



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Evaluation and Inspection Services

June 22, 2012

Control Number
ED-OIG/I13L0001

Anthony W. Miller
Deputy Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Mr. Miller:

This final inspection report presents the results of our review of the U.S. Department of Education's (Department) nonprocurement suspension and debarment process and the Department's response to the results.

The objective of our inspection was to determine whether the nonprocurement and non-Federal Student Aid (FSA) suspension and debarment process within the Department results in timely suspension and debarment actions to protect the Federal interest. We found that the Department's two-tiered nonprocurement suspension and debarment process is inefficient and lacks the characteristics identified by the Government Accountability Office (GAO) as common across active and effective suspension and debarment programs.

BACKGROUND

The Federal suspension and debarment system is intended to protect the public interest and to ensure the integrity of Federal programs by conducting business with only responsible persons. Under the Governmentwide suspension and debarment rules for both procurements and nonprocurements, Federal agencies can use suspension and debarment to exclude from Federal programs individuals who are not presently responsible – that is, those who lack business integrity because they have engaged in specific illegal conduct or are otherwise unable to satisfactorily perform their responsibilities.

Suspension is a temporary status of ineligibility for nonprocurement as well as procurement transactions pending completion of an investigation or legal proceedings. Debarment is a final determination that an individual or entity is not presently responsible and therefore should not be

eligible to participate in nonprocurement as well as procurement transactions for up to 3 years.¹ The suspension and debarment requirements provide that these actions are to be used to protect the public interest and not as punishment.

In 1986, the President issued an Executive Order that directed Federal departments and agencies to “participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits.” In May 1987, the Office of Management and Budget (OMB) issued guidelines for such nonprocurement suspension and debarment systems. In May 1988, 27 agencies, including the Department of Education, published a Common Rule establishing a uniform system of suspension and debarment.

The Department’s version of the Common Rule for nonprocurement suspension and debarment was found at 34 Code of Federal Regulations (C.F.R.) Part 85. The Common Rule provides numerous causes for debarment, including criminal convictions, or civil judgments for certain offenses, or a preponderance of the evidence of a serious violation of a public agreement or certain other specified causes. A suspension may be based on an indictment or other adequate evidence of the causes for debarment.

The Department’s internal directive establishing additional procedures for nonprocurement suspensions and debarments sets forth the responsibilities of the “Debarring/Suspending Official.” In this directive, the Department has divided the Debarring/Suspending Official responsibilities between a “Notice Official” and a “Deciding Official,” resulting in a two-tiered process.² The Office of the General Counsel (OGC) is responsible for reviewing all notices of suspension and/or proposed debarment issued by the Notice Official and all decisions issued by the Deciding Official prior to issuance.³

The Risk Management Service (RMS) is responsible for processing all nonprocurement suspensions and debarments that do not relate to FSA programs. This process is initiated by referrals to RMS. Currently, all referrals to RMS for nonprocurement suspension and debarment actions result from OIG investigations. There are no referrals for suspension and debarment from program offices even though they may make such referrals under the regulations.

At the Department, the nonprocurement suspension and debarment process is composed of two distinct phases— the notice phase and the deciding phase.

The notice phase begins with the original referral for suspension or debarment. The Notice Official works with an OGC attorney assigned to the case to evaluate the merit of the referral and if appropriate, to develop a suspension and/or proposed debarment notice. Individuals receiving a notice have 30 days to submit comments in opposition to the suspension and/or proposed debarment.

¹ According to the Common Rule, an individual’s period of debarment should generally not exceed 3 years; however, the debarring official may impose a longer period of debarment if circumstances warrant.

² A “Fact-Finding Official” may conduct fact-finding proceedings for the Deciding Official, if necessary.

³ Notices and decisions related to Certified Public Accountant cases are handled by OIG.

An individual who chooses to respond to the notice submits comments to the Deciding Official, who provides those comments to the Notice Official for official response. The Notice Official again works with the OGC attorney initially assigned to the case to determine whether the original decision should be upheld or overturned as a result of the individual's comments.

The deciding phase begins after the Notice Official has provided an official written response to the Deciding Official and has forwarded a copy of that written response to the individual. If an individual chooses not to respond, the deciding phase begins after the 30-day response period has ended. During this phase, a second OGC attorney is assigned to review the case documentation and advise the Deciding Official in determining: (1) whether all of the critical elements are in place to support a suspension or debarment and (2) the length of the suspension or debarment period. The Deciding Official will either uphold the terms of the suspension or debarment in the original notice or change them based on the OGC's attorney's advice and the information in the entire case file, which includes the case facts, the individual's comments in opposition, and the Notice Official's written response.

On August 31, 2011, GAO released a report titled, "Suspension and Debarment: Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved" (GAO-11-739). GAO examined the suspension and debarment structures of 10 Federal agencies and found that the agencies with the most effective programs have detailed implementing guidance, practices that encourage an active referral process, and staff dedicated to the suspension and debarment program. GAO recommended that agencies that did not have these characteristics incorporate them and that OMB improve its efforts and enhance oversight Governmentwide.

Subsequently, in November 2011, OMB released a memorandum, "Suspension and Debarment of Federal Contractors and Grantees," (OMB Memo M-12-02) directing departments and agencies to assess their current suspension and debarment process and take action to address any deficiencies. The OMB memorandum also recommends that agencies participate on the Interagency Suspension and Debarment Committee and use it to support building and maintaining their suspension and debarment programs. The Department has designated the Deputy Secretary as the senior accountable official for this assessment. Officials from RMS, FSA, and Contracts and Acquisitions Management (CAM) have begun a review of the Department's current processes.

REVIEW RESULTS

The objective of our inspection was to determine whether the nonprocurement and non-FSA suspension and debarment process within the Department results in timely suspension and debarment actions to protect the Federal interest. When we began our inspection, the Department had a backlog of unprocessed nonprocurement suspension and debarment referrals, all originating from OIG investigative matters. During our inspection, the Department dedicated additional resources to eliminate the backlog. The Department also implemented changes to its process that were too new to enable adequate evaluation. Due to the conditions created by the

backlog, the addition of temporary resources, and the initiation of changes to its process, we concluded that an evaluation of the timeliness of nonprocurement suspension and debarment process would not provide useful information for Department management. We did identify delays in referrals from OIG that impacted the ability of the Department to take timely suspension and debarment actions. OIG recognizes its role in the nonprocurement suspension and debarment process and is taking steps to improve the timeliness of its referrals. In addition, we identified two areas where the Department can improve its nonprocurement suspension and debarment process.

We found that: (1) the Department's two-tiered nonprocurement suspension and debarment process is inefficient and inconsistent with Governmentwide procedures and practices, and (2) the Department lacks the characteristics identified by GAO as common across active and effective suspension and debarment programs. We recommend that the Department use the assessment required by OMB as an opportunity to revise its nonprocurement suspension and debarment process.

The Department's Two-Tiered Nonprocurement Suspension and Debarment Process is Inefficient and Inconsistent with Governmentwide Procedures and Practices

We found that the Department's two-tiered process for handling nonprocurement suspension and debarment referrals is inefficient because it results in unnecessary duplication of effort. The Department's process is composed of separate notice and deciding phases.

The Department's process requires the use of duplicative human capital resources from both RMS and OGC. In the notice phase, the Notice Official and attorney initially assigned review court documentation and other case-specific information when considering action against an individual. In the deciding phase, the Deciding Official and a second attorney review the same documentation that was reviewed in the notice phase. The Notice Official and attorney do not communicate with the Deciding Official and attorney in either phase. As a result, multiple officials duplicate efforts by reviewing and researching the same information to process suspension and debarment referrals that could be more efficiently accomplished by one Debarring/Suspending Official. Currently, duplicate resources are required even in circumstances where suspensions and/or proposed debarments are not contested, which was the case more than 90 percent of the time for fiscal years 2010 and 2011. However, because of the two tiers, the process required duplicative efforts by different officials to complete the actions.

When proposed actions are contested, the two-tiered process results in even greater inefficiency. The Notice Official in those cases is required to evaluate any comments submitted by an individual in opposition to the suspension and/or proposed debarment, and provide a response to the Deciding Official. The Deciding Official must then evaluate the Notice Official's response along with the case facts and the individual's comments. This step delays final decisions on suspension and debarment because the Deciding Official must wait for the Notice Official's response. If the process were to use only a single Debarring/Suspending Official, this step could be accomplished more efficiently. That single official would have already considered those facts when preparing the notice. Furthermore, this step in the two-tiered process creates the potential

for conflicting positions between the Notice and Deciding Officials which could lead to inconsistent decision making.

In addition to the inherent inefficiencies created by the Department's two-tiered process, this process is inconsistent with Governmentwide procedures and practices. The 1987 OMB guidelines specifically directed agencies to establish procedures that are "as informal as practicable" and did not prescribe a two-tiered appellate process such as that created by the Department. The Common Rule does not require separate officials to provide notice and make final suspension and debarment decisions.

In our inspection, we obtained information on the suspension and debarment procedures for 31 Federal departments and agencies. None of these departments or agencies have implemented a two-tiered process under which there is a distinction between notice and deciding officials.

The Department views the current division of responsibilities as a means of providing individuals with due process. However, due process in the suspension and debarment context requires only that an agency provide adequate notice of the proposed action and a meaningful opportunity to be heard; there is no requirement for formal adjudication or a hearing before a separate official.⁴

OIG Conclusion

The Department should protect the Federal interest and ensure the integrity of its programs by maintaining an efficient suspension and debarment process. The two-tiered process prevents the Department from having a fully efficient and effective nonprocurement suspension and debarment process. The Department's two-tiered process is also inconsistent with Governmentwide procedures and current practices in other Government agencies that have suspension and debarment programs. Standard practices at other agencies provide for due process without a two-tiered process.

The Department Lacks the Characteristics Identified by GAO as Common Across Active and Effective Suspension and Debarment Programs

GAO's 2011 report on suspension and debarment identified four agencies with active and effective suspension and debarment programs and found that these agencies all share common characteristics: (1) detailed policies and procedures, (2) practices that encourage an active referral process, and (3) full-time staff dedicated to suspension and debarment.⁵ We found that

⁴ Girard v. Klopfenstein, 930 F.2d 738, 743 (9th Cir. 1991), *cert denied sub nom. Girard v. Agricultural Stabilization & Conservation Service*, 502 U.S. 858 (1991)(procedures where a single suspension or debarment official initiates an action, receives information and argument from a respondent, and issues a final decision "comport with the fundamental fairness requirements of due process"; hearing before administrative law judge not required); ATL, Inc. v. United States, 736 F.2d 677, 686-87 (Fed. Cir. 1984)(when regulations were "silent as to whether those who recommend suspension and those who conduct the fact-finding or proceeding may be one and the same," court rejected due process challenge to agency procedures whereby agency debarment committee approved notice of debarment, conducted challenge proceeding, and decided to sustain suspension).

⁵ The four agencies identified were the Defense Logistics Agency, the Department of the Navy, the General Services Administration, and the Department of Homeland Security's U.S. Immigration and Customs Enforcement.

the Department's nonprocurement suspension and debarment process does not have these characteristics. Restructuring the Department's process to include these characteristics would enhance the Department's ability to use suspension and debarment as a tool to protect the Federal interest.

Policies and Procedures

GAO found that agencies with active suspension and debarment programs had detailed policies and procedures that provide guidance on referrals, investigations, and legal review. The Department's guidance on nonprocurement suspension and debarment is outdated and in need of revision. The Department's directive on nonprocurement suspension and debarment was last updated on September 25, 1991, and refers to offices that no longer have responsibility for suspension and debarment processes. RMS was delegated the responsibility of processing suspension and debarment referrals in March 2008, but the directive does not reflect this change and refers to officials in the Office of Management as having the responsibility. Furthermore, many of the regulatory citations do not correspond to the current regulations. The Department is in the process of updating the directive to make technical corrections.

The Department has also been slow to conform to OMB regulatory requirements for suspension and debarment. In 2005, OMB issued a Federal Register notice directing agencies to eliminate separate publications of the Common Rule from individual agencies' regulations and instead adopt the Common Rule as published by OMB in 2 C.F.R. Part 180, including publishing any agency supplement in that part. It was not until March 2012, that the Department published final regulations in the Federal Register to comply with this requirement.

Active Referral Process

GAO also found that agencies with active and effective suspension and debarment programs engage in practices that encourage an active referral process. According to GAO, elements of an active referral process include practices such as training staff outside of the suspension and debarment process on how and when to make referrals and issuing an agency-wide directive identifying fraud protection as everyone's responsibility. These practices may yield suspension and debarment referrals from program offices where an individual or grantee should not be considered presently responsible to handle Federal funds.

Currently, the Department's nonprocurement suspension and debarment program does not receive referrals from program offices and receives only OIG referrals based on indictments and convictions. RMS has not provided program offices with any suspension and debarment training. Additionally, the Department's guidance does not address suspension and debarment referrals from program offices in sufficient detail. The RMS Director stated that the current suspension and debarment process is not prepared to handle referrals from program offices because RMS does not have enough staff and under the two-tiered system, processing those referrals would be cumbersome. The RMS Director indicated that RMS lacks the necessary skills and dedicated resources to assess referrals and develop actions not based on indictments and convictions. However, by limiting its process to referrals based only on indictments and convictions, the Department is not taking complete advantage of suspension and debarment as a

means to protect the Federal interest. Once the Department has developed a process so that program offices can refer cases for suspension and debarment, it should make program offices aware of this important resource and provide training on how and when to make referrals.

Full-time Staff

Another best practice identified by GAO was having full-time staff dedicated to suspension and debarment. The Department's suspension and debarment process relies on the work of staff in RMS and OGC. None of the staff currently involved in the Department's suspension and debarment process are dedicated to the process on a full-time basis.

OIG Conclusion

By having detailed policies and procedures, practices that encourage an active referral process, and dedicated staff, the Department can better protect and ensure the integrity of Federal programs through its suspension and debarment process. When conducting the assessment required by OMB's November 2011 memo, the Department should consider revising its nonprocurement suspension and debarment process to include these characteristics.

OIG Recommendations

We recommend that the Deputy Secretary:

1. Eliminate the two-tiered process for handling nonprocurement suspension and debarment referrals.
2. After conducting the assessment required by OMB Memo M-12-02, update the outdated Department directive to reflect changes to the process made as a result of the assessment.
3. Ensure that RMS develops a system for processing suspension and debarment referrals from program offices and the necessary skills to handle the referrals.
4. Ensure that program offices are aware of suspension and debarment as a resource and understand the criteria required.
5. Consider assigning suspension and debarment to staff as a primary responsibility rather than as a collateral duty.

DEPARTMENT COMMENTS

On April 30, 2012, we provided the Department with a copy of our draft inspection report for comment. We received the Department's comments to the report on May 21, 2012. The Department's comments did not concur or non-concur with any of our findings or recommendations, but provided comments in response to each recommendation. We have summarized the Department's comments and provided our responses below. The Department's response, in its entirety, is attached.

Recommendation 1

Department Comment

The Department stated that it has found the two-tiered process effective in ensuring accuracy and it believes that the use of a Deciding Official as an “independent arbiter” enhances the reliability and validity of suspension and debarment decisions. The Department also stated that OMB guidance and the Common Rule do not require a single-tier process.

The Department further stated that agencies without two-tiered suspension and debarment processes presumably considered factors specific to their organizations when developing their processes. The Department stated that those considerations are unique to those agencies and would not necessarily apply to the Department. The Department stated that because of its small volume of transactions compared to other Federal agencies, it does not have an opportunity for large gains in productivity by changing the nonprocurement suspension and debarment process.

The Department disagreed with our conclusion that the process for contested actions creates the potential for conflicting positions adding that the Notice Official does not make final determinations.

OIG Response

The Department did not directly respond to our finding that the two-tiered process is inherently inefficient due to the duplication of effort the process requires. Our inspection did not examine nor question the accuracy, reliability, and validity of the Department’s past suspension and debarment decisions.

The Common Rule directs agencies to handle suspension and debarment actions “as informally as practicable.” The Department did not identify any practical considerations that required it to adopt a structure not used by any of the other 31 agencies we researched. Where efficiency can be improved, as it can here, it is in the Department’s interest to make those changes regardless of transaction volume.

The process for contested actions creates the potential for conflicting positions because the Department’s current structure allows for the possibility of two different positions being taken by the Notice Official and Deciding Official as to whether suspension or debarment is warranted. While the Notice Official does not make final determinations of suspension and/or debarment, the Notice Official’s determinations have immediate impact since notices of suspension are effective upon issuance.

Recommendation 2

Department Comment

The Department explained that RMS and OGC are currently participating in a cross-agency workgroup on OMB Memo M-12-02 led by the Office of the Chief Financial Officer (OCFO). The Department stated that it has updated its directive on nonprocurement suspension and debarment with technical changes such as regulatory citations, appropriate references to offices

and staff positions, and processes to reflect the current practice. The Directive is now going through the Department's clearance process.

OIG Response

While the technical changes described were needed, the Department will have to further revise the directive to reflect changes that are made as a result of the evaluation required by OMB and the corrective action process for this OIG review. We have changed the wording of this recommendation for clarity.

Recommendation 3

Department Comment

The Department stated that referral mechanisms in RMS and OIG currently provide program offices with opportunities to refer cases for potential suspension and debarment. The Department stated that it is not practical to develop a separate investigative unit within RMS to handle the processing of suspension and debarment referrals from Department staff. The Department explained that establishing such a process would require significant time and effort and would potentially duplicate the work of the OIG's investigations unit.

OIG Response

Given that RMS is responsible for non-procurement suspension and debarment for non-FSA matters, program officials should make referrals directly to RMS. When a matter includes indications of fraud or criminal conduct, OIG should also be notified. An effective process for suspension and debarment referrals need not require creation of a separate investigative unit within RMS. The minimum standards of evidence required by 2 C.F.R. 180 provide the opportunity for nonprocurement suspension and debarment actions that do not require an OIG or other formal investigation. Program office oversight activities should be able to provide enough facts to meet the standards of evidence without an OIG investigation.

Recommendation 4

Department Comment

The Department stated that RMS will work closely with the OIG in developing staff training for program offices on the available resources and criteria required for suspension and debarment actions.

OIG Response

We look forward to working with RMS to develop training on when it is appropriate for program offices to refer individuals or entities to OIG for investigation versus RMS for suspension and/or debarment action.

Recommendation 5

Department Comment

The Department stated that it is not feasible to devote full-time staff to suspension and debarment work. The Department feels that the staff members currently carrying out this function are best suited to manage the current workload.

OIG Response

We did not recommend that the Department have full-time staff dedicated to suspension and debarment, only that it be a primary duty rather than a collateral one for those assigned. This should be reflected in the performance plan of the staff members assigned to suspension and debarment.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our inspection was to determine whether the nonprocurement and non-FSA suspension and debarment process within the Department results in timely suspension and debarment actions to protect the Federal interest.

We began our fieldwork on June 8, 2011, and conducted an exit conference on April 4, 2012.

We reviewed the Department's Directive on Nonprocurement Debarment and Suspension (OCFO: 2-102), applicable laws and regulations, information from the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Suspension and Debarment working group, OIG documents related to referrals for suspension and/or debarment, and RMS documents related to those referrals. We also reviewed GAO Report 11-739: "Suspension and Debarment: Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved" and OMB Memo M-12-02: "Suspension and Debarment of Federal Contractors and Grantees." We interviewed the Notice Official, the Deciding Official, RMS staff members, OGC attorneys, and OIG Investigative Services staff and management.

We researched the suspension and debarment practices at Federal agencies by reviewing 31 agency websites, including the Department of Justice, the Department of State, the Department of Health and Human Services, the Department of Housing and Urban Development, the Small Business Administration, the Agency for International Development, the Department of Veteran Affairs, the National Aeronautics and Space Administration, the Department of Defense, and the Department of the Treasury. We also contacted individuals at the Department of Interior, the Department of Agriculture, the Environmental Protection Agency, the Department of Energy, and the National Science Foundation to discuss the respective agency's suspension and debarment practices and confirm information listed on their websites.

We also reviewed data from the Department's grants management database (G5) to determine whether individuals referred for suspension and debarment subsequently obtained grants prior to suspension and debarment action. With the assistance of OIG's Computer Assisted Assessment Techniques staff, we developed a list of grant awards to identify individuals in the G5 data whose name matched those who were referred for suspension and/or proposed debarment. We then conducted Internet searches, reviewed court documents related to suspension and debarment referrals, and reviewed grant files obtained from program offices. We did not identify any issues in this area.

Our inspection was performed in accordance with CIGIE's "Quality Standards for Inspection and Evaluation" as appropriate to the scope of the inspection described above.

ADMINISTRATIVE MATTERS

Corrective actions proposed (resolution phase) and implemented (closure phase) by your office will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System (AARTS). Department policy requires that you enter your final Corrective Action Plan (CAP) for our review in the automated system within 30 days of the issuance of this report.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on the audits that remain unresolved after six months from the date of issuance.

In accordance with the Freedom of Information Act (5 U.S.C. §552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Respectfully,

/s/

Wanda A. Scott
Assistant Inspector General
Evaluation, Inspection, and Management Services

Electronic cc: Phil Maestri, Director, Risk Management Service
Heather Acord, Audit Liaison Officer, Office of the Deputy Secretary



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE DEPUTY SECRETARY

Risk Management Service

May 21, 2012

Wanda A. Scott
Assistant Inspector General
Evaluation, Inspection and Management Services
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Risk Management Service (RMS)/ Grants Policy and Procedures Team (GPPT) Response to the Office of Inspector General's (OIG) Suspension and Debarment Recommendations

We are writing in response to the draft Office of Inspector General (OIG) inspection report on the Department's non-procurement suspension and debarment process (**ED-OIG/I13L0001**).

The Department's Office of the Deputy Secretary (ODS), Risk Management Service (RMS) has been delegated authority by the Secretary to "impose non-procurement debarments and suspensions and to manage enforcement of non-procurement debarments and suspensions." As the OIG report states, "[t]he Federal suspension and debarment system is intended to protect the public interest and to ensure the integrity of Federal programs by conducting business only with responsible persons. Under the government-wide suspension and debarment rules for both procurements and non-procurements, Federal agencies can use suspension and debarment to exclude from Federal programs individuals who are not presently responsible – that is, those who lack business integrity because they have engaged in specific illegal conduct or are otherwise unable to satisfactorily perform their responsibilities." RMS is committed in its efforts to carry out that responsibility.

We recognize the importance of continuous improvement to ensure that the Department maximizes the effectiveness of the suspension and debarment process. To this end, RMS closely reviewed the draft OIG inspection results and recommendations and intends to use the results and recommendations to inform work on the suspension and debarment process to improve and streamline it where appropriate. To address the OIG recommendations, RMS provides the following responses.

OIG Recommendation 1: Eliminate the two-tiered process for handling non-procurement suspension and debarment referrals.

The OIG inspection report cites the following reasons for its recommendation to eliminate the two-tiered process:

- It results in unnecessary duplication of effort;
- The contested actions process creates the potential for conflicting positions between the Notice and Deciding Officials, which could lead to inconsistent decision making;
- The Common Rule does not require separate officials for the notice and deciding phases;
- OMB's 1987 guidelines on suspension and debarment do not prescribe a two-tiered appellate process;
- The OIG inspection did not identify any other department or agency to have a two-tiered suspension and debarment process such as at the Department

Response: Government-wide requirements and recommendations for agencies' development of suspension and debarment processes allow for some flexibility in how the Department implements its process. Neither the Common Rule nor OMB's 1987 guidance prescribes a single-tiered decision process. The Department has found that its two-tiered decision making process is effective in ensuring that cases are thoroughly considered and decisions are accurate. Particularly in cases in which the potential debaree appeals the first-tier decision, the two-tiered process enhances reliability and validity of the ultimate decision by allowing for an independent arbiter to consider the merits of the appeal and render a decision without having already taken a position in the case. Irrespective of the structure, it is important to note that the Department's process has proven to be effective and accurate. RMS is not aware of any suspension and debarment actions and/or cases that were not processed accurately and completely.

With regard to OIG's position that the Department's process for contested actions creates the potential for conflicting positions between the Notice and Deciding Officials and inconsistent decision making, we disagree. The Notice Official (NO) does not make final determinations of suspension and/or debarment. Rather, under the established process, it is the responsibility of the Debarring and Suspending Official (DSO) to determine if a referral from the NO is valid and to make the final decision.

It is important to note that while OIG researched other Federal agencies' suspension and debarment processes, those agencies presumably considered factors specific to their organizations in determining the proper approach to an efficient and effective suspension and debarment process. The considerations that influenced those agencies in designing their suspension and debarment processes would not necessarily apply to the Department.

The draft inspection report also cites a Government Accountability Office (GAO) report on suspensions and debarments in support of its recommendations. GAO identified four agencies as operating a "best practice" suspension and debarment program. All were identified for their procurement related processes and not grant-making processes. Each of the four agencies has a significantly higher volume of contract transactions than the Department and, accordingly, a larger number of contractor related suspension and debarment cases. At the Department, the process is defined by our financial obligations, the vast majority of which are grant related; our available resources; the frequency of case referrals; and the total volume of suspension and

debarment actions per calendar year. In calendar year 2011, OIG referred only 22 cases to RMS. So far in 2012, OIG has referred only nine cases.

The accuracy of the Department's suspension and debarment activities has always been the primary driving factor in the process. The small volume of transactions the Department engages in compared to other Federal agencies does not leave an opportunity for large gains in productivity by altering the process. However, RMS continuously reviews all activities for potential process improvements. Accordingly, taking into account the recommendations in the draft inspection report, RMS will examine the suspension and debarment function before the end of the calendar year to identify potential improvements and strike an appropriate balance between managing available resources and ensuring that the integrity of suspension and debarment decisions remains at a high level.

OIG Recommendation 2: After conducting the assessment required by OMB Memo M-12-02, update the outdated Department directive to reflect current practice.

Response: The suspension and debarment assessment requirement under OMB Memo M-12-02 is a Department-wide requirement with respect to procurement and non-procurement suspension and debarment processing. RMS and the Office of the General Counsel (OGC) are currently participating in a cross-agency workgroup on OMB Memo M-12-02 led by the Office of the Chief Financial Officer (OCFO).

With regard to OIG concerns about updating the Department Directive, the Department has updated the Directive with technical changes such as regulatory citations, appropriate references to offices and staff positions, and processes to reflect the current practice. The Directive is now going through the Department's clearance process and should be finalized in the near future.

OIG Recommendation 3: Develop a system for processing suspension and debarment referrals from program offices and the necessary skills to handle the referrals.

OIG Recommendation 4: Ensure that program offices are aware of suspension and debarment as a resource and understand the criteria required.

Response to recommendations 3 and 4: The suspension and debarment process at the Department is not limited to referrals of indictments and convictions from OIG. RMS also accepts referrals that are received from other sources involving matters that have not resulted in conviction. Program offices can also use the OIG hotline to refer cases for potential suspension and debarment. These referral mechanisms provide the program offices with opportunities to refer cases for potential suspension and debarment.

Considering the current budget climate at the Department, and the fact that there are effective referral mechanisms currently in place, it is not practical to develop a separate investigative unit within RMS to handle the processing of suspension and debarment referrals from Department staff. Establishing such a process would require significant time and effort and would potentially duplicate the work of the OIG, which remains the expert in the field of investigations. We find it

in our best interest, in this regard, to continue to rely on the expertise of the OIG investigations unit on this matter and refer potential criminal actions to the OIG hotline.

RMS will work closely with the OIG in developing staff training for program offices to make sure that program staff are aware of the available resources and understand the criteria required for referring suspected waste, fraud, and abuse instances that might result in suspension and debarment actions.

OIG Recommendation 5: Consider assigning suspension and debarment to staff as a primary responsibility rather than as a collateral duty.

Response: Based on the number of referrals RMS receives from OIG as noted in response #1, it is not feasible to devote full-time staff to suspension and debarment work. The staff members currently carrying out this function are well-trained and experienced in this work. The Department feels that these individuals are best suited to manage the current workload in a high quality manner.

We appreciate the opportunity to discuss the Department's actions to strengthen the non-procurement suspension and debarment process and trust that you will consider this response in the preparation of your final inspection report.

Sincerely,

/s/

Philip A. Maestri
Director
Risk Management Service
Office of the Deputy Secretary