USDA

United States Department of Agriculture

Research, Education, and Economics

National Institute of Food and Agriculture

1400 Independence Avenue SW
Washington, DC 20250

JUL 9 2012

TO: NIFA Partners

FROM: Andrea Brandon, MPA
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Office of Grants and Financial Management

SUBJECT: Sections 738 and 739 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012

Sections 738 and 739 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (Pub. L. 112-55) prohibits NIFA from entering into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee using funds under the Act to any corporation that:

-was convicted (or had an officer or agency of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months

-[has] any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

Following advice of USDA's Office of the General Counsel, NIFA took steps to adhere to the restrictions of sections 738 and 739. NIFA incorporated a representation as part of the application instructions and an assurance as part of NIFA's award terms and conditions.

Beginning with the June 15, 2012 version of the NIFA Grants.gov Application Guide, applicants are instructed to provide information about their corporate status and, if appropriate, provide the necessary certifications (this information collection is covered under OMB control no. 0505-0025). Such information is to be included in field 12, Other Attachments, of the SF-424 Application Guide. For those applicants that submitted an application that does not contain the above representation and is recommended for award, such applicants will be requested to complete and submit a representation as part of the administrative review for award. In addition, NIFA award terms and conditions dated May 2012, include a new article entitled, "Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Awardees."

While these restrictions only apply to FY 2012 funds, all indications are that these restrictions are going to become permanent features of future appropriation bills. NIFA will modify any of the documents noted above, if necessary, given the FY 2013 appropriations.

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