
DEBARMENT AND SUSPENSION

Policy

In order to protect the public trust imposed upon the Mississippi Department of Human Services (MDHS) and its involvement with subgrantees, it is the policy of the agency to conduct business only with responsible persons/subgrantees. However, when it appears that a subgrantee's conduct, as determined by the agency, creates a reasonable belief that a particular act or omission has occurred, MDHS shall implement discretionary actions known as debarment and suspension, possibly leading to termination. A subgrantee who is debarred or suspended shall be excluded from agency financial and nonfinancial assistance and benefits. These are serious actions which shall be used only in the public interest and for the agency and State of Mississippi's protection and not for purposes of punishment.

Coverage

This policy shall apply to all persons/subgrantees who are currently participating in transactions under state nonprocurement programs. For purposes of these regulations, transactions will be referred to as covered transactions which may be subdivided into (1) primary covered transactions, i.e., any nonprocurement transaction between MDHS and the subgrantee, regardless of type, or (2) lower tier covered transactions, i.e., transactions between subgrantee and another (other than a procurement contract for goods or services), regardless of type, under a primary covered transaction.

Effect of Action

Except to the extent prohibited by law, subgrantees who are debarred or suspended shall be excluded from primary covered transactions and lower tier covered transactions for the period of their debarment or suspension.

DEBARMENT

The MDHS Executive Director, or its designee, after consultation with the appropriate Division Director, may debar a subgrantee for any of the causes noted below. However, the existence of a cause for debarment does not necessarily require that the subgrantee's acts or omissions and any mitigating factors shall be considered in making a debarment decision. Debarment means, for purposes of this agency, an action taken by the agency in accordance with these regulations to exclude a subgrantee from participating in a covered transaction.

Causes for Debarment

Debarment may be imposed for:

- (a) Conviction of or civil judgment for:
 - (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

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- (2) Violation of Federal or State antitrust statutes, including these proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
 - (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or
 - (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person/subgrantee.
- (b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:
- (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
 - (2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
 - (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.
- (c) Any of the following causes:
- (1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 45 CFR Part 76; and
 - (2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted by the agency.

Procedures

MDHS shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official, MDHS Executive Director or its designee, may issue a notice of proposed debarment.

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Notice of Proposed Debarment

A debarment proceeding shall be initiated by notice to the respondent advising:

- (a) That debarment is being considered;
- (b) Of 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;
- (c) For the reasons covered in "Causes for Debarment" above;
- (d) Of the provisions regarding investigations, notice of proposed debarment, an opportunity to contest proposed debarment and a final decision; and
- (e) Of the potential effect of a debarment.

Opportunity to Contest Proposed Debarment

- (a) Submission in Opposition

Within 30 days after receipt of the notice of proposed debarment, the respondent may submit to the MDHS Executive Director, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

- (b) Additional Proceedings As to Disputed Material Facts

- (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.
- (2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

Debarring Official's Decision

- (a) No Additional Proceedings Necessary

In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

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(b) Additional Proceedings Necessary

- (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.
- (2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.
- (3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) Standard of Proof

- (1) In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.
- (2) The burden of proof is on the agency proposing debarment.

(d) Notice of Debarring Official's Decision

- (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:
 - (i) Referring to the notice of proposed debarment;
 - (ii) Specifying the reasons for debarment;
 - (iii) Stating the period of debarment, including effective dates; and
 - (iv) Advising that the debarment is effective for covered transactions throughout the agency.
- (2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

Settlement and Voluntary Exclusion

When in the best interest of the agency, MDHS may, at any time, settle a suspension action.

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Period of Debarment

- (a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
- (b) 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.

SUSPENSION

Suspension is a serious action to be imposed only when there exists adequate evidence, as set out below, and immediate action is necessary to protect the public interest. For purposes of this agency, suspension is an action taken by the agency in accordance with the following regulations that immediately excludes a subgrantee from participating in covered transactions for a temporary period, pending investigation and such legal action, debarment, or other proceedings as may ensue.

Causes for Suspension

Suspension may be imposed upon adequate evidence to suspect the commission of a debarment offense as listed in "Causes for Debarment" section above. Indictment shall constitute adequate evidence for purposes of suspension actions.

Procedures

Investigation and referral.

Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

Notice of Suspension

When a respondent is suspended, notice shall be immediately given:

- (a) That suspension has been imposed;
- (b) 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 State Government dealings with the respondent;
- (c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the State Government's evidence;
- (d) Of the cause(s) relied upon above for imposing suspension;

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- (e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal action, debarment, or other proceedings;
- (f) Of the notice of suspension, the opportunity to contest suspension, and the suspending official's decision; and,
- (g) Of the effect of the suspension.

Opportunity to Contest Suspension

- (a) Submission in Opposition

Within 30 days after receipt of the notice of suspension, the respondent may submit to the MDHS Executive Director, in person, in writing, or through a representative, information and argument in opposition to the suspension.

- (b) Additional Proceedings as to Disputed Material Facts

- (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses and confront any witness the agency presents, unless the action is based on an indictment, conviction or civil judgment as described in the "Causes for Debarment" section above.

- (2) A transcribed record of any additional proceedings shall be prepared and available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement of a transcript.

Suspending Official's Decision

The suspending official may modify or terminate the suspension or may leave it in force. A decision to modify or terminate the suspension shall be without prejudice, to the subsequent imposition of debarment. The decision shall be rendered in accordance with the following provisions:

- (a) No Additional Proceedings Necessary

In actions based on an indictment, conviction, or civil judgment in which additional proceedings to determine disputed material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of law enforcement advice, the suspending official shall make a decision on the basis of all information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

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(b) Additional Proceedings Necessary

In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record. The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious, or clearly erroneous.

(c) Notice of Suspending Official's Decision

Prompt written notice of the suspending official's decision shall be sent to the respondent.

Period of Suspension

Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal action, debarment, or other proceedings, unless terminated sooner by the suspending official.

If legal or administrative proceedings are not initiated within 12 months after the date of suspension notice, the suspension shall be terminated, unless the Executive Director receives a request from the applicable MDHS funding Division Director and determines that this time should be extended.