FEDERAL COMMUNICATIONS COMMISSION

2 CFR Part 6001

47 CFR Parts 54 and 64

[GN Docket No. 19-309; FCC 26-18; FR ID 339008]

Modernizing Suspension and Debarment Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts the Office of Management and Budget's Guidance for Nonprocurement Debarment and Suspension, along with agency-specific regulations to allow the agency to further combat waste, fraud, and abuse, and remove bad actors from participation in its support programs. The Commission finds further notice and comment "unnecessary" under the Administrative Procedure Act (APA) for the Commission to adopt the Guidelines (including updates made after the Notice of Proposed Rulemaking in this proceeding), but elect to provide an opportunity for input on that assessment as to three of the Guidelines. A Proposed Rule relating to the Commission's adoption of updated suspension and debarment rules is published elsewhere in this issue of the *Federal Register*.

DATES: *Effective dates*: Amendatory instruction 3 is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Amendatory instructions 1, 4 through 9, and 11 through 13 are delayed indefinitely. The Commission will publish a document in the *Federal Register* announcing the effective date for the delayed actions. *Comment due date*: As explained in the preamble below, comments in response to the adoption of §§ 180.630, 180.705, and 180.730 of the OMB Guidelines will be accepted until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If significant adverse comment is received, the Federal Communications Commission will publish

a timely notification in the *Federal Register* informing the public of additional procedures that must be followed.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates provided in the DATES section of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). You may submit comments, identified by GN Docket No. 19-309, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: https://www.fcc.gov/ecfs.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
    - Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission**.
    - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
    - Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

- *People with Disabilities*: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

FOR FURTHER INFORMATION CONTACT: Paula Silberthau, Attorney Advisor, Office of General Counsel, 202-418-1874, paula.silberthau@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in GN Docket No. 19-309, FCC 26-18, adopted on March 26, 2026, and released on March 27, 2026. The complete text of this document is available for download at https://docs.fcc.gov/public/attachments/FCC-26-18A1.pdf. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Government Affairs Bureau at (202) 418-0503.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the *Report and Order* on small entities. The FRFA is set forth below and in Appendix B appended to the Commission's Report and Order, https://docs.fcc.gov/public/attachments/FCC-26-18A1.pdf.

Paperwork Reduction Act. This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the

Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

INTRODUCTION

The Federal Communications Commission (FCC or Commission) administers several congressionally-mandated programs, such as the Universal Service Fund (USF) and the Telecommunications Relay Services (TRS) program, that provide significant funding to close the digital divide and ensure that all Americans have access to communications services. In administering these important programs, it is incumbent upon the Commission to be a good steward of these funds, which are ultimately paid for by the American people. We must ensure that these limited dollars serve their intended purposes. Waste, fraud, and abuse frustrate the Commission's goals and undermines public trust in these programs. Bad actors who would seek to enrich themselves by siphoning these critical resources away from connecting rural households and businesses, schools and libraries, rural healthcare providers, low-income households, and people with disabilities have no place in these programs. As such, in this Report and Order we adopt additional, critical tools which will allow us to promptly and efficiently take action to exclude or otherwise limit bad actors' participation in these programs. These changes, which received widespread support in the record, will align our processes with other agencies, incorporate current fraud prevention best practices, and, ultimately, distribute funds more responsibly.

BACKGROUND

OMB Guidelines. The Commission's 2019 Notice of Proposed Rulemaking (NPRM) (85 FR 2078) proposed to adopt the OMB Guidelines on Governmentwide Debarment and Suspension (Nonprocurement) (Guidelines) (71 FR 66431, amended 89 FR 30046). The Guidelines establish a common framework for a governmentwide debarment and suspension system for nonprocurement programs. The Guidelines define "non-procurement transaction" as "any transaction, regardless of type (except procurement contracts)," including but not limited to grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurances, payments for specified uses, and donation agreements. Suspension and debarment rules for federal procurement contracts are contained in the Federal Acquisition Regulation (FAR), 48 CFR pt. 9. The Guidelines generally provide for suspension or debarment based on a range of misconduct. This range includes not only convictions of or civil judgments for fraud or certain criminal offenses, but also violations of the requirements of public transactions "so serious as to affect the integrity of a Federal agency program" (including willful or repeated violations). In addition, the Guidelines provide that suspension or debarment could be warranted for "[f]ailure to pay a single substantial debt, or a number of outstanding debts . . . owed to any Federal agency. . . ." Finally, the Guidelines provide the discretion to suspend or debar for "[a]ny other cause that is so serious or compelling in nature that it affects [the party's] present responsibility." However, in the case of suspensions, but not debarments, the suspending official must find that "[i]mmediate action is necessary to protect the public interest."

Suspensions under the Guidelines have prospective but immediate effect, and debarments are effective following a 30-day opportunity for a party to respond to a debarment notice and the issuance of a final debarment order. Once effective, an action to suspend or debar serves to automatically exclude the suspended or debarred party from new covered transactions governmentwide, whether in procurement or nonprocurement programs or activities. For ongoing activities, "a participant may . . . continue to use the services of an excluded person as a

principal" if the participant was "using that person's services in the transaction before the person was excluded." The participant also has the option of discontinuing the excluded person's services and finding an alternative provider. Likewise, under the Guidelines, a participant "may continue covered transactions with an excluded person if the transactions were in existence when the Federal agency excluded the person," but the participant is not required to do so.

Under the Guidelines, suspension and debarment (referred jointly herein as exclusions) are not punitive actions, and are separate from civil enforcement actions (including those undertaken under the Communications Act) and criminal prosecutions. They are also separate from any administrative procedures that may be used to recover debt. Thus, this Report and Order does not limit or otherwise impact any preexisting statutory, regulatory or common law tools available to the Commission or to the Government generally, other than any suspension and debarment rules that may be expressly replaced or superseded by this Report and Order. Instead, exclusion is an administrative action taken to protect the Government's business interests on a prospective basis. Federal agencies, through their Suspending and Debarring Officials (SDO), must use balance and judgment in determining whether suspension or debarment is appropriate in a particular matter, including when an exclusion proceeding occurs as a result of, or at the same time as, other criminal, civil, or administrative proceedings. In this respect, the approach in the Guidelines can enhance the remedies or tools that a federal agency such as the Commission might use to address misconduct, while providing the federal agency with flexibility to adopt supplemental rules tailored to its specific programs.

NOTICE OF PROPOSED RULEMAKING

The Notice of Proposed Rulemaking (NPRM) proposed to adopt the Guidelines for several critical support programs: the USF programs, the TRS program, and the NDBEDP. The NPRM also proposed supplemental rules that would implement the Guidelines and clarify their application to the Commission's programs. The NPRM explained that the proposed supplemental rules were consistent with the Guidelines—which broadly afford each agency

flexibility to implement the Guidelines in a manner that addresses its specific needs—and were based on the Commission's experience in administering these programs over many years.

The comments received by the Commission demonstrate that there is widespread support for us to adopt new rules that are substantially similar to those proposed in the NPRM. Indeed, there was near consensus support for adopting updated, more flexible suspension and debarment rules based on the Guidelines to facilitate the exclusion of bad actors who pose a threat to the integrity of our programs. Additionally, many commenters proposed concrete, thoughtful modifications or alternatives to our proposed supplemental rules to improve their clarity, transparency, and process protections without compromising their efficacy. And in many cases, we find that adopting commenters' proposed changes or clarifications will advance the public interest.

Since the release of the NPRM, high-profile investigations involving fraud in Commission programs, including USF and other programs, have served to emphasize the importance of having more robust suspension and debarment rules in order to safeguard public funds.

REPORT AND ORDER

We hereby adopt the Guidelines and supplemental rules, as tailored below to the Commission's programs, to best address and prevent waste, fraud, and abuse with respect to those programs. Specifically, we adopt a broader and expanded range of misconduct (beyond merely criminal convictions and civil judgments) that can trigger Commission exclusion proceedings, and apply these remedies to the Covered Programs. We adopt the Guidelines' approach, again tailored to the Commission's programs and needs, in applying the exclusions to any participant or principal, which can include individuals, units of government, or legal entities, engaging in a covered transaction, and we adopt supplemental rules that explain how these regulations will apply for different tiers of transactions between an agency and a participant, as well as between a participant in one of the covered transactions and other parties. We establish

the position of SDO at the Commission and will subsequently appoint an SDO whose proceedings, unless otherwise designated, will be exempt proceedings governed by section 1.1204(b) of the Commission's ex parte rules, which provides that ex parte presentations to or from Commission decisionmaking personnel are permissible and need not be disclosed. We anticipate that this approach will encourage the free flow of information in communications involving the SDO, permit the SDO to consider relevant evidence, and facilitate expedient yet comprehensive resolution of these proceedings. Accordingly, we find it is in the public interest to designate such proceedings as exempt proceedings under our *ex parte* rules. The SDO will review the misconduct, adduce additional evidence if necessary, and determine whether an exclusion remedy is warranted.

We follow the Guidelines' approach, which excludes a suspended or debarred entity or individual from all new governmentwide nonprocurement and procurement programs, but we adopt supplemental rules and a presumption that the SDO will exclude a suspended or debarred party from existing transactions subject to a reasonable period for customers or end-users to transition to a new provider. For certain situations, such as where alternate service providers are not available, the supplemental rules will permit the SDO to consider whether it is in the public interest to grant limited exceptions. To the extent that another government agency has excluded an entity or individual from participating in its programs, the revised rules will generally provide for reciprocity and exclude such entities or individuals from Commission programs. We adopt the Guidelines' approach of imposing a suspension period of up to twelve months and a three year debarment period with a supplemental rule offering the SDO the option, in appropriate cases, to require the excluded entity or individual to file a petition for readmission rather than being automatically permitted to resume participation after the conclusion of the exclusionary period. Although we do not expect the SDO to regularly rely on this option, we permit the SDO to have discretion to require this filing if warranted.

We also adopt an alternative remedy to suspension and debarment, a Limited Denial of Participation, to address misconduct that may not warrant an exclusion. The SDO may limit the entity or individual from participating in some or all of the programs that the revised rules cover or may limit participation in other ways that we discuss in greater detail below.

Such entities or individuals generally may not participate in the relevant programs, must disclose to others involved in transactions receiving Federal funds that they are excluded from participation, and may not serve, or continue to serve, on Commission advisory committees and comparable Commission groups or task forces.

As a procedural matter, we acknowledge that in the NPRM we proposed to codify most proposed supplemental suspension and debarment rules at Title 47, chapter 1, subchapter A, part 16. As detailed below, we instead codify most of the supplemental rules at Title 2, subtitle B, chapter LX, part 6001, subject to coordination with other agencies regarding the placement in the Code of Federal Regulations. This change comports with the placement practice of many other agencies that have adopted the governmentwide suspension and debarment rules with any relevant supplemental rules or modifications.

SUSPENSION AND DEBARMENT

The default procedural requirements applicable to suspension and debarment actions are set forth in subparts F, G, and H of the Guidelines. In the NPRM, the Commission requested comment on Commission-specific modifications to those procedures as well as proposed supplemental rules specific to our programs. The NPRM also more broadly invited comment on any other changes that parties proposed to the Guidelines' default rules and procedures.

Definition of, and Relationship Between, Suspension and Debarment

We adopt the Guidelines' definitions of suspension and debarment given their broader range of covered misconduct and the governmentwide reach of their remedies as compared with the scope of our existing rules. The Guidelines define a "suspension" as "an action taken by a suspending official . . . that immediately prohibits a person from participating in covered

transactions and transactions covered under the Federal Acquisition Regulations . . . for a temporary period, pending completion of a Federal agency investigation and any judicial or administrative proceedings that may ensue," and note that a "person so excluded is suspended." The Guidelines define a "debarment" as "an action taken by a debarring official . . . to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulations," noting that "[a] person so excluded is debarred."

Suspension differs from debarment in several ways. First, a suspension is "a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal or debarment proceeding" whereas debarment is a remedy that is "impose[d] . . . for a specified period as a final determination that a person is not presently responsible." Second, an SDO only needs to find that there is "adequate evidence" to support a suspension but must base a debarment on a "preponderance of the evidence." Third, because a suspension usually precedes notice and a chance to be heard, an SDO may only impose a suspension when it finds that "immediate action is necessary to protect the public interest." In contrast, a debarment is imposed after a notice is issued and the respondent has had a chance to contest the proposed debarment. Finally, the period for suspension is typically capped at twelve months, though the SDO may also extend the suspension for an additional six months. If legal or debarment proceedings are initiated, the suspension may continue until the conclusion of those proceedings, but if such proceedings are not initiated a suspension may not exceed 18 months. Additionally, the period of debarment is based on the seriousness of the cause(s) prompting debarment and typically should not exceed three years. If circumstances warrant, the SDO may extend the debarment period or issue additional requirements under the supplemental rules adopted by this *Report and Order.*

Applicability

We apply the new suspension and debarment rules to nonprocurement transactions only under the Covered Programs. The rules shall not extend at this time to transactions carried out

under the Commission's other currently existing programs, nor shall they extend to transactions to or from licensees and those with spectrum usage rights (with the exception of transactions under the Covered Programs where such an entity is a participant). These decisions find ample support in the record.

Under the Guidelines that we adopt, together with supplemental rules, the suspension and debarment provisions apply to those persons or entities that the rules designate as "participants." We describe the participants for each of the programs to which the new rules apply in more detail below. But as a general matter, participants subject to these rules are: (1) the beneficiaries and service providers that participate in the Commission's programs (typically designated as "Primary Tier" participants); and (2) other entities or persons—including contractors, subcontractors, suppliers, consultants, marketing organizations, or agents or representatives of such entities or persons—involved with the implementation of these programs ("Lower Tier" participants). Persons at the lower tiers will not be considered participants unless they also satisfy additional criteria. Specifically, they must either: (i) have a material role relating to or significantly affecting claims for disbursements related to the program; (ii) be considered a "principal" in the transaction; or (iii) be involved in a transaction in the program anticipated to be at least $25,000. Given our experience administering the Covered Programs, we are inclined to construe broadly the term "involved in" to include the submission of an application for support. For example, E-Rate consultants are "involved in" a transaction when assisting schools and libraries in preparing their application. Likewise, marketing representatives are "involved in" transactions every time they assist in signing up a low-income consumer in the Lifeline program.

In addition, consistent with section 180.200 of the Guidelines, our rules also treat the E-Rate and Rural Health Care program beneficiaries, including schools, libraries, and rural health care facilities, that deal directly with the Commission or its agent, Universal Service Administrative Company (USAC), as "participants" subject to the rules. On the other hand, we

do not treat Lifeline (or former ACP) subscribers or end-users of TRS and NDBEDP services as "participants" subject to the disclosure and other requirements of our new rules.

Causes and Factors

We generally adopt the NPRM's proposals regarding what causes and factors may lead to suspension and debarments, but for the reasons explained below, we adjust and clarify our approach in light of the record. The Guidelines expressly identify several "causes" for suspension or debarment, which include: (1) convictions of, or civil judgments for, fraud or certain offenses—including any offense "indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;" or (2) violations of the terms of "a public agreement or transaction so serious as to affect the integrity of a Federal agency program," which may include willful or repeated violations. The Guidelines indicate that, beyond the specific, enumerated causes, an agency may exclude a person for "[a]ny other cause that is so serious or compelling in nature that it affects your present responsibility." Further, the Guidelines provide each agency flexibility to identify additional causes for suspensions and debarments. The NPRM proposed to adopt the causes in the Guidelines, proposed several additional causes, and requested comment generally on whether to adopt an FCC-specific supplemental rule with the additional causes. Further, as explained in the NPRM, in the case of the TRS program and NDBEDP, causes for suspension and revocation under existing procedures overlap with, but are not the same as, the new suspension and debarment rules. Therefore, the procedures adopted herein are intended to supplement, not replace, the existing program procedures authorizing suspension or revocation of certifications to provide TRS or to participate in the NDBEDP.

We find that adoption of the causes for exclusion articulated in the Guidelines will provide the Commission with flexibility while affording program participants notice of the types of misconduct that may trigger suspension or debarment. Most commenters did not object to our

adoption of the Guidelines' causes for suspension and debarment or aggravating and mitigating factors that an SDO may consider. We address other commenters' views below.

Consistent with the Guidelines, we also adopt the examples of "causes" and factors proposed in the NPRM. Our Supplemental Rule 6001.450(a) is consistent with the "causes," and subsections (b) and (c) of Supplemental Rule 6001.450 are consistent with the "factors" that may be considered. In this regard, we build on the longstanding history of the Guidelines and their widespread adoption. We also find that expressly identifying the types of FCC-specific activity that may result in exclusion serves the dual purposes of providing further guidance to the SDO and notice to program participants. We find that our supplemental rule is consistent with the Guidelines.

Our "causes" rule includes potential causes for suspension or debarment that fall into two categories: (i) violations of program-specific rules that affect program integrity; and (ii) violations of other applicable Commission rules that affect present responsibility. The first group includes "violation[s] of the terms of a public agreement or transaction," specific to FCC programs, that could "be so serious as to affect the integrity of" those programs. The causes that fall into this category include, but are not limited to: the willful or grossly negligent submission of false or misleading FCC forms or statements or other documentation to the Commission or to the administrators of the Covered Programs that result in or could result in overpayments of federal funds to the recipients; the willful or grossly negligent violation of a statutory or regulatory provision applicable to the Covered Programs; and the willful, grossly negligent, or habitual failure to respond to requests made by the Commission or the administrators of the Covered Programs for additional information to justify payment or continued operation under their certifications. We anticipate that in evaluating a person's failure to respond, the SDO will also consider the person's compliance with any applicable document retention regulations, as well as the quality and credibility of evidence presented. We also note that not all such violations will be serious enough to affect program integrity; rather, this supplemental rule

simply provides notice of the type of violations that, in light of the relevant facts and circumstances, may be sufficiently serious.

The second group of "causes" include: (1) a single serious violation of Commission rules or repeated violations of Commission rules; or (2) a single substantial or habitual non-payment or under-payment of Commission regulatory fees. A single serious violation would be a violation that materially and negatively affects the participant's present responsibility. Similar to the causes listed in section 180.800(c) of the Guidelines, these additional causes bear upon the present responsibility of a program participant in doing business with the federal government—specifically, the Commission.

Many of the commenters opposing our proposed supplemental causes rule misapprehended or mischaracterized the proposal. The NPRM did not propose automatic triggers that would always require exclusion or that would be dispositive in suspension and debarment proceedings; instead, the NPRM proposed to identify FCC-specific activity to supplement the causes that can trigger suspension and debarment processes. Under the Guidelines and our supplemental rule, before initiating a proceeding, an SDO should look to not only the causes identified in section 180.800, but also, consistent with the Guidelines, the FCC-specific activities identified in Supplemental Rule 6001.450, and then evaluate that conduct based on the aggravating and mitigating factors set forth in section 180.860. Consistent with the Guidelines, an SDO would then consider the unique circumstances of the particular case including whether a cause for debarment is "so serious or compelling in nature that it affects [a participant's] present responsibility," since the purpose of the suspension and debarment system is to "ensure[] the integrity of Federal programs by conducting business only with responsible persons." In this regard, we also observe that the extent of noncompliance often bears on Commission determinations relating to what actions it will take to address misconduct; the case-by-case determination we adopt here mirrors that approach in other contexts such as licensing. We thus reject suggestions to the contrary.

We also disagree with the Joint Association Commenters who claim that a supplemental rule is unnecessary because the Commission has "existing . . . mechanisms to protect affected funding programs," or that the proposed rule somehow "duplicate[s]" or "conflate[s] the FCC's enforcement function to prosecute past violations with the forward-looking purpose of the suspension and debarment rules." To the contrary, the rules we adopt are necessary precisely because they are not duplicative, but instead provide the Commission with needed additional tools to protect the integrity of its programs, including ensuring that federal funds are not disbursed to irresponsible actors. Rule violations generally will continue to be handled through enforcement proceedings in the first instance, though investigation of such violations could result in referral for an exclusion proceeding in appropriate cases. For example, in situations in which a single substantial rule violation or repeated rule violations (e.g., month after month violation of the same rule, notwithstanding FCC clarifications, guidance, or enforcement actions) demonstrate an entity's lack of responsibility, an exclusion proceeding would be appropriate and our revised supplemental rule accounts for this. Further, in light of the robust process protections in our supplemental rules and the clarifications we offer in this *Report and Order*, we also reject the suggestion of CTIA and USTelecom that "[p]ermitting suspension or debarment for minor or single rule violations could reduce participation in the Commission's support programs."

In turn, administration of funding holds and recovery of improper payments will continue to be handled through existing administrative and debt collection tools. Additionally, the rules adopted in this Report and Order will not preclude the agency or the program administrators from undertaking other reviews and actions, such as USAC's ability to lock a registered Representative Accountability Database (RAD) user's account, to address Commission rule violations or recover improperly disbursed funds. (RAD is a registration system that USAC uses to validate the identities of service provider representatives and track a representative's transactions in the National Lifeline Accountability Database (NLAD) and the National Verifier.

Service providers' representatives are required to register for a unique Representative ID (Rep ID) that is linked to the service provider's Application Programming Interface (API) account. This allows USAC to track and monitor the activity of individual service provider representatives. If USAC suspects that a representative is engaging in potentially fraudulent activity, it may lock the representative's account.) Likewise, nothing in this Report and Order or any order of the SDO shall interfere with the Commitment Adjustment Process (COMAD) through which USAC recovers funds that have been committed or disbursed in error, or otherwise wrongly, by rescinding those commitments and recovering improperly disbursed funding. An exclusion is a distinct remedy that will remove wrongdoers both from participation in agency procurement and nonprocurement programs governmentwide. We intend to enhance the tools available to ensure program integrity and not undermine them.

We also disagree with INCOMPAS, NCTA – The Rural Broadband Association, and ACA Connects – America's Communications Association (collectively, the Joint Association Commenters) that the *NPRM* "does not provide parties with fair notice as to when they could face suspension or debarment for the proposed additional factors, such as compliance history." We acknowledge that the *NPRM* used the term "factors" in connection with the OMB Guidelines' "causes" for suspension and debarment, but the Commission cited the OMB cause rule at the outset of that discussion, 2 CFR 180.800, and separately stated that OMB rules "also" list "mitigating and aggravating factors," citing 2 CFR 180.860, which permits a consideration of compliance history. The Joint Association Commenters had ample notice that the Commission might examine compliance history as an additional cause and/or as an aggravating or mitigating factor. Our Supplemental Rule § 6001.450(a) is consistent with the "causes," and subsections (b) and (c) of Supplemental Rule § 6001.450 supplement the "factors" that may be considered under the Guidelines (and consequently our rules).

The NPRM also proposed that our supplemental "cause" rule identify that suspension or debarment may be appropriate for certain "willful or grossly negligent" or "willful or habitual"

conduct. Some commenters urge the Commission to exclude from the "cause" rule inadvertent violations, good faith mistakes, and violations resulting from negligence not rising to the level of gross negligence, noting that in the enforcement context a "willfulness" standard encompasses situations where a participant intended to engage in conduct but not necessarily to violate Commission rules. We recognize that in certain other contexts, there is Commission precedent holding that even inadvertent errors can be "willful." Of course, the Guidelines do not define the term "willful," but one federal court has, in the context of the Guidelines, suggested that the word generally applies to knowing or reckless violations, rather than conduct that is merely negligent. *See, e.g.*, *Pillar of Fire*, Memorandum Opinion and Order, 32 FCC Rcd 9633, 9635 n.17 (2017); *Donald W. Bishop*, Forfeiture Order, 8 FCC Rcd 2847, 2847 (1993) (noting that the Commission has interpreted 47 U.S.C. 312(f)(1)'s use of "willful . . . [to] mea[n] the conscious and deliberate commission or omission of such act, irrespective of any intent to violate the Act or Commission rules." (citing authorities)). While this definition of "willfulness" may be narrower than the one in these Commission cases, that does not significantly change the SDO's ability to suspend or debar participants because the Guidelines also provide a general catchall basis for debarment for "[a]ny other cause that is so serious or compelling in nature that it affects [a participant's] present responsibility."

Moreover, a finding that a "cause" exists does not automatically result in a suspension or debarment. The Commission's implementation of the statutory enforcement requirements relating to the Do-Not-Call registry for telephone numbers used by Public Safety Answering Points (PSAPs) is instructive. As detailed in the 2012 PSAP Report and Order, the Commission was required to set forfeiture amounts within a statutory range based on "whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offence." The statute did not define the relevant terms. In the 2012 PSAP Report and Order, the Commission concluded that in setting forfeitures for PSAP Do-Not-Call registry violations it is reasonable, to the extent that terms such as

"willfulness" and "gross negligence" have been defined in the enforcement context, to rely on those definitions and that the Communications Act and Commission requirements to take into account the "nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require," "encompass the factors necessary to distinguish between negligent, grossly negligent, reckless or willful conduct, as used in the Tax Relief Act, without the need for further clarification on this point in our rules." We similarly conclude that it is reasonable and consistent with the Guidelines to take the same "case-by-case" approach here.

Further, the Guidelines' list of causes that we adopt in this Report and Order speaks about certain "willful failures" and "willful violations" as sufficient to support debarment, while having long afforded agencies the flexibility to implement this rule using their discretion in evaluating both what constitutes a willful act and the seriousness of the conduct. While the Guidelines provide no express exception for inadvertent errors, the drafters of the Guidelines intended to provide "assurance that performance matters which are minor or highly parochial in nature would not be used as a basis for debarment actions." (52 FR 20361). Consistent with this approach, we agree that in some cases, instances of inadvertent error, especially if set against a demonstrated history of compliance with program requirements, may be so minor and isolated that they do not provide an adequate basis for suspension or debarment.

For purposes of both section 180.800 and our supplemental cause rule, the term "willful" will not in the ordinary case include minor, isolated, and inadvertent noncompliance. On the other hand, the Guidelines clearly permit debarment for a "history of failure to perform or unsatisfactory performance" of a public transaction if "so serious as to affect the integrity of a Federal agency program." A history of violations of program requirements over one or multiple projects may rise to a level that affects the integrity of an agency program and forms a basis for debarment, even if these violations individually may each have been considered minor. Similarly, a single violation may be so significant that it affects the integrity of an agency

program—for example, a violation affecting substantial expenditures of public funds. The SDO thus has flexibility to evaluate the appropriateness of exclusion given the complexity of the rule(s) at issue as well as the facts of a particular case.

We therefore reject CTIA and USTelecom's argument that gross negligence should not be sufficient to support suspension or debarment and that our supplemental rule should require, at a minimum, a finding of recklessness. We note that consistent with our Rule 1.17 precedent, the exercise of reasonable due diligence—a standard that should not be difficult for program participants to meet—is generally sufficient to avoid a finding of simple negligence (and a fortiori of either gross negligence or recklessness). Thus, for example—as NCTA correctly surmised—a company that submits forms that "'could result in overpayments' notwithstanding [its] good faith effort to comply with all applicable rules," generally would not satisfy the "grossly negligent" requirement to trigger suspension or debarment proceedings.

We are also not persuaded by C Spire's arguments that every potential cause in our supplemental rule should "make reference to statutory or regulatory violations, not merely a type of conduct," or that words like "repeat" and "habitual" are overly vague." First, the Guidelines include among their causes a "history of failure to perform or of unsatisfactory performance," without specifying the length of that "history." The Guidelines also permit suspension or debarment based on a participant's lack of "business integrity or business honesty" that affects "present responsibility," which are not linked to specific statutory or regulatory violations. Second, if an exclusion proceeding is commenced, a participant can present evidence to the SDO that its conduct falls short of "repeated" or "habitual"—or does not qualify as a regulatory or statutory violation—and raise other mitigation arguments. We also decline to identify the "number of . . . violations" that can give rise to suspension or debarment as requested by C Spire, as this would be inconsistent with the kind of flexibility the Guidelines contemplate and give agencies to consider the facts and circumstances of each case. For these reasons, we are also not persuaded by SHLB-SECA's arguments that suspension or debarment should be invoked only

for "fraud or repeated willful violations" because some rules, in their view, "use a strict liability standard" while other rules may be considered vague. As we have stated repeatedly, suspension and debarment decisions will be determined on a case-by-case basis by which an SDO may consider mitigating circumstances even for such rules as SHLB-SECA may characterize as rules imposing strict liability.

The Joint Association Commenters also objected that our proposed supplemental rule—insofar as it permits suspension or debarment for "habitual non-payment or under-payment of Commission regulatory fees or of required contributions" —is "in tension" with the Guidelines, which permit suspension or debarment for "[f]ailure to pay a single substantial debt, or a number of outstanding debts" only if the "debt is uncontested" or the debtor's "legal and administrative remedies have been exhausted." But habitual nonpayment or underpayment of fees generally could also qualify as "repeated violations of Commission rules," permitting exclusion on that separate and independent basis. And in any event, the Guidelines permit an agency to identify what activity is "so serious or compelling" that it implicates a participant's "present responsibility." Further, as already discussed extensively, suspension and debarment decisions will be determined on a case-by-case basis in which an SDO may consider both aggravating and mitigating circumstances. A substantial single or habitual non-payment or under-payment of fees or contributions could be so egregious, in the context of a particular case, as to merit suspension and debarment, notwithstanding the fact that the participant has not exhausted its legal or administrative remedies.

Aggravating and Mitigating Factors

Under the Guidelines, the SDO should consider aggravating and mitigating factors in debarment proceedings, including specific factors set forth in the Guidelines. We also conclude that the SDO may consider aggravating and mitigating factors in suspension proceedings. Although the Guidelines do not explicitly provide for such considerations, the Guidelines do require a suspending official to consider "[a]ny further information and argument presented in

support of, or [in] opposition to, the suspension." The Guidelines also give the suspending official "wide discretion," stating that the official may, for example, "infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government." Accordingly, we determine that the SDO should consider aggravating or mitigating factors during suspension and debarment proceedings, pursuant to 2 CFR 180.860 as well as the additional factors we adopt here.

We adopt the aggravating and mitigating factors provided in the Guidelines. In addition, we adopt a supplemental rule under which the SDO may consider additional mitigating factors. Among such mitigating factors would be remedies that took effect after the misconduct occurred that the SDO considers likely to prevent misconduct going forward, as well as whether proceedings to address alleged misconduct (such as non-payment of regulatory fees) may be pending before the Commission. We decline, however, the request by the Joint Association Commenters and CTIA and USTelecom to create any safe harbors for specific program violations because of the discretion already afforded to the SDO to evaluate each situation on its own merits. Further, we note that a party can often mitigate risk from inadvertent violations, and we recommend that parties do so wherever possible. We also decline to adopt the Joint Association Commenter's request for a specific procedure to protect a self-reporting service provider from suspension action for a period of time after the provider notifies the Commission of a potential issue or following adoption of codes of business ethics and conduct as suggested in the record. While taking such self-corrective actions is critical and could qualify as a mitigating factor, the Commission should retain flexibility to proceed to exclusion, where appropriate, notwithstanding a participant's efforts at self-governance.

The NPRM also specifically asked whether, during a debarment proceeding, the Commission should consider the impact that debarment would have on the provision of services to customers and end-users. We agree that impact on customers and end-users should be

considered during suspension and debarment proceedings, and there is support for doing so in the record, but we conclude that we should not treat the potential impact on customers and end-users (including sole source considerations) as a rationale for allowing a person whose misconduct otherwise warrants an exclusion to avoid the imposition of a suspension or debarment. Rather, we conclude that the better approach is to address an exclusion's potential impact on customers and end-users in the context of whether or to what extent to permit an excluded party to continue to provide services for a limited duration, and under what terms and conditions. The SDO shall make determinations about transitions and continuation periods in the manner described in more detail below.

Evidentiary Standards

The Guidelines require "adequate evidence"—defined as "information sufficient to support the reasonable belief that a particular act or omission has occurred"—for suspension and a "preponderance of the evidence" for debarment. The NPRM requested comment on whether the Commission should adopt these evidentiary standards, as well as whether the Commission should adopt any supplemental evidentiary standard rules.

We received limited comment on the proposal, which we address below, and we now adopt the Guidelines' evidentiary standards. Other federal agencies across the government employ these standards, and we find that adopting a similar framework will facilitate governmentwide reciprocity and promote ease of application.

Contrary to CTIA and USTelecom and NCTA's claims, we are not persuaded that any harm will result from allowing suspension based on "adequate evidence," as opposed to a "preponderance of the evidence." To initiate a suspension under the "adequate evidence" standard in the Guidelines, an SDO still must independently consider whether there is "information sufficient to support the reasonable belief" that a "cause" for suspension has occurred—which also requires the SDO to consider whether the participant's alleged conduct implicates whether that participant is "presently responsible." While we do not adopt a rigid

definition of "adequate evidence," the SDO may find analogies in caselaw on how to apply the "adequate evidence" standard to be instructive. *See, e.g.*, *Horne Bros. v. Laird*, 463 F.2d 1268, 1271 (D.C. Cir. 1972). Unsubstantiated assertions made by a third party (e.g., an unsuccessful E-Rate competing bidder) would likely not satisfy this standard. Moreover, the Guidelines and our rules also provide procedural protections (including a notice of the reasons for suspension upon initiation and a timely opportunity to respond and present evidence), ensuring that, even if an initial suspension decision was erroneously based on materially incomplete or incorrect information, it could be quickly corrected. Specifically, we expect that the SDO will provide a suspension notice containing sufficient information for the suspended person to respond to the notice and identify any relevant facts or circumstances. In this regard, such notices should not be based on "mere suspicion, unfounded allegation, or error." *Transco Sec., Inc. of Ohio v. Freeman*, 639 F.2d 318, 322-23 (6th Cir. 1981). We find that it would be reasonable to apply an "adequate evidence" standard under these circumstances, particularly given that suspensions are temporary.

In response to comments, we further clarify the types of findings on which the SDO may rely. As the Joint Association Commenters, CTIA and USTelecom, and NCTA noted, section 504(c) of the Communications Act would preclude an FCC SDO from issuing a suspension or proposing a debarment based solely on the issuance of a Notice of Apparent Liability (NAL). However, section 504(c) does not preclude the SDO's reliance on any facts underpinning an NAL. Section 504(c) provides that "[i]n any case where the Commission issues a notice of apparent liability . . . that fact shall not be used, in any other proceeding before the Commission . . . to the prejudice of the person to whom such notice was issued . . . ." To be clear, section 504(c)'s prohibition on using NALs is limited to the Commission's use of "that fact"—i.e., the issuance of the NAL. The Commission has previously addressed this issue in the 1999 *Commission's Forfeiture Policy Statement* and explained that "[t]he statute says that the issuance of an NAL shall not be used against a person unless the forfeiture has been paid or the person is

subject to a final court order to pay. It does not say that the facts underlying prior NALs shall not be used against a person." This is supported by the legislative history. Thus, section 504(c) does not prohibit the Commission, and by extension the SDO, from considering the facts underlying the NAL in another proceeding. An SDO may therefore make determinations in an exclusion proceeding—i.e., impose a suspension or propose a debarment—based on the facts underlying an NAL if those satisfy the Guidelines' evidentiary standards. In proceedings before the SDO, however, parties may submit evidence disputing the facts underlying the NAL, should they choose to do so. We clarify this point in response to the Joint Association Commenters' concerns about the use of an NAL in proceedings before the SDO. Similarly, because an exclusion decision must satisfy these evidentiary standards based on the SDO's rigorous review of the record, we reject the recommendation of the Joint Association Commenters that the Commission "expressly exclude USAC decisions from serving as causes for suspension or debarment." An SDO may consider findings by a program administrator in an audit report or commitment adjustment if those findings satisfy the Guidelines' evidentiary standards. That is so even if an appeal of the administrator's decision is pending. But if the participant contests the exclusion, including contesting certain facts in the record of the proceeding, the SDO must render a final decision based on his/her independent evaluation of the record. As a corollary to this principle, in the event a response to an NAL has been filed or a USAC decision is subject to a request for FCC review, or the record otherwise has developed in direct response to the document or decision being referenced, we direct the SDO to consider that additional evidence independent of a participant contesting an exclusion. We emphasize that the SDO must exercise independent judgment. The SDO may not, consistent with section 504(c), presume based on the issuance of the NAL that the Guidelines' standards have been satisfied. We agree with CTIA that the same logic would apply equally to the use of factual allegations set forth in complaints before the Commission in pending proceedings because, like NALs, allegations made in pending Commission proceedings are not final.

In contrast, we note that in suspension proceedings, pursuant to section 180.735(a)(1) of the Guidelines, respondents may not challenge the facts if the "suspension is based upon an indictment, conviction, civil judgment, or other findings by a Federal, State, or local body for which an opportunity to contest the facts was provided." Under this rule, which we adopt, facts contained in Commission orders for which an opportunity to contest the facts was provided, including those issued by bureaus and offices on delegated authority, may not be challenged if relied upon by the SDO in issuing the suspension. We recognize, however, that orders may be affected by judicial decisions or modified by the issuing body itself. Therefore, we adopt section 180.735(a)(1) with a modification to allow respondents to bring to the SDO's attention information showing that the findings in the original Federal, State or local orders are no longer accurate where (i) an order has been reconsidered or modified by the issuing body (or by its staff acting on delegated authority), or (ii) an order has been remanded, reversed, or vacated on judicial review. For debarment proceedings, we adopt a new rule providing that the SDO, in consultation with the Office of General Counsel (OGC), shall apply the principles of collateral estoppel to determine whether a respondent may challenge findings set forth in (i) Commission orders (including orders of bureaus or offices issued on delegated authority) for which the opportunity to contest the facts was provided or (ii) orders of any other Federal, state, or local body for which the opportunity to contest the facts was provided. We also recognize that Commission-level decisions can be subject to petitions for reconsideration and actions on delegated authority can be subject to applications seeking full Commission review. In those cases, it either typically (in the case of reconsideration) or necessarily (in the case of an application for review) is the full Commission that resolves those requests. Consequently, where the facts material to an exclusion decision issued by the SDO are contested in a pending petition for reconsideration of a Commission-level decision or an application for review of an action on delegated authority, the SDO's exclusion decision shall take effect but shall be referred to the full Commission for review. In this scenario, the required written decision by the SDO for

purposes of 2 CFR 6001.135(a) would be the referral of the matter to the full Commission. Consistent with the policy reflected in 2 CFR 6001.135(b), the full Commission will attempt in good faith to issue a written decision within 180 days of receiving the referral.

Exceptions to Exclusion

The Guidelines permit an agency head to "grant an exception permitting an excluded person to participate in a particular covered transaction." The NPRM asked whether we should adopt this rule and whether we should identify factors for granting such an "exception" or whether that determination should be left solely to the discretion of the full Commission or the Chair. The NPRM tentatively proposed that if any factors are enumerated, one consideration should be the extent to which the exclusion would substantially impair delivery of services to customers and end-users. The NPRM asked whether there are additional factors that should be considered. In addition, the NPRM asked whether the Commission should delegate authority to the bureaus overseeing the programs to grant such exceptions. We adopt an approach by which the SDO in the first instance will determine whether good cause exists to grant an "exception" to the exclusion remedy in a particular case.

We agree that in appropriate cases, exceptions to both Commission exclusions and to those issued by another federal agency should be permitted. We thus adopt sections 180.135 of the Guidelines with the modifications set forth in Supplemental Rule 6001.125. This supplemental rule delegates authority to the SDO in the first instance to decide whether to "grant an exception permitting an excluded person to participate in a particular covered transaction." An excluded party, however, may seek reconsideration, or file an application for review (AFR) with the Commission, as provided for in Supplemental Rule 6001.125(f). Commenters expressed support for this approach. We intend for this delegation to apply for purposes of other rule sections in the OMB Guidelines that refer to section 180.135 of the Guidelines. We thus decline to adopt other possible approaches under the Guidelines, which would allow the Chairperson or perhaps even the full Commission to act on exceptions in the first instance. The

SDO's decisions will remain subject to the AFR procedures available for decisions of a Commission component, as we describe herein, thereby providing for appropriate oversight.

Under the supplemental rules that we adopt herein, the SDO is responsible for determining appropriate transition and continuation periods before issuing any suspension or debarment order, and in that process must consider whether, subject to the limitations described herein, an exception to permit extended continuation periods to ensure delivery of services to customers and end-users would be appropriate. Because the SDO will be responsible for conducting these proceedings in which these transitional issues (including sole source services) are closely evaluated, the SDO is in a suitable position to assess the facts of each case and determine whether to grant exceptions for covered transactions and to address the relevant scope of any applicable limitations that might apply. The proponent of an exception bears the burden of proving, by a preponderance of the evidence, any facts asserted.

Consistent with our discussion of transitions and continuations below and to better protect program integrity, we find that any exceptions shall be subject to appropriate conditions such as mandatory audits, additional reporting requirements, compliance agreements (with approval of OGC), monitoring, or any other forms of effective oversight supplemental to those already provided under FCC programs. We also adopt the NPRM's proposal, strongly supported by commenters, that the availability of alternate service providers to serve customers and end-users in a given area is one relevant factor for the Commission to consider in deciding whether to grant an exception to Commission exclusions or to those issued by another agency. If a participant contends that it is the sole provider of services, the SDO shall afford the bureau that administers

the program involved an opportunity to address this matter and rebut those assertions if necessary.

We note that for purposes of the Lifeline, E-Rate, or RHC programs, where exclusions involve resellers, there will almost always be alternate sources of service providers for customers

and end-users. That is because resellers by definition purchase their services or equipment from underlying carriers or from a manufacturer or other manufacturer partner and then resell the services and equipment to their own customers and end-users. Our experience with debarments and other enforcement actions in the Lifeline, E-Rate, and RHC programs has demonstrated that Lifeline subscribers, schools, libraries, and health care providers are able to transition from the reseller to the underlying carrier or to another provider. We recognize, however, that some participants in the E-Rate or RHC programs may need to seek new bids for services and/or equipment, and the SDO should provide a sufficient transition period for this to occur.

Transitions and Continuations

Under the Guidelines, a program participant may choose to continue with an excluded entity "if the transactions were in existence when the Federal agency excluded the person." The NPRM requested comment on that approach as well as on whether continuation should be permitted under those programs in which beneficiaries are receiving services on a month-to-month (or similarly short term) basis. We explained in the NPRM that section 180.310 of the Guidelines, if adopted, would constitute a significant change from policies currently in effect for the E-Rate program that preclude the distribution of any USF funds to debarred entities or entities that have violated program rules. For the reasons explained below, we conclude that the continuation policies set forth in section 180.310 of the Guidelines, and the related provisions contained in sections 180.315(a) and 180.415, should not be applied to the programs subject to this Report and Order. We instead adopt a presumption that the SDO require beneficiaries receiving services from an excluded provider to transition to new providers, subject to limited exceptions described below. To ensure consistency in eliminating bad actors from program participation, whether as participants or principals, we conclude that the related continuation policies set forth in section 180.315 of the Guidelines should not be applied to the programs subject to this Report and Order and that participants should promptly secure the services of

other principals (if needed) for their covered transactions in order to maintain the integrity of Commission programs.

The rules we adopt on transitions and continuations reflect our experience with current rules in the E-Rate or RHC programs that require beneficiaries to change providers after an exclusion or findings of rule violations. Further, in most of our programs there are alternative providers to whom beneficiaries can transition, whether for telecommunications or other services from participants or ancillary services from principals. For example, for participants (e.g., beneficiaries, consultants, and service providers) who are resellers, we expect that there will be an underlying carrier that may be able to continue providing services to customers and end-users. We note that some principals, such as consultants or management companies, may be providers of services for whom, in our experience, substitute providers should be readily available. Other principals such as officers, directors, or program managers, may be internal to organizations. In such cases, an exclusion would require that the organization remove those excluded persons from any role and duties in covered transactions (including oversight responsibilities) and transfer their duties for such transactions to other individuals as may be needed.

Additionally, many of the Lifeline consumers receive service on a month-to-month basis. If we were to treat such relationships as long-term contracts under sections 180.310 and 180.315 of the Guidelines, in practice any exclusion would become meaningless because excluded providers could continue to provide service indefinitely. That is not an acceptable outcome. Further, in most service areas there are multiple providers of these services such that consumers can readily find alternative providers.

Therefore, for both suspensions and debarments, we will continue and extend to all programs subject to this Report and Order the practice of requiring alternative providers and other mitigation measures to help transition customers and end-users from an existing, excluded provider to alternative providers. We recognize, however, that for some programs, the availability of alternative providers may be limited or longer transition periods may be necessary.

We therefore grant authority to the SDO to both fashion reasonable transition periods that protect beneficiaries from loss of services and also to grant exceptions pursuant to Supplemental Rule 6001.125 for that purpose subject to administrative agreements (such as compliance agreements) and agency oversight as appropriate. The SDO's determinations on transitions and continuations should reflect the overarching goal of the OMB Guidelines to protect program integrity by limiting or eliminating program participation by bad actors, while also ensuring continuation of services to beneficiaries. Funds for Learning has advanced the premise that, "[w]here at all possible, suspension and debarment should not interfere with the continued receipt of services to [the] . . . institutions and the communities they serve." Although this is an important consideration—and perhaps even a critical one in certain circumstances—we must balance it with the need to protect the public, including individual consumers, from waste, fraud, and abuse that could result in deleterious effects for a specific Commission program or group of programs.

In reaching these conclusions, we have carefully considered the comments of SHLB-SECA, which recommended that beneficiaries such as schools, libraries, and health care providers should have the option to receive uninterrupted support from a suspended or debarred entity for the duration of the contract, rather than being required to substitute a new service provider through a service provider or Service Provider Identification Number (SPIN) change, if allowable under state and local procurement rules, or rebidding the contract or service. Funds for Learning similarly encouraged us to "allow participants to receive service from a suspended or debarred entity for the duration of the USF-supported contract or to substitute a new provider, whether the services are on a fixed or on a month-to-month basis." Our experience with service provider substitutions under our current rules, however, persuades us that we can protect against service disruptions to beneficiaries, including under the E-Rate and RHC programs, without allowing excluded service providers to indefinitely continue to provide services and receive support under these programs. The SDO shall be responsible for determining the terms and conditions of any transitional periods or, in rare cases, permit exceptions to allow for

continuations of a limited duration where, for example, no alternative providers are presently available or transitioning to another service provider will require additional steps (perhaps under state agency requirements). We further direct the SDO to work closely with the bureaus and offices responsible for the programs, as well as OGC, to develop transition or continuation plans. Where appropriate, the SDO's transitional terms might include compliance agreements, enhanced agency oversight, and other safeguards designed to eliminate the potential for further misconduct. The review of how exclusions will apply as to agency procurement transactions in this regard shall be made by the SDO, in consultation with the affected bureaus or offices, and with OGC, on a case-by-case basis. Any compliance agreements will require the approval of OGC.

To achieve these goals, the SDO first will need to closely evaluate the particular services provided by the party and the availability of alternate providers in the geographic areas served, the typical terms of any contracts that may exist between the provider and its beneficiaries, and any federal or state certification requirements applicable in programs such as the NDBEDP or TRS program. If the SDO determines that a continuation is necessary, the SDO shall fashion an order (or provide for an administrative agreement) that ensures an expedited transition to alternative providers; we emphasize that transitions from excluded entities should be accomplished with all deliberate speed in order to protect program integrity and remove bad actors from our programs. The SDO shall require that during any transitional period, the excluded providers continue providing services to their beneficiaries consistent with our rules and with their contractual obligations. In those cases where obtaining an alternative provider may require new competitive bidding or provider certifications, the SDO shall ensure that the transition period is sufficient to allow for that process.

The equities as applied to marketing organizations, enrollment representatives, or consultants who have been suspended or debarred counsel that we adopt a different rule in that context. The SDO shall require that those entities or persons immediately cease their operations

related to covered transactions. No exceptions or transitional periods shall be permitted. Program participants shall not have the option to continue doing business with such entities or persons during the period of their suspension or debarment. In our experience, there are many persons and organizations seeking to perform such marketing and consulting services, such that service providers should have ample options for securing replacement vendors. Further, immediate discontinuation of such marketing and consulting services will not have adverse effects on current customers or end-users of the service providers and will help to avoid an excluded actor continuing to benefit under our programs.

Additionally, we acknowledge that the NDBEDP and TRS programs present unique circumstances for the SDO to consider in our transition and continuation framework. We note that the Commission certifies a state TRS program for each state, and each state program manages TTY-to-voice TRS, Speech-to-Speech Relay Service, and analog Captioned Telephone Service within the state. Generally, each state program contracts with one provider to offer service within the state, although states have the option to contract with different providers for the different forms of TRS, and states also have the option to contract with multiple providers of the same service or services. Because state programs are subject to the Commission's mandatory minimum standards, and the Interstate TRS Fund, which is overseen by the Commission, is responsible for payment of the interstate minutes originating in any given state, suspension or debarment of a provider that is contracted by a state program would effectively debar that provider from serving the state. If the contract provider in a state is debarred from providing service, the state program would need to contract with a new provider to maintain the state program's eligibility under the Commission's mandatory minimum standards. Thus, for example, because only a single NDBEDP provider is certified to serve each geographic area, suspended or debarred NDBEDP service providers may need to continue to provide services to program participants, with appropriate safeguards as directed by the SDO, until another entity is certified to operate within the respective jurisdiction. To facilitate the transition to another

provider, the Consumer and Governmental Affairs Bureau (CGB) should request an NDBEDP certified entity that has been suspended or debarred to voluntarily relinquish its certification within a deadline and explain that if the entity does not voluntarily relinquish its certification, then a revocation proceeding pursuant to 47 CFR 64.6207(h) will be initiated. Similarly, if a TRS provider is suspended or debarred and is the only entity offering a particular form of TRS in a jurisdiction, an alternative provider will need to be certified by the Commission or contracted by a state TRS program to provide those services.

Under those circumstances, we anticipate that the SDO will allow a suspended or debarred TRS provider to continue to provide services to program participants until another entity is certified by the Commission or contracted by the relevant state TRS program to provide the form of TRS involved. The Commission will expedite its certification review to the maximum extent possible to facilitate a rapid transition to an alternative provider and will encourage the state authorities to act similarly. Further, the Commission will follow its current notice and hearing process for suspending or revoking a TRS provider certification or a state TRS program certification. These procedures will ensure that any exclusion action is implemented consistent with applicable Commission rules to safeguard Commission programs and program beneficiaries' needs.

We anticipate that transitional periods to alternative providers will vary from program to program, and the SDO will need to take individual circumstances into account. In extraordinary situations where alternative providers cannot be identified as quickly as initially anticipated, the SDO may permit a continuation beyond the initial transition period, but any extended transition should be limited and as short as feasible. After the SDO determines the length of the initial and any subsequently extended transition period, the SDO shall require excluded providers to send timely notices to affected customers and end-users of the need to transition to alternative providers.

Notices to affected customers or end-users should include: (1) a statement that the participating provider has been suspended or debarred; (2) a statement that the provider will continue to provide services until the date certain as specified in the suspension or debarment order; (3) a statement that users should obtain service from another provider; and (4) a listing of the names and contact information for other providers authorized to supply that service in the jurisdiction. In evaluating transition periods and notice requirements, especially for the Lifeline program, the SDO should also consider any transition and notice provisions that the Commission has previously adopted.

The SDO, in consultation with the bureaus, should also take appropriate steps to ensure that a suspension or debarment is implemented in a manner consistent with existing Commission requirements and the needs of program beneficiaries.

Interagency Reciprocity

Under the Guidelines, an agency's determination to exclude an entity from its program is afforded governmentwide reciprocity; that is, an entity that is suspended or disbarred by another federal agency is automatically suspended or disbarred from the Commission's nonprocurement and procurement programs. However, the Guidelines also permit an excluded entity to petition the agency for an exception to the governmentwide exclusion. The NPRM explained that adoption of the Guidelines could trigger the suspension or debarment of persons or entities that currently participate in the Commission's programs through governmentwide reciprocity. The NPRM requested comment on whether there were any program participants currently excluded by another agency, and, if so, whether they proposed any modifications or supplemental rules to allow them to continue to participate in Commission programs.

The NPRM also requested comment on how a person excluded by another agency should advise the Commission of the exclusion and request an exception to reciprocity. The NPRM further asked if the Commission should be required to act within a certain period after receiving such a request and whether the agency should issue exceptions, if appropriate, through a

negotiated agreement that would include mandatory independent audits, additional reporting requirements, or similar forms of oversight. The NPRM requested comment on how the Commission will provide information regarding entities suspended or debarred by the Commission to the governmentwide Systems of Awards Management Exclusions (SAM.gov Exclusions). We received no comment on these requests.

We generally adopt the Guidelines' reciprocity rule; entities excluded by the Commission SDO will be excluded from nonprocurement programs governmentwide, and entities excluded by other federal agencies' SDOs will be excluded from the Commission's nonprocurement programs subject to this Report and Order. Additionally, we adopt with modifications our proposed supplemental rules on exceptions to reciprocity and explain the procedures necessary to ensure that the SDO can appropriately evaluate whether and to what extent to grant exceptions to exclusions issued by other agencies. Under Supplemental Rules 6001.120(d) and 6001.125, we delegate authority to the SDO to entertain petitions for exceptions from interagency reciprocity.

The procedure we adopt is a two-step process, consisting of a preliminary review by the SDO and the SDO's subsequent exception determination, if warranted. First, we require in Supplemental Rule 6001.120, as proposed in the NPRM, that FCC program participants or principals excluded by another agency promptly notify the Commission within ten business days after the participant has received notice of the exclusion so that the Commission may consider this information in connection with participation in the programs that the Commission administers. We also require that any participant or principal who is currently included in the SAM.gov Exclusion, based on conduct occurring before the effective date of this rule, provide notice of such exclusion to the Commission within 30 days after these rules become effective. Such notifications shall be made by email and by letter to the head of the bureau or office responsible for the program(s) in which the excluded entity participates, the administrators of any affected program, the Commission's General Counsel, and the Commission's Managing Director. We delegate authority to OGC, in consultation with these bureaus and offices, to revise

these methods where appropriate. Participants or principals excluded by other agencies may temporarily continue with existing covered transactions under FCC programs but may not enter into new transactions unless an exception is granted. Such participants and principals must also comply with any orders for transitions or limited continuations that the SDO may issue.

When advised of an exclusion issued by another agency, the SDO shall conduct a preliminary evaluation, upon the request of a participant or an excluded person or an FCC bureau or office responsible for administering the affected programs, to determine whether to grant an exception based on factors such as when the underlying misconduct occurred, when the other agency issued the exclusion, whether the excluded person is a sole source provider of services under an FCC program, and how much longer the exclusion will remain in effect. The SDO shall consult with OGC and the bureaus and offices responsible for administration of any affected programs or covered transactions in making this determination. If no exception is granted after the preliminary evaluation, the entity remains excluded from Commission programs. The SDO will promptly notify the excluded party and initiate informal proceedings on transitions to alternate providers or limited continuations, if necessary. The notice shall further state that the excluded party is immediately barred from enrolling new customers or end-users in any Commission programs subject to our suspension and debarment rules, may not enter into any new covered transactions or provide services for a covered transaction, and has 30 days to file a response in which the excluded person may seek an exception from Commission reciprocity.

Requests for an exception from an exclusion issued by another agency following a preliminary determination that no exception is warranted must state the reasons for the requested exception and provide any supporting evidence. After the informal proceedings are concluded, the SDO will issue a decision that rules on any exception request filed by the excluded person and may grant the exclusion only if doing so is supported by a preponderance of the evidence. In any event, exceptions should be granted only infrequently, particularly in the context of the

criteria that the SDO shall consider in evaluating whether to permit an exception. If the exception request is not granted, the decision will also set forth the appropriate transition or continuation requirements applicable to the exclusion (including customer notice requirements) consistent with Supplemental Rule 6001.310. The SDO will consult with OGC and the bureaus or offices responsible for administration of any affected programs before issuing these rulings. Any exceptions granted by the SDO may be subject to appropriate conditions such as mandatory audits, additional reporting requirements, compliance agreements (with approval of OGC), monitoring, or any other forms of effective oversight supplemental to that already provided under FCC programs.

We believe that the procedure we have created for the SDO to consider how to implement reciprocity creates sufficient opportunity for the party excluded by another agency to participate in this process, and we modify our proposed supplemental rule. We also require a participant that is not already registered with SAM.gov to do so within 10 days of the date that its suspension or debarment becomes effective. We note that the timing of this registration requirement will differ in cases of suspension, which generally becomes effective when first imposed, and debarment, which becomes effective only when the SDO issues a final decision at the close of the proceedings.

Alternative Remedies or Settlements

We also adopt potential alternative remedies within the suspension and debarment framework to resolve these proceedings without resorting to an exclusion, if appropriate. The Guidelines allow agencies to settle exclusion actions when it is in the best interest of the government and specifically authorize the use of administrative agreements as the settlement framework. The NPRM invited comment on whether the SDO should have authority to tailor exclusions for particular circumstances or propose remedies in lieu of exclusion. The NPRM asked commenters to address whether the SDO should impose alternative remedies after consulting with appropriate bureau and office staff with knowledge of how entities are certified

(in the case of TRS or NDBEDP) or how alternative remedies might impact delivery of services to beneficiaries. The NPRM also asked what types of alternative remedies should be considered, how such remedies should be fashioned, and when alternative resolutions might be appropriate.

There was consensus in the record that the SDO should have authority to fashion settlements (often referred to as administrative agreements in the suspension and debarment context) short of imposing exclusions. Moreover, the Interagency Suspension and Debarment Committee (ISDC) encourages agencies to use administrative agreements, which are increasingly being imposed as alternatives to exclusion.

We agree and adopt a modified supplemental rule on alternative remedies to suspension and debarment that will include administrative agreements, as contemplated by sections 180.635 and 180.650 of the Guidelines. The modified rule we adopt, however, recognizes that OGC possesses substantial expertise in designing administrative agreements (including compliance agreements under our programs). We require that the SDO consult and coordinate with OGC in structuring any administrative agreements and require the approval of OGC before they may be adopted. In addition, under the rules we adopt, administrative agreements may not: (i) impede or impair the Commission's authority to seek full recovery under its debt collection authority of any improper payments made to the settling party; or (ii) purport to resolve any claims the Government may have against the settling party, such as pending NALs issued by the Enforcement Bureau or causes of action under the False Claims Act or other similar laws or common law claims. Similarly, should a party propose a "global" settlement with the Government on matters before the SDO and pending in other forums, then such a settlement would require the participation and approval of all relevant decisionmakers at the Commission, the Department of Justice, and any other agencies or entities involved, as appropriate.

We also agree with WISPA and SHLB-SECA that the SDO should determine whether an administrative agreement is the appropriate remedy on a case-by-case basis. We note, as described by the Joint Association Commenters, that one factor that could weigh in favor of

resolution through administrative agreement is a participant's "self-report[ing] an issue to the FCC," depending on the circumstances (e.g., the severity of the violation or misconduct, and whether it was reported promptly and remediated when discovered). Based on the record, we also find that administrative agreements are most effective if, in addition to training and compliance obligations, they require reporting, auditing, and/or independent monitoring.

Period of Debarment

The typical debarment period under the Guidelines is not more than three years, but may be adjusted based on the "seriousness of the causes" for debarment and evaluation of the factors listed in the Guidelines. Further, a debarred person may ask the SDO to reconsider the debarment decision or to reduce the time period of the debarment. The NPRM asked whether we should adopt the standard debarment period and whether there are additional mitigating factors beyond those set forth in the Guidelines that may warrant a reduction in the debarment period, including the absence of an alternative service provider or the participant's post-debarment adoption of compliance agreements. Based on the record, we adopt the standard three-year debarment period under section 180.865 of the Guidelines, which provides the SDO with flexibility to consider adjustments. We also find that a debarred participant may submit a petition under sections 180.875 and 180.880 of the Guidelines for a reduction of the debarment period based on, among other things, the absence of other service providers or the participant's post-debarment adoption and satisfactory implementation of appropriate compliance agreements.

The NPRM additionally asked whether schools, libraries, and health care providers should be treated differently from other USF participants with respect to the period of debarment. SHLB-SECA stated that it is "absolutely necessary" to do so because such institutions are not "commercial enterprise[s]; these are the non-profit organizations that the FCC's programs were designed to benefit." As we have already made clear, the SDO will consider the totality of the circumstances, such as the effect of debarment on the broader public interest, including on the beneficiaries of FCC programs. All of the FCC programs that will be

subject to these suspension and debarment rules are intended, ultimately, to benefit unserved or underserved populations—regardless of the type of entity or individual obtaining program services, but all participants must also conduct their business in a manner designed to prevent waste, fraud, or abuse.

The NPRM also requested comment on a proposed rule that would permit the SDO to determine that a participant's conduct was so egregious as to require it to petition for readmission to Commission programs. We received no comments on this proposal and now adopt the proposed readmission rule. Although we expect that the SDO will not regularly rely on this option, we find that, in the appropriate situation, it will protect the public interest by adding an additional opportunity for review before permitting the worst actors from returning to FCC programs. Where a petition for readmission is required, the debarred party as petitioner must demonstrate that it has implemented sufficient remedial actions to avoid future program violations. These requirements shall apply regardless of any change of ownership of an excluded entity. If the entity fails to file a required petition or if the request is denied, the SDO may extend the debarment for an additional period under section 180.885 of the Guidelines in order to protect the public interest.

Additional Process Considerations

We resolve several additional procedural questions that the Commission raised in the NPRM to ensure that implementation of any new rules would be efficient and fair. In their comments, parties also offered proposals for other improvements or modifications which we address in this section.

Appointment and Designation of the SDO. Under our legacy rules, the Enforcement Bureau has authority to resolve universal service suspension and debarment proceedings. The NPRM requested comment on whether we should revisit that delegation given our proposal to significantly expand the scope of the Commission's suspension and debarment rules. Specifically, the NPRM asked whether the Chief, Enforcement Bureau (or designee) should

serve as SDO, and, if so, whether it would be appropriate for that person to conduct proceedings in which the individual was involved in any capacity. The NPRM also asked whether persons other than Enforcement Bureau personnel should be considered for appointment as SDOs, and, if so, to specify their qualifications, identifying the Managing Director as one possible alternative. Additionally, the NPRM asked if the SDOs should be subject to appointment for a specific term, or whether they should be subject to removal by the Commission at will—and whether the Supreme Court's decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), limited the appointment of SDOs. Ultimately, the NPRM explained that our primary goal is for the official to be neutral, but explained that suspension and debarment proceedings are not adjudications subject to the Administrative Procedure Act's (APA) formal hearing provisions that prohibit agency staff from performing both prosecutorial and decisional activities. We adopt an approach under which a Commission-appointed official, the SDO, will preside over suspension and debarment proceedings under delegated authority.

Commenters generally supported our proposal that the official should be neutral. The Joint Association Commenters and SHLB-SECA argued that, to ensure such neutrality, the Commission should house the SDO within the Office of the Managing Director (OMD) or OGC and/or should establish clear demarcations between the suspension and debarment function, on the one hand, and the enforcement and program administration functions, on the other. Mr. Meunier agreed that such separation is "desirable," although not required as a matter of due process. Mr. Meunier and SHLB-SECA also urged that the SDO must have sufficient background, knowledge, and expertise with the highly complex rules underlying USF, TRS, and other federal programs to avoid lengthy delays and erroneous findings and conclusions. And finally, one commenter, E-Rate Central, opined that appointment of the appropriate SDO might "depend upon the remedial action contemplated."

As the foregoing makes clear, while commenters generally agreed on the principle that the SDO should be "neutral" and have relevant expertise, they did not coalesce around any

specific proposal. We agree that the SDO's decisions should be informed by the relevant subject matter experts within the Commission, and we permit the SDO to draw upon and apply expertise from the pertinent bureaus and offices.

The Commission will designate an individual to serve as the SDO. It is not yet clear what demands the Commission will face in terms of staffing, resources, and time on an annual basis in connection with suspension and debarment proceedings. Therefore, we decline to adopt any of the other specific proposals regarding an SDO's appointment at this time. Rather, to enhance administrative economy and preserve flexibility to better serve the public interest in light of future staffing resources and enforcement demands, we anticipate that the Commission will address the agency's organizational needs and practices when making the SDO appointment.

To the extent that commenters question a bureau or office's objectivity to handle exclusion or LDP proceedings, we disagree. It is our experience that bureaus and offices routinely work together to administer the Commission's existing suspension and debarment rules in an objective manner, and we anticipate and expect that such efforts would continue. We delegate authority to the Office of General Counsel, in consultation with the Office of the Managing Director, the Enforcement Bureau, the Wireline Competition Bureau, and the Consumer and Governmental Affairs Bureau to revise existing delegated authority rules to accommodate this planned shift in responsibilities.

Pre-Notice Letters. We permit the use of pre-notice letters, as numerous commenters urged. According to the ISDC, these letters "include show cause letters, requests for information, and similar types of letters" and "are used to inform an individual or entity that the agency suspension and debarment program is reviewing matters for potential SDO action, to identify the assertion of misconduct or the history of poor performance, and to give the recipient an opportunity to respond prior to formal SDO action." CTIA and USTelecom suggested that such letters should be required. The Joint Association Commenters, in contrast, noted that pre-notice letters are generally beneficial and should be used "whenever possible," while NCTA

acknowledged they may not be appropriate in response to "egregious conduct." We agree that pre-notice letters may be a useful tool in appropriate circumstances, for example, if it is clear that the misconduct at issue should be resolved through an administrative agreement. We decline, however, to require their issuance in all cases. CTIA and USTelecom did not identify any agency that has made pre-notice letters mandatory, and we find that doing so could harm the public interest by preventing the Commission from moving quickly when necessary to protect our programs and their beneficiaries.

Imputation of Conduct. The Guidelines' imputation rule allows the agency to impute conduct from an individual to an organization, from an organization to an individual, among individuals, or among organizations in appropriate circumstances. The NPRM noted that the rule allows us to "plug a gap in the Commission's current suspension and debarment mechanism." We now adopt the Guidelines' imputation rule as proposed, which will afford us greater flexibility in responding to misconduct.

Some commenters expressed concern about the imputation of conduct under the Guidelines and recommended possible limitations or modifications. One commenter, E-mpa, also objected to any imputation, arguing that suspension or debarment of an entire company as a result of bad conduct by only a few individuals could cause undue hardship to all those at the company whose conduct was not improper. Such an argument, however, misses the critical point that where bad conduct exists, our obligation is to protect our programs and program beneficiaries, and in many cases any potential harm to the company or its "good actors" will be greatly outweighed by the harm that such firms can cause to our programs and beneficiaries. Further, E-mpa fails to recognize that the Guidelines' imputation rule is permissive, not mandatory—it sets forth when an agency "may" impute conduct—and permits the SDO to take individual facts into account on a case-by-case basis. We also find commenters' other concerns with the Guidelines' imputation rule unpersuasive. Specifically, SHLB-SECA urged that imputation from an individual to an organization should require the organization's knowledge,

approval, or acquiescence. While we generally agree that imputation from an individual to an organization will be most appropriate based on the latter's knowledge, approval, or acquiescence, there may be other scenarios where imputation is appropriate due to an organization's inadequate supervision or oversight. We also reject the recommendation of CTIA and USTelecom to limit imputation to an organization only where an individual acts within the scope of his/her employment; such a limitation would emphasize form over substance and fail to capture scenarios where an organization has knowledge of, and benefits from, an individual's misconduct that is outside of his/her scope of employment.

We also note that neither of the EPA decisions cited by CTIA and USTelecom suggests that imputation is appropriate only when an individual acts within the scope of his/her employment. In the *All Out Sewer and Drain Service* decision, the debarring official made passing reference to the fact that the individual "was acting within the scope of his agency" and "duties" for the company, but the debarring official did not state or suggest that this fact was necessary to his analysis. So too in *Michael J. Conrad*, the debarring official quoted a representation from a plea agreement that the individual was "acting within the scope of employment for the benefit of the corporation." But this fact is not referenced or cited as relevant to the debarring official's imputation from the organization to the individual.

Finally, NCTA's concern—that the imputation rule could trigger strict liability for a provider based on actions by a third party not within the provider's control and that the provider made good-faith efforts to identify —is misplaced. Section 180.630 permits (without requiring) imputation in such scenarios, and the provider may demonstrate why the SDO should not impute liability.

Presentation of Evidence. The NPRM requested comment on several evidentiary procedures, including who should provide information supporting suspension or debarment to the SDO in an exclusion proceeding. The NPRM proposed that where the Office of Inspector General (OIG) has conducted the underlying investigation supporting the suspension and

debarment, it should have primary responsibility for providing the information, because it would be the entity most familiar with the underlying facts. In other situations, the NPRM proposed, it might be appropriate for the presentation to be made by the other units within the Commission that may have conducted the investigation, such as the Enforcement Bureau, with input from the bureau most responsible for the implementation of the relevant program, who may inform how to implement suspension or debarment without adversely impacting the persons or entities the programs are designed to assist. We received minimal comment on this issue. SHLB-SECA agreed that an exclusion proceeding generally should involve the participation of the bureau responsible for the relevant FCC program to leverage its institutional memory and expertise. Consistent with the Guidelines' direction that suspension and debarment proceedings should be "informal," and with the analysis of Mr. Meunier that the SDO exercises "managerial decision functions," we authorize in Supplemental Rule 6001.445 that the SDO in each proceeding designate a Commission unit primarily responsible for sharing relevant materials with the SDO to inform the SDO's decisionmaking and, where necessary, establish coordination procedures for other bureaus or offices to participate.

Reconsideration, Review, and Appeal. The Guidelines are generally silent on procedures for review of the SDO's decisions. The NPRM proposed that a determination by the SDO should be subject to reconsideration under section 405 of the Communications Act or an AFR filed under section 155(c)(4) of the Act, and requested comment on whether it would be appropriate or necessary to adopt any supplemental rules regarding appeals and review. The NPRM also requested comment on whether there should be specific timeframes for appeals and requests for review, and which standard and timeframe should apply to related stay requests.

Commenters generally agreed that we should provide certainty with respect to the mechanisms, standards, and timeframes for reconsideration, review, and appeal of suspension and debarment decisions. For instance, CTIA and USTelecom requested that we specify both the process and timelines for review and that we authorize direct judicial review of SDO decisions,

subject to a shot-clock. The Joint Association Commenters recommended that we establish clear timeframes and due process protections for suspension and debarment proceedings, also urging that once the SDO issues a decision, a provider should be allowed to seek direct judicial review. NCTA agreed that the Commission should establish a set of clear timeframes for action by the SDO, as well as review of those decisions by the full Commission. Mr. Meunier stated that with respect to appeals, the Guidelines have no requirements "but agencies that wish to do so may include an avenue of internal agency appeal," noting that EPA provides a "restricted option" for an appeal officer to reverse a suspension or debarment only where the SDO "based the decision on an error of fact or law, or abused his or her discretion."

To provide for additional opportunities for review consistent with the Communications Act and our rules, we adopt procedures for review of SDO decisions and permit reconsideration, review, and appeal as follows. First, we reject proposals to allow direct judicial review of SDO decisions. Indeed, the Communications Act itself precludes such review. Moreover, we separately find that an aggrieved party will have an adequate opportunity to seek judicial review of a suspension or debarment decision after exhausting our procedures, which afford significant due process protections.

Second, we clarify that a suspended party may seek reconsideration and/or Commission review only after the SDO has issued a final suspension decision under section 180.755 of the Guidelines. (Such filings remain subject to the Commission's other, more general legal requirements.) Although a suspension is effective on the date the SDO first signs a suspension order (the initial suspension decision), under our supplemental rules, that initial decision shall only prevent the suspended party from enrolling new customers or otherwise entering into new covered transactions. After receiving notice of the initial suspension decision, a provider has an opportunity to respond and participate in an informal proceeding, after which, the SDO issues a suspension decision with written findings of fact (the final suspension decision). We find that, consistent with our rules and precedent, a party may not file a petition for reconsideration (PFR)

or an AFR of the initial suspension decision. These decisions are not amenable to PFR because they are interlocutory. They do not mark the consummation of the suspension decisionmaking process. The Joint Association Commenters seek to justify a PFR of the initial decision by asserting that "the decision of the SDO regarding a proposed suspension or debarment should contain specific findings of fact and law as well as the SDO's reasoning for such findings to provide a clear record in the event of an appeal." But unlike the requirements for final decisions, the Guidelines and supplemental rules that we adopt in this Report and Order do not require the SDO to include such findings in an initial suspension decision or proposed debarment. As a result, reconsideration of the initial suspension would not be appropriate at this early stage of the process. Initial suspension decisions are likewise not conducive to AFR, because any issues presented to the Commission in an AFR must be first raised with the entity acting on delegated authority—which cannot have occurred at this point in the suspension process.

In contrast, a party may seek reconsideration (if necessary) or Commission review (when otherwise permitted) of a final suspension decision only where the party has responded to the initial suspension decision. If a party does not oppose the initial suspension, however, the party waives the right to challenge the final suspension decision. As we proposed in the NPRM, and consistent with section 405 of the Act, a final suspension decision is not interlocutory, because it marks the consummation of the suspension process. Because the Guidelines do not expressly provide for reconsideration of suspension decisions, and to eliminate any ambiguity, we hereby adopt a supplemental rule expressly permitting reconsideration of final suspension decisions in accordance with section 1.106 of our rules. We note further that like other decisions on delegated authority, a participant may seek Commission review of a final suspension decision when otherwise permissible under the Act and our existing rules.

Third, we agree with commenters that reconsideration and Commission review of suspension decisions should be subject to reasonable timelines. Indeed, the Guidelines already establish timelines for an SDO to complete the exclusion process and issue a final, written

decision. To those ends, we also reject the request of INCOMPAS to implement a 90-day constructive denial rule as inconsistent with the Guidelines. And we agree with commenters that absent a clear timeline for reconsideration, review, and appeal, there is a possibility that suspension and debarment proceedings, including appeals, will be lengthy. We thus adopt rules directing the SDO to resolve any PFR of a final suspension decision within 45 days, which the SDO may extend for good cause, and the Commission to endeavor to resolve any AFR of a final suspension decision within 180 days. We note several commenters raised concerns regarding practices by USAC related to the timing of administrative processing. We conclude that these comments address issues that are outside of the scope of this rulemaking and reject them. We note, of course, that commenters may raise these concerns in an appropriate open proceeding or may propose changes to our rules through a petition for rulemaking.

Fourth, we conclude that a final suspension decision is a non-hearing order that resolves an informal proceeding. As such, the decision is subject to a permissive stay contemplated by § 1.102(b) of our rules. We remind participants that a permissive stay is an extraordinary remedy. Consistent with Commission policy for evaluating stay requests, the decisionmaker (whether the SDO or the Commission) will consider the four criteria set forth in *Virginia Petroleum Jobbers Association*: (1) whether the requesting party is likely to succeed on the merits; (2) whether the requesting party will be irreparably injured without a stay; (3) the degree of injury to other parties if relief is granted; and (4) whether a stay is in the public interest. We decline to adopt an automatic stay when the decisionmaker fails to issue a decision on the stay request within a prescribed timeframe. We likewise do not agree that the filing of an AFR should trigger an automatic stay. We find that such procedural steps are unnecessary given the timelines we adopt for reconsideration and review.

Fifth, we generally adopt the same rules and standards for reconsideration, review, and appeal of debarment decisions. Unlike suspensions, debarments become effective after the SDO issues a final debarment order. Accordingly, we adopt the Guidelines' reconsideration rule for

debarments and also clarify that any debarment decision may be subject to an AFR under § 1.115 of our rules. And, as with suspension decisions, we clarify that a debarment is a non-hearing order subject to a permissive stay under § 1.102(b) of our rules.

LIMITED DENIAL OF PARTICIPATION

We adopt an additional remedy to supplement the suspension and debarment framework adopted herein. In the NPRM, the Commission asked whether we should adopt a mechanism similar to a process utilized by the U.S. Department of Housing and Urban Development (HUD), which provides for a "limited denial of participation" as an alternative to suspension and debarment. (72 FR 73484, 73487 (Dec. 27, 2007)). Many of the procedures governing this mechanism resemble those under the Guidelines for suspensions or debarments, but HUD's LDP does not trigger inter-agency reciprocity because the LDP is not part of the governmentwide suspension and debarment system. Therefore, under HUD's regulations, imposing an LDP prevents a bad actor from continuing to participate in the particular program(s) and/or geographic region(s) that prompted the limited exclusion, but does not result in the party's placement on the SAM.gov Exclusions triggering governmentwide reciprocal exclusions. HUD's rules also offer flexibility by permitting the agency to initiate a suspension or debarment while an LDP is ongoing if the SDO thereafter determines an exclusion is more appropriate. The NPRM requested comment on whether the Commission should adopt the LDP mechanism and, if so, what standards might be appropriate for its use.

We find that an LDP will increase the agency's flexibility to protect its programs from actors whose conduct is concerning, but which does not warrant suspension and debarment. Additionally, the LDP mechanism we adopt will provide additional due process protections beyond those proposed in the NPRM by requiring that before an LDP may be issued, the alleged wrongdoer must first be provided with notice and an opportunity to be heard. Similar to HUD's LDP, a Commission-issued LDP will not have governmentwide effect, but will apply only to FCC activities.

Applicability

LDPs shall be available as a remedy for misconduct arising from any agency programs subject to our suspension or debarment rules. Commenters did not recommend a more expansive scope, and we have concluded that there is no need to broaden the scope of LDPs. Further, as proposed in the NPRM, we conclude that a denial of participation need not be limited to the program where the misconduct occurred, but may be extended by the SDO to any other Commission programs subject to LDPs, depending on the facts and circumstances of the case. For example, if the misconduct involves a violation of competitive bidding requirements in the E-Rate program, the action may warrant a denial of participation from another program involving competitive bidding, such as the Rural Health Care program. The SDO should make these determinations based on the unique circumstances of each case, and in coordination with all relevant bureaus and offices.

Commenters generally supported our adoption of an LDP. For example, SHLB-SECA "firmly support[ed]" our use of an LDP "as a parallel, more flexible alternative to suspension and debarment." According to SHLB-SECA, an LDP "could be put to good use to counteract the one-off bad conduct of participants with no history of the same, similar, or other misconduct . . . ." SHLB-SECA further explained that an LDP would not be the appropriate remedy "where there is evidence of substantial wrongdoing" but could be an effective tool to incentivize participants "to respond to information requests and other directives," provided that appropriate procedural protections are maintained. E-Rate Central agreed that an LDP could provide the Commission "with a useful investigative tool while at the same time providing greater transparency and due process for targets of an investigation." We largely agree with these views regarding the benefits of an LDP, but we emphasize that the Commission remains free to rely on other investigative tools to ensure compliance with the Commission's information requests and other directives.

Some commenters also requested that we adopt additional limitations on the imposition of this remedy. The Joint Association Commenters noted that the Commission can avoid "continuity of service concerns" by restricting the imposition of LDPs to new awards in affected programs, and by not covering existing contracts or customers. SHLB-SECA agreed and also urged that the LDP rules should incorporate due process protections. The Joint Association Commenters and SHLB-SECA also both recommended that an LDP should be imposed for a shorter period than a suspension and should not affect existing customers or awards. Finally, CTIA and USTelecom generally did not oppose adoption of an LDP, but suggested that it should not be imposed based solely on an assessment that a program applicant's participation in the program poses an "unsatisfactory" risk, as proposed in the NPRM.

The LDP mechanism we adopt in this Report and Order affords the SDO the flexibility to fashion the appropriate remedy based on the facts and circumstances of each case. We therefore decline to limit LDPs to cover only new awards in the program(s) in which the misconduct occurred as some commenters suggested. This remedy is similar to one adopted by HUD, which does not limit LDPs in this fashion, and there may be instances where it is in the public interest for an LDP to impact a provider's existing contracts or customers or participation in other FCC programs. We note, however, that the SDO should consider service disruptions and other customer-facing effects when determining the scope of an LDP, as it bears on the best interests of the federal government. Likewise, to the extent that an LDP could impact existing contracts or customers, the SDO should provide for transitions or continuations of services in a manner similar to what we have adopted in this Report and Order for suspensions or debarments to ensure that any service disruptions are mitigated. Given the limited scope and duration of the LDP, as well as the possibility that the SDO will adopt remedies designed to bring the subject of the LDP into compliance with the Commission's rules, we anticipate that it will be less likely that existing customers will need a different service provider.

Causes and Factors

We adopt, with several modifications, the proposed rule on LDP causes set forth in the NPRM. In evaluating whether to issue an LDP, we conclude that the SDO should consider the totality of the circumstances, the factors set forth in section 180.860 of the Guidelines, and such additional factors as whether the misconduct was an isolated occurrence, how egregious the misconduct was, and whether the violator promptly and fully self-reported or otherwise took concrete steps to come into compliance. This analysis is somewhat similar to what the Commission undertakes in the context of forfeitures.

We conclude, and commenters agree, that it is in the public interest to provide the agency with discretion to implement a remedy most appropriate for the misconduct at hand. We clarify in Supplemental Rule 6001.1103(a), however, that if the alleged misconduct involves any of the causes set forth in section 180.800(a) of the Guidelines, or the filing of a criminal indictment or information or a conviction or evidence of fraud, the presumption shall be that a suspension will be the more appropriate remedy. In addition, we adopt Supplemental Rule 6001.1105(a), but clarify therein that only misconduct in those FCC programs subject to the LDP remedy may trigger the LDP remedy. Limiting those causes to conduct in programs subject to the LDP remedy is a conforming change reflecting our decision that LDPs shall be available as a remedy only for those agency programs for which a suspension or debarment could be sought.

Finally, we do not agree with CTIA and USTelecom that one of the enumerated LDP causes—permitting LDPs on the basis of a provider's "unsatisfactory risk"—is impermissibly vague or overbroad. To the contrary, our approach is consistent with the Guidelines, which permit suspension and debarment based on, among other things, an entity's "unsatisfactory performance of one or more public agreements or transactions." Furthermore, the Commission is required by governmentwide guidance to manage risks in its programs.

Evidentiary Standard

We adopt an "adequate evidence" standard for an LDP consistent with the evidentiary standard for a suspension under the Guidelines. We also adopt two proposed rules that explicitly

define circumstances that constitute "adequate evidence." First, an existing LDP related to any Commission program shall constitute adequate evidence to enter a concurrent LDP for any other Commission program(s). Second, filing of a criminal indictment or information, regardless of whether it is based on offenses against, or related to, the Commission, shall constitute adequate evidence for the purpose of limited denial of participation actions. While we adopt two per se rules, these are not the only circumstances that may constitute adequate evidence.

Initiating a Proceeding

To preserve the flexibility of this remedy, an LDP proceeding may be initiated in several ways. As with exclusions, the head of any bureau or office that determines that an LDP would be appropriate based on the causes and factors in Supplemental Rule 6001.1105 may refer the matter to the SDO along with documentation supporting this remedy. Following the referral, the SDO, after consultation with the relevant bureau or office, shall determine whether an exclusion, an LDP, other action, or no action is most appropriate. If the SDO determines an LDP is appropriate, the SDO shall promptly provide any person subject to the proceeding with notice that the LDP has been proposed. Such notice shall specify the causes for the proposed limited denial of participation, the potential effect of the remedy, including its possible length and the FCC program(s) and geographic areas (if relevant) impacted. The notice shall explain the recipient's right to contest the proposed limited denial of participation as provided under Supplemental Rule 6001.1113 by seeking a conference or providing documents in opposition, or both, and state that the person has 15 days to respond.

An LDP may also be initiated if an SDO determines during a suspension or debarment proceeding, after consultation with the relevant bureau or office, that an LDP would be a more appropriate remedy. The SDO shall provide notice to the respondent that the suspension or debarment proceeding shall be suspended, and the record for the suspension and debarment proceeding transferred to and incorporated into the LDP proceeding. The imposition of an LDP,

however, does not alter the right of the Commission to suspend or debar any person under this part if the SDO later determines that an exclusion is warranted.

Administrative Agreements

We conclude that administrative agreements, including compliance agreements, may be issued either to supplement an LDP or as an alternative to an LDP to ensure that the SDO has maximum flexibility to fashion the appropriate remedy. As in suspension or debarment proceedings, administrative remedies may be implemented only after consultation with the bureaus and offices responsible for the programs in which the misconduct occurred, and compliance agreements shall require consultation with and approval by OGC.

Period of Limited Denial of Participation

We also adopt our proposal that the SDO may impose an LDP for any term up to twelve months, but we also permit the SDO to grant an extension of an additional six months (not to exceed eighteen months in total). Such an extension should be imposed if review of conduct during the initial suspension period: (i) fails to demonstrate full compliance with the terms of the LDP or any supplemental administrative agreements; or (ii) shows other misconduct in any Commission program subject to this remedy or additional new causes sufficient to support extension of the LDP period. In addition, the SDO imposing the LDP may also initiate a suspension or debarment proceeding (after consultation with applicable bureaus) if review of conduct during the initial or extended LDP period demonstrates conduct that may warrant a suspension or debarment.

Additional LDP Process Considerations

In the NPRM, the Commission requested comment on several additional process proposals and questions related to the proposed LDP mechanism. In their comments, parties also offered proposals for other improvements or modifications which we address in this section.

SDO Authority to Conduct LDP Proceedings. The NPRM proposed that the authority to conduct LDP proceedings would reside with the bureaus administering the relevant programs.

However, after review of the record, we agree with the Joint Association Commenters and conclude that consolidating this authority under the SDO will provide a more streamlined administrative mechanism and will promote consistency in the application of this remedy. Consolidated authority will also allow the SDO to more easily convert an LDP to an exclusion proceeding, or vice versa, based on the alleged bad actor's conduct and the evidence that the SDO reviews during the proceeding.

Converting an LDP Proceeding to a Suspension and Debarment Proceeding. Just as an SDO may determine that a suspension and debarment proceeding may be paused pending consideration of an LDP on the same facts, if after an LDP has been initiated the SDO either learns of new facts evidencing more serious misconduct than initially suggested or learns of new misconduct, the SDO shall have authority to initiate an exclusion proceeding if appropriate after consulting with the relevant bureau or office.

We also adopt Supplemental Rule 6001.1121, as proposed in the NPRM, to establish procedures to handle parallel proceedings in cases where a subsequent suspension and debarment is proposed based on the same transactions or conduct underlying the LDP. Under this rule, LDP proceedings are stayed for 30 days so that respondents may contest the proposed suspension or debarment. If the respondent contests the proposed exclusion, the proceedings will be consolidated and the LDP record incorporated into the exclusion proceeding.

We further emphasize that if the person or entity subject to an LDP fails to comply with its terms (including those in any administrative agreements), the SDO, after consultation with the bureaus or offices, may initiate an exclusion proceeding. If the suspension and debarment proceeding is initiated when an LDP is already in effect, the LDP shall remain operative while the exclusion is contested. Where both suspension or debarment and LDP proceedings are pending, the procedures described in section 6001.1121 of the Supplemental Rules, as proposed in the NPRM, shall be applicable.

Imputation of Conduct. We also adopt our proposed rule by which the Commission may impute conduct in LDP proceedings in the same manner as provided under section 180.630 of the Guidelines for exclusion proceedings, which we have adopted in this Report and Order.

COVERED PROGRAMS, PARTICIPANT TIERS, AND DISCLOSURES

Scope of Covered Transactions

The Guidelines generally define "non-procurement transactions" as "any transaction, regardless of type (except procurement contracts)," including but not limited to grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurances, payments for specified uses, and donation agreements. Thus, procurement contracts awarded directly by a federal agency would not be considered "covered transactions" under the nonprocurement governmentwide guidance for suspension and debarment. However, where non-federal participants in nonprocurement transactions award contracts for goods or services, such contracts would be deemed to be covered transactions if the amount of the contract equals or exceeds $25,000. Notwithstanding this definition, the Guidelines provide agencies with flexibility to determine which nonprocurement transactions should be covered by their suspension and debarment rules.

The Commission's primary nonprocurement programs have been the Covered Programs. For example, in 2024, disbursements totaled $8.59 billion for USF programs, and $1.48 billion (projected) for the 2025-26 TRS Fund Year. Based in part on audits and reports by the Commission's Inspector General, the NPRM proposed that all transactions under the USF programs, TRS programs, and the NDBEDP be considered covered transactions under any new rules, and that all other Commission transactions be exempt from such rules. The NPRM, tentatively concluding that application of the suspension and debarment rules to these programs would improve the sustainability of their funding for the benefit of those whom the programs serve, requested comment on the benefits of applying the suspension and debarment rules to the

USF programs, TRS programs, and the NDBEDP. We now adopt the tentative conclusions in the NPRM, for which there is substantial support in the record.

The NPRM also requested comment on whether all transactions covered by the Guidelines' definition should be included within the Commission's suspension and debarment regime or whether some Commission nonprocurement programs should be exempted because alternative remedies (e.g., license revocation) may be more appropriate. The NPRM noted that the Guidelines primarily, but not exclusively, focus on transactions that involve a transfer of Federal funds to a non-Federal entity. The Guidelines exclude from the definition of "covered transaction" any "permit, license, certificate or similar instrument issued as a means to regulate public health, safety or the environment," unless a federal agency specifically designates it as a covered transaction. Consistent with that framework, the NPRM proposed to exclude all other transactions, such as applications for section 214 authorizations, equipment authorizations, and broadcast and spectrum licenses issued by the Commission. Similarly, the NPRM proposed to exclude all transactions to or from licensees and those with spectrum usage rights (except for those USF, TRS, and NDBEDP transactions where such an entity is a participant), such as incentive auction payments or repacking payments.

Commenters overwhelmingly supported the NPRM's proposal to apply the Guidelines to the USF programs. Funds For Learning, the Joint Association Commenters, and SHLB-SECA noted that the current suspension and debarment rules for USF programs are too narrow or inflexible and can impede the Commission's ability to safeguard its programs against bad actors. E-Rate Central also generally favored "the adoption of more formal suspension and debarment rules" for E-Rate transactions. Commenters also expressed support for coverage of the TRS program and the NDBEDP. We adopt our proposal to apply the modified Guidelines and our supplemental rules to nonprocurement transactions under these programs.

Commenters also generally supported excluding programs other than the USF and TRS programs and the NDBEDP from coverage under any new rules. For example, CTIA and

USTelecom "agree[d] with the Commission's finding that the Communications Act and the Commission's rules regarding [other] applications and transactions provide more appropriate remedies." WISPA also agreed with the Commission's approach, "particularly because" excluded transactions are "governed by separate Commission rules," and warned against expanding the set of covered programs. And Mr. Meunier noted that while most agencies do not adopt supplemental rules identifying an "elaborate list of inclusions," that fact "does not preclude an agency from issuing such a list if it chooses to do so." The rules, therefore, shall not extend at this time to transactions carried out under the Commission's other currently existing programs, nor shall they extend to transactions to or from licensees and those with spectrum usage rights (with the exception of transactions under the Covered Programs where such an entity is a participant). These decisions find ample support in the record.

Participant Categories

Tiers. All participants (primary tier and lower tier) are potentially subject to suspension and debarment. The Guidelines use "tiers" to categorize program participants, and a participant's placement in a particular tier can affect the scope of that participant's required disclosures. Primary tier participants are those who deal directly with the agency or program administrators by submitting proposals for, or entering into, covered transactions. Lower tier participants are typically those who enter into covered transactions with a person at the next higher tier. Agencies, however, have some discretion to designate participants as belonging to the primary tier, the lower tier, or neither. The NPRM proposed to define USF, TRS, and NDBEDP program participants as primary tier participants and other individuals who contract with program participants as lower tier participants. The NPRM also proposed, consistent with the Guidelines, to designate certain parties who do not directly contract with the primary tier participant (for example, subcontractors) as lower tier participants if they meet certain criteria. While the tier designations varied by program, the NPRM generally proposed two prongs for the lower tier participant definition. First, the participant must belong to one of several specified

categories, including contractors, subcontractors, suppliers, consultants, or their agents or representatives for supported transactions. Second, the participant must also satisfy at least one of the following three criteria: (1) the participant must have a material role relating to, or significantly affecting, claims for disbursements related to the program; (2) the participant must be a "principal," or (3) the amount of the transaction involving the participant is expected to be at least $25,000.

We now adopt the framework of primary tier and lower tier participants proposed in the NPRM and summarized in the chart below. The program-specific rationales for our designations are discussed in detail below, but, overall, we find that expanding the definition of lower tier participant for each program will provide the Commission with the flexibility necessary for more comprehensive program oversight, without imposing onerous requirements on participants. Subcontractors and suppliers play essential roles in carrying out covered transactions, and they are entrusted with large sums of Federal funds. By classifying them as lower tier participants, rather than excluding them from designation as participants, our rules will establish more extensive oversight and control of program spending. Further, these parties who may play a significant role in covered transactions will be subject to exclusion from our programs, when justified by the facts. Therefore, the expanded list of lower tier participants as described in the summary chart and codified in our Supplemental Rules affords the Commission authority to take an exclusion action, if justified by the record, with respect to these parties who are often key players in transactions under our programs. We thus find that this broad definition of lower tier participants, including subcontractors and suppliers, is in the public interest.

Our adopted designations for the Covered Programs by tier are summarized in the chart below.

	Primary Tier Participants	Lower Tier Participants
High-Cost	Service Providers	Contractors, subcontractors, suppliers, consultants or their agents or representatives for High-Cost-supported transactions, if: (1) such person has a material role relating to, or significantly affecting, claims for disbursements related to the program; (2) such person is considered a "principal;" or (3) the amount of the transaction is expected to be at least $25,000.
Lifeline	Service Providers	Any participant in the Lifeline program (except for the primary tier carrier), regardless of tier or dollar value, including but not limited to those that are reimbursed based on the number of Lifeline subscribers enrolled. Contractors, subcontractors, suppliers, consultants, or their agents or representatives and Lifeline marketing organizations for Lifeline-supported transactions, or their agents or representatives, if (1) such person has a material role relating to, or significantly affecting, claims for disbursements related to the program; (2) such person is considered a "principal;" or (3) the amount of the transaction is expected to be at least $25,000.
E-Rate	Schools and Libraries FCC Form 471 Service Providers	Contractors, subcontractors, suppliers, consultants, or their agents or representatives for E-Rate-supported transactions, if (1) such person has a material role relating to, or significantly affecting, claims for disbursements related to the program; (2) such person is considered a "principal;" or (3) the amount of the transaction is expected to be at least $25,000.
RHC	Health Care Providers FCC Form 462/466 Service Providers	Contractors, subcontractors, suppliers, consultants, or their agents or representatives for RHC-supported transactions, if (1) such person has a material role relating to, or significantly affecting, claims for disbursements related to the program; (2) if such person is considered a "principal;" or (3) the amount of the transaction is expected to be at least $25,000.

	Primary Tier Participants	Lower Tier Participants
TRS NDBEDP	Service Providers Certified Programs	Contractors, subcontractors, suppliers with whom the certified programs have a contractual relationship, consultants, or their agents or representatives for TRS- or NDBEDP-supported transactions, if: (1) such person has a material role relating to, or significantly affecting, claims for disbursements related to the program; (2) such person is considered a "principal;" or (3) the amount of the transaction is expected to be at least $25,000.
ACP	Service Providers	Any participant in the ACP (except for the primary tier service provider), regardless of tier or dollar value, including but not limited to those reimbursed based on the number of ACP subscribers enrolled. Contractors, subcontractors, suppliers, consultants, or their agents or representatives and any ACP Marketing Organizations for ACP-supported transactions, or their agents or representatives, if (1) such person has a material role relating to, or significantly affecting, claims for disbursements related to the program; (2) such person is considered a "principal;" or (3) the amount of the transaction is expected to be at least $25,000.
ACP Outreach Grant Program	Recipients of ACP Outreach grants	Subrecipients, contractors or subcontractors of the grant recipients, or their agents or representatives, if (1) such person has a material role relating to, or significantly affecting, claims for disbursements related to the program; (2) such person is considered a "principal;" or (3) the amount of the transaction is expected to be at least $25,000.

General Lower Tier Considerations. Several commenters, including CTIA, USTelecom, and NCTA, suggested that the Commission either exclude lower tier participants from the rules' coverage altogether or adopt a purported safe harbor described in the Guidelines that provides participants with three options for verifying other participants' status. Specifically, CTIA and USTelecom suggested that the NPRM did not adequately explain why extending the rules to subcontractors and suppliers was necessary to promote the public interest, and they further stated that such an extension would "impose unduly burdensome investigation obligations on primary

tier participants." The breadth and scope of the Guidelines offers a governmentwide default for including subcontractors and suppliers. CTIA and USTelecom do not offer any indication of why this scope is unnecessary for failing to guard against waste, fraud, and abuse, and indeed, the Commission's experience suggests otherwise. That is, subcontractors and suppliers may originate or amplify the extent of fraud, further supporting the need for this scope.

CTIA and USTelecom also raised the possibility that subcontractor exclusions could significantly limit "competitive options" for primary tier contractors, particularly in rural areas. Similarly, NCTA urged the Commission not to "impos[e] a strict liability standard on providers that would hold them accountable for actions by a third party that are not within their control and that they made a good faith effort to identify." Because subcontractors and suppliers play essential roles in carrying out covered transactions and are entrusted with large sums of Federal funds, they are also in a position to plan, initiate, or carry out wrongdoing, both with or without the awareness of the primary tier participant. Applying the rules to all participants, including subcontractors and suppliers, establishes the most comprehensive level of program oversight to ensure the actions of all bad actors can be addressed so program funds go to applicants who need it and comply with program rules. Applicants and participants in programs that the Commission administers should carefully consider the scope of the Commission's requirements directed at safeguarding waste, fraud, and abuse, when receiving and spending these funds and deciding with whom to engage in business.

We find NCTA's concerns misguided. First, nothing in the Guidelines imposes a strict liability standard, as NCTA has suggested. To the contrary, the Guidelines explicitly list a number of mitigating factors that the SDO may consider in evaluating exclusions, including "[w]hether and to what extent [the participant] planned, initiated, or carried out the wrongdoing," "[w]hether there is a pattern or prior history of wrongdoing," and "[o]ther factors that are appropriate to the circumstances of a particular case." These mitigating factors give the Commission flexibility to address each case on its own merits and ensure that providers will not

be held to a "strict liability standard." Second, as discussed above, the Guidelines give the Commission flexibility to determine whether the actions of a lower tier participant should result in any action against a primary tier participant. Finally, as discussed above, the Guidelines also furnish several methods for primary tier participants to collect information about their lower tier business partners. Primary tier participants who follow these methods, which we largely adopt with minor modifications consistent with our augmented disclosure requirements, can further mitigate any liability.

We are similarly unpersuaded by CTIA and USTelecom's argument that suspension or debarment of subcontractors and other lower tier participants could limit the ability of primary tier participants to bid on work. If a service provider concludes there is a bona fide shortage of competent contractors, subcontractors, or suppliers to enable it to bid on a covered transaction, it can support an excluded party's request for an "exception" under the Guidelines, allowing the excluded person to participate in future transactions. As discussed above, one basis for granting such an exception is the unavailability of any other qualified entities to perform the necessary services.

Finally, the commenters ask that if disclosure requirements are nevertheless extended to lower tier participants, then primary tier participants should be permitted to use any one of three options to satisfy disclosure obligations provided in section 180.300 of the Guidelines. As nothing in the NPRM proposed to limit the disclosure options for lower tier participants, we agree that the disclosure obligation options described in section 180.300 should be applicable to all participants.

Lower Tier Transaction Thresholds. As described above, one of the three criteria in the NPRM's proposed definition of lower tier participant is "the amount of the transaction is expected to be at least $25,000." Some commenters expressed concern that this threshold was too low. CTIA and USTelecom argued that a $25,000 threshold would sweep in nearly all contractors for some projects and would not adequately account for inflation. They suggested

that the threshold be increased to $100,000. E-Rate Central in turn sought clarification on whether the $25,000 threshold applies to "an individual FRN, application, invoice, or some combination thereof."

We find that the $25,000 threshold is reasonable and decline to raise the transaction value threshold to an amount greater than $25,000. That threshold is consistent with and is derived from the Guidelines' definition of "covered transactions." Moreover, under the Guidelines, the Commission can consider the "actual or potential harm or impact" arising from any wrongdoing as a mitigating factor in an exclusion proceeding, allowing it to take the size of a transaction into account without creating an unnecessarily rigid higher dollar threshold. We are also concerned that adopting a higher threshold for our programs could interfere with governmentwide reciprocity. While CTIA and USTelecom noted that agencies tasked with regulating other capital-intensive industries have increased their thresholds and urge that inflation should be considered, the breadth and diversity of outlays made through our covered programs, as well as the myriad threats to the integrity of our programs, weigh against adjusting the threshold. Even a small lower tier participant (e.g., a marketing organization) can drive significant amounts of waste, fraud, and abuse.

We also find a "transaction" can be cumulative and encompass more than a one-off funding request number (FRN), application, or monthly disbursement. Bad actors should not be able to avoid the obligations that attach to lower tier participants by dividing larger projects into smaller reimbursement requests that fall below a transaction threshold. Instead, the SDO must have the discretion to aggregate smaller related FRNs, applications, or disbursements to meet the threshold. For example, an "act or pattern of behavior" could fall within a single contract that multiple E-Rate or Rural Health Care applications rely on, or within a particular enrollment or claims process or policy that a Lifeline service provider applied to multiple Lifeline subscribers.

An "act or pattern of behavior" can also include, for example, a billing practice that does not account for changes in the service start or end dates, or a subscriber's non-usage of a USF-

supported service that results in the Rural Health Care (RHC) program or the Lifeline program being over-invoiced for services that were not actually provided. Although missing one change in a service date or the non-usage of a single Lifeline subscriber may be a small amount that is over-charged, these acts or patterns of behavior have resulted in significant amounts of over-billing in the USF programs.

Primary and Lower Tier Classifications for High-Cost Programs. For the High-Cost programs, we adopt the NPRM's proposal that the primary tier participant will be the carrier receiving support. We likewise adopt the NPRM's proposal that lower tier participants are contractors, subcontractors, suppliers, consultants, or their agents or representatives for High-Cost-supported transactions if: (1) such person has a material role relating to, or significantly affecting, claims for disbursements related to the High-Cost program; (2) such person is a "principal;" or (3) the amount of the transaction involving the participant is expected to be at least $25,000. We received no comment on these proposals.

Primary and Lower Tier Classifications for the Lifeline Program, Affordable Connectivity Program, and ACP Outreach Grant Program. In the Lifeline program and former ACP, we adopt the proposals that the primary tier participant will be the service provider receiving support, while for the former ACP Outreach Grant Program, the primary tier participants were those parties obtaining grants (consistent with sections 180.970 and 180.200 of the Guidelines). Although the appropriation for the ACP has been exhausted, we include misconduct in the ACP as a basis for suspension and debarment because many service providers that participated in ACP also participate in the Lifeline program and it can also take time to investigate and assess the misconduct. Additionally, we adopt the proposals that beneficiaries under these programs generally are not considered primary or lower tier participants. For the ACP Outreach Grant Program, however, beneficiaries are primary tier participants. Under both the Lifeline program and the former ACP, the service providers can submit consumer Lifeline and/or ACP applications to the National Verifier and enroll subscribers through the National

Lifeline Accountability Database, and therefore service providers are in the best position to have up-to-date information on customer eligibility, activation, and use of their Lifeline and/or ACP services. In addition, the service provider submits requests for payment to the USF Administrator and is best situated to carry out the obligations of primary tier participants under the Guidelines. In contrast, interactions between low-income consumers and the Commission or the USF Administrator are incidental. We received no comment on these proposals.

The NPRM proposed three categories of lower tier participants in the Lifeline program. We received no comment on these categories and therefore adopt the proposal without modification. We also adopt the same categories for the former ACP because of the similarities between the two programs. First, lower tier participants include parties (except for the primary tier Lifeline carrier or ACP service provider) to any contract or award in which a person is reimbursed, including but not limited to contracts or awards based on the number of Lifeline or ACP subscribers enrolled or providing commissions, or any combination thereof, regardless of dollar value. Second, lower tier participants include contractors, subcontractors, suppliers, consultants, or their agents or representatives, and third-party marketing organizations for Lifeline or ACP-supported transactions, or their agents or representatives, including enrollment representatives, if: (1) such person has a material role relating to, or significantly affecting, claims for disbursements related to the Lifeline program or the ACP; (2) such person is considered a "principal;" or (3) the amount of the transaction involving the participant is expected to be at least $25,000.

We adopt similar categories for lower tier participants in the former ACP Outreach Grant Program, recognizing that some grantees may do business with third parties in conducting their covered transaction. In the ACP Outreach Grant Program, lower tier participants include subrecipients, contractors or subcontractors of the grant recipients, or their agents or representatives, if: (1) such person has a material role relating to, or significantly affecting, claims for disbursements related to the ACP Outreach Grant Program; (2) such person is

considered a "principal;" or (3) the amount of the transaction involving the participant is expected to be at least $25,000.

Primary and Lower Tier Classifications for the E-Rate Program. In the E-Rate program, we adopt the proposal that both the program applicant (the school, library, or consortium) and the service provider(s) selected by the applicant (as indicated on FCC Form 471) be designated as primary tier participants. We received no comment on this proposal. We find that extending the primary tier designation to all applicants will allow us to obtain more extensive primary tier disclosures from the applicants themselves before approving transactions, while also ensuring that applicants will obtain disclosures from service providers during their bid selection process under the modified disclosure rules we adopt.

The NPRM also proposed that the service providers selected by the applicant schools, libraries, and consortia also be considered primary tier participants, regardless of whether they submit invoices directly to USAC for reimbursement. Here too, we received no comment and adopt the proposal without modification. In our experience, service providers, like applicants, may be responsible for waste, fraud, and abuse, and therefore imposing the more substantial primary tier obligations and disclosure requirements on these entities also promotes the Commission's goal of protecting federal funds.

Under the E-Rate program, schools and libraries may create "consortia" that can seek competitive bids and/or apply for E-Rate funding on behalf of all their members. When schools and libraries participate as a consortia, the NPRM proposed that the consortium itself, acting through its lead member, would be a primary tier participant, along with the member schools or libraries. In considering any suspension or debarment action, however, we proposed that the SDO should evaluate which particular school or library consortium member was responsible for the misconduct and direct the suspension and debarment orders to those responsible for the bad acts, rather than to all consortium members. We adopt that proposal.

E-Rate Central supported this tailored approach to consortia, but further proposed that "multiple schools and libraries being serviced by a single E-Rate consultant or service provider be treated in an equivalent manner." If E-Rate Central is proposing that when a lower tier participant is excluded each school or library serviced by that lower tier participant should be evaluated on its own merits in exclusion proceedings, the Guidelines already provide for such case-by-case review. Among other things, an SDO must consider the facts and circumstances of each particular case, including any arguments that a respondent raises, and must make a final determination about that respondent's present responsibility. Alternatively, if E-Rate Central is requesting that a lower tier participant's misconduct in connection with one school or library not affect transactions involving another school or library with whom that lower tier participant works, that may be unavoidable. As explained above, where a participant in an E-Rate transaction is excluded, we require that other parties to the transaction promptly complete a service provider or SPIN change and, for the integrity of the program, terminate their dealings with the excluded party (unless an exception is granted under section 180.135 of the Guidelines or under section 6001.125 of our supplemental rules). Finally, if E-Rate Central is requesting some broader form of relief that would undermine the exclusions, we find that it would frustrate the purposes of the Guidelines, one of which is to facilitate a broad exclusion when it is in the public interest.

Finally, the NPRM proposed three categories of lower tier participants for the E-Rate program. Lower tier participants include contractors, subcontractors, suppliers, consultants, or their agents or representatives for E-Rate transactions if: (1) they have a material role relating to, or significantly affecting, claims for disbursements related to the E-Rate program; (2) they are considered a "principal;" or (3) the amount of the transaction involving the participant is expected to be at least $25,000. All these individuals or entities play important roles in our E-Rate transactions, and we find it is important to our oversight and to the integrity of the E-Rate program that they be included as lower tier participants.

We also note that given the similarities between the program rules (such as forms and processes) and overlap in participants, for the purposes of this *Report and Order*, E-Rate specific rules and requirements adopted in this *Order* will also be applicable to the Cybersecurity Pilot Program.

Primary and Lower Tier Classifications for the Rural Health Care Program. In the Rural Health Care program, we adopt the NPRM proposal that both the program applicant and the service provider(s) selected by the applicant (as indicated on FCC Form 462 or 466) be designated as primary tier participants. We received no comment on these proposals, and for the same reasoning discussed in connection with the E-Rate program, now adopt them.

Similarly, the NPRM proposed that a consortium applicant in the RHC Health Care Connect Fund program, acting through its lead entity, would be the primary tier participant, along with its member health care providers, but that in exclusion proceedings, the SDO should evaluate which particular consortium member is responsible for the underlying misconduct and direct the suspension and debarment orders to those entities, rather than to all consortium members. For the same reasoning articulated in the E-Rate program, we now adopt this proposal.

Finally, the NPRM proposed three categories of lower tier participants for the RHC program. We received no comment on these proposals, and for the same reasoning discussed in connection with the E-Rate program, now adopt them. Lower tier participants include contractors, subcontractors, suppliers, consultants, or their agents or representatives for RHC program transactions, if: (1) they have a material role relating to, or significantly affecting, claims for disbursements related to the RHC program; (2) they are considered a "principal;" or (3) the amount of the transaction involving the participant is expected to be at least $25,000.

Primary and Lower Tier Classifications for the TRS Program and NDBEDP. In the TRS program and the NDBEDP, we adopt the proposal that the service providers and certified programs receiving payments should be deemed the primary tier participants. We received no

comment on this proposal, and for the reasons set forth in the NPRM now adopt it. In these programs, the service providers for TRS and certified programs for NDBEDP evaluate the qualifications of customers to participate in the programs. In addition, the service providers and certified programs submit requests for payment to the program administrators and are in the best position to carry out the obligations of primary tier participants under the Guidelines. Specifically, for the TRS program (other than TRS that is provided through state programs) and the NDBEDP, the primary tier participants will be the certified entities that are reimbursed by the Commission and the TRS Fund administrator for providing services under the covered transactions. Additionally, for TRS that is provided through a state TRS program, the primary tier participants will be the TRS providers that are authorized by each state to provide intrastate TRS under the state program and that, accordingly, are compensated by the TRS Fund for the provision of interstate TRS. We received no comment on the question of whether the rules should treat certain types of TRS and NDBEDP participants differently, noting that, for the NDBEDP, some participants are state or local governments, and others are non-profits. In the absence of a clear record, we decline to distinguish in our rules between participants based on their governmental or non-governmental status.

The NPRM observed that, in contrast to the service providers, direct interaction between TRS and NDBEDP beneficiaries (i.e., individuals with hearing or speech disabilities) and the Commission or the program administrators is incidental. Because beneficiaries in the TRS program and NDBEDP do not directly submit applications to the program administrators, the NPRM proposed that, similar to Lifeline, these beneficiaries should not be considered either primary or lower tier participants, and not be subject to the exclusion rules. We received no comment on this proposal and now adopt it.

The NPRM proposed three categories of lower tier participants for the TRS program and the NDBEDP. We received no comment on these proposals and now adopt them. Lower tier participants include contractors, subcontractors, suppliers with whom the certified programs have

a contractual relationship, consultants, or their agents or representatives for TRS- or NDBEDP-supported transactions if: (1) they have a material role relating to, or significantly affecting, claims for disbursements related to the TRS or NDBEDP programs; (2) they are considered a "principal;" or (3) the amount of the transaction involving the participant is expected to be at least $25,000. In the case of suppliers, however, to ensure more effective enforcement, we have clarified that only those suppliers with whom the certified programs have a contractual relationship shall be automatically deemed lower tier participants.

Transactions with the USF, TRS Fund, and NDBEDP Administrators. The Commission also proposed a clarification to section 180.200 of the Guidelines explaining that covered transactions include not only transactions between a person and the Commission, but also any transactions between a person and the administrators of relevant programs, when those administrators are acting on behalf, or as agents, of the Commission. As noted above, the Wireline Competition Bureau (WCB) subsequently sought comment on application of this proposal to the former ACP. We received no specific comment on this proposal, and we now adopt it. This clarification will ensure that all transactions overseen by the Commission under these programs are covered, whether the Commission is acting directly or through its agents.

Principals

The definition of "principal" plays an important role under the Guidelines not only in establishing the scope of disclosure requirements, but also in ensuring that parties who may play a significant role in covered transactions are subject to our suspension and debarment rules when justified by the facts. The modified definition of "principal" ensures that the Commission may take an exclusion action, if justified for cause, with respect to all parties that fall into this modified definition.

The Guidelines define "principal" as: (a) an "officer, director, owner, partner, principal investigator, or another person . . . with management or supervisory responsibilities;" or (b) a "consultant or other person, whether or not employed by the participant or paid with Federal

funds, who (1) [i]s in a position to handle Federal funds; (2) [i]s in a position to influence or control the use of those funds; or (3) [o]ccupies a technical or professional position capable of substantially influencing the development or outcome of an activity [in a transaction]." The Guidelines further state that an agency may "[i]dentify specific examples of types of individuals who would be 'principals' under [its] nonprocurement programs and transactions, in addition to the types of individuals" specifically identified above.

The NPRM proposed that in addition to those persons defined as principals under the Guidelines, the term "principal" should also mean "any person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant." The NPRM then identified classes of persons who may fit this supplemental definition of "principal," including management and marketing agents, accountants, consultants, investment bankers, engineers, attorneys, and other professionals who are in a business relationship with participants in connection with a covered transaction under a Commission program. (This expanded definition of the term "principal" draws upon a supplement to the governmentwide definition adopted by HUD.) Most commenters did not address the NPRM's proposed definition of "principal." WISPA, however, recommended that the Commission adopt OMB's definition of "principal" without modification, while raising some concerns about the clarity and scope of our proposed supplemental rule. And SHLB-SECA, while not expressly objecting to our supplemental definition of "principal," suggested that the breadth of the definition extends to those that merely provide advice and do not necessarily have substantial influence or control over a covered transaction.

We now adopt a modified version of the NPRM's proposed supplemental definition of "principal" that expands the Guideline's definition, but is narrower than originally proposed. As noted, the existing definition in the OMB Guidelines includes an "officer, director, owner, partner, principal investigator, or another person . . . with management or supervisory responsibilities" and we adopt that definition as part of our overall adoption of the OMB

Guidelines' definitions. This decision therefore adequately captures a person, such as a corporate executive or board member with management or supervisory responsibilities, that the Commission may wish to exclude, particularly given our decision regarding the scope of imputation. The supplemental definition of "principal" we adopt has two components: first, in addition to the persons deemed principals under section 180.995(a) of the Guidelines, a principal will also include any consultants that have a business relationship with participants in connection with a covered transaction, as well as Lifeline or ACP marketing organizations; and second, in addition to any person deemed a principal under section 180.995(b) of the Guidelines, a principal will also include any person having a critical influence on, or substantive control over, a covered transaction even if not in one of the enumerated categories. In this regard, we find that an individual's status as a principal does not depend on whether that individual is employed by the participant, the specific title the individual holds, or whether the person is paid with federal funds. Rather, we focus on the function that the person performs and how adequately the person performs it with respect to "principal" level responsibilities. The modified definition of "principal" ensures that the Commission may take an exclusion action, if justified for cause, with respect to all parties that fall into this modified definition.

We also decline to designate management agents, accountants, or attorneys as persons who will automatically be deemed principals as we had proposed in the NPRM. We conclude that the term "management agent" which was drawn from a HUD definition is inapposite in our context. As to accountants or attorneys, we note that these professionals could be principals under the "influence or control" prongs of the supplemental definition, but decline to categorically deem them as principals. We received no specific comment on the categories of persons that the NPRM proposed as "principals," but we remove "investment bankers" and "engineers" from the definition (as proposed) because, on further review, we find that these professionals have not been drivers of waste, fraud, and abuse in our programs.

To implement our supplemental definition of principal, we also define "Lifeline marketing organization" or "ACP marketing organization" as an entity that: (i) has a contractual relationship with the entity providing the Lifeline or ACP services to consumers for the purpose of securing Lifeline or ACP enrollments; or (ii) has any contract to provide for such Lifeline or ACP enrollment services.

The first component of our supplemental definition is a per se rule that consultants who have or had a business relationship with the participant in connection with a covered transaction and Lifeline or ACP marketing organizations shall be considered a principal. Our decision to treat certain enumerated professionals as principals without requiring an explicit fact-finding process for each person in these categories reflects both a special concern for the roles played by those professionals in Commission transactions and the need for clarity and administrability in our rules. Were we to adopt a supplemental definition requiring a finding of fact to clarify the disclosure requirements applicable to each participant in a transaction, as WISPA has suggested, participants would face increased uncertainty with respect to their disclosure responsibilities, while the Commission would need to continually provide guidance in numerous transactions as to what constitutes "critical influence" or "substantive control."

Moreover, based on our experience with our programs, we find that in most cases consultants and Lifeline or ACP marketing organizations would likely be designated as principals under the "influence" or "control" component of our definition, even if they were not categorically included in the definition. Marketing organizations, for instance, have had an outsized impact on activity in the Lifeline program and the former ACP, frequently submitting apparently fraudulent Lifeline or ACP enrollments to increase reimbursements for service providers and, prior to its prohibition by the Lifeline and ACP rules, potential commissions for the agents themselves. Likewise, consultants play a significant role in the E-Rate and Rural Health Care programs when retained by program participants to manage projects that receive USF support. In several cases, such consultants have committed serious program violations.

The expanded definition of "principal" will enable us to bar those who participate in the schemes as well as those who orchestrate them.

We further clarify, however, that enrollment representatives of marketing organizations will be classified as lower tier participants because of their "material role relating to, or significantly affecting, claims for disbursements related to the programs in which they participate" as described in the Tier Chart of this Report and Order, but such persons will not be deemed "principals" except in extraordinary circumstances as determined on a case-by-case basis. The term "enrollment representatives" shall have the same meaning as set forth in the Commission programs that may be implicated in any transaction (to the extent such definitions exist). Moreover, the disclosure obligations of marketing representatives, who are lower tier participants, will be limited to those under section 180.355 of the Guidelines.

There was muted objection to designating various persons providing advice to program participants as "principals." SHLB-SECA did not object directly, but "encourage[d] the Commission to clarify that [providing] incorrect or allegedly incorrect advice . . . may not be grounds for suspension or debarment," explaining that "[a]dvice alone does not constitute substantial influence or control over a covered transaction." Similarly, SHLB-SECA and E-mpa argued that consultants and other third parties can never cause violations or misconduct by providing "incorrect or allegedly incorrect advice" because "participants are free to accept or reject advice, whether it be good, bad or somewhere in between." We reject these assertions. As a result of our experience administering our programs and addressing cases involving waste, fraud, and abuse, we find that consultants and other third parties can easily contribute to rule violations by negligently or intentionally providing erroneous or misleading advice, notwithstanding the fact that "USF participants are free to accept or reject advice."

We note in any given case, a consultant may make the factual argument that it did not cause the misconduct by the primary tier participant, which, if true, would preclude the consultant's suspension or debarment. But if the evidence demonstrates that a consultant's "act

of giving advice" was the cause of rule violations or misconduct by a program participant, then an exclusion might be appropriate, depending on the aggravating and mitigating factors. Thus, for example, a consultant also could argue in any given case that, to the extent that its advice was incorrect, it was merely negligently so, which, if true, would weigh against exclusion as we have made clear in this analysis.

As to the second prong of our supplemental rule, we adopt the "critical influence on or substantive control over" component to ensure that certain forms of misconduct in our programs may be addressed even if the bad actor may not otherwise be captured by the Guidelines' definition of principal. For example, a person that violates our competitive bidding rules might not be "influencing the development or outcome of an activity required to perform the covered transaction," yet that person's misconduct could merit a debarment. For example, in the course of an investigation into the TRS entity, it might be determined that a particular hearing health professional or entity had a significant adverse effect on the transaction that could warrant a debarment of that person. Individual hearing health professionals are not directly subject to Commission rules, but such conduct could critically influence ineligible individuals to register for and use TRS, despite the determination of eligibility ultimately lying with TRS providers and users. Our expanded definition of "principal" affords the Commission the flexibility to consider such conduct in protecting program integrity.

We reject WISPA's recommendation that the Commission adopt the OMB definition of a "principal" without any modification as the definition of "principal" adopted here advances the purpose of the Guidelines. Certain individuals that facilitate program abuse (including rule violations) may not fall within the Guidelines' more narrow definition of "principal." Standing alone, the Guidelines could unduly restrict the Commission's ability to address the actions of individuals it has identified as posing a risk to the integrity of its programs.

Likewise, we find that adopting these program-specific supplemental definitions will provide greater certainty and notice to program participants and improve administrative

efficiency and program integrity. Under the Guidelines, both primary and lower tier participants must promptly make disclosures about all "principals" to the transactions before a transaction is consummated. We therefore disagree with WISPA's concern that the SDO first must make individualized findings about whether a person in the supplemental categories is a "principal" before disclosures are required. Such a cumbersome process would delay consummation of transactions and the timely delivery of services. In contrast, by affording participants further clarity at this stage, our supplemental rule will ensure more timely disclosures that will facilitate program integrity and efficiency. We would also urge participants to err on the side of disclosure in close cases. Finally, we conclude the benefit of our enhanced ability to combat forms of waste, fraud, and abuse, greatly outweigh any incidental burdens created by the modified disclosure requirements.

Participant Disclosures by Tier

The Guidelines require both primary and lower tier participants to disclose certain information before they enter into a covered transaction. We adopt the Guidelines' disclosure requirements, with program-specific modifications, as detailed below. In addition to the discussion in this section, we refer parties to the Guidelines in 2 CFR part 180, subpart C (Responsibilities of Participants Regarding Transactions Doing Business with Other Persons), and note that entities who participate in federal grant programs (e.g., schools, libraries, or rural health care providers) or seek federal contracts (e.g., service providers) should already be familiar with similar requirements.

Primary Tier Participants. Under the Guidelines, primary tier participants must advise the agency if they are presently excluded or disqualified, and also must state (a) whether the participant or any principals for the transaction "[h]ave been convicted within the preceding three years of any of the offenses listed in § 180.800(a) or had a civil judgment rendered against [them] for one of those offenses within that time period;" (b)"[a]re presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with the

commission of any of the offenses listed in § 180.800(a);" or (c) "[h]ave had one or more public transactions . . . terminated within the preceding three years for cause or default."

The NPRM proposed that these disclosure requirements could be communicated and implemented by amending existing program forms, form instructions and certification rules and sought comment on how to administer such requirements in a manner that minimizes burdens on primary tier participants. The NPRM and subsequent Public Notice also proposed to clarify that such disclosures by primary tier participants be made not only to the Commission and the applicable bureaus, but also to the relevant program administrators.

We adopt the full disclosure requirements set forth in the Guidelines for primary tier participants. Commenters generally focused their opposition on the breadth and clarity of the disclosure requirement—especially as it relates to the disclosure of having "one or more public transactions . . . terminated within the preceding three years for cause or default." For example, immixGroup, NCTA, E-Rate Central, and E-mpa sought clarification on what kinds of "termination" would merit disclosure. (immixGroup, however, supported the requirement that parties report convictions for offenses listed under section 180.800(a) and stated that it might be reasonable for parties to have to report charges or indictments for those same offenses.) Several commenters also specifically requested that we clarify that a mere denial of a USAC funding request would not qualify as a reportable "termination." Commenter immixGroup also suggested that we adopt "exceptions to both the reporting of funding denials requirement during the pendency of an administrative appeal and, specifically, until a final non-appealable decision is issued by the appropriate body of last resort." CTIA and USTelecom suggested that the disclosure requirement for terminations be limited to transactions with the Federal government, not state and local governments.

First, we adopt a supplemental rule clarifying that a mere denial of a funding request does not, without more, constitute a "termination . . . for cause or default" of a public transaction as that phrase is used by the Guidelines. Program administrators deny funding requests for a wide

variety of reasons, some of which may arise from minor technical and procedural errors. On the other hand, participants are required to report termination of a previously approved funding request based on serious errors or misconduct (such as violations of competitive bidding requirements) by a participant in the covered transaction that was terminated. Although this requirement does mean that, for example, a service provider must disclose a denial caused by a violation by an applicant, we note again both that a party making a disclosure may provide additional information (e.g., that it was not responsible for the violation), and that unfavorable disclosures do not automatically trigger denial of a transaction or the initiation of exclusion proceedings.

Second, we decline to establish an exception for otherwise reportable terminations that are pending appeal. The mere disclosure of a termination—pending appeal or otherwise—does not automatically trigger the denial of a new transaction or initiate an exclusion proceeding. Rather, the Commission has flexibility under the Guidelines to consider both the disclosed information and "any additional information or explanation [a transaction participant] elect[s] to submit with the disclosed information" in deciding whether to approve the transaction. Additionally, the Commission or program administrators might allow a transaction to proceed, despite an unfavorable disclosure, but employ additional safeguards, including heightened scrutiny or audits, to ensure compliance. Establishing an exception covering all terminations pending appeal would unnecessarily deprive the Commission and program administrators of potentially relevant information about transaction partners. We will not, however, require the reporting of terminations that have been reversed or vacated.

Third, we decline to limit the termination reporting requirement to Federal transactions. Subject to the clarifications herein, primary tier participants must report terminations of transactions with state and local governments. Like Commission programs, programs run by state and local governments often require participants to handle and direct public funds in an appropriate manner. A participant's propriety in these dealings can offer valuable insight as to

its fitness to participate in Commission programs, particularly when a participant's prior contact with the Federal government is limited or nonexistent. We are unconvinced by CTIA and USTelecom's argument that "identifying every state and local 'transaction' terminated for cause or default . . . would be highly burdensome." The reporting requirement stretches back only three years and would likely require significant review of only a small subset of transactions.

We also adopt a supplemental rule requiring that such disclosures be made not only to the Commission, but to the relevant program administrators as well. We find that the requirements are essential to ensuring that the program administrators and the Commission have access to the information needed to make informed decisions around approval and denial of transactions.

In addition, recognizing that primary tier participants in the E-Rate and RHC programs typically enter into contractual arrangements with each other, we create a supplemental rule requiring service providers in the E-Rate and RHC programs to make the necessary disclosures not only to the Commission and USAC, but also to the schools, libraries, or health care providers during the competitive bidding process. Because service providers will now be primary tier participants, section 180.300 of the Guidelines, which requires pre-transaction verification by a primary tier participant that a lower tier participant is not excluded, would not apply on its face to transactions between E-Rate schools and libraries and their service providers or rural health care beneficiaries and their service providers because all these entities will now be considered primary tier participants. Therefore, we adopt a supplemental rule modifying section 180.300 to require that the verifications required by that rule will be applicable not only to transactions with "another person at the next lower tier" but to transactions among participants at the same tier as well.

We note that disclosures among primary tier participants other than the agency involved is not envisioned under the Guidelines because for typical transactions covered by the Guidelines, non-federal primary tier participants may not be entering into transactions with each

other. However, the E-Rate and RHC programs follow a different model, and service providers in the first instance are chosen by the program beneficiaries, not by the Commission. Therefore, to facilitate program integrity and ensure the efficacy of disclosures, primary tier disclosures as required by Supplemental Rule 6001.300(a) should be made to the beneficiaries prior to consummation of any covered transactions, preferably at an early stage in the bid selection process and before the service provider is selected and the FCC Form 471, 462 or 466 is submitted in cases where there are no bids or a competitive bidding exemption may apply.

We encourage schools, libraries, and health care providers to require such disclosures as early as possible in the bid selection process so that they may consider such disclosures before entering into any covered transactions.

We further direct WCB and CGB to modify, as appropriate, any applicable program forms (such as FCC Forms 470, 461, or 465) to require the relevant primary tier disclosures. In those cases in which no bids are submitted, or in which a competitive bidding exemption is applicable (such as 47 CFR 54.622(i)), the program beneficiaries shall obtain such disclosures from service providers before they may enter into any new covered transactions for program services.

These requirements will ensure that all primary tier participants receive valuable background information about the parties with whom they are considering doing business. Importantly, most disclosures (other than that the disclosing party has been excluded or disqualified) are not dispositive or outcome determinative. Rather, disclosures enable program beneficiaries, program administrators, and the Commission to evaluate the level of risk associated with any given transaction and consider appropriate remedial measures short of disqualification (e.g., compliance conditions, audits, heightened scrutiny).

We recognize that the Guidelines' disclosure requirements necessarily involve some administrative costs for the Commission and program administrators, as well as program participants. But we reject CTIA and USTelecom's argument that these requirements will have

the net effect of diverting "resources better invested in providing service and equipment to unserved communities and consumers" into "satisfying onerous compliance obligations." To the contrary, we anticipate that these disclosure requirements will ensure that scarce federal support dollars fulfill their intended purposes by allowing the Commission and primary tier participants to avoid entering into business with bad actors who may commit waste, fraud, or abuse. The disclosures will also allow the Commission and program administrators to address perceived risks ex ante through monitoring and audits rather than through ex post remedies, which also will enhance the efficiency of the Commission's operations.

Lower Tier Participants. The Guidelines' disclosure requirements for lower tier participants are less extensive: lower tier participants need disclose only whether they are excluded or disqualified from participating in covered transactions. The NPRM asked whether the Commission should adopt a supplemental rule requiring that lower tier participants also disclose the information required of primary tier participants to both the Commission and program administrators, and to the higher tier participant with which they seek to conduct business. The NPRM noted that, under the Guidelines, an unfavorable disclosure by a primary tier participant would not necessarily cause the federal agency to deny participation (except for instances of exclusion or disqualification), and the NPRM proposed to extend this protection to disclosures by lower tier participants. The NPRM explained that extending primary tier disclosure requirements to lower tier participants would allow the Commission and its administrators, as well as higher tier participants, the opportunity to consider additional information to better determine whether the participation of lower tier participants is appropriate. The NPRM proposed requiring that primary and lower tier participants include a term or condition in their transactions with the next lower tier participants mandating compliance with the disclosure rules.

We adopt with the modifications and exceptions described below our proposed rule extending the Guidelines' primary tier disclosure requirements to lower tier participants in all

Commission programs subject to this Report and Order. We find that this extension will advance the public interest and is appropriate given our experience combatting waste, fraud, and abuse in our programs. Specifically, lower tier participants, such as consultants and marketing organizations, have been significant drivers of malfeasance in the universal service programs. We do not believe that requiring lower tier participants to disclose only whether they are excluded or disqualified from participating in covered transactions will fully accomplish the Guidelines' objective of enabling government agencies or the parties with whom these participants may be conducting transactions to make better-informed decisions about prospective business partners.

We further modify the Guidelines to require disclosures among and between lower tier participants that enter into covered transactions with each other. In those transactions, the lower tier participant who is performing work for another participant shall provide the disclosures to any participant who is paying for the work or otherwise hiring the person under the covered transaction. Thus, for example, an E-Rate subcontractor who wants to enter into a covered transaction with a contractor—both of whom are lower tier participants—must provide any applicable disclosures to that contractor before consummating the covered transaction. Similarly, a marketing organization that wants to perform a portion of Lifeline marketing work for another marketing entity must provide that entity with the applicable disclosures. This requirement will again ensure that all parties, regardless of tier, who enter into covered transactions can make an informed decision about their potential partners.

However, we tailor the disclosure obligations for enrollment representatives of marketing organizations, which we classify as lower tier participants. Enrollment representatives need only disclose whether that individual representative is excluded or not and need only make the disclosures to the marketing organization with whom the representative is employed or seeks employment. We limit the disclosure obligations for enrollment representatives because we conclude that a marketing organization will not require the full panoply of disclosures in order to

make reasonable hiring decisions of enrollment representatives. Additionally, we recognize the substantial administrative burden that would be imposed on lower tier employees of marketing representatives to make the more expansive disclosures. To ensure Commission oversight of this disclosure obligation, enrollment representative disclosures shall be retained by the marketing organization for review by the Commission for the period during which the enrollment representative is employed in support of the program or the period otherwise required by document retention rules, whichever is longer.

Few commenters squarely addressed the proposal to expand disclosures for lower tier participants. CTIA and USTelecom stated that the Commission "has not explained why departure from its current rules, which do not extend to suppliers or subcontractors, is necessary to protect the public interest." They therefore urged the Commission to apply disclosure rules to primary tier applicants only. As already demonstrated, lower tier participants have been significant drivers of malfeasance in the universal service programs, and we require and welcome more expansive tools to effectively address the waste, fraud, and abuse that they originate. SHLB-SECA similarly "question[ed] whether the disclosures proposed in the NPRM will help the Commission." As already explained above, the disclosures will protect our programs by allowing parties, including the Commission and program administrators, to review unfavorable information before determining whether or not to proceed with a transaction—possibly deciding to avoid the transaction altogether.

CTIA and USTelecom, NCTA, and the Joint Association Commenters also requested clarification regarding how primary tier participants are expected to collect required disclosures from lower tier participants. As they noted, section 180.300 of the Guidelines allows a primary tier participant to verify whether a lower tier participant has been excluded or disqualified by checking the SAM.gov Exclusions, collecting certifications, or including clauses or conditions in the terms governing covered transactions. We agree that these methods are appropriate for confirming whether a lower tier participant has been excluded or disqualified. But we note that

checking SAM.gov Exclusions does not allow a primary tier participant to verify the additional information that we require from lower tier participants in our supplemental rule. These additional disclosures should be obtained through collecting certifications or including clauses or conditions in covered transactions, and, consistent with the record, we so provide in Supplemental Rule 6001.330.

Lifeline Disclosures. Under the Lifeline program, eligible telecommunications carriers (ETCs) as well as their lower tier participants will be subject to disclosure obligations. The NPRM sought comment on how to implement these disclosure obligations. For example, the NPRM asked whether the disclosure rules should require all primary and lower tier participants in the Lifeline program to file disclosure statements, upon penalty of perjury, reporting all required disclosures or certifying that they have no reportable disclosures to make. It also asked whether the disclosure should be added to existing forms or submissions for ETCs, how often such disclosure statements should be filed, and what remedies should be available if participants fail to disclose the required information. The NPRM also sought comment on several program-specific questions, including whether individuals who have registered with USAC for access to the Lifeline National Verifier or National Lifeline Accountability Database systems should be required to file disclosure statements upon registration and every subsequent recertification, and whether ETCs should be required to maintain such disclosure statements as part of their record retention requirements.

We did not receive comment regarding the implementation of disclosure requirements for the Lifeline program. Relying on the Commission's expertise providing oversight of the Lifeline program, we find it is most appropriate for primary and lower tier participants in the Lifeline program to file annual disclosure statements, upon penalty of perjury, reporting all required disclosures or certifying that they have no reportable disclosures to make. Primary tier participants may also file on behalf of lower tier participants with which they have a direct relationship. However, as already discussed, the disclosure requirements for enrollment

representatives are more limited. As the disclosure requirements may apply beyond ETCs, we do not believe a current information collection can easily be modified to request this information. Therefore, we direct WCB to develop an information collection to receive the appropriate certifications annually. At this time, we do not believe it is necessary to receive similar disclosures from individuals as they register to access USAC's systems. Consistent with the Commission's Lifeline rules, we also determine that it is appropriate for primary tier participants to maintain documentation that substantiates their required certification, at a minimum, for the three full preceding calendar years and provide such documentation to the Commission or USAC upon request. Finally, in addition to any other enforcement mechanisms that may be available, a participant's non-filing of required disclosures may be considered by the relevant bureaus and offices of the Commission as "credible information" for the purposes of directing USAC to apply a funding hold to universal service funds. We believe that all of these efforts will ensure better stewardship of universal service funds and prevent potential waste, fraud, and abuse in the Lifeline program. Given the similarity across programs, we delegate authority to WCB and CGB to develop appropriate information collections to apply the Lifeline program's disclosure requirements to former ACP and ACP Outreach Grant Program and to streamline any required disclosures under these programs.

USF Competitive Bidding Short Forms. In some instances, the Commission conducts competitive bidding to award universal service support, as in the Connect America Fund Phase II and Rural Digital Opportunity Fund auctions. In such competitive bidding processes, an applicant for support first files a short-form application to participate in bidding. This approach streamlines the competitive bidding process and encourages participation. At the short-form stage, pursuant to the competitive bidding rules, an applicant is required to certify either that it "is in compliance with all statutory and regulatory requirements for receiving the universal service support . . . , or, if expressly allowed by the rules specific to a high-cost support mechanism, . . . that the applicant acknowledges that it must be in compliance with such

requirements before being authorized to receive support," without being required to demonstrate fully such compliance. Only after becoming a winning bidder must an applicant file a long-form application demonstrating in detail the applicant's qualification to receive the support.

The Guidelines require primary tier participants not only to disclose whether they are presently excluded or disqualified, but also to make several additional disclosures that could assist the agency in evaluating whether to enter into the transaction. The NPRM acknowledged that requiring all of the disclosures and evaluations at the short-form stage could slow down auction processes, and therefore sought comment on the appropriate balance between requiring helpful disclosures at the short-form stage and preserving the speed of the competitive bidding process. The NPRM proposed three options for addressing this balance. First, the NPRM proposed that at the short-form application stage the Commission would only require the applicant to disclose whether they are presently excluded or disqualified and wait until the long-form application to require the applicant to submit additional disclosures for review. Second, the Commission could require applicants to disclose at the short-form stage whether the applicant or any of its principals are presently excluded or disqualified, and subsequently require the full disclosures at the long-form stage. Or third, the Commission could require applicants to make all of the required disclosures on both the short-form and the long-form application.

WISPA agreed that requiring applicants to provide all disclosures mandated by the Guidelines at the short-form application stage could slow the auction process. It further suggested that since "[l]imiting the scope of the initial disclosures will expedite staff review of short-forms and simplify preparation for USF auctions," the Commission should, for the High-Cost programs, require that an applicant disclose only whether it or any of its principals are presently excluded or disqualified.

We now adopt the NPRM's first (and narrowest) option, under which the Commission's review at the short-form stage is limited to the status of the applicant—i.e., whether the applicant is presently excluded or disqualified—while a winning bidder will be required to make any

additional required disclosures when it submits a long-form application. Thus, for the reasons stated elsewhere in this Report and Order, we choose not to adopt WISPA's recommendation that we implement the second option, which encompasses principals as well as applicants, but clarify that the rule adopted involves fewer disclosures than the second option.

In a USF competitive bidding short-form application, an applicant must certify that it is "in compliance with all . . . regulatory requirements for receiving the universal service support." Therefore, a presently excluded applicant could not make the required certification and could not successfully submit an accurate and complete short-form application. This approach will permit the Commission to process competitive bidding applications more quickly and minimizes the disclosures and administrative burdens required of potential participants. The applicant bears the risks that its short-form application is inaccurate and that required disclosures in its long-form application could result in its disqualification from support and a default on its bid. We note that long-form disclosures revealing that the initial certification was incorrect could result in enforcement actions, if warranted.

We adopt these USF competitive bidding-specific rules based on our present experience administering competitive bidding auctions. To the extent future USF competitive bidding mechanisms are structured differently and require additional or augmented suspension and debarment rules, we reserve the ability to make such changes in those future rulemakings.

TRS and NDBEDP Disclosures. For the TRS program and NDBEDP, TRS providers and NDBEDP providers as well as their lower tier participants will be subject to disclosure obligations. An entity seeking certification as a TRS provider or NDBEDP provider shall file the required disclosures as part of its application for certification and renewal thereof. Additionally, Internet-based TRS providers must update their disclosures within 60 days of any change by filing notices of substantive change with the TRS Fund Administrator and the Commission. We amend part 64 of our rules to implement these disclosure requirements.

Each certified NDBEDP provider shall file updates to their disclosures every six months, including disclosures within required program reports. Each NDBEDP provider shall also file a change in its disclosure as a notification of substantive change if the disclosure bears directly on the provider's ability to meet the qualification necessary for certification as an NDBEDP provider. We amend part 64 of our rules to implement these disclosure requirements.

Implications of Unfavorable Disclosures

Primary Tier Participants. The NPRM also contemplated what Commission action is warranted if a primary tier participant discloses unfavorable information (other than an exclusion or disqualification) before entering into a transaction. While the NPRM noted suspension and/or debarment proceedings as one possible method for the Commission to respond, the NPRM sought comment on whether the Commission's rules should also permit less severe remedies. For example, the NPRM asked whether the Commission should, in consultation with the relevant program administrator, merely preclude a participant from entering into the transaction at issue, prior to or in lieu of suspending or debarring the participant. The NPRM also asked whether the agency could elect to not enter into covered transactions with the party for some specified period, similar to the "limited denial of participation" process described above. The NPRM also requested comment on whether the Commission's rules should be modified to permit the Commission to consider unfavorable information in TRS or NDBEDP certification proceedings and, if so, what modification to our certification rules would be necessary.

Commenters generally supported preserving flexibility for agency action in response to unfavorable disclosures. SHLB-SECA and Funds for Learning preferred the use of tailored measures to avoid outright preclusion of a transaction, including "[a]llowing the participant to enter into the transaction, but monitoring the participant's activities more closely." SHLB-SECA also requested that the Commission "specify which information may be deemed so unfavorable that rejection of a transaction is warranted." SHLB-SECA further suggested that the Commission "adopt a modified, formally authorized version of the [suspension] procedure that

USAC currently employs," and that any discretionary process adopted by the Commission "come complete with reasonable due process, transparency, and known time limits."

The Guidelines afford agencies the flexibility to respond to unfavorable disclosures. Consistent with this approach, we now adopt the proposal, strongly supported by comments in the record, that the Commission retain flexibility to pursue tailored measures based on unfavorable disclosures. In addition to suspension and debarment proceedings, the agency may also consider other remedies, including prohibiting a participant from continued participation in a transaction, or permitting transactions presenting potential risks of misconduct to proceed with additional monitoring and oversight.

To implement this approach, we authorize the relevant bureau or office to determine, in the first instance, what remedies are appropriate in light of an applicant's unfavorable disclosures and any other relevant circumstances. (For the TRS program and the NDBEDP, we delegate authority to CGB. For the USF Programs, we delegate authority to WCB. For the former ACP and ACP Outreach Grant Program, we delegate authority jointly to the bureaus in consultation with OMD.) Such remedies may include, by way of example, approving the transaction only after entering into an administrative agreement (such as a compliance plan), denying the application, terminating an ongoing transaction or a specific party's participation in such a transaction, or referring the matter to the SDO to consider a limited denial of participation under the supplemental rules adopted above or to initiate an exclusion proceeding, if necessary. We adopt a supplemental rule to implement this approach. We also direct the administrators of the programs covered by the Guidelines to develop—and submit for approval to the relevant bureaus and offices—policies and procedures governing how they will review unfavorable disclosures as part of their broader review of applications, as applicable. In the case of the TRS program, and the NDBEDP, however, these disclosures will be reviewed directly by CGB. In the case of the former ACP and ACP Outreach Program, these disclosures will be reviewed jointly by WCB and CGB in consultation with OMD. We expect that in most cases, the remedies and procedures

developed by the relevant bureau or office, and those of the administrators, will permit administrators to continue approving (or denying) applications consistent with current practice.

We decline SHLB-SECA's request that the Commission delineate "what information [should] be deemed so unfavorable that rejection of a transaction is warranted." Supplemental Rule 6001.345, consistent with section 180.340 of the Guidelines, is designed to allow the Commission to address risks to program integrity without resorting to suspension and debarment action, if warranted. To limit the availability of alternative responses would risk making suspension and debarment the only option available in circumstances where another less severe action might be more appropriate.

Finally, we remind participants that any challenge to the imposition of the alternative agency actions may be done through any normal procedures currently available for seeking reconsideration or review of that type of decision.

Lower Tier Participants. Based on our decision to require lower tier participants to disclose the same information as primary tier participants, we also must adopt mechanisms for the Commission to address unfavorable disclosures by lower tier participants. The NPRM noted that, for example, if a school is utilizing an E-Rate consultant who has been convicted of fraud related to another government program but has not yet been debarred, the Guidelines themselves do not provide a mechanism for the rejection of the school's E-Rate application. The NPRM explained that the additional disclosures might give the Commission and the relevant program administrator reason to deny or closely monitor the lower tier participant and, if appropriate, should enable the agency to initiate an exclusion proceeding against the lower tier participant (if the disclosures are so significant that suspension or debarment is warranted).

Here again, we conclude that the relevant bureau or office will be best suited to determine what steps should be taken with respect to a lower tier participant based on its unfavorable disclosures. (Therefore, for the TRS program and the NDBEDP, we delegate authority to CGB. For the USF Programs, we delegate authority to WCB. For the former ACP and ACP Outreach

Grant Program, we delegate authority jointly to the bureaus in consultation with OMD.) And for applicable programs, we similarly direct the administrators to develop, and obtain prior bureau approval of, policies and procedures governing the review of unfavorable disclosures by lower tier participants—and, when necessary, to obtain prior bureau approval in novel situations or when departing from those policies and procedures.

Additionally, we clarify that the NPRM did not propose to "reject[] automatically every application that a participant with a questionable past has touched" as SHLB-SECA suggests. As we have explained, most unfavorable disclosures by even a primary tier participant will not automatically trigger exclusion proceedings and may not result in the denial of the transaction in which the disclosures were made. Instead, the disclosures are additional data points that inform the agency's decisionmaking when it comes to moving forward with a transaction. The same logic holds for unfavorable disclosures by lower tier participants, except that such disclosures generally should be outcome determinative even less frequently than unfavorable disclosures by primary tier participants, and only where the factual circumstances require that outcome to protect the integrity of Commission programs. Moreover, consistent with the approach we take to "exceptions" and "continuations" as discussed above, primary tier participants and other decisionmakers may consider "the number of suppliers" available for specific transactions, which "may be limited in high-cost rural areas," when determining how much weight to afford an unfavorable disclosure, as recommended by CTIA and USTelecom. For example, a participant with unfavorable disclosures might be permitted to enter into or continue with a covered transaction, but under heightened scrutiny or a compliance plan, depending on the circumstances. The supplemental rule we adopt for unfavorable disclosures therefore applies by its terms to disclosures for both tiers of participants.

Moreover, we agree with commenters that in most if not all cases, the public interest will be served by affording the primary tier participant an opportunity to address any concerns with a lower tier participant, for example, by terminating that relationship. We also agree that denial of

a transaction based on lower tier participant disclosures will not usually be justified absent some "nexus" between the conduct covered by the unfavorable disclosure and the primary tier transaction. In many cases, we anticipate that the program administrator or bureau will be able to move forward with a transaction, notwithstanding the lower tier participant's disclosures, subject to targeted remedies, such as heightened scrutiny, compliance audits, or a compliance plan to ensure that the lower tier participant does not present a significant risk to program integrity. However, in situations where the lower tier participant's involvement is integral to the primary tier participant's performance in the transaction, we cannot rule out the possibility that denial of the primary tier transaction may be the appropriate remedy, along with any action taken with respect to the lower tier participant. For example, the primary tier participant could be a reseller of the lower tier participant's service and dependent on the lower tier participant for many or most back-office functions necessary to provide program services. An aggrieved participant may seek reconsideration or review of any such decision through the normal mechanisms available.

OTHER MATTERS

Application of Revised Rules to Conduct Occurring Prior to The Effective Date

We modify the NPRM's proposal regarding which rules govern misconduct that preceded the effective date of the revised rules, but for which no debarment proceeding under the legacy rules has been initiated. Instead, we conclude that we should not categorically prescribe whether our current rules or the rules adopted herein apply to the limited number of cases where the misconduct occurred before the effective date of these rules.

The NPRM proposed, "in appropriate cases," to authorize the SDO to apply the Guidelines and any supplemental rules to conduct in Commission programs that occurred before the effective date of such rules, where expeditious suspension or debarment is "in the public interest to prevent or deter further harm" to those programs. The NPRM also proposed that where such conduct "has already resulted in settlements with the Commission by a party

responsible for the alleged misconduct, no suspension or debarment of that party based on such antecedent conduct would be authorized if such party has and continues to comply with the settlement terms."

Several commenters expressed concerns that application of revised rules to past action could be impermissibly retroactive. For example, the Joint Association Commenters questioned whether retroactive application would have any public interest benefit, given that past misconduct cannot be deterred and can be addressed through existing remedies. CTIA and USTelecom argued that retroactive application of the rules "risks running afoul of" the APA, which prohibits rules that alter the past legal consequences of past actions. WISPA also generally opposed application of any new rules to past misconduct, recommending instead that the Commission should "consider such retroactive application of revised rules only in the event of well-documented, egregious misconduct that poses a clear threat of immediate and lasting harm." NCTA also noted that retroactive application of the rules could result in arbitrary enforcement. In contrast, Mr. Meunier explained that such retroactivity concerns are less compelling in the context of administrative rulemakings: "[I]f an act was already illegal, the government may have greater latitude in the exercise of its discretionary, non-punitive management functions to recognize that act in administering its own duties on behalf of the tax[-]paying public." He further described that "it is still common practice for agencies to determine whether and how far to retroactively apply a new or altered regulation." And he urged that any application of revised rules to past misconduct should be guided by the public interest: "[T]he protection to be afforded the government by retroactive application should outweigh the perceived unfairness in the application itself."

Based on the record and in light of the range of fact patterns that may arise in any case, we require that the SDO evaluate on a case-by-case basis whether our new rules should be applied to past conduct. This will "leave room" for the exercise of judgment in "hard cases." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994). In conducting the evaluation, we

anticipate that the SDO will consider among other factors whether there is past egregious, well-documented misconduct in these programs in assessing any pattern or prior history of wrongdoing. Thus, we will take a flexible approach.

We observe that there are other options, such as consideration of the misconduct as part of the factors that inform whether to exclude or enter an administrative agreement, that also permit consideration of what approach will best facilitate compliance with the Commission's rules. We further observe that parties demonstrating cause for suspension and debarment are already subject to other agencies imposing this measure, which is intended to be remedial and not punitive.

We also adopt our proposal that the Commission maintain its current separate listing of suspensions and debarments imposed pursuant to our legacy rules. As proposed in the NPRM, we adopt a rule construing the term "excluded or exclusion" in sections 180.830 and 180.940 of the Guidelines to include those individuals and entities currently suspended or debarred by the Commission, in addition to those included on the SAM.gov Exclusions. A program participant thus must ensure that, before entering into a covered transaction, it checks both the Commission's listing of suspensions and debarments and the SAM.gov Exclusions. Further, the SDO may review existing exclusions entered pursuant to our legacy rules to determine, in consultation with OGC, whether a debarment proceeding under the rules adopted herein should be initiated that may result in a referral to the SAM.gov Exclusions.

Preclusion of Excluded Persons from Serving on Commission Advisory Committees

The appointment of members to federal advisory committees is at the discretion of the Commission. The NPRM proposed that any persons or entities that are suspended or debarred be prohibited (during their period of exclusion) from serving on the Commission's advisory committees or comparable groups or task forces established by the Commission. Similarly, if an existing member of such an advisory group is suspended or debarred, the NPRM proposed that

such person or entity be removed from that position. We received no comment on these proposals and now adopt them.

Implementation and Update of Revised Rules

We delegate authority to the SDO, OGC, OMD, WCB, and CGB, to develop and implement any necessary procedures to effectuate the requirements that we adopt in this Report and Order. Such implementation may include, for example, adoption of public notices or other public-facing documents as well as internal documents such as guidelines or templates to help support the SDO and conduct exclusion and LDP proceedings, and updates to systems of records given additional data collections. We further delegate authority to OGC, in consultation with OMD, to coordinate with other federal agencies to cause these rules to be codified in the Code of Federal Regulations in light of these supplementing a governmentwide program and to update these rules to remain current, including through notice-and-comment rulemaking where appropriate. We further delegate authority to OGC and OMD to update the rules we adopt today, including through notice and comment under the APA, where appropriate.

Recent Revisions to OMB Guidelines

Good Cause to Forgo Notice and Comment. Under the APA, when an agency for good cause finds that notice and public comment "are impracticable, unnecessary, or contrary to the public interest," it need not follow notice and comment procedures before modifying or repealing rules. Prior notice and comment are "unnecessary" under the APA when '"the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'"

OMB revised its Guidelines in 2024, during the pendency of the Commission's rulemaking, to adopt "clarifying changes," primarily at the recommendation of the ISDC. (89 FR 30055). In pertinent part, OMB amended § 180.705 to include "other indicators of adequate evidence that may include, but are not limited to, warrants and their accompanying affidavits" that officials may consider before initiating a suspension. Other revisions included edits to §

180.630 to note that a "corporation" or "company" are examples of organizations for purposes of determining whether conduct was imputed from one organization to another, and edits to § 180.730 to clarify that a person contesting a suspension must "identify any of the paragraphs in 180.730(a)" that do not apply to the person contesting the suspension. Our NPRM, issued in 2019, proposed to adopt rules consistent with the Guidelines by reference to the then-codified Guidelines. For convenience, the current language of these provisions as compared to the language that existed at the time the NPRM was adopted are reproduced in Appendix D of the *Report and Order*, available at https://docs.fcc.gov/public/attachments/FCC-26-18A1.pdf.

Applying the "good cause" standard discussed above, however, we conclude that prior notice and comment are unnecessary for us to adopt the 2024 OMB clarifying changes today because the changes were minor and were adopted after careful consideration of the record in OMB's rulemaking proceeding. Out of an abundance of caution, however, we choose to provide an opportunity to object to these changes consistent with the direct final rule process.

We follow the processes previously outlined by the Commission, which we briefly summarize here. At times when the Commission has found prior notice and comment unnecessary before modifying or repealing rules, it simply adopted the relevant rule change without any additional process. Although we reserve the right to proceed in that manner, we elect in this rulemaking to proceed using what is known as a "direct final rule" process. (We note that the Commission's Direct Final Rule Process (described herein), including this Direct Final Rule, is distinguishable from the Direct Final Rule process described in the Office of the Federal Register's Document Drafting Handbook (see Chapter 3.19: Direct Final Rule; DDH, August 2018 Edition (Rev.2.2), dated June 2025; https://www.archives.gov/federal-register/write/ddh).)

By proceeding through a direct final rule, the Commission chooses to provide expanded opportunities for public comment when it is not legally required to do so under the "good cause" standard. Under a direct final rule process, rule changes are adopted without prior notice and

comment, but accompanied by an opportunity for the public to file comments—and if we conclude that significant adverse comments have been filed, the relevant rule changes would not take effect until after a full notice and comment process.

Comment Process. In particular, this item incorporating as rules the current OMB Guidelines allows for comment from interested parties within 30 days of publication regarding the 2024 OMB changes described in above. Until 60 days after publication, this shall be a "permit-but-disclose" proceeding for purposes of our ex parte rules. Because this comment process is directed toward a discrete objective, and to avoid unwarranted delay in that process, we prohibit filings addressing the rule changes contemplated more than 60 days after publication, absent further direction from the Commission published in the Federal Register. This process both accords with the purpose of the comment process, and is similar (though not identical) to actions the Commission has taken in other contexts to provide a defined end-point for public filings to enable the Commission to focus its attention on the submissions already before it.

The three amendments described above will become effective unless the Commission receives significant adverse comments within 30 days after publication. To the extent that the Commission receives comments on these rules, we delegate authority to OGC to evaluate whether they are significant adverse comments that warrant further procedures before modifying the rules. We intend for this assessment to be guided by ACUS's recommendation that "[a]n agency should consider any comment received during direct final rulemaking to be a significant adverse comment if the comment explains why: a. The [direct final] rule would be inappropriate, including challenges to the rule's underlying premise or approach; or b. The [direct final] rule would be ineffective or unacceptable without a change."

In the event that OGC concludes that significant adverse comments have been filed, OGC will publish a timely notice in the Federal Register announcing any appropriate additional procedures that must be followed. If significant adverse comments are filed only with respect to a subset of amendments, OGC will publish a timely notice as to the amendments that were

subject to significant adverse comments. In that case, we direct OGC to adopt the versions of any such rules as they were in effect at the time of the NPRM. Where comments are filed, but none of the comments are significant adverse comments, where warranted by the record OGC will issue a public notice that will briefly explain why any comments filed were not determined to be significant adverse comments.

FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the Modernizing Suspension and Debarment Rules Notice of Proposed Rulemaking (NPRM), released in November 2019. The Commission sought written public comment on the proposals in the NPRM, including comment on the IFRA. The comments received are addressed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

As discussed in the regulatory preamble, the Commission oversees a number of government-funded critical support programs that provide assistance to low-income individuals, individuals with disabilities, schools and libraries, and individuals in rural, underserved, and unserved areas, and that help bridge the digital divide for these groups and other Americans, such as the Universal Service Fund (USF) programs, the Telecommunications Relay Service (TRS) program, and the National Deaf-Blind Equipment Distribution Program (NDBEDP). The Commission has also previously administered the Affordable Connectivity Program (ACP) and ACP Outreach Programs, which ended on June 1, 2024, due to exhaustion of appropriated funds. As part of its oversight role, the Commission seeks to protect these programs from waste, fraud, and abuse to ensure that government funds are efficiently used for their intended purposes. The Commission's rules only allow it to suspend and debar those against whom there had been a conviction or civil judgment arising from or related to USF programs

The rules the Commission adopts in the Report and Order expand the Commission's arsenal of tools to root out bad actors by implementing the Office of Management and Budget Guidelines on Government Debarment and Suspension (Nonprocurement) (Guidelines), with modifications through FCC-specific supplemental rules to allow the Commission to carry out its statutory obligations to ensure that the support provided by the applicable FCC programs reach the intended beneficiaries. The Order applies the new suspension and debarment framework and supplemental rules to transactions for the four USF programs, the TRS program, and the NDBEDP, the Commission's primary permanent nonprocurement programs, as well as to other programs (collectively Covered Programs). Other Commission nonprocurement programs are exempt from these rules. Under the new suspension and debarment framework and FCC-supplemental rules, the Commission will evaluate the wrongful or fraudulent conduct of companies or individuals in other dealings with the government and take remedial action before the issuance of a judgment or conviction.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

Comments regarding the impact of the rule on small entities were filed by The Joint Association Commenters, SHLB-SECA, E-mpa, Funds For Learning, E-Rate Central, NCTA, and CTIA and US Telecom. We summarize the comments here and respond to them below.

In the NPRM, the Commission proposed that when schools and libraries act through consortia, suspension and debarment proceedings will be directed towards the specific entities or persons responsible for bad conduct, rather than all consortium members. Comments from E-Rate Central supports giving schools and libraries serviced by a single E-Rate provider similar treatment. Funds for Learning opposes the proposal to reject the application of a primary tier participant that does business with a lower tier participant, such as an E-Rate consultant, who is convicted of fraud in another program.

NCTA, CTIA, and USTelecom contend that the Commission's proposal to extend the enhanced disclosure obligations to lower tier participants is not necessary to protect the public

interest and would impose burdensome investigation obligations on primary tier participants. These commenters urge the Commission, in the event that it adopts these disclosures, to allow a safe harbor for companies acting in good faith.

CTIA and USTelecom raise concern about the applicable contract valuation threshold that would trigger a lower tier participant's obligations and urge the Commission to raise the applicable contract valuation threshold from $25,000 to at least $100,000 to account for the capital-intensive nature of communications networks and inflation.

Joint Association, SHLB-SECA, E-mpa, Funds for Learning, and E-Rate Central contend that the USF administrator, Universal Service Administrative Company (USAC), has imposed de facto suspensions by slowed and/or delayed administrative processing, failure to act, and withholding USF funding. These commenters also express concern specifically with the impact of these de facto suspensions on small to medium sized service providers and ask the Commission to address this issue in the context of this rulemaking.

Response to Comments by the Chief Counsel for the Small Business Administration Office of Advocacy

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy, and also provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small

business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The SBA establishes small business size standards that agencies are required to use when promulgating regulations relating to small businesses; agencies may establish alternative size standards for use in such programs, but must consult and obtain approval from SBA before doing so.

Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe three broad groups of small entities that could be directly affected by our actions. In general, a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses. Next, "small organizations" are not-for-profit enterprises that are independently owned and operated and are not dominant in their field. While we do not have data regarding the number of non-profits that meet that criteria, over 99 percent of nonprofits have fewer than 500 employees. Finally, "small governmental jurisdictions" are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand. Based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.

The rules adopted in the Report and Order will apply to small entities in the industries identified in the chart below by their six-digit North American Industry Classification System (NAICS) codes and corresponding SBA size standard. Based on currently available U.S. Census data regarding the estimated number of small firms in each identified industry, we conclude that the adopted rules will impact a substantial number of small entities. Where available, we also provide additional information regarding the number of potentially affected entities in the identified industries below.

Table 1. 2022 U.S. Census Bureau Data by NAICS Code

Regulated Industry (Footnotes specify potentially affected entities within a regulated industry where applicable)	NAICS Code	SBA Size Standard	Total Firms	Total Small Firms	% Small Firms
Telephone Apparatus Manufacturing	334210	1,250 employees	155	136	87.74%
Radio and Television Broadcasting and Wireless Communications Equip Manufacturing	334220	1,250 employees	155	136	87.74%
Other Communications Equipment Manufacturing	334290	800 employees	310	294	94.84%
Software Publishers	513210	$47 million	16,824	12,148	72.21%
Wired Telecommunications Carriers	517111	1,500 employees	3,403	3,027	88.95%
Wireless Telecommunications Carriers (except Satellite)	517112	1,500 employees	1,184	1,081	91.30%
Telecommunications Resellers	517121	1,500 employees	955	847	88.69%
Satellite Telecommunications	517410	$44 million	332	195	58.73%
All Other Telecommunications	517810	$40 million	1,673	1,007	60.19%
Libraries and Archives	519210	$21 million	2,030	1,891	93.15%
Custom Computer Programming Services	541511	$34 million	63,144	46,196	73.16%
Information Technology Value Added Resellers (Exception)	541519	150 employees	11,570	8,182	70.72%
Other Computer Related Services (Except Information Technology Value Added Resellers)	541519	$34 million	11,570	8,152	70.46%
Administrative Management and General Management Consulting Services	541611	$24.5 million	10,1761	69,836	68.63%

Regulated Industry (Footnotes specify potentially affected entities within a regulated industry where applicable)	NAICS Code	SBA Size Standard	Total Firms	Total Small Firms	% Small Firms
Marketing Consulting Services	541613	$19 million	50,507	34,127	67.57%
Other Management Consulting Services	541618	$19 million	10,446	6,383	61.10%
Schools	611110	$20 million	14,088	14,087	99.99%
Offices of Physicians Except Mental Health Specialists	621111	$16 million	138,120	104,486	75.65%
Offices of Physicians - Mental Health Specialists	621112	$13.5 million	11,973	8,376	69.96%
Offices of Dentists	621210	$9 million	121,011	105,588	87.25%
Offices of Chiropractors	621310	$9 million	38,673	30,425	78.67%
Offices of Optometrists	621320	$9 million	18,582	16,425	88.39%
Offices of Mental Health Practitioners Except Physicians	621330	$9 million	39,395	30,210	76.68%
Offices of Physical Occupational & Speech Therapists & Audiologists	621340	$12.5 million	31,682	25,139	79.35%
Offices of Podiatrists	621391	$9 million	6,546	5,737	87.64%
Offices of All Other Miscellaneous Health Practitioners	621399	$10 million	29,775	18,206	61.15%
Family Planning Centers	621410	$19 million	1,671	1,238	74.09%
Outpatient Mental Health and Substance Abuse Centers	621420	$19 million	9,647	6,837	70.87%
HMO Medical Centers	621491	$44.5 million	56	25	44.64%
Kidney Dialysis Centers	621492	$47 million	516	367	71.12%
Freestanding Ambulatory Surgical and Emergency Centers	621493	$19 million	6,092	4,544	74.59%
All Other Outpatient Care Centers	621498	$25.5 million	8,942	7,160	80.07%
Medical Laboratories	621511	$41.5 million	4,527	3,525	77.87%
Diagnostic Imaging Centers	621512	$19 million	4,717	3,537	74.98%
Home Health Care Services	621610	$19 million	27,774	20,724	74.62%

Regulated Industry (Footnotes specify potentially affected entities within a regulated industry where applicable)	NAICS Code	SBA Size Standard	Total Firms	Total Small Firms	% Small Firms
Ambulance Services	621910	$22.5 million	3,002	2,436	81.15%
Blood and Organ Banks	621991	$40 million	371	258	69.54%
All Other Miscellaneous Ambulatory Health Care Services	621999	$20.5 million	7,270	5,794	79.70%
General Medical and Surgical Hospitals	622110	$47 million	2,280	501	21.97%
Psychiatric and Substance Abuse Hospitals	622210	$47 million	403	134	33.25%
Specialty Hospitals - Except Psychiatric and Substance Abuse	622310	$47 million	280	92	32.86%
Emergency and Other Relief Services	624230	$41.5 million	714	514	71.99%

Table 2. Telecommunications Service Provider Data

2024 Universal Service Monitoring Report Telecommunications Service Provider Data (Data as of December 2023)	SBA Size Standard (1500 Employees)		
Affected Entity	Total # FCC Form 499A Filers	Small Firms	% Small Entities
Incumbent Local Exchange Carriers (Incumbent LECs)	1,175	917	78.04
Interexchange Carriers (IXCs)	113	95	84.07
Local Resellers	222	217	97.75
Operator Service Providers (OSPs)	22	22	100
Paging & Messaging	59	59	100.00
Toll Resellers	411	398	96.84
Telecommunications Resellers	633	615	97.16
Wired Telecommunications Carriers	4,682	4,276	91.33
Wireless Telecommunications Carriers (except Satellite)	585	498	85.13
Wireless Telephony	326	247	75.77

Table 3. E-Rate Funding Data

Affected Entity	# Receiving E-Rate Funding Commitments
Schools	101,522
Libraries	11,671

Description of Economic Impact and Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

The RFA directs agencies to describe the economic impact of adopted rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The Report and Order adopts new rules consistent with the OMB Guidelines in 2 CFR part 180 and supplemental FCC-specific rules to provide the Commission with additional tools to prevent and respond to fraud, waste, and abuse of certain nonprocurement programs that it administers. Specifically, the Commission adopts the new suspension and debarment rules for transactions involving the Covered Programs. Pursuant to the new rules, small and other entities participating in these programs will have new reporting, recordkeeping, and other compliance obligations. While, on the basis of the record developed in response to the NPRM and given the amount of variation in terms of the level of participation in FCC programs, the Commission cannot quantify the cost of compliance or determine whether small entities will have to hire professionals to comply with the Report and Order, we have adopted the OMB Guidelines (with some modification). These establish the framework for a governmentwide suspension and debarment system for federal assistance, loans, benefits, and other nonprocurement activities, and therefore small entities should largely be able to employ the compliance mechanisms they already have in place to the extent they participate in other government programs. Similar to the OMB Guidelines, the rules the Commission adopts in the Report and Order are designed to

protect the integrity of federal programs and the public interest at large by ensuring that the Commission only does business with responsible persons.

The applicability of the rules adopted in the Report and Order to small entities depends on whether the entity is classified as a primary tier or a lower tier participant in a transaction under the covered Commission program. The Report and Order imposes certain new obligations on primary tier participants, including: (1) requirements that program participants confirm that those with whom they do business are not already excluded or disqualified from government activities (which can be accomplished by checking the governmentwide System for Award Management Exclusions (SAM.gov Exclusions) and the Commission's list of previously suspended or debarred entities), by a certification, or by addition of terms to the applicable transaction and (2) communicating requirements to lower tier participants by collecting certifications or including a transaction term or condition requiring compliance with subpart C of the Guidelines.

Further, in accordance with the OMB Guidelines, small and other entities are required to make advance disclosures prior to entering into covered transactions with Federal agencies and participants in Federal programs. Mandatory disclosures for all participants include: (1) notification to the Commission and its program agents of whether any of the participants' principals have been either convicted, indicted, or civilly charged by any government entity for certain offenses during the past three years, (2) notification of whether the participants are excluded or disqualified from participating in covered transactions, and (3) notification to the Commission if an entity is excluded by another agency.

Additional mandatory disclosures for lower tier participants include: (1) notifying the higher tier participant with whom it is doing business the information described in 2 CFR 180.335; (2) notifying the higher tier participant of the same if participating in competitive bidding to provide services to a higher tier participant at the time of the bid; (3) notifying the USF, TRS, NDBEDP, and ACP Administrators of the same if participating in transactions

related to those programs; (4) notifying the FCC of the same; and (5) notifying the USF, TRS, NDBEDP, and ACP Administrators, the FCC, and the higher tier participant if the lower tier participant learns of new information required under 2 CFR 180.335. The Commission also adopts other program specific disclosure requirements that we discuss below that are applicable to small entities and other participants in covered Commission programs.

Lifeline and ACP. Eligible telecommunications carriers (ETCs) who are primary tier participants and their lower tier participants participating in the Lifeline program are required to file annual disclosure statements, under penalty of perjury, reporting all required disclosures or certifying that they have no reportable disclosures to make. Primary participants can file on behalf of lower tier participants with which they have a direct relationship and are required to maintain documents substantiating their required certification for the three full years preceding. They must provide the Commission or USAC this documentation upon request. In light of the similarities between, and the overlap of participants in the Lifeline program and the ACP, primary and lower tier participants in the ACP have the same disclosure requirements as primary and lower tier participants in the Lifeline program except that, for consistency with the Commission's ACP rules, ACP primary tier participants must maintain documentation that substantiates their required certification for the six full preceding calendar years and provide such documentation to the Commission or USAC upon request.

The new certification requirements for small and other Lifeline or former ACP providers require service providers to certify that they have implemented processes applicable to (1) their own employees, and (2) any employees (or independent contractors) working for their Lifeline or former ACP marketing organizations, or their other contractors or subcontractors, that require any such organization, as part of the onboarding process, obtain from their own employees (or from individuals they may hire as independent contractors) disclosures of whether these employees (or individuals hired as independent contractors) are suspended or debarred from participation in a federal program or have been required to resign from such employment due to

malfeasance within the past three years. The certification should also confirm that (1) impacted companies will not hire individuals disclosing that they are suspended or debarred or who have disclosed such resignations or terminations, and (2) consistent with the rules adopted in the Report and Order, neither the service providers nor their contractors or subcontractors shall enter into business relationships with companies or individuals that are suspended or debarred, individuals that have disclosed such an exclusion, or disclosed any resignation or employment termination within the past three years caused by malfeasance.

USF Competitive Bidding Short Forms. At the short-form application stage of the USF auction process, applicants are only required to disclose whether the applicant or any of its principals are presently excluded or disqualified from any Federal government programs. Only applicants that become winning bidders and proceed to the long-form stage of the auction process will be required to provide all disclosures mandated by the OMB Guidelines adopted in the Report and Order.

TRS and NDBEDP. An entity seeking certification as a TRS provider or NDBEDP provider must file the required disclosures as part of its application for certification and renewal thereof. Additionally, Internet-based TRS providers must update their disclosures within 60 days of any change by filing a Notice of Substantive Change with the TRS Fund Administrator and the Commission. Disclosure obligations for NDBEDP providers require each certified NDBEDP provider to file updates to their disclosures with their required six-month program reports and to file a change in its disclosure as a notification of substantive change, if the disclosure bears directly on the provider's ability to meet the qualification necessary for certification as a NDBEDP provider.

For all of the covered programs discussed in the Report and Order, any person suspended or debarred by a Commission order is excluded from participation in any Commission program (not just the program in which the bad actions occurred) and will be placed on the governmentwide System for Award Management Exclusions list, triggering reciprocity barring

that person from participating in other government programs (including procurement transactions) unless the person was granted an exemption by another agency.

Discussion of Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."

The record comments indicate overwhelming support of the FCC's efforts to adopt updated, more flexible suspension and debarment procedures based on the OMB Guidelines, and we address here requests that the Commission modify or tailor its proposals to small entities as follows.

As noted above, in the NPRM, the Commission proposed that when schools and libraries act through consortia, suspension and debarment proceedings will be directed towards the specific entities or persons responsible for bad conduct, rather than all consortium members. Comments from E-Rate Central support giving schools and libraries serviced by a single E-Rate provider similar treatment. Funds for Learning opposes the proposal to reject the application of a primary tier participant that does business with a lower tier participant, such as an E-Rate consultant, who is convicted of fraud in another program.

The Report and Order does not apply the approach the Commission adopted for consortia to schools and libraries serviced by a single E-Rate consultant because the OMB Guidelines provide an appropriate level of flexibility to prevent penalizing schools and libraries for the conduct of an E-Rate consultant. The OMB Guidelines already allow for a case-by-case review in the event that an entity serviced by a lower tier participant is excluded. Suspension and Debarment Officials (SDOs) are required to determine an individual respondent's responsibility

and consider the facts and circumstances of each case as well as the respondent's arguments. The exception to an exclusion mechanism allowed by the OMB Guidelines also provides sufficient flexibility to limit the impact a lower tier participant's misconduct with one school or library may have on existing transactions with a separate school or library. The FCC supplemental rules for continuations and transitions also provide appropriate mechanisms for limiting the impact on covered transactions while protecting the Commission against ongoing fraud, waste, and abuse by bad actors. Any broader form of relief would undermine the purpose of the OMB Guidelines and the Commission's supplemental rules. Finally, unfavorable disclosures by lower tier participants are unlikely to be outcome determinative, except in instances where the factual circumstances require exclusion to protect the Commission's programs.

Funds for Learning's comments support allowing USF participants, particularly schools and libraries, to continue receiving services from excluded entities for either the remainder of the USF-supported contract, or until a different provider could be substituted. Under the FCC supplemental rules, a program participant is permitted to continue with an excluded entity in transactions that were in existence at the time the agency excluded the entity until a substitute provider is found. In the event a substitute provider cannot be promptly identified, an exception to this rule may be required to allow for limited continuation with the excluded provider for a reasonable transition period. The Report and Order delegates authority to the SDO to review the need for exceptions on a case-by-case basis by evaluating factors such as the availability of an alternate provider and the Commission's goals of preventing waste, fraud, and abuse.

As also noted above, NCTA and CTIA and USTelecom contend that the Commission's proposal to extend the enhanced disclosure obligations to lower tier participants is not necessary to protect the public interest and would impose burdensome investigation obligations on primary tier participants. These commenters urge the Commission, in the event that it adopts these disclosures, to allow a safe harbor for companies acting in good faith.

The Commission disagrees and adopts the original proposal, extending the primary tier disclosure requirements to lower tier participants. Requiring these participants to adhere to more expansive disclosure requirements is essential to preventing the waste, fraud, and abuse of the Commission's programs. These disclosures will allow the Commission to better scrutinize transactions and apply heightened safeguards where necessary while also avoiding transactions that undermine the integrity of the Commission's programs entirely. Additionally, under the OMB Guidelines and supplemental FCC rules we adopt, the Commission has flexibility to evaluate the actions of a lower tier participant along with mitigating factors. This flexibility allows the SDO to tailor (and potentially limit) the degree of impact a lower tier participant's behavior may have on a primary tier participant. This same flexibility is why the Report and Order declines to adopt a safe harbor for good faith compliance. A safe harbor would be inconsistent with the flexible approach and invite litigation concerning whether a certain safe harbor should, or should not have, been triggered.

In addition, in response to CTIA and USTelecom's concern about the applicable contract valuation threshold that would trigger a lower tier participant's obligation, the Commission declines to adopt the request that it raise the applicable contract valuation threshold from $25,000 to at least $100,000 to account for the capital-intensive nature of communications networks and inflation. The Report and Order maintains the $25,000 threshold which the OMB Guidelines include in its definition of a "covered transaction." A higher threshold could interfere with governmentwide reciprocity for excluded entities, and threats against the integrity of Commission programs weigh against increasing the threshold. Although, as CTIA and USTelecom note, other agencies tasked with regulating capital-intensive industries increased their thresholds, the Commission finds that the breadth and diversity of outlays made through FCC covered programs, as well as the myriad threats to the integrity of these programs, weigh against the Commission adjusting the threshold. The Commission notes that, in its experience, lower tier participants such as marketing organizations can commit significant amounts of waste,

fraud, and abuse. Further, under the OMB Guidelines and FCC supplemental rules, the SDO may consider the actual or potential harm or impact arising from the bad behavior, which can include the dollar-value of the affected transaction, into account as a mitigating factor.

As noted above, the Joint Association Commenters as well as others parties contend that in the absence of rules the USF administrator, Universal Service Administrative Company (USAC), has imposed de facto suspensions by slowed and/or delayed administrative processing, failure to act, and withholding USF funding. Commenters express concern specifically with the impact of these de facto suspensions on small to medium sized service providers. In the Report and Order, the Commission determines that these issues are outside of the scope of this rulemaking because the NPRM did not propose or seek comments on USAC's administration of USF programs. The Commission also determines that this proceeding cannot serve as a vehicle to address these concerns and comments. The Commission notes, however, that parties can raise these concerns in an appropriate open proceeding or may propose changes to our rules through a petition for rulemaking.

Report to Congress

The Commission will send a copy of the Report and Order, including this Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for the SBA Office of Advocacy and will publish a copy of the Report and Order, and this Final Regulatory Flexibility Analysis (or summaries thereof) in the Federal Register.

List of Subjects

2 CFR Part 6001

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

47 CFR Part 54

Communications common carriers, Health facilities, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 64

Communications, Communications common carriers, Communications equipment, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 2 CFR chapter LX and 47 CFR parts 54 and 64 as follows:

Title 2 – Federal Financial Assistance

Subtitle B – Federal Agency Regulations for Grants and Agreements

CHAPTER LX – FEDERAL COMMUNICATIONS COMMISSION

1. Delayed indefinitely, add part 6001 to chapter LX of title 2 of the Code of Federal Regulations to read as follows:

PART 6001 – NONPROCUREMENT DEBARMENT AND SUSPENSION

Subpart A—General

Sec.

Subpart B—Covered Transactions

Sec.

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business with Other

Persons

Sec.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

Sec.

Subparts E through I [Reserved]

Subpart J—Limited Denial of Participation

Sec.

Authority: 47 U.S.C. 154, 225, 254, 620; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738, 38 FR 25161, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

Subpart A—General

§ 6001.100 Supplemental definitions.

In addition to the definitions set forth in part 180, subpart I of this title, which have been adopted pursuant to § 6001.105, we adopt the following definitions for purposes of this part:

Administrator shall mean the USF Administrator, the TRS Fund Administrator, the NDBEDP Administrator, and the ACP Administrator, and the ACP Outreach Grant program Administrator.

ACP means the former Affordable Connectivity Program which provided support as set forth in 47 CFR part 54, subpart R, and which ended on June 1, 2024, due to an exhaustion of appropriated funds.

ACP Outreach Grant Program means that former program established by the Commission for which the rules are set forth in 47 CFR part 54, subpart S, and which ended on June 1, 2024, due to an exhaustion of appropriated funds.

Commission or *FCC* means the Federal Communications Commission.

Covered Programs means the Universal Service Fund programs, the Telecommunications Relay Services

program, the National Deaf-Blind Equipment Distribution Program, the ACP, and the ACP Outreach Grant Program.

Cybersecurity Pilot Program means the program providing universal service support to provide cybersecurity services and equipment for eligible schools and libraries as set forth in 47 CFR part 54, subpart T.

E-Rate program means the program providing universal service support for schools and libraries, as set forth in 47 CFR part 54, subparts A and F.

Eligible Telecommunications Carrier means an Eligible Telecommunications Carrier as defined in 47 CFR 54.5.

Enrollment representative shall have the same meaning as set forth in the Commission programs that may be implicated in any transaction (to the extent such definitions exist). Thus, for the Lifeline program, the definition found at 47 CFR 54.400(p) shall apply; and for ACP, the definition found at 47 CFR 54.1800(k) shall apply.

Exclusion in §§ 180.830 and 180.940 of this title includes suspension or debarment by the Commission under the Communications Act and the rules in effect prior to the effective date of the Commission's adoption of the Guidelines in addition to those that are listed under SAM.gov Exclusions.

Guidelines or *OMB Guidelines* means the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), as set forth in part 180 of this title.

High-Cost program or *High-Cost programs* means the USF program or USF programs providing universal service support for rural, insular, and high cost areas, as set forth in 47 CFR part 54, subparts A, B, C, D, J, K, L, M, and O, including Frozen High Cost Support, High Cost Loop Support (HCLS), the Rural Digital Opportunity Fund, the Connect America Fund (CAF) Phase II Model and the CAF Phase II Auction support, the 5-G Fund, the Alaska Plan Support, the Alternative-Connect America Cost Model Support, the Alternative Cost America Model II Support, Revised Alternative Cost America Model Support, the Rural Broadband Experiments, the Bringing Puerto Rico Together Fund, Connect USVI Fund, the CAF Intercarrier Compensation (ICC) Recovery, the CAF Broadband Loop Support (CAF BLS), the Safety Valve Support, the CAF Fixed Support, Enhanced A-CAM Support, and the Alaska Connect Fund.

Lifeline marketing organization or *ACP marketing organization* means a person that:

(1) Has a contractual relationship with the person providing the Lifeline or ACP services to consumers for the purpose of securing Lifeline or ACP enrollments; or

(2) Has any contract to provide for such Lifeline or ACP enrollment services.

Lifeline program means the program providing universal service support for low-income consumers set forth in 47 CFR part 54, subparts A, B, C and E.

NDBEDP means the National Deaf-Blind Equipment Distribution Program, under which payments from the TRS Fund are made to support programs distributing communications equipment to low-income individuals who are deafblind, as set forth in 47 CFR part 64, subpart GG.

NDBEDP Administrator means the Commission official designated by the Consumer and Governmental Affairs Bureau as the administrator of the NDBEDP pursuant to 47 CFR 64.6205.

Principal means, in addition to those individuals described in § 180.995 of this title:

(1) Consultants that have a business relationship with any participant in connection with a covered transaction and Lifeline or ACP marketing organizations; or

(2) Any other person (as defined in § 180.985 of this title) having a critical influence on, or substantive control over, a covered transaction.

(3) An individual's status as a principal does not depend on whether he or she is employed by the participant or paid with federal funds.

Rural Health Care program or *RHC program* means the program providing universal service support for health care providers set forth in 47 CFR part 54, subparts A and G.

SAM.gov Exclusions means the System for Award Management Exclusions, which is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions, as further described in part 180, subpart E of this title.

Suspension and Debarment Official or SDO means an official authorized by the Commission to conduct suspension and debarment proceedings.

Termination . . . for cause or default shall not include a denial of a funding request by the NDBEDP Administrator, TRS Fund Administrator, USF Administrator, or ACP Outreach Grant program Administrator. See also § 6001.335(e)(1).

TRS program means all forms of TRS set forth in 47 CFR part 64, subpart F.

TRS Fund Administrator means the person selected as the administrator of the Telecommunications Relay Services Fund pursuant to 47 CFR 64.604(c)(5)(iii).

USF Administrator means the administrator of the universal service mechanisms appointed pursuant to 47 CFR 54.701.

USF Programs means the programs implementing the Universal Service Fund pursuant to section 254 of the Communications Act of 1934, as amended, 47 U.S.C. 254.

§ 6001.105 What does this part do?

(a) In this part, the Federal Communications Commission adopts the Guidelines in part 180, subparts A through I of this title, as supplemented by this part, as Commission policies, procedures, and requirements for nonprocurement debarment and suspension. All persons affected by this part should consult the Guidelines in part 180, subparts A through I of this title in order to be informed of all the provisions of the suspension and debarment rules (as supplemented by this part).

(b) Nothing in this part forecloses the Commission from utilizing such other administrative remedies that may be available to the Commission relating to the conduct underlying any exclusion proceeding, including forfeiture actions, debt collection procedures, or other remedies permitted by statute or by Commission rules in this part.

§ 6001.110 Does this part apply to me?

This part and, through this part, pertinent portions of part 180, subparts A through I of this title (see table at § 180.100(b) of this title), apply to you if you are a—

(a) “Participant” or “principal” in a “covered transaction” under part 180, subpart B of this title as supplemented by this part;

(b) Respondent in a Commission suspension or debarment action;

(c) Commission SDO; or

(d) Commission official, or agent, authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 6001.115 What policies and procedures must I follow?

The Commission policies and procedures that you must follow are the policies and procedures specified

in each applicable section of the Guidelines in part 180, subparts A through I of this title, as that section is supplemented by this part. The transactions that are covered transactions, for example, are specified by § 180.220 of this title, as supplemented by § 6001.220. For any section of the Guidelines in part 180, subparts A through I of this title that has no corresponding section in this part, Commission policies and procedures are those in the Guidelines.

§ 6001.120 What steps must I take if I am suspended or debarred by the Commission or another agency?

(a) If a person excluded by action of the Commission or another agency is not already registered with the System for Award Management, that person must register within 10 days after the person's suspension or debarment becomes effective.

(b)(1) Any person already listed in the SAM.gov Exclusions when this part takes effect shall provide notice of such exclusion to the Commission within 30 days of the effective date of this part.

(2) Any person excluded by another agency on or after the effective date of this part shall provide notice to the Commission within 10 days after such person has received notice of the exclusion.

(3) Notifications under this paragraph (b) shall be made by email and letter to both the Chief of the Bureau(s) responsible for any program in which such person participates, as well as to the Administrators of any such program, to the General Counsel of the Commission, and to the Office of the Managing Director.

(4) These requirements shall apply only to those persons described in § 180.120(a) of this title (i.e., persons who have been, are, or may reasonably be expected to be a participant or principal in a covered transaction).

(c) Persons that are subject to exclusions issued by other agencies may temporarily continue with existing covered transactions (including services for those transactions) under FCC programs but may not enter into any new covered transactions or provide services for such transactions unless an exception is granted. Such excluded persons will comply with such orders for transitions or limited continuations as may be required by the SDO.

(d) When notified of an exclusion issued by another agency, and upon the request of a participant or an excluded person or an FCC bureau or office responsible for administration of any affected programs, the

SDO shall preliminarily evaluate whether or not to grant an exception under § 180.135 of this title, after consulting with the Office of General Counsel and the bureaus or offices responsible for administration of any affected programs. The SDO may consider such factors including, but not limited to:

(1) When the misconduct resulting in the exclusion occurred;

(2) When the other agency issued the exclusion;

(3) How much longer the exclusion will remain in effect; and

(4) The availability of alternate providers of the services provided by the excluded person.

(e) For those exclusions issued by another agency for which the SDO preliminarily determines that no exception is warranted, the SDO will promptly initiate informal proceedings on transitions to alternate providers or limited continuations with notice to the excluded person. The notice shall advise that the excluded person is immediately barred from enrolling new customers or otherwise entering into new covered transactions (or providing services for such transactions). Excluded persons shall have 30 days to file responses to the notice, in which the excluded person may seek an exception from the Commission granting reciprocity by stating in writing the reasons for such an exception. After the proceedings are concluded, the SDO will issue a decision that rules on any exception request filed by the excluded person. If the exception request is not granted, the decision will also set forth the appropriate transition or continuation requirements applicable to the exclusion (including customer notice requirements) consistent with § 6001.310. The SDO will consult with the Office of General Counsel and the bureaus or offices responsible for administration of any affected programs before issuing these rulings. Any exceptions granted by the SDO under this paragraph (e) may be subject to appropriate conditions such as mandatory audits, additional reporting requirements, compliance agreements (with approval of the Office of General Counsel), monitoring, or any other forms of effective oversight supplemental to that already provided under FCC programs.

§ 6001.123 How do initial and final suspension decisions differ in their effects?

(a) An initial suspension decision shall prevent the suspended party from enrolling new customers or otherwise entering into new covered transactions. However, an initial suspension decision made before a party has had the opportunity to oppose the suspension decision shall not trigger either

(1) Any discontinuations of service; or

(2) Any requirements that beneficiaries or program administrators (in the case of the NDBEDP or TRS programs) find alternative service providers.

(b) Any discontinuations or substitution of provider requirements shall not be effective until after the suspension process has run its course resulting in a final suspension decision under § 180.755 of this title or until after the time for a party to contest the initial suspension notice under § 180.725 of this title has passed.

§ 6001.125 How do I receive an exception from a suspension or debarment?

(a) The Commission delegates exclusive authority to its SDO in the first instance, as the Commission's sole designee, to grant exceptions to exclusions. Neither the Commission, nor the Chairperson of the Commission, will rule on exceptions in the first instance, but the Commission may consider applications for review of an SDO decision on exceptions. An exception, if granted, permits an excluded person to participate in one or more particular covered transactions as specified by the SDO. If the SDO grants an exception, the exception must be in writing and state the reasons for deviating from the governmentwide policy in Executive Order 12549.

(b) A person may petition for an exception during the proceedings before the SDO in which the SDO is considering the periods for continuations and transitions, as described in § 6001.310, or in the case of exclusions by other agencies, may petition for an exception as provided in § 6001.120(c).

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

(d) Any exceptions granted by the SDO under this section shall be subject to such conditions as mandatory audits, additional reporting requirements, compliance agreements (with approval of the Office of General Counsel), monitoring, or any other forms of effective oversight supplemental to that already provided under FCC programs as the SDO considers appropriate to ensure that an excluded person for whom an exception is granted complies with the requirements of Commission programs.

(e) In evaluating requests for exceptions, the SDO shall evaluate the particular services provided by the excluded person and the availability of alternate providers in the areas served, the typical terms of any contracts that may exist between the provider and its beneficiaries, any federal or state certification requirements that may be applicable (especially for NDBEDP or TRS), when the misconduct resulting in

the exclusion occurred, and in the case of exclusions by other agencies, when the exclusion was issued and how much longer the exclusion will remain in effect. Because exceptions are evaluated on a case-by-case basis, the SDO has discretion to consider any other factors that may be relevant to the exception determination and shall also balance the goal of providing continued services to beneficiaries of Commission programs and the protection of program integrity by eliminating participation of bad actors. In evaluating exception requests, the SDO shall consult with the bureaus or offices responsible for the program in which the excluded person has participated, as well as the Office of General Counsel. The SDO shall issue a written ruling acting on the exception request. The proponent of an exception bears the burden of proving, by a preponderance of the evidence, any facts asserted.

(f) An excluded person may contest an exception determination of the SDO through motions for reconsideration or an application for review pursuant to 47 CFR 1.106 or 1.115.

(g) No exceptions shall be permitted for Lifeline or ACP marketing organizations or for enrollment representatives.

§ 6001.130 How do I seek review of a suspension or debarment?

(a) Consistent with 47 CFR 1.106, any person may request reconsideration of a final suspension decision issued pursuant to § 180.870 of this title, a debarment decision issued pursuant to § 180.875 of this title, or an exception decision issued pursuant to § 6001.125.

(b) Consistent with 47 CFR 1.115, any person may seek Commission review of a final suspension decision issued pursuant to § 180.870 of this title, a debarment decision issued pursuant to § 180.875 of this title, or an exception decision issued pursuant to § 6001.125.

(c) Consistent with 47 CFR 1.102(b), any person may seek a stay of a final suspension decision issued pursuant to § 180.870 of this title or a final debarment decision issued pursuant to § 180.875 of this title.

§ 6001.135 What is the timeframe for review of a suspension or debarment decision?

(a) The SDO must make a written decision addressing any petition for reconsideration within 45 days of receiving the petition. The SDO may extend that period for good cause.

(b) The Commission will attempt in good faith to issue a written decision addressing any application for review of a final suspension or debarment decision within 180 days of receiving the application.

§ 6001.140 What are exempted Commission transactions?

(a) Any transactions involving the Commission that are not related to or do not arise in connection with the Covered Programs shall be exempted transactions under this part.

(b)(1) An application to the Commission to participate in any competitive process, including an auction, that will determine parties that subsequently may apply to be authorized to receive universal service support (also known as a short-form application) shall also be an exempted transaction under this part. In such an application, no party suspended or debarred under this part may certify that it is able to satisfy the regulatory requirements for receiving universal service support.

(2) Any subsequent application to the Commission to be authorized to receive universal service support (also known as a long-form application) based on the results of any competitive process described in paragraph (b)(1) of this section is not an exempted transaction under this part.

§ 6001.145 If I am excluded, may I serve on a Commission advisory committee?

No. Any person that is suspended or debarred may not, during their period of exclusion, serve on a Commission advisory committee or comparable Commission group or task force established by the Commission. If a person that is already a member of such an advisory group is suspended or debarred after an initial appointment to a Commission advisory group, such person shall be removed from that position. For purposes of this section, persons that are suspended or debarred shall mean both persons suspended or debarred by the Commission as well as persons included on the SAM.gov Exclusions.

Subpart B—Covered Transactions

§ 6001.200 What additional transactions are covered transactions?

For purposes of determining what is a covered transaction under § 180.200 of this title, this section applies to any transaction at the primary tier between a person and the Commission or any agents of the Commission, including the USF Administrator, the TRS Fund Administrator, and the NDBEDP Administrator. For purposes of § 180.200 of this title, any transactions between two primary tier participants (as clarified by § 6001.210), other than the Commission, shall be considered to be a transaction at a lower tier within the meaning of § 180.200(b) of this title. The hiring of enrollment representatives by marketing organization participants also shall be considered covered transactions within the meaning of § 180.200(b) of this title.

§ 6001.210 Clarification of tier participants in Commission programs.

(a) For the E-Rate program, the Cybersecurity Pilot Program, and the Rural Health Care program, the primary tier participants shall be both the schools or libraries (or consortia) that submit applications to the USF Administrator (for the E-Rate program) or the health care providers (including consortia) that submit applications to the USF Administrator (for the Rural Health Care program), as well as the service providers selected by these applicants.

(b) For the High-Cost programs, the Lifeline program, the TRS program, and the ACP, the primary tier participants shall be the service providers that request and receive support from the USF Administrator, the TRS Fund Administrator, or the ACP Administrator, respectively. For the ACP Outreach Grant Program, the primary tier participants shall be grant recipients.

(c) For the NDBEDP, the primary tier participants shall be the certified programs that request and receive reimbursements from the TRS Fund Administrator.

(d) The lower tier participants are those persons engaged in covered transactions as described in § 6001.220, including enrollment representatives employed by or seeking employment with marketing organizations engaged in covered transactions involving the Lifeline program or the ACP.

(e) Beneficiaries under the Lifeline program, the ACP, the TRS program, and the NDBEDP shall not be considered primary or lower tier participants.

§ 6001.220 What transactions are lower tier covered transactions?

In addition to the transactions covered under § 180.220 of this title, this part applies to additional lower tiers of transactions supported by the Commission's programs involving the persons described below. This section extends the coverage of the Commission nonprocurement suspension and debarment requirements at the lower tiers to all transactions involving contracts or subcontracts, express or implied, and regardless of tier, awarded under or in furtherance of covered nonprocurement transactions, as permitted under the Guidelines at § 180.220(c) of this title. The SDO has the discretion to aggregate smaller related transactions (e.g., FCC Registration Numbers, applications, or disbursements) to meet the threshold. The additional transactions described in this section will be considered covered transactions under § 180.220 of this title and the parties described herein will be deemed "participants" under § 180.980 of this title, at the lower tiers, consistent with § 6001.210(d).

(a) For the High-Cost program, High-Cost supported transactions involving contractors, subcontractors,

suppliers, consultants, or their agents or representatives, if:

(1) Such person has a material role relating to, or significantly affecting, claims for disbursements related to the program;

(2) Such person is considered a "principal;" or

(3) The amount of the transaction is expected to be at least $25,000.

(b) For the Lifeline program:

(1) Lifeline-supported transactions involving any participant in the Lifeline program (except for the primary tier carrier), regardless of tier or dollar value, including but not limited to those that are reimbursed based on the number of Lifeline subscribers enrolled; and

(2) Lifeline-supported transactions involving contractors, subcontractors, suppliers, consultants, or their agents or representatives, and Lifeline-supported transactions involving Lifeline marketing organizations, or their agents or representatives, including enrollment representatives, if:

(i) Such person has a material role relating to, or significantly affecting, claims for disbursements related to the program;

(ii) Such person is considered a "principal;" or

(iii) The amount of the transaction is expected to be at least $25,000.

(c) For the E-Rate program and Cybersecurity Pilot Program, E-Rate-supported transactions or Cybersecurity Pilot program-supported transactions involving contractors, subcontractors, suppliers, consultants, or their agents or representatives if:

(1) Such person has a material role relating to, or significantly affecting, claims for disbursements related to the program;

(2) Such person is considered a "principal;" or

(3) The amount of the transaction is expected to be at least $25,000.

(d) For the RHC program, RHC-supported transactions involving contractors, subcontractors, suppliers, consultants, or their agents or representatives if:

(1) Such person has a material role relating to, or significantly affecting, claims for disbursements related to the program;

(2) Such person is considered a "principal;" or

(3) The amount of the transaction is expected to be at least $25,000.

(e) For the TRS program and the NDBEDP, TRS- or NDBEDP-supported transactions involving contractors, subcontractors, suppliers with whom the certified programs have a contractual relationship, consultants, or their agents or representatives, if:

(1) Such person has a material role relating to, or significantly affecting, claims for disbursements related to the program;

(2) Such person is considered a "principal;" or

(3) The amount of the transaction is expected to be at least $25,000.

(4) For the TRS program (other than TRS that is provided through state programs), the service providers are the certified entities that are reimbursed by the Commission and the TRS Fund Administrator for providing services under the covered transactions. For TRS that is provided through state TRS programs, the service providers are the TRS providers that are authorized by each state to provide intrastate TRS under the state program and that, accordingly, are compensated by the TRS Fund for the provision of interstate TRS. For the NDBEDP, the certified programs are the certified entities that are reimbursed by the Commission and the TRS Fund Administrator for providing services and equipment under the covered transactions.

(f) For the ACP program:

(1) ACP-supported transactions involving any participant in the ACP program (except for the primary tier service provider), regardless of tier or dollar value, including but not limited to those that are reimbursed based on the number of ACP subscribers enrolled; and

(2) ACP supported transactions involving contractors, subcontractors, suppliers, consultants, or their agents or representatives, and any ACP-supported transactions involving ACP marketing organizations, or their agents or representatives, including enrollment representatives, if:

(i) Such person has a material role relating to, or significantly affecting, claims for disbursements related to the program;

(ii) Such person is considered a "principal;" or

(iii) The amount of the transaction is expected to be at least $25,000.

(g) For the ACP Outreach Grant Program, transactions involving subrecipients, contractors, or

subcontractors of the grant recipient if:

(1) Such person has a material role relating to, or significantly affecting, claims for disbursements related to the program;

(2) Such person is considered a "principal;" or

(3) The amount of the transaction is expected to be at least $25,000.

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business with Other Persons

§ 6001.300 What must I do before I enter into a covered transaction with another person?

(a) You, as a participant, are responsible for determining whether you are entering into a covered transaction with an appropriate person based on its disclosures. You must verify that the person with whom you intend to do business is not excluded or disqualified. You may do so by checking the SAM.gov Exclusions, by collecting certifications from that person, or by adding a clause or condition to the contract with that person. These requirements are applicable whether entering into a covered transaction with another person at the next lower tier (as required by § 180.300 of this title) or with another person in the same tier.

(b) For purposes of FCC programs, persons that are "excluded or disqualified" as used in §§ 180.300 and 180.940 of this title shall mean persons suspended or debarred by the Federal Communications Commission as well as persons included on the SAM.gov Exclusions. If you elect to verify that a person is not excluded or disqualified by checking the SAM.gov Exclusions, you must also check the Federal Communications Commission's list of previously suspended or debarred entities.

(c) In the case of an employment contract, the FCC does not require employers to check the SAM.gov Exclusions before making salary payments pursuant to that contract.

§ 6001.310 What policies govern continuations and transitions when a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a)(1) The continuation policies set forth in §§ 180.310, 180.315(a), and 180.415 of this title are not applicable to the programs subject to this part. Instead, if you are in covered transactions with an excluded person as to whom the SDO has issued a suspension or debarment, or for whom another agency has issued an exclusion, or have been using the services of an excluded person as a principal under a

covered transaction, you as a participant must transition to an alternate provider, or must discontinue use of that excluded principal for covered transactions, within the period of time required by the SDO except in those rare cases in which the SDO has permitted continuation of services for a limited period. However, even if continuation is permitted, you are not required to continue the transactions, and you may consider termination, subject to compliance with all applicable Commission rules. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(2) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person unless an exception is provided by the SDO under this part or under § 180.135 of this title.

(b)(1) Except as otherwise provided in paragraph (e) of this section, each exclusion order issued by an SDO (including those in proceedings initiated under § 6001.120) shall establish the transition period by which parties engaged in covered transactions with an excluded person or using the services of an excluded person as a principal must transition to an alternate provider or principal or, in rare cases, shall provide for a continuation period of limited duration. Before making these determinations, the SDO shall closely evaluate the particular services provided by the excluded person, the typical terms of any contracts that may exist between the excluded person and the program beneficiaries or other third parties, any federal or state certification requirements applicable in the Commission programs involved, and the availability of alternate persons to provide the services. In those cases where obtaining an alternate provider may require new competitive bidding or provider certifications, the SDO shall ensure that the transition period is sufficient to provide for that process. The SDO may also permit a limited continuation period where an excluded person demonstrates to the SDO's satisfaction that continued service subject to such compliance measures as the SDO may impose (including stringent administrative remedies and agency oversight) is in the public interest and will adequately protect consumers and eliminate the likelihood of further misconduct. In evaluating transition periods, especially for service providers for the Lifeline program, the SDO should also take into consideration any transition provisions that the Commission has adopted specific to those programs.

(2) Exclusion orders issued by the SDO shall provide a smooth and expedited transition to alternative

providers to the maximum extent possible, including administrative agreements where appropriate. The SDO's determinations on transitions and continuations shall balance the important goal of ensuring continuation of services to beneficiaries with the need to protect the public from waste, fraud, and abuse in Commission programs.

(3) The SDO shall require that during any transitional period, the excluded providers continue providing services to their beneficiaries consistent with Commission rules and with their contractual obligations.

(4) In those instances where alternate service providers cannot be identified as quickly as initially anticipated by the SDO, the SDO may allow continuation beyond the initial transition period, but for as limited a period as feasible. For any extended continuation periods, the SDO shall give strong consideration to providing for administrative remedies such as compliance agreements (with approval of the Office of General Counsel), mandatory audits, additional reporting requirements, monitoring, or any other forms of effective oversight supplemental to that already provided under FCC programs. Any compliance agreement will require consultation with the bureau or office administering the programs involved, and also the approval of the Office of General Counsel.

(5) The review of how exclusions apply to agency procurement transactions shall be made by the SDO, in consultation with the affected bureaus and offices, and the Office of General Counsel, on a case by case basis.

(c)(1) After the SDO determines the length of the transition period, the SDO shall require excluded providers to provide timely notices to affected customers of the need to transition to alternate providers. In any cases where the SDO determines that a mandatory transition to an alternate provider is not required due to an exception, and that sufficient remedies have been put in place to facilitate compliance by the excluded party, the beneficiaries shall be so advised and shall have the option to continue with that provider by notifying the SDO within 30 days after notice of the suspension or debarment.

(2) Notices to affected beneficiaries shall include:

(i) A statement that the participating provider has been suspended or debarred and the date that it will be ceasing operations (as specified by the SDO);

(ii) A statement that users should obtain service from another provider;

(iii) A listing of the names and contact information for other providers authorized to provide that service

in the jurisdiction; and

(iv) A statement that the excluded provider will continue to provide service to program participants until such time as it must cease operations.

(v) In determining notice requirements, especially for the Lifeline program, the SDO should also consider the notice provisions that the Commission has adopted specific to those programs.

(d) The bureaus and offices, working with the SDO, shall take appropriate steps to ensure that a suspension or debarment is implemented in a manner consistent with existing Commission requirements. For exclusions from the NDBEDP, the Consumer and Government Affairs Bureau should request an NDBEDP certified person that has been suspended or debarred to voluntarily relinquish its certification within a deadline and explain that if the person does not voluntarily relinquish its certification, then a revocation proceeding will be initiated. For TRS, if a TRS provider is suspended or debarred and is the only person offering a particular form of TRS in a jurisdiction, an alternative provider will need to be certified by the Commission or contracted by a state TRS program to provide those services. The Commission will expedite its certification review to the maximum extent possible to facilitate the transition to an alternate provider, and will encourage the state authorities to act similarly. These and similar procedures for our programs will ensure that any exclusion action is implemented consistent with applicable Commission rules with the least disruption to program beneficiaries.

(e) The SDO shall require that marketing organizations, enrollment representatives, or consultants who have been suspended or debarred shall immediately cease their operations related to covered transactions. No exceptions or transitional periods shall be permitted. Program participants shall not have the option to continue doing business with such entities or persons during the period of their suspension or debarment.

(f) The SDO has delegated authority to serve in the first instance as the "agency official" responsible for making continuation and transition decisions under § 180.415 of this title, and shall make those decisions consistent with the requirements and considerations set forth in this section.

§ 6001.330 What methods must I use to pass requirements of the Guidelines and this part to participants with whom I intend to do business?

Before entering into a covered transaction with another participant at the same or lower tier, you must require that participant to:

(a) Comply with part 180, subpart C of this title, as supplemented by this part, as a condition of participation, by collecting a certification or including a term or condition to this effect in your transaction; and

(b) Pass that same requirement to each person with whom the participant enters into a covered transaction.

§ 6001.335 Additional information disclosures for primary and lower tier participants.

(a)(1) Before entering into a covered transaction, all lower tier participants shall be obligated to notify and disclose to any other participants (regardless of tier) with whom they are doing or seek to do business the information described in § 180.335 of this title (pertaining to disclosures by primary tier participants). Disclosures shall be made under penalty of perjury, and if no disclosures are made, the participant must certify under penalty of perjury that none are required. If the lower tier participant is participating in competitive bidding to provide services to another participant, such information must be disclosed at the time the bid is submitted. Except as provided in paragraph (a)(3) of this section, any disclosures under this section must be simultaneously submitted to the USF Administrator (for transactions related to or arising in connection with USF Programs), to the ACP Administrator or the ACP Outreach Grants Program Administrator (for transactions related to or arising in connection with the ACP or ACP Outreach Grants Program), to the TRS Fund Administrator (for transactions relating to the TRS program), to the NDBEDP Administrator (for transactions relating to the NDBEDP), and to the FCC (at the addresses identified in paragraph (c) of this section). The provisions of § 180.345 of this title shall be applicable to any failures to disclose under this section and, in addition, any such failure to disclose shall permit the participant with whom the lower tier participant is doing business to terminate the transaction for failure to comply with this disclosure requirement, or to pursue any other available remedies. Participants subject to this section shall also comply with § 180.350 of this title, requiring notifications upon learning new information, and such notifications shall be provided not only to the USF Administrator, the TRS Fund Administrator, the NDBEDP Administrator, and the FCC, but also to the higher or lower tier participant with whom the lower tier participant is doing or seeks to do business.

(2) Primary and lower tier participants in the Lifeline program shall file annual disclosure statements, upon penalty of perjury, reporting all required disclosures or certifying that they have no reportable

disclosures to make. Primary tier participants may also file on behalf of lower tier participants with whom they have a direct relationship.

(3) Enrollment representatives of Lifeline or ACP marketing organizations shall be required to disclose only to the marketing organizations with whom they are employed or seek employment the information described in § 180.355 of this title (pertaining to exclusions). Marketing organizations are required to obtain these disclosures for review by the Commission.

(4) Primary and lower tier participants in the ACP Outreach Grant Program shall file annual disclosure statements, upon penalty of perjury, reporting all required disclosures or certifying that they have no reportable disclosures to make. To streamline the administration of this program, however, lower tier participants need only file their expanded disclosures with the primary tier participant for whom they are performing work or, in the case of contracts among lower tier participants, with the lower tier participants for whom they perform work. Primary tier participants shall then file on behalf of all lower tier participants with which they have a relationship (including the disclosures filed among lower tier participants). The documentation that substantiates the required certifications shall be provided to the Commission upon request.

(5) For USF competitive bidding, the Commission's review at the short-form stage shall be limited to the status of the applicant—i.e., whether the applicant is presently excluded or disqualified—while a winning bidder will be required to make the additional required disclosures upon submission of a long-form application.

(b) Before primary tier participants in the E-Rate program, the Cybersecurity Pilot Program, or the Rural Health Care program may enter into a covered transaction with other participants in that tier, those participants who are service providers shall make the disclosures required by § 180.335 of this title not only to the Commission and the USF Administrator, pursuant to paragraph (c) of this section, but also to those primary tier participants who are schools, libraries, or health care providers (or consortia of eligible schools, libraries, or health care providers) with whom such service providers intend to do business. The provisions of § 180.345 of this title shall be applicable to any failures to disclose under this section and, in addition, any such failure to disclose shall permit the school, library or rural health care provider with whom the service provider is doing business, or seeks to do business, to refuse to enter a transaction or to

terminate the transaction for failure to comply with this requirement, or to pursue any other available remedies. Participants subject to this section shall also comply with § 180.350 of this title, requiring notifications upon learning new information, and such notifications shall be provided not only to the USF Administrator and the FCC, but also to the higher tier participant with whom the service provider is doing business.

(c) The disclosures required by §§ 180.335 through 180.350 of this title shall be made not only to the Commission, but also to the USF Administrator (for transactions related to or arising in connection with USF Programs), the TRS Fund Administrator (for transactions relating to the TRS program), to the NDBEDP Administrator (for transactions relating to the NDBEDP), and the ACP Administrator (for transactions relating to the ACP). Disclosures to the Commission regarding the USF Program, the ACP, or the ACP Outreach Grant Program shall be submitted via email to USFDisclosures@fcc.gov or via mail to the Federal Communications Commission, Telecommunications Access Policy Division, Wireline Competition Bureau (for USF or ACP disclosures), or to the Federal Communications Commission, Consumer and Governmental Affairs Bureau (for ACP Outreach Grant Program disclosures) at the Commission's address specified in 47 CFR 0.401(a). Disclosures to the USF Administrator shall be submitted via email to USFDisclosures@usac.org or via mail to Universal Service Administrative Company, 700 12th Street, NW, Suite 900, Washington, DC 20005. Disclosures to the Commission regarding the TRS program shall be submitted via email to TRSreports@fcc.gov or via mail to the Federal Communications Commission, Disability Rights Office, Consumer and Governmental Affairs Bureau, at the Commission's address specified in 47 CFR 0.401(a). Disclosures to the TRS Fund Administrator shall be submitted via email to the email address of the TRS Fund Administrator at such email address as is specified on the TRS website located on the website of the Disability Rights Office of the Consumer and Governmental Affairs Bureau. Disclosures to the NDBEDP Administrator shall be submitted via email to NDBEDP reports@fcc.gov or via mail to NDBEDP Administrator, Federal Communications Commission, Disability Rights Office, Consumer and Governmental Affairs Bureau at the Commission's address specified in 47 CFR 0.401(a).

(d) The disclosures required to be made under this section shall also include such disclosures as the Commission may require, in implementing these suspension and debarment rules, under any updated

information collections or other disclosure obligations that may be required for Lifeline, TRS and NDBEDP programs.

(e) For purposes of the disclosure requirements under § 180.335(d) of this title and this section as they pertain to terminations of public transactions:

(1) A termination "for cause or default" shall not include the denial of funding requests for minor technical or procedural errors (as determined by the SDO); but a termination of a previously approved funding request because of serious errors or misconduct by a participant requires disclosure; and

(2) Otherwise reportable terminations that may be pending appeal must be disclosed.

§ 6001.345 Review of unfavorable disclosures by Bureaus and Administrators.

(a) Each bureau or office with principal delegated authority for making policy recommendations and administering a program to which the rules in this part apply should consider information disclosed under this part and under the Guidelines when determining whether to enter into a covered transaction with a participant, as well as any additional information or explanation that a participant elects to submit with the disclosed information.

(b) Each Administrator responsible for administration of a program to which the rules in this part apply should develop—and submit for approval to the relevant bureau or office—policies and procedures governing its review of disclosures under this part and under the Guidelines, as well as any additional information or explanation that a participant elects to submit with the disclosed information. Such policies and procedures should be consistent with § 180.340 of this title. Before taking any action based on such information that is not contemplated by such policies and procedures or is a new and novel situation, the Administrator must obtain prior approval from the relevant bureau or office.

(c)(1) Unfavorable disclosures by primary or lower tier participants shall be evaluated under this section on a case by case basis and will not automatically trigger exclusion proceedings or the denial of the transaction in which the disclosures were made. Unfavorable disclosures should be outcome determinative only where it is determined that the factual circumstances require denial of a transaction or possibly an exclusion (or an LDP) to protect the integrity of Commission programs. The bureaus or offices and Administrators may consider the number of providers or suppliers available to provide services under a program (especially in rural areas) when determining how much weight to afford an

unfavorable disclosure, as well as any of the other factors described in § 6001.310 (pertaining to transition and continuation periods).

(2) Where primary or lower tier participants have submitted unfavorable disclosures, the bureau or office that oversees the program to which the participant's application (or participation) is pending shall have delegated authority to determine, in the first instance, what remedies are appropriate in light of such disclosures and any other relevant circumstances, including those described in paragraph (c)(1) of this section. Such remedies may include, but are not limited to: approving a pending transaction (or continued participation in other transactions) only after the participant has entered into an administrative agreement, such as a compliance plan, ensuring additional monitoring, oversight, and other appropriate conditions to ensure program integrity; denying the application; terminating any ongoing transaction with the party or denying the party who made such disclosures the right to continued participation in one or more transactions; and/or referring the matter to an SDO to consider a limited denial of participation under this part. Where considered appropriate after consideration of the disclosures and other relevant circumstances, the bureau or office involved may also refer the matter to an SDO to initiate an exclusion proceeding. Any compliance agreement shall require the approval of the Office of General Counsel.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 6001.430 How are the Suspension and Debarment Official Appointed and Designated to Proceedings?

(a) The SDO shall be appointed by the Commission. The Commission shall have the discretion to designate the term of each such SDO.

(b) The Chair, a Commissioner, or head of the relevant bureau or office including the SDO shall refer matters to the SDO to initiate suspension and debarment proceedings under the Guidelines.

§ 6001.435 What method should the Commission or participants use to implement the requirements of primary tier participants?

To implement the requirements described in § 180.435 of this title, the Commission may require as a condition of participation in any of the Covered Programs that participants:

(a) Comply with part 180, subpart C of this title, as supplemented by this part; and

(b) Communicate the requirement to comply with part 180, subpart C of this title, as supplemented by this

part, to persons at the next lower tier with whom the participant enters into covered transactions.

(c) The Commission, or the Administrators, may also obtain an assurance or certification of compliance at the time of application for approval of the covered transaction or upon submission of an invoice for payment.

§ 6001.440 Who conducts fact finding for FCC suspensions?

In all FCC suspensions, the SDO shall be responsible for conducting additional fact-finding proceedings where disputed material facts are challenged.

§ 6001.443 Who conducts fact finding for FCC debarments?

In all FCC debarments, the SDO shall be responsible for conducting additional fact-finding proceedings where disputed material facts are challenged.

§ 6001.445. Who shall present evidence supporting suspensions or debarments?

When necessary, the SDO in each proceeding shall designate a Commission unit primarily responsible for presentation of the government's evidence and to establish coordination procedures for other bureaus or offices to participate. In cases where the Office of the Inspector General has engaged in the sole or parallel investigation of a matter, the Office of the Inspector General shall be given an opportunity to present the evidence supporting suspension or debarment.

§ 6001.447 On what findings and evidence from other Commission proceedings or activities or other Federal, State, or local bodies may the Suspension and Debarment Official rely?

(a)(1) An SDO may consider findings made by a program administrator in an audit report or commitment adjustment even if an appeal is pending. The SDO may also rely on factual findings underlying a Notice of Apparent Liability (NAL), but may not rely on the issuance of an NAL alone to support an exclusion decision. An SDO may also rely on other information obtained from Commission proceedings that may not be expressly identified in this section. Except as otherwise provided in paragraph (b) of this section, parties may submit evidence disputing the factual findings described in this paragraph (a).

(2) If a participant contests an exclusion, and contests certain facts in the record of the proceeding, the SDO shall render a final decision based on the SDO's independent judgment except as otherwise provided in paragraph (b) of this section.

(b)(1) For purposes of a suspension or debarment proceeding, findings and other information contained in

Commission orders on which the Commission has relied for its conclusions shall be deemed conclusive and may be rebutted only by clear and convincing evidence that the information or findings are no longer accurate due to the passage of time or other compelling evidence (such as where an order has been reconsidered, modified, or vacated on judicial review).

(2) In addition, the SDO, in consultation with the Office of General Counsel, shall apply the principles of collateral estoppel to determine whether a respondent may challenge findings set forth in Commission orders (including orders of bureaus or offices issued on delegated authority) for which the opportunity to contest the facts was provided.

(c)(1) Notwithstanding § 180.735(a)(1) of this title, where an exclusion is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided, respondents will have the opportunity to challenge the findings in the original Federal, State or local orders where:

(i) An order has been reconsidered or modified by the issuing body (or by its staff acting on delegated authority); or

(ii) An order has been remanded, reversed, or vacated on judicial review.

(2) In addition, the SDO, in consultation with the Office of General Counsel, shall apply the principles of collateral estoppel to determine whether a respondent may challenge findings set forth in orders of any Federal, state, or local body for which the opportunity to contest the facts was provided.

(d) The SDO shall consider on a case-by-case basis whether to include conduct preceding the effective date of this part in any determination regarding suspensions or debarments.

§ 6001.450 What causes and factors should the Commission consider for suspension or debarment determinations?

(a) Consistent with the causes for debarment described in the Guidelines at § 180.800 of this title (which are also applicable to suspension determinations under § 180.700 of this title), the SDO may also may suspend or debar a person for conduct including:

(1) The willful or grossly negligent violation of a single Commission rule or applicable statutory obligation that materially and negatively affects the participant’s present responsibility;

(2) The repeated violations of Commission rules, or applicable statutory obligations, that materially and

negatively affects the participant's present responsibility regardless of whether such repeated violations are willful or grossly negligent;

(3) The substantial or habitual non-payment or under-payment of Commission regulatory fees or of required contributions to FCC programs such as USF or TRS;

(4) The willful or grossly negligent submission of FCC forms or statements or other documentation to the FCC or to the USF Administrator, TRS Fund Administrator, or NDBEDP Administrator that results in or could result in overpayments of federal funds to the recipients;

(5) The willful or grossly negligent violation of a statutory or regulatory provision applicable to the Covered Programs that results in or could result in overpayments of federal funds to the recipients;

(6) The willful, grossly negligent, or habitual failure to respond to requests made by the FCC or the Administrators for additional information to justify payment or continued operation under their certifications; and

(7) Any noncompliance with requirements of an applicable statute or any Commission requirement that causes substantial harm, whether willful, grossly negligent, or inadvertent.

(8) For purposes of this section and also § 180.800 of this title, the term "willful" in the ordinary case will not include inadvertent noncompliance unless attributable to an unreasonable lapse in oversight of the person's statutory or regulatory responsibilities.

(b) In determining whether to issue a suspension, the SDO may take into account, in the SDO's discretion, the factors set forth in § 180.860 of this title, as well as the factors under § 180.705 of this title.

(c) Consistent with the factors described in the Guidelines at § 180.860 of this title, which shall be applicable to both suspensions and debarments, the SDO may also consider any of the following examples as mitigating factors:

(1) Whether a person implemented a robust compliance plan (and internal controls) designed to prevent misconduct under agency programs;

(2) Whether the person has self-reported the violations;

(3) Whether the violations resulted from inadvertent, computational, or clerical errors;

(4) Whether the violations resulted from good-faith misinterpretation of statutory or regulatory requirements;

(5) Whether the violations were discovered by a subsequent purchaser after a transfer of control has occurred and the transferee is undertaking efforts to come into compliance;

(6) Any other remedial actions that took effect after the misconduct occurred that the party can demonstrate to the SDO will likely prevent misconduct under agency programs going forward; or

(7) Whether any of the alleged misconduct, such as non-payment of regulatory fees, is currently being addressed in other proceedings.

(d) Where an SDO is considering suspension or debarment involving a consortia under the E-Rate program, Cybersecurity Pilot Program, or Rural Health Care program, the SDO should evaluate which particular school, library, or rural health care consortium member was responsible for the alleged misconduct and direct the suspension or debarment orders only to those responsible for the bad acts, rather than to all consortium members. In making this evaluation, the SDO will necessarily consider who served as the lead consortium member for the transaction at issue.

(e) As used in the Guidelines at § 180.800(b) of this title, the term "public agreement or transaction" shall encompass contracts between USF Program applicants and their selected service providers and/or consultants or other principals.

§ 6001.455 What Commission alternatives to suspension or debarment may be appropriate?

(a) If the SDO determines that circumstances justify an alternative to suspension or debarment, such as when a participant's suspension or debarment could have a substantial detrimental impact on the provision of services under a Commission program, then the SDO may elect to pursue an alternative remedy that the SDO finds appropriate. If the SDO determines that an administrative agreement is the more appropriate course, the SDO shall consult and coordinate with the Office of General Counsel in structuring any such administrative agreements, which will require the concurrence and approval of the Office of General Counsel before it may be adopted by the SDO and any settling party.

(b) Administrative agreements may not:

(1) Impede or impair the Commission's authority to seek full recovery under its debt collection authority of any improper payments made to the settling party; or

(2) Purport to resolve any claims the Government may have against the settling party, such as pending NALs issued by the Enforcement Bureau or causes of action under the False Claims Act or other similar

laws or common law.

(c) Should a party want to reach a global settlement with the Government on matters before the SDO as well as claims pending in other forums, such a settlement would require the participation and approval of all relevant decisionmakers at the Commission, the Department of Justice, and any other agencies or entities involved, as appropriate.

§ 6001.460 What must I do to be reinstated after my period of debarment is over?

An SDO may determine that a person's conduct is so egregious that the debarred party must petition for readmission into FCC programs, and such a requirement will be set forth in the debarment decision. In the absence of such a determination in the debarment decision, reinstatement will be automatic once the debarment period is over. If a petition for readmission is required, the debarred party as petitioner must demonstrate that it has taken sufficient remedial actions to avoid future program violations. If the petitioner fails to make such a showing, the SDO may extend the debarment for an additional period under § 180.885 of this title in order to protect the public interest.

Subparts E through I [Reserved]

Subpart J—Limited Denial of Participation

§ 6001.1101 What is a limited denial of participation?

A limited denial of participation excludes a specific person from participating in a specific FCC program or programs for a specific period of time. LDPs are available for any agency programs for which a suspension or debarment may be sought for Covered Programs. For purposes of this subpart, the term "person" shall have the same meaning as set forth in § 180.985 of this title.

§ 6001.1102 How does a limited denial of participation start?

(a) A SDO has the delegated authority, subject to the parameters established by the Commission by rule or by order, to impose an LDP. The Chief of any bureau with delegated authority to administer rules for a program subject to the Commission's LDP remedy shall refer the matter to the SDO, along with documentation for the SDO's consideration, if the Chief finds that an LDP may be appropriate. The SDO shall promptly initiate a proceeding by providing any person subject to the proceeding with notice that an LDP is being proposed. The notice shall state that the person has 15 days to respond. The notice shall specify the causes for the proposed LDP, and the potential effect of the remedy, including its possible

length and the FCC program(s) and geographic areas (if relevant) affected. The notice shall explain the recipient's right to contest the LDP as provided under § 6001.1113 by seeking a conference or providing documents in opposition, or both.

(b) Alternatively, after consultation with the relevant bureau or office with responsibility for administering the rules of a program, an SDO may determine after reviewing the record in a suspension and debarment proceeding that a limited denial of participation would be the more appropriate remedy. In that situation, the official shall provide written notice to the respondent that the suspension or debarment proceeding is stayed and that a proceeding to consider imposition of a limited denial of participation shall be initiated. The written notice shall include the information described in paragraph (a) of this section. The record from the suspension and debarment proceeding shall be transferred to and incorporated into the proceeding for the limited denial of participation. The SDO shall conduct the LDP proceeding consistent with the process in this subpart.

§ 6001.1103 Scope of a limited denial of participation.

(a) An LDP extends at a minimum to participation in the program(s) under which the cause arose. As provided in § 6001.1105(d), the LDP may, at the discretion of the SDO, be extended to other Commission programs. If the limited denial of participation is based on any of the causes set forth in §180.800(a) of this title, the filing of a criminal indictment or information or a conviction, or evidence of fraud, then there shall be a presumption that denial shall apply to all Commission programs subject to LDPs unless the SDO issuing the denial determines that such a broader application of the denial is inappropriate. The SDO may impose an LDP on a nationwide or more limited geographic basis.

(b) For purposes of this subpart, participation in a program includes receipt of any benefit or financial assistance through subsidies, grants, or contractual arrangements; benefits or assistance in the form of any loan guarantees or insurance; or any other arrangements that benefit a participant in a covered transaction. When an SDO issues an LDP, the SDO shall also advise the Commission's contracting officer so that such official is aware of the LDP when considering entering into procurement contracts.

(c) The SDO may issue an administrative agreement either as a supplemental remedy or as an alternative to a limited denial of participation. In such administrative agreements, the SDO may require measures such as compliance agreements or other remedies that will enhance Commission oversight and facilitate

the respondent's compliance with agency programs. Before approving any administrative agreements, the SDO shall consult with the bureau or office responsible for the affected programs and with the Office of General Counsel. Any compliance agreement shall require the approval of the Office of General Counsel.

(d) While a limited denial of participation proceeding is pending, if additional facts come to light in the record of the proceeding that cause the SDO to consider a suspension or debarment remedy to be more appropriate, the SDO may initiate a suspension or debarment proceeding. If the SDO initiates a suspension or debarment proceeding, the procedures set forth in § 6001.1121 shall apply.

§ 6001.1105 When may a Commission official issue a limited denial of participation?

(a) An SDO may issue a limited denial of participation against a person, based upon the SDO finding adequate evidence of any of the following causes:

(1) Approval of an applicant for a program subject to an LDP remedy would constitute an unsatisfactory risk;

(2) There are irregularities in a person's current and/or past performance in an FCC program subject to an LDP remedy;

(3) The person has failed to honor contractual obligations or abide by FCC regulations associated with an FCC program subject to an LDP remedy;

(4) The person has documented deficiencies in FCC programs subject to an LDP remedy;

(5) The person has made a false certification in connection with any FCC program subject to an LDP remedy, whether or not the certification was made directly to the FCC;

(6) The person has committed any act or omission that would be cause for debarment under § 180.800 of this title;

(7) The person has violated any law, regulation, or procedure relating to an FCC program subject to an LDP remedy; or

(8) The person has made or procured to be made any false statement for the purpose of influencing in any way an action of the Commission.

(b) Filing of a criminal indictment or information shall constitute adequate evidence for the purpose of limited denial of participation actions. The indictment or information need not be based on offenses against the Commission.

(c) In evaluating whether an LDP is a more appropriate remedy than a suspension or debarment, the SDO shall consider the totality of the circumstances, including whether the misconduct was an isolated occurrence, how egregious the misconduct was, and whether the violator self-reported or otherwise took steps to come into compliance.

(d) Imposition of an LDP related to any FCC program shall constitute adequate evidence for a concurrent limited denial of participation for any other FCC program subject to the LDP remedy. Where the SDO imposes a concurrent limited denial of participation, the SDO may restrict participation on the same basis without the need for an additional conference or further hearing.

(e) If a notice of proposed debarment or suspension is already pending that is based on the same transaction(s) or the same conduct for which a notice of an LDP has been issued under § 6001.1102, the procedures set forth in § 6001.1121 shall apply.

§ 6001.1107 When does a limited denial of participation take effect?

If parties choose not to contest the imposition of an LDP after receiving notice under § 6001.1102, then the remedy will be effective as soon as the SDO issues an order imposing this remedy. Otherwise, an LDP will be effective only after conclusion of any proceedings to contest the imposition of the remedy under § 6001.1113 and issuance of the SDO's order.

§ 6001.1109 How long may a limited denial of participation last?

An LDP may remain in effect initially up to 12 months. This period may be extended for up to an additional six months if deemed appropriate to ensure program compliance if review of conduct during the initial suspension period:

(a) Fails to demonstrate full compliance with the terms of the LDP or any supplemental administrative agreements; or

(b) Shows other misconduct in any Commission program subject to this remedy or additional new causes sufficient to support extension of the LDP period.

(c) In addition, the SDO imposing the LDP may also initiate a suspension or debarment proceeding (after consultation with applicable bureau or office) if review of conduct during the initial or extended denial period demonstrates conduct that may warrant a suspension or debarment.

§ 6001.1113 How may I contest my limited denial of participation?

(a) Within 15 days after receiving a notice of an LDP, you may request a conference with both the SDO who issued such notice as well as a representative from the Commission unit that conducted the investigation resulting in the proposed denial. The conference shall be held within 15 days after the Commission's receipt of the request for a conference, unless you waive this time limit. You may also request to resolve the matter without a conference by responding within 15 days stating your opposition to the remedy and filing documents in opposition within 30 days after receiving the notice of the proposed limited denial of participation. The SDO who issued the notice shall preside over the proceedings and rule on the proposed remedy. If you request a conference, you may appear with a representative and may present all relevant information and materials to the official or designee. Within 30 days after the conference, or within 30 days after any agreed-upon extension of time for submission of additional materials, the SDO shall, in writing, advise you of the decision to affirm, modify, or reject the proposed LDP. At the conference, you may also seek alternative remedies such as an administrative agreement, including a compliance plan, which the SDO would have authority to approve subject to consultation with the bureau or office involved and concurrence of the Office of General Counsel. If an LDP is affirmed, the order affirming the exclusion shall advise you of the opportunity to contest the SDO's determination by filing a request for reconsideration or an application for review with the Commission

(b) In ruling on the LDP, the SDO shall consider the factors listed in § 6001.1105 as well as those in § 180.860 of this title.

§ 6001.1115 Do Federal agencies coordinate limited denial of participation actions?

Federal agencies do not coordinate LDP actions. As stated in § 6001.1101, an LDP is an FCC-specific action and applies only to FCC activities.

§ 6001.1117 How will an LDP affect services to current customers of an excluded service provider?

Before issuing an order imposing an LDP, the SDO shall take into account the effect of the LDP on current customers of the excluded service provider and shall fashion any order in a manner designed to minimize service disruptions, including the requirement that the excluded party provide such notifications to its customers as the SDO may require to ensure a smooth transition of its customers to alternative providers. The SDO shall be guided by the same requirements and considerations on transitions and continuations set forth in § 6001.310 (relating to suspensions and debarments).

§ 6001.1119 May the FCC impute the conduct of one person to another in a limited denial of participation?

For purposes of determining an LDP, the Commission may impute conduct in the same manner as provided under §180.630 of this title as adopted under § 6001.105.

§ 6001.1121 What is the effect of a suspension or debarment on a limited denial of participation?

If you have contested a notice of an LDP pursuant to § 6001.1113(a), and you subsequently receive, pursuant to subpart A of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or the same conduct as the limited denial of participation, as determined by the SDO, the following rules shall apply:

(a) During the 30-day period after you receive a notice of proposed debarment or suspension, during which you may elect to contest the debarment under § 180.815 of this title, or the suspension pursuant to § 180.720 of this title, all proceedings in the LDP, including discovery, are automatically stayed.

(b) If you do not contest the proposed debarment pursuant to § 180.815 of this title, or the suspension pursuant to § 180.720 of this title, the final imposition of the debarment or suspension shall also constitute a final decision with respect to the LDP, to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the LDP.

(c) If you contest the proposed debarment pursuant to § 180.815 of this title, or the suspension pursuant to § 180.720 of this title, then those parts of the LDP and the debarment or suspension based on the same transaction(s) or conduct, as determined by the SDO, shall be immediately consolidated and the record from the proceeding for the LDP shall be transferred to and incorporated into the suspension and debarment proceeding.

§ 6001.1123 What is the effect of a limited denial of participation on a suspension or a debarment?

The imposition of an LDP does not affect the right of the Commission to suspend or debar any person under this part or part 180 of this title.

§ 6001.1127 How is a limited denial of participation reported?

When an LDP has been made final, or the period for contesting this remedy pursuant to § 6001.1113(a) has expired without receipt of such a request, the SDO imposing the LDP shall notify the relevant bureaus and offices, the Office of General Counsel, the Office of the Managing Director, and the relevant program

Administrators of the scope of the limited denial of participation.

Title 47 – Telecommunication

PART 54 – UNIVERSAL SERVICE

2. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

3. Add introductory text to § 54.8 to read as follows:

§ 54.8 Prohibition on participation; suspension and debarment.

Subject to case-by-case exceptions, this section shall apply to conduct occurring before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and where otherwise determined to be appropriate by the Commission.

* * * * *

4. Delayed indefinitely, amend § 54.320 by revising paragraph (c) to read as follows:

§ 54.320 Compliance and recordkeeping for the high-cost program.

* * * * *

(c) Eligible telecommunications carriers authorized to receive high-cost support that fail to comply with public interest obligations or any other terms and conditions may be subject to further action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8 or 2 CFR parts 180 and 6001.

* * * * *

5. Delayed indefinitely, amend § 54.322 by revising the final sentence of paragraph (k)(2) to read as follows:

§ 54.322 Public interest obligations and performance requirements, reporting requirements, and non-compliance mechanisms for mobile legacy high-cost support recipients.

* * * * *

(k) * * *

(2) * * * The carrier may also be subject to further action, including the Commission's existing

enforcement procedures and penalties, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8 or 2 CFR parts 180 and 6001.

* * * * *

6. Delayed indefinitely, amend § 54.1015 by revising the final sentence of paragraph (g) to read as follows:

§ 54.1015 Public interest obligations and performance requirements for 5G Fund support recipients.

* * * * *

(g) * * * A support recipient that fails to comply with the public interest obligations or any other terms and conditions associated with receiving 5G Fund support may be subject to action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, revocation of eligible telecommunications carrier designation, and suspension or debarment pursuant to § 54.8 or 2 CFR parts 180 and 6001.

7. Delayed indefinitely, amend § 54.1800 by revising paragraph (r)(4) to read as follows:

§ 54.1800 Definitions.

* * * * *

(r) * * *

(4) Has not been removed or voluntarily withdrawn from the Affordable Connectivity Program pursuant to § 54.1801(e) or 2 CFR parts 180 and 6001.

* * * * *

8. Delayed indefinitely, amend § 54.1801 by adding paragraph (e)(5) to read as follows:

§ 54.1801. Participating providers.

* * * * *

(e) * * *

(5) *Applicability.* The rules regarding suspension and removal in this paragraph (e) shall apply to conduct occurring before [EFFECTIVE DATE], and for which the SDO has granted an exception under 2 CFR 6001.120 or otherwise determined that application of 2 CFR parts 180 and 6001 would be impermissible. Conduct occurring after [EFFECTIVE DATE], will be subject to the 2 CFR parts 180 and

6001 rules on suspension, debarment, and limited denial of participation.

* * * * *

9. Delayed indefinitely, add § 54.1905 to subpart S to read as follows:

§ 54.1905 Suspension and debarment.

The ACP Outreach Grant program is subject to the rules on suspension, debarment, and limited denial of participation at 2 CFR parts 180 and 6001.

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

10. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091; Pub. L. 117-338, 136 Stat. 6156.

11. Delayed indefinitely, amend § 64.604 by revising paragraph (f) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(f) *Other standards*. The applicable requirements of §§ 64.611, 64.615, 64.621, 64.631, 64.632, 64.5105, 64.5107, 64.5108, 64.5109, and 64.5110, § 9.14 of this chapter, and 2 CFR parts 180 and 6001, are to be considered mandatory minimum standards.

12. Delayed indefinitely, amend § 64.6207 by:

a. Revising paragraph (c)(7);

b. Redesignating paragraph (c)(8) as paragraph (c)(9); and

c. Adding new paragraph (c)(8).

The revision and addition read as follows:

§ 64.6207 Certification to receive funding.

* * * * *

(c) * * *

(7) Familiarity with Covered Services;

(8) A statement providing the information listed in 2 CFR 180.335; and

* * * * *

13. Delayed indefinitely, amend § 64.6215 by:

a. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d); and

b. Adding new paragraph (b).

The addition reads as follows:

§ 64.6215 Reporting requirements.

* * * * *

(b) Every 12 months, for the period July 1 through June 30, a certified program shall provide a statement updating the information listed in 2 CFR 180.335 or certify that there are no changes to the information since the most recent filing or update.

* * * * *

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