

Small Business Administration

§ 145.413

(1) To suspect the commission of an offense listed in §145.305(a); or

(2) That a cause for debarment under §145.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 145.410 Procedures.

(a) *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.

(b) *Decisionmaking process.* SBA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §§145.411 through 145.413.

§ 145.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be 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 Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under §145.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§145.411 through 145.413 and any other SBA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 145.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, 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:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall 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.

(3) In accordance with §145.413(b)(2), the suspending official may refer cases involving disputed material facts to the Office of Hearings and Appeals, which shall conduct any additional proceedings necessary in accordance with the procedures contained in part 134 of this title. Upon conclusion of such proceedings, the Office of Hearings and Appeals shall issue a recommended decision to the suspending official including proposed findings of facts and conclusions of law.

[53 FR 19176, 19204, May 26, 1988, as amended at 53 FR 19176, May 26, 1988]

§ 145.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see §145.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision