

825-RICR-10-00-4

## **TITLE 825 - HOUSING AND MORTGAGE FINANCE CORPORATION**

### **CHAPTER 10 - RULES RELATIVE TO AGENCY ADMINISTRATION**

#### **SUBCHAPTER 00 - N/A**

PART 4 – Debarment and Suspension from Participation in Corporation Programs and Transactions.

#### **4.1 Purpose**

The Corporation shall promote affordable housing and fulfill its statutory purposes through interactions with responsible parties only. In doing so, it must promote and encourage the highest level of integrity and service in the public interest. Debarment and suspension are discretionary actions that, taken in accordance with this Part, are appropriate means to effectuate this policy. The serious nature of debarment and suspension requires that these sanctions shall be imposed in protection of the interests of the Corporation and the public and not for the purposes of punishment.

#### **4.2 Construction of the Rules and Regulations**

Unless otherwise defined herein or unless a different meaning is required in the context in which they are used herein, all words and terms used in this Part are as defined in the Corporation's Enabling Act, as codified at R.I. Gen. Laws Chapter 42-55.

#### **4.3 DEFINITIONS**

- A. "Adequate Evidence" means information that is sufficient to support a reasonable belief that a particular act, omission, or event has occurred.
- B. "Affiliates" means business concerns, organizations, or individuals associated with another as a subordinate, subsidiary, or member. Business concerns, organizations, or individuals are Affiliates if, directly or indirectly, (A) either one controls or has the power to control the other, or (B) third-party controls or has the power to control both. Indicia of control include but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management,

ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

- C. "Civil Judgment" means a judgment or finding of civil offense by any court or administrative body of competent jurisdiction.
- D. "Contractor" means any person that does either of the following directly or indirectly (e.g., through an Affiliate):
  - 1. performs or provides labor or professional or technical services or supplies goods to the Corporation pursuant to a contract or participation agreement; or
  - 2. conducts business with the Corporation as the agent, representative, or subcontractor of another contractor.
- E. "Conviction" means a judgment of guilt in a criminal case by any court of competent jurisdiction, whether by verdict, guilty plea, or plea of nolo contendere, and whether the judgment has been or is on appeal.
- F. "Debarment" means action taken to exclude a person from direct or indirect participation in any Corporation program or transaction whether as a Contractor, Participant or as an Affiliate thereof.
- G. "Notice" means written communication delivered by personal service or sent either by certified mail, return receipt requested, or by commercial courier with verification of delivery.
- H. "Participant" means any person who directly or indirectly takes part in or is involved in or applies to participate in a Corporation program or transaction other than as a Contractor. Participant includes a person who receives benefits or income from or through another Participant or Contractor. A Participant includes any of the following:
  - 1. Bonding companies
  - 2. Borrowers
  - 3. Builders
  - 4. Grantees
  - 5. Mortgagors
  - 6. Management agents

7. Marketing agents
8. Owners of housing developments
9. Recipients of housing subsidies
10. Persons employed by, or offering services to, Participants, such as any of the following:
  - a. Architects
  - b. Accountants
  - c. Attorneys
  - d. Consultants
  - e. Engineers
  - f. Contractors with Participants
  - g. Subcontractors of Contractors with Participants
- I. "Person" means an individual, sole proprietor, corporation, limited liability corporation, partnership, limited partnership, joint venture, association, unit of government, or other form of legal entity.
- J. "Respondent" means a person against whom Debarment or Suspension is to be imposed.
- K. "Suspension" means an action which immediately excludes a person from direct or indirect participation in Corporation programs or transactions, whether as a Participant, Contractor or Affiliate thereof, for a temporary period pending completion of any legal or Debarment proceeding.

#### **4.4 Applicability**

- A. This Part shall apply to any program or transaction funded or administered by the Corporation, including any of the following:
  1. Grants, assistance contracts, loans, subsidies, awards, loan service contracts, allocations, or contracts related to federal tax credits administered by the Corporation.
  2. Participation or agency contracts for Corporation programs.

3. Professional or technical service contracts or subcontractors.
- B. Sanctions imposed hereunder shall not preclude any Person from:
1. Renting an apartment assisted under any Corporation program or
  2. Financing an owner-occupied single-family home under any Corporation program, if they otherwise qualify for such program.
- C. Sanctions imposed hereunder shall not bar any person from receipt of any funds, credit, or benefit to which the person is otherwise entitled under federal or state law and for which the Corporation is solely the program administrator; however, this exception does not enable or authorize participation in the program involving the applicable funds, credit, or benefit beyond the mere receipt of such funds, credit, or benefit. This provision does not prevent sanctions where the Corporation acts as program administrator and also has the ability to impose additional requirements beyond those requirements of state or federal law as a prerequisite to receipt of the respective funds, credit, or benefit.
- D. Persons are subject to this Part regardless of whether they are acting as a Contractor, Participant, Affiliate or one receiving funds directly or indirectly from a Contractor or a Participant.
- E. Persons are subject to this Part whether the conduct at issue occurred while they were engaged in a Corporation program or transaction.
- F. The Corporation shall require that Contractors and Participants submit a disclosure statement setting forth such information as may be necessary to make any determination hereunder.

#### **4.5 Causes for Debarment**

- A. Debarment may be imposed for any of the following causes:
1. Conviction of a criminal offense, including a conviction for an attempted criminal activity, or civil judgment, for an offense or actions involving or indicating dishonesty, false pretense, or misrepresentation. The following list contains examples of the type of offense that may result in debarment:
    - a. Fraud
    - b. Bribery
    - c. Embezzlement
    - d. Forgery

- e. Falsification of documents or records
  - f. Theft
  - g. Robbery
  - h. Larceny
  - i. Receiving and concealing stolen property
  - j. Obtaining Goods, money, or services under false pretenses
  - k. Misrepresentations (intentional or negligent)
  - l. Price fixing
  - m. Bid rigging or other violation of federal or state laws involving the submission of bids or proposals.
  - n. Violation of other federal or state law involving illegally obtaining or attempting to obtain public or private goods, services, or contracts.
2. Violation of Corporation regulation or policy through conduct that evidences dishonesty, a lack of business integrity, or a willful or repeated failure to perform obligations in a responsible manner.
  3. Knowingly submitting false or materially misleading information or documentation to the Corporation.
  4. Imposition of any civil or administrative penalty related to the operation, financing, development or management of any commercial or residential property subsidized by the Corporation.
  5. Failure to perform contractual obligations to the Corporation, which evidences willful or repeated noncompliance with the terms and conditions of the contracts or agreements and a failure or refusal to perform in a responsible manner.
  6. Debarment or equivalent exclusionary action by a governmental body or public instrumentality, including but not limited to the Department of Housing of Urban Development, any department, agency or public corporation of the State of Rhode Island or any public housing authority.
  7. Loss or suspension of a license or the right to do business or practice a profession, the loss or suspension of which indicates dishonesty, a lack of

integrity, or a failure or refusal to perform in accordance with the ethical standards of the business or profession in question.

8. Violation of federal, state, or local civil rights, equal rights, or nondiscrimination laws, ordinances, rules, or regulations.
9. Violation of provisions in contracts or agreements concerning nondiscrimination or equal opportunity in employment, housing, or lending.
10. Violation of law, rule, regulation, or provision of contract or agreement involving conflict of interest or an improper shared identity of interest.
11. Other events, conduct, or causes serious enough to lead to a determination of dishonesty, a lack of business integrity, or willful or repeated failure to perform obligations in a responsible manner.

#### **4.6 Debarment Procedures**

- A. Debarment procedures shall be initiated by an authorized officer or employee of the Corporation, as designated by the Board of Commissioners. Procedures shall commence with the sending of a written Notice of Debarment to the respondent.
- B. The Notice of Debarment shall be sent to each Respondent and shall contain all the following information:
  1. That Debarment is being proposed.
  2. The acts or omissions that are the grounds upon which Debarment shall be based.
  3. The particular provisions of laws, regulations, rules, and program requirements involved.
  4. The nature and duration of the proposed Debarment.
  5. That the Respondent has the right to request a hearing regarding the proposed Debarment.
- C. A Respondent is entitled to a hearing on the matters set forth in the Notice of Debarment by delivering a written Request for Hearing to the authorized officer or employee initiating the Debarment procedures within fifteen (15) days of the Notice of Debarment. If the Respondent does not request a hearing as provided herein, the proposed Debarment shall be implemented without further notice.
- D. If a hearing is requested:

1. The Corporation will schedule a hearing and send written notice to the Respondent at least fifteen (15) days in advance of the hearing specifying:
    - a. The time, place and nature of the hearing;
    - b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
    - c. A reference to the sections of the statutes and rules involved; and
    - d. A short and plain statement of the matters at issue.
  2. The hearing will commence within thirty (30) days of the date of the Request for Hearing, unless mutually extended by the Corporation and the respondent.
- E. The hearing will be conducted in accordance with this Part and the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, as amended. The Corporation's Board of Directors shall designate authorized officials to serve as hearing officers to effectuate this Part.
- F. Within sixty (60) days of the completion of the hearing, the hearing officer shall issue his or her written order. Said written order shall be presented for review and approval by the Corporation's Board of Commissioners at its next regularly scheduled or special meeting held in accordance with the requirements of the Rhode Island Open Meetings Act, R.I. Gen. Laws Chapter 42-46. As part of the review by the Board of Commissioners, the respondent shall have the right to submit written exceptions or arguments responding to the hearing officer's order. The Board of Commissioners may approve the order and recommended sanctions, remand the matter to the hearing officer for further specifically defined proceedings or vote to deny the imposition of sanctions.
- G. Any respondent may elect to resolve the matter with the Corporation before the completion of the hearing, such that the Respondent agrees to accept a sanction imposed by the Corporation. The Respondent and the Corporation shall sign a notarized agreement stating the Respondent's agreement to forgo the initiation or completion of a hearing and the Respondent's agreement to the imposed sanction.

#### **4.7 Duration of Debarment**

- A. Debarment shall be for a period of time commensurate with the acts or omissions of the Person to be debarred. Where the offense is egregious, permanent Debarment may be imposed in the best interests of the Corporation.

- B. If a Person is Suspended pursuant to this Part, the period of Debarment shall be reduced by the period of time that the person has been Suspended, if the Suspension was for the same offense.

#### **4.8 Scope and Effect of Debarment**

- A. The Corporation's decision to Debar a Person shall specify the scope of Debarment. A Person can be debarred from one or more particular Corporations programs or transactions or from all Corporation programs and transactions.
- B. Unless prohibited by law, the Corporation may require that a non-Debarred Contractor or Participant must terminate existing contracts or agreements with a Debarred Person. Further, a Participant or Contractor shall not renew or extend a contract or agreement with a Debarred Person.
- C. A decision to Debar a Person may also serve to Debar any Affiliate of such Person, if the Affiliate is named in the Notice of Debarment and given an opportunity to request a hearing.

#### **4.9 Limitation Periods to Commence Debarment Proceedings**

- A. A Notice of Debarment shall be issued within three (3) years after the later of any of the following:
  - 1. The effective date of this Part;
  - 2. Criminal conviction or civil judgment;
  - 3. Completion of administrative proceedings, investigation, or other action;
  - 4. Discovery by the Corporation of the facts, actions, omissions, or events which provide the cause upon which the Debarment is based;
  - 5. The initial submission of the disclosure statement pursuant to § 4.4(F) of this Part or the Corporation's discovery of any material omissions or misstatements in the disclosure statement.
- B. Notwithstanding the provisions of § 4.9(A) of this Part, the Corporation shall have the right, within the exercise of its discretion and fulfillment of its public purposes, to serve a notice of Debarment without any limitation period upon any former commissioner, officer or employee of the Corporation, who was convicted of any criminal offense within the scope of his or her service to the Corporation and who later seeks to transact business with the Corporation either directly or indirectly.

#### **4.10 Reinstatement Following Debarment**

- A. A Debarred Person shall not be allowed to resume participation in Corporation programs or transactions until the expiration of the period of Debarment or until a petition for early reinstatement has been submitted and approved by an authorized officer of the Corporation, whichever occurs first. The approval of a petition for early reinstatement rests in the sole discretion of the Corporation.
- B. Petitions for early reinstatement shall only be submitted as follows:
  - 1. Upon discovery of new evidence which was not previously discoverable or upon the dismissal of criminal charges or a civil or administrative action, the reversal of a criminal conviction or a civil judgment, or the reversal of the debarment or other exclusion imposed by another governmental agency, upon which the authority for the Debarment was based.
  - 2. Upon a bona fide change in ownership or management of the Person Debarred.
  - 3. Upon proof that the causes for Debarment have been eliminated.
- C. The petition for early reinstatement shall be submitted to the Corporation's Executive Director, who will request a written response to the petition from the Corporation official that initiated the debarment proceedings, if he or she is currently in the Corporation's employ, or if not, from such other Corporation official designated by the Executive Director. In the exercise of his or her discretion, the Executive Director shall determine whether the Corporation shall hold a hearing on the petition for reinstatement.

#### **4.11 Suspension**

- A. The Corporation may impose Suspension on a Contractor, a Participant and/or a named Affiliate thereof when adequate evidence exists that any of the causes set forth in § 4.5(A) of this Part are present and the decision to suspend is in the Corporation's best interests.
- B. The Corporation's Executive Director may, upon receipt of reports, investigations, or other documents determine that cause exists to suspend a Contractor, a Participant and/or any named Affiliate. Unless exigent and emergency circumstances mandate the immediate imposition of a Suspension, the Executive Director shall furnish written Notice of Suspension to each Respondent at least five (5) days before the effective date of Suspension. The Notice of Suspension shall state:
  - 1. that a Suspension has been imposed;

2. the effective date of the Suspension;
  3. the facts giving rise to the Suspension;
  4. the causes relied upon for the Suspension;
  5. that the Suspension is for a temporary period pending the completion of an investigation and any ensuing legal or debarment proceeding.
- C. The Executive Director shall report the Suspension to the Corporation's Board of Commissioners at its next regularly scheduled or special meeting held in accordance with the provisions of the Rhode Island Open Meetings Act, R.I. Gen. Laws Chapter 42-46.
- D. Within thirty (30) days after receipt of the Notice of Suspension, each Respondent may submit to the Executive Director, in writing, any relevant information or argument in opposition to or clarification of the suspension.
- E. Upon receipt of such written response, the Executive Director shall determine in the exercise of his or her reasonable discretion and within ten (10) days thereafter whether the response raises a genuine and material dispute regarding the facts upon which the Suspension is based and whether a hearing is necessary to review the disputed facts. If the Executive Director determines that a hearing should be held, it shall be subject to the procedures outlined in §§ 4.6(C) through (E) of this Part, except that the hearing will commence no later than twenty (20) days after the Executive Director's decision that a hearing is necessary, unless the Corporation and the Respondent agree to a later starting date of the hearing.
- F. A Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless sooner terminated. A suspension shall not continue for more than six (6) months from its effective date, unless civil or criminal action regarding the alleged violations shall have been initiated within that period, or unless debarment proceedings have been initiated. The Suspension continues until the legal or debarment proceedings are completed.

#### **4.12 Effect on Current Corporation Contracts**

- A. The Corporation shall have the discretion to continue contracts or subcontracts in existence at the time of a Debarment and/or Suspension decision.
- B. The Corporation shall determine the impact of a Debarment or Suspension decision upon the financing or refinancing of any housing development. Notwithstanding a Person's Debarment, the Board of Commissioners may allow

the release of additional funds or approve a restructuring or refinancing if it is in the best interests of the Corporation or the development's residents. However, the Board of Commissioners may require, as a condition of the Corporation's provision of additional funds, restructuring or refinancing, that the Debarred or Suspended Person must divest any interest in the affected housing development.

- C. Nothing in this Part shall be construed to limit the Corporation's discretion with regard to its evaluation of any application or request for Corporation funds, assistance or services. In all circumstances, the Corporation expressly has the right to evaluate the past performance, character and expertise of applicants for loans, grants or other public benefits.

#### **4.13 LIST OF DEBARRED OR SUSPENDED PERSONS**

The Corporation shall maintain a list of all persons who have been Debarred or Suspended in accordance with this Part. The list shall be available for public inspection in accordance with the Rhode Island Access to Public Records Act, R.I. Gen. Laws Chapter 38-2.

#### **4.14 SEVERABILITY**

If any provision contained under this Part or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of this Part which can be given legal effect.

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