

§ 2424.1135

2 CFR Ch. XXIV (1–1–08 Edition)

participation, the Departmental official or designee may consider the factors listed at 2 CFR 180.860. The Departmental Hearing Officer may also consider the factors listed at 2 CFR 180.860 in making any recommended decision.

§ 2424.1135 Do Federal agencies coordinate limited denial of participation actions?

Federal agencies do not coordinate limited denial of participation actions. As stated in § 2424.1100, a limited denial of participation is a HUD-specific action and applies only to HUD activities.

§ 2424.1140 What is the scope of a limited denial of participation?

The scope of a limited denial of participation is as follows:

(a) A limited denial of participation generally extends only to participation in the program under which the cause arose. A limited denial of participation may, at the discretion of the authorized official, extend to other programs, initiatives, or functions within the jurisdiction of an Assistant Secretary. The authorized official, however, may determine that where the sanction is based on an indictment or conviction, the sanction shall apply to all programs throughout HUD.

(b) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts.

(c) The sanction may be imposed for a period not to exceed 12 months, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by an Assistant Secretary or Deputy Assistant Secretary, in which case the sanction may be imposed on either a nationwide or a more restricted basis.

§ 2424.1145 May HUD impute the conduct of one person to another in a limited denial of participation?

For purposes of determining a limited denial of participation, HUD may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* HUD may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, 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.

(b) *Conduct imputed from an organization to an individual or between individuals.* HUD may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed participated in, had knowledge of, or had reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* HUD may impute the fraudulent, criminal, or other improper conduct of one organization 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.

§ 2424.1150 What is the effect of a suspension or debarment on a limited denial of participation?

If you have submitted a request for a hearing pursuant to § 2424.1130 of this subpart, and you also receive, pursuant to subpart G or H of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or the same conduct as the limited denial of participation, as determined by the debarring or suspending official, the following rules shall apply:

(a) During the 30-day period after you receive a notice of proposed debarment or suspension, during which you may elect to contest the debarment under 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, all proceedings in the limited denial of participation, including discovery, are automatically stayed.

(b) If you do not contest the proposed debarment pursuant to 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation, to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(c) If you contest the proposed debarment pursuant to 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, then:

(1) Those parts of the limited denial of participation and the debarment or suspension based on the same transaction(s) or conduct, as determined by the debarring or suspending official, shall be immediately consolidated before the debarring or suspending official;

(2) Proceedings under the consolidated portions of the limited denial of participation shall be stayed before the hearing officer until the suspending or debarring official makes a determination as to whether the consolidated matters should be referred to a hearing officer. Such a determination must be made within 90 days of the date of the issuance of the suspension or proposed debarment, unless the suspending/debarring official extends the period for good cause.

(i) If the suspending or debarring official determines that there is a genuine dispute as to material facts regarding the consolidated matter, the entire consolidated matter will be referred to the hearing officer hearing the limited denial of participation, for additional proceedings pursuant to 2 CFR 180.750 or 180.845.

(ii) If the suspending or debarring official determines that there is no dispute as to material facts regarding the consolidated matter, jurisdiction of the hearing officer under 2 CFR part 2424, subpart J, to hear those parts of the limited denial of participation based on the same transaction[s] or conduct as the debarment or suspension, as determined by the debarring or suspending official, will be transferred to the debarring or suspending official, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarring or suspending official.

(3) The suspending or debarring official shall hear the entire consolidated case under the procedures governing suspensions and debarments, and shall issue a final decision as to both the limited denial of participation and the suspension or debarment.

§ 2424.1155 What is the effect of a limited denial of participation on a suspension or a debarment?

The imposition of a limited denial of participation does not affect the right of the Department to suspend or debar any person under this part.

§ 2424.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?

If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it.

§ 2424.1165 How is a limited denial of participation reported?

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to § 2424.1130 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Compliance Division in the Departmental Enforcement Center of the scope of the limited denial of participation.