



United States Department of Agriculture



OFFICE OF INSPECTOR GENERAL



# Implementation of Suspension and Debarment Tools in the U.S. Department of Agriculture

## Audit Report 50016-0001-23

### OBJECTIVE

We assessed the adequacy of USDA's implementation of corrective actions taken on the 2010 audit recommendations, and the controls to ensure USDA and its agencies initiate and refer program violators for appropriate suspension and debarment actions.

### REVIEWED

We reviewed actions, guidance, and documents concerning suspension and debarment from OCFO, the Office of Procurement and Property Management, and seven USDA agencies for activities from March 2013 to September 2016.

### RECOMMENDS

OCFO should develop and implement plans to comply with prior 2010 audit recommendations. OCFO should also amend Departmental regulations and issue a reminder to define roles and, clarify allowable suspension and debarment actions, and develop a process to identify non-compliant agencies.

**OIG reviewed USDA's implementation of prior audit recommendations and oversight of the Department's suspension and debarment program.**

### WHAT OIG FOUND

We found that since our last audit, issued in 2010, the Office of the Chief Financial Officer (OCFO) implemented a comprehensive set of suspension and debarment tools and has an active referral process. While OCFO implemented a majority of the 27 recommendations, we found 5 that were not effectively implemented and a sixth recommendation had yet to reach final action. This occurred because OCFO felt the alternate corrective actions it implemented for three recommendations were sufficient. For the other three recommendations, OCFO did not exercise its authority to assist with the effective implementation of one agency's suspension and debarment guidance. As a result, the Department of Agriculture (USDA) has not fully complied with the Executive Order (issued in 1986) to implement a comprehensive suspension and debarment program that protects Federal resources.

We also found that while OCFO provided USDA agencies and offices with the necessary suspension and debarment tools, 12 USDA agencies had not fully implemented their suspension and debarment programs. This occurred because OCFO's controls did not include defined program roles and responsibilities for Suspension and Debarment Council members or a policy to elevate issues when agencies did not comply with requirements. This included three agencies that had not considered suspension and debarment for parties convicted of fraud or bribery. As a result, USDA agencies did not always pursue discretionary government-wide debarment or mandatory permanent debarment from USDA programs. OCFO generally agreed with our findings and we accepted management decision on all nine recommendations.





United States Department of Agriculture  
Office of Inspector General  
Washington, D.C. 20250



DATE: September 28, 2017

AUDIT  
NUMBER: 50016-0001-23

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Acting Deputy Assistant Secretary for  
Administration Departmental Management

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of the Chief Financial Officer

ATTN: Annie Walker  
Director  
Internal Control Division

FROM: Gil H. Harden  
Assistant Inspector General for Audit

SUBJECT: Implementation of Suspension and Debarment Tools in the U.S. Department of  
Agriculture

This report presents the results of the subject review. Your written responses to the official draft report, dated August 4, 2017, and September 8, 2017, is included in its entirety at the end of the report. Excerpts from your response and the Office of Inspector General's position are incorporated into the relevant sections of the report.

Based on your written response, we accept management decision for all nine recommendations in the report and no further response to us is necessary. In accordance with Departmental Regulation 1720-1, final action on the management decision should be completed within 1 year of the date of the management decisions to preclude being listed in the Department's annual Performance and Accountability Report.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publicly available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.





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# Background and Objectives

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## Background

The Federal Government's system for suspension and debarment ensures that the Government only does business with responsible persons in both nonprocurement activities (for example, grants, cooperative agreements, loan guarantees, etc.) and procurement activities (for example, contracts).<sup>1</sup> Suspension and debarment are discretionary administrative actions taken by Federal agencies to exclude persons and entities who are not presently responsible from doing business with the Federal Government. Suspension is an action that immediately prohibits a person or entity from participating in covered procurement and nonprocurement transactions for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. Suspensions can be taken based on adequate evidence such as an indictment. Debarment is an action based on a preponderance of evidence, such as a conviction.<sup>2</sup> These actions are not designed to be punitive in nature, but are intended to protect the Federal Government from fraud, waste, and abuse.<sup>3</sup> Federal departments enter data about suspended and debarred contractors and program participants into the General Services Administration's (GSA) System for Award Management (SAM), which includes information from the previous Excluded Parties List System (EPLS). Federal agencies are required to consult this list before granting new benefits or issuing new contracts so that they may be certain they are dealing with responsible persons and entities.<sup>4</sup>

Executive Order 12,549, signed by the President in 1986, directed all Federal departments and agencies to participate in a system for suspension and debarment to protect programs and activities involving Federal financial and nonfinancial assistance and benefits.<sup>5</sup> The Executive Order pertained to nonprocurement activities and noted that a participant's suspension and debarment from one agency should be effective government-wide. In 1989, as required by the Executive Order, the Department of Agriculture (USDA) issued its own guidance to implement suspension and debarment for nonprocurement transactions.<sup>6</sup> Issued in August of that same year, Executive Order 12,689 required suspension and debarment for procurement actions under the Federal Acquisition Register (FAR) to have reciprocal effect with nonprocurement transactions.<sup>7</sup> As a result, when a program violator is debarred from obtaining new grants or other assistance

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<sup>1</sup> Procurement is defined as the acquiring of supplies or services (including construction) by contract with appropriated funds by and for the use of the Federal Government through purchase or lease. 48 *Code of Federal Regulation* (C.F.R.) § 2.101.

<sup>2</sup> Debarments generally do not exceed three years, but can if the circumstances warrant. 2 C.F.R. § 180.865(a) and 48 C.F.R. § 9.406-4(a)(1).

<sup>3</sup> After an agency takes suspension or debarment action against a person, that agency may continue to provide a covered benefit or contract with that excluded person if the benefit or contract was in existence at the time that person was excluded. However, an agency may not renew or extend a benefit or contract (other than no-cost time extensions) with any excluded person.

<sup>4</sup> 2 C.F.R. § 180.300 and 48 C.F.R. § 9.405.

<sup>5</sup> Exec. Order No. 12,549 (Feb. 18, 1986).

<sup>6</sup> 7 C.F.R. pt. 3017.

<sup>7</sup> FAR Subpart 9.4 mandates that Federal agencies establish procedures to implement policies related to the enforcement of suspension and debarment for procurement transactions; these regulations include basic policies and general information about USDA's Acquisition Regulation, 48 C.F.R. § 409.403 - .470.



(nonprocurement transactions) the violator is also debarred from obtaining new contracts (procurement transactions) regulated by FAR, and vice versa.

For USDA, the Nonprocurement Rule is codified at Title 2 of the C.F.R. in Part 180 and at Title 2 of the C.F.R. in Part 417 (each agency enacts its own supplement of the Nonprocurement Rule in Subtitle B of Title 2). The Procurement Rule is found in the Federal Acquisition Regulation codified at Title 48 in the C.F.R. at Part 9.4. Both rules have reciprocal effect. Updates to USDA's regulations found at 2 C.F.R. Part 417 included making adjustments to and documenting which nonprocurement transactions were considered not covered as it relates to the effect of a suspension and debarment action within USDA.<sup>8</sup> These regulations established the basis for the Department's implementation of nonprocurement suspension and debarment.

In 2011, the Secretary of Agriculture issued a memorandum that established a Suspension and Debarment Council (Council) under the authority of the Office of the Chief Financial Officer (OCFO) to better coordinate the Department's efforts for ensuring effective implementation of suspension and debarment procedures.<sup>9</sup> The Council includes members from OCFO and representatives for each agency (none lower in rank than Deputy Administrator for Management) that meet every quarter to brief on their respective areas' suspension and debarment activity. It is the Council's role to develop and issue procedural guidance and training recommendations to enable the effective implementation of USDA's suspension and debarment procedures. USDA agencies are required to report to the Council the policies, performance metrics, outcomes of debarment and suspension referrals, and actions taken to address outstanding issues. OCFO is responsible for sharing the information reported in Council meetings with the Office of Procurement and Property Management (OPPM) and Office of the General Counsel (OGC).

The Secretary delegated the authority to perform nonprocurement suspension and debarment activities to the Chief Financial Officer,<sup>10</sup> and procurement activities to the Director of OPPM.<sup>11</sup> Coordinating together, OCFO and OPPM had the authority to develop, promulgate, and coordinate Department-wide policy concerning suspension and debarment.

Under this authority, USDA issued Departmental Regulation (DR) 2280-001 in January 2013, describing its standards for implementing suspension and debarment for all USDA procurement and nonprocurement programs and activities.<sup>12</sup> DR 2280-001 describes nonprocurement and procurement transactions, identifies causes for suspension and debarment action, and provides instruction for agencies to follow when implementing suspension and debarment. This instruction differentiates between transactions covered and not covered by the Nonprocurement Rule,<sup>13</sup> and it states that not-covered transactions are not exempt from suspension and debarment

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<sup>8</sup> Noncovered transactions are listed in 2 C.F.R. § 180.215, 2 C.F.R. § 417.215, and 2 C.F.R. § 417.220 (i.e., personal awards, entitlements, etc.). Noncovered transactions are not exempt from suspension and debarment procedures. A person or entity that abuses a noncovered transaction may continue to receive benefits under the program, but may be referred by the agency for suspension or debarment to protect the Federal Government.

<sup>9</sup> USDA, *Establishment of the Debarment and Suspension Council*, Secretary Memorandum (June 13, 2011).

<sup>10</sup> 7 C.F.R. § 2.28(a)(25).

<sup>11</sup> 7 C.F.R. § 2.93(a)(3)(i).

<sup>12</sup> USDA Departmental Regulation 2280-001, Suspension and Debarment (Jan. 16, 2013).

<sup>13</sup> A covered transaction is defined as a nonprocurement (e.g., grant) or procurement (e.g., contract) transaction that is subject to the prohibitions of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 417. A suspended or debarred individual or entity is precluded from participating in any covered transactions.

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actions. This means that a person or entity that abused a not-covered transaction may continue to receive benefits under that program. However, that person or entity may be referred by the agency for suspension and debarment to render the person ineligible for participation in procurement and nonprocurement transactions government-wide. An agency taking suspension and debarment action against that person or entity would help protect the Federal Government from entering into a transaction with a nonresponsible person.

In addition, DR 2280-001 documents the responsibilities of the Department, agencies, and others for properly administering suspension and debarment. OCFO's Transparency Accountability and Reporting Division (hereafter referred to as OCFO) and OPPM are responsible for coordinating suspension and debarment issues within USDA and with other federal agencies<sup>14</sup> as well as updating and maintaining supplemental suspension and debarment regulations for USDA. OCFO and OPPM are also responsible for entering suspended or debarred persons' or contractors' information in SAM to keep agencies abreast of exclusions taken by USDA. DR 2280-001 also describes the function of the Suspension and Debarment Council: "...to better coordinate USDA efforts for ensuring effective implementation of suspension and debarment procedures."

DR 2280-001 describes agencies' responsibility for initiating and taking action for suspension and debarment. Agencies discover potential causes for suspension and debarment through a variety of sources, including investigations conducted by the Office of Inspector General (OIG) or the Department of Justice, civil or criminal court actions, and hotline complaints. USDA nonprocurement suspension and debarment cases routinely arise from OIG-reported indictments and convictions, these are provided to each agency's suspension and debarment coordinator quarterly. Agencies review this quarterly report and determine whether to pursue suspension or debarment. An indictment meets the standard of proof of adequate evidence for a suspension, and a conviction meets the preponderance of the evidence standard for a debarment. While an agency can consider suspension or debarment for either an indictment or conviction, the latter meets the standards of proof for a debarment.<sup>15</sup> The nonprocurement suspension and debarment coordinator works with internal and external interested offices, such as OIG and OGC,<sup>16</sup> to share and obtain information relevant to the case. Once the coordinator has sufficiently reviewed the referral record, the case is presented to the appropriate official,<sup>17</sup> who ultimately initiates and imposes suspension or debarment.

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<sup>14</sup> OCFO and OPPM coordinate with other Federal agencies through the Interagency Suspension and Debarment Committee to facilitate the sharing of suspension or debarment information and to prevent duplicative efforts should another Federal agency express an interest in or initiate an action against the same person or entity.

<sup>15</sup> In any debarment action, the Federal agency must establish the cause for debarment by a preponderance of the evidence. If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met. 2 C.F.R. § 180.850 and 48 C.F.R. § 9.406-2(a).

<sup>16</sup> When needed, OIG personnel will attend suspension and debarment meetings and hearings, provide testimony and other information and evidence regarding OIG's work, and generally assist the suspension and debarment staff. When requested, OGC provides legal advice to the agency suspension and debarment staff, program managers, contracting officers, suspension and debarment coordinators, and suspension and debarment officials. In addition, OGC reviews proposed suspension and debarment actions for legal sufficiency.

<sup>17</sup> The official for nonprocurement suspension and debarment is the agency administrator, except for the Forest Service, which delegated the authority to the Deputy Chief and Associate Deputy Chief. The official for procurement suspension and debarment is the Director of OPPM.

However, suspension and debarment is not the only form of administrative action available to Federal agencies. USDA agencies can also use (1) disqualifications or (2) statutory or other nondiscretionary debarments. Unlike suspension and debarment, which have a government-wide exclusionary effect, these other options allow an agency to prohibit persons or entities from subsequent participation in USDA programs only. A disqualification is an administrative remedy where an agency prohibits a person from participating in specified Federal procurement or nonprocurement transactions and has effect only for the particular program from which a person or entity was disqualified.<sup>18</sup> A statutory or other nondiscretionary debarment (hereinafter permanent debarment) permanently excludes persons from participating in all USDA procurement and nonprocurement programs or activities, even those normally considered not-covered transactions. One example of a permanent debarment is when the Secretary must debar individuals or organizations convicted of a felony for knowingly defrauding the United States in connection with any USDA program. This prevents the program violator from any subsequent participation in USDA programs.<sup>19</sup> Disqualifications and permanent debarments are actions that should still be entered into SAM.

In 1990, OIG conducted its first audit of USDA's implementation of suspension and debarment.<sup>20</sup> During that audit, OIG determined that USDA had not implemented an adequate system to suspend and debar known program violators. In 2010, OIG again conducted an audit of USDA's implementation of suspension and debarment. OIG reported that USDA still had not fully implemented procurement or nonprocurement suspension and debarment programs,<sup>21</sup> and the participants in programs that made up \$98 billion of the Department's \$124 billion budget (in fiscal year (FY) 2007) were not subject to suspension and debarment. In addition, USDA lacked a centralized suspension and debarment division and instead dispersed the authority throughout the Department without providing guidance to the responsible officials. OIG made 27 recommendations that USDA remove or justify program exclusions from nonprocurement suspension and debarment, centralize the organization of suspension and debarment programs, and more effectively implement suspension and debarment for its procurement programs.

Before OIG issues an audit report, management from USDA offices and agencies describe their decisions for implementing each recommendation. While OIG accepts management decisions for some recommendations when the final report is issued, accepting other decisions may be delayed if the agency needs additional time to propose corrective actions that meet the intent of the recommendation. Once management decisions are accepted, agencies must submit documentation about completed final actions to OCFO's Management Control and Audit Team (MCAT) before considering a recommendation closed. The corrective action associated with

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<sup>18</sup> The term "disqualified" as defined by statute "means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive Order (other than Executive Orders 12549 and 12689) or other authority." 2 C.F.R. § 180.935. Disqualified persons are to be included in SAM. 2 C.F.R. § 180.45(a)(1).

<sup>19</sup> 7 U.S.C. § 2209j.

<sup>20</sup> Audit Report 50-099-0022-AT, *Survey of Debarment and Suspension Activities in USDA*, June 1990.

<sup>21</sup> Audit Report 50601-14-AT, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, Aug. 2010.

each management decision, otherwise known as final action, is to be completed within 1 year of the management decision date.<sup>22</sup>

OCFO-MCAT monitors follow-up activities and evaluates closure and final action requests. If USDA offices or agencies later decide they are unable to implement the recommendation and agreed-upon correction action, they must request a change in management decision and develop alternative corrective actions. OCFO-MCAT will notify OIG of requests for change in management decision and forward the supporting documentation received from the agencies to OIG for review.

## Objectives

Our audit objectives were to assess the adequacy of USDA's implementation of corrective actions taken on prior audit recommendations,<sup>23</sup> and the controls to ensure USDA and its agencies initiate and refer program violators for appropriate suspension and debarment actions.

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<sup>22</sup> USDA Departmental Regulation 1720-001, Audit Follow-up and Management Decision (Nov. 2, 2011).

<sup>23</sup> Audit Report 50601-14-AT, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, Aug. 2010.

## Section 1: Implementation of Prior Audit Recommendations

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### Finding 1: OCFO Needs to Ensure Corrective Actions Are Fully Implemented

In 2010, we reported that USDA had not fully implemented a suspension and debarment program as required by Executive Order No. 12,549,<sup>24</sup> and we made 27 recommendations to address the reported findings.<sup>25</sup> The Secretary of Agriculture delegated authority to OCFO to develop, promulgate, and coordinate department-wide policy concerning the suspension and debarment program. In our current audit, we found that OCFO made substantial progress implementing a comprehensive suspension and debarment program. While OCFO and the agencies implemented a majority of the 27 prior recommendations, we found 5 that were not effectively implemented by OCFO and one of those agencies.<sup>26</sup> We also found that a sixth recommendation has yet to reach final action almost 4 years after the management decision date (see Exhibit A).<sup>27</sup> This occurred because OCFO felt that the corrective actions implemented for three recommendations (6, 17, and 19) were sufficient even though those actions did not match the agreed-upon corrective actions. For the other three recommendations (11, 12, and 14), which were designed to implement one agency's suspension and debarment program, that agency did not effectively implement corrective actions or ensure final action was completed. Although OCFO was aware that this agency had not implemented a suspension and debarment program, it did not exercise its authority to assist with the effective implementation of program regulations. As a result, USDA has not fully complied with the President's Executive Order (issued in 1986) to implement a comprehensive program to suspend and debar individuals that violate program requirements in order to protect Federal resources.

USDA regulations require agency heads and heads of staff offices to ensure the appropriate agency management is held accountable for audit follow-up responsibilities in regards to audit report recommendations. The agencies' audit liaison officials ensure that corrective actions are completed.<sup>28</sup> In addition, USDA agencies implement agreed-upon corrective actions associated with audit recommendations, and OCFO monitors audits without final action at least 1 year after management decision date. To implement the suspension and debarment program, the Secretary of Agriculture issued a memorandum that delegated to OCFO the authority over nonprocurement activities. In 2013, USDA issued DR 2280-001 covering the requirements for the Department's suspension and debarment program.<sup>29</sup>

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<sup>24</sup> Exec. Order No. 12,549 (Feb. 18, 1986).

<sup>25</sup> Audit Report 50601-14-AT, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, Aug. 2010.

<sup>26</sup> Recommendations 6, 12, 14, 17, and 19 from Audit Report 50601-14-AT, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, Aug. 2010.

<sup>27</sup> Recommendation 11 from Audit Report 50601-14-AT, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, Aug. 2010. OCFO-MCAT monitors follow-up activities and evaluates closure and final action requests.

<sup>28</sup> USDA Departmental Regulation 1720-001, Audit Follow-up and Management Decision (Nov. 2, 2011).

<sup>29</sup> USDA Departmental Regulation 2280-001, Suspension and Debarment (Jan. 16, 2013).

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We reviewed all of the recommendations from the 2010 audit report and compared them to the agreed-upon management decisions and final actions. We found that six of the recommendations were not effectively implemented. We discuss each of these six recommendations below.

### **OCFO Did Not Fully Implement Recommendations 6, 17, and 19**

*Recommendation 6: Provide Departmental clarification and guidance concerning the differences between Government-wide suspension and debarment actions and internal agency statutory disqualification actions and how the actions are to be used in response to program violations. Require the agencies to report their statutory disqualification actions in GSA's EPLS in accordance with USDA's suspension and debarment regulation.*

The 2010 audit found that USDA agencies did not clearly understand the difference between statutory disqualifications and suspension and debarment. We made this recommendation because agencies were not posting their disqualification actions of program abusers in EPLS (which is now SAM).<sup>30</sup> As a result of agencies not posting their disqualifications in EPLS, they were, in effect, not alerting other USDA agencies and Federal departments of known program violators. To reach management decision, OCFO stated that it would issue a memo to all agencies clarifying the differences between Government-wide suspension and debarment actions and internal agency statutory disqualifications. The memo would also require agencies to report their statutory disqualification actions in GSA's EPLS in accordance with USDA's suspension and debarment regulation.

During our current audit, we found that OCFO issued guidance in the form of DR 2280-001, but the guidance did not make clear that disqualifications must be reported in SAM. Our review of USDA's DR 2280-001 for the suspension and debarment program found that disqualifications were addressed, but the guidance stated that the "policy on listing disqualified persons or entities in the SAM varies from agency to agency" and that OCFO would coordinate with the agencies to determine the appropriateness of the inclusion of disqualifications in SAM.<sup>31</sup> OCFO stated that it believed that the guidance implemented was sufficient to meet the intent of the prior recommendation. OCFO officials also explained that OGC did not comment on disqualifications when it reviewed DR 2280-001. We discussed this issue with OGC officials and they stated that they reviewed DR 2280-001 for legal sufficiency and found no issues; however, OGC specified that it did not take into consideration any prior audit recommendations. OGC officials stated that this sounded more like a wording issue in DR 2280-001 rather than a legal issue. OCFO agreed that the language in that directive could be stronger to help clarify the requirements.

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<sup>30</sup> EPLS was consolidated into SAM in 2012. SAM is streamlining processes and consolidating hosting to make the process of doing business with the government more efficient. Federal agencies are required to list disqualified persons in SAM and Federal agencies are required to check SAM to determine whether they can enter into certain transactions with a person. 2 C.F.R. §§ 180.45(a)(1) and 180.430(a).

<sup>31</sup> USDA Departmental Regulation 2280-001, Suspension and Debarment (Jan. 16, 2013).

*Recommendation 17: Provide training and guidance to USDA scientific, inspection and grading, marketing, and natural resources agency officials regarding the suspension and debarment regulations. Require the agencies to establish controls and procedures to identify fraud and misconduct related to their programs and to refer for suspension and debarment determination indicted, convicted, and other nonresponsible program violators. Perform follow-up reviews to ensure effective implementation of the regulations.*

In the prior audit, we reported that USDA excluded many programs from the nonprocurement suspension and debarment regulations, including inspection and grading, marketing, natural resources, and scientific agencies. USDA justified these exclusions because the programs are either mandatory awards; vital for animal, plant, and public health and safety; or necessary for agricultural commerce. Due to these exclusions, applicable USDA agencies would not take suspension and debarment action on known program violators. Recommendation 17 required OCFO to “perform follow-up reviews to ensure effective implementation of the regulations,” and OCFO responded that it planned to use performance indicators to accomplish this. We accepted management decision for this recommendation, and for final action, we required OCFO to perform at least one round of follow-up reviews and provide documentation attesting to the completion of those reviews.

During the current audit, we found that OCFO provided training and guidance to these agencies about suspension and debarment. It also required agencies to establish controls and procedures to identify fraud and misconduct related to their programs, and instructed those agencies to consider known program violators for suspension and debarment. However, we found that OCFO did not perform the follow-up reviews required for final action. Instead, without requesting a change in management decision, OCFO decided that it would use other methods such as phone calls, emails, and quarterly meetings to ensure USDA agencies complied with suspension and debarment regulations. We concluded that OCFO’s alternative methods were not sufficient since we found that most agencies did not fully comply with all the requirements in USDA’s DR 2280-001. (See Finding 2.)

*Recommendation 19: Require the centralized suspension and debarment division to develop and promulgate Departmental policy and an internal control plan for identifying cases to be referred for suspension and debarment consideration, and assuring suspended and debarred entities do not do business with USDA.*

During the management decision process, OCFO replied it would require each agency to develop an internal review plan to identify cases for consideration for suspension and debarment. We accepted OCFO’s management decision and for final action required OCFO to obtain a copy of the agencies’ guidance.

USDA agencies were required to provide a copy of their suspension and debarment guidance to OCFO.<sup>32</sup> However, after OCFO received guidance from a few agencies,

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<sup>32</sup> USDA Departmental Regulation 2280-001, Suspension and Debarment (Jan. 16, 2013).



officials felt that final action was achieved and no further action was necessary. During the current audit, we found that OCFO had not received guidance from six agencies even though the requirement had been in place since January 2013.<sup>33</sup> (See Finding 2.)

Food and Nutrition Service (FNS) Did Not Complete Agreed-to Final Actions for Recommendations 11, 12, and 14

*Recommendation 11: In collaboration with OGC and OCFO, review all FNS program transactions to determine if they should be classified as noncovered by suspension and debarment, pursuant to the President's Executive Orders and in Office of Management and Budget (OMB)'s guidance. For programs to be excluded from suspension and debarment, provide statutory language justifying the exclusions or acceptable program rationale supporting their noncovered status.*

To achieve management decision for the 2010 audit, FNS consulted with OGC and determined that FNS program benefits are not-covered transactions under suspension and debarment rules—meaning a person suspended or debarred would still be able to receive FNS program benefits such as Supplemental Nutrition Assistance Program (SNAP) and Special Supplemental Nutrition Program for Women, Infants and Children (WIC). In addition, FNS stated it believed that retailers convicted of criminal offenses were an identifiable group that could be considered for nonprocurement debarment actions. FNS also proposed creating criteria to identify a category of retailers that might be subject to suspension actions. To support its efforts, FNS requested that OIG provide copies of indictments and convictions of SNAP and WIC program retailers on a quarterly basis. OIG agreed and began fulfilling the request in the third quarter of FY 2013.

Since reaching management decision in January 2013, FNS and OIG worked to develop an indictment and conviction quarterly report that was useful in identifying retailers in order to pursue suspension and debarment actions. Since the first quarter of FY 2016, OIG provided FNS with the agreed upon quarterly report. However, by the time that FNS received the quarterly report, the retailers were already disqualified and added to SAM through FNS' disqualification process. Therefore, FNS decided to pursue disqualification rather than pursue suspension and debarment actions against retailers who have been indicted or convicted.<sup>34</sup> FNS officials stated that they continue to have more success and timeliness in following FNS' administrative disqualification procedures. FNS officials also stated that based on those factors they felt administrative disqualification is the best course of action for their programs.

While OCFO officials were aware that FNS was not complying with the agreed-to corrective actions, they did not require FNS to submit a change of management decision. We met with FNS officials and they stated they would continue with disqualification and not implement suspension and debarment procedures. We informed FNS that this is

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<sup>33</sup> The six agencies included Food and Nutrition Service (FNS), Foreign Agricultural Service (FAS), Grain Inspection, Packers and Stockyards Administration (GIPSA), Natural Resources Conservation Service (NRCS), Office of Advocacy and Outreach (OAO), and Office of the Chief Economist (OCE).

<sup>34</sup> OIG provides quarterly reports to the Department listing all indicted and convicted retailers.

different from the corrective actions they previously agreed to implement for Recommendation 11. Subsequent to our discussion, in December 2016, FNS submitted a change in management decision for Recommendation 11, stating that:

“FNS takes the position that we met the intent of the OIG recommendation by strongly considering the use of debarment and suspension for retailers involved in criminal proceedings. However, without a quarterly indictment and conviction report containing the necessary elements to pursue possible suspension and debarment, FNS could never move forward with items two and three of the original OIG position. FNS will continue to use SAM as a means for sharing disqualified store information with other governmental agencies.”<sup>35</sup>

OIG agreed to FNS’ request to a change in management decision provided FNS developed and implemented a suspension and debarment policy that included criteria to (1) permanently debar from any subsequent participation in USDA programs those convicted of a felony for knowingly defrauding the United States in connection with any program administered by USDA, and (2) consider nonprocurement suspension and/or debarment actions against a category of retailers who are the most egregious SNAP and WIC offenders.

*Recommendation 12: Issue guidance to FNS officials at headquarters and in its regional offices as well as State agency officials clarifying that those who abuse entitlement programs should be considered for suspension and debarment for misconduct related to those entitlement programs.*

During the current audit, we found that FNS issued guidance in 2012 to its headquarters and regional staff, but it did not clarify that those who abuse entitlement programs should be considered for suspension and debarment.<sup>36</sup> Instead, the agency’s guidance said that FNS would pursue disqualifications against SNAP and WIC retailers that abuse entitlement programs.<sup>37</sup> FNS officials stated that the disqualification process (an administrative tool) would be a quicker way for removing program violators than USDA’s suspension and debarment program. While FNS’ disqualification process might be quicker, statutory disqualifications do not have the same effect as a government-wide suspension and debarment. FNS’ disqualifications remove program participants from FNS programs and do not prevent those program participants from participating in other USDA or Federal agencies’ programs.

We found that OCFO did not verify whether FNS’ guidance contained the required information on suspension and debarment. OCFO officials stated that it was FNS’ responsibility to implement corrective actions and therefore did not monitor the implementation of this recommendation. We agree that OCFO is not responsible for implementing FNS’ corrective actions. However, this guidance was a key part of the

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<sup>35</sup> FNS continues to receive the updated OIG quarterly indictment and conviction report that started in the first quarter of FY 2016, but did not inform OIG about elements missing from those reports that would help the agency pursue possible suspension and debarment.

<sup>36</sup> OCFO-MCAT accepted final action for Recommendation 12 on Sept. 21, 2016.

<sup>37</sup> FNS also enters all permanently disqualified participants into SAM.

agency's suspension and debarment program and OCFO has the authority to assist agencies in its implementation of suspension and debarment procedures.

*Recommendation 14: Provide training and guidance to State agencies who administer FNS entitlement programs to require enforcement of the suspension and debarment regulations and perform follow-up reviews to ensure effective implementation.*

OIG made this recommendation because the prior audit found that FNS did not consider debarment for emergency or disaster food aid recipients or retailers convicted of program violations. FNS did not consider debarment for those recipients because emergency and disaster food programs were not-covered transactions under the suspension and debarment program. For retailers, FNS agreed to an alternative action, permanently disqualifying known program violators from the respective program. To reach management decision, FNS stated it would issue guidance to all appropriate FNS officials concerning the proposed debarment policy. To achieve final action, we required FNS to provide evidence of the training and guidance they provided to those officials.

During the current audit, we found that FNS had issued guidance to its regional staff and State agencies instructing State agencies to notify FNS when a WIC retailer was permanently disqualified. However, FNS did not provide evidence that it trained regional staff or State agencies to execute this guidance. FNS officials stated that the guidance they issued was self-explanatory and therefore training of FNS regional staff and State agencies was not needed. OCFO officials stated that they were not aware that FNS had not provided training and stated that because the recommendation was directed to FNS it did not track FNS' actions to resolve the recommendation. While we agree that it is the agency's responsibility to implement corrective actions, this recommendation was related to the implementation of the agency's suspension and debarment program. OCFO was delegated the authority to enable the effective implementation of suspension and debarment procedures, and this would include assisting in the implementation of all related prior audit recommendations.

We discussed our findings for these six recommendations with OCFO officials. These officials stated that they believed their corrective actions met the intent of the three recommendations for which they were responsible. However, OCFO officials agreed that the language in DR 2280-001 needed to be amended to require disqualified participants to be entered into SAM. They also agreed they could establish procedures to conduct follow-up reviews to ensure agencies fully comply with requirements including establishing suspension and debarment guidance. For the three recommendations directed to FNS, OCFO stated that it was not OCFO's responsibility to ensure FNS implemented the corrective actions. However, OCFO officials are willing to work with FNS officials to fully implement a suspension and debarment program.

While OCFO made substantial progress implementing a comprehensive suspension and debarment program within the Department, we found that it needs to improve its monitoring of USDA agencies to ensure they have fully implemented and complied with the program. Specifically, OCFO did not ensure corrective actions were fully implemented on three recommendations, or that FNS completed its agreed-to final actions for another three

recommendations. The President's Executive Order, issued in 1986, required all Federal departments to implement a comprehensive suspension and debarment program to identify program violators and protect Federal resources. Until OCFO ensures corrective actions have been fully and effectively implemented, the goals of the Executive Order have not been met.

## **Recommendation 1**

The Office of the Chief Financial Officer (OCFO) should ensure that the language in DR 2280-001 requires disqualifications to be listed in the System for Award Management (SAM) as requested by Recommendation 6 of the prior 2010 report.

### **Agency Response**

In its August 4, 2017, response, OCFO officials stated that they will amend USDA Suspension and Debarment Regulation (DR 2280-001), Section 8: Disqualifications, to clarify its language. OCFO's estimated completion date for this action is December 1, 2017.

### **OIG Position**

We accept OCFO's management decision for this recommendation.

## **Recommendation 2**

OCFO should develop and implement an action plan for all agencies to include specific deliverables for completing the follow-up reviews. As requested by Recommendation 17 of the prior audit report, perform follow-up reviews as necessary to ensure all agencies and offices fully and correctly implement the suspension and debarment program.

### **Agency Response**

In its August 4, 2017, response, OCFO officials stated that it will issue a memorandum detailing its recommendations to Mission Area Under Secretaries, Agency Administrators, and Staff Office Heads concerning specific suspension and debarment internal controls to capture all suspension and debarment activity including specific deliverables. The memorandum will discuss specific suspension and debarment internal control components to achieve USDA's suspension and debarment program objectives. OCFO officials also stated that OCFO must protect the integrity of the USDA suspension and debarment program it established and defer to Agency or Staff Office Suspension and Debarring Official's (SDO) discretion when the suspension and debarment remedy is administered because of the many factors that may influence an SDO's decision under the nonprocurement rule. OCFO's estimated completion date for this action is October 2, 2017.

### **OIG Position**

We accept OCFO's management decision for this recommendation.

### **Recommendation 3**

OCFO should work with the six agencies (FNS, GIPSA, FAS, NRCS, OAO, and OCE) to obtain their suspension and debarment guidance as requested by Recommendation 19 and ensure the guidance contains an internal review plan to identify cases to be referred for suspension and debarment.

#### **Agency Response**

In its August 4, 2017, response, OCFO officials stated that they have fully addressed the intent of this recommendation by developing USDA's Suspension and Debarment Regulation (DR 2280-001). This regulation offers consistency in the application of the suspension and debarment remedy and is a departmental regulation for use by all agencies and staff offices. In its subsequent response, dated September 8, 2017, OCFO officials stated they will provide each of the six agencies with a suspension and debarment guidance template to assist those agencies with developing their suspension and debarment guidance. For any agency or staff office that has minimal staff or little to no award activity, OCFO will obtain signed letters, similar to the ones provided by OAO and OCE, stating that they will use the Department's DR 2280-001 as their suspension and debarment guidance. GIPSA adopted DR 2280-001 as its agency guidance. NRCS published a directive (May 2017) establishing NRCS policies and procedures for nonprocurement suspension and debarment programs and activities consistent with USDA, CFRs, and OMB guidance. OCFO's estimated completion date for this action is September 2, 2018.

#### **OIG Position**

We accept OCFO's management decision for this recommendation.

### **Recommendation 4**

OCFO should exercise its authority to assist FNS in implementing a suspension and debarment program in accordance with corrective actions from prior audit Recommendation 11.

#### **Agency Response**

In its August 4, 2017, response, OCFO officials stated that they would follow up with FNS concerning a change in management decision for recommendation 11 of the prior audit. OCFO officials also stated that DR 2280-001 provides a step-by-step guide for compiling an action referral and assistance in the application of evidentiary standards when applying the suspension and debarment remedy. OCFO also provides internal and external suspension and debarment training opportunities for USDA's Suspension and Debarment Community of Practice. These activities are in line with its delegated authority. OCFO relies upon agencies and staff offices to balance their program objectives with their regulations and resources to ensure that program violators are identified and removed from participation in USDA's programs. In its subsequent response, dated September 8, 2017, OCFO officials stated that they will reach out to FNS officials to offer OCFO's assistance, within its authority, in the agency's implementation of a

suspension and debarment program. OCFO's estimated completion date for this action is September 2, 2018.

## **OIG Position**

We accept OCFO's management decision for this recommendation.

## **Recommendation 5**

OCFO should provide the necessary assistance (for instance, technical direction, guidance, etc.) to FNS to implement the corrective actions from prior audit Recommendations 12 and 14.

## **Agency Response**

In its August 4, 2017, response, OCFO officials stated that OCFO executed a comprehensive department wide suspension and debarment program which includes a departmental regulation that "prescribes Departmental standards for implementing suspension and debarment procedures for all Department of Agriculture nonprocurement and procurement programs or activities" and provides training opportunities for USDA's Suspension and Debarment Community of Practice. Agency and staff office "assistance" is received through the implementation tools provided by USDA's suspension and debarment program. OCFO provides direction and guidance but lacks authority to enforce compliance. Through escalation and agency and staff office scorecard reporting (which will track agency and staff office implementation of corrective actions), non-compliance will be elevated to the Mission Area Under Secretary level. OCFO does not have the authority to modify an agency's or staff office's decision to balance its program objectives with its regulations and resources to ensure that its program violators are identified and removed from participation in its programs. FNS determined that disqualifications were the best course of action to disqualify program violators and is placing those disqualifications in the GSA SAM Exclusions database. That business decision is one afforded solely to its Agency Administrator, the Suspension and Debarring Official (SDO). OCFO must defer to the SDO's decision. FNS also determined that the "suspension and debarment guidance it issued to its regional staff and State agencies was 'self-explanatory' and therefore training of FNS regional staff and State agencies was not needed." OCFO also defers to this decision made by FNS. A change of management decision for these recommendations lies with FNS. In its subsequent response, dated September 8, 2017, OCFO officials stated that OCFO will reach out to FNS officials to offer OCFO's assistance, within its authority, in the agency's implementation of corrective actions from the prior audit Recommendations 12 and 14. OCFO's estimated completion date for this action is September 2, 2018.

## **OIG Position**

We accept OCFO's management decision for this recommendation.

## Section 2: USDA's Suspension and Debarment Program

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### **Finding 2: OCFO Needs to Coordinate Better with USDA Council Members to Improve Oversight of the Suspension and Debarment Program**

We found that 12 of 17 agencies did not comply with one or more of the requirements for USDA's suspension and debarment program. For example, three agencies did not consider suspension and debarment for program participants convicted of fraud and bribery.<sup>38</sup> This occurred because Suspension and Debarment Council members, representing individual agencies, did not enable effective implementation of USDA suspension and debarment regulations. In addition, USDA's DR 2280-001 did not provide a detailed explanation of Council members' roles and responsibilities. Furthermore, while OCFO's role is to monitor and provide technical assistance to agencies, it did not adequately monitor one agency to ensure that it documented all permanently disqualified participants in SAM, nor did it have a process to elevate issues when agencies are not responsive to needed corrective actions.<sup>39</sup> As a result, USDA did not pursue permanent debarment from some USDA programs, and one agency did not list over 600 known program violators in SAM. In addition, two different USDA agencies did not suspend or debar program participants and list them in SAM, even though they were convicted of bypassing food safety requirements.<sup>40</sup> According to the Centers for Disease Control and Prevention, one of those instances resulted in a food recall that led to over 1,900 reported confirmed cases of salmonella and more than 56,000 people who may have been sickened.

A 2011 memorandum from the Secretary of Agriculture established a Suspension and Debarment Council under the authority of OCFO.<sup>41</sup> The memorandum instructed each agency to appoint a Council member to represent them for suspension and debarment. The Department's Council was to develop and issue guidance to USDA agencies to enable the effective implementation of USDA's suspension and debarment regulations. In 2013, USDA's OCFO published DR 2280-001 that required agencies to implement suspension and debarment in accordance with the applicable regulations for procurement and nonprocurement suspension and debarment actions.<sup>42</sup> As part of that implementation, agencies are required to establish guidance that includes the following: (1) controls and procedures to identify fraud and misconduct related to agency programs, (2) an internal review plan for identifying cases to be referred for suspension and debarment, and (3) a training plan to identify agency personnel required to take suspension and debarment training. In addition, USDA's suspension and debarment regulation required that agencies ensure suspension and debarment action is considered when warranted (for example, program participants who are indicted or convicted) and report quarterly to OCFO any nonprocurement suspension and debarment actions.

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<sup>38</sup> Agricultural Marketing Service (AMS), FNS, and Food Safety and Inspection Service (FSIS).

<sup>39</sup> A previous OIG audit report recommended that FNS to post permanent disqualifications in SAM (see Recommendation 13 from Audit Report 50601-14-AT, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, Aug. 2010). OCFO agreed with allowing FNS to perform this function. FNS worked with GSA to obtain access to SAM.

<sup>40</sup> AMS and FSIS.

<sup>41</sup> USDA, *Establishment of the Debarment and Suspension Council*, Secretary Memorandum (June 13, 2011).

<sup>42</sup> USDA Departmental Regulation 2280-001, Suspension and Debarment (Jan. 16, 2013).



While OCFO, in cooperation with the Council, established a comprehensive suspension and debarment program for the Department, we found that monitoring of USDA agencies needs improvement to ensure full compliance. We determined that 12 of 17 USDA agencies did not fully comply with suspension and debarment program requirements. We found that while OCFO contacted agency officials (including Council members) regarding various noncompliance issues, it did not sufficiently elevate noncompliance issues to ensure Council members took corrective actions. For example, we found that the seven agencies in our sample either did not have a suspension and debarment training plan in place or did not ensure the official responsible for suspension and debarment completed the training. (See Exhibit B for a list of agencies that are noncompliant with suspension and debarment.) In addition, another five agencies (not part of our sample) did not provide OCFO with their agency-specific suspension and debarment guidance even though that requirement had been in place since January 2013.<sup>43</sup> Our review disclosed that three of the seven agencies we reviewed did not initiate and refer known convicted program violators for appropriate suspension and debarment actions.

*AMS, FSIS, and FNS did not consider suspension and debarment for known program violators*

OCFO provides the agencies with OIG's quarterly report to make them aware of indicted or convicted program participants of USDA programs. The agencies are required to review that report so that they can consider taking suspension and debarment action against known program violators. We reviewed a sample of those quarterly reports and found that three agencies—the Agricultural Marketing Service (AMS), the Food Safety and Inspection Service (FSIS), and FNS—did not consider suspension and debarment action for nearly 1,000 individuals convicted of criminal activities involving USDA programs.<sup>44</sup> We asked OCFO why it did not question the agencies about this inaction; OCFO stated that it did not monitor an agency's suspension and debarment actions because it is merely a point of contact for information, and agency officials are responsible for applying requirements appropriately. While we agree OCFO's role is to act as a point of contact, responsibilities also include monitoring and providing technical assistance to agencies. We found that each agency provided reasons why no action was taken, but the effect remains the same: other USDA agencies and Federal departments will not be aware of known program violators. The examples below describe the program participants' actions that the agencies deemed not sufficient to take suspension and debarment action.

### **Example 1: AMS Program Participants Convicted of Bribery and Fraud**

AMS received an OIG indictment and conviction quarterly report from OCFO in 2015 that listed three convicted program participants involving one private company that

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<sup>43</sup> Our sample included 7 of the 17 agencies required to report to OCFO. During our review of OCFO's documentation, we identified an additional 5 agencies that did not provide agency-specific guidance for suspension and debarment.

<sup>44</sup> OIG Investigations' indictment and conviction quarterly reports from 2nd quarter FY 2013 through 2nd quarter FY 2016.

participated in AMS' grading program for shell eggs.<sup>45</sup> These convictions included the bribery of a public official and the introduction of misbranded food into interstate commerce with intent to defraud. Furthermore, these actions were associated with a nationwide outbreak of salmonella that may have sickened more than 56,000 people. One of the convicted participants had a 50-year history of misconduct against different Federal departments and was subject to many fines and penalties.

AMS officials initially stated that they did not consider suspension and debarment against the company or the three program participants because AMS' grading program is considered a not-covered transaction under suspension and debarment rules. While the effect of a debarment would not automatically prevent these individuals from participating in USDA grading or inspection services, the fact that these services are considered not-covered transactions does not preclude a Federal agency from considering suspension and debarment for program violators and subsequently entering them in SAM.<sup>46</sup> Entering these known program violators in SAM would have alerted other Federal agencies that this company and its owners were known program violators. AMS officials later clarified their position that they did not consider suspension and debarment actions for that company because they had already taken other administrative action to protect AMS. AMS officials were unable to provide documentation to support that they had taken administrative actions. Regardless, even if they could have supported the action, it would have only protected AMS and did not notify other USDA or Federal agencies about these known program violators.

OCFO officials stated that they did not bring this to AMS' attention because OCFO misinterpreted how the suspension and debarment rules should have been applied for not-covered transactions. However, according to Federal regulations and OGC, suspension and debarment can be considered for a program violator even if a transaction is not covered. As a result, one company and three individuals convicted of bribery, fraud, and other actions that pose a risk to public health, would still be seen as responsible individuals by other USDA agencies and Federal departments and allowed to do business with the Federal Government.

## **Example 2: FSIS Program Participants Convicted of Conspiracy and Misbranding Adulterated Meat**

The quarterly reports for OIG indictments and convictions in our sample showed that there were 19 FSIS program participants who were convicted of a crime related to not-covered transactions. One of these participants was convicted on one count of conspiracy to make and deliver false certificates and writings (the participant replaced official USDA markings with other markings from other facilities). Another participant allegedly obtained meat from another grocery store's dumpsters and re-labeled the items to be sold in their discount food market. The participant eventually was convicted for selling

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<sup>45</sup> These convictions were related to an inspection service provided by AMS. Inspection services are not-covered transactions, but individuals or entities with convictions can still be considered for suspension and debarment actions.

<sup>46</sup> 2 C.F.R. § 417.215.

uninspected, misbranded, and adulterated meat. We found that although FSIS was informed about these convictions, the agency did not take any suspension and debarment actions against the participants.

FSIS officials could not explain why actions were not taken because the agency officials responsible for the implementation of the suspension and debarment program had left the agency, including the Council member who represented FSIS. As of January 2017, FSIS still had not permanently filled the coordinator position or named a Council member. Those 19 convictions should have been considered for action by the agency. Because the staff that made those decisions are no longer with the agency, FSIS officials could not provide an explanation why the report to OCFO stated there were no convictions to be considered. OCFO officials stated that they were aware that the agency was not always responsive to addressing FSIS program participants listed on OIG Investigations' indictment and conviction quarterly reports, but DR 2280-001 does not have a policy or process to elevate issues noted to ensure agency compliance.

### **Example 3: FNS SNAP Retailers Convicted of Fraud**

FNS did not consider suspension and debarment for indicted and convicted program participants or retailers that provide program benefits even though some of these convictions related to program fraud. As discussed in Finding 1, FNS had agreed to pursue suspension and debarment on convicted program retailers, but later decided to use the disqualification action.<sup>47</sup> This was in contrast to what was agreed to in order for FNS to achieve management decision and resulting final action. FNS officials concluded that the disqualification process (an administrative tool) would be more efficient for removing program violators. In response to Recommendation 13 of the prior audit, FNS agreed to enter each of those disqualifications into SAM so that other USDA agencies and Federal departments would be made aware of those program violators.

We compared the names in SAM against the list of names we obtained from FNS of permanently disqualified retailers for FY 2016. Our evaluation found that over 600 of the approximately 1,600 program retailer names that FNS permanently disqualified in FY 2016 were not listed in SAM. After notifying FNS of the results of our review, agency officials stated that there was a problem with the process for uploading the names into SAM and implemented immediate corrective actions. We confirmed a nonstatistical sample of the 600 permanently disqualified retailers was subsequently uploaded into SAM.

OCFO officials stated that they normally enter all suspended and debarred individuals in SAM. However, due to the large number of FNS disqualifications, OCFO transferred the responsibility to FNS for entering disqualified program retailers into the system. When we informed OCFO officials of the results of our analysis, they stated that they were unaware that the agency had not followed through, and that they had not developed a process to monitor FNS' actions with this responsibility.

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<sup>47</sup> Disqualification does not have government-wide exclusionary effect.

*OCFO did not elevate issues to ensure corrective actions*

The Department's DR 2280-001 requires each agency to develop agency-specific guidance that includes a training plan and identifies the responsible suspension and debarment officials that need to complete the training. Five agencies in our sample (AMS, FSIS, FNS, Animal and Plant Health Inspection Service (APHIS),<sup>48</sup> and Rural Development (RD)) did not ensure their suspension and debarment officials completed the training.<sup>49</sup> We found that five agencies (AMS, FNS, Forest Service (FS), RD, and Farm Service Agency (FSA)) did not include a training plan in their suspension and debarment guidance.<sup>50</sup>

Another requirement in DR 2280-001 states that agency officials must report quarterly to OCFO any nonprocurement suspension and debarment. However, we found that two agencies (FNS and FSIS) did not provide all their quarterly reports to OCFO.<sup>51</sup> FNS officials said they were not aware of the requirement to report disqualifications to OCFO, but stated that they are willing to supply OCFO with their quarterly reports in the future. FSIS officials did not provide an explanation. OCFO officials stated that they regularly reminded FSIS about the reporting requirements via email and during the Council meetings. However, OCFO was unsuccessful at getting FSIS to comply with suspension and debarment program requirements.

USDA agencies are required to provide a copy of their suspension and debarment guidance to OCFO.<sup>52</sup> In addition to FNS, we identified that another five agencies (not in our sample) still have not accomplished this<sup>53</sup> even though that requirement has been in place since January 2013. OCFO officials stated that they knew that those agencies had not complied and reminded those agencies of the requirement.

OCFO officials stated that they were aware of these agencies' noncompliance with the suspension and debarment regulation, and they have discussed these concerns with the agencies' Council members. However, OCFO officials stated that some Council members and/or agency staff were sometimes not responsive to OCFO's concerns. We attempted to speak with the Council members who represented the agencies with the most noncompliance issues. We found that one Council member left USDA, another agency did not appoint a Council member, and a third agency's representative said they do not recall OCFO requesting documentation. We found that USDA's regulation did not describe a policy or a process in which OCFO could elevate suspension and debarment issues to the next level of management when agency officials are

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<sup>48</sup> One APHIS official had not completed the suspension and debarment training in AgLearn at the beginning of our audit work; however, this individual did complete the training before the audit work concluded.

<sup>49</sup> OCFO developed suspension and debarment training and made it available in AgLearn.

<sup>50</sup> FSA did not have a training plan, but issued a memo directing current staff to complete training. However, without a training plan in place, there is no requirement for new FSA employees to complete suspension and debarment training.

<sup>51</sup> FSIS provided 4 of the 13 quarterly reports. FNS has not provided OCFO with a quarterly report.

<sup>52</sup> USDA Departmental Regulation 2280-001, Suspension and Debarment (Jan. 16, 2013).

<sup>53</sup> Our sample included 7 of the 17 agencies that are required to report to OCFO. During our review of OCFO's documentation, we identified an additional 5 agencies that did not provide agency-specific guidance for suspension and debarment. These five agencies were FAS, GIPSA, NRCS, OAO, and OCE.

nonresponsive. OCFO officials stated that Council members should ensure their agency's compliance with suspension and debarment requirements, but DR 2280-001 did not clearly define the roles and responsibilities for Council members. We found that the Council's charter listed roles and responsibilities for its members that included "to enable effective implementation of USDA's debarment and suspension regulations." However, it did not provide guidance on what oversight role a Council member would have to ensure an agency's compliance.

#### *USDA's Application of Permanent Debarment*

Suspension and debarment authorized by the President's Executive Order is discretionary, but USDA is also required to take permanent debarment action (statutory nondiscretionary) against individuals and organizations convicted of a felony for knowingly defrauding the Federal Government in connection with any USDA administered program. Pursuant to the 2008 Farm Bill, permanent debarment became a mandatory action when an individual or organization is convicted of a felony for knowingly defrauding the Federal Government in connection with any USDA program.<sup>54</sup> A permanent debarment action prevents the program violator from further participation in USDA programs (an exception is made for participation in domestic food assistance programs).

As stated in USDA's DR 2280-001, program participants convicted of felony fraud<sup>55</sup> in connection with any program administered by USDA must be permanently debarred from all USDA programs. While not all USDA agencies might have participants convicted of felony fraud, we found that four of the seven agencies we reviewed had at least one participant convicted of felony fraud. While we did not review all convictions related to USDA to determine if they were felony convictions for fraud, according to an OIG Investigations official a majority of these convictions were related to retailers in FNS' food assistance programs. During FY 2016, FNS had over 400 convicted program participants and, according to an OIG Investigations official, a majority of those convictions were related to felony fraud. However, FNS did not pursue permanent debarment for convicted felons in accordance with DR 2280-001. Instead, it used only permanent disqualifications. In addition, we found that AMS had one participant who was convicted of felony fraud, but the agency did not pursue permanent debarment from USDA programs. We found that FNS still had not implemented suspension and debarment procedures (as discussed in Finding 1), and AMS officials stated that they felt the administrative actions they took were sufficient.

OCFO officials stated that it has been a challenge to get agencies to comply with DR 2280-001 requirements. Those officials stated that they rely on the agencies' representatives at the Council, but they are not always responsive to OCFO's requests. OCFO agreed that DR 2280-001 needs to be updated to better define agency and Council member's roles and responsibilities, and include a process to elevate the issues when Council members are not responsive. Finally,

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<sup>54</sup> 7 U.S.C. § 2209j.

<sup>55</sup> The term "felony fraud" is used to describe a felony conviction "for knowingly defrauding the United States in connection with any program administered by the Department of Agriculture." 7 U.S.C. § 2209j(a).

OCFO officials stated that they have not emphasized the mandatory requirement in DR 2280-001 that requires agencies to permanently debar participants from all USDA programs when known program violators are convicted of felony fraud.

Based on our review, we recommend that USDA amend DR 2280-001 to provide clearly defined roles and responsibilities for agency officials assigned to the Council. In addition, USDA needs to amend the regulation to establish a policy and a process to ensure agencies timely respond to OCFO officials' requests for required data and reports. We also recommend that USDA issue a reminder to the Department explaining that suspension and debarment can be taken on program participants in not-covered transactions, and that permanent debarments are mandatory for participants convicted of felony fraud. Finally, we recommend that OCFO officials need to work with FNS officials to ensure all permanently disqualified participants are entered into SAM. By implementing these corrective actions, USDA can be assured that its agencies and other Federal departments will be aware of known program violators and can better help protect government resources.

## **Recommendation 6**

OCFO should amend DR 2280-001 to clearly define the roles and responsibilities for Suspension and Debarment Council members with respect to the implementation and oversight of the agency's suspension and debarment program.

### **Agency Response**

In the agency's response, dated August 4, 2017, OCFO officials stated that they will amend USDA's Suspension and Debarment Regulation (DR 2280-001) to define Suspension and Debarment Council Member roles. OCFO officials also stated that they will issue a memorandum to Mission Area Under Secretaries, Agency Administrators and Staff Office Heads recommending specific suspension and debarment internal controls. The memorandum will discuss specific suspension and debarment internal control components to achieve USDA's suspension and debarment program objectives. OCFO's estimated completion date for this action is December 1, 2017.

### **OIG Position**

We accept OCFO's management decision for this recommendation.

## **Recommendation 7**

OCFO should develop and implement a process to identify agencies that do not fully comply with suspension and debarment requirements and to elevate those non-compliance issues within the Department when agencies are not responsive.

### **Agency Response**

In the agency's response, dated August 4, 2017, OCFO officials stated that they will address noncompliant agency and staff office behavior in its suspension and debarment program implementation by communicating information to Mission Area Under Secretaries, Agency

Administrators and Staff Office Heads about agency and staff office suspension and debarment activities. The enforcement authority to comply with the tools that OCFO has implemented for an active referral process to capture bad actors in receipt of its Federal resources lies with those offices. OCFO officials also stated that they will issue a memorandum to Mission Area Under Secretaries, Agency Administrators and Staff Office Heads recommending specific suspension and debarment internal controls. The memorandum will discuss specific suspension and debarment internal control components to achieve USDA's suspension and debarment program objectives. OCFO's estimated completion date is October 2, 2017.

## **OIG Position**

We accept OCFO's management decision for this recommendation.

## **Recommendation 8**

OCFO should issue a reminder to all agencies clarifying that individuals participating in a not-covered transaction are eligible for suspension and debarment action(s), and that individuals or entities convicted of felony fraud offenses must be permanently debarred from all USDA programs.

## **Agency Response**

In the agency's response, dated August 4, 2017, OCFO officials stated that they will amend DR 2280-001 to further clarify the provision found in USDA's supplement to 2 C.F.R. § 180 located at 2 C.F.R. § 417. As to the latter half of this recommendation, USDA program violators can only be permanently debarred from USDA programs if convicted of a felony for knowingly defrauding the United States in connection with any USDA program. DR 2280-001 also addresses this issue. OCFO has, and will continue to be, direct in its management control objectives through its established Suspension and Debarment Community of Practice. In its subsequent response, dated September 8, 2017, OCFO officials stated that they will issue a notification to remind all agencies and staff offices that 1) suspension and debarment actions can be taken against individuals with respect to nonprocurement transactions under a USDA program even if such action has been excluded from covered transaction status and 2) program violators (individuals or entities) can be permanently debarred from USDA programs if convicted of a felony for knowingly defrauding the United States in connection with any USDA program as defined by the provisions located at 2 C.F.R. § 417.215(c) and 7 U.S.C. § 2209j; 2 C.F.R. § 417.865 (d). OCFO's estimated completion date is September 2, 2018.

## **OIG Position**

We accept OCFO's management decision for this recommendation.

## **Recommendation 9**

OCFO should establish an action plan in collaboration with FNS officials that ensures all permanently disqualified participants are reported to OCFO and entered into SAM. In addition,



OCFO should conduct spot checks of the disqualified participants entered into SAM by FNS on an annual basis.

### **Agency Response**

In the agency's response, dated August 4, 2017, OCFO officials stated that it has an established case tracking system on a Microsoft SharePoint Website on which FNS can report its disqualified participants. Annual reviews of disqualified participants must be "cross walked" with FNS suspension and debarment case numbers (fact-based and OIG-driven) to net useful case tracking data. OCFO will conduct the spot checks with crosswalk data provided by FNS. In its subsequent response, dated September 8, 2017, OCFO officials stated that OCFO's action plan will include issuing a department-wide memorandum in which FNS [information] will be captured concerning specific suspension and debarment internal controls to capture all suspension and debarment activity, including specific deliverables (for instance, entering FNS disqualifications in the General Services Administration's SAM). OCFO officials also stated that they will issue a memorandum that will discuss specific suspension and debarment internal control components to achieve USDA's suspension and debarment program objectives. OCFO's estimated completion date is December 1, 2017.

### **OIG Position**

We accept OCFO's management decision for this recommendation.

## Scope and Methodology

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To accomplish our audit objectives, we evaluated the adequacy of USDA's implementation of corrective actions taken on 27 prior audit recommendations.<sup>56</sup> In addition, we evaluated USDA's suspension and debarment program and the controls to initiate and refer program violators for appropriate suspension and debarment. We performed our audit work at USDA's headquarters in Washington, D.C., APHIS' headquarters in Riverdale, Maryland, and FNS' headquarters in Alexandria, Virginia. We performed our audit fieldwork from May 2016 through March 2017. The scope of our audit was USDA's suspension and debarment program activities between March 2013 and September 2016.

We reviewed two USDA offices, OCFO (for nonprocurement actions) and OPPM (for procurement actions) since they are the points of contact for agencies' suspension and debarment programs. We also selected a non-statistical sample of 7 of the 17 USDA agencies. These seven agencies included: four that received recommendations from the prior audit report (FNS, FS, FSA, and RD); two that had a large number of indictments and convictions with a low number of suspensions and debarments (APHIS and FSIS); and one based on performance indicator reports that showed no suspension and debarment action was taken for known program violators (AMS). We reviewed OCFO's files to determine if all 17 agencies submitted their suspension and debarment guidance as required.

We did not rely on an information technology (IT) system for identifying the universe for our non-statistical sample of USDA offices and agencies. Therefore, we did not perform any additional testing to evaluate the agency's IT system used and make no representation as to the adequacy of the agency's IT systems or reports. The results of our analysis of SAM data, from GSA's system, was corroborated by documents and discussions with agency officials.

To accomplish our audit objectives, we:

- Reviewed applicable laws, Executive Orders, Federal regulations, OMB guidance, and agencies' policies and procedures pertaining to the internal controls and processes governing suspension and debarment.
- Interviewed OCFO and OPPM officials regarding implementation of the suspension and debarment program and their oversight of agencies' suspension and debarment activities.
- Interviewed OGC officials to clarify OGC's role in the suspension and debarment process.
- Evaluated OCFO's and OPPM's oversight procedures of agencies' suspension and debarment activities.

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<sup>56</sup> Audit Report 50601-14-AT, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, Aug. 2010.

- Analyzed OIG Investigations’ quarterly reports of indictments and convictions of USDA program participants.
- Interviewed AMS, APHIS, FNS, FS, FSA, FSIS, and RD officials, and related Suspension and Debarment Council members responsible for procurement and nonprocurement activities about their policies and procedures to initiate and carry out suspension and debarment enforcement actions, reporting those actions to their Council member, OCFO, and OPPM, and entering program violators into SAM.
- Analyzed the selected agencies’ suspension and debarment cases considered or proposed for suspension and debarment action to determine the adequacy of their controls over the suspension and debarment program. In addition, we reviewed the number of cases in which suspension or debarment actions were completed.
- Analyzed agencies’ actions taken in response to OIG Investigations’ indictment and conviction quarterly reports to determine if they considered suspension and debarment action and reported those performance indicators to OCFO and OPPM, as required.
- Evaluated agencies’ suspension and debarment training records obtained from OCFO to document the completed training.
- Evaluated the adequacy of the selected agencies’ coordination within USDA (for example, OGC, OCFO, OPPM, and OIG Investigations) to effectively implement procurement and nonprocurement suspension and debarment actions.
- Conducted several comparisons of selected agencies’ procurement and nonprocurement participants’ information with data from SAM using database analysis software.

We conducted this audit 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.

## Abbreviations

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AMS	Agricultural Marketing Service
APHIS	Animal and Plant Health Inspection Service
CFR	Code of Federal Regulations
DR	Departmental Regulation
EPLS	Excluded Parties List System
FAR	Federal Acquisition Regulation
FAS	Foreign Agricultural Service
FNS	Food and Nutrition Service
FS	Forest Service
FSA	Farm Service Agency
FSIS	Food Safety and Inspection Service
FY	fiscal year
GIPSA	Grain Inspection, Packers and Stockyards Administration
GSA	General Services Administration
IT	information technology
MCAT	Management Control and Audit Team
NRCS	Natural Resources Conservation Service
OAo	Office of Advocacy and Outreach
OCE	Office of the Chief Economist
OCFO	Office of the Chief Financial Officer
OGC	Office of the General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPPM	Office of Procurement and Property Management
RD	Rural Development
SAM	System for Award Management
SDO	Suspension and Debarring Official
SNAP	Supplemental Nutrition Assistance Program
USDA	Department of Agriculture
WIC	Special Supplemental Nutrition Program for Women, Infants, and Children

## Exhibit A: Results of Prior Audit Recommendations

The table below lists the results of USDA's implementation of prior audit recommendations from audit 50601-14-AT.<sup>57</sup> For all corrective actions not fully or effectively implemented, see Finding 1 for details.

Recommendation	Prior Audit Recommendations	USDA Agency or Office	Corrective Action Fully Implemented?	Corrective Action Effective?
1	Issue a Secretarial directive to all agencies, directing them to fully implement nonprocurement suspension and debarment, according to the President's Executive Orders and OMB's guidance. Clarify, in that directive, that those who abuse transactions excluded from covered transaction status in the suspension and debarment regulations should still be considered for suspension and debarment to protect other Federal programs that are covered by the regulations.	OCFO	Yes	Yes
2	Direct USDA agency administrators to review their program statutes and operations to identify program transactions that are excludable from suspension and debarment implementation. For program transactions to be excluded from suspension and debarment, provide adequate statutory language justifying the exclusions or an acceptable program rationale supporting their noncovered status.	OCFO	Yes	Yes
3	As part of Departmental efforts to fully implement the authorities, finalize USDA's new rule concerning nonprocurement suspension and debarment. This should include the removal of noncovered programs and program transactions from USDA's suspension and debarment rule unless they are adequately justified by program statutory language or acceptable program rationale.	OCFO	Yes	Yes

<sup>57</sup> Audit Report 50601-14-AT, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, Aug. 2010.

Recommendation	Prior Audit Recommendations	USDA Agency or Office	Corrective Action Fully Implemented?	Corrective Action Effective?
4	Require timely referrals by agency officials of indicted and convicted program violators to suspension and debarment officials for case determination. Also, require USDA agency debarring officials to prepare an annual report of suspension and debarment actions taken in cases of indictments and convictions, including reasons where no suspension and debarment action was taken for indictment and conviction cases.	OCFO	Yes	Yes
5	Require the agencies to develop performance indicators and measures to assess the effectiveness of the agencies' implementation of the suspension and debarment regulations. Agencies should report their performance to OCFO.	OCFO	Yes	Yes
6	Provide Departmental clarification and guidance concerning the differences between Government-wide suspension and debarment actions and internal agency statutory disqualification actions and how the actions are to be used in response to program violations. Require the agencies to report their statutory disqualification actions in GSA's EPLS in accordance with USDA's suspension and debarment regulation.	OCFO	Yes	No
7	In collaboration with OGC and OCFO, review all FSA program transactions to determine if they should be classified as noncovered by suspension and debarment according to the President's Executive Orders and OMB's guidance. For program transactions to be excluded from covered transaction status for suspension and debarment, provide adequate statutory language justifying the exclusions or acceptable program rationale supporting their noncovered status.	FSA	Yes	Yes
8	Issue guidance to agency officials clarifying that those who abuse any noncovered program should still be considered for suspension and debarment to protect other Federal programs that are covered by the suspension and debarment regulations.	FSA	Yes	Yes
9	Implement a tracking system within the Direct Loan System to record indictments and convictions of agricultural producers so that FSA officials will be alerted if convicted producers should reapply for farm program	FSA	Yes	Yes

Recommendation	Prior Audit Recommendations	USDA Agency or Office	Corrective Action Fully Implemented?	Corrective Action Effective?
	benefits. Establish controls and procedures to ensure that indicted, convicted, and other nonresponsible program violators are referred to the suspension and debarment official for case determinations.			
10	Provide training to FSA headquarters and State officials, and State and county committees, about suspension and debarment; develop and implement procedures to refer the violators for case determinations for suspension and debarment actions; and conduct follow-up reviews to ensure effective implementation.	FSA	Yes	Yes
11	In collaboration with OGC and OCFO, review all FNS program transactions to determine if they should be classified as noncovered by suspension and debarment, pursuant to the President's Executive Orders and in OMB's guidance. For programs to be excluded from suspension and debarment, provide statutory language justifying the exclusions or acceptable program rationale supporting their noncovered status.	FNS	No	No
12	Issue guidance to FNS officials at headquarters and in its regional offices as well as State agency officials clarifying that those who abuse entitlement programs should be considered for suspension and debarment for misconduct related to those entitlement programs.	FNS	No	No
13	Post all FNS disqualification, suspension, and debarment actions on GSA's EPLS as required.	FNS	Yes	Yes
14	Provide training and guidance to State agencies who administer FNS entitlement programs to require enforcement of the suspension and debarment regulations and perform follow-up reviews to ensure effective implementation.	FNS	Yes	No



Recommendation	Prior Audit Recommendations	USDA Agency or Office	Corrective Action Fully Implemented?	Corrective Action Effective?
15	Require USDA scientific, inspection and grading, marketing, and natural resources agencies to reassess their program transactions not covered by the suspension and debarment regulations, and amend the interim final rule for nonprocurement suspension and debarment to reclassify transactions that are currently considered noncovered and are not adequately justified. For program transactions to be excluded from suspension and debarment, provide adequate statutory language justifying the exclusions or acceptable program rationale supporting their noncovered status.	OCFO	Yes	Yes <sup>58</sup>
16	Direct the administrators of USDA's scientific, inspection and grading, marketing, and natural resources agencies to issue guidance to agency officials clarifying that those who abuse noncovered entitlement programs or mandatory awards are subject to consideration for suspension and debarment from other Federal programs covered by suspension and debarment.	OCFO	Yes	Yes <sup>59</sup>
17	Provide training and guidance to USDA scientific, inspection and grading, marketing, and natural resources agency officials regarding the suspension and debarment regulations. Require the agencies to establish controls and procedures to identify fraud and misconduct related to their programs and to refer for suspension and debarment determination indicted, convicted, and other nonresponsible program violators. Perform follow-up reviews to ensure effective implementation of the regulations.	OCFO	Yes	No
18	Establish a centralized division that specializes in suspension and debarment; provides coordination, guidance, and training to all relevant agency officials; promotes consistency in handling the Department's	OCFO	Yes	Yes <sup>60</sup>

<sup>58</sup> OGC completed a review of all USDA not-covered transactions to evaluate which programs were not-covered or covered transactions.

<sup>59</sup> USDA Departmental Regulation 2280-001, Suspension and Debarment (Jan. 16, 2013) and USDA, *Establishment of the Debarment and Suspension Council*, Secretary Memorandum (June 13, 2011) clearly presented the requirements that agencies are to consider suspension and debarment for not-covered transactions. However, AMS and FSIS chose not to follow that guidance and did not take action on multiple transactions (see Finding 2).

<sup>60</sup> The Suspension and Debarment Council was established, guidance and training was provided, and OCFO acted as a point of contact for USDA agencies.

Recommendation	Prior Audit Recommendations	USDA Agency or Office	Corrective Action Fully Implemented?	Corrective Action Effective?
	suspension and debarment cases; and processes case referrals for all actions. Provide appropriate staffing resources, funding, and training to the centralized division to enable it to effectively and efficiently carry out its responsibilities.			
19	Require the centralized suspension and debarment division to develop and promulgate Departmental policy and an internal control plan for identifying cases to be referred for suspension and debarment consideration, and assuring suspended and debarred entities do not do business with USDA.	OCFO	Yes	No
20	Amend the Department's suspension and debarment regulations to require that the centralized division monitor how the agencies implement suspension and debarment, including establishing agency performance indicators and measures, and reporting requirements; identifying and correcting any problems detected; and reporting annually on the agencies' performance in implementing the suspension and debarment authorities to the OCFO.	OCFO	Yes	Yes
21	Require the Rural Development Administrators for Business and Cooperative Programs, Housing and Community Facilities, and Rural Utility Programs to inform the agency's suspension and debarment coordinator upon notification from OIG's Office of Investigations that a program violator has been indicted or convicted.	RD	Yes	Yes
22	Require the Rural Development Administrators for Business and Cooperative Programs, Housing and Community Facilities, and Rural Utility Programs to develop a manual system to be used by the loan specialist and approving official as an interim compensating control to ensure GSA's EPLS is reviewed and the review documented for new loan applicants.	RD	Yes	Yes
23	Require the Rural Development Administrators for Business and Cooperative Programs, Housing and Community Facilities, and Rural Utility Programs to include an automated system control in the Comprehensive Loan Program, Common Loan Origination System to require a certification by the loan specialist that GSA's EPLS has been reviewed and the review documented before the system will allow the application to be finalized.	RD	Yes	Yes

Recommendation	Prior Audit Recommendations	USDA Agency or Office	Corrective Action Fully Implemented?	Corrective Action Effective?
24	Establish and implement a suspension and debarment program for all FS mission areas in addition to the already operating unit established for the agency's timber program.	FS	Yes	Yes
25	Issue a secretarial directive to all agencies directing that they fully implement procurement suspension and debarment actions according to the FAR, the President's Executive Orders, and OMB guidance.	OPPM	Yes	Yes
26	Assign responsibility to the centralized division, established to process nonprocurement suspension and debarment actions for all USDA agencies, to also process all procurement suspension and debarment actions for all USDA agencies.	OPPM	Yes	Yes
27	In accordance with control standards and guidance issued by the centralized division and those standards outlined in the FAR, direct OPPM and Departmental contracting officials to develop and implement internal controls to identify and refer cases warranting consideration for procurement suspension and debarment actions to the centralized division.	OPPM	Yes	Yes

## Exhibit B: Suspension and Debarment Noncompliance Issues for Our Sample of Seven Agencies

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The table below lists the results of our review of the seven agencies (See Finding 2).

Agencies Reviewed	No Agency-Specific Guidance <sup>61</sup>	Did Not Take Action on Known Program Violators	Did Not Provide All Activity Reports to OCFO	No Training Plan	Responsible Officials Did Not Complete Training
AMS		X		X	X
APHIS					X
FNS	X	X	X	X	X
FS				X	
FSA				X	
FSIS		X	X		X
RD				X	X

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<sup>61</sup> We also found an additional 5 USDA agencies that did not provide their suspension and debarment guidance to OCFO. These five agencies were not a part of the seven agencies in our selected sample and included Foreign Agricultural Service, Grain Inspection, Packers and Stockyards Administration, Natural Resources Conservation Service, Office of Advocacy and Outreach, and Office of the Chief Economist.



**USDA'S  
OFFICE OF THE CHIEF  
FINANCIAL OFFICER'S  
RESPONSE TO AUDIT REPORT**





August 4, 2017

United States  
Department of  
Agriculture

Office of the Chief  
Financial Officer

1400 Independence  
Avenue, SW

Washington, D.C.  
20250

TO: Gil H. Harden  
Assistant Inspector General  
Office of Inspector General

FROM: Lynn M. Moaney /S/  
Acting Chief Financial Officer

SUBJECT: OIG Audit Report 50016-0001-23 Official Draft Report: *Implementation of  
Suspension and Debarment Tools in the Department of Agriculture*

This letter responds to the Office of the Inspector General (OIG) official draft report for Audit Report number 50016-0001-23. To reach its audit objectives OIG reviewed the comprehensive suspension and debarment program that was implemented at USDA. As described below, implementation of the tools are based on OCFO's confidence in an agency or staff office Suspension and Debarring Official's independent duty to act. OCFO continues to raise awareness by promoting the use of the suspension and debarment remedy at USDA to ensure that Federal government interests are protected. OCFO has relied on compliance from the diverse program portfolio represented by USDA agencies and staff offices. OCFO will consider applicable OIG recommendations to improve USDA's suspension and debarment program using a baseline against which the program's implementation progress can be measured – internal staff office and agency controls, training efforts, and use of tools in addition to suspension and debarment (e.g., administrative agreements, voluntary exclusions). The purpose of USDA's Suspension and Debarment Community of Practice established by OCFO is to protect the integrity of USDA's Federal nonprocurement and procurement programs and activities. USDA's comprehensive suspension and debarment program is consistent with and supports a basic governmentwide objective -- to prevent poor performance, fraud, waste and abuse.

**OCFO Response to the Introduction Section of the Audit Report, "What OIG Found."**

OCFO expresses its appreciation for the audit of USDA's suspension and debarment program as a few of its recommendations are helpful and identify areas for needed improvement. OCFO established a comprehensive suspension and debarment program regarding its secretarial delegation of authority for such matters as organizational goals and objectives, operating functions, and regulatory requirements in an organizational structure that is appropriately decentralized given the nature of USDA's diverse portfolio of programs.<sup>1</sup> The audit report does

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<sup>1</sup> The Secretarial Delegation of Authority for the Chief Financial Officer to administer a suspension and debarment program is found in 7 C.F.R. § 2.28. That authority also addresses coordination with the Director, Office of Procurement and Property Management to administer the debarment authorities in section 14211 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. § 2209j). The Secretarial Delegation of Authority for the Office of Property and Procurement Management (OPPM) is found in 7 C.F.R. § 2.93.



not seem to acknowledge the integrity of the independent decision making authority of USDA's Suspension and Debarment Officials. The Audit does not find culpability on the part agencies or staff offices who are not implementing the department wide suspension and debarment tools established by OCFO and their alleged disregard for the oversight requirements it established.

OCFO effectively implemented department wide suspension and debarment tools in compliance with the rules and regulations governing the administrative suspension and debarment remedy. USDA has an active referral process and implemented more than 80 percent of the audit recommendations from the Office of Inspector General (OIG) Audit Report 50601-14-AT, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, Aug. 2010. (Audit Report 50601-14-AT). Despite the fact that USDA does not have a dedicated centralized suspension and debarment program and full time staff which operate in a division where all suspension and debarment activities are conducted, it shares common characteristics with other Federal agencies that encourage an active referral process. OCFO optimizes, when possible, agency, staff office and other internal/external stakeholder resources necessary to accommodate USDA's suspension and debarment caseloads to increase efficiencies in the administration of the remedy.

OCFO provides overall direction of department wide suspension and debarment nonprocurement policies under 2 C.F.R. §§ 180, 417 and has the authority to issue guidelines for nonprocurement suspension and debarment actions.<sup>2</sup> The Office of Property and Procurement Management (OPPM) provides overall direction of department wide suspension and debarment policies under the governmentwide Federal Acquisition Regulation (FAR), a parallel process to the nonprocurement rule, and also has the authority to issue guidelines for procurement suspension and debarment actions under delegated secretarial authority.<sup>3</sup> OCFO, as USDA's Exclusions Representative for Nonprocurement Transactions, places applicable exclusions in the General Services Administration (GSA)'s System for Award Management (SAM) Exclusions database which reflects information about parties that have been excluded from receiving Federal financial and nonfinancial assistance and benefits and Federal contracts. Similarly, OPPM, as USDA's Exclusions Representative for Procurement Transactions, places applicable exclusions in this system.

In Audit Report 50601-14-AT, OIG reported on challenges with USDA's suspension and debarment program and made recommendations to improve it.<sup>4</sup> OCFO ensured that corrective actions were implemented to address the recommendations and developed a comprehensive program in response to the audit.

OCFO has no authority to determine the magnitude, significance and use of information in the agency or staff office decision making process to meet the stages of the suspension and debarment remedy as it relates to its programs. OCFO established management controls

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<sup>2</sup> See, 7 C.F.R. § 2.28, 7 U.S.C. § 2209j.

<sup>3</sup> See, FAR 48 § 9.406, FAR 48 C.F.R. Subpart 409.4, 7 C.F.R. § 2.93.

<sup>4</sup> See, *Audit Report 50601-14-AT, Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, Aug. 2010.

through policies and procedures to achieve the objectives of applying the suspension and debarment remedy department wide for a diverse program portfolio with each agency and staff office managing their portfolios with their own set of unique requirements. Its delegated authority is rooted in the integrity of the independent decisions of USDA's Suspending and Debarment Officials (SDOs).<sup>5</sup> OCFO has been and continues to be direct in its management control objectives through its established Suspension and Debarment Community of Practice and has provided implementation tools to which agencies and staff offices can avail themselves to ensure that Federal government resources are protected. OCFO implemented a comprehensive suspension and debarment program to meet this standard in a decentralized organizational structure tailored to meet the needs of USDA's diverse program portfolio. Over the past six years, about four percent of USDA's more than 10,200 cases included in GSA's SAM Exclusions database were suspensions and debarments while the remaining were other exclusions based on violations of mandatory laws and agency-specific regulations resulting from certain prohibited conduct. All of the cases involved actions listed under 2 C.F.R. §§ 180, 417. The following discussion forms the basis for OCFO's conclusion regarding the tools it implemented to create USDA's comprehensive suspension and debarment program.

USDA's suspension and debarment program shares governmentwide characteristics to foster an active referral process which includes full-time staff, detailed policies and procedures, and practices that encourage an active referral process. Unlike the rest of the Federal government, USDA's suspension and debarment activity is managed by OCFO's Transparency and Accountability Reporting Division which has one division director and eight staff members; two of which are dedicated part-time to administer the remedy. OCFO established policies and procedures for USDA's suspension and debarment program, including roles and responsibilities.<sup>6</sup> USDA's suspension and debarment program fosters practices that encourage referrals and maintains a Microsoft SharePoint Website as a tool for agencies and staff offices to manage information from multiple sources pertaining to proposed suspension and debarment actions. OCFO also manages USDA's nonprocurement activity participation with the Interagency Suspension and Debarment Committee and is engaged in a mentoring relationship with the Committee to further develop efficiencies in USDA's suspension and debarment program. An OCFO-Transparency and Accountability Reporting Division staff member participates in one of its subcommittee projects, the Working Group that prepares its annual report to Congress.

The comprehensive USDA suspension and debarment program established by OCFO is consistent with its delegated authorities and supports a basic governmentwide objective – to prevent poor performance, fraud waste and abuse of Federal resources. The Secretarial delegation of authority to OCFO is appropriate in relation to the assignment of responsibility. Key areas of authority and responsibility are clearly defined and communicated throughout USDA's Suspension and Debarment Community of Practice. The organizational structure of the

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<sup>5</sup> See, 2 C.F.R. §§ 417.930, 417.1010.

<sup>6</sup> See, *USDA Departmental Regulation 2280-001, Debarment and Suspension*, (Jan. 16, 2013). See also, *USDA Establishment of the Debarment and Suspension Council*, Secretary Memorandum (June 13, 2011); *USDA Suspension and Debarment Training, Module 3* (Nov. 2012) charting the stages of the administrative suspension and debarment process.

program is appropriately decentralized given the nature of USDA's diverse program portfolio. Pertinent and clear internal reporting relationships are established. The program judiciously delegates responsibility to the proper personnel to deal with the suspension and debarment remedy's goals and objectives. Agency and staff office personnel with suspension and debarment duties knows how his or her actions interrelate to others considering the way in which authorities and responsibilities are assigned and is sufficiently made aware of the related duties concerning internal suspension and debarment controls.

Effective oversight of the program requires changes to OCFO's guidance, including elevating reporting agency and staff office suspension and debarment activity to the requisite Offices of the Under Secretaries. These changes are a result of evidence of agencies and staff offices not fully implementing OCFO's oversight requirements and reporting deadlines which resulted in the suspension and debarment remedy not being applied where applicable.

Attachments

## **ATTACHMENTS**



**Findings and Recommendations: Office of the Chief Financial Officer (OCFO) Response:** The audit objectives used by Office of Inspector General (OIG) in its analysis speaks to an assessment based on a consolidated suspension and debarment office with representative internal stakeholders (agency and staff office representatives, OCFO, Office of General Counsel (OGC), OIG and the Office of Property and Procurement Management (OPPM), managing the Department of Agriculture's (USDA) suspension and debarment referral caseloads. USDA has not identified, assigned and aligned all suspension and debarment activities under one division. OCFO acknowledges the noncompliance in the cases OIG highlights and will modify USDA's program to further foster a Suspension and Debarment Community of Practice at USDA that will effectively avail itself of the tools OCFO made available. OCFO closed 21 of 27 recommendations from the 2010 OIG audit of USDA's suspension and debarment program.<sup>1</sup> OIG found 5 were ineffectively implemented and 1, directed at an USDA Agency, had not reached management decision. However, an 81 percent success rate in response to OIG's 2010 Audit does not speak to ineffectiveness of the program, but rather a 19 percent noncompliance rate reflective of findings for agencies and staff offices. OCFO must protect the integrity of USDA's independent Suspension and Debarment Officials authority to make decisions about the use of the suspension and debarment remedy. It does not have enforcement powers concerning agency or staff office administration of the remedy. OCFO agrees with OIG that the challenge USDA's suspension and debarment program faces is with some agencies and staff offices failure to comply. To remedy this, OCFO will seek to minimize agency and staff office noncompliance by communicating fact-based and OIG-driven indictment and conviction information about suspension and debarment activities to Mission Area Under Secretaries, Administrators and Staff Office Heads. The enforcement authority held by the agencies and staff offices to comply with the tools that OCFO has implemented will further develop an active referral process to capture bad actors in receipt of USDA's Federal resources.

The following discussion will address Sections 1 and 2 of *Audit Report 50016-0001-23 Official Draft: Implementation of Suspension and Debarment Tools in the Department of Agriculture*.

## **Section 1: Implementation of Prior Audit Recommendations**

### **Finding 1: OCFO Needs to Ensure Corrective Actions Are Fully Implemented**

#### **OCFO Did Not Fully Implement Recommendations 6, 17 and 19**

Recommendation 6 - *Provide Departmental clarification and guidance concerning the differences between Government-wide suspension and debarment actions and internal agency statutory disqualification actions and how the actions are to be used in response to program violations. Require the agencies to report their statutory disqualification actions in GSA's EPLS in accordance with USDA's suspension and debarment regulation.*

Recommendation 17 - *Provide training and guidance to USDA scientific, inspection and grading, marketing, and natural resources agency officials regarding the suspension and debarment regulations. Require the agencies to establish controls and procedures to identify fraud and misconduct related to their programs and to refer for suspension and debarment determination indicted, convicted, and other nonresponsible program violators. Perform follow-up reviews to ensure effective implementation of the regulations.*

Recommendation 19 - *Require the centralized suspension and debarment division to develop and promulgate Departmental policy and an internal control plan for identifying cases to be referred*

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<sup>1</sup> See, Audit Report 50601-14-AT, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*, Aug. 2010.

*for suspension and debarment consideration, and assuring suspended and debarred entities do not do business with USDA*

**OCFO Response: We concur in part.**

**OCFO Fully Implemented Recommendations 6, 17, and 19**

In Audit Report 50601-14-AT 2010, OIG reported on challenges with USDA's suspension and debarment program and made recommendations to improve it.<sup>2</sup> OCFO ensured that corrective actions were implemented and developed a comprehensive program in response to the audit. OCFO fully implemented Recommendations 6, 17, 19 of the audit report and will amend Section 8 of USDA, *Departmental Regulation 2280-001, Suspension and Debarment (DR 2280-001)* to clarify its language in response to Recommendation 6. The Food and Nutrition Service must address agreed to final actions for Recommendations 11, 12 and 14 in that audit report.

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 1:** The Office of the Chief Financial Officer (OCFO) should ensure that the language in DR 2280-001 requires disqualifications to be listed in the System for Award Management (SAM) as requested by Recommendation 6 of Audit Report 50601-14-AT 2010.

**OCFO Response: We concur.**

OCFO will amend USDA Suspension and Debarment Regulation (DR 2280-001), Section 8: Disqualifications to clarify its language.

**Estimated Completion Date(s):**

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|--|----------|
| • Amend DR 2280-001, Section 8 Disqualifications to clarify language   | 10/02/17 |
| • Enter amended DR 2280-001 into Departmental clearance  | 10/09/17 |
| • Amend USDA Supplement to 2 CFR § 180 (2 C.F.R. § 417)  | 10/09/17 |
| • Enter amended 2 C.F.R. § 417 into Departmental clearance for <i>Federal Register</i> publication                       | 10/16/17 |
| • Coordinate amended DR 2280-001 posting to Office of Chief Information Officer (OCIO) website with OCIO Representatives | 12/01/17 |

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 2:** OCFO should develop and implement an action plan for all agencies to include specific deliverables for completing the follow-up reviews. As requested by Recommendation 17 of the prior audit report, perform follow-up reviews as necessary to ensure all agencies and offices fully and correctly implement the suspension and debarment program.

**OCFO Response: We concur in part.**

OCFO will issue a memorandum detailing its recommendations to Mission Area Under Secretaries, Agency Administrators, and Staff Office Heads concerning specific suspension and debarment internal controls to capture all suspension and debarment activity including specific deliverables.

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<sup>2</sup> See, footnote 1 *supra*.

The memorandum will discuss specific suspension and debarment internal control components to achieve USDA's suspension and debarment program objectives including:

- a. Managing a control environment administered by identified Suspension and Debarment Council members which provides discipline and structure;
- b. Performing risk assessments;
- c. Developing control activities which establishes management actions through policies and procedures and responding to risks in an internal suspension and debarment control system;
- d. Managing information and communication to support an internal suspension and debarment control system;
- e. Monitoring suspension and debarment activities that management establishes and operates, to assess the quality of performance over time and promptly resolving the findings of audits and other reviews; and
- f. Reporting all fact-based and OIG, Office of Investigations indictment and conviction suspension and debarment activity to OCFO through the Suspension and Debarment Council.

OCFO must protect the integrity of the USDA suspension and debarment program it established and defer to Agency or Staff Office Suspension and Debarring Official's (SDO) discretion when the suspension and debarment remedy is administered because of the many factors that may influence an SDO's decision under the nonprocurement rule including, but not limited to:

- a. Actual or potential harm;
- b. Historical pattern of wrongdoing;
- c. Frequency and duration of wrongdoing;
- d. Other sanctions imposed for similar misconduct;
- e. Respondent's role in the wrongdoing;
- f. Pervasiveness of misconduct within the organization;
- g. Scope of ineligibility; and
- h. Automatic inclusion of all divisions, organization elements and operational components associated with a participant unless limited by a SDO decision.

**Estimated Completion Date(s)**

- **Distribute Memorandum to Mission Area Under Secretaries, Agency Administrators, Staff Office Heads** **10/02/17**

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 3:** OCFO should work with the six agencies, the Food and Nutrition Service (FNS), Grain Inspection, Inspection and Stockyards Administration (GIPSA), Foreign Agricultural Service (FAS), Natural Resource Conservation Service (NRCS), Office of Advocacy and Outreach (OAO), and Office of the Chief Economist (OCE) to obtain their suspension and debarment guidance, as requested by Recommendation 19, and ensure the guidance contains an internal review plan to identify cases to be referred for suspension and debarment.



**OCFO Response: We do not concur.** Action complete.

USDA's Suspension and Debarment Regulation (DR 2280-001)<sup>3</sup> offers consistency in the application of the suspension and debarment remedy and is a departmental regulation for use by all agencies and staff offices including FNS, GIPSA, FAS, NRCS, OAO and OCE. Because of the size of their program portfolios and the need to avoid unnecessary duplication, OAO and OCE adopted DR 2280-001 as their agency guidance.<sup>4</sup> OCFO accepts these actions. DR 2280-001 is the departmental guidance and if agencies and staff offices issue guidance, it should align with it to minimize inconsistent results and avoid unnecessary duplication in the administration of the suspension and debarment remedy. An agency's lack of internal suspension and debarment guidance does not translate into its inability to use available departmental resources to apply the suspension and debarment remedy where applicable. FNS, GIPSA<sup>5</sup>, FAS and NRCS have access to DR 2280-001 which prescribes Departmental standards for implementing suspension and debarment procedures for all Department of Agriculture nonprocurement and procurement activities, including definitions of the rules governing the remedy, roles and responsibilities, and procedures such as inquiry and review, lead agency coordination, document preparation, and decision-making processes. DR 2280-001 also provides a step-by-step guide for compiling an action referral and assistance in the application of the evidentiary standards for suspension and debarment. OCFO routinely distributes information concerning internal/external training/seminar suspension and debarment opportunities to USDA personnel. OCFO has fully addressed the intent of this recommendation.

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 4:** OCFO should exercise its authority to assist FNS in implementing a suspension and debarment program in accordance with corrective actions from prior audit Recommendation 11.

**OCFO Response: We do not concur.**

OCFO will follow up with FNS concerning a change in management decision. USDA's Suspension and Debarment Regulation (DR 2280-001) prescribes Departmental standards for implementing suspension and debarment procedures for USDA nonprocurement and procurement activities. DR 2280-001 provides a step-by-step guide for compiling an action referral and assistance in the application of evidentiary standards when applying the suspension and debarment remedy. OCFO also provides internal and external suspension and debarment training opportunities for USDA's Suspension and Debarment Community of Practice. These activities are in line with its delegated authority. Agency and staff office assistance can be gleaned from the tools provided in the suspension and debarment program established by OCFO. OCFO relies upon agencies and staff offices to balance their program objectives with their regulations and resources to ensure that program violators are identified and removed from participation in USDA's programs. FNS determined that disqualifications were the "best course of action" to disqualify program violators and is placing disqualifications in the General Service Administration's (GSA) System for Award Management (SAM) Exclusions database under the Prohibition/Restriction Exclusion Type with specific language in the comments section.<sup>6</sup> OCFO and OGC coordinated the use

<sup>3</sup> See, *USDA Departmental Regulation 2280-001, Debarment and Suspension*, (Jan. 16, 2013).

<sup>4</sup> See, *Office of the Chief Economist S&D Guidance and Instruction Document* (Apr. 7, 2017); *Office of Advocacy and Outreach Suspension and Debarment Guidance and Instructions* (Apr. 24, 2017).

<sup>5</sup> GIPSA does not have a portfolio that supports nonprocurement programs over which OCFO has oversight authority for the suspension and debarment remedy.

<sup>6</sup> The description for the GSA SAM Prohibition/Restriction Exclusion Type is: License or Approval Revoked; Sanctioned, Partial Denial. The following language appears in the GSA SAM Exclusions database when FNS lists disqualified program participants: "Declared permanently disqualified from participation in the Supplemental Nutritional Assistance Program (SNAP, formerly the Food Stamp Program) by the Department of Agriculture Food and Nutrition Service pursuant to 7 U.S.C. 2021(b) (sic) for violations resulting from the purchase of coupons or

of this exclusion type for FNS with GSA. Because of the volume of cases, OCFO collaborated with FNS and GSA to reach a bulk upload method to list FNS disqualifications in the SAM exclusions database. Coordinating this effort lasted several months. GSA had to design, test and implement a change to its system to facilitate FNS' need. To date there are more than 10,307 FNS disqualifications listed. OIG's Office of Investigations (OIG/OI) also tracks indictments and convictions it reports to FNS. OCFO defers to FNS' December 2012 Agency Response in which it indicated that its intent is to "provide a reasonable balance between protecting government resources, while not allocating additional resources towards efforts unlikely to provide a return on investment."<sup>7</sup> FNS and OCFO routinely field inquiries from/about disqualified violators in the GSA SAM Exclusions database. USDA Agency Administrators are its Suspension and Debarment Officials (SDO)<sup>8</sup> and as such, OCFO must defer to a SDO's discretion to administer the suspension and debarment remedy.

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 5:** OCFO should provide the necessary assistance (i.e., technical direction, guidance, etc.) to FNS to implement the corrective actions from prior audit Recommendations 12 and 14.

**OCFO Response: We do not concur.**

OCFO executed a comprehensive department wide suspension and debarment program which includes a departmental regulation that "prescribes Departmental standards for implementing suspension and debarment procedures for all Department of Agriculture nonprocurement and procurement programs or activities"<sup>9</sup> and provides training opportunities for USDA's Suspension and Debarment Community of Practice. Agency and staff office "assistance" is received through the implementation tools provided by USDA's suspension and debarment program. OCFO provides direction and guidance but lacks authority to enforce compliance. Through escalation and agency and staff office scorecard reporting (which will track agency and staff office implementation of corrective actions), non-compliance will be elevated to the Mission Area Under Secretary level. OCFO does not have the authority to modify an agency's or staff office's decision to balance its program objectives with its regulations and resources to ensure that its program violators are identified and removed from participation in its programs. FNS determined that disqualifications were the best course of action to disqualify program violators and is placing those disqualifications in the GSA SAM Exclusions database. That business decision is one afforded solely to its Agency Administrator, the Suspension and Debarment Official (SDO). OCFO must defer to the SDO's decision. FNS also determined that the "suspension and debarment guidance it issued to its regional staff and State agencies was 'self-explanatory' and therefore training of FNS regional staff and State agencies was not needed."<sup>10</sup> OCFO also defers to this decision made by FNS. A change of management decision for these recommendations lies with FNS.

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trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration or possession of Electronic Benefit Transfer (EBT).

<sup>7</sup> See, December 4, 2012, Memorandum To Gil Harden, Assistant Inspector General for Audit, From Audrey Rowe, Administrator, Food and Nutrition Service, Subject: *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture*.

<sup>8</sup> See, 2 C.F.R. 417 §§ 417.930, 417.1010.

<sup>9</sup> See, footnote 3 *supra*.

<sup>10</sup> See, OIG Audit Report 50016-0001-23, *Implementation of Suspension and Debarment Tools in the U.S. Department of Agriculture, Discussion Draft*, May 23, 2017.

## **OCFO Position in OIG Audit Report 50016-0001-23 Official Draft, June 29, 2017**

### **Section 2: USDA's Suspension and Debarment Program**

#### **Finding 2: OCFO Needs to Coordinate Better with USDA Council Members to Improve Oversight of the Suspension and Debarment Program**

##### **SUSPENSION AND DEBARMENT COUNCIL MEMBERS**

**OCFO Response.** OCFO's oversight of USDA's Suspension and Debarment (S&D) Community of Practice is clearly established. It fosters two internal suspension and debarment Committees (S&D Council and S&D Coordinators) to manage the implementation of the tools that it provides. Programmatic improvements will be due in large part by increased management attention within USDA's individual agencies and staff offices. OCFO will continue to identify and maintain Suspension and Debarment Council Members and Coordinator rosters in coordination with agencies and staff offices and will share them with requisite Mission Area Under Secretaries, Administrators and Staff Office Heads. OCFO's oversight of suspension and debarment activity at USDA is rooted in the authorities delegated to it by the Secretary. Suspension and Debarment Council Members roles, though not specifically named, are implied in DR 2280-001.<sup>11</sup> OCFO will amend DR 2280-001 to further identify their roles in it. OCFO maintains that stakeholder responsibility to meet USDA's department wide suspension and debarment program requirements falls with the agencies and staff offices.

##### **AMS, FSIS and FNS Did Not Consider Suspension and Debarment for Known Program Violators**

**OCFO Response.** OCFO established a Suspension and Debarment Community of Practice in which the manner and application of the suspension remedy can be applied to USDA's diverse program portfolio. OCFO does not review agency and staff office case files for suspension and debarment referrals. Multiple factors are considered involving case facts during the action referral stages of the suspension and debarment process none of which OCFO has an awareness of since it does not prepare or review action referrals for agency or staff office SDO consideration.

Fact-based cases are generated if effective agency and staff office management controls are in place. OIG-driven cases are borne out of OIG's, Office of Investigations (OIG/OI) indictment and conviction reports that are distributed to agencies and staff offices. OCFO distributes OIG/OI information it receives quarterly from OIG/OI via the Suspension and Debarment Microsoft SharePoint Website to stakeholders in USDA's Suspension and Debarment Community of Practice. OCFO must rely upon the experience and skills of agency and staff office personnel identified by management to apply effective monitoring controls and take applicable suspension and debarment actions. OCFO must defer to the agencies and staff offices to balance program objectives with regulations and resources to ensure that program violators are identified and removed from participation in USDA's programs. OCFO has no authority to determine the magnitude, significance and use of information in agency and staff office decisions to meet the stages of the suspension and debarment process as it relates to their programs. OCFO does not "monitor and provide technical assistance to agencies"<sup>12</sup> when agency or staff office suspension and debarment considerations are made beyond the scope of its authorities. Such activity is charged to agency and staff office management officials and offices of general counsel who are aware of the applicable laws and regulations (in addition to the suspension and debarment remedy) that govern their program portfolios. OCFO's administration of department wide suspension and debarment policy must protect the integrity of USDA's SDO independent decision making authority.<sup>13</sup>

<sup>11</sup> See, *USDA Departmental Regulation 2280-001, Suspension and Debarment* (Jan. 16, 2013), Section 6 b.(4)(5); 6 c.(2)(4). See also, *USDA Establishment of the Debarment and Suspension Council*, Secretary Memorandum (June 13, 2011).

<sup>12</sup> See, *Implementation of Suspension and Debarment Tools in the Department of Agriculture, Audit Report 50016-0001-23 Official Draft*, Finding 2, June 29, 2017.

<sup>13</sup> See, footnote 8 *supra*.

### **AMS, FSIS and FNS Did Not Consider Suspension and Debarment for Known Violators**

**OCFO Response.** OCFO has been and continues to be direct in its management control objectives through its established Suspension and Debarment Community of Practice framework and has provided suspension and debarment remedy implementation tools to which agencies and staff offices can avail themselves. OCFO provides agencies and staff offices with OIG/OI quarterly reports reflecting indictment and conviction information as a crosswalk organization tool. OIG/OI communicates the same information found in the reports directly to the agencies and staff offices through its Audit Liaison Officers. In Audit Report 50016-0001-23 Official Draft<sup>14</sup> on page 16, language in the 3rd paragraph reads, “*We reviewed a sample of those quarterly reports and found that three agencies, -- the Agriculture Marketing Service (AMS), the Food Safety and Inspection Service (FSIS), and the Food and Nutrition Service (FNS) -- did not consider suspension and debarment for nearly 1000 individuals convicted of criminal activities involving USDA programs. ... We found that each agency provide reasons why no action was taken, but the effect remains the same: other USDA agencies and Federal departments will not be aware of known program violators.*” OCFO shares OIG’s goal to protect the interests of the Federal government by capturing bad actors. This is evident through the implementation of the comprehensive suspension and debarment tools that OCFO provided for use by USDA agencies and staff offices. Equally important, it must protect the integrity of USDA’s SDO independent decision making authority.<sup>15</sup>

### **AMS Program Participants Convicted of Bribery and Fraud**

**OCFO Response.** In Audit Report 50016-0001-23 Official Draft<sup>16</sup> on page 17, language in the 2nd paragraph discusses convicted program participants involving a private company that participated in AMS’ grading program for shell eggs. As OIG correctly observes, “inspection services are not-covered transactions, but individuals or entities with convictions can still be considered for suspension and debarment actions.” Additional language in this paragraph reads, “*AMS officials ... did not consider suspension and debarment actions for that company because they had already taken other administrative action to protect AMS. ... AMS officials were unable to provide documentation to support that they had taken administrative actions. Regardless, even if they could have supported the action it would have only protected AMS and did not notify other USDA or Federal agencies about these known program violators.*” The application of the suspension and debarment remedy as it relates to non-covered transactions in this case is treated in USDA’s supplement to the governmentwide nonprocurement rule.<sup>17</sup> The SDO considered and made a decision concerning administrative action for this matter.<sup>18</sup> OCFO must protect the integrity of USDA’s suspension and debarment program by adhering to its SDOs independent decision making authority.

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<sup>14</sup> See, *Implementation of Suspension and Debarment Tools in the Department of Agriculture*, Audit Report 50016-0001-23, Official Draft, June 29, 2017.

<sup>15</sup> See, footnote 13 *supra*.

<sup>16</sup> See, footnote 14 *supra*.

<sup>17</sup> See, 2 C.F.R. § 417.215 (c).

<sup>18</sup> See, AMS Memorandum TO: Transparency and Accountability Report Division, FROM, Director, Compliance, Safety and Security, Nonprocurement Suspension and Debarment Coordinator: *Response to OIG Discussion Draft: 50016-0001-23 – Implementation of Suspension and Debarment Tools in the U.S. Department of Agriculture* (June 8, 2017). See also, *AMS Decision Regarding the Non-Suspension or Debarment of Wright Country Egg, Clarion, Iowa or its Principals* (OIG Case File No. CH-0199-0026) (July 17, 2017) submitted to OCFO from AMS Director, Compliance, Safety & Security Division, Management & Analysis Program. OCFO respectfully requests the right to amend its Official Response to this Official Draft to add an opinion from the AMS Office of General Counsel concerning the independent decision making authority of its SDO in this case.

### **FSIS Program Participants Convicted of Conspiracy and Misbranding Adulterated Meat**

**OCFO Response.** In Audit Report 50016-0001-23 Official Draft<sup>19</sup> on page 17, language in the 4<sup>th</sup> paragraph discusses the noncompliance of FSIS which resulted in reported OIG/OI indictments and convictions of its program participants not being considered for the suspension and debarment remedy. As a member of USDA's Suspension and Debarment Community of Practice, FSIS has always held seats on the Suspension and Debarment Council and Coordinators rosters. As such it receives all communication that deals with USDA's suspension and debarment program that OCFO distributes to those workgroups from OCFO and OIG/OI through its Audit Liaison Officers. It is also represented on OCFO's internal and external suspension and debarment training rosters. FSIS experienced an internal management crisis by losing key suspension and debarment personnel which contributed to the suspension and debarment remedy not being executed where applicable. Implementation of the suspension and debarment tools that are provided in USDA's suspension and debarment program are borne out of OCFO's confidence in an agency or staff office Suspension and Debarment Official's duty to act. FSIS provided comments to address OIG's assertion.<sup>20</sup> OCFO continues to raise awareness department wide by promoting the use of suspension and debarment at USDA to ensure that Federal government interests are protected.

### **FNS SNAP Retailers Convicted of Fraud**

**OCFO Response.** In Audit Report 50016-0001-23 Official Draft<sup>21</sup> on page 18 the language reads "*FNS did not consider suspension and debarment for indicted and convicted program participants or retailers that provide program benefits, even though some of these convictions related to program fraud.*" OCFO is reliant upon FNS to balance its program objectives with its regulations and resources to ensure that its program violators are identified and removed from participation in its programs. FNS determined that disqualifications were the "best course of action" to disqualify program violators and is placing those disqualifications in the GSA SAM Exclusions database under the Prohibition/Restriction Exclusion Type with specific language in the comments section.<sup>22</sup> OCFO and OGC coordinated the use of this exclusion type for FNS with GSA. Because of the volume of cases, OCFO collaborated with FNS and GSA to reach a bulk upload method to list FNS disqualifications in the SAM exclusions database. Coordinating this effort lasted several months. GSA had to design, test and implement a change to its system to facilitate FNS' need. To date there are more than 10,307 FNS disqualifications listed. OCFO defers to

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<sup>19</sup> See, footnote 16 *supra*.

<sup>20</sup> "A new suspension and debarment Coordinator and Council member have since been appointed by FSIS, focusing on improving the Agency's suspension and debarment program. In an attempt to make sure proper action is being taken on suspension and debarment actions, the FSIS suspension and debarment Coordinator has conducted meetings with the Transparency and Accountability Reporting Division in the Office of the Chief Financial Officer. Based upon their guidance, FSIS intends to evaluate the aforementioned 19 convictions. Further, FSIS is re-evaluating its suspension and debarment program, staff, and Agency roles to ensure the appropriate staffing, resources, policies, and procedures are in place to meet its suspension and debarment program responsibilities. This includes actions to address the backlog of convictions that have yet to have been evaluated by FSIS for suspension and debarment as well as the volume of not covered, non-procurement actions uncovered in this audit, now and going forward." Language submitted to OCFO from FSIS Program Evaluation and Improvement Staff (July 19, 2017).

<sup>21</sup> See, footnote 19 *supra*.

<sup>22</sup> The description for the GSA SAM Prohibition/Restriction Exclusion Type is: License or Approval Revoked; Sanctioned, Partial Denial. The following language appears in the GSA SAM Exclusions database when FNS lists disqualified program participants: "Declared permanently disqualified from participation in the Supplemental Nutritional Assistance Program (SNAP, formerly the Food Stamp Program) by the Department of Agriculture Food and Nutrition Service pursuant to 7 U.S.C. 2021(b) (sic) for violations resulting from the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration or possession of Electronic Benefit Transfer (EBT).

FNS' December 2012 Agency Response in which it indicated that its intent is to "provide a reasonable balance between protecting government resources, while not allocating additional resources towards efforts unlikely to provide a return on investment."<sup>23</sup> FNS and OCFO routinely field inquiries from/about disqualified violators that appear in the GSA SAM excluded parties database.

### **OCFO Did Not Elevate Issues to Ensure Corrective Actions**

**OCFO Response.** In Audit Report 50016-0001-23 Official Draft OIG cites several instances of agency and staff noncompliance. On page 19 the language reads *"Five agencies in our sample AMS, FSIS, FNS, Animal and Plant Health Inspection Service (APHIS) and Rural Development (RD) did not ensure that their suspension and debarment officials completed the training. We found that five agencies (AMS, FNS, Forest Service (FS), RD and Farm Service Agency (FSA) did not include a training plan in their suspension and debarment guidance."* Language in this paragraph also states *FNS and FSIS "did not provide all of their quarterly reports to OCFO."* Additional language cites agency or staff office noncompliance concerning internal suspension and debarment guidance. It states *"... In addition to FNS we identified that another five agencies (not in our sample) still have not accomplished this even though that requirement has been in place since January 2013."* Agency and staff office responsibilities are prescribed in DR 2280-001 and in a Secretarial Memorandum.<sup>24</sup> USDA does not have a centralized suspension and debarment division and is operating under the authority afforded it by Secretarial delegation. OCFO must weigh limited resources against duplicative oversight efforts to minimize undue burden on other department wide objectives that it manages. OCFO asserts that an OIG focus on noncompliance should be directed at the agency or staff office level. OCFO recognizes that some agencies and staff offices have not met OCFO's reporting deadlines. This is due to several factors e.g., unexpected agency and staff office reorganization or replacement of key suspension and debarment personnel, or not fully implementing suspension and debarment procedures. OCFO believes the audit should assess those agency and staff offices showing a lack of compliance. OCFO implemented a comprehensive USDA suspension and debarment program. USDA's agencies and staff offices have a duty to execute it to protect USDA's Federal government resources.

OCFO fosters and encourages agency and staff office emphasis of the importance of integrity in the administration of the suspension and debarment remedy. This is often achieved through oral communications in meetings, or via one-on-one discussions. It routinely takes appropriate action as soon as there are signs that a problem exists. It has a sound basis for setting realistic and achievable goals that are routinely communicated to compliant and noncompliant agencies and staff offices. OCFO addresses OIG's findings below.

### **➤ SDO Training Insurance Was Lacking: AMS, FSIS, FNS APHIS, RD**

**OCFO Response.** Agencies and staff offices have a duty to ensure that appropriate personnel avail themselves of the numerous internal/external training opportunities that OCFO provides to aide their decision making process.<sup>25</sup> The named agencies are represented in OCFO's suspension and debarment training rosters.<sup>26</sup>

<sup>23</sup> See, December 4, 2012, Memorandum To Gil Harden, Assistant Inspector General for Audit, From Audrey Rowe, Administrator, Food and Nutrition Service, Subject: Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture.

<sup>24</sup> See, *USDA Departmental Regulation 2280-001, Debarment and Suspension*, (Jan.16, 2013). See also, USDA, Establishment of the Debarment and Suspension Council, Secretary Memorandum (June 13, 2011).

<sup>25</sup> To date more than 8,000 employees have had suspension and debarment training as part of USDA's suspension and debarment program.

<sup>26</sup> USDA Suspension and Debarment Training completion rolls: AMS 40, FSIS 31, FNS 5, APHIS 77, RD 78.

➤ **No Training Plan in Suspension and Debarment Guidance:** AMS, FNS, FSA, FS, RD

**OCFO Response.** These agencies are represented in OCFO's suspension and debarment training rosters and/or in the GSA SAM Exclusions database.<sup>27</sup> DR 2280-001 prescribes departmental standards for implementing suspension and debarment procedures for all Department of Agriculture nonprocurement and procurement activities. Performance indicators of their implementation are evident in the training and GSA SAM Exclusions rosters.

➤ **Failure to provide quarterly reports:** FNS, FSIS

**OCFO Response.** The quarterly reporting in Appendix A serves as case tracking crosswalk mechanism to help agencies and staff offices organize their suspension and debarment actions and to give OCFO an overview of USDA's suspension and debarment activity. It was borne out of OCFO's need to help agencies and staff offices manage their fact-based and OIG-driven indictment and conviction suspension and debarment actions. It is OCFO's understanding that OIG/OI also maintains a case tracking system. While both appear on OIG/OI's indictment and conviction reports (with identifying case numbers) that OCFO populates into a Microsoft SharePoint Website, these agencies are (or should be) in contact routinely with an OIG/OI Audit Liaison Officer or any other stakeholder during the pre-decisional phase of a suspension and debarment action. Because of agency and staff office lack of full compliance with OCFO's oversight requirements, unexpected agency and staff office reorganization and replacement (or not) of key suspension and debarment personnel, agency and staff office difficulty in meeting OCFO reporting deadlines, OCFO urges OIG to assess the behavior of noncompliant agencies and staff offices. Turnover of personnel impairs internal agency or staff office suspension and debarment controls results in assigning people who are unfamiliar with the administration of the suspension and debarment remedy. This could be indicative of a problem with internal agency or staff office management controls. Agencies and staff offices have a duty to execute the comprehensive suspension and debarment program that OCFO implemented at USDA. While OCFO shares OIG's commitment to identify and prohibit fraud, waste and abuse of USDA's diverse program portfolio, it does not use the quarterly reports as a tool to analyze an agency or staff office's treatment of any particular case. Doing so would pose a threat to its SDOs independent decision making authority. OCFO will amend DR 2280-001 to make that clarification.

➤ **Did Not Provide Specific Guidance:** Foreign Agriculture Service (FAS), Grain Inspection, Packers & Stockyards Administration (GIPSA), Natural Resources Conservation Service, Office of Advocacy and Outreach (OAO), Office of the Chief Economist (OCE).

**OCFO Response.** DR 2280-001 prescribes Departmental standards for implementing suspension and debarment procedures for all USDA nonprocurement and procurement programs or activities. It is the best source of information for agencies to use when engaged in suspension and debarment activity. Its use promotes consistency in the administration of the remedy, avoids duplication, and can be tailored to fit specific agency or staff office needs. OAO and OCE asked and was granted permission to use it because of their limited number of programs. OAO also has a suspension and debarment component in an internal agency directive under review. GIPSA does not have a portfolio that supports nonprocurement programs over which OCFO has oversight authority for the suspension and debarment remedy. NRCS and FAS can source DR 2280-001 as its guidance document.

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<sup>27</sup> USDA Suspension and Debarment Training completion rolls: AMS *see* footnote 26 *supra*, FNS, *see* footnote 26 *supra*, RD *see* footnote 26 *supra*, FS 535, FSA 2,772. SAM Exclusions: Suspensions & Debarments: FNS 3, FS 132, FSA 118, RD 53; Other: FNS 9,682, FS 8, FSA 47, RD 19.

### **USDA's Application of Permanent Debarment**

**OCFO Response.** In Audit Report 50016-0001-23 Official Draft on page 20 the language reads *“While not all USDA agencies might have participants convicted of felony fraud, we found that four of the seven agencies we reviewed has at least one participant convicted of felony fraud. While we did not review all convictions related to USDA to determine if they were felony convictions for fraud, according to an OIG Investigations official a majority of these convictions were related to retailers in FNS’ food assistance programs. ... In addition, we found that AMS had one participant that was convicted of felony fraud but the agency did not pursue permanent debarment from USDA programs. We found that FNS still had not implemented suspensions and debarment procedures (as discussed in Finding 1), and AMS officials stated that they felt the administrative actions they took were sufficient.”* OCFO has no authority to determine the magnitude, significance and use of information in the agency or staff office decision making process to meet the stages of suspension and debarment actions as it relates to its programs. OCFO made agency and staff office management officials aware of the administration of the permanent debarment provisions and relies on their knowledge, skills and abilities to administer it where applicable. OCFO established management controls through policies and procedures to achieve the objectives of applying the suspension and debarment remedy department wide for a diverse program portfolio with each agency and staff office managing their portfolios with their own set of unique requirements. Its delegated authority is rooted in the integrity of the independent decisions of USDA’s Suspending and Debarment Officials.

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 6:** OCFO should amend DR 2280-001 to clearly define the roles and responsibilities for Suspension and Debarment Council members with respect to the implementation and oversight of the agency’s suspension and debarment program.

**OCFO Response: We concur.**

OCFO will amend USDA’s Suspension and Debarment Regulation (DR 2280-001) to define Suspension and Debarment Council Member roles.

OCFO will issue a memorandum to Mission Area Under Secretaries, Agency Administrators and Staff Office Heads recommending specific suspension and debarment internal controls. The memorandum will discuss specific suspension and debarment internal control components to achieve USDA’s suspension and debarment program objectives including:

- a. Managing a control environment administered by identified Suspension and Debarment Council members which provides discipline and structure;
- b. Performing risk assessments;
- c. Developing control activities which establishes management actions through policies and procedures and responding to risks in an internal suspension and debarment control system;
- d. Managing information and communication to support an internal suspension and debarment control system;
- e. Monitoring suspension and debarment activities that management establishes and operates, to assess the quality of performance over time and promptly resolving the findings of audits and other reviews; and
- f. Reporting all fact-based and OIG, Office of Investigations indictment and conviction suspension and debarment activity to OCFO through the Suspension and Debarment Council.



**Estimated Completion Date(s):**

- Amend DR 2280-001 further define S&D Council Member roles 10/02/17
- Enter amended DR 2280-001 into Departmental clearance 10/09/17
- Distribute Memorandum to Mission Area Under Secretaries, Agency Administrators, Staff Office Heads 10/02/17
- Coordinate amended DR 2280-001 posting to Office of Chief Information Officer's (OCIO) website with OCIO Representatives 12/01/17

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 7: OCFO should develop and implement a process to identify agencies that do not fully comply with suspension and debarment requirements and to elevate those non-compliance issues within the Department when agencies are not responsive.**

**OCFO Response: We concur.**

OCFO will address noncompliant agency and staff office behavior in its suspension and debarment program implementation by communicating information to Mission Area Under Secretaries, Agency Administrators and Staff Office Heads about agency and staff office suspension and debarment activities. The enforcement authority to comply with the tools that OCFO has implemented for an active referral process to capture bad actors in receipt of its Federal resources lies with those offices.

OCFO will issue a memorandum detailing its recommendations to Mission Area Under Secretaries, Agency Administrators and Staff Office Heads concerning specific suspension and debarment internal controls. The memorandum will discuss specific suspension and debarment internal control components to achieve USDA's suspension and debarment program objectives including:

- a. Managing a control environment administered by identified Suspension and Debarment Council members which provides discipline and structure;
- b. Performing risk assessments;
- c. Developing control activities which establishes management actions through policies and procedures and responding to risks in an internal suspension and debarment control system;
- d. Managing information and communication to support an internal suspension and debarment control system;
- e. Monitoring suspension and debarment activities that management establishes and operates, to assess the quality of performance over time and promptly resolving the findings of audits and other reviews; and
- f. Reporting all fact-based and OIG, Office of Investigations indictment and conviction suspension and debarment activity to OCFO through the Suspension and Debarment Council.

**Estimated Completion Date(s):**

- Distribute Memorandum to Mission Area Under Secretaries, Agency Administrators, Staff Office Heads 10/02/17

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 8:** OCFO should issue a reminder to all agencies clarifying that individuals participating in a not-covered transaction are eligible for suspension and debarment action(s), and that individuals or entities convicted of felony fraud offenses must be permanently debarred from all USDA programs.

**OCFO Response: We concur in part.** OCFO will amend DR 2280-001 to further clarify the provision found in USDA's supplement to 2 C.F.R. § 180 located at 2 C.F.R. § 417.<sup>28</sup> As to the latter half of this recommendation, USDA program violators can only be permanently debarred from USDA programs if convicted of a felony for knowingly defrauding the United States in connection with any USDA program.<sup>29</sup> DR 2280-001 also addresses this issue. OCFO has, and will continue to be, direct in its management control objectives through its established Suspension and Debarment Community of Practice.

**Estimated Completion Date(s):**

- Amend DR 2280-001 to further clarify language concerning 2 C.F.R. § 417.215 10/02/17
- Enter amended DR 2280-001 into Departmental clearance 10/09/17
- Coordinate amended DR 2280-001 posting to Office of Chief Information Officer's (OCIO) website with OCIO Representatives 12/01/17

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 9:** OCFO should establish an action plan in collaboration with FNS officials that ensures all permanently disqualified participants are reported to OCFO and entered into SAM. In addition, OCFO should conduct spot checks of the disqualified participants entered into SAM by FNS on an annual basis.

**OCFO Response: We concur in part.**

OCFO has an established case tracking system on a Microsoft SharePoint Website on which FNS can report its disqualified participants. Annual reviews of disqualified participants must be "cross walked" with FNS suspension and debarment case numbers (fact-based and OIG-driven) to net useful case tracking data. OCFO will conduct the spot checks with crosswalk data provided by FNS.

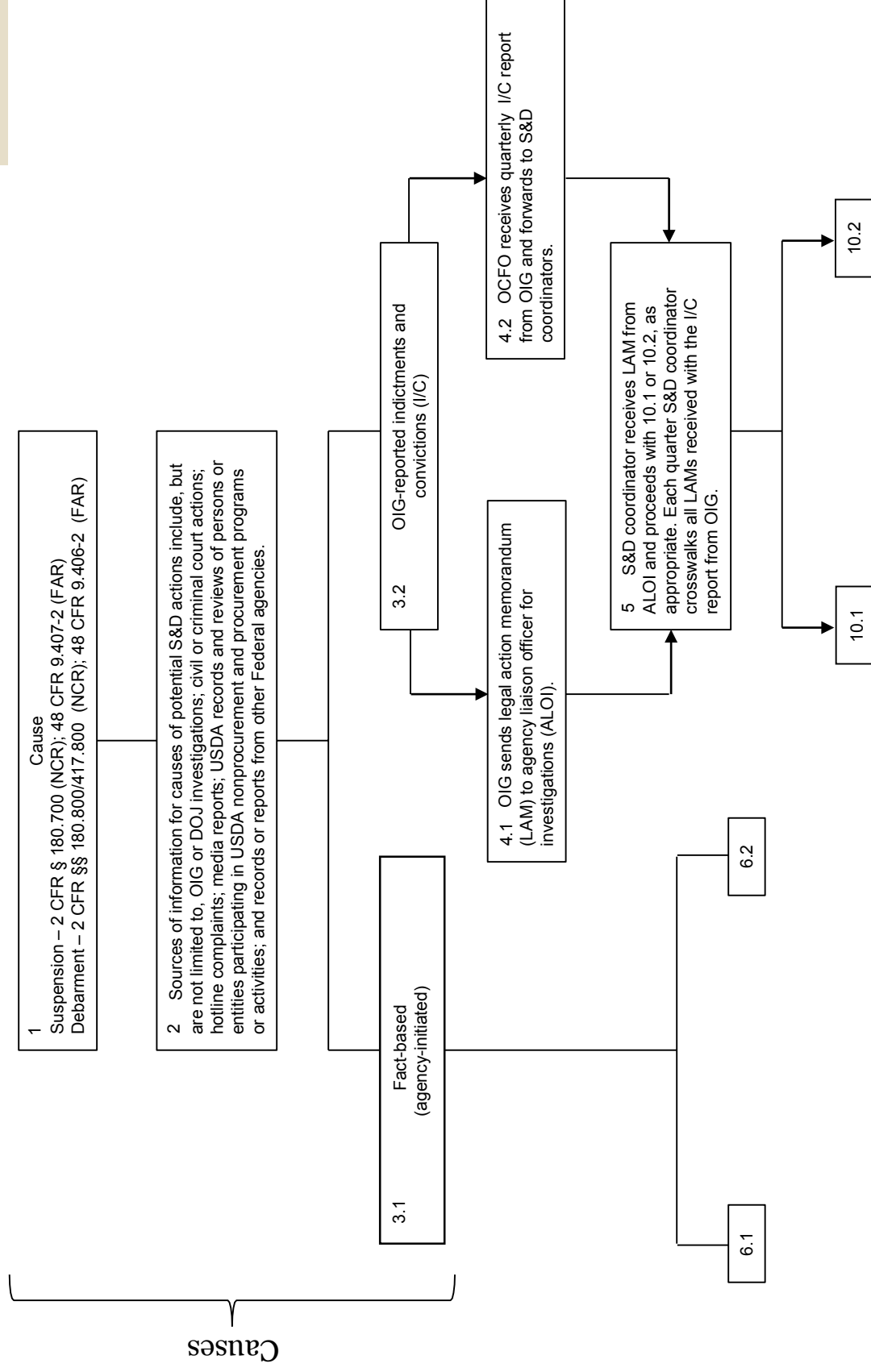
**Estimated Completion Date(s):**

**Conduct first spot check in GSA SAM database 12/01/17**

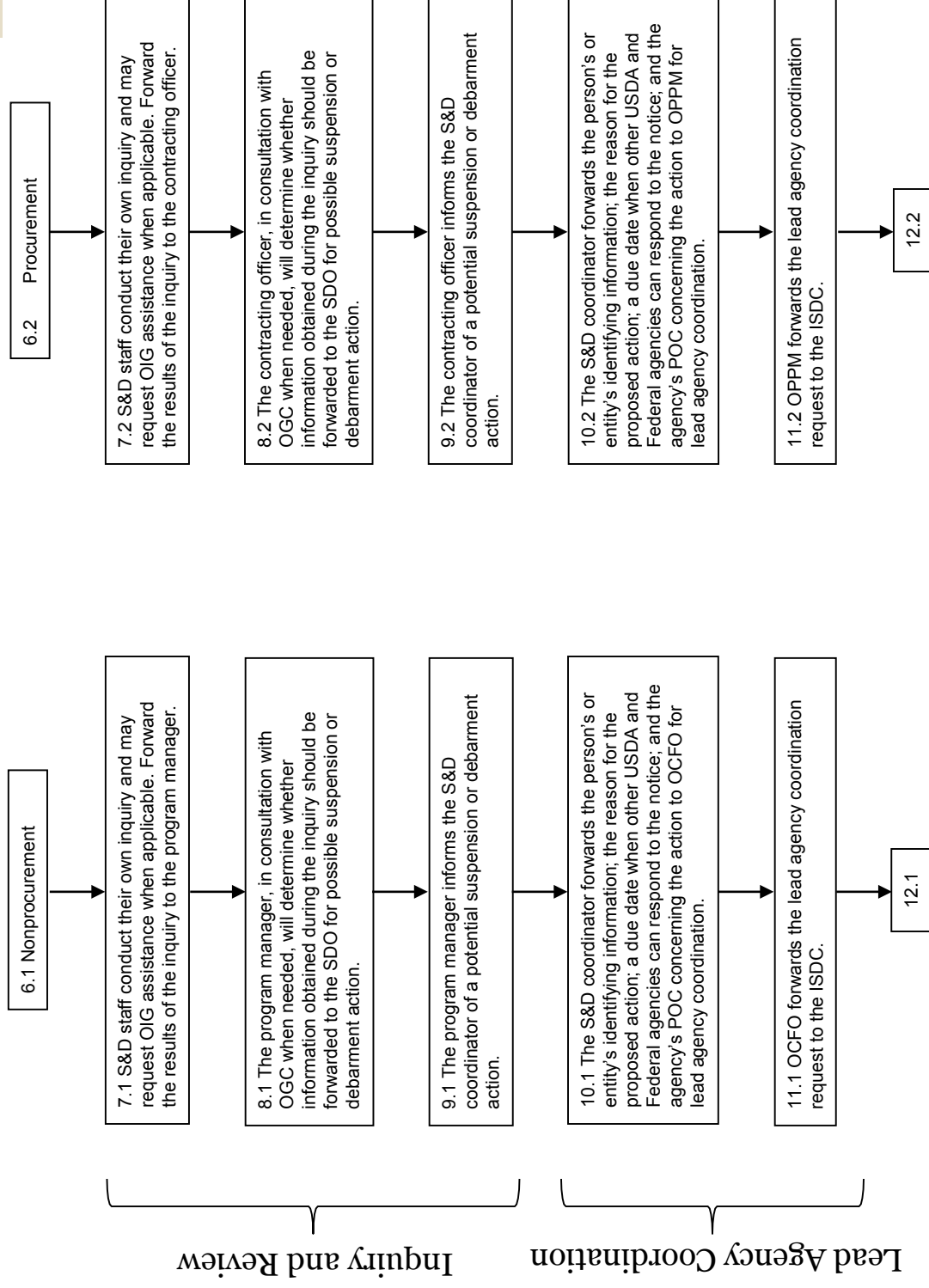
<sup>28</sup> Under that provision, "a cause for suspension and debarment ... may be based on the actions of a person with respect to a procurement or nonprocurement transaction under a USDA program even if such action has been excluded from covered transaction status by this section or 2 C.F.R. § 417.210." See, 2 C.F.R. § 417.215(c).

<sup>29</sup> 7 U.S.C. § 2209j; 2 C.F.R. § 417.865 (d).

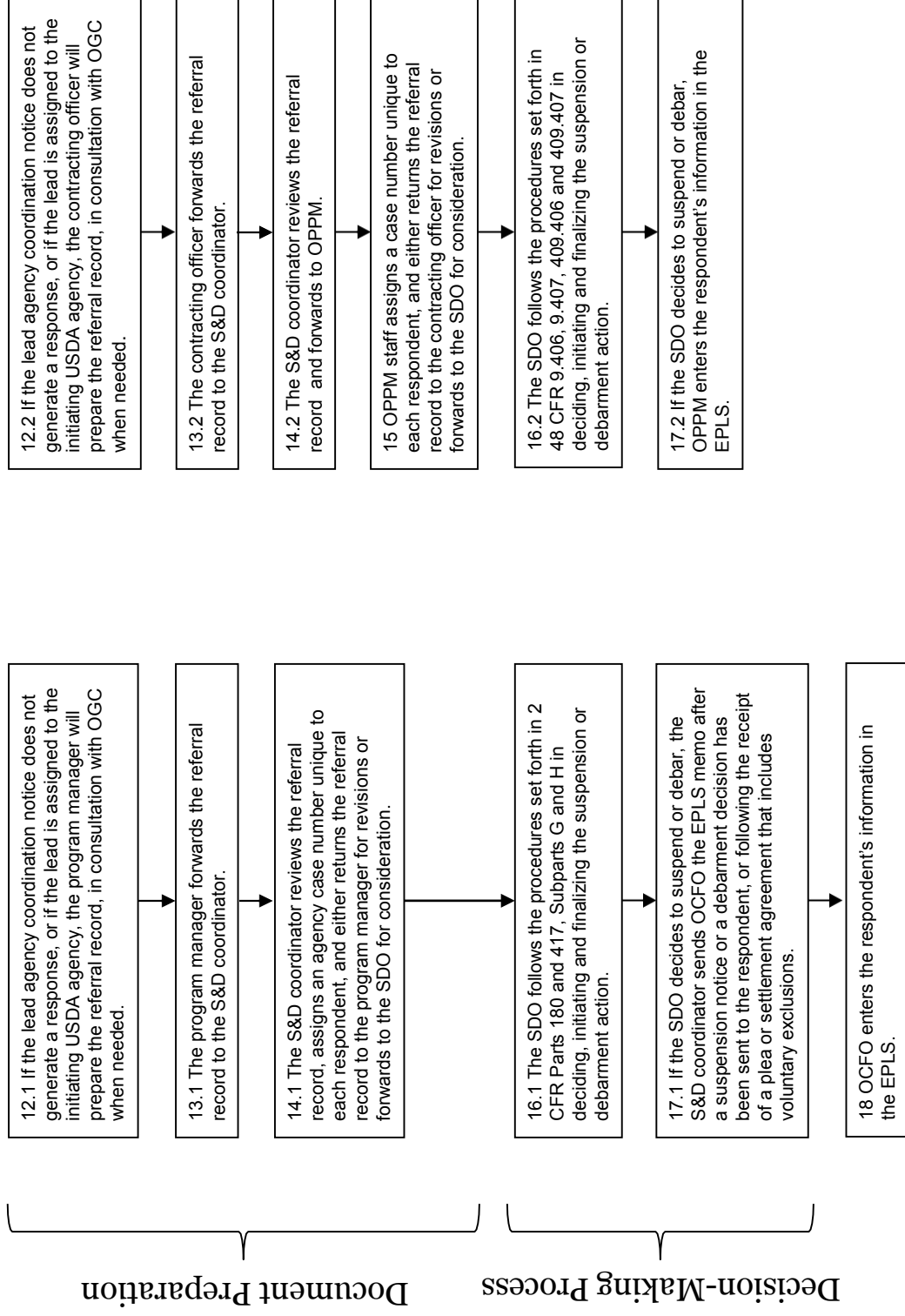
## Module 3 - Administrative S&D Procedures 3/23



## Module 3 - Administrative S&D Procedures 4/23



## Module 3 - Administrative S&D Procedures 5/23





**United States Department of Agriculture**

Office of the Chief Economist  
1400 Independence Avenue, SW  
Washington, D.C. 20250-3810

April 7, 2017

To: Tyson Whitney  
Director, Transparency & Accountability Reporting Division  
Office of the Chief Financial Officer (OCFO)

From: Robert Johansson /S/  
Chief Economist

Re: Office of the Chief Economist's S&D Guidance and Instructions Document

In USDA's Suspension and Debarment Departmental Regulation 2280-001, Sec. 6.b.(1)(f), Agency Administrators are required to "Establish S&D guidance or instructions that implement the Department's policies and procedures, and provide to OCFO when established or modified."

In the case of the Office of the Chief Economist (OCE), a small Departmental staff office with a very limited number of administrative and financial staff, OCE is using and plans to continue to use DR 2280-001 as our guiding policy and procedure document.

Only one OCE staffer is actively engaged in the OCE S&D program. In addition, DM/OPPM handles all OCE procurements and OCE enters into only about 20 cooperative agreements each year. Therefore, it was deemed burdensome and unnecessary to create a separate policy and procedure document above and beyond the DR that is already in place for the Department. To date, OCE has been fully in compliance with all other aspects of the Department's S&D program, so by all reasonable measures, use of the DR has been effective in terms of maintaining compliance with and assuring full participation in the Department's S&D program.



United States  
Department of  
Agriculture

Office of Advocacy  
and Outreach

1400 Independence  
Avenue, SW.

Stop 0601

Washington, DC  
20250-0103

**April 24, 2017**

**TO:** Tyson Whitney  
Director  
Transparency & Accountability Reporting Division  
Office of the Chief Financial Officer

**FROM:** Carolyn C. Parker  
Director /S/  
Office of Advocacy and Outreach

**SUBJECT:** Office of Advocacy and Outreach's Suspension and Debarment  
Guidance and Instructions

The Office of Advocacy and Outreach (OAO) acknowledges the need to establish written guidance and instructions to implement the U.S. Department of Agriculture's Departmental Regulation governing Suspension and Debarment (S&D DR 2280-001). The OAO uses the DR 2280-001 as the guiding policy and procedural document to implement our Suspension and Debarment (S&D) program.

The OAO is currently revising the Standard Operating Procedure (SOP) for our non-procurement program to address the S&D processes. Additionally, Departmental Management Office of Procurement and Property Management is the lead on all procurement activities for the OAO.

Therefore, it is deemed burdensome and unnecessary to create a separate policy and procedural document beyond that which is already in place for the department. The OAO continues to be in full compliance with all other aspects of the Department's S&D program; so by all reasonable measures, use of the DR is an effective method of ensuring compliance with, and assuring full participation in, the Department's S&D program.

June 8, 2017

TO: Transparency and Accountability Reporting Division  
Office of the Chief Financial Officer  
U.S. Department of Agriculture

FROM: David W. Trykowski /S/  
Director  
Compliance, Safety and Security  
Non-procurement Suspension and Debarment Coordinator

SUBJECT: AMS Response to OIG Discussion Draft: 50016-0001-23 - Implementation of  
Suspension and Debarment Tools in the U.S. Department of Agriculture

In footnote 44 on page 17 of the discussion draft, OIG states, “These convictions were related to an inspection service provided by AMS.” While AMS graders performed grading services at the subject company’s facilities, the subjects pled guilty to violations of 21 U.S.C. §§ 331(a) and 333(a)(2): Introducing Misbranded Food Into Interstate Commerce with Intent to Defraud or Mislead; and 21 U.S.C. §§ 331(a) and 333(a)(1): Introducing Adulterated Food Into Interstate Commerce. These are in fact matters under the jurisdiction of the Food and Drug Administration (FDA). These issues initially came to light in an investigation by FDA’s Office of Criminal Investigation (OCI) and was later joined by USDA’s Office of Inspector General (OIG).

In May 2015, OIG notified AMS of guilty pleas by the subjects for conspiracy to bribe a public official and selling misbranded and adulterated food. The report and court results were provided to the AMS Acting Administrator, AMS Associate Administrator, Deputy Administrator for the AMS Livestock, Poultry and Seed Program (LPS), and the Associate Deputy Administrator for LPS, for consideration of administrative action.

Based on the guilty pleas and sentences in Federal District Court, combined with the fact that the subjects had divested themselves of any and all interest in the subject company,<sup>1</sup> it was the consensus opinion of AMS officials that USDA was adequately protected from any future misconduct by the subjects<sup>2</sup>.

If you have any questions, please feel free to contact me at (202) 720-2400.

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<sup>1</sup> Wright County Egg and Quality Egg, LLC, were out of business and the assets of those companies were owned and operated by Centrum Valley Farms.

<sup>2</sup> The purpose of suspension of debarment is to protect the Federal Government from fraud, waste and abuse by not conducting business with non-responsible individuals.



## AGRICULTURAL MARKETING SERVICE

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**Subject:** Decision Regarding the Non-Suspension or Debarment of Wright Country Egg, Clarion, Iowa or its Principals (OIG Case File No. CH-0199-0026)

### **Background**

During the spring and summer of 2010, adulterated eggs produced and distributed by Quality Egg were linked to approximately 1,939 reported consumer illnesses in multiple states—a nationwide outbreak of salmonellosis that led to the August 2010 recall of millions of eggs produced by the defendants.

### **Timeline**

- In February 2012, the USDA Office of Inspector General (OIG) and the Department of Justice notified AMS that one of its employees had been implicated in a bribery scheme with Quality Egg. The USDA inspector's job responsibilities included inspecting shell eggs at one or more of Quality Egg's production facilities in Iowa. OIG, reported that the inspector in question had taken a polygraph examination where it was determined that deception was indicated (DI). During an interview in the post instrument phase of the examination, the inspector admitted that on one occasion he had accepted \$100 from an employee of Wright County Egg but had spent the money for the services of a prostitute. This information was provided to AMS for any administrative action the Agency wanted to take in regards to the employee.
- AMS coordinated with the APHIS Human Resources Division (HRD) regarding an indefinite suspension for the employee pending indictment and resolution of the criminal case. However, based on existing employment case law, suspension of a Federal employee could not be instituted without an indictment. DOJ did not want to proceed to an indictment of the AMS employee immediately out of concern for prematurely jeopardizing other aspects of the investigation.
- On September 30, 2012, the AMS employee retired after being diagnosed with a terminal illness. Without an indictment or other substantive evidence AMS was not able to block or disapprove the request for retirement. On October 23, 2012, the AMS employee succumbed to the illness without AMS being able to institute administrative action because DOJ had not been willing to indict sooner.
- In September 2012, former Quality Egg employee, Tony Wasmund, pleaded guilty to one count of conspiracy to bribe a public official, sell restricted eggs with intent to defraud and introduce misbranded food into interstate commerce with intent to defraud and mislead. However, Wasmund was not sentenced until May 15, 2015.

- On June 3, 2014, Quality Egg, pleaded guilty to one count of attempted bribery of a public official (AMS employee), one count of introducing a misbranded food into interstate commerce with intent to defraud and one count of introducing adulterated food into interstate commerce. Austin "Jack" DeCoster and his son, Peter DeCoster, each pleaded guilty to one count of introducing adulterated food into interstate commerce, and subsequently entered into plea agreements.
- Jack DeCoster was sentenced to serve three months in prison to be followed by one year of supervised release, and fined \$100,000. Peter DeCoster who was Quality Egg's Chief Operating Officer, was also sentenced to serve three months in prison to be followed by one year of supervised release, and fined \$100,000. Quality Egg was sentenced to pay a fine of \$6.79 million and placed on probation for three years. All three defendants were ordered to make restitution in the total amount of \$83,008.19. Quality Egg also agreed to forfeit \$10,000 as part of its plea agreement with the government.
- On April 15, 2015, OIG forwarded to AMS the final report of investigation for Quality Egg as well as a letter which outlined the guilty pleas and sentences for Jack and Peter DeCoster, and Quality Egg, but Tony Wasmund was not scheduled to be sentenced until May 15, 2017<sup>1</sup>. OIG requested that AMS inform them regarding any administrative action that was taken as a result of the investigation.
- On June 17, 2015, AMS notified OIG that no administrative action by the Agency was anticipated.

### **Basis for not instituting Suspension or Debarment Action**

In accordance with Departmental Regulation 2280-001, Non-procurement Suspension & Debarment (S&D) procedures as mandated by EO 12549 are outlined in Title 2 Code of Federal Regulations (C.F.R.) Part 180 (*OMB Guidelines to Agencies on Government-wide Debarment and Suspension*) and 2 C.F.R. Part 417 (USDA Supplement to 2 C.F.R. Part 180).

2 CFR 180.210: Which non-procurement transactions are covered transactions?

All non-procurement transactions, as defined in § 180.970, are covered transactions unless listed in the exemptions under § 180.215.

§ 180.970 Non-procurement transaction.

(a) *Non-procurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

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<sup>1</sup> This was due in part to the fact that Mr. Wasmund had decided to cooperate with the investigation.

- (1) Grants.
- (2) Cooperative agreements.
- (3) Scholarships.
- (4) Fellowships.
- (5) Contracts of assistance.
- (6) Loans.
- (7) Loan guarantees.
- (8) Subsidies.
- (9) Insurances.
- (10) Payments for specified uses.
- (11) Donation agreements.

180.215 Which non-procurement transactions are not covered transactions?

The following types of non-procurement transactions are not covered transactions:

(g) Any other transaction if—

- (1) The application of an exclusion to the transaction is prohibited by law; or
- (2) A Federal agency's regulation exempts it from coverage under this part.

S&D are discretionary or statutory administrative actions taken by Federal agencies to protect the government by excluding persons and entities who are not presently responsible from participating in Federal programs or activities. These actions are not designed to be punitive in nature, but are meant to ensure that the Federal government does not conduct business with a person or entity that is not presently responsible.

Quality Egg received inspection and grading service from AMS under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) and the denial or withdrawal of inspection, certification, or grading service is governed by 7 CFR Part 1, Subpart H - Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes:

7 CFR § 1.131 - Scope and applicability of this subpart.

(a) The rules of practice in this subpart shall be applicable to all adjudicatory proceedings under the statutory provisions listed below as those provisions have been or may be amended from time to time, ...

(b) These rules of practice shall also be applicable to:

(1) Adjudicatory proceedings under the regulations promulgated under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) for the denial or withdrawal of inspection, certification, or grading service;

#### **Discussion:**

The OIG report and court results were provided to the AMS Acting Administrator, AMS Associate Administrator, Deputy Administrator for the AMS Livestock, Poultry and Seed Program (LPS), and the Associate Deputy Administrator for LPS, for consideration of administrative action.

The services that were provided to Quality Egg by AMS under the Agricultural Marketing Act of 1946 fall into the category of non-covered transactions. It's understood that AMS had the authority to seek non-procurement debarment of the subjects as a result of the criminal proceedings but even if AMS had sought debarment and was successful in its efforts, AMS would have still been required to provide inspection and grading service unless it sought to withdraw those services under 7 CFR § 1.131 (b)(1).

During the evaluation process by AMS officials it was determined that the principals of Wright County Egg and Quality Egg, LLC, divested their interest and the assets of the subjects and subject companies were now owned and operated by Centrum Valley Farms.

Additionally, there was no evidence that the subjects and subject companies had ever sought to obtain services considered to be covered transactions (i.e., Grants, Cooperative agreements, Scholarships, Fellowships, Contracts of assistance, Loans, Loan guarantees, etc.), and with the divestment of assets AMS was no longer providing services to the subjects.

Based on those facts, plus the results of the criminal prosecution and plea agreements, it was the determination of AMS, including the non-procurement Suspension and Debarment Official (AMS' Acting Administrator at the time), there was reasonable assurance the subjects were not in a position to conduct any further business with the Federal government.

Additionally, because AMS is a user fee organization with limited assets, all potential actions which could ultimately result in litigation, it carefully analyzes the potential costs versus benefits before deciding on a course of action. In the present case it was concluded that by seeking non-procurement debarment at this period in time after extensive criminal proceedings the subjects might view this action as punitive in nature and force AMS to defend itself in court with protracted litigation. Not seeking non-procurement debarment was deemed the proper and most cost effective course of action.



September 8, 2017

**United States  
Department of  
Agriculture**

Office of the Chief  
Financial Officer

1400  
Independence  
Avenue, SW

Washington, D.C.  
20250

TO: Gil H. Harden  
Assistant Inspector General  
Office of Inspector General

FROM: Lynn M. Moaney /s/  
Acting Deputy Chief Financial Officer

SUBJECT: OIG Audit Report 50016-0001-23 Official Draft Report: *Implementation of  
Suspension and Debarment Tools in the Department of Agriculture*

This memorandum amends the Office of the Chief Financial Officer's (OCFO) response to the Office of the Inspector General (OIG) official draft report for Audit Report number 50016-0001-23. OCFO is providing this addendum to its responses dated August 4, 2017 to reach management decision on five out of nine recommendations to which it did not originally concur or concurred in part as a result of a meeting with audit representatives from your office. During follow up discussions with them it was determined that management decisions for recommendations 1, 2, 6 and 7 would be accepted. However, they indicated that alternative actions would be required for recommendations 3, 4, 5, 8 and 9, before acceptance of management decisions could be reached. The recommendations for which alternative actions are required are outlined in Attachment A.

As previously stated, the purpose of USDA's Suspension and Debarment program established by OCFO is to protect the integrity of USDA's Federal nonprocurement and procurement programs and activities. USDA's comprehensive suspension and debarment program is consistent with and supports a basic government-wide objective -- to prevent poor performance, fraud, waste and abuse. OCFO established management controls through policies and procedures to achieve the objectives of applying the suspension and debarment remedy department wide for a diverse program portfolio with each agency and staff office managing their portfolios with their own set of unique requirements. Its delegated authority is rooted in the integrity of the independent decisions of USDA's Suspending and Debarring Officials (SDOs).<sup>1</sup> OCFO has been and continues to be direct in its management control objectives through its established Suspension and Debarment Community of Practice and has provided implementation tools to which agencies and staff offices can avail themselves to ensure that Federal government resources are protected.

## Attachments

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<sup>1</sup> See, 2 C.F.R. §§ 417.930, 417.1010.

## ATTACHMENT A

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 3:** OCFO should work with the six agencies, the Food and Nutrition Service (FNS), Grain Inspection, Inspection and Stockyards Administration (GIPSA), Foreign Agricultural Service (FAS), Natural Resource Conservation Service (NRCS), Office of Advocacy and Outreach (OAO), and Office of the Chief Economist (OCE) to obtain their suspension and debarment guidance, as requested by Recommendation 19, and ensure the guidance contains an internal review plan to identify cases to be referred for suspension and debarment.

**OCFO Amended Response:**

OCFO will provide each of the six agencies with a suspension and debarment guidance template to assist those agencies with developing their suspension and debarment guidance. For any agency or staff office that has minimal staff or little to no award activity, OCFO will obtain signed letters, similar to the ones provided by OAO and OCE, stating that they will use the Department's DR 2280-001 as their suspension and debarment guidance. The Grain Inspection, Packers and Stockyards Administration (GIPSA) adopted DR 2280-001 as its agency guidance.<sup>2</sup> The Natural Resource Conservation Service (NRCS) published a directive (May 2017) establishing NRCS policies and procedures for nonprocurement suspension and debarment programs and activities that are consistent with USDA, Code of Federal Regulations (CFR), and Office of Management and Budget (OMB) guidance.<sup>3</sup>

**Estimated Completion Date(s):**

**09/02/18**

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 4:** OCFO should exercise its authority to assist FNS in implementing a suspension and debarment program in accordance with corrective actions from prior audit Recommendation 11.

**OCFO Amended Response:**

OCFO will reach out to FNS officials to offer OCFO's assistance, within its authority, in the agency's implementation of a suspension and debarment program.

**Estimated Completion Date(s):**

**09/02/18**

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 5:** OCFO should provide the necessary assistance (i.e., technical direction, guidance, etc.) to FNS to implement the corrective actions from prior audit Recommendations 12 and 14.

OCFO Amended Response

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<sup>2</sup> See, *Grain Inspection, Packers and Stockyards Administration's S&D Guidance and Instructions Document* (Sept. 7, 2017).

<sup>3</sup> See, *General Manual, Title 120-Administrative Services, Part 410, Suspension and Debarment for Nonprocurement Transactions* (May 2017).

OCFO will reach out to FNS officials to offer OCFO's assistance, within its authority, in the agency's implementation of corrective actions from the prior audit Recommendations 12 and 14.

**Estimated Completion Date(s):**

**09/02/18**

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 8:** OCFO should issue a reminder to all agencies clarifying that individuals participating in a not-covered transaction are eligible for suspension and debarment action(s), and that individuals or entities convicted of felony fraud offenses must be permanently debarred from all USDA programs.

**Amended OCFO Response:**

OCFO will issue a notification to remind all agencies and staff offices that 1) suspension and debarment actions can be taken against individuals with respect to nonprocurement transactions under a USDA program even if such action has been excluded from covered transaction status and 2) program violators (individuals or entities) **can be permanently debarred from USDA programs if convicted of a felony for knowingly defrauding the United States in connection with any USDA program** as defined by the provisions located at 2 C.F.R. § 417.215(c) and 7 U.S.C. § 2209j; 2 C.F.R. § 417.865 (d).

**Estimated Completion Date(s):**

- **Distribute Memorandum to Mission Area Agencies and Staff Offices** **9/2/18**

**Audit Report 50016-0001-23 Official Draft Audit Recommendation No 9:** OCFO should establish an action plan in collaboration with FNS officials that ensures all permanently disqualified participants are reported to OCFO and entered into SAM. In addition, OCFO should conduct spot checks of the disqualified participants entered into the General Services Administration's System for Award Management (SAM) by FNS on an annual basis.

**Amended OCFO Response:**

Additional OCFO actions needed:

OCFO's action plan will include issuing a department-wide memorandum in which FNS will be captured concerning specific suspension and debarment internal controls to capture all suspension and debarment activity including specific deliverables (i.e., entering FNS disqualifications in the General Services Administration's System for Award Management).

The memorandum will discuss specific suspension and debarment internal control components to achieve USDA's suspension and debarment program objectives including:

- a. Managing a control environment administered by identified Suspension and Debarment Council members which provides discipline and structure;
- b. Performing risk assessments;
- c. Developing control activities which establishes management actions through policies and procedures and responding to risks in an internal suspension and debarment control system;

- d. Managing information and communication to support an internal suspension and debarment control system;
- e. Monitoring suspension and debarment activities that management establishes and operates, to assess the quality of performance over time and promptly resolving the findings of audits and other reviews; and
- f. Reporting all fact-based and OIG, Office of Investigations indictment and conviction suspension and debarment activity to OCFO through the Suspension and Debarment Council.

OCFO has an established case tracking system on a Microsoft SharePoint Website on which FNS can report its disqualified participants. Annual reviews of disqualified participants must be “cross walked” with FNS suspension and debarment case numbers (fact-based and OIG-driven) to net useful case tracking data. OCFO will conduct the spot checks with crosswalk data provided by FNS.

Estimated Completion Date(s):

- Distribute Memorandum to Mission Area Under Secretaries, Agency Administrators,  
Staff Office Heads 10/02/17
- Conduct first spot check in GSA SAM database 12/01/17



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**Part 410 – Suspension and Debarment for Nonprocurement Transactions**

**Subpart A – General**

**Subpart B – Covered and Not Covered Nonprocurement Transactions**

**Subpart C – Covered and Not Covered Procurement Contracts**

**Subpart D – Responsibilities Applicable to Nonprocurement S&D Actions**

**Subpart E – Causes for Suspension and Debarment**

**Subpart F – Process for Suspension or Debarment**

## **Part 410 – Suspension and Debarment for Nonprocurement Transactions**

### **Subpart A – General**

#### **410.0 Purpose**

This directive establishes NRCS policies and procedures for nonprocurement suspension and debarment programs and activities that are consistent with USDA, Code of Federal Regulations (CFR), and Office of Management and Budget (OMB) guidance. To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons. All procurement contracts issued by a Federal agency are not covered by this policy. Refer to Title 120, General Manual (GM), Part 406, Subpart A (NRCSPOP 4I-9.4).

#### **410.1 References**

- A. Executive Order 12549, Debarment and Suspension
- B. Executive Order 12689, Debarment and Suspension
- C. Agricultural Acquisition Regulation (AGAR), 48 CFR Subpart 409.4, Debarment, Suspension, and Ineligibility
- D. Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4, Debarment, Suspension, and ineligibility
- E. 2 CFR Part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension (nonprocurement)
- F. 2 CFR Part 417, USDA Nonprocurement Debarment and Suspension
- G. Departmental Regulation (DR) 1700-2, OIG Organization and Procedures
- H. DR 2280-001, Suspension and Debarment
- I. 120-GM, Part 406, Subpart A (NRCSPOP Subpart 4I-9.4)

#### **410.2 Abbreviations**

The following appear in their shortened form in this policy:

- (1) CFR.—Code of Federal Regulations
- (2) EO.—Executive order
- (3) GSA.—General Services Administration
- (4) HCAD.—head of contracting activity designee
- (5) OCFO.—Office of the Chief Financial Officer
- (6) OGC.—Office of General Counsel
- (7) OIG.—Office of Inspector General
- (8) OMB.—Office of Management and Budget
- (9) OPPM.—Office of Procurement and Property Management
- (10) POC.—point of contact
- (11) S&D.—suspension and debarment
- (12) SAM.—System for Award Management

### 410.3 Definitions

A. Covered Transaction.—A nonprocurement or procurement transaction that is subject to the prohibitions of 2 CFR Parts 180 and 417 in that a suspended or debarred person is precluded from participating in covered transactions (2 CFR Section 180.200).

B. Debarment.—An action taken by a debarring official that excludes a person or entity from participating in covered transactions for a fixed specified time period, generally up to 3 years, but may be for a longer period where circumstances warrant.

The action taken by a debarring official under either of the following:

- (i) FAR 48 CFR Section 9.406 and AGAR 48 CFR Section 409.406 for procurement
- (ii) Subpart H of 2 CFR Parts 180 and 417 for nonprocurement transactions, to exclude a person or entity from participating in covered transactions. 2 CFR Section 180.925.

C. Noncovered Transaction.—Nonprocurement transactions listed in 2 CFR Sections 180.215 or 417.215 and procurement transactions listed at 2 CFR Sections 180.220 or 417.220. Noncovered transactions are not exempt from suspension and debarment procedures. A person or entity that abuses a noncovered transaction may continue to receive benefits under the program, but may be referred by the agency for suspension or debarment to protect the interests of the Federal Government. Procurement contracts awarded directly by a Federal agency are also excluded (2 CFR Section 180.220(a)).

D. Referral.—A formal recommendation to initiate a suspension or debarment action made to the S&D official by the Office of Inspector General (OIG), a program manager, contracting officer, grants specialist, or other appropriate agency S&D personnel after receipt, investigation, and verification of information about a potential cause for suspension or debarment.

E. Respondent.—Respondent means a person against whom an agency has initiated a debarment or suspension action (2 CFR Section 180.1000).

F. SAM.—The Federal repository into which an entity must provide information required for the conduct of business as a recipient (2 CFR Section 25.310). Records reflected in the SAM database identify those persons excluded by Federal Government agencies from receiving certain types of Federal financial and nonfinancial assistance and benefits, Federal contracts, or federally approved subcontracts. Actions may be taken under 2 CFR Parts 180 and 417, FAR 48 CFR Subparts 9.4 and 409.4, or other specific statutory authority.

G. Suspension.—An action taken by a suspending official under FAR 48 CFR Section 9.407 and AGAR 48 CFR Section 409.407 for procurement, or subpart G of 2 CFR Parts 180 and 417 for nonprocurement transactions. Suspension immediately prohibits a person or entity from participating in covered transactions for a temporary period, which may last up to 1 year, is effective immediately, and may potentially be the grounds for debarment by the agency, pending completion of further proceedings. 2 CFR Section 180.1015.

## **Part 410 – Suspension and Debarment for Nonprocurement Transactions**

### **Subpart B – Covered and Not Covered Nonprocurement Transactions**

#### **410.10 Covered and Not Covered Nonprocurement Transactions**

- A. Covered nonprocurement transactions are defined and listed at 2 CFR Sections 180.210 and 180.970
- B. Noncovered nonprocurement transactions are identified at 2 CFR Sections 180.215 and 417.215

## **Part 410 – Suspension and Debarment for Nonprocurement Transactions**

### **Subpart C – Covered and Not Covered Procurement Contracts**

#### **410.20 Covered and Not Covered Procurement Contracts**

Not all procurement contracts issued by a Federal agency are covered by this policy. Refer to Title 120, General Manual, Part 406, Subpart A (NRCSPOP Subpart 4I-9.4). Procurement contracts issued by recipients of financial assistance may, or may not be, covered (see 2 CFR Sections 180.220 and 417.220 and Departmental Regulation 2280-001 for a list of covered contracts).

## **Part 410 – Suspension and Debarment for Nonprocurement Transactions**

### **Subpart D – Responsibilities Applicable to Nonprocurement S&D Actions**

#### **410.30 Suspension and Debarment (S&D) Positions**

A. The S&D official for nonprocurement actions is the agency official who is authorized to impose S&D. Pursuant 2 CFR Sections 180.930, 180.1010, 417.930, and 417.1010, the nonprocurement S&D official is the agency administrator. This function may not be delegated. The Chief is the S&D official for NRCS.

B. The NRCS S&D coordinator for nonprocurement actions is the Acquisitions, Grants, and Agreements Division director. The associated responsibilities are listed in Departmental Regulation (DR) 2280-001. In addition to the listed responsibilities, the S&D coordinator must ensure NRCS provides a certificate of completion (see appendix B of DR 2280-001) for AgLearn S&D training to the Office the Chief Financial Officer by December 30 of each year.

#### **410.31 Training Requirements**

Any staff member with assigned S&D responsibilities must complete the S&D training in AgLearn. The following categories of individuals are required to complete S&D training in AgLearn:

- (1) Agency S&D staff members
- (2) Grants management specialists
- (3) Agreements signatory officials and program managers
- (4) Warranted contracting officers
- (5) Contract specialists and purchasing agents
- (6) Warranted real property leasing officers
- (7) Reality specialists

## **Part 410 – Suspension and Debarment for Nonprocurement Transactions**

### **Subpart E – Causes for Suspension and Debarment**

#### **410.40 Causes for Suspension and Debarment**

The causes for suspension and debarment (S&D) can be found at 2 CFR Sections 180.700, 180.800, and 417.800, and Departmental Regulation (DR) 2280-01. Individuals who identify causal instances for S&D must prepare the referral record (see appendix D of DR 2280-01) and forward it to the S&D coordinator. Other program statutes may identify other causes for suspension and debarment.

## **Part 410 – Suspension and Debarment for Nonprocurement Transactions**

### **Subpart F – Process for Suspension or Debarment**

#### **410.50 Process for Suspension or Debarment**

##### **A. Determining Whether Suspension or Debarment is Warranted**

- (1) When program managers encounter circumstances where they believe that a suspension or debarment could be warranted, they must coordinate with the NRCS S&D coordinator.
  - (i) Program managers should present the evidence to substantiate the suspected violations that form the basis for the suspension or debarment.
  - (ii) The S&D coordinator will evaluate the evidence to determine whether sufficient evidence exists to support a proposed suspension or debarment.
  - (iii) If insufficient evidence exists to support a proposed suspension or debarment, program managers and the S&D coordinator, in collaboration with the affected parties, will develop a remediation plan to correct any deficiencies and establish internal controls to prevent future noncompliance.
- (2) Once sufficient evidence has been gathered to support the proposed action, the S&D coordinator will prepare a referral to the USDA Office of General Counsel (OGC) to ensure the proposed action is legally sufficient.
- (3) If OGC is of the opinion that the proposed action is legally sufficient, then the S&D coordinator will submit a “Suspension and Debarment Lead Agency Coordination Request” to the USDA Office of the Chief Financial Officer (OCFO), which is the point of contact for the Interagency Suspension and Debarment Committee. The request will include the person’s or entity’s identifying information, the reason for the proposed action, a due date when other USDA and Federal agencies should respond to the notice, and the agency’s point of contact (POC).
- (4) Provided there are no other organizations that seek lead agency status, the program manager will prepare a nonprocurement referral record (located in Departmental Regulation (DR) 2280-001, Appendix D) in consultation with OGC when needed.

##### **B. Notice of Proposed Suspension or Debarment**

- (1) The S&D coordinator will initially send to the person or entity subject to suspension or debarment (the respondent) a “Notice of Proposed Suspension or Debarment.”
- (2) The notice will provide the person or entity with the following details:
  - (i) The nature of the default or deficiency
  - (ii) The dates and times during which the deficiency was observed
  - (iii) The regulation reference that prohibits the alleged deficiency
  - (iv) That the action will be effective throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception
  - (v) The date upon which the action (suspension or debarment) will become effective
  - (vi) That the respondent may submit to the S&D coordinator’s attention any information or argument against the proposed action within 30 days after the “Notification of Suspension or Debarment,” unless an extension by the respondent is requested and granted by the S&D coordinator
  - (vii) Procedures for submitting information to the S&D coordinator



C. The S&D coordinator sends the respondent a written notice of one the following official decisions:

- (1) Not to suspend or debar the respondent. In the event that they are subsequently suspended, they will need to serve the suspension before applying for financial assistance.
- (2) To suspend or debar the respondent.

D. Reporting to the System of Award Management (SAM)

- (1) After respondent is suspended or debarred, the S&D coordinator completes a SAM memorandum to the OCFO that contains information for input in the SAM (see DR 2280-001, Appendix C for a SAM memorandum template) accompanied by the “Notice of Suspension or Debarment” signed by the S&D official.
- (2) Within 7 days after each fiscal year’s quarter, the S&D coordinator provides the OCFO with the nonprocurement S&D report (see DR 228-001, Appendix A).



United States Department of Agriculture

September 7, 2017

Grain Inspection,  
Packers and Stockyards  
Administration

Office of the  
Administrator

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TO: Tyson Whitney  
Director  
Transparency and Accountability Reporting Division  
Office of the Chief Financial Officer

FROM: Randall D. Jones /S/  
Acting Administrator  
Grain Inspection, Packers and Stockyards Administration

SUBJECT: Grain Inspection, Packers and Stockyards Administration's S&D  
Guidance and Instructions Document

In USDA's Suspension and Debarment Departmental Regulation 2280-001, Sec. 6.b.(l)(f), Agency Administrators are required to "Establish S&D guidance or instructions that implement the Department's policies and procedures, and provide to OCFO when established or modified."

In the case of the Grain Inspection, Packers and Stockyards Administration (GIPSA), a small agency with a very limited number of administrative and financial staff, GIPSA is using and plans to continue to use DR 2280-001 as our guiding policy and procedure document.

Only one GIPSA staffer is actively engaged in the GIPSA S&D program. In addition, APHIS' Marketing and Regulatory Programs Business Services (MRPBS) handles all GIPSA procurements and GIPSA infrequently enters into cooperative agreements. Therefore, it was deemed burdensome and unnecessary to create a separate policy and procedure document above and beyond the DR that is already in place for the Department. To date, GIPSA has been fully in compliance with all other aspects of the Department's S&D program, so by all reasonable measures, use of the DR has been effective in terms of maintaining compliance with and assuring full participation in the Department's S&D program.

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