

January 2015

Non-Material, Non-Substantive Change Request

0505-0025

Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants & Awardees

Based on the updated government-wide felony and tax delinquent corporation appropriations restrictions in §744 and §745 of the Consolidated and Further Continuing Appropriations Act, 2015, P.L. 113-235, as amended, we are updating the new citation information and language on forms AD 3030 and AD 3031 for USDA agencies and offices.

The AD 3030-FS and AD 3031-FS are no longer necessary, as the new provisions are government-wide so there is no longer a difference in the language for the Forest Service (FS) and the rest of the USDA agencies and offices.

The removal of the two FS forms will not affect the burden as FS respondents will now use the USDA AD 3030 and AD 3031. Office of General Counsel provided the language comparison below:

Comparison of FY '15 Government-Wide Provisions to FY '12 - FY '14 USDA and FS Separate Provisions

Language of FY '15 Government-Wide Provisions

Section 744 (Tax Delinquency Provision)

None of the funds made available by this or any other Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has 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, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

Section 745 (Felony Provision)

None of the funds made available by this or any other Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan

guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

Changes from USDA Only FY '12 and FY '13 Language

Section 738 (Felony Provision)

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation that was convicted ~~(or had an officer or agency of such corporation acting on behalf of the corporation convicted)~~ of a felony criminal violation under any Federal ~~or State~~ law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, ~~or such officer or agent~~, and made a determination that this further action is not necessary to protect the interest of the Government.

→ The highlighted and strikethrough language from the USDA only provision is not included in the new government-wide provision. Accordingly, the restrictions no longer apply to corporations that have had an officer convicted of a felony, but have not have the corporation convicted. Also, the restrictions no longer apply to corporations convicted of felonies under State laws.

Section 739 (Tax Delinquency Provision)

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that [has] 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, ~~where the awarding agency is aware of the unpaid tax liability~~, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

→ The highlighted and strikethrough language from the USDA only provision is not included in the new government-wide provision. Accordingly, the appropriations restrictions now apply to all corporations with a qualifying federal tax delinquency regardless of whether the agency is "aware" of the liability. This makes use of the AD 3030 and AD 3031 representations all the more important.

Changes from Forest Service Only FY '12, FY '13 and FY '14 Language

Section 433 (Felony Provision)

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation that was convicted ~~(or had an officer or agency of such corporation acting on behalf of the corporation convicted)~~ of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agent, and made a determination that this further action is not necessary to protect the interest of the Government.

→ The highlighted and strikethrough language from the Forest Service only provision is not included in the new government-wide provision. Accordingly, the restrictions no longer apply to corporations that have had an officer convicted of a felony, but have not have the corporation convicted.

Section 434 (Tax Delinquency Provision)

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation with respect to which 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, ~~where the awarding agency is aware of the unpaid tax liability~~, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

→ The highlighted and strikethrough language from the Forest Service only provision is not included in the new government-wide provision. Accordingly, the appropriations restrictions now apply to all corporations with a qualifying federal tax delinquency regardless of whether the agency is “aware” of the liability. This makes use of the AD 3030 and AD 3031 representations all the more important.