

(d) When an employee becomes aware that an action has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee should immediately notify A.I.D. that such an action is pending.

(e) The employee may, thereafter, request either: (1) Indemnification to satisfy a verdict, judgment or award entered against the employee or (2) payment to satisfy the requirements of a settlement proposal. The employee shall submit a written request, with documentation including copies of the verdict, judgment, award or settlement proposal, as appropriate, to the General Counsel. The General Counsel may also seek the views of the Department of Justice. The General Counsel shall forward the request and the General Counsel's recommendation to the Administrator for decision.

(f) Any payment under this part either to indemnify an employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds.

(5 U.S.C. 301; 22 U.S.C. 2381(a))

[53 FR 29658, Aug. 8, 1988]

PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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- 208.965 Legal proceedings.
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- 208.975 Notice.
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Subpart J [Reserved]

APPENDIX TO PART 208—COVERED TRANSACTIONS

AUTHORITY: E.O. 12163, 3 CFR 1979 Comp., p. 435; E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended.

SOURCE: 68 FR 66544, 66584, Nov. 26, 2003, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 208 appear at 68 FR 66585, Nov. 26, 2003.

Subpart I—Definitions

- 208.900 Adequate evidence.
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- 208.910 Agency.
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- 208.920 Civil judgment
- 208.925 Conviction.
- 208.930 Debarment.
- 208.935 Debarring official.
- 208.940 Disqualified.

§ 208.25 How is this part organized?

(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

| In subpart . . . | You will find provisions related to . . . |
|------------------|---|
| A | general information about this rule. |
| B | the types of USAID transactions that are covered by the Governmentwide nonprocurement suspension and debarment system. |
| C | the responsibilities of persons who participate in covered transactions. |
| D | the responsibilities of USAID officials who are authorized to enter into covered transactions. |
| E | the responsibilities of Federal agencies for the <i>Excluded Parties List System</i> (Disseminated by the General Services Administration). |
| F | the general principles governing suspension, debarment, voluntary exclusion and settlement. |
| G | suspension actions. |
| H | debarment actions. |
| I | definitions of terms used in this part. |
| J | [Reserved] |

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

| If you are . . . | See subpart(s) . . . |
|--|----------------------|
| (1) a participant or principal in a non-procurement transaction. | A, B, C, and I. |
| (2) a respondent in a suspension action | A, B, F, G and I. |

| If you are . . . | See subpart(s) . . . |
|--|-------------------------|
| (3) a respondent in a debarment action | A, B, F, H and I. |
| (4) a suspending official | A, B, D, E, F, G and I. |
| (5) a debarring official | A, B, D, E, F, H and I. |
| (6) a (n) USAID official authorized to enter into a covered transaction. | A, B, D, E and I. |

| | |
|--------------------|----------------------|
| If you are . . . | See subpart(s) . . . |
| (7) Reserved | J. |

§ 208.50 How is this part written?

(a) This part uses a “plain language” format to make it easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed. The pronoun “we” always is the U.S. Agency for International Development.

(c) The “Covered Transactions” diagram in the appendix to this part shows the levels or “tiers” at which the U.S. Agency for International Development enforces an exclusion under this part.

§ 208.75 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart I of this part. For example, three important terms are—

(a) *Exclusion or excluded*, which refers only to discretionary actions taken by a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified*, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible*, which generally refers to a person who is either excluded or disqualified.

Subpart A—General

§ 208.100 What does this part do?

This part adopts a governmentwide system of debarment and suspension for USAID nonprocurement activities. It also provides for reciprocal exclusion

of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 208.105 Does this part apply to me?

Portions of this part (see table at § 208.25(b)) apply to you if you are a—

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom the U.S. Agency for International Development has initiated a debarment or suspension action);

(c) USAID debarring or suspending official; or

(d) USAID official who is authorized to enter into covered transactions with non-Federal parties.

§ 208.110 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ 208.115 How does an exclusion restrict a person’s involvement in covered transactions?

With the exceptions stated in §§ 208.120, 208.315, and 208.420, a person who is excluded by the U.S. Agency for International Development or any other Federal agency may not: