



Testimony
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Government Reform, House of
Representatives

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SUSPENSION AND DEBARMENT

Characteristics of Active Agency Programs and Governmentwide Oversight Efforts

Statement of John Neumann, Acting Director
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GAO Highlights

Highlights of [GAO-13-707T](#), a testimony before the Committee on Oversight and Government Reform, House of Representatives

Why GAO Did This Study

Spending on contracted goods and services was more than \$517 billion in 2012. To protect the government's interests, federal agencies are required to award contracts only to responsible sources. One way to protect the government's interest is through the use of 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 disqualification from government contracting, while a debarment is an exclusion for a specified period.

This testimony is based on reports GAO issued in August 2011 and September 2012 and addresses (1) characteristics of suspension and debarment programs at selected agencies and (2) governmentwide efforts to oversee and coordinate the use of suspensions and debarments. In 2011, GAO assessed suspension and debarment programs at 10 agencies from among those having more than \$1 billion in contract obligations in fiscal year 2009. In 2012, GAO reviewed the extent to which DOD had processes for identifying and referring cases of contractor misconduct for possible suspension and debarment.

GAO is not making any new recommendations, but made several recommendations in prior reports on this topic. Agencies agreed with those recommendations and several have taken steps to implement them.

View [GAO-13-707T](#). For more information, contact John Neumann at (202) 512-4841 or neumannj@gao.gov.

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SUSPENSION AND DEBARMENT

Characteristics of Active Agency Programs and Governmentwide Oversight Efforts

What GAO Found

While each agency's suspension and debarment program that GAO reviewed in 2011 was unique, agencies with the most suspension and debarment activity shared certain characteristics. These included a dedicated suspension and debarment program and staff, detailed policies and procedures, and practices that encouraged an active referral process.

- Dedicated suspension and debarment program and staff. Each of the four agencies with the most suspension and debarment activity had a dedicated suspension and debarment program and staff, which according to agency officials, cannot be accomplished without the specific focus and commitment of an agency's senior officials.
- Detailed policies and procedures. The four most active agencies also developed agency-specific guidance that goes well beyond the suspension and debarment guidance in the Federal Acquisition Regulation (FAR). For example, these agencies had guidance that included details on conducting investigatory research, coordinating with other organizations, and evaluating contractor misconduct.
- Practices that encourage an active referral process. In addition, each of the four agencies engaged in practices that encourage an active referral process. For example, the General Services Administration (GSA) Office of Inspector General looked for and referred cases based on investigations and legal proceedings.

GAO also consistently found these characteristics among the four Department of Defense (DOD) components that it examined in 2012. In contrast, agencies that GAO reviewed in 2011 that did not have these characteristics generally had few or no suspensions or debarments of federal contractors. GAO recommended that these agencies take steps to improve their suspension and debarment programs ensuring that they incorporate the characteristics identified as common among agencies with more active programs. Several agencies have taken actions to implement these recommendations.

GAO also reported in 2011 that governmentwide efforts to oversee and coordinate the use of suspensions and debarments faced challenges. Specifically, the Interagency Suspension and Debarment Committee (ISDC) relied on voluntary participation and not all agencies coordinated through the committee. To better coordinate and oversee suspensions and debarments, GAO recommended that the Office of Management and Budget's (OMB) Office of Federal Procurement Policy (OFPP) issue governmentwide guidance to ensure that agencies are aware of the elements of an active suspension and debarment program and the importance of cooperating with ISDC. In response, OMB directed the agencies to appoint a senior official responsible for the agency's suspension and debarment program and directed that this official ensure that the agency participates regularly on the ISDC. In its September 2012 annual report, ISDC noted improvements by most agencies to promote more active and effective suspension and debarment programs.



Chairman Issa, Ranking Member Cummings, and Members of the Committee:

I am pleased to be here to discuss the federal government's use of suspensions and debarments. Spending on contracted goods and services was more than \$517 billion in 2012. To protect the government's interests, federal agencies are required to award contracts only to responsible sources—those that are determined to have a satisfactory record of integrity and business ethics, and are capable of performing required work. One way to protect the government's interest is through the use of suspensions and debarments, which are actions taken to exclude firms or individuals from receiving contracts or assistance based on various types of misconduct. The Federal Acquisition Regulation (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.

Even though the FAR specifies numerous causes for suspensions and debarments, including fraud, theft, bribery, tax evasion, or lack of business integrity, the existence of one of these does not necessarily require that the party be suspended or debarred. There are various tools that protect the government's interests, including civil and criminal penalties that may be imposed for contracting fraud and other violations. Suspensions and debarments are not a punishment, but instead are to ensure that agencies only award contracts to responsible contractors. Agencies are to establish procedures for prompt reporting, investigation, and referral to the agency suspension and debarment official. Parties that are suspended, proposed for debarment, 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.

My testimony today is based on reports we issued in August 2011 and September 2012 and addresses (1) characteristics of suspension and debarment programs at selected agencies and (2) governmentwide efforts to oversee and coordinate the use of suspensions and debarments.

In 2011, we assessed suspension and debarment programs at 10 agencies from among those having more than \$1 billion in contract obligations in fiscal year 2009.¹ These agencies included:

- Defense Logistics Agency (DLA);
- Department of Commerce (Commerce);
- Department of Health and Human Services (HHS);
- Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) and Federal Emergency Management Agency (FEMA);
- Department of Justice (Justice);
- Department of the Navy (Navy);
- Department of State (State);
- Department of the Treasury (Treasury); and
- General Services Administration (GSA).

In 2012, we reviewed the extent to which the Department of Defense (DOD) had processes for identifying and referring cases of contractor misconduct for possible suspension and debarment at the Departments of the Air Force, Army, and Navy, and DLA.² The reports that this statement is based on include detailed information about our scope and methodology. Our work was performed in accordance with generally accepted government auditing standards.

¹ GAO, *Suspension and Debarment: Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved*, [GAO-11-739](#) (Washington, D.C.: Aug. 31, 2011).

² GAO, *Suspension and Debarment: DOD Has Active Referral Processes, but Action Needed to Promote Transparency*, [GAO-12-932](#) (Washington, D.C.: Sept. 19, 2012).

Agencies with Greater Suspension and Debarment Activity Share Common Characteristics Missing at Agencies with Less Activity

While each agency suspension and debarment program we reviewed in 2011 was unique, the four with the most suspension and debarment activity—DLA, Navy, GSA, and ICE—shared certain characteristics. These include:

- a dedicated suspension and debarment program and staff,
- detailed policies and procedures, and
- practices that encourage an active referral process.

Dedicated suspension and debarment program and staff.

Officials from these four agencies stated that having dedicated staff cannot be accomplished without the specific focus and commitment of an agency's senior officials. The existence of dedicated staff was evident at selected agencies in our 2011 governmentwide review. For example GSA had dedicated staff to refer suspension and debarment cases and coordinate with internal offices. In our review of DOD in 2012, each of the four DOD components we reviewed also had dedicated staff, including attorneys and support staff, to monitor and ensure the coordination of remedies for each significant investigation of contracting fraud.

Detailed policies and procedures.

Each of the four agencies with the most suspension and debarment activity in our 2011 review also developed agency-specific guidance that goes well beyond the suspension and debarment guidance in the FAR. For example, ICE's suspension and debarment program procedures included detailed guidance on conducting online database research, coordinating with other DHS components, preparing for legal review, and tracking cases in their database. DOD components we reviewed in 2012 also had guidance on the process for evaluating contractor misconduct. 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.

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. For example, in 2011 we noted that GSA's Office of Inspector General looked for and referred cases based on investigations and legal

proceedings. Also, ICE uses a case management system that allowed for tracking and followup on all referrals for consideration of suspension and debarment. This was also evident in 2012, when we found that all four DOD components we examined—the Air Force, Army, Navy, and DLA—had active processes to refer identified cases of contractor misconduct for appropriate action. Specifically, they used multiple sources to identify numerous cases of actual or alleged contractor misconduct and followed their procedures to refer them for appropriate action, including possible suspension and debarment. According to agency officials, 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.

The remaining six agencies we reviewed in 2011—HHS, FEMA, Commerce, Justice, State, and Treasury—did not have these three characteristics and had few or no suspensions or debarments of federal contractors. 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 encouraged an active referral process. We recommended that these agencies take steps to improve their suspension and debarment programs ensuring that they incorporate the common characteristics we identified among agencies with more active programs, including assigning dedicated staff resources, developing detailed implementing guidance, and promoting the use of a case referral process. Most of these agencies have taken actions to implement these recommendations. For example:

- HHS created the Office of Recipient Integrity Coordination that reports to the Suspension and Debarment Official and dedicated three full-time staff positions to this office. HHS has also developed detailed policies and procedures. To promote case referrals, the revised policies and practices will be reinforced through communication and training.
- DHS recently completed the transition to a department-wide suspension and debarment policy and program and designated a suspension and debarment official to establish, maintain, supervise, and exercise oversight of the suspension and debarment program.
- At Justice, the Senior Procurement Executive in a memorandum to its Procurement Chiefs emphasized suspension and debarment as a powerful administrative tool and summarized the law and the

department's procedures that govern suspensions and debarments. In addition, the department aligned all of its suspension and debarment activities under one division.

- State issued detailed policies and procedures for suspending or debarring contractors in its Debarment and Suspension Program Handbook. This handbook also describes the department's process for referring contractor misconduct or poor performance for consideration by the suspension and debarment official.

Governmentwide Efforts to Coordinate and Oversee Suspensions and Debarments

The Interagency Suspension and Debarment Committee (ISDC), established in 1986, monitors and coordinates the governmentwide system of suspension and debarment. The committee consists of representatives from agencies designated by the Director of the Office of Management and Budget (OMB).³ ISDC provides support to help agencies implement their suspension and debarment programs and serves as a forum for agencies to coordinate suspension and debarment actions. In 2011, we found that governmentwide efforts to oversee and coordinate suspensions and debarments faced a number of challenges. For example, according to ISDC officials, ISDC relied on voluntary agency participation in its informal coordination process, which worked well when used. However, we found that not all agencies coordinated through ISDC, and agencies without active suspension and debarment programs generally were not represented at monthly coordination meetings.

Since our 2011 report, the ISDC has taken actions to improve coordination and emphasize suspension and debarment governmentwide. For example, the ISDC has acted as a clearinghouse to provide training expertise; provided agencies with a sample practice manual and action documents, fact-finding procedures, and a case law compendium; and established a standing subcommittee dedicated to training. In addition, the ISDC established a subcommittee to review opportunities to improve practices and processes for coordinating suspension and debarment actions among agencies. In its September 2012 annual report, the ISDC noted improvements by most agencies to promote more active and effective suspension and debarment programs.

³ Standing members include each of the 24 agencies covered by the Chief Financial Officers Act. Nine independent agencies and government corporations also participate.

These included formally establishing suspension and debarment programs, dedicating staff resources, and simplifying processes for making referrals.

In 2011, we also noted that the suspension and debarment process could be improved governmentwide by building upon the existing framework to better coordinate and oversee suspensions and debarments. We recommended that the OMB's Office of Federal Procurement Policy (OFPP) issue governmentwide guidance to ensure that agencies are aware of the elements of an active suspension and debarment program and the importance of cooperating with ISDC. In response, in November 2011, the OMB directed the departments and agencies that are subject to the Chief Financial Officers Act to appoint a senior official who shall be responsible for, among other things, assessing the agency's suspension and debarment program, including the adequacy of available training and resources. OMB also directed that this official ensure that the agency participates regularly on the ISDC.

Chairman Issa, Ranking Member Cummings, and Members of the Committee, this concludes my statement. I would be pleased to respond to any questions that you or other members of the Committee may have.

Contacts and Acknowledgments

For questions about this statement, please contact John Neumann at (202) 512-4841 or NeumannJ@gao.gov. In addition, contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Individuals who made key contributions to this testimony are Russ Reiter, Bradley Terry, and Mary Quinlan.

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John Neumann is an Acting Director with 24 years of experience with the Government Accountability Office, where he has managed a diverse portfolio of audits of defense industrial base and government wide contracting issues. Mr. Neumann has produced a range of reports on topics such as export enforcement, counterfeit parts in the defense supply chain, and the suspension and debarment of federal government contractors.

Mr. Neumann holds a Juris Doctor from Georgetown University Law Center and a Masters in Business Administration from American University.