



United States  
Department of  
Agriculture

MAR 19 2012


Office of the  
Assistant Secretary  
for Administration

Office of  
Procurement and  
Property  
Management

300 7<sup>th</sup> Street  
Southwest  
Room 302  
Reporters Building

Washington, DC  
20024-9300

TO: Directors, Administrative Services Divisions

FROM: Paul Walden   
Chief  
Property Management Division

SUBJECT: Real Property Management Advisory Memorandum 2012-01:  
Supplemental Guidance, FY 2012 Appropriations Restrictions On  
Use of Funds to Enter Into Financial Transactions with Felon or  
Tax Delinquent Corporations

By memorandum dated February 22, I informed you of new real property leasing requirement language that restricts U.S. Department of Agriculture (USDA) Agencies and Offices from entering into financial transactions with corporations that have been convicted of felonies within the past 24 months, or that have federal tax delinquencies where the agency is aware of the felonies and/or tax delinquencies. The restrictions are based on USDA's fiscal year (FY) 2012 appropriations budget legislation. Non-compliance with these requirements could result in Anti-Deficiency Act (31 U.S.C. §1341) violations.

Since issuing that memorandum, the Office of the General Counsel (OGC) has provided clarifying guidance and revised representations and award assurance language to be used in all new real property leases immediately. OGC's "Second Guidance Memorandum (Q&A's)" dated March 12<sup>th</sup>, is attached. Please do not share this memorandum outside USDA. Language for all Agencies and Offices except for the Forest Service (FS) is found on pages 10 and 11. Language exclusive to the FS is on pages 12 and 13. OGC's wording supersedes and replaces the language issued in my previous memorandum.

Pursuant to this Notice, Real Property Leasing Officers (RPLOs) must include the March 12th language by OGC in all requests for lease proposals and leases awarded through the remainder of FY 2012. RPLOs are prohibited from awarding a lease contract to any corporation that either fails to complete the representation or completes it in the affirmative for having a felony conviction and/or a tax delinquency. If during the course of administering an existing contract, an RPLO becomes aware of a felony or tax delinquency for a corporate Lessor they should notify OPPM for guidance.

These restrictions and award assurance language are to be used until this Advisory is cancelled or modified. OGC expects them to eventually be codified as a

Federal Acquisition Regulation (FAR) deviation. Once that is completed, lease contracts should probably use the FAR language instead of the non-procurement language in the memo. We will keep you advised of the latest policy and legal updates concerning this matter.

Please distribute this Notice to your Realty staffs, including all RPLOs, and monitor to ensure immediate compliance. Feel free to contact me with any questions or concerns on (202) 720-7283.

Attachment

cc: Young, Benjamin, OGC  
Self, Heather, OGC



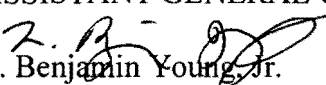
United States  
Department of  
Agriculture

Office of the  
General  
Counsel

Washington,  
D.C.  
20250-1400

March 12, 2012

**MEMORANDUM FOR:** LISA WILUSZ, OPPM DIRECTOR  
JODIE EDWARDS, OPPM DEPUTY DIRECTOR  
TYSON WHITNEY, OCFO TRANSPARENCY AND  
ACCOUNTABILITY DIV. ACTING DIRECTOR  
ASSOCIATE GENERAL COUNSELS  
ASSISTANT GENERAL COUNSELS

**FROM:**   
L. Benjamin Young, Jr.  
Assistant General Counsel  
General Law and Research Division

**SUBJECT:** FY 2012 Appropriations Restrictions On Use of Funds to Enter  
Into Financial Transactions with Felon or Tax Delinquent  
Corporations – Second Guidance Memorandum (Q&A's)

On January 31, 2012, the Office of the General Counsel's General Law and Research Division ("OGC-GLRD") issued a memorandum titled "FY 2012 Appropriations Restrictions On Use of Funds to Enter Into Financial Transactions with Felon or Tax Delinquent Corporations." Since issuance of that memorandum OGC-GLRD has received many questions from both agency clients and other divisions of the Office of the General Counsel. This memorandum is a compilation of those questions and answers, and this frequently asked questions document is being issued as the second guidance memorandum on implementation of the fiscal year 2012 appropriations restrictions. At the end of this memorandum there are draft representations and assurances for use in solicitations and award documents (note that these clauses replace the boilerplate MOU language previously included in the January 31, 2012 memorandum).

This memorandum is also being issued to correct one error in the original January 31, 2012 memorandum. In the sections of that memorandum quoting the statutory provisions, a section of the wording reads "or had an officer or agency of such corporation acting on behalf of the corporation convicted." This should read "officer or agent" not agency.

Please distribute this memorandum to the Procurement Council, CFO Council, and to your clients as applicable.

The point of contact for questions about this memorandum, or implementation of the fiscal year 2012 appropriations restrictions in general, is Heather Self, OGC-GLRD, 202-720-5840 or via e-mail at [heather.self@ogc.usda.gov](mailto:heather.self@ogc.usda.gov).

## **Fiscal Year 2012 Appropriations Restrictions Frequently Asked Questions**

**Question #1:** What is the timeline for implementation of these restrictions?

**Answer:** The restrictions took effect as soon as the fiscal year 2012 appropriations bill was signed into law. Accordingly, immediate compliance is required.

**Question #2:** Do these restrictions apply to awards made during fiscal year 2012 using unobligated balances from a prior fiscal year?

**Answer:** No. These restrictions apply only to awards made with fiscal year 2012 funds.

**Question #3:** Do these restrictions apply only to direct federal awards or also to sub-awards made by the recipient of the funds?

**Answer:** The appropriations restrictions apply only to the direct federal transaction – e.g., the funds given from an agency to a grantee or contractor. The appropriations restrictions do not apply to sub-transactions – e.g., the funds spent by a grantee on a contract for services related to the grantee's implementation of the grant or by a contractor to a subcontractor.

**Question #4:** Can I comply with these appropriations restrictions by checking the Excluded Parties List System ("EPLS") before entering into one of the types of transactions listed in the statutory language?

**Answer:** No. A search of the EPLS shows entities or individuals that have been suspended, debarred, or otherwise disqualified by an agency or office of the federal government for any of a variety of reasons. Not all corporations who have been convicted of a felony or have a tax delinquency have been suspended or debarred, and so they are not all on the EPLS. Also, not all corporations who are on the EPLS were suspended, debarred, or disqualified because of a felony conviction or tax delinquency, so the appropriations restrictions do not apply to everyone on the EPLS.

Note that complying with these restrictions is in addition to complying with the normal suspension and debarment requirement to check the EPLS prior to making award.

**Question #5:** Are there other databases that I can check to find out whether a corporation has been convicted of a felony or has a tax delinquency?

**Answer:** Not currently. The Department of Justice does not maintain any type of central database listing all federal felony convictions, nor is there any database that lists felony convictions for all of the various states. The Department of Justice has agreed to work with the Interagency Suspension and Debarment Committee (ISDC) to provide a list of corporations and related individuals that are indicted/convicted on a quarterly basis.

This agreement between the ISDC will only cover the felony piece and not the tax delinquent piece, however, and OGC-GLRD is not aware of any Internal Revenue Service database that contains a list of all tax delinquents.

Question #6: If a non-procurement transaction is considered “not covered” for purposes of the suspension and debarment regulations does that mean that these appropriations restrictions do not apply?

Answer: No. The appropriations restrictions apply to all USDA contracts, grants, cooperative agreements, loans, loan guarantees, and memoranda of understanding or agreement. Whether a transaction is considered “not covered” under the suspension and debarment regulations is irrelevant.

Question #7: The January 31, 2012 memorandum included guidance for complying with these restrictions if we are awarding a non-procurement transaction using the SF-424. What if we are awarding a non-procurement transaction that does not use the SF-424, how do we comply with these restrictions?

Answer: For grants, cooperative agreements, loans, loan guarantees, and memoranda of understanding/agreement – both those using the SF-424 and those not – you will need to include a representation in your solicitation documents (all solicitation documents) and an assurance in your award documents (when the award is made to a corporation). Please use the representation and assurance clauses included at the end of this memorandum.

Follow Up Question #7: What if I don’t have a solicitation for my transaction? If your transaction does not involve the use of a solicitation or request for proposals of some kind then you would not use the representation but do still need to include the assurance in your award document if the award is being made to a corporation.

Question #8: The January 31, 2012 memorandum recommended that the Office of Procurement and Property Management issue a FAR deviation for procurement officials to include a representation in their contract solicitations. The FAR deviation has not come out yet, how do I comply with these appropriations restrictions in the meantime?

Answer: For all new contract solicitations you will need to include a representation in your solicitation documents (all solicitation documents). For all new contract awards you will need to include an assurance in your award documents (when the award is made to a corporation). Please use the representation and assurance clauses included at the end of this memorandum.

Note that this includes lease contract solicitations and award documents.

Question #9: What do I do if my request for grant proposals or contract solicitation (including lease contract solicitations) was already out on the street without a representation and proposals/offers have come in but award has not yet been made?

Answer: In writing (e-mail is acceptable), you should notify everyone who submitted a proposal/offer of the new appropriations restrictions and ask them to submit signed representations to be added to their proposals/offers. You will also add the assurance to your award documents for any awards made to corporations. Please use the representation and assurance clauses included at the end of this memorandum.

The notification should read “This is to notify you of recent award prohibitions contained in [insert agency’s name] Fiscal Year 2012 Appropriations Act regarding corporate felony convictions and corporate tax delinquencies. Under the Appropriations Act, no awards can be made to any corporation (for profit or non-profit) that has a tax delinquency or felony conviction as defined in the Appropriations Act and described in the attached representation. To comply with these provisions, all offerors/applicants are required to return the attached representation to [insert name and submission address] no later than [insert date and time]. Please note that if you have a tax delinquency or felony conviction, as defined in the Appropriations Act and described in the attached representation, you are not eligible for award. If you are ineligible for award because of these prohibitions it is possible that you can regain eligibility for award, but only if the [insert agency name] suspension and debarring official considers your tax delinquency and/or felony conviction and determines that suspension or debarment is not necessary to protect the interests of the Government.” You will then insert the appropriate representation language from the clauses included at the end of this memorandum.

Question #10: Several questions were received requesting clarification on what “corporation” means.

Question #10 Subset A: Are universities corporations? Are colleges corporations? Are non-profits corporations? Are SNAP retailers corporations? Are state fire crews made up of prison inmates corporations? What about municipal and tribal corporations?

Answer: This question cannot be answered for an entire class of entities, but is an entity-by-entity specific fact. Universities, colleges, non-profits, SNAP retailers, and state prisons come in a variety of government agency or business types some of which may be corporations. Corporations will be considered to be entities that have filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands. (Note that this includes both for-profit and non-profit organizations.)

With respect to municipal corporations and tribal corporations, we are still awaiting OMB guidance. However, if a for-profit or non-profit organization is organized under the corporate laws of a State or tribe, but happens to be wholly-owned by a State, local, or tribal government, the better view at the moment is that they are covered by the prohibitions. Again, however, for these unique types of corporations the question will have to be reviewed on a case-by-case basis.

Question #10 Subset B: Do the appropriations restrictions apply to foreign corporations?

Answer: No.

Question #11: Several questions were received requesting expansion or clarification of the January 31, 2012 memorandum’s discussion of the statutes’ awareness requirement.

Answer: In discussing the statutory language’s requirement for an agency to be “aware of” a felony conviction or tax delinquency in order for the restrictions to apply, the January 31, 2012

memorandum stated that awareness “will be imputed at the level of the contracting officer, awarding official, or other person who signs a non-competitive cooperative agreement or memorandum of understanding on behalf of the agency.”

Awareness is being imputed at the awarding official level for two primary reasons. The first reason is that many agencies’ procurement, financial assistance, and grants and agreements staffs are large and widely geographically dispersed, making imputation to each individual person of the knowledge of every other individual person in the organization both unrealistic and unwieldy. The second reason is that because these are appropriations restrictions, for which failure to follow could result in an Anti-Deficiency Act violation, the imputation of awareness and responsibility for compliance must be placed on the official who has the authority to and is authorizing the expenditure of funds.

As an example consider a scenario where a procurement tech working on a solicitation and compiling offeror information for evaluation by the technical team knows that one of the offers received is from a corporation that has recently been convicted of a federal felony, but the procurement tech does not make the contracting officer aware of this knowledge. The technical team selects and recommends for award the offeror with the felony conviction and the contracting officer makes award to this offeror. At the time the contracting officer made award s/he did not know – i.e., was not aware of – the offeror being a corporation that had been convicted of a federal felony. The award would likely be considered to be in violation of the appropriations restrictions, but the contracting officer would likely not be considered to have committed an Anti-Deficiency Act violation due to his/her lack of knowledge. To avoid these types of situations and ensure full compliance with the appropriations restrictions, agencies and offices of USDA should widely distribute information about these restrictions amongst procurement, financial assistance, and grants and agreements staffs. Non-awarding official members of these staffs – e.g., procurement techs, grant reviewers, etc. – should be encouraged to bring any knowledge of possible felony convictions or tax delinquencies to the attention of their contracting officers, awarding officials, or other funds obligating officials.

The opposite of the above example, is a situation where someone in senior management knows of a felony conviction or tax delinquency, but the awarding official is not aware. Having an award made in this type of situation would not only be publicly embarrassing for USDA, but also would fail to comply fully with the intent of the appropriations restrictions. Accordingly, information about corporate felony convictions and tax delinquencies should be shared broadly both top down and bottom up within and across USDA’s agencies and offices to ensure that funds obligating officials are aware of situations where these appropriations restrictions are applicable.

Question #12: Memoranda of Understanding (“MOU”) and Memoranda of Agreement (“MOA”) do not normally involve money, so is it the intent of the appropriations restrictions to reach the salary and expenses costs associated with any technical assistance, cooperation in sharing information, etc.?

Answer: Correct. MOUs and MOAs generally are not fund obligating documents, although the practice may vary among Federal agencies. In fact, one of the boilerplate clauses OGC-GLRD recommends for inclusion in all USDA MOUs and MOAs is a statement to the effect that the



agreement specifically does not obligate funds. Given that MOUs and MOAs generally are not fund obligating documents, and that we must assume Congress was aware of this being generally the nature of MOUs and MOAs at the time it passed the appropriations restrictions, we must infer that the inclusion of MOUs and MOAs in the statutory language was meant to restrict the expenditure of appropriated funds for indirect costs associated with entering into MOUs and MOAs – e.g., salaries and expenses. In short, the intent of Congress is not merely to shut off the flow of funding to entities with felony convictions or tax delinquencies but also to stop the government from doing any kind of business with such entities, including MOUs.

To comply with the appropriations restrictions for MOUs and MOAs OGC-GLRD is recommending that agreements staff place into any MOU or MOA being entered into with a corporation the appropriate assurance clause included at the end of this memorandum. Inclusion of this clause coupled with signature of the corporation before signature of any USDA official should be sufficient to establish compliance with the appropriations restrictions. If a situation ever arises where the corporation has signed but the USDA official has reason to believe the corporation is making a false representation – i.e., that the corporation has a felony conviction or tax delinquency – the USDA official should not sign the MOU or MOA until the issue is raised with counsel for resolution.

We are aware that the Environmental Protection Agency (“EPA”) has taken the view that these prohibitions cover only fund obligating MOUs. OMB’s final guidance will make a final call on this issue, but in the meantime we feel a more conservative approach is warranted for the reasons expressed above.

Question #13: If we are making awards using appropriated dollars from other federal agencies can we use the same representations and assurances we use to comply with our appropriations restrictions?

Answer: No. The appropriations restrictions are not the same for every department or agency of the federal government. If you are making awards using another department or agencies fiscal year 2012 appropriated funds you will need to check with them to determine what appropriations restrictions apply to their funds and how they are complying with those restrictions.

Question #14: The appropriations restrictions say that funds cannot be used to make awards to corporations that have had “an officer or agent of such corporation acting on behalf of the corporation convicted” of a felony. What does this mean?

Answer: This means that if an officer or agent of a corporation, for example the chief financial officer, is convicted of a felony for something that he did for the corporation the appropriations restrictions would apply but if he was convicted of a felony for something that he did for himself the appropriations restrictions would not apply. For example, if the chief financial officer of Corporation ABC is convicted of a felony for filing false corporate financial reports with the Internal Revenue Service that would be something he did for the corporation – or “acting on behalf of the corporation” – and so the appropriations restrictions would apply to Corporation ABC. If, however, the chief financial officer of Corporation ABC is convicted of a felony for domestic abuse that is not something that he did for the corporation, then the appropriations restrictions would not apply to Corporation ABC.



Question #15: If a corporation had an officer or agent convicted of a felony for actions taken on behalf of the corporation but that officer or agent no longer works at the corporation do the restrictions still apply?

Answer: Yes. Using our example from above where the chief financial officer of Corporation ABC was convicted of a felony for filing false corporate financial reports with the Internal Revenue Service and the appropriations restrictions apply. If Corporation ABC fires the convicted chief financial officer, the appropriations restrictions still apply. Corporation ABC cannot purge itself of the taint of its chief financial officer's conviction by firing him. Corporation ABC had an officer or agent convicted of a felony for actions taken on behalf of the corporation, accordingly the appropriations restrictions will continue to apply until the conviction is older than 24 months.

While a corporation cannot purge itself of the taint of an officer or agent's conviction by firing the officer or agent, the fact that the convicted officer or agent has been fired would be a factor for a suspending and debarring official to consider in deciding whether suspension or debarment action is warranted. If the suspending and debarring official made a determination that the felony conviction did not warrant suspension or debarment action then the appropriations restrictions would cease to apply before the 24 month expiration of the conviction.

Question #16: If an offeror for a procurement solicitation submits an affirmative representation saying that they have a felony conviction or tax delinquency does that make that offeror "non-responsible?"

Answer: No. The offeror would be considered statutorily ineligible for award because of the appropriations restrictions, but would not be considered non-responsible.

Question #17: If an offeror for a procurement or an applicant for a non-procurement transaction affirmatively represents that they have a felony conviction or tax delinquency do I have to refer the matter to my agency's suspending and debarring official?

Answer: The statutory language of the appropriations restrictions does not require you to refer the matter to a suspending and debarring official. However, both the non-procurement and procurement suspension and debarment regulations require you to alert your agency's suspension and debarment official if you become aware of a cause for possible suspension or debarment. See 48 C.F.R. § 409.406-3(a); 2 C.F.R. § 180.600.

Question #18: If an offeror for a procurement or an applicant for a non-procurement transaction affirmatively represents that they have a felony conviction or tax delinquency can I make award to another offeror or applicant or do I have to wait for the suspending and debarring official to make a determination before proceeding with award?

Answer: This is a matter of discussion at OMB. While we await final guidance from OMB, OGC's best advice is that these prohibitions do not require any agency to delay award pending review by the suspending and debarring official but the agency certainly has the discretion to do so if it wishes.

Question #19: If a corporation with a felony conviction or tax delinquency is referred to an agency suspending and debarring official does the official have to consider suspension or debarment action?

Answer: Again, the statutory language of the appropriations restrictions does not require consideration of suspension or debarment action, but OGC-GLRD recommends initiating suspension and debarment proceedings for all referrals of felony convictions or tax delinquencies. Corporations that have felony convictions or tax delinquencies are statutorily ineligible for awards under the appropriations restrictions, but there is no database to make awarding officials aware of this ineligibility creating the very real possibility that statutorily ineligible corporations will receive awards because of awarding officials not being aware of their ineligibility. Initiating suspension and debarment proceedings will resolve the issue of ineligibility in a definitive way to provide a greater level of certainty for awarding officials.

If the result of the suspension and debarment proceedings is that the convicted felon or tax delinquent corporation is suspended or debarred then it will be placed on the EPLS and awarding officials would know not to award to that corporation when they perform the already required EPLS check. If the result of the suspension and debarment proceedings is that the convicted felon or tax delinquent corporation is not suspended or debarred then the agency suspending and debarring official would notify the awarding officials in his/her agency as well as the Interagency Suspension and Debarment Committee of the determination. The Interagency Suspension and Debarment Committee is working with the Office of Management and Budget to create an online repository for determinations resulting from felony conviction and tax delinquency referrals.

Question #20: If another agency's suspending and debarring official has made a determination that suspension or debarment was not necessary for a convicted felon or tax delinquent corporation can I rely on the other agency's determination to say that the appropriations restrictions do not apply to that corporation for my agency's awards?

Answer: Not entirely. Agencies that have made determinations not to suspend or debar based on felony convictions or tax delinquencies should notify the Interagency Suspension and Debarment Committee of their determination and the reasons for it. Your agency suspending and debarring official should consult with the agency that already initiated suspension and debarment proceedings (the "lead agency") and should review the determination to decide whether s/he concurs with it. If your suspending and debarring official concurs with the lead agency's determination not to suspend or debar, then your agency does not need to initiate separate suspension and debarment proceedings. If your suspending and debarring official does not concur with the lead agency's determination not to suspend or debar, then your agency will need to initiate its own proceedings and reach its own decision about suspension or debarment.

The Interagency Suspension and Debarment Committee is working with the Office of Management and Budget to create an online repository for determinations resulting from felony conviction and tax delinquency referrals.

Question #21: Peter Laub has retired from USDA's Office of the Chief Financial Officer. Who is USDA's new point of contact for the Interagency Suspension and Debarment Committee?

Answer: The new USDA point of contact for the Interagency Suspension and Debarment Committee is Martha Burton in the Transparency and Accountability Reporting Division of USDA's Office of the Chief Financial Officer.

Question #22: The non-procurement suspension and debarment regulations say that failure to pay a debt for sums owed to the Federal Government under the Internal Revenue Code is not a cause for suspension or debarment. 2 C.F.R. § 180.800(c)(3). How does this work with the appropriations restrictions prohibition on awarding funds to corporations with tax delinquencies?

Answer: A corporation that has a tax delinquency, as defined in the statutory language, is statutorily ineligible for award because of the appropriations restrictions. If your agency's suspending and debarring official considers the circumstances of the corporation's tax delinquency and makes a determination that neither suspension or debarment is warranted then the tax delinquent corporation would cease to be statutorily ineligible.

Also, it should be noted that while failure to pay a federal tax debt is not by itself a cause for debarment, tax evasion is a cause for debarment. 2 C.F.R. § 180.800(a)(3). So if the corporation's tax debt came to be because of tax evasion and the corporation is now delinquent on that tax debt suspension or debarment might be warranted because of the underlying tax evasion even though the tax debt alone is not a cause for debarment.

It should further be noted that this discussion applies only to non-procurement transactions. For procurement transactions tax delinquencies over \$3,000 are specifically listed as a cause for debarment in the Federal Acquisition Regulation. 48 C.F.R. § 9.406-2(b)(1)(v).

Question #23: The appropriations restrictions apply to loan guarantees. Does this mean that the restrictions apply to lenders, borrowers, or both?

Answer: OGC-GLRD believes that the restriction applies only to the lender because the federal loan guarantee is extended only to the lender and the funds the lender loans the borrower are not federal funds, just federally guaranteed.

Question #24: Do these appropriations restrictions apply to non-procurement contracts – e.g., Forest Service timber sale contracts?

Answer: We have asked OMB for further input into whether the appropriations restrictions apply to contracts other than procurement contracts. For the moment, we conclude that the appropriations restrictions do not apply to timber sale contracts. However, if the contract is a mixture of procurement and sale – i.e., a hybrid like a stewardship contract – then we believe the appropriations restrictions do apply.

Cc: General Law and Research Division Procurement & Agreements Attorneys (Mark Garrett, Elin Dugan, Azine Farzami, Adam Hermann, Melissa McClellan, Antonio Robinson, Heather Self)  
Regional Attorneys (Andrea Foster, Lisa Christian, John Vos, Jeff Moulton)

**Draft Representations & Assurances for Use Solicitations and Awards Documents**  
**(All USDA Agencies and Offices Except Forest Service)**

**These clauses should be used for the following non-procurement transactions – grants, cooperative agreements, loans, loan guarantees, and memoranda of understanding/agreement. (Note that these clauses replace the boilerplate MOU language previously included in OGC’s January 31, 2012 memorandum.)**

**Until advised differently by OPPM, these clauses should be used in all new contract solicitations and contract award documents, including lease contracts.**

Representation: This clause is for use in all solicitations, requests for proposals, or other application announcements.

**REPRESENTATION REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS  
FOR CORPORATE APPLICANTS**

Awards made under this announcement are subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, P.L. No. 112-55, Division A, Sections 738 and 739 regarding corporate felony convictions and corporate federal tax delinquencies. To comply with these provisions, all applicants must complete the paragraph (1) of this representation, and all corporate applicants also must complete paragraphs (2) and (3) of this representation.

- (1) Applicant \_\_\_\_\_ [insert applicant name] is \_\_\_\_ is not \_\_\_\_ (check one) an entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands. (Note that this includes both for-profit and non-profit organizations.)

If Applicant checked “is” above, Applicant must complete paragraphs (2) and (3) of the representation. If Applicant checked “is not” above, Applicant may leave the remainder of the representation blank.

- (2) Applicant \_\_\_\_\_ [insert applicant name] has \_\_\_\_ has not \_\_\_\_ (check one) been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of application. Applicant has \_\_\_\_ has not \_\_\_\_ (check one) had any officer or agent of Applicant convicted of a felony criminal violation for actions taken on behalf of Applicant under Federal or State law in the 24 months preceding the date of signature.
- (3) Applicant \_\_\_\_\_ [insert applicant name] has \_\_\_\_ does not have \_\_\_\_ (check one) any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

Assurance: This clause is for use in all award documents that are entered into with any entity that is a corporation. If the entity receiving award is not a corporation then you do not need to include the assurance in the award document.

#### ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE APPLICANTS

This award is subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, P.L. No. 112-55, Division A, Sections 738 and 739 regarding corporate felony convictions and corporate federal tax delinquencies.

Accordingly, by accepting this award the recipient acknowledges that it: (1) does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal or State law within 24 months preceding the award, unless a suspending and debarment official of the United States Department of Agriculture has considered suspension or debarment of the recipient corporation, or such officer or agent, based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government. If the recipient fails to comply with these provisions, [insert agency name] will annul this agreement and may recover any funds the recipient has expended in violation of sections 738 and 739.

## **Draft Representations & Assurances for Use Solicitations and Awards Documents (Forest Service)**

**These clauses should be used for the following non-procurement transactions – grants, cooperative agreements, loans, loan guarantees, and memoranda of understanding/agreement. (Note that these clauses replace the boilerplate MOU language previously included in OGC’s January 31, 2012 memorandum.)**

**Until advised differently by OPPM, these clauses should be used in all new contract solicitations and contract award documents, including lease contracts.**

Representation: This clause is for use in all solicitations, requests for proposals, or other application announcements.

### **REPRESENTATION REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE APPLICANTS**

Awards made under this announcement are subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Division E, Sections 433 and 434 regarding corporate felony convictions and corporate federal tax delinquencies. To comply with these provisions, all applicants must complete the paragraph (1) of this representation, and all corporate applicants also must complete paragraphs (2) and (3) of this representation.

- (1) Applicant \_\_\_\_\_ [insert applicant name] is \_\_\_\_ is not \_\_\_\_ (check one) an entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands. (Note that this includes both for-profit and non-profit organizations.)

If Applicant checked “is” above, Applicant must complete paragraphs (2) and (3) of the representation. If Applicant checked “is not” above, Applicant may leave the remainder of the representation blank.

- (2) Applicant \_\_\_\_\_ [insert applicant name] has \_\_\_\_ has not \_\_\_\_ (check one) been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of application. Applicant has \_\_\_\_ has not \_\_\_\_ (check one) had any officer or agent of Applicant convicted of a felony criminal violation for actions taken on behalf of Applicant under Federal in the 24 months preceding the date of signature.
- (3) Applicant \_\_\_\_\_ [insert applicant name] has \_\_\_\_ does not have \_\_\_\_ (check one) any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

Assurance: This clause is for use in all award documents that are entered into with any entity that is a corporation. If the entity receiving award is not a corporation then you do not need to include the assurance in the award document.

#### ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE APPLICANTS

This award is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Division E, Sections 433 and 434 regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by accepting this award the recipient acknowledges that it: (1) does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending and debarring official of the United States Department of Agriculture has considered suspension or debarment of the recipient corporation, or such officer or agent, based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government. If the recipient fails to comply with these provisions, the United States Forest Service will annul this agreement and may recover any funds the recipient has expended in violation of sections 433 and 434.



OPPM:BWodley:SuppMemo:03/16/12:revised03/19/12