

Suspension and Debarment - Frequently Asked Questions

NOTE: This list of questions and answers is merely an attempt to summarize the applicable standards to a suspension or debarment action. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the USDOT, its operating administrations, its officers, or any persons. In determining the applicability of, and rights under, any suspension or debarment, refer to the applicable regulations at 49 C.F.R. PART 29 OR 48 C.F.R. SUBPART 9.4 as appropriate.

1. What is a suspension?
 2. What is a debarment?
 3. What is the purpose of suspension and debarment?
 4. Is suspension and debarment punitive?
 5. What type of conduct will lead to a suspension?
 6. What type of conduct will lead to a debarment?
 7. How are suspensions and debarments initiated?
 8. How do I respond to a suspension or debarment notice?
 9. What rights do I have if I am suspended or proposed for debarment?
 10. May I have legal representation if suspended or proposed for debarment?
 11. What types of information does the suspending official consider in a deciding whether to terminate or modify a suspension?
 12. What types of information does the suspending official consider in a debarment proceeding?
 13. How long is the term of debarment?
 14. How long is the term of suspension?
 15. When does a suspension take effect?
 16. When does a debarment take effect?
 17. May an agency settle an actual or potential suspension or debarment?
 18. What is the effect if my company is suspended or debarred?
 19. What is the effect on a company if a principal?
 20. What is the effect on an individual if suspended or debarred?
 21. How does a State or Federal agency or local government know if a person or company is debarred?
 22. What happens if I do business with a person or company that has been suspended or debarred?
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Q1. What is a suspension?

Answer: A suspension is an action taken by a suspending official that excludes or disqualifies a person or company from bidding on, receiving, or participating in Federally funded contracts or grants for a temporary period of time pending the completion of an investigation or legal or administrative proceedings. A suspension has government wide effect applying to all Federal programs and procurement.

Q2. What is a debarment?

Answer: A debarment is an action taken by a debarring official that excludes or disqualifies a person or company for a specific period of time, generally not longer than 3 years. A debarment has government wide effect applying to all Federal programs and procurement.

Q3. What is the purpose of suspension and debarment?

Answer: The purpose of suspension and debarment is to protect the integrity of government programs by ensuring that only honest, ethical, and otherwise responsible persons and companies participate.

Q4: Is suspension and debarment punitive?

Answer: No. Suspension and debarment are not punitive. Instead, suspension and debarment

are remedial intended to ensure that only responsible persons and companies participate in government programs.

Q5: What type of conduct will lead to a suspension?

Answer: The most common basis for a suspension is an indictment for a crime. Such offenses may include fraud, antitrust violations, forgery, bribery, falsification of records, making false statements, making false claims, conspiracy, failure to comply with applicable environmental requirements (such as the proper storage, transportation, and disposal of hazardous waste), failure to pay the predetermined minimum wage, and other offenses indicating a lack of business integrity or business honesty that seriously and directly affects a person's or company's present responsibility. In addition to an indictment, a person or company may be suspended whenever the agency has other adequate evidence to suspect that a crime or some other serious cause that affect a person's of company's present responsibility may have occurred.

Q6: What type of conduct will lead to a debarment?

Answer: The basis for a debarment can be for either a conviction or a civil judgment. Criminal convictions that lead to a debarment may include fraud, antitrust violations, forgery, bribery, falsification of records, making false statements, making false claims, conspiracy, failure to comply with applicable environmental requirements (such as the proper storage, transportation, and disposal of hazardous waste), failure to pay the predetermined minimum wage, and other offenses indicating a lack of business integrity or business honesty that seriously and directly affects a person's or company's present responsibility. Civil judgments that lead to a debarment typically include qui tam actions for making false claims under the False Claims Act, 31 U.S.C. 3729 et seq. In addition to a civil judgment or conviction, a person or company may be debarred whenever the agency can show by a preponderance of the evidence that some other serious cause that affect a person's of company's present responsibility has occurred.

Q7: How are suspensions and debarments initiated?

Answer: Suspensions and debarments are initiated by sending notice to the person or company that is suspended or proposed for debarment.

Q8: How do I respond to a suspension or debarment notice?

Answer: You may respond to a suspension or debarment notice either in person or in writing, or both. However, any information that is provided orally you consider important for the suspending or debarring official's consideration must also be submitted in writing for the record.

Q9: What rights do I have if I am suspended or proposed for debarment?

Answer: If you are suspended or proposed for debarment, then, within 30 days after receipt of the notice, you have the right to respond in person, in writing, or both. However, any information that you provide orally and consider important for the suspending or debarring official's consideration must also be submitted in writing for the record. Additionally, in cases that are not based on an indictment, conviction, or civil judgment, and where the suspending or debarring official determines that your response has raised a genuine dispute over facts material to the suspension or proposed debarment, you have the right to a separate fact-finding proceeding at which you may present witnesses, documents, and other evidence as to the material facts that the suspending or debarring official has identified as being in dispute.

Q10: May I have legal representation if suspended or proposed for debarment?

Answer: Yes. You may have legal representation if you are suspended or proposed for debarment. However, the government is not obligated to provide legal representation to you. If you desire legal representation, you must retain your own representation at your expense.

Q11: What types of information does the suspending official consider in a deciding whether to terminate or modify a suspension?

Answer: In a suspension proceeding, the suspending official will consider any relevant information. Such information may include information that addresses the government's immediate interests that are at risk. If a respondent can demonstrate that protective action has been taken to eliminate, or reduce to an acceptable level, the government's risk pending the completion of the investigation or legal proceedings, then a suspension may be terminated or modified even though there is adequate evidence to support the suspension.

Q12: What types of information does the suspending official consider in a debarment proceeding?

Answer: The debarring official will consider any information that is relevant to the determination of present responsibility. Such information may include the seriousness of the acts or omissions that are at issue and any relevant mitigating or aggravating factors. Relevant mitigating or aggravating factors may include the actual or potential harm or impact that results from the act or omission; whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the conduct; whether you have paid all criminal, civil and administrative liabilities for the improper activity; the extent of cooperation during the investigation or legal or administrative proceeding; whether the wrongdoing was pervasive with the organization; the kind of positions held by the individuals involved in the wrongdoing; whether the organization has taken appropriate corrective action; whether the principals tolerated the offense; whether the activity was brought to the attention of the appropriate government agency in a timely manner; whether you have fully investigated the wrongful activity and made those results available to the relevant authorities; whether you have taken appropriate disciplinary action against the individuals involved; and whether you have had adequate time to eliminate the circumstances leading to the cause for debarment. A listing of the relevant aggravating and mitigating factors that the debarring official may consider can be found at 49 C.F.R. 29.860.

Q13: How long is the term of debarment?

Answer: Debarments generally do not exceed 3 years unless the debarring official determines that the circumstances warrant a longer period of time.

Q14: How long is the term of suspension?

Answer: Suspensions are only for a temporary period of time pending the outcome of an investigation or legal or administrative proceedings. In the case of an investigation, the suspension will not last longer than 12 months, unless a prosecuting official submits a written request for an extension to the suspending official. In such cases, the suspension may not be extended beyond an additional 6 months. In cases where a legal or administrative proceeding have been initiated, such as where an indictment has been filed or where a person has been proposed for debarment, the suspension will continue until the conclusion of those proceedings.

Q15: When does a suspension take effect?

Answer: A suspension takes effect immediately upon the signature of the notice by the suspending official. The person or company that has been suspended will not have an opportunity to respond until after the suspension has been imposed.

Q16: When does a debarment take effect?

Answer: A debarment imposed under the nonprocurement debarment process at 49 C.F.R. Part 29 does not take effect until the debarment proceedings have been concluded. The person or company that has been proposed for debarment will have an opportunity to respond prior to the imposition of the debarment. Likewise, a debarment under the Federal Acquisition Regulations (FAR) at 48 C.F.R. 9.4 will not take effect until after the debarment proceedings have been concluded. However, like a suspension, a notice of proposed debarment under the FAR at 48 C.F.R. Subpart 9.4 will have immediate effect and the person or company will be excluded for the duration of the debarment proceedings.

Q17: May an agency settle an actual or potential suspension or debarment?

Answer: Yes. An agency may settle an actual or potential suspension or debarment if it is in the best interests of the Federal Government to do so.

Q18: What is the effect if my company is suspended or debarred?

Answer: If you company is suspended or debarred, then you company may not bid on or receive any federally funded contracts. Your company may also not receive any Federal grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, or insurance.

Q19: What is the effect on a company if a principal?

Answer: If a principal of a company is suspended or debarred, then that company cannot bid on or receive any Federally funded contracts. The company may also not receive any Federal

grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, or insurance. A principal is an officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities related to a covered transaction.

Q20: What is the effect on an individual if suspended or debarred?

Answer: If an individual is suspended or debarred, then that individual may not bid on or receive any Federally funded contracts. The individual may also not receive any Federal grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, or insurance.

Q21: How does a State or Federal agency or local government know if a person or company is debarred?

Answer: A State or Federal agency or local government knows if a person or company is suspended or debarred by checking the Federal Excluded Parties List System at or by collecting a certification from the person or company that the person or company, or any of the company's principals, are not debarred.

Q22: What happens if I do business with a person or company that has been suspended or debarred?

Answer: If you knowingly do business with a suspended or debarred person, then the Federal agency may disallow costs, annul or terminate the transaction, issue a stop work order, initiate suspension or debarment proceedings, or take other remedies as appropriate.