



**STATEMENT OF
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DEPARTMENT OF HEALTH
AND HUMAN SERVICES**

**BEFORE THE
SUBCOMMITTEE ON TECHNOLOGY, INFORMATION
POLICY, INTERGOVERNMENTAL RELATIONS AND
PROCUREMENT REFORM
UNITED STATES
HOUSE OF REPRESENTATIVES**

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Chairman Lankford, Ranking Member Connolly, and Members of the Subcommittee, thank you for this opportunity to appear before you to discuss the Department of Health and Human Services' (HHS) grants and acquisition policies and practices; and, in particular, its use of suspensions and debarments in its oversight practices. As the Deputy Assistant Secretary for HHS' Grants and Acquisition Policy and Accountability, I serve as the Department's Suspension and Debarment Official and am the lead executive responsible for the management, administration and oversight of the HHS grants and acquisition programs. I supervise the Department's Senior Grants Policy and Senior Procurement Executives. I also oversee and support thirteen grants management offices and ten procurement activities within HHS.

HHS Office of Grants and Acquisition Policy and Oversight

My office, which is known as the Office of Grants and Acquisition Policy and Accountability, or OGAPA, provides Department-wide leadership in the areas of grants and acquisition management through: (1) policy development; (2) performance measurement; (3) oversight; and (4) workforce training, development, and certification. HHS is the Federal government's largest grant-making organization and third largest Department in federal contracting. As a result, my staff and I are actively involved in Government-wide governance bodies involving grant or acquisition priorities, policies, and systems; such as the Grants Policy Council, Chief Acquisition Officer's Council, and the Interagency Suspension and Debarment Committee. OGAPA also represents the Department in coordinating with the Office of Management and Budget, the Government Accountability Office (GAO), Congress, and other Federal agencies in the area of grants and acquisition policies and management. It is within this context, and in my role as the Department's Suspension and Debarment Official, that I join you today. We appreciate the work of this Subcommittee and GAO in highlighting policies and practices from which HHS may learn; to include: (1) dedicated staff resources, (2) detailed implementation guidance, and (3) an active case referral process.

Scope of HHS' Grants and Acquisition Programs

In fiscal year 2010, HHS' grants management and contracting offices awarded over \$368 billion in grants and \$19 billion in contract dollars, respectively. HHS' mission is to enhance the health and well-being of Americans by providing for effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services. HHS accomplishes its mission through several hundred programs and initiatives that cover a wide spectrum of activities, serving the American public at every stage of life and ranging from researching life-saving new cancer therapies to supporting Head Start grantees in providing children a better start in life.

Summary of HHS' Suspension and Debarment Activities

Fighting fraud and ensuring program integrity are central to fulfilling the Department's mission. The Department is committed to the effective use of suspension and debarment as a tool to support successful grant and acquisition management. HHS debarred 29 grant recipients, between 2006 and 2010; and in fiscal year 2011 debarred six grant recipients and executed one voluntary exclusion agreement. HHS has not suspended or debarred any of its contractors during this timeframe.

Suspensions and debarments are elements in the Department's broader effort to foster program integrity in its grants and contracts. We rely upon HHS' program, grant, and contracting officials to refer concerns; our Office of Inspector General and Office of Research Integrity to investigate those cases; and Office of the General Counsel to provide advice on prospective suspension and debarment actions. HHS is in the process of strengthening its suspension and debarment referral process.

HHS focuses its resources on comprehensive grantee and contractor selection and grant and contract administration processes, which help ensure satisfactory performance and reduce the need to resort to suspension and debarment. By strengthening the relevant policies and referral processes, and through increased training and awareness, HHS believes that its existing staff will be even better positioned to recognize fraud, waste, abuse and refer those cases to the proper authorities.

Grant Policies and Related Cases

The HHS grants community fosters program integrity through four dimensions of grant administration practices: (1) preventing fraud, waste, and abuse; (2) ensuring timely detection of inappropriate activities through routine monitoring & reporting procedures; (3) fostering compliance by providing technical assistance to grantees; and (4) facilitating corrective actions to address questionable activities or poorly performing grantees. HHS utilizes statutes, regulations, and Departmental policies to ensure that its grant programs are administered so that Federal dollars are given to the appropriate recipient, are spent on the appropriate types of activities, and facilitate delivery of high quality products and services to ensure meaningful outcomes that benefit the public. HHS follows the rules in the Code of Federal Regulations governing nonprocurement debarment and suspension, and further implements those regulations through HHS' Grants Policy Statement. Nonprocurement transactions include grants and cooperative agreements as well as scholarships, fellowships, and loan.

HHS divides the lifecycle of grant administration into two basic segments – pre-award and post award activities. In the pre-award phase, HHS employs a deliberative and objective process to review grant applicants and their capability to be successful, fiscally responsible, and ethical in determining eligibility for award. My office has recently reviewed HHS' policies that govern these processes, and we are making changes to strengthen them. Additionally, we have used surveys to determine whether our agencies are conducting risk assessments prior to making new and continuing awards by checking the Excluded Parties List System and other databases – and received favorable results. Across both phases of the grant lifecycle, HHS utilizes planning, education and communication, risk assessments and analysis, monitoring, reporting, technical assistance, and enforcement actions to facilitate strong program integrity, fiscal stewardship, and timely detection of inappropriate activities.

HHS' recent grant debarment cases were based on embezzlement and the submission of fraudulent invoices, as investigated by our Office of Inspector General; and scientific misconduct such as fabricating data or falsifying research, as investigated by our Office of Research Integrity in cooperation with the affected universities and research institutions.

Contract Policies and Related Cases

HHS follows the rules in Federal Acquisition Regulation (FAR) governing suspensions and debarments for acquisitions. HHS has issued additional guidance in the HHS Acquisition Regulation (HHSAR) regarding suspensions and debarments.

HHS strives to award contracts only to responsible sources by complying with the FAR, which includes researching the federal-wide databases available – such as the Excluded Parties List System – and determining if potential awardees have: (1) adequate financial resources to perform the contract; (2) the ability to comply with the required or proposed delivery or performance schedule; (3) a satisfactory record of performance, integrity and business ethics; and (4) the necessary organization, experience, accounting and operational controls, and technical skills.

Additionally, we manage risks to successful contractor performance by: (1) assigning a Contracting Officer's Representative to contracts; (2) scrutinizing contractor invoices and verifying through our receipt and acceptance processes that contract performance requirements have been met; (3) leveraging the termination procedures in the FAR by issuing cure notices and/or show cause notices as appropriate when performance issues arise; and (4) terminating for default those contracts where these steps have failed to overcome performance issues.

From fiscal year 2009 to date, HHS has terminated approximately 12 contracts for default. HHS' Heads of Contracting Activity have verified that, in each of these cases, none of the associated performance issues rose to the level of either suspension or debarment and none were based on such concerns as fraud or the lack of business integrity.

Interagency Coordination Efforts

As a standing member of the Interagency Suspension and Debarment Committee (ISDC), HHS representatives attend and participate in the ISDC. HHS agrees with the GAO that the ISDC could be strengthened and is committed to supporting the Office of Federal Procurement Policy and the ISDC in their efforts to issue Government-wide guidance for an active suspension and debarment program and to emphasize the importance of cooperating with the ISDC.

Improvement Plans

In light of GAO's recommendations, and in an effort to strengthen our suspension and debarment process, HHS is working with its Office of Inspector General to develop more detailed policies and implementing guidance. This will include a case referral process that can be leveraged by HHS' grants and acquisition communities. We are also in discussions on how best to dedicate staff and resources toward suspension and debarment and related oversight activities.

To further promote integrity in our grant programs, we are: (1) reviewing and revising HHS' existing grants policies to clarify the policy, procedures, and actions for reducing the risk of fraud, waste, and abuse – such as suspension and debarments – and addressing problematic grantees; (2) developing and requiring special award conditions for grantees that have performed poorly; and (3) reinstating the *HHS Alert List* to share information across HHS' grants management offices on poorly performing grantees.

To enhance our acquisition practices, HHS is: (1) assessing the policies and practices of other agencies for contract-related suspensions and debarments to tailor best practices to our organization and issue detailed policy and procedures, and (2) creating an electronic desk reference to implement the new policy and provide contracting officers with associated reference materials and uniform decision-making tools regarding referrals for suspensions and debarments, financial responsibility determinations, and other performance remedies.

Additionally, HHS plans to establish an electronic case referral and tracking process for both grant and contract-related concerns, which will enable HHS to better monitor and follow through on each case and identify consistent themes or vulnerabilities. Finally, these policies and practices will be reinforced through communication and training to ensure the HHS grants and acquisition communities understand their responsibilities and are able to identify and refer cases of fraud, misconduct, and abuse of the public's trust in the Department's grant and acquisition programs.

Conclusion

HHS strongly agrees with the need to protect taxpayer dollars and is committed to using its grants and acquisition management practices to serve as a careful steward of these funds. Suspensions and debarments, which exclude firms or individuals from receiving federal funds, are useful tools in this regard. Because of the serious nature of these remedies, and the consequences that they hold for firms and individuals, HHS only employs suspensions and debarments when absolutely needed to protect the interests of the Government. That said, HHS is actively working to strengthen its grant and acquisition-related suspension and debarment policies and referral process, and we appreciate the work of this Subcommittee and GAO in highlighting policies and practices at other agencies from which HHS may learn.

Thank you for the opportunity to testify before the Subcommittee about HHS' use of suspension and debarment in dealing with its grantees and contractors. I am glad to answer any questions you may have.

Nancy Gunderson is the Deputy Assistant Secretary for the Office of Grants and Acquisition Policy and Accountability (OGAPA) for the U.S. Department of Health and Human Services (HHS). Nancy joined HHS in February 2009, and served as the Acting Deputy Assistant Secretary for OGAPA since it was formed in November 2009, and previously for the Office Acquisition Management and Policy. In these roles she served as HHS' Senior Procurement Executive, and now oversees HHS' Senior Procurement Executive and HHS' Senior Grants Policy Executive. She provides Department-wide leadership in grants and acquisition through policy development, performance measurement and training and fosters creativity and innovation in the conduct of these functions throughout the Department.

Before coming to HHS, Nancy was the Director of Acquisition Operations for the Federal Emergency Management Agency and provided guidance and oversight for acquisitions awarded in support of the agency's mission. She also held several positions within the Department of Defense where she developed the Human Capital Strategic Plan for the Acquisition, Technology and Logistics Workforce; established Department's first governance board for Strategic Sourcing; and supported several E-Business transformation initiatives. Nancy led the Contracting efforts within the Pentagon Renovation Program from June 2000 through September 2004. For her efforts in rebuilding the Pentagon, she was awarded the Elmer B. Staats Young Federal Acquisition Professional Award in 2003. These accomplishments followed her professional development and training in the Navy's contracting career intern program and as a contracting officer for several Navy weapon systems programs.

She obtained a Bachelor of Arts Degree from St. Lawrence University, and benefitted from Executive Leadership development at the Federal Executive Institute as well as Masters-level courses in Public Administration through the University of California at San Bernardino.