

SC State Housing Finance and Development Authority

Suspension and Debarment Policy for Non-Procurement Matters

September 2023

1. Introduction

As a steward of public funds, the South Carolina State Housing Finance and Development Authority (SC Housing) is required to award contracts and financial assistance only to those who are determined to be reliable, ethical, and capable of performing the required work. One way to achieve this vital goal is through suspensions and debarments, which are actions taken to exclude organizations or individuals from receiving contracts or assistance based on various types of misconduct. Although SC Housing has the authority to suspend and debar contractors and awardees, these administrative remedies should not be considered punishment, as they are only intended to ensure that publicly funded business is conducted with responsible entities.

1.1 Authorities:

- a. Executive Order 12549, Feb. 18, 1986 (51 FR 6370)
- b. Executive Order 12689, August 16, 1989 (54 FR 34131)
- c. Non-Procurement Common Rule, 2 CFR Part 180
- d. Non-Federal Entities Rule, 2 CFR 200.214
- e. SC Housing Enabling Statutes, SC Code § 31-13-10 et seq.

To the extent there is any conflict or inconsistency between these Authorities and the Policy herein, these Authorities control.

1.2 Purpose: The Policy herein provides a framework for SC Housing to suspend and/or debar a person/entity in a non-procurement matter. To ensure due process, the rules promulgated herein have their basis in the Non-Procurement Common Rule as extended by the Non-Federal Entities Rule and authorized by SC Housing's Board of Commissioners under its enabling statutes.

1.3 Scope: The Policy herein applies to all programs at SC Housing and represents a comprehensive suspension and debarment program for non-procurement matters. However, if a SC Housing program receives funding from a source with differing requirements, the funding source requirements will supersede this Policy. This Policy should not be confused with legal remedies authorized by law, regulation, contract, or restrictive covenant.

1.4. **Summary of the Policy:** Suspension and debarment sanctions shall be imposed only in the public interest of overseeing and safeguarding the use of public funds, not for punishment. To protect the public interest, SC Housing shall award contracts and continue business relationships with only those who are determined to be reliable, ethical, and capable of performing the required work. When a person/entity doing business with SC Housing appears to be or is proven to be irresponsible, then SC Housing may elect at its discretion to suspend or debar the person/entity. Suspension is not a prerequisite to debarment. Suspensions or debarments may be imposed on individuals either in conjunction with, in lieu of, or independent of suspension or debarment imposed on organizations. Also, SC Housing may elect to suspend or debar individuals or organizations employed by, utilized by, or affiliated with a person/entity doing business with SC Housing. Individuals who are suspended or debarred by SC Housing are ineligible to serve on any board, committee, task force, or similar body related to SC Housing. Suspension and debarment are tools to fight fraud, waste, and abuse, and are independent of any fine or penalty imposed under the provisions of any program or compliance requirement. All SC Housing employees are responsible for discovering and reporting misconduct of potential and actual business partners that may give rise to a suspension and/or debarment.

2. Suspension

A suspension is a temporary status of ineligibility for any ongoing relationship or business with SC Housing, pending completion of an investigation or legal proceeding, and means the person/entity will not be able to participate in a specific program area or possibly any SC Housing program, board, committee, task force, or similar body. In order to impose a suspension, there must be adequate evidence that there may be a cause and a determination that immediate action is necessary to protect the public interest. Adequate evidence means the evidence is sufficient to support a reasonable belief that a particular act, omission, or event has occurred. A person/entity may be immediately suspended prior to receiving notice and given an opportunity to contest the suspension.

2.1 **Causes for Suspension:** SC Housing may suspend a person/entity when it has been determined that immediate action is necessary to protect the public interest and:

- a. There exists an indictment for or other adequate evidence to suspect a conviction of or civil judgment for:
 1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or

- transaction;
2. Violation of federal or state antitrust statutes, including those that prohibit price fixing between competitors, allocation of customers between competitors, and bid rigging;
 3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or claims, submitting false or materially misleading information or documentation, tax evasion, receiving stolen property, or obstruction of justice; or
 4. Commission of any other offense that indicates dishonesty, false pretense or misrepresentation, a lack of business integrity, or a willful or repeated failure to perform obligations in a responsible manner; or
- b. There exists adequate evidence to suspect a violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:
1. A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
 2. A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
 3. A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction; or
- c. Any of the following causes:
1. A non-procurement debarment by any federal agency taken before October 1, 1988, or a procurement debarment by any federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;
 2. Knowingly doing business with an ineligible person, except as explicitly permitted by SC Housing;
 3. Failure to pay a single substantial debt, or a number of outstanding debts owed to any federal or state agency or instrumentality, provided the debt is uncontested by the debtor, or if contested, provided the debtor's legal and administrative remedies have been exhausted;
 4. Failure to pay SC Housing for 90 days or more from notice of payment due;
 5. Failure to meet SC Housing program deadlines or requirements, as defined in the program manual, program notice, and/or contract with SC Housing;
 6. Failure to correct audit findings or compliance reports during the correction

period, as defined in the program manual, program notice, and/or contract with SC Housing;

7. Misappropriation or ineligible use of funds;
 8. Violation of a material provision of a voluntary exclusion agreement and/or any settlement of a debarment or suspension action;
 9. Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 USC 701); or
- d. Any other cause so serious or compelling a nature that it affects the person/entity's present responsibility (e.g., performance record, integrity, business ethics, qualifications, etc.); including but not limited to debarment or equivalent exclusionary action by a federal or state agency or instrumentality; violation of any civil rights, equal rights or nondiscrimination laws; violation of any agreement related to nondiscrimination or equal opportunity in employment, housing or lending; or violation of any agreement involving conflict of interest or an improper shared identity of interest.

2.2 Period of Suspension: A suspension is for a temporary period up to two (2) years, pending the completion of an investigation and any legal proceedings. A suspension may be terminated sooner by SC Housing (e.g., a person/entity may be allowed to resume participation thirty (30) days after the person/entity's corrective action is confirmed by SC Housing). However, if legal proceedings are not initiated within twenty-four (24) months after the date of the suspension notice, the suspension must be terminated unless an extension is requested in writing and approved by SC Housing's Executive Director for up to an additional six (6) months. If the severity of the misconduct (including but not limited to more than one suspension) warrants a longer period, then the matter will be referred to SC Housing's Board of Commissioners for debarment.

2.3 Early Reinstatement: The suspended person/entity may petition for early reinstatement only under the following circumstances:

- a. Upon discovery of new evidence that was not previously discoverable;
- b. Upon the dismissal or reversal of criminal charges or a civil or administrative action related to the suspension;
- c. The reversal of the debarment, suspension or other exclusion imposed by another governmental agency upon which the suspension was based;

- d. Upon a bona fide change in ownership or management of the suspended entity; or
- e. Upon proof that the cause for suspension has been eliminated.

A petition for early reinstatement must be submitted in writing to SC Housing's General Counsel who will convene a committee consisting of a total of three members of the Executive Staff, including the Deputy Director or Executive Staff member who originated the suspension recommendation. The committee will review the evidence submitted by both the suspended person/entity and SC Housing staff and will determine whether the suspension should be reversed or modified. The committee must submit its decision to the Executive Director for review. If Executive Director decides to deny the early reinstatement, then the General Counsel will inform the suspended person/entity in writing of the denial. If the Executive Director approves the early reinstatement, then the General Counsel will inform the person/entity in writing of the reinstatement.

2.4 Reinstatement Following Suspension: Upon the conclusion of a suspension, the suspended person/entity is permitted to resume activities with all SC Housing programs. However, the suspension may be considered with respect to future suspensions and/or debarments.

3. Debarment

SC Housing's Board of Commissioners is the sole body authorized to impose debarment. A person/entity referred for debarment is suspended until the Board renders its decision. A debarment is imposed only after providing notice of the action to the person/entity and an opportunity to contest the proposed debarment. In order to impose a debarment, the Board must conclude, based on a preponderance of the evidence, that the entity/person has engaged in conduct that warrants debarment. A debarment is imposed for a specified period as a final determination that an entity/person is not presently responsible.

3.1 Causes for Debarment: SC Housing may debar a person/entity for:

- a. Conviction of, civil judgment for, or acceptance of deferred adjudication of the:
 - 1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
 - 2. Violation of federal or state antitrust statutes, including those that prohibit price fixing between competitors, allocation of customers between

- competitors, and bid rigging;
- 3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or claims, submitting false or materially misleading information or documentation, tax evasion, receiving stolen property, or obstruction of justice; or
- 4. Commission of any other offense that indicates dishonesty, false pretense or misrepresentation, a lack of business integrity, or a willful or repeated failure to perform obligations in a responsible manner; or
- b. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:
 - 1. A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
 - 2. A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
 - 3. A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction; or
- c. Any of the following causes:
 - 1. A non-procurement debarment by any federal agency taken before October 1, 1988, or a procurement debarment by any federal or state agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;
 - 2. Knowingly doing business with an ineligible person, except as explicitly permitted by SC Housing;
 - 3. Failure to pay a single substantial debt, or a number of outstanding debts owed to any federal or state agency or instrumentality, provided the debt is uncontested by the debtor, or if contested, provided the debtor's legal and administrative remedies have been exhausted;
 - 4. Failure to pay SC Housing for 90 days or more from notice of payment due;
 - 5. Failure to meet SC Housing program deadlines or requirements, as defined in the program manual, program notice, and/or contract with SC Housing;
 - 6. Failure to correct audit findings or compliance reports during the correction period, as defined in the program manual, program notice, and/or contract

- with SC Housing;
 - 7. Misappropriation or ineligible use of funds;
 - 8. Violation of a material provision of a voluntary exclusion agreement and/or any settlement of a debarment or suspension action; or
 - 9. Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 USC 701); or
- d. Any other cause of so serious or compelling a nature that it affects the person/entity's present responsibility (e.g., performance record, integrity, business ethics, qualifications, etc.); including but not limited to debarment or equivalent exclusionary action by a federal or state agency or instrumentality; violation of any civil rights, equal rights or nondiscrimination laws; violation of any agreement related to nondiscrimination or equal opportunity in employment, housing or lending; or violation of any agreement involving conflict of interest or an improper shared identity of interest.

3.2 Period of Debarment: Debarment shall be for a period commensurate with the seriousness of the cause(s). If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. However, if a person/entity is convicted of fraud or a financial crime, then the person/entity will be permanently debarred from all SC Housing programs, boards, committees, task forces, and any other similar bodies related to SC Housing.

3.3 Early Reinstatement: A debarred person/entity may petition SC Housing for early reinstatement only under the following circumstances:

- a. Upon discovery of new evidence that was not previously discoverable;
- b. Upon the dismissal or reversal of criminal charges or a civil or administrative action related to the debarment;
- c. The reversal of the debarment, suspension or other exclusion imposed by another governmental agency upon which the debarment was based;
- d. Upon a bona fide change in ownership or management of the debarred entity; or
- e. Upon proof that the cause for debarment have been eliminated.

A petition for early reinstatement must be submitted in writing to SC Housing's General Counsel who will convene a committee consisting of a total of three members of the Executive Staff, including the Deputy Director or Executive Staff member who originated the suspension and/or

debarment recommendation. The committee will review the evidence submitted by both the debarred person/entity and SC Housing staff and will determine whether the debarment should be reversed or modified. The committee must submit its decision to the Executive Director for review. If Executive Director decides to deny the early reinstatement, then the General Counsel will inform the debarred person/entity in writing of the denial. If the Executive Director approves the early reinstatement, then the matter must be placed on the agenda for the next most convenient meeting of the Board of Commissioners. The decision of the Board is final, and the General Counsel will inform the debarred person/entity in writing of the Board's decision.

3.4 Reinstatement following Debarment: Upon the conclusion of a debarment, the debarred person/entity is permitted to resume activities with all SC Housing programs. However, the debarment may be considered with respect to future suspensions and/or debarments.

4. Imputed Conduct

For actions taken under suspension and debarment procedures, conduct may be imputed to other individuals and organizations as outlined below.

4.1 Conduct Imputed from an Individual: The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an entity may be imputed to the entity when the conduct occurred in connection with the individual's performance of duties for or on behalf of the entity, or with the entity's knowledge, approval, or acquiescence.

4.2 Conduct Imputed from an Organization: The fraudulent, criminal or other seriously improper conduct of an entity may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the entity when the individual who, the improper conduct is imputed, participated in, knew of, or had reason to know of the entity's conduct.

4.3 Conduct Imputed from Joint Ventures or Similar Arrangements: The fraudulent, criminal, or other seriously improper conduct of an entity participating in a joint venture or similar arrangement may be imputed to other participating entities if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these entities.

4.4 Conduct to Include Affiliates: The Board of Commissioners may extend the debarment decision to include any affiliates if they are specifically named in the written notices. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways to determine control include but are not limited to:

- a. Interlocking management or ownership;
- b. Identity of interests among family members;
- c. Shared facilities and equipment;
- d. Common use of employees; or
- e. A business entity that has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

Other examples of affiliates include but are not limited to architects, accountants, attorneys, consultants, engineers, contractors, subcontractors, property management companies, lenders, etc.

5. Procedures for Suspension and Debarment

5.1 Automatic Suspension: SC Housing will automatically suspend a person/entity for the following causes:

- a. Failure to pay SC Housing for 90 days or more from notice of payment due;
- b. Failure to meet SC Housing program deadlines or requirements, as defined in the program manual, program notice, and/or contract with SC Housing; or
- c. Failure to correct audit findings or compliance reports during the correction period, as defined in the program manual, program notice, and/or contract with SC Housing.

5.2 Letter of Automatic Suspension: SC Housing will not deliberate on the causes listed in Section 5.1. Upon the occurrence of one or more of those causes, the applicable Division Director is authorized to send a Letter of Automatic Suspension (see Exhibit A for a sample) that will inform the person/entity of the following:

- a. That the person/entity has been suspended;
- b. The cause for the suspension;
- c. The suspension will continue until SC Housing determines that the person/entity is

- back in compliance;
- d. The effect of the suspension;
- e. That the person/entity has thirty (30) calendar days from the receipt of the notice to respond in writing with an Argument in Opposition that must address all defenses, contested facts, admissions, remedial actions taken, and mitigating factors that the person/entity would like for SC Housing to consider; and
- f. That the person/entity may be represented or assisted by counsel.

The Letter of Automatic Suspension shall be emailed and sent by USPS mail to the person/entity's last known address. If no bounce back message is received in response to the email, then the email is considered received on the next business day. If the person/entity does not respond within 30 days, then the suspension will continue without further notice. If the person/entity responds within 30 days, then the Executive Committee will review the evidence submitted by both the person/entity and SC Housing staff and will determine whether the suspension of the person/entity should continue. The General Counsel will inform the person/entity in writing of the Committee's decision.

5.3 Request for Suspension and/or Debarment: If an employee of SC Housing suspects that there is cause for suspension and/or debarment, then that employee must submit relevant evidence via her/his supervisor to the Division Director for the program. If the Division Director recommends suspension, then the Request for Suspension and/or Debarment (see Exhibit B for a sample) and supporting evidence should be submitted to the applicable Deputy Director or Executive Staff member for review. If the applicable Deputy Director or Executive Staff member recommends suspension and/or debarment, then the Executive Committee must review the Request for Suspension and/or Debarment and supporting evidence, vote on the action to be taken, and then SC Housing's General Counsel, on behalf of the Executive Committee, must take one of the following actions:

- a. Reject the Request for Suspension and/or Debarment: The Executive Committee may determine that there are insufficient grounds for a suspension and/or debarment or that a suspension and/or debarment is not appropriate. This decision must be documented via email from the General Counsel to the appropriate Division Director. If the Executive Committee rejects the referral, the requesting official should continue to monitor the situation, when appropriate, and may submit a revised request upon discovery of additional supporting evidence.
- b. Issue Notice of Suspension: The General Counsel may issue a Notice of

Suspension. To the extent possible, a Notice of Suspension should set forth the bases for suspension with sufficient particularity to demonstrate consideration of all known aggravating and mitigating circumstances. The Notice of Suspension shall inform the person/entity of the following:

1. That the person/entity has been suspended;
2. The reasons and causes for the suspension, including any aggravating factors;
3. The suspension is for a temporary period, pending the completion of an investigation or legal proceeding;
4. The effect of the suspension;
5. That the person/entity has thirty (30) calendar days from the receipt of the notice to respond in writing with an Argument in Opposition that must address all defenses, contested facts, admissions, remedial actions taken, and mitigating factors that the person/entity would like for SC Housing to consider;
6. That the person/entity may be represented or assisted by counsel.

The Notice of Suspension shall be emailed and sent by USPS mail to the person/entity's last known address. If no bounce back message is received in response to the email, then the email is considered received on the next business day. If the person/entity does not respond within 30 days, then the suspension continues without further notice. If the person/entity responds within 30 days, then the Executive Committee will review the evidence submitted by both the person/entity and SC Housing staff and will determine whether the suspension of the person/entity should continue. The General Counsel will inform the person/entity in writing of the Committee's decision.

- c. Issue Notice of Proposed Debarment: The General Counsel may issue a Notice of Proposed Debarment. To the extent possible, a Notice of Proposed Debarment should set forth the bases for debarment with sufficient particularity to demonstrate consideration of all known aggravating and mitigating circumstances. The Notice of Proposed Debarment shall inform the person/entity of the following:
 1. That the person/entity is being considered for debarment and is suspended until further notice;
 2. The reasons and causes for the proposed debarment, including any aggravating factors;

3. The effect of the proposed debarment;
4. That the person/entity has thirty (30) calendar days from the receipt of the notice to respond in writing with an Argument in Opposition that must address all defenses, contested facts, admissions, remedial actions taken, and mitigating factors that the person/entity would like for SC Housing to consider;
5. That the person/entity may be represented or assisted by counsel.

The Notice of Proposed Debarment shall be emailed and sent by USPS mail to the person/entity's last known address. If no bounce back message is received in response to the email, then the email is considered received on the next business day. If the person/entity does not respond within 30 days, then the person/entity will be referred to the Board of Commissioners for debarment without further notice. If the person/entity responds within 30 days, then the General Counsel will inform the person/entity in writing of the date and time of the Board meeting at which the debarment recommendation will be presented. The person/entity may attend the meeting to answer any questions of the Board. If the Board agrees with the debarment recommendation, the person/entity will be placed on the applicable Exclusion List(s). If the Board of Commissioners disagrees with the findings, the Board may impose other sanctions such as suspension or debarment from specific SC Housing programs and/or for a shorter time period, as determined to be appropriate, or may grant the person/entity full access to SC Housing programs. The General Counsel will inform the person/entity in writing of the Board's decision.

6. Effect of Suspension and/or Debarment

SC Housing has the discretion to continue or discontinue contracts or subcontracts in existence at the time of suspension or debarment. Notwithstanding a suspension or debarment, SC Housing may allow the release of additional funds or approve a restructuring or refinancing if it is in the best interests of SC Housing and its constituents. However, SC Housing may require, as a condition of the provision of additional funds or approval of a restructuring or refinancing request, that the suspended or debarred person/entity divest any interest in the affected project, program, and/or housing development.

A suspended or debarred person/entity is prohibited from participating in any manner with SC Housing programs either directly or indirectly. However, suspension or debarment will not

preclude an individual from renting or financing a home under any SC Housing program if otherwise qualified for such program.

Unless prohibited by law, SC Housing may require the recipients of SC Housing assistance to terminate existing contracts or agreements related to SC Housing programs with the suspended or debarred person/entity. Further, recipients of SC Housing assistance shall not renew or extend contracts or agreements related to SC Housing programs with the suspended or debarred person/entity.

This Policy does not limit its discretion with regard to the evaluation of any application or request for funds, assistance, or services. Unless otherwise prohibited, SC Housing has the right to evaluate past performance and expertise of applicants for loans, grants or other public benefits.

7. Administrative Agreements

At any time during a suspension and/or debarment proceeding, SC Housing may negotiate an administrative agreement with the person/entity in order to resolve a suspension and/or debarment matter, if it is in the public interest. An administrative agreement recognizes or imposes conditions upon a person/entity in lieu of exclusion and may include acceptance of responsibility by the person/entity, voluntary exclusion, requirements or limitations, mitigating plans, training, or representations made by the person/entity.

Under the administrative agreement, the person/entity remains eligible to enter into contracts and other covered transactions with SC Housing but must adhere to the terms and conditions of the administrative agreement. SC Housing may consider the following when contemplating an administrative agreement:

- a. The person/entity's otherwise satisfactory performance;
- b. Response to the wrongdoing; and
- c. Willingness to cooperate, willingness to make restitution, and willingness to implement or strengthen an existing ethics program.

If an administrative agreement is deemed appropriate, SC Housing's General Counsel will draft an agreement in consultation with the operating unit or office administering the program. Upon agreement with the person/entity, a final administrative agreement will be distributed for signature.

8. Finality of Decisions and Venue for Lawsuits

Suspension and debarment decisions are final and not subject to appeal. Any legal action against SC Housing must be brought exclusively in state court located in Lexington, South Carolina.

9. Exclusion Lists

A suspended or debarred person/entity is excluded from receiving federal or state assistance or contracts involving federal or state funds.

9.1 System for Award Management (SAM): SAM is a web-based database maintained by the U.S. General Services Administration that contains all parties who are suspended, proposed for debarment, debarred, declared ineligible, excluded, or disqualified. The list contains the names and other information concerning parties who are ineligible to receive government contracts or non-procurement covered transactions.

9.2 SC Housing Suspension and Debarment List: SC Housing will maintain a list of any person/entity it has suspended or debarred. The list will be available for public inspection in accordance with the South Carolina Freedom of Information Act. Additionally, SC Housing may include the list in any publication it deems appropriate, including but not limited to SC Housing's website.

9.3 Pre-Award Review: Prior to the solicitation and award of a contract or financial assistance, SC Housing employees shall consult SAM and SC Housing's Suspension and Debarment List for possible exclusions. A SC Housing employee will not make an award to a person/entity that is suspended, debarred, proposed for debarment, or otherwise excluded without the approval of the Board of Commissioners.

9.4 Post-Award Review: SC Housing employees will consult SAM and SC Housing's Suspension and Debarment List for possible exclusions prior to:

- a. Placing orders exceeding the guaranteed minimum under indefinite quantity contracts;
- b. Placing orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or
- c. Adding new work, exercising options, or otherwise extending the duration of current

contracts or orders.

A SC Housing employee will not continue any such order, agreement, or contract without the approval of the Board of Commissioners.

9.5 Updating Exclusion Lists: Upon a final decision of suspension or debarment by SC Housing, the applicable Division Director or designee will update SAM and/or SC Housing's Suspension and Debarment List, as applicable, within five (5) business days, to include:

- a. The full name (where available) and address of each excluded person/entity, in alphabetical order, with cross references if more than one name is involved in a single action;
- b. The type of action;
- c. The cause for the action;
- d. The scope of the action;
- e. Any termination date for the exclusion; and
- f. The name and telephone number for SC Housing's point of contact for the action.

10. Severability

If any provision of this Policy or the application thereof is found to be invalid by a court of law, such invalidity shall not affect the remainder of this Policy.

11. Supersedes Prior Policy

This Policy supersedes all prior policies, either oral or written, covering suspension and/or debarment, including but not limited to any reference thereto in a program manual, email, or verbal communication.

Exhibit A

Sample – Letter of Automatic Suspension (on SC Housing letterhead)

Date

Name and Address of Suspended Person/Entity

Re: Automatic Suspension

This letter serves as official notice that you, the above referenced person and/or entity, are hereby automatically suspended from all programs with SC Housing, effective immediately, for one or more of the following reasons (check all that apply):

- Failure to pay SC Housing for 90 days or more from notice of payment due.
- Failure to meet SC Housing program deadlines or requirements, as defined in the program manual, program notice, and/or contract with SC Housing.
- Failure to correct audit findings or compliance reports during the correction period, as defined in the program manual, program notice, and/or contract with SC Housing.

You are prohibited from participating in any manner with SC Housing programs either directly or indirectly.

Notwithstanding this suspension, SC Housing has the discretion to continue or discontinue contracts or subcontracts with you or related business you may have with any recipient of assistance from SC Housing. Unless prohibited by law, SC Housing may require the recipients of said assistance to terminate existing contracts they may have with you.

You have thirty calendar days from the date of this notice to respond in writing with an Argument in Opposition that must address all defenses, contested facts, admissions, remedial actions taken, and mitigating factors that you would like for SC Housing to consider in your defense. You may be represented or assisted by counsel in your response.

More details about this suspension can be found in SC Housing's Suspension and Debarment Policy for Non-Procurement Matters, which is posted on our website and was previously provided to you.

This suspension will continue until SC Housing determines that you are back in compliance.

Sincerely,

Division Director

Exhibit B

Sample – Request for Suspension and/or Debarment

To: Deputy Director/Executive Staff Member
From: Division Director
Subject: Person/Entity Name, Program, Contract Number
Request For: Suspension or Debarment

PURPOSE:

Please summarize the reason(s) for requesting suspension and/or debarment consideration of the person/entity.

PERSON/ENTITY:

Please list the parties, principals, and affiliates, including known identifying information such as addresses, zip codes, and other identifying information.

STATEMENT OF FACTS:

Please list the engagement history with the parties, including recent experiences under contracts and/or financial assistance agreements. Please list any known investigations, proceedings, or claims.

For Example: On August 13, 2008, suit was filed in the District of Columbia charging the person/entity with violations of 18 U.S.C 2 §§ 666(a)(1)(A) and (2), Misapplication of federal funds and aiding and abetting. The person/entity knowingly and in direct violation caused federal grants to be misappropriated for personal use. The charges state that the person/entity spent in excess of \$100,000 from these federal grants to hold extravagant parties in Charleston, SC. On November 18, 2009, person/entity pled guilty to counts one and two, which were violations of 18 U.S.C 2 §§ 666(a)(1)(A) and (2), Misapplication of federal funds and aiding and abetting. On January 4, 2010, person/entity was convicted and sentenced to a two-year probation and fined \$100,000 to which payment was deferred.

AGGRAVATING AND MITIGATING FACTORS:

Please list favorable and unfavorable considerations that demonstrate a person/entity's present responsibility.

For Example: The person/entity's criminal misconduct was ongoing and pervasive as it occurred over a period of at least three years. The person/entity in full awareness of his/her responsibilities under the public agreement caused funds to be misappropriated for personal gain thus causing the person/entity's business ethics to be suspect. However, upon being confronted by SC Housing staff, the person/entity admitted wrongdoing and submitted a check in the amount of \$10,000 as the first step in making restitution. Through a search of SAM, person/entity was not found to have any current or prior instances of being suspended or debarred.

NEXUS STATEMENT:

Briefly explain SC Housing's interest in or risk associated with case.

For Example: The criminal statutes that the person/entity was convicted of have a direct relationship to SC Housing's responsibilities. The incident underlying the conviction calls into question the person/entity's present responsibility and therefore poses a risk to current and future misappropriation. This criminal conviction provides a basis to propose debarment.

REGULATORY BASIS:

Please highlight the regulatory basis for requesting consideration in case. Insert program statutes, regulations, and funding amounts that are at risk if the person/entity is not suspended or debarred.

TIME CRITICAL EVENTS:

Please highlight any potential awards and or other time critical events that the Executive Committee and the Board of Commissioners should be aware of when deciding.

RECOMMENDATION:

Please provide recommendations that you would like the Executive Committee and the Board of Commissioners to consider, including whether to suspend and/or debar, the period of any suspension or debarment, and whether to continue any current engagements to finish projects and/or any obligations under contract.

ATTACHMENTS:

Copies of all documentary evidence (i.e., court documents, contract or grant documents, invoices, emails, and any other appropriate exhibits or documents).

NOTE:

A request that includes more than a single person or entity should include sections that separately set forth the grounds and bases for proceeding against each person or entity. The request should include all information supporting an imputation and/or affiliation determination. All recommendations and conclusions should properly reference supporting documentation.