of authority to an affiliate.

m. Copies of written declarations by any Forest Service employee or contractor, if applicable.

83.2 - Transmittal Letter

See exhibit 01 for transmittal letter template for use by the Forest Service debarring or suspension official to officially notify USDA Office of the Chief Financial Officer of Forest Service actions regarding debarments and suspensions. This template should be modified for transmittal of proposed debarment and/or suspension actions to the debarring and suspension official and be signed, as appropriate and in according with specific regional procedures, if any, by the G&A specialist, regional G&A lead, and regional AQM director and send to the Debarment and Suspension Office attention Washington Office G&A Branch Chief.

The transmittal letter must be prepared by the G&A specialist in accordance with procedures and must:

1. Recommend an action and the scope of the action.

2. Note relevant facts regarding respondent's responsibility with respect to future dealings with the Forest Service.

3. Detail the specific causes, believed to be supported by the evidence, for debarment or suspension.

4. Not include any remarks indicating intent to punish.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

5. Not reference activities unrelated to the specific cause(s) for debarment or suspension.

6. State that the case has been coordinated with Program, the Office of the General Counsel, and law enforcement personnel.

7. Be signed, as appropriate, by the G&A specialist, area lead, regional AQM director, Washington Office Grants & Agreements Branch Chief, Washington Office AQM Director, and addressed to the debarring or suspending official.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

83.2 – Exhibit 01

D&S Transmittal Template

United States Department of Agriculture	Forest Service	Washington Office	1400 Independence Ave., SW Washington, DC 20250-0003

TO: Grants Policy
Office of the Chief Financial Officer

FROM: Debarment and Suspension Official
USDA Agency

DATE:

SUBJECT: Debarment (or Suspension) of Entity

Pursuant to 2 CFR 417.520, the following entity is debarred (or suspended). The pertinent information as required by 2 CFR 417.515(a) is as follows:

Classification:	Individual or Firm
DUNS:	Enter a 9 digit DUNS number when the Classification is Firm. Leave blank if unknown.
Name and Address:	Complete name and address of entity
Action Date:	The effective date of the exclusion
Term Date:	The date the action will terminate from the EPLS current list of exclusions and placed in the archived list of past exclusions. If no term date, state "Indefinite."
CT Code:	Cause and Treatment Code – Should be one of the following: A, A1, B, CC, E, J, J1, K, N, N1, O, P, Q, R, RRR, S, T.

If you have any questions regarding this matter, please contact Agency POC at contact information.

Debarment and Suspension Procedures

The procedures below must be followed when taking action to debar or suspend a cooperator.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

83.3 - Notice of Proposed Debarment and/or Suspension

1. Suspension. If the decision is to suspend the respondent pending completion of criminal, civil, or debarment proceedings, the suspending official shall send a notice of suspension, a copy of the official record, and a copy of 2 CFR 417 to the respondent and all named affiliates. The suspension is effective when the suspending official signs the decision to suspend (2 CFR §180.710). The notice of suspension must:

a. Advise the respondent that suspension has been imposed (2 CFR §180.715), and;

b. State that the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent, or conduct of another person that has been imputed to respondent, or respondents affiliation with a suspended or debarred person (2 CFR §180.715(b)(1)-(4));

c. Describe any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence (2 CFR §180.715(c));

d. List the cause(s) under 2 CFR §180.700 for imposing suspension (2 CFR §180.715(d));

e. State that the suspension is for a temporary period pending the completion of an investigation or ensuing legal or debarment proceedings (2 CFR §180.715(e)) or Program Fraud Civil Remedies Act;

f. List the provisions of 2 CFR 417, subparts F and G, and any other USDA procedures, if applicable, governing suspension decision making (2 CFR §180.715(f)); and

g. Explain the government-wide effect of the suspension from procurement and nonprocurement programs and activities (2 CFR §180.715(g)).

The notice of suspension to the respondent must be signed by the suspending official and is sent to the last known street address, facsimile number, or e-mail address of respondent, respondent's identified counsel, or agent for service process, or any partners, officers, directors, owners or joint ventures (2 CFR §180.615).

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

2. Proposed Debarment. If the decision is to propose debarment without imposing suspension, the debarring official shall send a notice of proposed debarment, a copy of the official record, and a copy of 2 CFR 417 to the respondent and all named affiliates. The notice of proposed debarment must advise the respondent that debarment is being considered (2 CFR §180.615) and include:

a. The reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based (2 CFR §180.805(b));

b. The cause(s) under for proposing debarment (2 CFR §180.800(c)(1-5));

c. The applicable provisions of 2 CFR, subparts F and H, and any other USDA procedures, if applicable, governing debarment decision making (2 CFR 417.800); and

d. The potential effect of a debarment (2 CFR §180.800(e)).

The notice of proposed debarment to the respondent must be signed by the debarring official and sent to the last known street address, facsimile number, or e-mail address of respondent, respondent's identified counsel, or agent for service process, or any partners, officers, directors, owners or joint ventures (2 CFR §180.615).

3. Proposed Debarment and Immediate Suspension. If the official record demonstrates cause(s) for debarment and need for immediate suspension to protect the Government's interest, the notice of suspension and notice of proposed debarment are combined into one notice following the procedures described above for each action.

4. Decision Not To Pursue Action. If the debarring or suspending official decides not to pursue administrative action, a decision letter must be sent to the regional AQM director providing information and reasons for the decision.

84 - Opportunity to Debarment and/or Proposed Suspension

1. Respondent's Opposition. Within 30 days after receipt of the notice of proposed debarment and/or notice of suspension, the respondent or respondent's representative may provide the debarring official with information in opposition to the proposed action(s). This may be done orally or in writing, but any information provided orally that respondent considers important must also be submitted in writing for the official record (2 CFR §180.720, 180.730, 180.815, and 180.820).

2. Additional Proceedings. If the debarring or suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment and/or suspension, the respondent(s) shall be afforded an

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents (2 CFR §180.735(b), 180.740, and 2 CFR §180.830(b), 180.835 and 180.840).

A transcribed record of any fact-finding hearing must be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript (2 CFR §180.745(b) and 180.840(b)). In cases where a transcribed record is not requested, notes should be taken and included in the official record.

The debarring or suspending official may refer disputed material facts to another official for findings of fact. The debarring or suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous (2 CFR §180750(b) and 180.840(c)(3)).

85 - Settlement and Voluntary Exclusion

The debarring or suspending official may, at any time, settle a debarment or suspension action when it is in the best interest of the Government (2 CFR §180.635).

Only the debarring or suspending official has the authority to consider and accept, in coordination with OGC attorneys, settlement offers, which include debarment, suspension, or voluntary exclusion.

86 - Period of Debarment and Suspension

86.1 - Period of Debarment

Debarment must be for a period commensurate with the seriousness of the cause(s) and generally not exceeding 3 years. If a suspension precedes a debarment, the suspension period must be considered in determining the debarment period. Where circumstances warrant, a longer period of debarment may be imposed (2 CFR §180.865 and 2 CFR §417.865). 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.

The Department permanently debars from participation in USDA programs any individual, organization, corporation, or other entity convicted of a felony for knowingly defrauding the United States in connection with any program administered by USDA (2 CFR §417.865(d)).

The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based (2 CFR §180.885). If debarment for an additional period is determined to be necessary, the procedures of 2 CFR part §180, subparts F and H, must be followed to extend the debarment (2 CFR §180.885).

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

86.2 - Period of Suspension

1. If legal or debarment proceedings are initiated at the time of, or during the suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months (2 CFR §180.755).

2. The suspending official may extend the 12 month limit under paragraph 1 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 in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph 1 of this section (2 CFR §180.760(b)).

3. The suspending official shall notify the appropriate officials under paragraph 2 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 (2 CFR §180.760(c)).

The suspending official shall notify the Washington Office Office of the General Counsel, who in turn notifies the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

86.3 - Scope of Debarment or Suspension

Debarment or suspension of a party or business constitutes debarment or suspension of all its divisions and other organizational elements from all covered transactions, unless the debarment or suspension decision is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements, or to specific types of transactions (2 CFR §180.630).

The debarment or suspension action may include any affiliate of the participant that is specifically named, and given notice of the proposed debarment or suspension and an opportunity to respond. For purposes of determining the scope of debarment or suspension, conduct may be imputed as follows:

1. Conduct imputed from an individual to an organization. The fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization may be imputed 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 (2 CFR §180.630(a)).

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

2. Conduct imputed from an organization to an individual, or between individuals. The fraudulent, criminal, or other improper conduct of any organization may be imputed 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 reason to know of the improper conduct (2 CFR §180.630(b)).

3. Conduct imputed from one organization to another organization. The fraudulent, criminal, or other improper conduct of one organization may be imputed 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 (2 CFR §180.630(c)).

86.4 - Request for Reconsideration and Appeal

The respondent may request that the debarring official reverse the debarment decision or reduce the period or scope of debarment. All requests must be in writing and supported by documentation of the reasons to revise the debarment (2 CFR §180.875). The debarring official may grant such a request for reasons including, but not limited to:

1. Newly discovered material evidence (2 CFR §180.875(a));

2. Reversal of the conviction or civil judgment upon which the debarment or suspension was based (2 CFR §180.875(b));

3. Bona fide change in ownership or management (2 CFR §180.875(c));

4. Elimination of other causes for which the debarment or suspension was imposed (2 CFR §180.875(d)); or

5. Other reasons the debarring or suspending official deems appropriate (2 CFR §180.875(e)).

87 - General Services Administration (GSA) Excluded Parties List System (EPLS)

87.1 - Pre-Award EPLS Inspection

Upon receipt of a request for financial or non-financial assistance award transaction(s) from the program manager, the Grants & Agreements specialist shall search the Excluded Parties List System maintained by the General Services Administration (GSA) at http://www.epls.gov to determine whether a prospective recipient/cooperator or any principals thereof are included. See narrative in the Pre-Award Roles and Responsibilities section of the FSH 1580.41f -41h.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

Prior to execution of an agreement or other instrument, the G&A Specialist shall check the Excluded Parties List to ascertain whether a prospective cooperator or any principals thereof are included.

87.2 - Post-Award Reporting Requirements

In accordance with OMB guidelines, the General Services Administration (GSA) maintains the Excluded Parties List System (EPLS) (2 CFR §180.510). When the Forest Service takes an action to exclude a recipient/cooperator, or any principals thereof under the nonprocurement or procurement debarment and suspension system, such information is furnished by the USDA point of contact to GSA and entered into the EPLS (2 CFR §180.520). The Internet address for this list is: *www.epls.gov*. At a minimum, the list indicates:

1. The full names and addresses of all debarred, suspended, ineligible, and voluntarily excluded parties, in alphabetical order, when available, with cross-references when more than one name is involved in a single action (2 CFR §180.515(a)(1));

2. The type of action (2 CFR §180.515(a)(2));

3. The cause for the action (2 CFR §180.515(a)(3));

4. The scope of the action (2 CFR §180.515(a)(4));

5. Any termination date for each listing (2 CFR §180.515(a)(5)); and

6. The agency and name and telephone number of the agency point of contact for the action (2 CFR §180.515(a)(6)).

7. The Dun and Bradstreet Number (DUNS), or other similar code approved by the GSA, of the excluded or disqualified person, if available (2 CFR §180.515(a)(7)).

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.