

**§ 911.103 Eligibility for indemnification.**

As provided for under 5 U.S.C. 9101(b)(3), a State or locality may request an indemnification agreement.

(a) To be eligible for an indemnification agreement, a State or locality must have had a law in effect on December 4, 1985, that prohibited or had the effect of prohibiting the disclosure of criminal history record information to OPM.

(b) A State or locality is also eligible for an indemnification agreement if it meets the conditions of paragraph (a) of this section, but nevertheless provided criminal history record information to OPM on or before December 4, 1985.

**§ 911.104 Procedures for requesting an indemnification agreement.**

When requesting an indemnification agreement, the State or locality must—

(a) Certify that on December 4, 1985, the State or locality had in effect a law that prohibited or had the effect of prohibiting the disclosure of criminal history record information to OPM;

(b) Attach a copy of the law to the request for an indemnification agreement;

(c) Notify OPM, at the address below, of its eligibility for an indemnification agreement.

Office of Personnel Management, Office of Federal Investigations, P.O. Box 886, Washington, DC 20044

**§ 911.105 Terms of indemnification.**

The terms of the indemnification agreement must conform to the following provisions:

(a) *Eligibility.* The State or locality must certify that its law prohibits or has the effect of prohibiting the disclosure of criminal history record information to OPM for the purposes described in § 911.101(a) and that such law was in effect on December 4, 1985.

(b) *Liability.* (1) OPM must agree to indemnify and hold harmless the State or locality from any claim for damages, costs, and other monetary loss arising from the disclosure or negligent use by OPM of criminal history record information obtained from that State

or locality pursuant to 5 U.S.C. 9101(b). The indemnification will include the officers, employees, and agents of the State or locality.

(2) The indemnification agreement will not extend to any act or omission prior to the transmittal of the criminal history record information to OPM.

(3) The indemnification agreement will not extend to any negligent acts on the part of the State or locality in compiling, transcribing, or failing to delete or purge any of the information transmitted.

(c) *Consent and access requirements.* By requesting the release of criminal history record information from the State or locality, OPM represents that—

(1) It has obtained the written consent of the individual under investigation to request criminal history record information about the individual from criminal justice agencies in accordance with 5 U.S.C. 9101, after advising the individual of the purposes for which the information is intended to be used by a Privacy Act of 1974 (5 U.S.C. 552a), or an equivalent, notice; and

(2) Upon request, OPM will provide the individual access to criminal history record information received from the State or locality, as required by 5 U.S.C. 9101(d).

(d) *Purpose requirements.* OPM will use the criminal history record information only for the purposes stated in § 911.101(a).

(e) *Notice, litigation, and settlement procedures.* (1) The State or locality must give notice of any claim against it on or before the 10th day after the day on which a claim against it is received, or it has notice of such a claim.

(2) The notice must be given to the Attorney General and to the United States Attorney of the district embracing the place wherein the claim is made.

(3) The Attorney General will make all determinations regarding the settlement or defense of such claims.

**PART 919—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

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APPENDIX TO PART 919—COVERED TRANSACTIONS

AUTHORITY: 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.

SOURCE: 68 FR 66544, 66561, Nov. 26, 2003, unless otherwise noted. Redesignated at 68 FR 74161, Dec. 23, 2003.

**§ 919.25 How is this part organized?**

(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart . . .	You will find provisions related to . . .
A . . . . .	general information about this rule.
B . . . . .	the types of OPM transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.
C . . . . .	the responsibilities of persons who participate in covered transactions.
D . . . . .	the responsibilities of OPM officials who are authorized to enter into covered transactions.
E . . . . .	the responsibilities of Federal agencies for the <i>Excluded Parties List System</i> (Disseminated by the General Services Administration).
F . . . . .	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G . . . . .	suspension actions.
H . . . . .	debarment actions.
I . . . . .	definitions of terms used in this part.
J . . . . .	[Reserved]

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are . . .	See subpart(s) . . .
(1) a participant or principal in a non-procurement transaction.	A, B, C, and I.
(2) a respondent in a suspension action	A, B, F, G and I.
(3) a respondent in a debarment action	A, B, F, H and I.
(4) a suspending official . . . . .	A, B, D, E, F, G and I.
(5) a debarring official . . . . .	A, B, D, E, F, H and I.
(6) a(n) OPM official authorized to enter into a covered transaction.	A, B, D, E and I.
(7) Reserved . . . . .	J.

**§ 919.50 How is this part written?**

(a) This part uses a “plain language” format to make it easier for the general public and business community to

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use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed. The pronoun “we” always is the OPM.

(c) The “Covered Transactions” diagram in the appendix to this part shows the levels or “tiers” at which the OPM enforces an exclusion under this part.

**§ 919.75 Do terms in this part have special meanings?**

This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart I of this part. For example, three important terms are—

(a) *Exclusion or excluded*, which refers only to discretionary actions taken by a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified*, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible*, which generally refers to a person who is either excluded or disqualified.

**Subpart A—General**

**§ 919.100 What does this part do?**

This part adopts a governmentwide system of debarment and suspension for OPM nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689,