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SUSPENSION AND DEBARMENT

Some Agency
Programs Need
Greater Attention, and
Governmentwide
Oversight Could Be
Improved

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ACCOUNTABILITY ★ INTEGRITY ★ RELIABILITY

Why GAO Did This Study

The federal government spent more than \$535 billion on contracted goods and services in fiscal year 2010. One tool for ensuring that agencies are only awarding contracts to responsible sources is the use of suspensions and debarments—actions taken by agencies to exclude firms or individuals from receiving federal contracts or assistance based on various types of misconduct. This report analyzed (1) the nature and extent of governmentwide exclusions reported in the Excluded Parties List System (EPLS) maintained by the General Services Administration; (2) the relationship, if any, between practices at various agencies and the level of suspensions and debarments under federal acquisition regulations; and (3) governmentwide efforts to oversee and coordinate the use of suspensions and debarments across federal agencies. GAO reviewed EPLS data and suspension and debarment programs at 10 federal agencies, including those with relatively more suspensions and debarments and those with few or none to identify differences between the two groups.

What GAO Recommends

GAO recommends that the six agencies it examined that did not have the characteristics associated with active suspension and debarment programs incorporate those characteristics, and that the Office of Management and Budget (OMB) improve its governmentwide efforts and enhance governmentwide oversight. Five of the six agencies and OMB generally concurred with the recommendations. The Department of Justice believes its existing guidelines are sufficient, but GAO does not agree.

View [GAO-11-739](#) or key components. For more information, contact William T. Woods at (202) 512-4841 or woodsw@gao.gov.

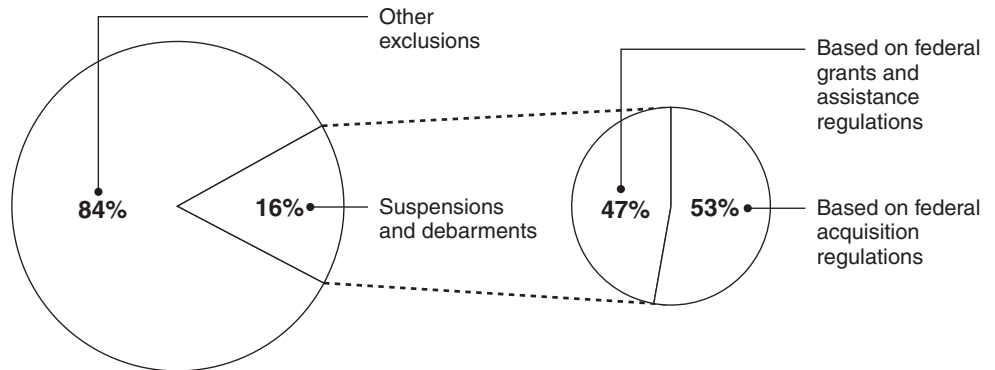
SUSPENSION AND DEBARMENT

Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved

What GAO Found

Suspensions and debarments made up about 16 percent of exclusions in EPLS for fiscal years 2006 through 2010. These are discretionary exclusions taken by agencies based on causes specified in regulations for acquisitions or grants and assistance, including fraud, bribery, or a history of failure to perform on government contracts. The remaining 84 percent were exclusions based on violations of statutes or other regulations, including health care fraud or illegal exports. In these cases, agencies are generally required to exclude the party from participating in specified government transactions or activities. More than half of the governmentwide suspensions and debarments were based on acquisition regulations. Several agencies did not report any such cases.

Basis of EPLS Cases, Fiscal Years 2006 through 2010



Source: GAO analysis of EPLS data.

The four agencies GAO reviewed with the most suspensions and debarments based on acquisition regulations shared certain characteristics that were not present at agencies with relatively few or no such cases. These agencies had staff dedicated to the suspension and debarment program, detailed implementing guidance, and practices that encourage an active referral process. The six agencies without such characteristics had virtually no suspensions or debarments, regardless of the dollar level of their contract obligations. For example, the Department of Health and Human Services, the civilian agency among those GAO reviewed with the highest amount of contract obligations, had no suspensions and debarments based on acquisition regulations. U.S. Immigration and Customs Enforcement had considerably less in contract obligations, but was one of the top four agencies of those GAO reviewed.

The interagency committee responsible for governmentwide oversight and coordination of suspensions and debarments faces challenges as it relies on voluntary agency participation and only the limited resources of member agencies to fulfill its mission. For example, the committee took almost 2 years to submit a required annual report to Congress on agencies' suspension and debarment activities because agencies had been slow in providing needed information and it had limited resources to devote to the report.

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Abbreviations

CIGIE	Council of the Inspectors General on Integrity and Efficiency
DHS	Department of Homeland Security
DLA	Defense Logistics Agency
DOD	Department of Defense
EPLS	Excluded Parties List System
FAR	Federal Acquisition Regulation
FEMA	Federal Emergency Management Agency
GSA	General Services Administration
HHS	Department of Health and Human Services
ICE	U.S. Immigration and Customs Enforcement
ISDC	Interagency Suspension and Debarment Committee
NCR	Nonprocurement Common Rule
OIG	office of inspector general
OMB	Office of Management and Budget

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G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

August 31, 2011

The Honorable Joseph I. Lieberman
Chairman
The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Darrell E. Issa
Chairman
The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

The Honorable Claire McCaskill
Chairman
Subcommittee on Contracting Oversight
Committee on Homeland Security and Governmental Affairs
United States Senate

Federal government spending on contracted goods and services was more than \$535 billion in 2010. To protect the government's interests, federal agencies are required to award contracts only to responsible sources—those that are determined to be reliable, dependable, and capable of performing required work. One way to protect the government's interests is through suspensions and debarments, which are actions taken to exclude firms or individuals from receiving contracts or assistance based on various types of misconduct. A suspension is a temporary exclusion pending the completion of an investigation or legal proceeding, while a debarment is for a fixed term that depends on the seriousness of the cause, but generally should not exceed 3 years. These exclusions are reported in the Excluded Parties List System (EPLS),¹ maintained by the General Services Administration (GSA), along with violations of certain statutes and regulations, such as health care fraud.

¹EPLS is an electronic database containing the list of all parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified by agencies. It is available for agency and public access at www.epls.gov.

Given your interest in ensuring that the government only does business with responsible contractors, we analyzed (1) the nature and extent of governmentwide exclusions reported in EPLS; (2) the relationship, if any, between practices at selected agencies and the level of suspensions and debarments under federal acquisition regulations; and (3) governmentwide efforts to oversee and coordinate the use of suspensions and debarments across federal agencies. Based on discussions with your staff, we particularly focused on agency practices for suspensions and debarments under federal acquisition regulations.

To determine the nature and extent of governmentwide suspensions and debarments, we analyzed data for fiscal years 2006 through 2010 from EPLS. We analyzed the various codes used by agencies entering data into EPLS that specify the cause of the action and the effect of the listing to identify (1) suspension and debarment actions taken under the Federal Acquisition Regulation (FAR); (2) suspension and debarment actions taken under the Nonprocurement Common Rule (NCR), which covers grants and other assistance; and (3) other exclusions.² To provide information on the level of agency activity, we aggregated related actions, such as those involving affiliates and related parties, to identify the number of cases.³ We used cases to provide a common comparison among the agencies. A case may include separate actions for an individual, a business, and each affiliate, and it may entail dedication of resources and the potential for separate representation by a party's counsel and separate resolution. Analysis of agency activity included all agencies. We assessed the reliability of EPLS data by performing electronic testing, reviewing system documentation, and interviewing knowledgeable officials about data quality and reliability. We determined

²For purposes of this report, "other exclusions" are based on violations of certain statutes or regulations other than the FAR or are required under executive orders. These are also known as declarations of ineligibility. These exclusions can relate to such matters as health care fraud, export control violations, or drug trafficking, which may render a party ineligible for specified government transactions or activities. These violations may be unrelated to federal contracts, grants, or assistance but may include sanctions that preclude the party from some or all procurement and nonprocurement transactions as set out in the statute or regulation.

³EPLS provides reports showing the number of agency actions, but multiple actions may be recorded for the same case because agencies may exclude multiple individuals associated with a firm or list the firm under different firm names and include affiliates. In addition, a listed firm or individual may have multiple related actions, such as suspension, proposed debarment, or debarment, which are reported as separate actions in EPLS.

that the data were sufficiently reliable for the purpose of this review. To identify agency practices for suspension and debarment taken under the FAR, we reviewed a mix of 10 agencies from among all agencies having more than \$1 billion in contract obligations in fiscal year 2009.⁴ These agencies included the Defense Logistics Agency (DLA), the Department of the Navy (Navy), GSA, and the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE)—all of which had relatively more cases involving actions taken under the FAR than other agencies—as well as the Departments of Commerce (Commerce), Health and Human Services (HHS), Justice (Justice), State (State), and the Treasury (Treasury), and DHS's Federal Emergency Management Agency (FEMA)—all of which had relatively few or no suspensions or debarments under the FAR.⁵ At these 10 agencies, we focused on certain attributes of the suspension and debarment process, including the organizational placement of the suspension and debarment official, staffing and training, guidance, and the referral process, including triggering events. To identify governmentwide efforts to oversee and coordinate the suspension and debarment system, we met with officials from the Office of Management and Budget (OMB), which through its Office of Federal Procurement Policy provides overall direction of governmentwide procurement policies, including suspensions and debarments under the FAR; officials at the Interagency Suspension and Debarment Committee (ISDC);⁶ the Council of the Inspectors General on Integrity and Efficiency's (CIGIE) Suspension and Debarment Working Group;⁷ and GSA. We also met with or obtained information from

⁴Fiscal year 2009 was the most current full year of data available at the beginning of our review.

⁵We included two components for the Department of Defense and DHS because each had its own suspension and debarment official as well as its own guidance and procedures.

⁶The ISDC was established as the Interagency Committee on Debarment and Suspension by Executive Order 12549 on February 18, 1986.

⁷The Inspector General Reform Act of 2008, Pub. L. No. 110-409, established CIGIE as an independent entity within the executive branch to address integrity, economy, and effectiveness issues that transcend individual government agencies and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in establishing a well-trained, highly skilled workforce in the offices of the inspectors general. The Suspension and Debarment Working Group was formed in summer 2010 as part of the CIGIE Investigations Committee to raise the overall profile and expand the use of suspension and debarment.

suspension and debarment and inspector general officials at the 10 selected agencies.

We conducted this performance audit from September 2010 to August 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. For more information on our scope and methodology, see appendix I.

Background

Suspensions and debarments are tools that may be used at the discretion of agencies to protect the government's interest. The FAR prescribes overall policies and procedures governing the suspension and debarment of contractors by agencies and directs agencies to establish appropriate procedures to implement them. This flexibility enables each agency to establish a suspension and debarment program suitable to its mission and structure. The FAR specifies numerous causes for suspensions and debarments, including fraud, theft, bribery, tax evasion, or lack of business integrity.⁸ (See app. II for a list of potential causes listed in the FAR.) The existence of one of these causes does not necessarily require that the party be suspended or debarred; agencies are directed to consider the seriousness of the act and any remedial measures or mitigating factors. Agencies are to establish procedures for prompt reporting, investigation, and referral to the agency suspension and debarment official. A suspension or debarment action may also include related business entities or individuals associated with the business. Parties that are suspended, proposed for debarment,⁹ or debarred are precluded from receiving new contracts, and agencies must not solicit offers from, award contracts to, or consent to subcontracts with these parties, unless an agency head determines that there is a compelling reason for such action.

⁸FAR §§ 9.406-2 and 9.407-2.

⁹The debarring official issues a notice of proposed debarment to advise a party that a debarment is being considered and to provide the contractor an opportunity to respond. A proposed debarment has the same effect as a suspension and is listed in EPLS.

The NCR¹⁰ provides a suspension and debarment process, which is parallel to the suspension and debarment process specified by the FAR, for nonprocurement transactions, such as grants or other assistance.¹¹ The FAR and NCR provide for reciprocity—that is, a suspension or debarment under either the FAR or the NCR is recognized under the other, and a party precluded from participating in federal contracts is also excluded from receiving grants, loans, and other assistance and vice versa. Suspensions and debarments apply governmentwide—one agency’s action precludes all executive agencies from doing business with the excluded party.

Additionally, violations of certain statutes and regulations other than the FAR and NCR also exclude a party from specified government transactions. The prohibited behavior could involve, for example, fraudulently receiving payments under federal health care programs or violating export control regulations. These statute- and regulation-based exclusions are often mandatory, while those taken under the FAR and NCR are discretionary. Although the violations that led to the exclusions may be unrelated to federal contracts, grants or assistance, they may result in sanctions that exclude the party from some or all procurement or federal financial and nonfinancial assistance and benefits as set out in the statute or regulation.

OMB provides overall direction of governmentwide procurement policies, including those on suspensions and debarments under the FAR, and has the authority to issue guidelines for nonprocurement suspensions and debarments. ISDC, established in 1986, monitors the governmentwide system of suspension and debarment.¹² The committee consists of representatives from agencies designated by the Director of OMB.¹³ ISDC

¹⁰The NCR was adopted under the rule-making authority of the respective agencies after OMB issued guidelines, as provided for in Exec. Order No. 12549 (1986), *OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)*, found at 2 C.F.R. Part 180.

¹¹Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

¹²51 Fed. Reg. 6370 (Feb. 21, 1986).

¹³Standing members include each of the 24 agencies covered by the Chief Financial Officers Act. Nine independent agencies and government corporations also participate.

provides support to help agencies implement their suspension and debarment programs. It serves as a forum for agencies to share ideas and assists in coordinating suspension and debarment actions among agencies.

To facilitate the identification of parties that have been suspended or debarred and are excluded from receiving federal contracts, certain subcontracts, and certain federal financial and nonfinancial assistance and benefits, GSA operates the web-based EPLS. The FAR requires agencies to enter information about a firm or individual that has been suspended, proposed for debarment, or debarred by the agency, including the party's name and address, the cause for the action, the effect of the action, and the end date of the debarment action.¹⁴ Other exclusions are also entered into EPLS, generally by the agency with designated enforcement authority.¹⁵ Contracting officers are responsible for checking EPLS to ensure that they do not award contracts to these firms or individuals.

In 2005, we reported that federal agencies may not be consistently identifying suspended or debarred contractors when awarding new contracts.¹⁶ In 2009, we found that some contractors nevertheless received federal funds during their period of ineligibility.¹⁷ We made recommendations for improving EPLS to enhance agencies' confidence that they can readily identify these contractors, which GSA subsequently addressed by making system modifications. More recently, several agencies' offices of inspector general (OIG) have reported on challenges in their agencies' suspension and debarment programs and made recommendations to improve the programs, including developing procedures for documenting decisions and metrics for timely processing of suspension and debarment referrals. The Department of Defense (DOD) OIG recently reported that the services and DLA had an effective

¹⁴FAR § 9.404.

¹⁵Some agencies with regulatory authority, including HHS, Justice, and Treasury, maintain their own ineligibility listings that are electronically transmitted into EPLS.

¹⁶GAO, *Federal Procurement: Additional Data Reporting Could Improve the Suspension and Debarment Process*, [GAO-05-479](#) (Washington, D.C.: July 29, 2005).

¹⁷GAO, *Excluded Parties List System: Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds*, [GAO-09-174](#) (Washington, D.C.: Feb. 25, 2009).

suspension and debarment process, but recommended that DOD develop a working group to review and improve the process for referring poorly performing contractors for potential suspensions or debarments, develop a training program to inform contracting personnel of the suspension and debarment program and the process for referring poorly performing contractors, and conduct training for contracting personnel on checking the EPLS before awarding contracts.¹⁸

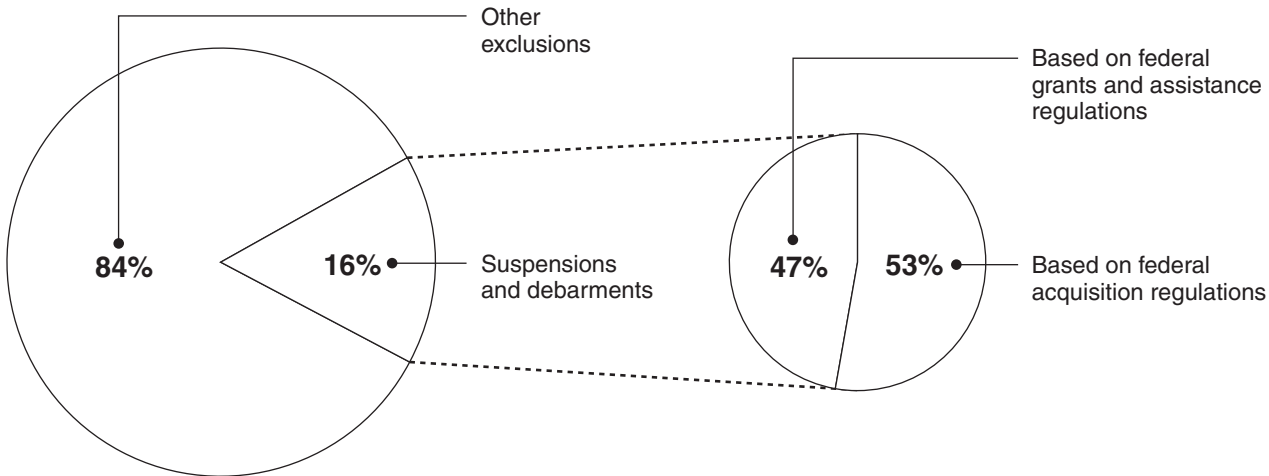
Suspension and Debarment Cases Make Up a Small Percentage of All Exclusions in the Governmentwide Database

The governmentwide database on excluded parties includes suspension or debarment actions taken under the FAR or regulations pertaining to federal grants and other financial assistance, as well as exclusions related to other laws and regulations. Over the past 5 fiscal years, about 16 percent of cases included in EPLS were suspensions or debarments, while the remaining 84 percent of cases were other exclusions based on violations of laws and regulations resulting from certain prohibited conduct.¹⁹ (See fig. 1.) DOD accounted for most of the suspension and debarment cases. Slightly more than half of the governmentwide suspension and debarment cases involved actions taken under the FAR. Several civilian departments and agencies had few or no such cases.

¹⁸Department of Defense Office of Inspector General, *Additional Actions Can Further Improve the DOD Suspension and Debarment Process*, D-2011-083 (Arlington, Va.: July 14, 2011).

¹⁹A case in EPLS results in multiple actions when agencies exclude multiple individuals associated with a firm, list the firm under different names, or include affiliates. In addition, a listed firm or individual may have multiple related actions, such as suspension, proposed debarment, or debarment, which are reported as separate actions in EPLS. Therefore, to provide information on the level of agency activity, we aggregated related entities, such as business affiliates and associated parties, and actions to identify the number of cases. See app. I for further information on how we aggregated the actions.

Figure 1: Basis of EPLS Cases, Fiscal Years 2006 through 2010



Source: GAO analysis of EPLS data.

For fiscal years 2006 through 2010, about 4,600 cases—about 16 percent of all cases in EPLS—involved suspension and debarment actions taken at the discretion of agencies against firms and individuals based on any of the numerous causes specified in either the FAR or NCR, such as fraud, theft, or bribery or history of failure to perform on government contracts or transactions. Such cases generally result in exclusion from all federal contracts, grants, and benefits. About 47 percent of suspension and debarment cases were based on the NCR, which covers federal grants and assistance, with the Department of Housing and Urban Development accounting for over half of these grant and assistance–related cases. The other 53 percent of suspension and debarment cases were based on causes specified in the FAR and related to federal procurements.

During this same time period, about 84 percent—or about 24,000 of the approximately 29,000 total cases reported in EPLS—were other exclusions based on a determination that the parties had violated certain statutes or regulations. For example, prohibited conduct, such as health care fraud, export control violations, or drug trafficking, can result in an EPLS listing. In these types of cases, once an agency with the designated authority has determined that a party has engaged in a prohibited activity, such as fraudulently receiving payments under federal health care programs, or violating export control regulations, the law generally requires that the party be declared ineligible for specified government transactions or activities. Although most other exclusions are based on violations that are not related to federal procurements or grants, the party

is excluded from some or all procurement and nonprocurement transactions as set out in the statute.²⁰ As shown in table 1, HHS, Justice, and Treasury recorded the most other exclusion type cases. These cases were related to health care fraud, drug abuse, and drug-trafficking violations.

Table 1: EPLS Other Exclusions Cases for Fiscal Years 2006 through 2010

Department/agency	Violation	Cases
Department of Health and Human Services	Health care regulations	15,371
Department of Justice	Anti-Drug Abuse Act	4,301
	Defense regulations	100
Department of the Treasury	Foreign asset control provisions - drug trafficking	1,192
	Foreign asset control provisions - various	743
	Foreign asset control provisions - terrorism	189
Office of Personnel Management	Health care regulations	1,503
Department of Homeland Security	Immigration and Nationality Act	284
Environmental Protection Agency	Clean Air/Water Acts	255
Department of Labor	Labor - various	165
	Labor - Davis-Bacon Act	2
Department of State	Export control	122
	Iran sanctions/nonproliferation	60
Department of Agriculture	Crop Insurance Act	40
Government Accountability Office	Labor - Davis-Bacon Act	19
Department of Education	Higher Education Act	13
Department of Veterans Affairs	Veteran-owned business	2
U.S. Agency for International Development	Foreign Assistance Act	1
General Services Administration	Buy American Act	1
Total		24,363

Source: GAO analysis of EPLS data.

As shown in table 2, the number of suspension and debarment cases related to federal procurement varied widely among departments or

²⁰For example, violations of the Iran Sanctions Act result in exclusion from all government contracts, while violations of the Clean Air Act and Clean Water Act only preclude contracts at the violating facility. Violations of the Anti-Drug Abuse Act may result in exclusion from some or all government contracts and benefits based on the discretion of the sentencing judge.

agencies over the last 5 fiscal years. DOD accounted for about two-thirds of all suspension and debarment cases related to federal procurements with almost 1,600 cases. Of all the agencies, almost 70 percent had fewer than 20 suspension and debarment cases related to federal procurements. Six agencies—HHS, Commerce, and the Departments of Labor, Education, and Housing and Urban Development and the Office of Personnel Management—had no such cases over the last 5 fiscal years.²¹

Table 2: EPLS Suspension and Debarment Cases by Agency and Contract Obligations, Fiscal Years 2006 through 2010

Department/agency ^a	Contract obligations (in billions of dollars)	Suspension and debarment cases related to ^b		Total suspension and debarment cases
		Federal procurement	Grants and other assistance	
Department of Defense	\$1,776.20	1,592	24	1,616
Department of Energy	129.70	82	0	82
Department of Health and Human Services	80.15	0	29	29
General Services Administration	73.44	269	0	269
National Aeronautics and Space Administration	72.56	41	1	42
Department of Homeland Security	70.79	116	8	124
Department of Veterans Affairs	69.00	4	11	15
Department of State	33.20	6	1	7
Department of Justice	31.97	8	3	11
Department of Agriculture	25.55	3	105	108
U.S. Agency for International Development	24.36	18	18	36
Department of the Treasury	23.67	8	1	9
Department of Transportation	23.41	11	193	204
Department of the Interior	23.04	94	10	104
Department of Commerce	14.10	0	0	0
Department of Labor	9.76	0	0	0
Environmental Protection Agency	7.81	1	332	333
Department of Education	7.59	0	163	163

²¹Some agencies may suspend or debar federal contractors utilizing the NCR, and such suspensions and debarments would be listed in EPLS as cases related to grants and other assistance.

Department/agency ^a	Contract obligations (in billions of dollars)	Suspension and debarment cases related to ^b		Total suspension and debarment cases
		Federal procurement	Grants and other assistance	
Department of Housing and Urban Development	5.38	0	1,141	1,141
Social Security Administration	5.30	1	0	1
Office of Personnel Management	4.89	0	0	0
National Science Foundation	2.08	40	1	41
All other agencies	9.83	124	136	260
Total		2,418	2,177	4,595

Source: GAO analysis of Federal Procurement Data System–Next Generation and EPLS data.

^aThis table lists departments and agencies with over \$2 billion in contract obligations for fiscal years 2006 through 2010. "All other agencies" includes those agencies with less than \$2 billion in contract obligations.

^bAgencies may suspend or debar federal contractors utilizing the NCR, and such suspensions and debarments would be listed in EPLS as cases related to grants and other assistance.

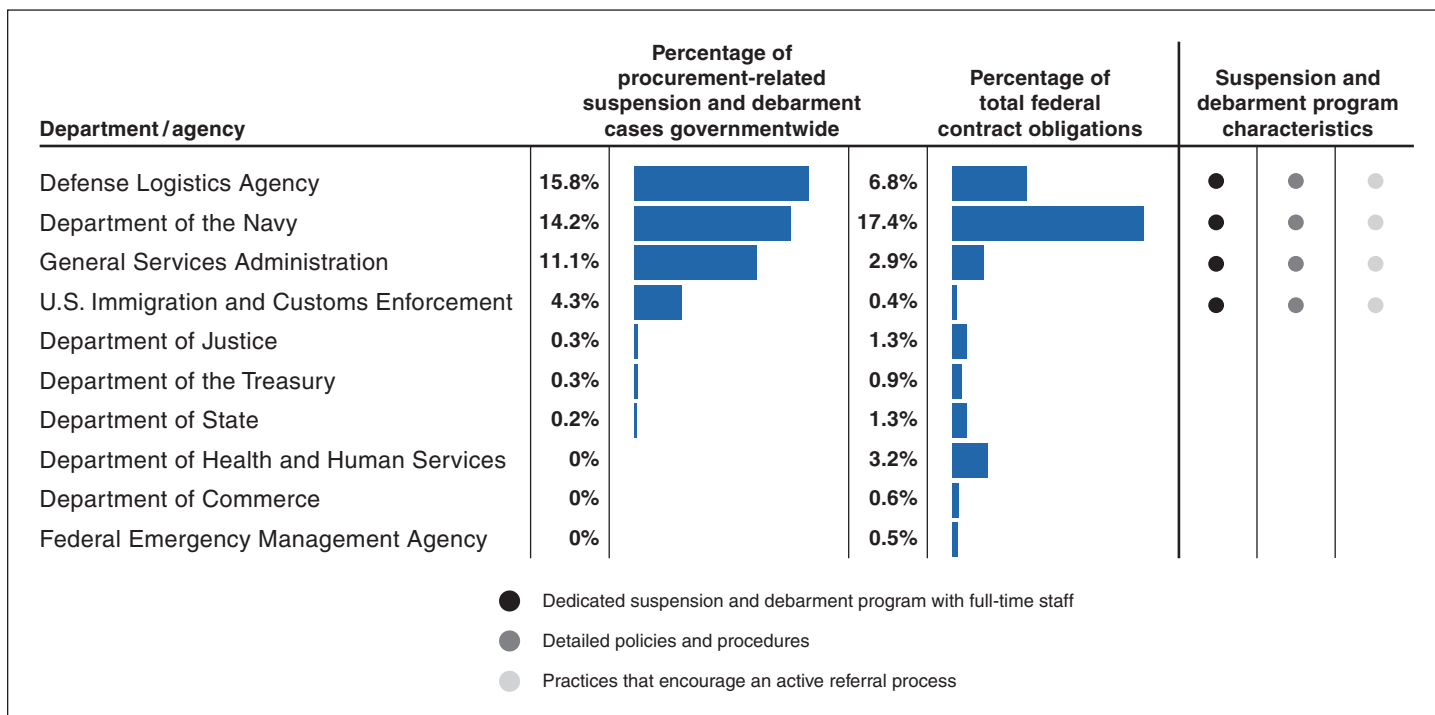
Agencies with Most Suspension and Debarment Cases Share Common Characteristics Missing at Agencies with Few Cases

Of the agencies we studied, those with the most procurement-related suspension and debarment cases share common characteristics. Agencies with few or no such suspensions or debarments for the same period do not have these characteristics regardless of the agency's volume of contracting activity. Officials at most of these agencies acknowledged that suspension and debarment is an underutilized tool at their agencies.

Agencies with More Active Suspension and Debarment Programs Share Common Characteristics

While each agency suspension and debarment program we reviewed is unique, the four with the most suspension and debarment cases for fiscal years 2006 through 2010—DLA, Navy, GSA, and ICE—share certain characteristics. These include a dedicated suspension and debarment program with full-time staff, detailed policies and procedures, and practices that encourage an active referral process, as shown in figure 2.²²

Figure 2: Analysis of Selected Agency Contract Obligations, Procurement-Related Suspension and Debarment Cases for Fiscal Years 2006 through 2010, and Program Characteristics



Source: GAO analysis of Federal Procurement Data System-Next Generation, EPLS data, and agencies' procedures and guidance.

²²Figure 2 shows for each of the 10 agencies we studied the percentage of federal contract dollars obligated and the percentage of total government procurement-related suspension and debarment cases for fiscal years 2006 through 2010, and the extent to which certain characteristics were found among the selected agencies.

Dedicated Program and Staff

One of the shared traits we identified among the four most active agencies is a dedicated suspension and debarment program with full-time staff (see table 3). Officials from the four agencies stated that having dedicated staff cannot be accomplished without the specific focus and commitment of an agency’s senior officials.

Table 3: Description of the Staffing at Four Agencies

Department/agency	Description	Staffing
Defense Logistics Agency (DLA)	DLA’s suspension and debarment activity is part of the agency’s larger contracting integrity issue area. The activity is administered by full-time and part-time staff all with legal backgrounds from the Office of the General Counsel. Suspension and debarment staff responsibilities include processing referrals from the agency’s primary field activity offices, assisting in coordination with the Department of Justice, and coordinating lead agency determinations with other relevant agencies.	Full-time 3 Attorneys Part-time 1 Paralegal
Department of the Navy (Navy)	The suspension and debarment program within the agency’s Acquisition Integrity Office carries out the Navy’s suspension and debarment activities as part of a larger fraud prevention program. This office has attorneys and staff support dedicated to developing and processing suspension and debarment cases referred by other offices.	Full-time 14 Attorneys 3 Staff support
General Services Administration (GSA)	GSA has a Center for Suspension and Debarment within the Office of Acquisition Policy. ^a Most staff have law degrees—and attend the Federal Law Enforcement Training Center’s suspension and debarment training. Staff duties include referral processing, case development, and coordination with internal offices such as the Office of Inspector General, when appropriate.	Full-time 1 Division Director 4 Staff members
Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE)	The Suspension and Debarment Division administers ICE’s suspension and debarment program. Full- and part-time staff in the division research referrals, coordinate with other offices within the Department of Homeland Security, track cases, and enter excluded parties into the Excluded Parties List System to handle ICE’s substantial suspension and debarment caseload.	Full-time 1 Division Director 1 Procurement analyst 1 Staff assistant Part-year 2 Summer interns (fiscal year 2010)

Source: GAO analysis of agency documentation and discussions with agency suspension and debarment officials.

^aThe office has since been renamed the Suspension and Debarment Division and is now part of GSA’s Office of Governmentwide Policy.

Other reviews of agency suspension and debarment programs also have recognized the importance of having dedicated suspension and debarment staff. For example, responding to a February 2010 OIG

report,²³ DHS reviewed its suspension and debarment practices and concluded in October 2010 that it needed to establish and fully resource the suspension and debarment function throughout the department.²⁴ Additionally, in October 2009, the U.S. Agency for International Development's Inspector General recommended that the agency consider forming a dedicated division for suspension and debarment.²⁵ In response, the agency created and staffed the Compliance and Oversight of Partner Performance Division, which is dedicated to business integrity issues, including suspension and debarment. Furthermore, ISDC officials stated that without dedicated staff, none of the other essential functions of an agency suspension and debarment program can be carried out. During a recent hearing of the Commission on Wartime Contracting in Iraq and Afghanistan,²⁶ it was noted by the Administrator for Federal Procurement Policy that management and resources devoted to suspension and debarment are inconsistent across agencies and more could be done to protect the government and taxpayers from bad contractors.²⁷

²³Department of Homeland Security, Office of Inspector General, *DHS' Use of Suspension and Debarment Actions for Poorly Performing Contractors*, OIG-10-50 (Washington, D.C.: Feb. 2, 2010).

²⁴Department of Homeland Security, *Assessment of Suspension & Debarment at DHS* (Washington, D.C.: May 28, 2010). In November 2010, DHS accepted the recommendations of this review and approved the implementation of a suspension and debarment official position within the Office of the Under Secretary for Management, tasked with developing a departmentwide suspension and debarment policy and program. The report concluded that ICE's suspension and debarment program—established in May 2008—was robust and sufficiently distinct in its enforcement of the Immigration and Nationality Act, and that it should remain a separate entity.

²⁵U.S. Agency for International Development, Office of Inspector General, *Audit of USAID's Process for Suspension and Debarment* (Washington, D.C.: Oct. 1, 2009).

²⁶Commission on Wartime Contracting in Iraq and Afghanistan, *Ensuring Contractor Accountability: Past Performance and Suspensions and Debarments* (Washington, D.C.: Feb. 28, 2011).

²⁷The Commission on Wartime Contracting in Iraq and Afghanistan, an independent, bipartisan legislative commission, was established by Congress to study wartime contracting in Iraq and Afghanistan. Created in Section 841 of the National Defense Authorization Act for Fiscal Year 2008, this eight-member commission is mandated by Congress to study federal agency contracting for the reconstruction, logistical support of coalition forces, and the performance of security functions in Iraq and Afghanistan.

Detailed Policies and Procedures

The agencies we reviewed with active suspension and debarment programs each had detailed policies and procedures that supplement FAR requirements. This generally included guidance on things such as referrals, investigations, and legal review. Table 4 shows how each of the top four agencies has developed agency-specific guidance that goes well beyond the suspension and debarment guidance in the FAR.

Table 4: Description of Detailed Policies and Procedures at Four Agencies

Department/agency	Description
Defense Logistics Agency (DLA)	DLA's <i>Business Integrity Program Handbook</i> has operational guidance for the suspension and debarment program, including definitions of roles and responsibilities at the field office and headquarters levels and notification of senior officials prior to high-risk exclusions. It also includes protocols for working with other defense and civil agencies, making lead agency determinations, and coordinating legal review. ^a
General Services Administration (GSA)	GSA's policies and procedures include the <i>Suspension and Debarment Standard Operating Procedures Manual</i> , which contains detailed information on the Center for Suspension and Debarment, including its mission and structure. The manual also has a step-by-step guide for compiling an action referral memorandum and assistance in the application of the evidence standards for suspension and debarment.
Department of the Navy (Navy)	Navy suspension and debarment policies and procedures include a Secretary of the Navy Instruction, which establishes the Acquisition Integrity Office as the lead on all fraud matters and outlines the suspension and debarment function. The instruction includes guidance on timely preparation of referrals based on indictments or convictions and coordinating with investigative units, such as the Naval Criminal Investigative Service.
Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE)	ICE's suspension and debarment program procedures include detailed guidance on conducting online database research, coordinating with other DHS components, preparing for legal review, and tracking cases in their database.

Source: GAO analysis of agency documentation and discussions with agency suspension and debarment officials.

^aDefense Logistics Agency, *Business Integrity Program Handbook*, DLSA P2 (February 2002).

Several of the reports we reviewed by inspectors general and others regarding agency suspension and debarment programs cited the importance of agency-specific, detailed policies and procedures to an active agency suspension and debarment program. For example, in August 2010, the Department of Agriculture's Inspector General reported that developing suspension and debarment policies and procedures is

important to ensuring that regulations are consistently applied throughout an agency.²⁸

Practices That Encourage Referrals

Finally, each of the four agencies we studied with the most active suspension and debarment programs engage in practices that encourage an active referral process. The FAR directs agencies to refer appropriate matters to their suspension and debarment officials for consideration, and it allows agencies to develop ways to accomplish this task that suit their missions and structures. According to agency officials at these four agencies, when senior agency officials communicate the importance of suspension and debarment through their actions, speeches, and directives, they help to promote a culture of acquisition integrity where suspension and debarment is understood and utilized by staff (see table 5).

Table 5: Sample of Practices Encouraging Referrals at Four Agencies

Department/agency	Practices
Defense Logistics Agency	Staff outside of the Suspension and Debarment Office regularly trained on how and when to make referrals. Meeting regularly with other agencies within department to discuss intended actions.
Department of the Navy	Senior official issues agencywide directive stressing importance of fraud prevention, including suspension and debarment, as everyone’s responsibility. Meeting with the Department of Justice regularly and demonstrating agency’s ability to take suspension and debarment actions without jeopardizing potential legal proceedings.
General Services Administration	Use of a case management tool that allows for referral tracking and case reporting, and provides internal controls, all of which are intended to emphasize the importance of submitting and following up on referrals. Office of Inspector General looks for and refers cases based on investigations and legal proceedings.
Department of Homeland Security, U.S. Immigration and Customs Enforcement	Use of the Suspension and Debarment Case Management system that allows for tracking and follow-up on all referrals, which supports an active referral process.

Source: GAO analysis of agency documents and discussions with agency suspension and debarment officials.

Government officials made similar observations about what actions agencies need to take to improve how they use suspension and debarment. For example, in February 2011, the Administrator for Federal Procurement Policy within OMB outlined progress among federal

²⁸Department of Agriculture, Office of Inspector General, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, 50601-14-AT (Washington, D.C.: Aug. 16, 2010).

agencies' suspension and debarment programs and highlighted those same characteristics we identified at the agencies we studied with the most suspension and debarment activity.²⁹ The Administrator acknowledged that there is much room for improvement among agency suspension and debarment programs and noted that more agencies are establishing formal suspension and debarment programs, dedicating greater staff resources to handling referrals and managing cases, strengthening policies, providing training, and taking action to root out illegal behavior and irresponsible actors. In addition, the DHS Inspector General, a member of the National Procurement Fraud Task Force, testified before Congress that the task force formed a Suspension and Debarment Committee, which concluded that several elements were necessary for an effective suspension and debarment program. Similar to our observations, he noted the need for a dedicated person or group responsible for identifying potential suspension and debarment cases and effective coordination with the agency's OIG. He also noted the need for protocols that identify the officials responsible for compiling suspension and debarment referral packages, as well as for legal support to pursue suspension or debarment actions against contractors.³⁰

Agencies with Few or No Procurement-Related Suspension and Debarment Cases Lacked the Traits Common among Agencies with More Active Programs

The remaining six agencies we studied—HHS, FEMA, Commerce, Justice, State, and Treasury—do not have the characteristics common to the four agencies with the most suspension and debarment cases. Based on our review of agency documents and interviews with agency officials, none of these six agencies had dedicated suspension and debarment staff, detailed policies and guidance other than those to implement the FAR, or practices that encourage an active referral process. These agencies have few or no suspensions or debarments of federal contractors.

²⁹Office of Management and Budget, Office of Federal Procurement Policy, *Statement of the Honorable Daniel I. Gordon, Administrator for Federal Procurement Policy, Office of Management and Budget, Before the Commission on Wartime Contracting* (Washington, D.C.: Feb. 28, 2011).

³⁰Department of Homeland Security, Office of Inspector General, *Statement of Richard L. Skinner, Inspector General, U.S. Department of Homeland Security, Before the Committee on Oversight and Government Reform, U.S. House of Representatives* (Washington, D.C.: Mar. 18, 2010).

In addition, an agency's level of suspension and debarment activity was not necessarily related to its contracting volume. For example, FEMA and ICE, two components of DHS with separate suspension and debarment programs, had similar percentages of federal contract obligations for fiscal years 2006 through 2010—0.5 percent and 0.4 percent, respectively. ICE, however, represented 4.3 percent of the procurement-related suspension and debarment cases across the government, while FEMA had no suspensions or debarments. ICE practices included the three program attributes that we identified at the agencies with the most suspension and debarment cases. (See fig. 2.) FEMA had none of them.

Officials at the agencies we reviewed that have few or no procurement-related suspensions or debarments, acknowledged that their agencies need to place greater emphasis on suspension and debarment as a tool to ensure that the government only does business with responsible contractors. Some of these agencies have already begun efforts to develop more robust suspension and debarment programs. These ongoing efforts include the following:

- An HHS OIG official told us that since more than 80 percent of HHS's appropriations are for Medicare and Medicaid programs, their emphasis and budget have been largely directed toward monitoring those programs, including the Exclusions Program, which was designed to combat health care fraud.³¹ The HHS suspension and debarment official added that HHS now sees suspension and debarment as an underutilized management tool, and the agency has made a commitment to having a more active process, which so far includes training and researching best practices. The official noted that the tools for suspension and debarment are present and that the agency needs to emphasize using them.
- FEMA officials have noted the need to improve their procurement-related suspension and debarment program, and are working closely with ICE to adopt some of the characteristics of agencies with more active programs. At the same time, DHS has named a suspension and

³¹Monitoring the Medicaid and Medicare programs includes HHS OIG's administration of the Exclusions Program, a program designed to combat health care fraud by preventing certain individuals and businesses from participating in federally funded health care programs and other government procurement and nonprocurement transactions, based on convictions for program-related fraud and patient abuse, licensing board actions, and default on Health Education Assistance Loans.

debarment official within the Office of the Under Secretary for Management, who has been tasked with developing a departmentwide suspension and debarment policy and program.

- Treasury also has efforts under way to improve its procurement-related suspension and debarment program. Treasury officials noted that the Office of Inspector General is taking steps to promote the use of suspensions and debarments. According to an OIG official, they are improving training and education throughout the office by having OIG attorneys attend suspension and debarment training sponsored by CIGIE. In addition, investigators are beginning to receive training on using suspension and debarment with ongoing legal cases or those cases declined for prosecution by the U.S. Attorney that meet the criteria for potential debarment.
- Commerce officials stated that the Suspension and Debarment Official is working actively to build a robust suspension and debarment program. The OIG expects to have a fully functioning suspension and debarment program by the end of fiscal year 2011. The Office of Counsel to the Inspector General has proposed to serve as liaison between the OIG, other investigatory bodies within Commerce, and the Suspension and Debarment Official. The official is collaborating with the OIG and the Office of General Counsel to develop an acceptable process and leverage available resources.

Governmentwide Efforts to Oversee Suspensions and Debarments Face Challenges

Governmentwide efforts to oversee and coordinate suspensions and debarments have faced a number of challenges. OMB assigned responsibility for governmentwide coordination to ISDC; however, ISDC relies on agencies' voluntary participation in its processes and member agencies' limited resources to fulfill its mission. Other efforts are under way to coordinate suspension and debarment activity across government, including the CIGIE Suspension and Debarment Working Group's efforts to raise awareness by promoting the use of suspension and debarment and GSA's ongoing efforts to simplify and improve EPLS.

**Interagency Committee
Relies on Voluntary
Agency Participation and
Limited Agency Resources
to Oversee Suspension and
Debarment Programs**

OMB, starting in 1986, assigned responsibility for governmentwide suspension and debarment oversight and coordination to ISDC. More recently, the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009³² strengthened the committee's role by specifying functions ISDC was to perform, including

- resolve lead agency responsibility and coordinate actions among interested agencies with respect to suspension or debarment proceedings,
- report to Congress annually on agency suspension and debarment activities and accomplishments as well as agency participation in the committee's work,
- recommend to OMB committee-approved changes to the government suspension and debarment system and its rules, and
- encourage and assist agencies in cooperating to achieve operational efficiencies in the governmentwide suspension and debarment system.

When more than one agency has an interest in the debarment or suspension of a contractor, the FAR requires ISDC to resolve the lead agency issue and coordinate such resolution among all interested agencies prior to the initiation of any suspension or debarment by any agency.³³ According to ISDC officials, ISDC relies on voluntary agency participation in its informal coordination process, which works well when used. However, not all agencies coordinate through ISDC. Officials from ISDC cited as an example the Small Business Administration's recent suspension of a major federal contractor. Because the agency did not go through the ISDC coordination process, other agencies were surprised by the suspension and did not have an opportunity to offer their perspectives on this action. ISDC has to rely on the individual agencies involved in a potential suspension or debarment to resolve any coordination issues.

Likewise, in part because it could not compel agencies to respond to its inquiries, ISDC took almost 2 years to submit its required annual report to

³²Pub. L. No. 110-417, § 873 (2008).

³³FAR § 9.402 (d).

Congress on agencies' suspension and debarment activities. According to ISDC representatives, only about half of the member agencies responded to the initial request for information needed for the report. These officials also noted that their limited resources to devote to committee responsibilities further delayed the report. Consequently, ISDC issued its first report on June 15, 2011, covering both of the reports required for 2009 and 2010.³⁴ The report identifies several agencies that made progress in establishing formal suspension and debarment programs. It does not make any recommendations to improve the suspension and debarment system. However, the report describes a survey ISDC conducted of its members to create a baseline against which to measure agency progress—looking at internal agency controls, training efforts, and use of tools in addition to suspensions and debarments, such as show cause notices, administrative agreements, and voluntary exclusions. Although ISDC did not make recommendations in its report, its Acting Chair indicated that the committee is currently assisting agencies in improving suspension and debarment programs through the sharing of experience, operating policies, practices and procedures, and “example action documents” developed and used by active programs. OMB officials acknowledged that while they are seeing progress in the attention devoted by agencies to suspensions and debarments, agencies would benefit from guidance on how to establish such programs and how to work effectively with ISDC.

ISDC's coordination role concerning the governmentwide suspension and debarment system also has faced other challenges. ISDC holds monthly meetings for members as a forum to provide information and discuss relevant issues, but according to ISDC representatives, agencies without active suspension and debarment programs generally are not represented at these meetings. In addition, ISDC officials noted that the committee does not have dedicated staff and depends on limited resources provided by member agencies, particularly the agencies of the officials appointed as the Chair and Vice-Chair. According to the Chair and Vice-Chair, they do committee work in addition to their primary agency responsibilities, using their own agencies' resources.

³⁴Interagency Suspension and Debarment Committee, *Report on Federal Agency Suspension and Debarment Activities* (Washington, D.C.: June 15, 2011).

Other Efforts Are Under Way to Improve Suspension and Debarment Coordination

Other efforts are under way across government to improve coordination of suspension and debarment programs. CIGIE's Suspension and Debarment Working Group—formed in the summer of 2010—promotes the use of suspension and debarment as a tool to protect the government's interest. This group includes representatives from the Recovery Accountability and Transparency Board and the OIGs for nine federal agencies. The CIGIE working group is taking steps to raise awareness, including sponsoring training and advising the inspector general community about other training opportunities. In October 2010, the working group held an all-day suspension and debarment workshop that generated great interest, with over 300 people attending. Subsequently, the working group notified the suspension and debarment community of the 3-day National Suspension and Debarment Training Program hosted by the Federal Law Enforcement Training Center. Working group representatives stated that the demand for the workshop made clear that more training and outreach needs to be done, and the working group is trying to determine ways to meet the need. In addition, the working group informally surveyed the entire inspector general community about suspension and debarment efforts to identify good practices and is in the process of analyzing the responses.

GSA has begun an effort to improve EPLS by consolidating and simplifying the codes agencies use to identify the basis and consequences of exclusions, referred to as cause and treatment codes. GSA included EPLS as part of an ongoing Integrated Acquisition Environment initiative to consolidate various acquisition-related systems under a single system for award management. As part of this effort, GSA officials reviewed the configuration and function of EPLS and concluded that the cause and treatment code structure represented a major area of potential improvement primarily because there were too many codes—some of which were duplicative or specific to one agency—and the consequences of a listing is sometimes unclear. As a result, agency officials could be confused when accessing EPLS to readily determine the extent of exclusion. According to a GSA official, the goal of the EPLS effort is to consolidate the codes into categories that clearly define the effect of a listing.

Conclusions

Suspensions and debarments can serve as powerful tools to help ensure that the government protects its interests by awarding contracts and grants only to responsible sources. The attention dedicated to these tools varies across the agencies we reviewed. Some agencies could benefit from adopting the practices we identified as common among agencies

that have more active suspension and debarment programs. Because agency missions and organizational structures are unique, each agency must determine for itself the extent to which it can benefit from adopting these practices. However, one point is clear: agencies that fail to devote sufficient attention to suspension and debarment issues likely will continue to have limited levels of activity and risk fostering a perception that they are not serious about holding the entities they deal with accountable. Additionally, the suspension and debarment process could be improved governmentwide by building upon the existing framework to better coordinate and oversee suspensions and debarments. As acknowledged by officials at the Office of Federal Procurement Policy, which provides overall direction of governmentwide procurement policies, agencies would benefit from guidance on how to establish active suspension and debarment programs and how to work more effectively with ISDC.

Recommendations for Executive Action

We recommend that the Attorney General and the Secretaries of Commerce, Health and Human Services, State, and the Treasury take steps to improve their suspension and debarment programs by

- assigning dedicated staff resources,
- developing detailed implementing guidance, and
- promoting the use of a case referral process.

We also recommend that the Secretary of Homeland Security, as part of ongoing efforts to establish a departmentwide program for suspensions and debarments, take steps to ensure that FEMA incorporates the characteristics we identified as common among agencies with more active programs.

In addition, to improve suspension and debarment programs at all agencies and enhance governmentwide oversight, we recommend that the Administrator of the Office of Federal Procurement Policy issue governmentwide guidance that (1) describes the elements of an active suspension and debarment program, and (2) emphasizes the importance of cooperating with ISDC in terms of

- helping to resolve lead agency issues,
- providing required reporting information in a timely manner, and

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- designating existing resources as needed to enable the committee to function effectively.

Agency Comments and Our Evaluation

We provided a draft of this report to Commerce, DHS, DOD, GSA, HHS, Justice, OMB, State, and Treasury. In written comments, DHS, State, and Treasury concurred with the report's recommendations, while Commerce, HHS, and Justice generally concurred. In e-mailed comments from the agency liaison, OMB concurred with the report's recommendations. In addition, DHS, DOD, GSA, and OMB provided technical comments, which were incorporated as appropriate.

In commenting on the draft report, DHS stated that it is committed to ensuring that its suspension and debarment program has the same characteristics as those that we identified as common among agencies with more active programs. State noted that it recognizes the importance of maintaining strong suspension and debarment processes, and plans to publish agency guidance on referring a contractor or grantee for possible suspension or debarment. Treasury stated that it plans to leverage the practices identified as in use by other agencies to deploy more detailed implementing guidance and a better defined case referral process. Commerce stated that it is already taking action to implement the recommendations, and HHS stated that it will work with its OIG to develop detailed implementing guidance, including a case referral process. Justice noted the need for agencies to devote sufficient attention to suspension and debarment and plans to have its senior agency officials actively promote the suspension and debarment case referral process.

Commerce, Justice, and Treasury raised concerns about assigning full-time or additional staff to their suspension and debarment programs. HHS stated it will utilize existing resources rather than assigning dedicated staff resources. As we note in our report, agency missions and organizational structures are unique, so each agency must determine for itself the extent to which it can benefit from adopting these practices, including determining the appropriate level of resources. Given the current budget environment, our recommendation is for agencies to assign dedicated staff resources, but we leave it to the agencies to determine if additional full-time or part-time staff are needed, or if existing resources can be used to carry out suspension and debarment activities. Nevertheless, our findings show that agencies that do not devote sufficient attention to this area likely will continue to have few suspensions and debarments, which may place the government at risk of doing business with irresponsible contractors. We continue to believe that

agencies need to assign dedicated staff to have effective suspension and debarment programs.

Justice also stated that its current regulations and guidelines, coupled with its implementation of the recommendation to actively promote the referral process, will provide sufficient guidance to referring activities on the suspension and debarment policies and procedures. The agencies we reviewed with active suspension and debarment programs, however, each have detailed policies and procedures that supplement FAR requirements. These policies and procedures go well beyond the guidance in the FAR, are agency specific, and generally include guidance on matters such as referrals, investigations, deadlines, points of contact, and legal review. Justice's current guidance does not adequately cover these matters. We encourage Justice to supplement its existing regulations with agency-specific guidance that would include information such as referral requirements, time frames, and points of contacts.

Written comments from Commerce, HHS, DHS, Justice, State, and Treasury are reprinted in appendixes III through VIII, respectively.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to interested congressional committees; the Director of the Office of Management and Budget; the Attorney General; the Secretaries of Commerce, Defense, Health and Human Services, Homeland Security, State, and the Treasury; and the Administrator of General Services. The report will also be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or woodsw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IX.



William T. Woods, Director
Acquisition and Sourcing Management

Appendix I: Scope and Methodology

To determine the nature and extent of governmentwide suspensions and debarments, we analyzed data for fiscal years 2006 through 2010 from the web-based Excluded Parties List System (EPLS) managed by the General Services Administration. We analyzed the various codes agencies use to enter exclusions in EPLS that specify the cause of the action and effect of the listing to identify (1) suspension and debarment actions against firms or individuals based on the Federal Acquisition Regulation, (2) suspension and debarment actions based on the Nonprocurement Common Rule covering grants and other assistance, and (3) other exclusions.¹ Reporting a case in EPLS can result in numerous actions. For example, a case may include (1) multiple individuals associated with an excluded firm, (2) several business units or affiliates of the firm, and (3) listings under different names of a firm or individual—all of which are recorded as separate actions in EPLS. In addition, each listed firm or individual can have multiple related actions, such as a suspension, proposed debarment, and debarment, which are also listed as separate actions. To provide information on the level of agency activity, we aggregated related entities, such as business affiliates and associated parties, and actions to identify the number of cases. We counted cases with multiple actions in the fiscal year of the first exclusion action. We counted cases in which a party was excluded by more than one agency for the agency first taking the action.² We used cases to provide a common comparison among the agencies. A case may include separate action for an individual, a business, and each affiliate and may entail dedication of resources and the potential for separate representation by a party's counsel and separate resolution. (See table 6, which shows the number of actions entered in EPLS and the corresponding number of cases during the same period.)

¹For purposes of this report, "other exclusions" are based on violations of certain statutes or regulations other than the Federal Acquisition Regulation or are required under executive orders. These are also known as declarations of ineligibility. These exclusions can relate to such matters as health care fraud, export control violations, or drug trafficking, which may render a party ineligible for specified government transactions or activities. These violations may be unrelated to federal contracts, grants, or assistance but may include sanctions that preclude the party from some or all procurement and nonprocurement transactions as set out in the statute or regulation.

²For example, both the Department of Health and Human Services and the Office of Personnel Management exclude some health care professionals.

Table 6: Department or Agency Actions Reported in EPLS and Cases, Fiscal Years 2006 through 2010

Department/agency	Total EPLS actions	Total cases
Department of Agriculture	235	148
Department of Commerce	0	0
Department of Defense	6,110	1,616
Department of Education	180	176
Department of Energy	212	82
Department of Health and Human Services	15,424	15,400
Department of Homeland Security	487	408
Department of Housing and Urban Development	1,552	1,141
Department of Justice	4,417	4,412
Department of Labor	307	167
Department of State	236	189
Department of the Interior	153	104
Department of the Treasury	4,987	2,133
Department of Transportation	320	204
Department of Veterans Affairs	17	17
Environmental Protection Agency	887	588
General Services Administration	1,161	270
National Aeronautics and Space Administration	52	42
National Science Foundation	41	41
Office of Personnel Management	4,242	1,503
Social Security Administration	2	1
U.S. Agency for International Development	38	37
All other agencies	617	279
Total	41,677	28,958

Source: GAO analysis of EPLS data.

Notes: This table lists departments and agencies with over \$2 billion in contract obligations for fiscal years 2006 through 2010. "All other agencies" include those agencies with less than \$2 billion in contract obligations. Cases include both suspension and debarment and other exclusion cases.

We analyzed the activities of all agencies listed in EPLS. We assessed the reliability of EPLS data by performing electronic testing, reviewing system documentation, and interviewing knowledgeable officials about data quality and reliability, and determined that the data were sufficiently reliable for the purpose of this review.

To determine the relationship, if any, between selected agency practices and the level of suspension and debarment activity, we identified

agencies with more than \$1 billion in contract obligations and their total number of procurement-related suspension and debarment cases in fiscal year 2009.³ These agencies are listed in table 7. We selected a mix of these agencies, including the Defense Logistics Agency, the Department of the Navy, the General Services Administration, and the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement—all of which had relatively more cases involving federal procurement than other agencies—and the Departments of Commerce, Health and Human Services, Justice, State, and the Treasury, and DHS's Federal Emergency Management Agency—all of which had relatively few or no exclusions involving federal procurements.⁴ We selected these agencies based on the number of suspension and debarment cases and whether the agency had recently been reviewed by its inspector general. The Inspectors General for the Departments of Defense and Justice were reviewing the agency suspension and debarment processes at the time of our review. We closely coordinated our reviews to minimize any duplication of effort.

³Fiscal year 2009 was the most recent full year of contract obligations data available at the beginning of our review.

⁴We included two components for the Department of Defense and DHS because each had its own suspension and debarment official as well as its own guidance and procedures.

Table 7: Departments or Agencies with Contract Obligations Greater Than \$1 Billion, Fiscal Year 2009

Agencies	Total contract obligations (dollars in billions)	Percentage of total government obligations	Total number of procurement-related suspension and debarment cases (fiscal year 2009)
Department of the Army	\$133.4	24.7	132
Department of the Navy	95.4	17.6	58
Department of the Air Force	67.8	12.5	127
Defense Logistics Agency	38.0	7.0	89
All other defense activities	38.9	7.2	1
Department of Energy	31.7	5.9	12
Department of Health and Human Services	20.2	3.7	0
General Services Administration	15.5	2.9	58
National Aeronautics and Space Administration	15.2	2.8	12
Department of Veterans Affairs	14.8	2.7	0
U.S. Immigration and Customs Enforcement	2.1	0.4	28
Federal Emergency Management Agency	1.7	0.3	0
All other Department of Homeland Security activities	10.4	1.9	0
Department of Justice	7.5	1.4	4
Department of State	7.5	1.4	1
U.S. Agency for International Development	6.1	1.1	0
Department of Transportation	5.5	1.0	0
Department of Agriculture	5.4	1.0	1
Department of the Treasury	4.9	0.9	0
Department of the Interior	4.3	0.8	32
Department of Commerce	3.2	0.6	0
Department of Labor	2.0	0.4	0
Environmental Protection Agency	1.8	0.3	0
Department of Education	1.5	0.3	0
Social Security Administration	1.3	0.2	0
Office of Personnel Management	1.2	0.2	0
All other agencies	3.5	0.6	69
Total	\$540.8	100^a	624

Source: GAO analysis of Federal Procurement Data System–Next Generation data and EPLS data.

^aPercentages may not add to total because of rounding.

At the 10 selected agencies, we identified certain attributes of the suspension and debarment process, including the organizational placement of the suspension and debarment official, staffing and training, formal or informal process, and the referral process, including triggering events. We conducted a comparative analysis to identify attributes that agencies with relatively more cases involving federal procurements have in common that are not present at agencies with few or no cases. To help identify attributes associated with a more active suspension and debarment program, we reviewed agency inspector general reports identifying needed improvements and met with representatives of the Council of the Inspectors General on Integrity and Efficiency's (CIGIE) Suspension and Debarment Working Group⁵ and the Interagency Suspension and Debarment Committee.

To identify governmentwide efforts to oversee and coordinate the use of suspension and debarment, we met with officials from the Office of Management and Budget, which provides overall direction of governmentwide procurement policies;⁶ the Interagency Suspension and Debarment Committee; CIGIE's Suspension and Debarment Working Group; and the General Services Administration, which manages and maintains the governmentwide EPLS. We also met with or obtained information from suspension and debarment and inspector general officials at the 10 selected agencies.

We conducted this performance audit from September 2010 to August 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe

⁵The Inspector General Reform Act of 2008, Pub. L. No. 110-409, established CIGIE as an independent entity within the executive branch to address integrity, economy, and effectiveness issues that transcend individual government agencies and to increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in establishing a well-trained, highly skilled workforce in the offices of the inspectors general. The Suspension and Debarment Working Group was formed in summer 2010 as part of the CIGIE Investigations Committee to raise the overall profile and expand the use of suspension and debarment.

⁶The Office of Federal Procurement Policy in the Office of Management and Budget provides overall direction of governmentwide procurement policies, including procurement suspension and debarment. 41 U.S.C. § 1101.

that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Causes for Suspension or Debarment

The Federal Acquisition Regulation (FAR) provides numerous potential causes for debarment, which are based on criminal convictions, civil judgments, or a preponderance of the evidence, as shown in table 8.¹ The existence of a cause for debarment does not require that a firm or an individual be debarred. In determining whether it is in the government's interest to debar the firm or an individual, the agency suspension and debarment official should consider the seriousness of the acts or omissions, any remedial measures, and mitigating factors. This official may impose a suspension pending the completion of an investigation or legal proceeding, when immediate action is necessary to protect the government's interest. A suspension may be based on adequate evidence² of most of the causes for debarment listed in table 8.³

¹FAR § 9.406-2.

²In assessing the adequacy of the evidence, agencies should consider how much information is available, how credible it is given the circumstances, whether important allegations are corroborated, and what inferences can reasonably be drawn as a result. Indictment for any of the causes specified in FAR § 9.407-2 (a) constitutes adequate evidence for suspension.

³Letters f. and l. in table 8 are not included in the causes for suspension listed at FAR § 9.407-2.

Table 8: Causes for Debarment Listed in FAR § 9.406-2

A contractor may be debarred for a criminal conviction or a civil judgment for:

- a. Commission of fraud or criminal offense related to obtaining, attempting to obtain, or performing a public contract or subcontract.
- b. Violation of federal or state antitrust statutes relating to the submission of offers.
- c. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal criminal tax laws, or receiving stolen property.
- d. Intentionally affixing a false "Made in America" label to a product not made in the United States.
- e. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a government contractor or subcontractor.

A contractor may be debarred based upon a preponderance of the evidence for:

- f. Serious violation of terms for one or more government contracts or subcontracts, such as willful failure to perform, history of failure to perform, or history of unsatisfactory performance.
- g. Certain violations of the Drug-Free Workplace Act
- h. Intentionally affixing a false "Made in America" label to a product not made in the United States.
- i. Commission of an unfair trade practice, including certain violations of the Tariff Act of 1930 (19 U.S.C. 1337), certain violations of the Export Administration Act or similar export agreement, or knowingly making a false statement about a major element in the foreign content certification of a supply item.
- j. Delinquent payment on finally determined federal tax liability in excess of \$3,000.
- k. Knowing failure by a principal to timely disclose to the government, in connection with award, performance, or closeout of contract or subcontract, credible evidence of violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations; violation of civil False Claims Act; or significant overpayment(s) on the contract.

A contractor may also be debarred based upon:

- l. A determination by the Secretary of Homeland Security or U.S. Attorney General that the contractor is not in compliance with Immigration and Nationality Act employment provisions.
- m. Any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

Source: GAO analysis of the FAR.

Appendix III: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

July 21, 2011

Mr. William T. Woods
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Woods:

Thank you for the opportunity to comment on the draft report from the U.S. Government Accountability Office (GAO) entitled, *Suspension and Debarment: Some Agency Programs Need Greater Attention and Governmentwide Oversight Could be Improved* (GAO-11-739).

We generally concur with the report's findings and recommendations and are already taking action to implement the recommendations associated with developing detailed implementing guidance and promoting the use of a case referral process. However, due to the size of our organization and anticipated level of suspension and debarment activity, we do not believe it would be cost effective relative to the risk for the Department of Commerce to assign dedicated full time staff resources to the suspension and debarment program. We have created a Suspension and Debarment Coordinator function as an additional duty that will be the administrative point of contact to insure the processes and procedures are followed and referrals are processed in a timely manner. We believe this will meet the intent of the recommendation without additional resource requirements.

If you have questions regarding this response, please contact Barry E. Berkowitz in the Office of Acquisition Management at (202) 482-4248,

Sincerely,

A handwritten signature in cursive script that reads "Gary Locke".

Gary Locke

Appendix IV: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

William T. Woods
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street N.W.
Washington, DC 20548

JUL 21 2011

Dear Mr. Woods:

Attached are comments on the U.S. Government Accountability Office's (GAO) draft report entitled, "SUSPENSION AND DEBARMENT: Some Agency Programs Need Greater Attention and Governmentwide Oversight Could Be Improved" (GAO 11-739).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

A handwritten signature in black ink that reads "Jim R. Esquea".

Jim R. Esquea
Assistant Secretary for Legislation

Attachment

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED, "SUSPENSION AND DEBARMENT: SOME AGENCY PROGRAMS NEED GREATER ATTENTION AND GOVERNMENTWIDE OVERSIGHT COULD BE IMPROVED" (GAO-11-739)

The Department appreciates the opportunity to review and comment on this draft report.

GAO Recommendation

We recommend that the Secretary of Health and Human Services take steps to improve its suspension and debarment programs by:

- assigning dedicated staff resources
- developing detailed implementing guidance, and
- promoting the use of a case referral process

HHS Response

The Department has reviewed the findings and recommendations made by GAO. The Department's Office of Grants and Acquisition Policy and Accountability, which is led by HHS' Suspending and Debarment Official, will work with HHS' Office of Inspector General to develop detailed implementing guidance, including a case referral process. The Department will utilize existing resources to support these and other assigned duties rather than assigning dedicated staff resources.

Appendix V: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

July 19, 2011

William T. Woods
Director, Acquisition and Sourcing Management
441 G Street, NW
U.S. Government Accountability Office
Washington, DC 20548

Re: Draft Report GAO-11-739 "SUSPENSION AND DEBARMENT: Some Agency Programs Need Greater Attention and Government-wide Oversight Could Be Improved"

Dear Mr. Woods:

Thank you for the opportunity to review and provide comments on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO's) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's positive recognition that the U.S. Immigration and Customs Enforcement (ICE) Suspension and Debarment office has many of the attributes found in successful Suspension and Debarment Programs. In the brief period since the office was established, DHS has been impressed with ICE's Suspension and Debarment accomplishments and intends to build on those successes as DHS establishes a single department-wide Suspension and Debarment program.

The draft report contained one recommendation directed at DHS, with which DHS concurs. Specifically, GAO recommended that the Secretary of Homeland Security, as part of ongoing efforts to establish a Department-wide program for suspensions and debarments, take steps to:

Recommendation 1: Ensure that the Federal Emergency Management Agency (FEMA) incorporates the characteristics we identified as common among agencies with more active programs.

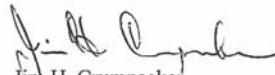
Response: Concur. As acknowledged in GAO's report, DHS is in the process of developing a Department-wide suspension and debarment policy and program. DHS is committed to ensuring this program has the same characteristics as the successful programs GAO reviewed. FEMA's current suspension and debarment process will be transitioned to DHS's new suspension and debarment program. The new program will have a dedicated trained workforce that coordinates with contracting officers, grant officers, the DHS Office of the Inspector General (OIG), and other DHS investigative units. It will also have formal policies and procedures published and available for all DHS employees. The newly developed office and processes will make coordination quicker and easier to ensure more effective

**Appendix V: Comments from the Department
of Homeland Security**

coordination of cases for potential suspension or debarment action, as appropriate. In this way, DHS's new program will implement all the characteristics GAO identified as present in robust suspension and debarment programs.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. We look forward to working with you on future Homeland Security issues.

Sincerely,



Jim H. Crumpacker
Director
Departmental GAO/OIG Liaison Office

Appendix VI: Comments from the Department of Justice



U.S. Department of Justice

Washington, D.C. 20530

July 20, 2010

William T. Woods
Director, Acquisition and Sourcing
United States Government Accountability Office
Washington, DC 20548

Dear Mr. Woods:

The Department of Justice (Department) has reviewed the Government Accountability Office's (GAO's) draft report "*Suspension and Debarment: Some Agency Programs Need Greater Attention and Governmentwide Oversight Could be Improved*," GAO-11-739 (Report). The Department concurs with much of the Report's findings and conclusions, and in particular with the Report's emphasis on the need for agencies to devote sufficient attention to suspension and debarment in order to ensure that agencies conduct business with responsible parties only. The Department's comments on the Report's recommendations follow.

Recommendations. The Report recommends that the Attorney General and the Secretaries of Commerce, Health and Human Services, State, and the Treasury take steps to improve their suspension and debarment programs by (1) promoting the use of the case referral process; (2) assigning a dedicated suspension and debarment program with full-time staff; and (3) developing additional detailed policies and procedures to supplement the guidance contained in the Federal Acquisition Regulation (FAR). The Report also recommends that the Director of the Office of Management and Budget (OMB) direct the Administrator of the Office of Federal Procurement Policy (OFPP) to issue governmentwide guidance (4) describing the elements of an active suspension and debarment program and (5) emphasizing the importance of cooperating with the Interagency Suspension and Debarment Committee (ISDC).

The Department's Response: As an initial matter, the Department notes that the Report's recommendations are based on a review of the "shared traits" of the four agencies with the greatest number of suspension and debarment cases for fiscal years 2006-2010, as identified in the General Service Administration's (GSA's) Excluded Parties List System (EPLS).¹ The Report does not address in detail the policies and practices of the other federal agencies, including the Department. Additionally, the Report does not consider certain factors that may

¹ While the total number of suspension and debarment cases identified in the Report for the Department during this time period appears accurate, the division between procurement and non-procurement cases appears to be inaccurate, likely the result of EPLS coding errors. The Department understands that GSA is considering changes to the EPLS.

William T. Woods
Page 2

impact the number of suspension and debarment cases, including, for example, the total number of contractors and grantees conducting business with an agency, or the types of products or services being acquired by an agency. Importantly, the Report acknowledges that, because agency missions and organizational structures are unique, each agency must determine for itself the extent to which it can benefit from adopting the characteristics of these four agencies.

Promoting the Case Referral Process. The Department agrees with the Report's recommendation that senior agency officials actively promote and encourage the suspension and debarment case referral process, and it intends to implement this recommendation. The Department intends to issue memoranda to all component heads, emphasizing suspension and debarment as an important tool to protect the Government. The memoranda also will remind all potential referring components, including contracting, grant-making, investigating, and litigating activities, of the Department's procedures when a cause for suspension or debarment arises. The Department believes that implementation of this recommendation should significantly improve its suspension and debarment program.

Assigning Dedicated Full-time Staff. The Department does not believe that assigning dedicated full-time staff to its suspension and debarment program is necessary or practical at this time. First, the Department appreciates the importance of conducting business with responsible parties and the important role of suspension and debarment. Second, given the current fiscal environment, including a hiring freeze, it is impractical to hire new staff at this time. Third, given budget constraints, the Department anticipates that the amount of obligations for both contracts and grants likely will be reduced in the near term, thereby reducing the overall number of contractors and grantees conducting business with the Department, which in turn likely will curtail the overall level of suspension and debarment activity. Finally, the Department believes that implementing the Report's recommendation to actively promote the case referral process, in combination with existing policy and procedures, will demonstrate both within and outside the Department that the Department is serious about holding entities with which it does business accountable.

Additional Policies & Procedures. The Department relies upon a number of guidelines in its suspension and debarment program, including the FAR, the Justice Acquisition Regulation (JAR), the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement), and the Justice Non-procurement Debarment and Suspension Regulations. The U.S. Attorneys' Manual (USAM) also contains guidance regarding the coordination of criminal, civil, and administrative actions, including emphasizing the need for timely and effective communication with suspension and debarment authorities. The JAR specifically outlines the Department's internal process when a possible cause for suspension or debarment is shown, including directing the contracting activity to seek review by the activity's legal counsel and Procurement Chief. Indeed, it is the Department's experience that when a possible cause for suspension or debarment surfaces, the contracting or grant-making activity typically contacts its legal counsel early in the process. If the contracting or grant-making activity decides that

William T. Woods
Page 3

additional fact-finding is required, the matter is then referred to the Department's Office of the Inspector General (OIG), which investigates and, after consultation with the referring activity, refers the matter directly to the Department's suspension and debarment official. The Department believes that the current regulations and guidelines, coupled with the Department's implementation of the Report's recommendation to actively promote the referral process, will provide sufficient guidance to referring activities of the Department's suspension and debarment policies and procedures without unnecessary duplication.

OFPP Guidance and Cooperation with the ISDC. The Department concurs with the Report's recommendations directed to the OMB, including encouraging agencies to cooperate with the ISDC (and two Department employees currently participate in the activities of the ISDC).

The Department appreciates the opportunity to comment on the GAO's draft report. Should you have any questions regarding this topic, including the Department's comments, please do not hesitate to contact Richard Theis, Department of Justice, Audit Liaison, on (202) 514-0469.

Sincerely,



Lee J. Lofthus
Assistant Attorney General
for Administration

Appendix VII: Comments from the Department of State



United States Department of State

Chief Financial Officer

Washington, D.C. 20520

Ms. Jacquelyn Williams-Bridgers
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

JUL 22 2011

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "SUSPENSION AND DEBARMENT: Some Agency Programs Need Greater Attention and Governmentwide Oversight Could be Improved," GAO Job Code 120934.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Daniel Walt, Procurement Analyst, Bureau of Administration, Office of the Procurement Executive at (703) 516-1696.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Millette".

James L. Millette

cc: GAO – William T. Woods
A – William A. Moser
State/OIG – Evelyn Klemstine

Department of State Comments on GAO Draft Report

SUSPENSION AND DEBARMENT:
Some Agency Programs Need Greater Attention, and
Governmentwide Oversight Could Be Improved
(GAO-11-739, GAO Code 120934)

Thank you for the opportunity to comment on your draft report entitled, *Suspension and Debarment: Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could be Improved*. The Department of State recognizes the importance of maintaining strong suspension and debarment processes to maintain the integrity of our supply chain and help keep non- and poor performers from continuing to receive government contracts and grants.

GAO recommends the Secretary of State take the following steps to improve our suspension and debarment programs. We agree with all of these recommendations and provide the following additional responses:

1. **Assign dedicated staff resources.** We will review current staffing levels and pursue any needed staffing level changes in light of current departmental priorities.
2. **Develop detailed implementing guidance.** We will draft guidance that will provide more detailed information to Contracting Officers and others regarding the debarment and suspension process.
3. **Promote the use of a case referral process.** We will publish guidance to our acquisition community (both domestic and overseas) regarding when and how to refer a contractor or grantee for possible suspension or debarment.

Appendix VIII: Comments from the Department of the Treasury



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JUL 20 2011

William T. Woods
Director, Acquisition and Sourcing Management
Government Accountability Office
441 G Street NW
Washington, DC 20548

Re: GAO Draft Report GAO-11-739

Dear Mr. Woods:

I have reviewed the draft report entitled *Suspension and Debarment: Some Agency Programs Need Greater Attention and Governmentwide Oversight Could be Improved* (GAO-11-739) and I am pleased to offer comments on behalf of the Treasury Department.

We agree with GAO's recommendations, and plan to leverage to the extent possible the practices identified in the report in use by other agencies to deploy more detailed implementing guidance and a better defined case referral process. We will also leverage Departmental and other available federal resources to promote the responsible use of suspension and debarment tools.

With regard to GAO's recommendation on dedicated resources, Treasury has a total of eight staff to cover all the legislated requirements for use of procurement authority, including suspension and debarment. Due to budget forecasts, however, there appears to be little probability of obtaining additional resources. We will, however, examine existing resources to ensure they are being used to maximum efficiency for suspension and debarment activities.

The Treasury Department appreciates the opportunity to review and respond to the draft report. Please contact me on 202- 622-1039, or Thomas.Sharpe@do.treas.gov if you have any questions in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "TAS", followed by a stylized flourish.

Thomas A. Sharpe, Jr.
Senior Procurement Executive
Department of the Treasury

cc: Mike Lewis, Sr. Advisor to the ASM & CFO

Appendix IX: GAO Contact and Staff Acknowledgments

GAO Contact

William T. Woods, (202) 512-4841 or woodsw@gao.gov

Staff Acknowledgments

In addition to the contact named above, John Neumann, Assistant Director; Noah Bleicher; Morgan DelaneyRamaker; Angela Pleasants; Russ Reiter; Raffaele (Ralph) Roffo; Roxanna Sun; and Bradley Terry made key contributions to this report.

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