

# Rules and Regulations

Federal Register

Vol. 72, No. 159

Friday, August 17, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## SOCIAL SECURITY ADMINISTRATION

### 2 CFR Part 2336 and 20 CFR Part 436

[Docket No. SSA 2007-0033]

RIN 0960-AG48

### SSA Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: Social Security Administration.

ACTION: Final rule.

**SUMMARY:** The Social Security Administration (SSA) is moving its regulations on nonprocurement debarment and suspension from title 20 of the Code of Federal Regulations (CFR), chapter III, part 436, to title 2 of the CFR, subtitle B, chapter 23, part 2336. In 2 CFR part 180, the Office of Management and Budget (OMB) provides guidance for Federal agencies on the government-wide debarment and suspension system for nonprocurement programs and activities. SSA is implementing regulations covering policies and procedures for nonprocurement debarment and suspension by adopting OMB's guidance in 2 CFR part 180 and adding some provisions that are specific to SSA. The new part in 2 CFR will be substantively the same as the prior nonprocurement debarment and suspension regulations that set forth common policies and procedures that Federal Executive branch agencies use in taking suspension and debarment actions (the common rule). However, 2 CFR will consolidate all of the Executive agencies' regulations in one location so that they are easier to find. This regulatory action is an administrative simplification that makes no substantive change in SSA policies or procedures for nonprocurement debarment and suspension.

**DATES:** This final rule is effective August 17, 2007.

### FOR FURTHER INFORMATION CONTACT:

Phyllis Y. Smith, Chief Grants Management Officer, Office of Operations Contracts and Grants, Office of Acquisition and Grants, SSA, 7111 Security Blvd, 1st Floor Rear Entrance, Baltimore, MD 21244; e-mail: [phyllis.y.smith@ssa.gov](mailto:phyllis.y.smith@ssa.gov); telephone (410) 965-9518; fax (410) 966-9310. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

### SUPPLEMENTARY INFORMATION:

#### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

#### Background

Executive Order 12549, "Debarment and Suspension," issued on February 18, 1996, gave government-wide effect to each Federal Executive agency's nonprocurement debarment and suspension actions. Section 6 of the Executive Order authorized OMB to issue guidance to Executive agencies on nonprocurement debarment and suspension, including provisions prescribing government-wide criteria and minimum due process procedures. Section 3 directed Executive agencies to issue regulations implementing the Executive Order that were consistent with the OMB guidelines.

On May 11, 2004, in the **Federal Register** (69 FR 26275), OMB established title 2 in the CFR for grants and other financial assistance and nonprocurement agreements. Title 2 consisted of two subtitles, subtitles A and B. Subtitle A, "Office of Management and Budget Guidance for Grants and Agreements," contained OMB government-wide policy guidance to Federal agencies. Subtitle B, "Federal Agency Regulations for Grants and Agreements," was reserved for Federal agencies' regulations implementing the OMB guidance as it applies to grants and other financial assistance agreements and nonprocurement transactions.

On August 31, 2005, OMB published interim final guidance for government-wide nonprocurement debarment and suspension in the **Federal Register** (70

FR 51863). The guidance, located in 2 CFR part 180, updated previous OMB guidance. The interim final guidance conformed the OMB guidance with an update to the common rule on nonprocurement debarment and suspension for Federal agencies published in the **Federal Register** on November 26, 2003 (see 70 FR 51864). On November 15, 2006, OMB published a final rule adopting the interim final guidance with changes (71 FR 66431).

#### Regulatory Change

In accordance with OMB's guidance, this final rule moves SSA's nonprocurement debarment regulations to subtitle B in a new chapter 23, part 2336, and removes them from 20 CFR part 436. The substance of the regulations is unchanged.

#### Regulatory Procedures

Pursuant to sections 205(a), 702(a)(5) and 1631(d)(1) of the Social Security Act, 42 U.S.C. 405(a), 902(a)(5) and 1383(d)(1), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of this rule, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures because we are merely moving our rules on debarment and suspension to a new title in the CFR. We are making no substantive changes in the rules. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as a direct final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are merely moving our rules on debarment and suspension to a new title in the CFR. This is a government-wide initiative to streamline and simplify debarment and suspension rules in one place in the CFR. Therefore, we find that it is in the public interest to make these rules effective upon publication.

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, it was not subject to OMB review. We have also determined that this rule meets the plain language requirement of Executive Order 12866, as amended.

*Regulatory Flexibility Act*

We certify that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104-4)*

This rule does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

*Paperwork Reduction Act*

This rule will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.007, Social Security—Research and Demonstration; and 96.008, Social Security Administration—Benefits Planning, Assistance, and Outreach Program)

**List of Subjects***2 CFR Part 2336*

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

*20 CFR Part 436*

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements.

Dated: May 8, 2007.

**Michael J. Astrue,**

*Commissioner of Social Security.*

■ Accordingly, under the authority of 42 U.S.C. 902(a)(5); Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235), SSA amends the Code of Federal Regulations, title 2, subtitle B, and title 20, chapter 3, part 436, as follows:

**Title 2—Grants and Agreements**

■ 1. Add chapter XXIII, part 2336 to subtitle B, to read as follows:

**CHAPTER XXIII—SOCIAL SECURITY ADMINISTRATION****PART 2336—NONPROCUREMENT DEBARMENT AND SUSPENSION**

Sec.

2336.10 What does this part do?

2336.20 Does this part apply to me?

2336.30 What policies and procedures must I follow?

**Subpart A—General**

2336.137 Who in the SSA may grant an exception to let an excluded person participate in a covered transaction?

**Subpart B—Covered Transactions**

2336.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

**Subpart C—Responsibilities of Participants Regarding Transactions**

2336.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

2336.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

**Subpart E—J—Reserved**

**Authority:** 42 U.S.C. 902(a)(5); Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

**§ 2336.10 What does this part do?**

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the SSA policies and procedures for nonprocurement debarment and suspension. 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, Pub. L. 103-355, 108 Stat. 3327).

**§ 2336.20 Does this part apply to me?**

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in an SSA suspension or debarment action;

(c) SSA debarment or suspension official; or

(d) SSA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

**§ 2336.30 What policies and procedures must I follow?**

The SSA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220), as supplemented by section 220 in this part (i.e., § 2336.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, SSA policies and procedures are those in the OMB guidance.

**Subpart A—General****§ 2336.137 Who in the SSA may grant an exception to let an excluded person participate in a covered transaction?**

(a) Within the Social Security Administration, the Commissioner or the designated agency debarment official may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Commissioner or the designated agency debarment official grants an exception, the exception must be in writing and state the reason(s) for deviating from the OMB guidance at 2 CFR 180.135.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

**Subpart B—Covered Transactions****§ 2336.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see option lower tier coverage in the figure in the Appendix to 2 CFR part 180), SSA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

**Subpart C—Responsibilities of Participants Regarding Transactions****§ 2336.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?**

You as a participant must include a term or condition in lower-tier

transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

#### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

##### § 2336.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

#### Subpart E—J—[Reserved]

#### Title 20—Employees' Benefits

#### CHAPTER III—SOCIAL SECURITY ADMINISTRATION

#### PART 436—[REMOVED]

##### ■ 2. Remove part 436.

[FR Doc. E7-16195 Filed 8-16-07; 8:45 am]

BILLING CODE 4191-02-P

#### OFFICE OF PERSONNEL MANAGEMENT

#### 5 CFR Part 591

RIN 3206-AL12

#### Nonforeign Area Cost-of-Living Allowance Rates; U.S. Virgin Islands

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is publishing a final regulation to increase the cost-of-living allowance (COLA) rate received by certain white-collar Federal and U.S. Postal Service employees in the U.S. Virgin Islands (USVI). The increase is the result of living-cost surveys conducted by OPM in USVI, Puerto Rico, and the Washington, DC area in 2005. The final regulation increases the COLA rate for USVI from 23 percent to 25 percent.

**DATES:** *Effective date:* September 17, 2007. *Implementation date:* First day of the first pay period beginning on or after September 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** J. Stanley Austin, (202) 606-2838; fax:

(202) 606-4264; or e-mail: COLA@opm.gov.

**SUPPLEMENTARY INFORMATION:** Section 5941 of title 5, United States Code, authorizes Federal agencies to pay cost-of-living allowances to white-collar Federal and U.S. Postal Service employees stationed in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Executive Order 10000, as amended, delegates to the Office of Personnel Management (OPM) the authority to administer nonforeign area COLAs and prescribes certain operational features of the program. OPM conducts living-cost surveys in each allowance area and in the Washington, DC, area to determine whether, and to what degree, COLA area living costs are higher than those in the DC area. OPM sets the COLA rate for each area based on the results of these surveys.

As required by section 591.223 of title 5, Code of Federal Regulations, OPM conducts COLA surveys once every 3 years on a rotating basis. For areas not surveyed during a particular year, we adjust COLA rates by the relative change in the Consumer Price Index (CPI) for the COLA area compared with the Washington, DC, area. (See 5 CFR 591.224-226.) OPM adopted these regulations pursuant to the stipulation of settlement in *Caraballo et al. v. United States*, No. 1997-0027 (D.V.I), August 17, 2000. *Caraballo* was a class-action lawsuit which resulted in many changes in the COLA methodology and regulations.

OPM conducted living-cost surveys in Puerto Rico, the U.S. Virgin Islands, and the Washington, DC, area in the spring of 2005. We published the results of these surveys in the *2005 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas* in the **Federal Register** on October 27, 2006, at 71 FR 63179.

As described in the 2005 survey report, we compared the results of the COLA area surveys with the results of the DC area survey to compute a living-cost index for each of the COLA areas. The results of the living-cost surveys indicated an increase in the COLA rate for the U.S. Virgin Islands, from 23 percent to 25 percent, and a decrease in the COLA rate for Puerto Rico.

We also computed interim adjustments based on the relative change in the CPI for the Alaska, Hawaii, and Guam and the Northern Mariana Islands COLA areas. We published the calculation of these interim adjustments in a notice in the **Federal Register** on October 27, 2006, at

71 FR 63178. The interim adjustments indicated that the COLA rates for the Hawaii and Guam COLA areas were set at the appropriate level but that the Anchorage, Fairbanks, and Juneau, Alaska, COLA rates should be reduced.

We published a proposed rule to increase the USVI COLA rate and reduce the COLA rates in Puerto Rico and Anchorage, Fairbanks, and Juneau, Alaska, in the **Federal Register** on October 27, 2006, at 71 FR 63176. However, 5 CFR 591.228(c) limits COLA rate decreases to 1 percentage point in a 12-month period, and we implemented COLA rate decreases in Anchorage, Fairbanks, Juneau, and Puerto Rico effective on the first pay period beginning on or after September 1, 2006. Therefore, we are changing only the USVI rate at this time. We will address the rate reductions, and comments received on these reductions, in a future **Federal Register** publication. We did not receive comments regarding the USVI rate increase.

#### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

#### List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

■ Accordingly, the Office of Personnel Management amends subpart B of 5 CFR part 591 as follows:

#### PART 591—ALLOWANCES AND DIFFERENTIALS

##### Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

■ 1. The authority citation for subpart B of 5 CFR part 591 continues to read as follows:

**Authority:** 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943-1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

■ 2. Revise Appendix A to Subpart B to read as follows: