

Debarment Solutions Institute



***Meeting the Needs of Business, Industry,
Government, Non-profits, Individuals, and
the Legal Community***

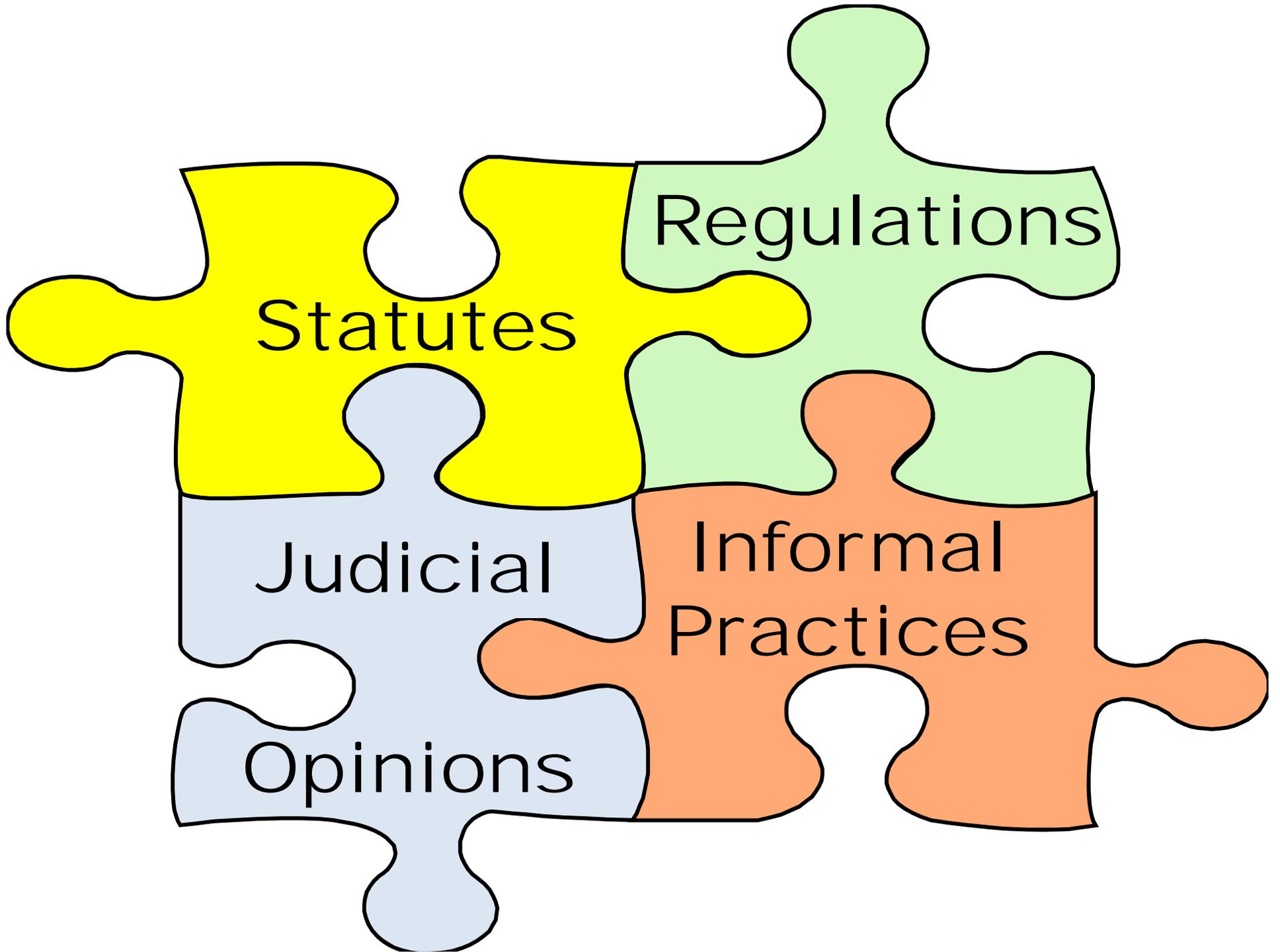
**SUSPENSION
and
DEBARMENT**

“If you go about your representation attending to the criminal and civil interests of your client only to run into a suspension or debarment as an afterthought, you may find the criminal and civil matters pale in comparison to this administrative sanction. Debarment is, in fact, the tail that wags the dog.”

John Pavlick, Esq.
(1947-2007)

The Debarment Puzzle



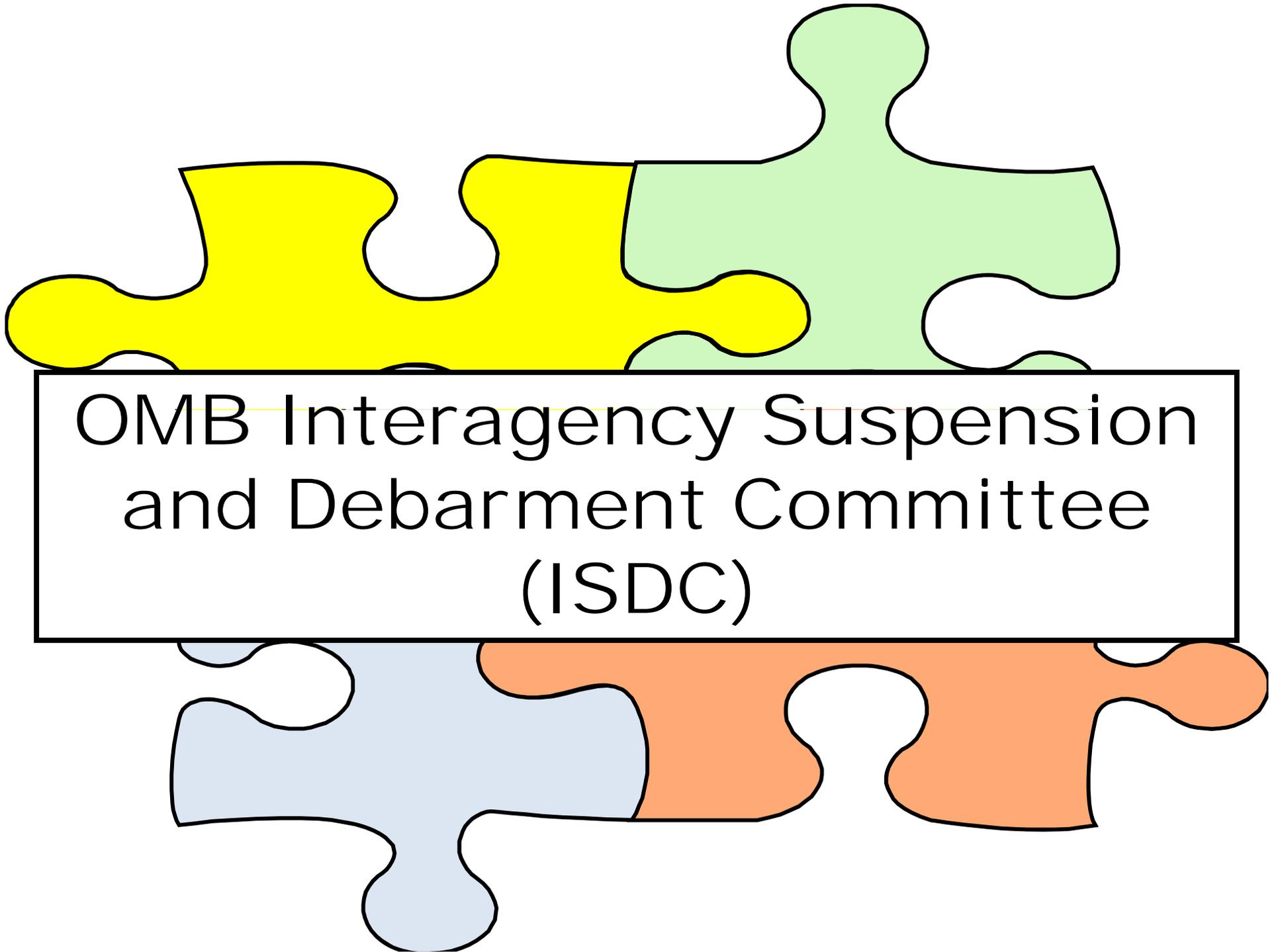


Statutes

Regulations

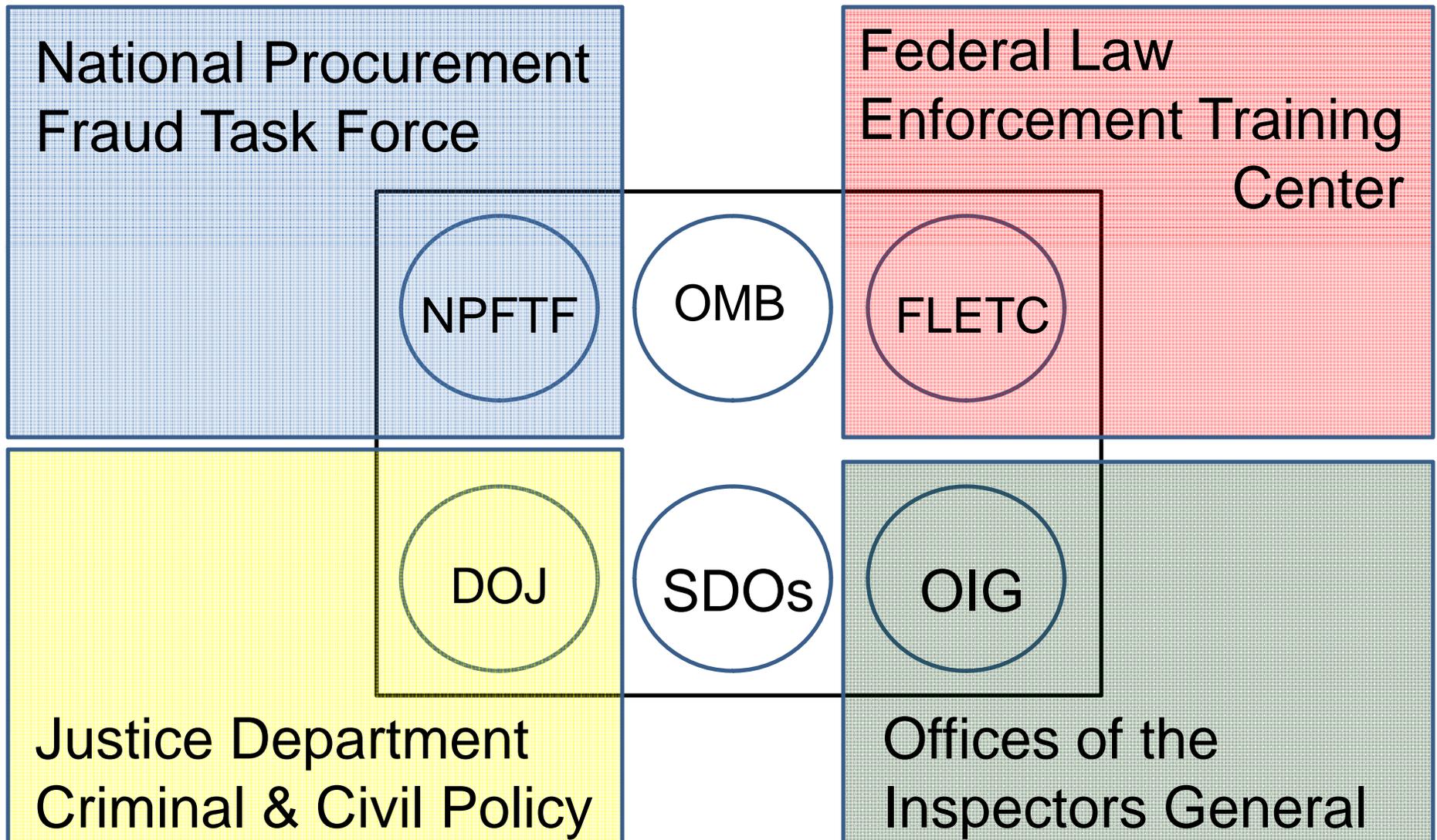
Judicial
Opinions

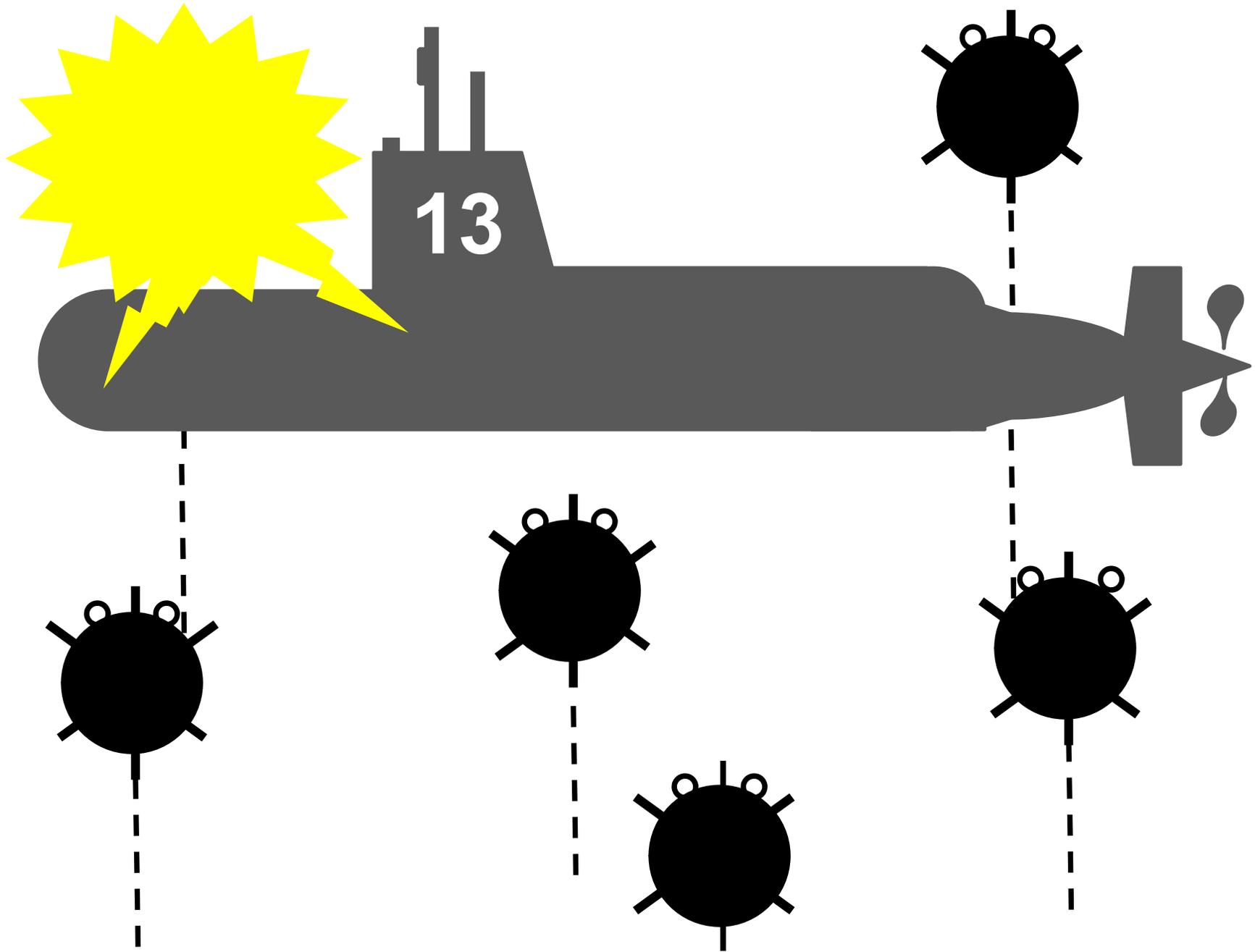
Informal
Practices



OMB Interagency Suspension
and Debarment Committee
(ISDC)

Interagency Suspension and Debarment Committee





Overview of the Federal Debarment System

BASIC TERMINOLOGY

"PROCUREMENT"

Contracts, subcontracts and related transactions in which the Federal Government acquires goods and services for its own use.

"NON-PROCUREMENT"

Grants, loans, subsidies, loan guarantees, price supports, leases, cooperative agreements, technical assistance, sales and a wide range of Federally-provided benefits to accomplish a public purpose (*i.e.*, *everything not covered by the FAR*).

"DEBARMENT"

The exclusion of an individual, business or other entity from participating in Federal procurement and/or non-procurement transactions.

"SUSPENSION"

The “temporary” exclusion of an individual, business or other entity from participation in Federal procurement and/or non-procurement transactions *pending conclusion of an investigation, legal, debarment or other proceeding.*

"FAR"

Acronym for the Federal Acquisition Regulation. It is found at Title 48 of the Code of Federal Regulations (CFR). Procurement suspension and debarment rules are located at 48 CFR Part 9, Subpart 9.4.

"NCR"

Acronym for the Federal Non-procurement Common Rule. It is found at Title 2 of the Code of Federal Regulations (CFR). Non-Procurement suspension and debarment rules are located at 2 CFR Part 180.

"SDO"

Acronym for the Suspending and Debarring Official. These are the official(s) authorized by a Federal Department or Agency to impose a suspension or debarment.

"ADMINISTRATIVE DEPARTMENT"

An exclusion from Federal procurement and/or non-procurement transactions at the discretion of an SDO. It is an inherent authority and governed by the FAR and/or the NCR.

"STATUTORY DEBARMENT"

An exclusion from Federal procurement and/or non-procurement transactions imposed by Congress. It is authorized and governed by statute, and often (though not always) mandatory.

"EPLS"

Acronym for the Excluded Parties List System. This is the Federal data base used by the Government to enforce its suspension and debarment orders.

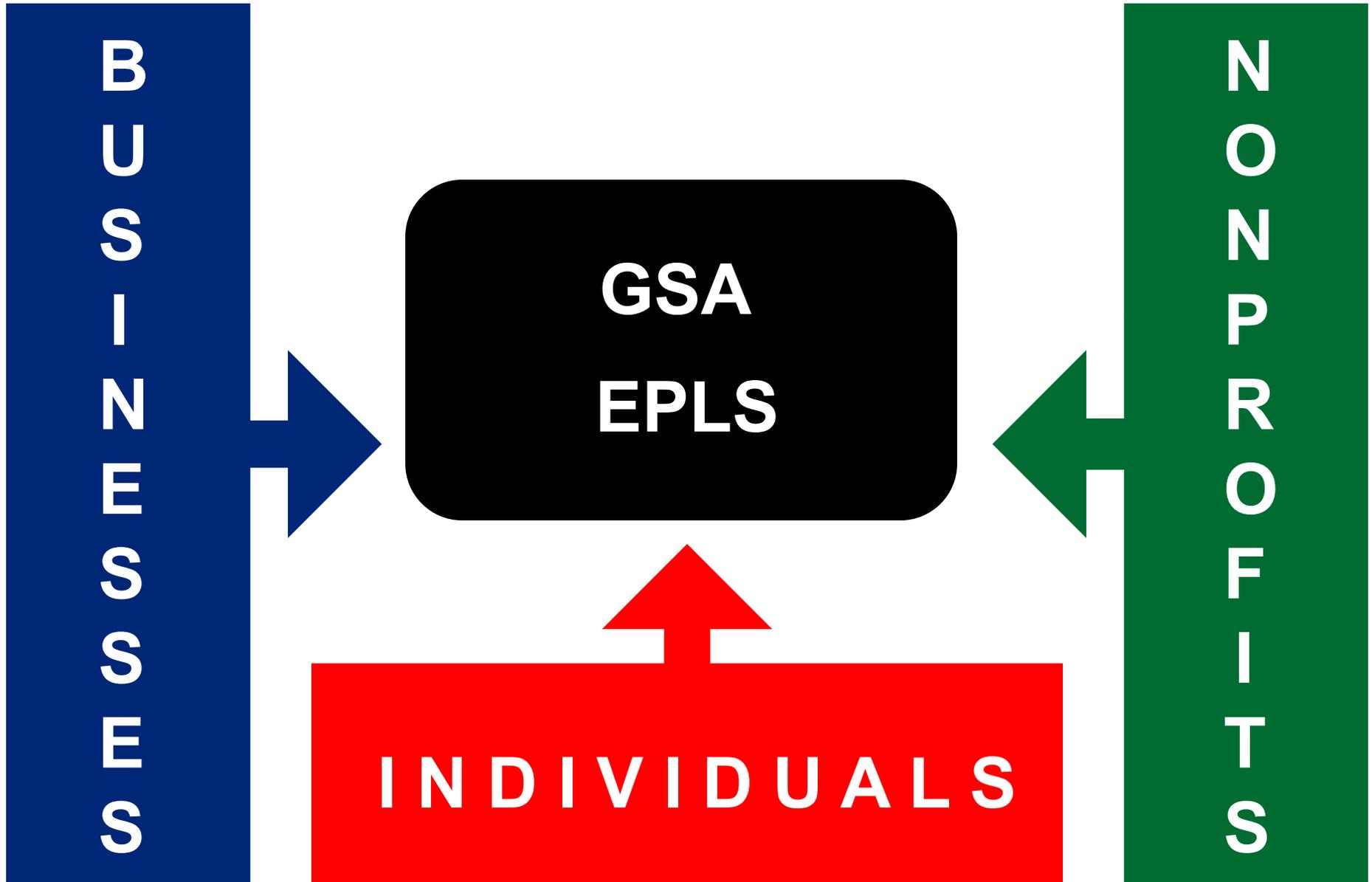
FEDERAL GOVERNMENT BLACKLIST SYSTEM



EXCLUDED PARTIES LIST SYSTEM

www.epis.gov

FEDERAL BLACKLIST



FEDERAL BLACKLIST

DANGER

Inferior Oil Co.

**Dishonest
Incompetent
Compliance or Financial Risk**

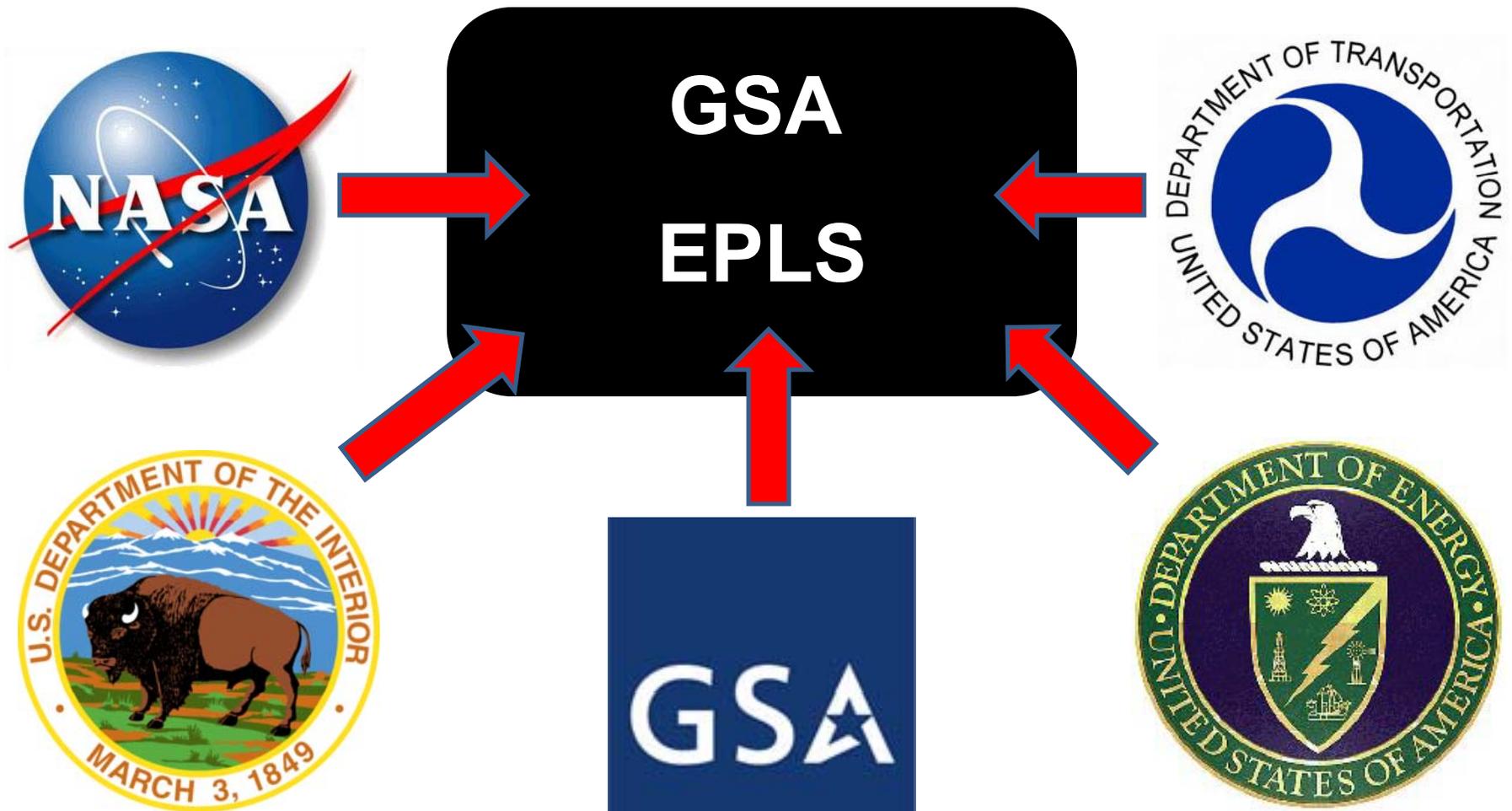
FEDERAL GOVERNMENT BLACKLIST SYSTEM

- **Binding on the Federal Government**
- **Binding on most Contractors and Recipients of Assistance**
- **Publically Available on the Web and Usable by Anyone Wishing to use it.**

FEDERAL GOVERNMENT BLACKLIST SYSTEM



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FEDERAL GOVERNMENT BLACKLIST SYSTEM

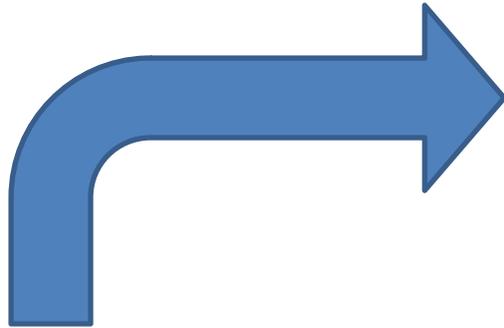
GSA

EPLS

ENFORCEMENT

FEDERAL GOVERNMENT BLACKLIST SYSTEM





EPLS

Company
or
Individual
Name

Inferior Oil & Gas Inc.

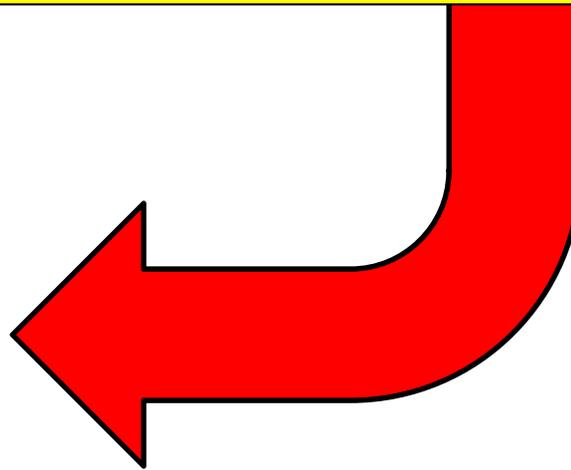
Debarred, Suspended, etc.

Basis for Ineligibility

Scope of Sanction

Cognizant Agency

Contact Person



Inferior Oil & Gas Inc.

Suspended etc

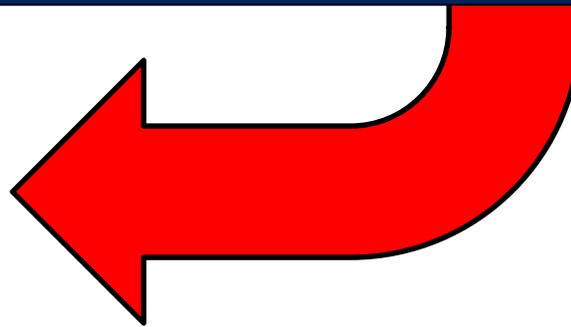
Reference

DBAs & Other Names

Affiliates

Principals & Employees

Imputed Conduct



EPLS Exclusions

I. Administrative

**Federal Contracts
Regulations**

**Federal Assistance
Regulations**

EPLS Exclusions

I. Administrative

**Federal Contracts
Regulations**

**Federal Assistance
Regulations**

II. Statutory

**Wage, Hour and
Labor Conditions**

**Protection of the
Environment**

Drug Enforcement

Immigration

Health Care Fraud

Administrative S &D

Contracts

48 CFR Subpart 9.4

Procurement
FAR

Assistance

2 CFR Part 180

ALL Benefits
not Covered by
the FAR

Similar Rules, but *NOT* Identical

Administrative S &D

**48 CFR Subpart 9.4
Procurement
FAR**

**2 CFR Part 180
Non-Procurement
NCR**

- **Similar but Separate Rules**
- **Contain Substantive Differences**
- **Format and Other Technical Differences**

Exclusion under the FAR

Procurement

**48 CFR Part 9
(FAR)**

Precludes

- **Prime Contracts**
- **Approved Subs**
- **Non-Approved Subs > \$30k**
- **Agent or Rep.**
- **Surety**
- **Options**

Exclusion under the NCR

Precluded

- Recipient any tier
- Contracts and Approved Subs
- Non-approved subs \geq \$25k*
- Principal or Key Employee
- Incremental Funds

Non-Procurement

2 CFR Part 180
(NCR)

Sec. 2455 Federal Acquisition Streamlining Act of 1994

Procurement

**Non-
Procurement**

**48 CFR Part 9
(FAR)**

**2 CFR Part 180
(NCR)**

RECIPROCALITY



Actions are Discretionary

Procurement

**48 CFR Part 9
(FAR)**

**Non-
Procurement**

**2 CFR Part 180
(NCR)**

Limitations on SDO

- Establishing a cause to suspend or debar does not compel imposition of the sanction;
- SDO may not use the sanction as punishment;
- SDO must have sufficient nexus to justify use of the sanctions; and
- SDO must consider mitigating factors

Causes of Action

- Must involve a matter *relevant* to performance under a procurement or non-procurement transaction

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- Need not have occurred in a Federal transaction

Rule of Thumb

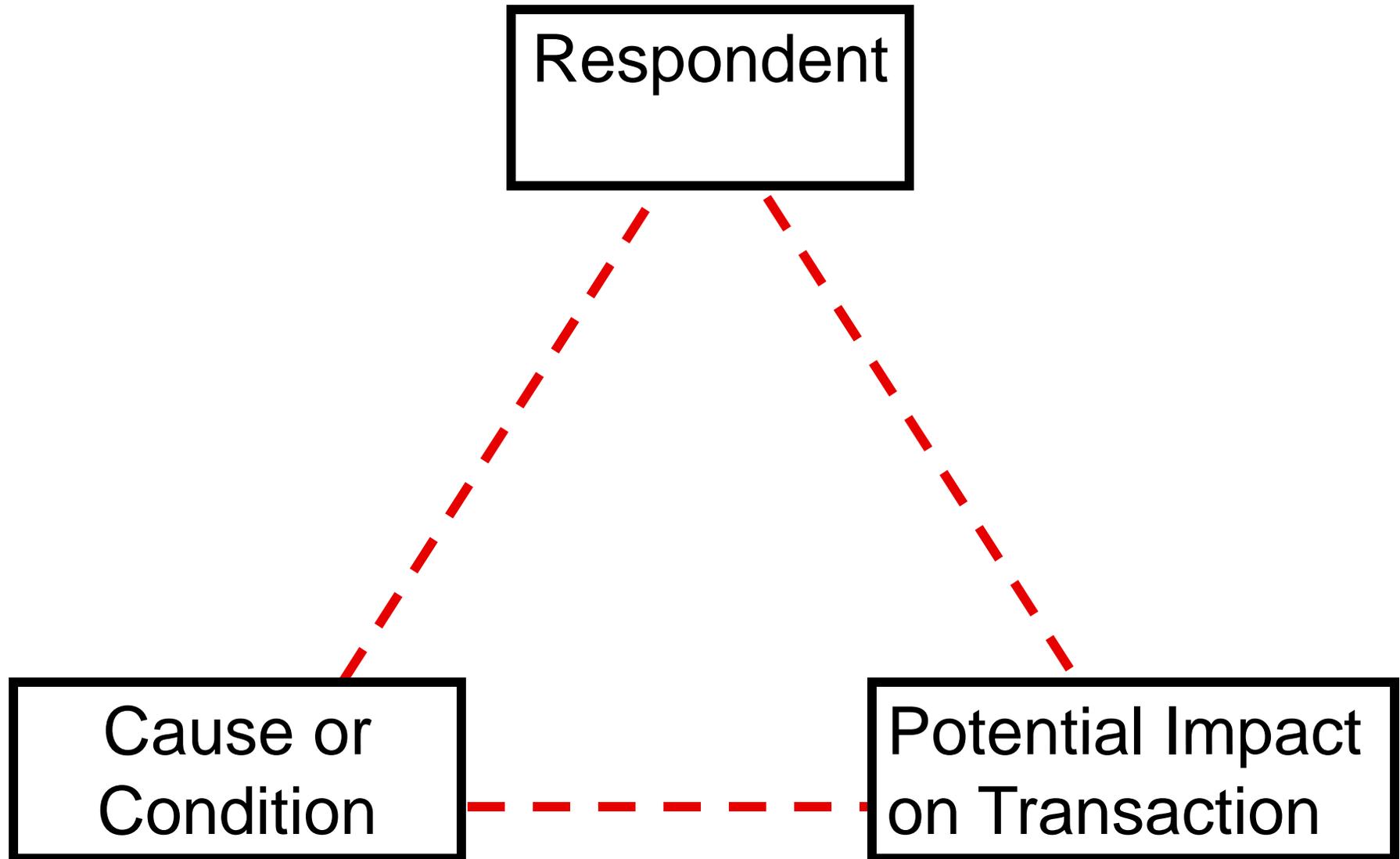
- Fraud
- Waste
- Abuse
- Poor Performance
- Noncompliance
- Debt

Sufficiency of Nexus

Degree of relationship between—

- a.) The person against whom action is taken
- b.) The alleged conduct or condition of interest, and
- c.) Potential impact on a Government procurement or non-procurement transaction

Nexus Triangle



Scope of Exclusion

- Covers all facilities and operations of the legal entity
- May be enlarged to include any affiliates
- May be extended to others to whom misconduct is imputable

Due Process

- Notice
- Opportunity to present matters in opposition
- Written decision based on an administrative record

Suspension

- Agency may suspend procurement and non-procurement eligibility *pending outcome of an investigation, legal or debarment proceeding.*
- Same effect as being debarred.

Suspension Requirements

1. “Adequate evidence” that a cause for debarment may exist

AND

2. Immediate action is needed to protect Government interests

Suspension Exceptions to Process

- Notice need not reveal the particulars of the offense or condition
- Respondent may be denied a fact-finding hearing
- Evidence may be held “in-camera”