

ALERT

FCC Undertakes Major Overhaul With New Suspension and Debarment Rules

March 13, 2026

On March 5, 2026, the Federal Communications Commission (FCC) released a draft Report and Order (draft Order), Direct Final Rule (draft Direct Final Rule), and Further Notice of Proposed Rulemaking (draft FNPRM) that would substantially change the agency's oversight of federal funding programs. If the changes are adopted, they will apply and tailor the Office of Management and Budget (OMB) Guidelines on Governmentwide Debarment and Suspension (Guidelines, commonly referred to as the Nonprocurement Common Rule, or NCR) to additional FCC congressionally-mandated programs, provide additional grounds for the FCC to pursue exclusion of a program participant, and require the transition of services to a new provider if an entity is suspended or debarred. The draft FNPRM also would impose a certification requirement and contemplates a governmentwide mandatory reporting requirement, which increases the risk of False Claims Act liability for covered program participants. According to the Commission, the proposals in the draft items seek to "exclude or otherwise limit bad actors" and address "waste, fraud, and abuse" in the FCC's administered programs, such as the Universal Service Fund (USF) and the Telecommunications Relay Services (TRS) program.

Wiley's Government Contracts and TMT teams have decades of experience with suspension and debarment across the federal government and offer insights into how these new rules may change the enforcement landscape at the FCC.

The Commission will vote on the draft item at the March 2026 Open Commission Meeting. If adopted, comments on the Direct Final Rule will be due 20 days after publication in the Federal Register. Comments will be due 30 days after the FNPRM's publication in the

Authors

Megan L. Brown
Partner
202.719.7579
mbrown@wiley.law

Diane G. Holland
Partner
202.719.3338
dgholland@wiley.law

Kara M. Sacilotto
Partner
202.719.7107
ksacilotto@wiley.law

Ania Trichet
Associate
202.719.4737
atrichet@wiley.law

Kevin T. Nguyen
Associate
202.719.3395
knguyen@wiley.law

Practice Areas

Government Contracts
Suspension and Debarment
Telecom, Media & Technology

Federal Register, and reply comments will be due 30 days thereafter.

Draft Order Largely Adopts OMB's Governmentwide Suspension and Debarment Standards for Its Programs

The draft Order aims to strengthen the Commission's capacity to "exclude bad actors" from FCC support programs by introducing additional regulations and expanding the scope of existing rules. To achieve this, the draft Order adopts the Guidelines, with some deviations, and supplements the program with FCC-specific rules that were proposed in the Commission's November 2019 Notice of Proposed Rulemaking.

Broadens the Definitions of "Suspension and Debarment." The OMB Guidelines establish a governmentwide framework for handling debarment and suspension of entities or individuals for "nonprocurement programs"; the Federal Acquisition Regulation (FAR) establishes the governmentwide framework for suspension and debarment for "procurements." OMB issued the Guidelines with the intent that individual agencies would either adopt them in full or, as the Commission elects, tailor them to their agency missions. Under the Guidelines or NCR, as incorporated in the draft Order, "suspension" is an action taken by an SDO that immediately prohibits an individual or entity from participating in covered transactions. Suspension is a shorter-term remedy to protect the government's interests during the pendency of an investigation or any legal proceedings. "Debarment" is an action taken by an SDO to exclude an individual or entity from participating in covered transactions, generally for three years. Federal agencies may suspend or debar participants for a range of misconduct; suspension or debarment by any one agency under the Guidelines applies governmentwide and would also exclude the participant from future procurements under the FAR. As discussed below, the draft Order would adopt the Guidelines with respect to reciprocity, but allow the SDO to adopt exceptions to such reciprocity.

Extends Coverage to Additional FCC Programs. The FCC's current suspension and debarment rules only apply to the USF programs; the draft Order would broaden the scope of these rules to include the TRS program and the National Deaf-Blind Equipment Distribution Program (NDBEDP). The draft Order excludes at this time "transactions carried out under the Commission's other currently existing programs," such as "applications for section 214 authorizations, equipment authorizations, and broadcast and spectrum licenses issued by the Commission," nor shall they extend to or from licensees and those with spectrum usage rights, unless a Covered Program is involved and the entity is a participant. The draft Order describes covered participants as:

- "Primary Tier" participants: Beneficiaries and service providers that "participate in the Commission's programs"; and
 - The draft order identifies the following as Primary Tier participants: High-Cost and Lifeline service providers, E-rate schools and libraries, FCC Form 471 Service providers, RHC Healthcare providers, Form 462/466 service providers, TRS service providers, NDBEDP certified programs, ACP service providers, and recipients of ACP outreach grants.
- "Lower Tier" participants: Contractors, subcontractors, suppliers, consultants, marketing organizations – or agents or representatives of such entities or persons – involved with the implementation of these

programs that either: “(i) have a material role relating to or significantly affecting claims for disbursements related to the program; (ii) are considered a “principal” in the transaction; or (iii) are involved in a transaction in the program anticipated to be at least \$25,000.”

- The draft order identifies the following as Lower Tier participants in addition to the above for the programs previously identified: any participant in the Lifeline program or ACP (except for the carrier/provider) and subrecipients of ACP grant recipients.

The draft Order would also classify E-Rate and Rural Health Care program beneficiaries, “including schools, libraries, and rural health care facilities,” that deal directly with the Commission or with Universal Service Administrative Company (USAC), as “participants” subject to the new rules.

Expands the Definition of “Principal.” The draft Order would adopt the Guidelines’ definition of “principal” and a two-part supplemental definition. First, the draft Order would establish a *per se* classification of “any consultants that have a business relationship with participants in connection with a covered transaction, as well as Lifeline or ACP marketing organizations” as a “principal.” Second, a “principal” would include any person with a “critical influence” on or “substantive control” over a covered transaction.

Adopts Additional “Causes and Factors” for Suspension or Debarment. The draft Order would adopt the NCR “causes” for exclusion, which include convictions of, or civil judgments for, fraud or certain offenses, as well as any offense “indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility” and violations of the terms of “a public agreement or transaction so serious as to affect the integrity of an agency program,” which may include willful or repeated violations. Consistent with the Guidelines, the FCC also would adopt two additional causes: “(i) violations of program-specific rules that affect program integrity; and (ii) violations of other applicable Commission rules that affect present responsibility.” This latter addition would substantially increase the risk of exclusion; consequently, covered participants should ensure that their compliance programs are robust.

Establishes an SDO. Under current FCC rules, the Enforcement Bureau has authority to oversee suspension and debarment proceedings. The draft Order would create a new Commission-appointed SDO to conduct suspension and debarment proceedings.

Implements Governmentwide Standards and Reciprocity, with Some Modifications. The FCC would adopt the Guidelines’ evidentiary standards, requiring “adequate evidence” for suspension and a “preponderance of the evidence” for debarment. The draft Order also would adopt the Guidelines’ interagency 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.” But it also would adopt a modification that allows an SDO to grant exceptions to exclusions issued by other agencies. Under this process, covered participants must provide notice, as detailed in the draft Order, of an exclusion by another federal agency; if requested, the SDO then makes a preliminary determination, in consultation with the Office of General Counsel and affected bureaus, whether to grant an exception to reciprocal exclusion; after receiving notice of that preliminary determination, the affected entity can request an exception to reciprocity; and finally the SDO will decide, based on the preponderance of the

evidence, whether to grant the exception (which the draft Order notes should be done “infrequently”).

Deviates from NCR and FAR regarding Existing Transactions: In a significant departure, the draft Order would not adopt the presumption in the NCR and the FAR that agencies may continue transactions or contracts that were already in existence at the time an entity is suspended or debarred. *See, e.g.,* 2 C.F.R. § 180.310; FAR 9.405-1. Instead, the Commission would adopt a presumption that beneficiaries must *transition* from excluded providers to new providers, with limited exceptions and SDO-controlled transition periods.

Introduces New “Limited Denial of Participation” Mechanism. In addition to the modified suspension and debarment framework, the FCC also would adopt an alternative to governmentwide exclusion through a new Commission-specific Limited Denial of Participation (LDP) mechanism. The LDP, borrowed from a process used by the U.S. Department of Housing and Urban Development, would apply to “instances of less egregious or isolated misconduct” and would limit participation only with respect to covered FCC programs. This FCC-specific LDP will give the SDO flexibility to avoid complete governmentwide exclusion while protecting FCC programs.

Draft Order Adopts Broad Disclosure Requirements for Primary and Lower Tier Participants

The draft Order would adopt the Guidelines’ pre-transaction disclosure requirements relating to prior exclusions, criminal or civil findings, and transaction terminations with program-specific modifications for primary tier participants. The Commission clarifies that for primary tier participants, mere denial of a funding request would not constitute a “termination ... for cause or default” of a transaction. But the Commission declines to establish an exception for reportable terminations that are pending appeal and also would mandate disclosure of state and local transaction terminations. Moreover, entities would be required to make their mandated disclosures to the relevant program administrators in addition to the Commission. Service providers in E-Rate and RHC programs would also be required to make necessary disclosures to the schools, libraries, or health care providers, in addition to the FCC and Universal Service Administrative Company. Finally, the draft Order would extend the same disclosure obligations to lower tier participants and would require disclosure among and between lower tier participants.

Draft Order Adopts a Case-by-Case Review of Past Conduct

The Draft Order declines to limit the categories of cases to which these new rules would apply where the misconduct occurred before the effective date of these rules. Instead, the Draft Order would require the SDO to evaluate on a case-by-case basis whether the new rules should be applied to past conduct.

Direct Final Rule Could Accelerate Implementation Timeline

The Commission also has elected to issue a “Direct Final Rule” without prior notice and comment to incorporate certain minor clarifying changes made by OMB during the pendency of the Commission’s rulemaking. This rule change is accompanied by an opportunity for the public to file comments within 20 days of publication. If the Commission on review concludes that significant adverse comments have been filed, the relevant rule changes would not take effect until after a full notice and comment process. Otherwise, this rule

would take effect 90 days after publication.

FNPRM Proposes Updated Program Certifications and Mandatory Reporting

The draft FNPRM proposes to decrease the potential for waste, fraud, and abuse by including a new certification that applicable program participants have read and complied with the rules in the draft Order. The draft FNPRM additionally proposes to adopt the mandatory disclosure provision from the Guidelines that would require applicants and recipients to “promptly disclose ... credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations” in regard to federal funds. Similar disclosure requirements apply to government contractors under FAR 52.203-13. The FNPRM seeks comment on additional safeguards, certifications, appointment of compliance officers in connection with any compliance plans, or other steps it should take to “enhance its ability to promote greater accountability and policing among persons receiving financial assistance from Commission programs.”

The Commission recognized that the Secure and Trusted Communications Networks Reimbursement Program (also referred to as the Supply Chain Reimbursement Program or, colloquially, Rip-and-Replace) is excluded from the NPRM as a covered program for purposes of suspension and debarment, noting that the Secure Networks Act already provides for a debarment-like remedy. Nonetheless, the Commission seeks comment in the draft FNPRM on whether to extend the suspension and debarment rules to the SCRP.

The draft FNPRM additionally proposes that any new universal service program (including programs like USF, TRS, NDBEDP, or other similar programs) it creates will be governed by default by the suspension and debarment framework in the draft Order. The draft FNPRM specifically notes that it does not expect any significant burden on program participants given the anticipated similarities to those programs currently in effect and that the Commission can consider “program-specific” rules for programs where modifications are appropriate.

Wiley’s Government Contracts and Telecom, Media & Technology practitioners can assist clients in navigating the FCC’s USF and TRS requirements, as well as suspension and debarment matters. For further details, please reach out to any of the authors mentioned in this alert.