

**U. S. Department of Housing and Urban Development**

**Office of Inspector General for Investigation**

**Inspections and Evaluations Division**



**HUD's Departmental Enforcement Center's  
Compliance Division**

**Evaluation of Suspension and Debarment Referrals**

November 4, 2010

IED-11-001R

## Executive Summary

The Office of Inspector General (OIG), Inspections and Evaluations Division, conducts independent, objective examinations of U.S. Department of Housing and Urban Development (HUD) activities, programs, operations, and organizational issues.

We conducted an evaluation of HUD's Departmental Enforcement Center (DEC), specifically, the Compliance Division. We wanted to know whether DEC processed suspension and debarment referrals in a timely manner. We also wanted to identify ways to improve case management for suspensions and debarments.

The Compliance Division is responsible for administering HUD's administrative sanctions program as established at 2 CFR (Code of Federal Regulations) Parts 180 and 2424. The division imposes suspensions and debarments against individuals or entities for criminal and/or serious departmental program violations.

- Suspensions are imposed for a temporary period, pending the completion of an investigation or legal proceedings. Suspension may be enacted based on adequate evidence, such as indictment or conviction. Depending upon the outcome of the investigation or legal proceedings, suspension could lead to debarment.
- Debarments are serious actions imposed by HUD. The general duration of a debarment is 3 years, but it could be longer, even for an indefinite period, depending upon the seriousness of the violation.

A suspension or debarment results in the immediate exclusion from participation in HUD and all other Federal Government procurement and nonprocurement programs for a specified period.<sup>1</sup>

Between October 1, 2006, and December 9, 2009, DEC's Compliance Division received a total of 978 suspension and/or debarment referrals (cases) from HUD OIG, various HUD program offices, and the U.S. Department of Justice. We observed the following based on our review of 62 cases:

- Suspension and debarment referrals were not processed in a timely manner. In 36 cases, the Compliance Division took between 12 and 681 days after receipt of a referral and/or charging document to process suspension and debarment notices. Immediate actions to suspend and/or debar individuals or entities were not taken in 11 of 47 cases, although the standards of evidence under Federal regulations had been met. Notices of final determination for debarments were sent to 13 individuals between 12 and 316 days beyond the 45-day requirement. Lastly, the division took from 96 to 740 days to close 16 of 18 cases in which it was determined that a suspension or debarment was not warranted.

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<sup>1</sup> U.S. Department of Housing and Urban Development's Homes and Communities, "Compliance Division," <http://www.hud.gov/offices/enforce/sidebar/decrelationships.cfm> (content current as of November 4, 2010)

- Federal requirements for entry of excluded parties were not met. Regulations at 2 CFR 180.520(c) require DEC to enter information on excluded (suspended or debarred) individuals or entities into the Excluded Parties List System (EPLS), a governmentwide electronic database, generally within 5 working days after taking action. Information on 14 (40 percent) of 35 individuals, against whom DEC took a suspension and/or debarment action, was not entered in EPLS within the time permitted. The number of days elapsed for entry of information on the excluded individuals ranged from 6 to 114 days for suspensions and 1 to 394 days for debarments.
- Record keeping system needs improvement. Of the 83 referrals selected for review, the Compliance Division was unable to locate 21 of the related case files and had to reconstruct two case files that were provided. Also, DEC's policies and procedures for the retention and disposition of related suspension and debarment records had not been formalized.

Delays in the processing of suspension and debarment actions and late entry of information on excluded individuals or entities into EPLS ultimately places HUD and other Federal agencies at an increased risk of awarding contracts, grants, and other subsidies to unethical, dishonest, and irresponsible parties. To improve the effectiveness of HUD's administrative sanctions program, steps must be taken by DEC to ensure that suspension and debarment actions are processed consistently and in a timely manner. These steps include development of formalized written policies and procedures for the Compliance Division and department wide guidance. Also, a uniform record keeping system that provides for a complete historical record of the suspension and debarment process should be established.

We provided a draft copy of the report to HUD's General Counsel on October 12, 2010. The DEC generally agreed with our observations and concurred with the recommendations. OIG considers the DEC's planned corrective actions to be responsive to the four recommendations. However, the recommendations remain open pending verification of corrective actions taken. The complete text of the DEC's October 27, 2010, response is included in appendix A.

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## Introduction

### Departmental Enforcement Center

The U.S. Department of Housing and Urban Development’s (HUD) Departmental Enforcement Center (DEC) was established in September 1998 to combine the enforcement actions of the Office of Public and Indian Housing (PIH), the Office of Community Planning and Development (CPD), the Office of Fair Housing and Equal Opportunity (FHEO), and the Office of Housing into one authority. DEC is part of the Office of General Counsel (OGC) and is comprised of the Office of the Director, the Compliance Division, the Operations Division, and five satellite offices.

The Compliance Division is responsible for administering HUD’s administrative sanctions program as established at 2 CFR (Code of Federal Regulations) Parts 180 and 2424. The division imposes administrative sanctions—suspensions and debarments—against individuals or entities for criminal and/or serious departmental program violations. A suspension or debarment results in the exclusion of an individual or entity from participation in HUD and all other future Federal procurement and nonprocurement transactions for a specified period. The DEC Director, as the suspension and debarment official, has discretion to suspend and/or debar an individual or entity. The table below provides the differences between a suspension and a debarment.<sup>2</sup>

	Suspension	Debarment
<b>When to take action</b>	Temporary status of ineligibility pending the outcome of the investigation or legal proceeding	A specific period as a <u>final</u> determination that a person is not presently responsible
<b>Causes</b>	a. Must have <u>adequate evidence</u> (an indictment) that there may be a cause for debarment of a person, and  b. <u>Immediate action</u> is necessary to protect the Federal Government’s interest	<u>Preponderance of evidence</u> (a conviction or civil judgment) that the person has engaged in conduct that warrants debarment
<b>Period</b>	Usually 1 year	Usually 3 years, could be indefinite
<b>Effective</b>	Upon the issuance of a notice of suspension	Upon the issuance of a notice of final determination
<b>Burden of proof</b>	Suspended person	Federal agency
<b>Opportunity to contest</b>	Yes, 30 days from notice	Yes, 30 days from notice
<b>Timeframe for suspension and debarment official to take action</b>	Within 45 days of closing of official record	Within 45 days of closing of official record

<sup>2</sup> 2 CFR Part 180, OMB [Office of Management and Budget] Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)

The Compliance Division processes two types of suspension and debarment referrals (cases): criminal-based and fact-based. Criminal-based cases are generally referred to the division by the HUD Office of Inspector General’s (OIG) Office of Investigation, and the related court documents are submitted with the referral. The amount of work required for processing a criminal-based case is normally minimal, involving some background research and information verification. Fact-based cases are usually referred by HUD’s program offices and HUD OIG’s Office of Audit. A referral for a fact-based case, for example, can originate from a newspaper article, which would require the analyst to “build the case” (i.e., research and gather additional information) to ensure that there is adequate evidence to pursue an administrative sanction. Fact-based cases generally require more time to process than a criminal-based case.

### DEC Case Statistics

Between October 1, 2006, and December 9, 2009, DEC’s Compliance Division received 978 suspension and/or debarment referrals. In fiscal year (FY) 2007, the division received 278 cases that were divided among six full-time analysts. In FY 2008, the division experienced an increase of 23 percent in cases, while the number of full-time analysts remained the same. In FY 2009, the workload decreased by 15 percent, and the division lost a full-time analyst. Currently, the Compliance Division has a total of four full-time analysts.<sup>3</sup> The following table provides a breakdown of cases by analyst.

DEC analyst	FY			FY			10/01/2009 to 12/09/2009
	2007	2008	% Change	2008	2009	% Change	
Full time	43	83	93%	83	80	-4%	15
Full time	50	74	48%	74	63	-15%	12
Full time	48	56	17%	56	68	21%	11
Full time	86	33	-62%	33	19	-42%	6
Full time	36	42	17%	42	13	-69%	-
Full time	2	25	1150%	25	-	-	-
Part time	6	-	-	-	-	-	-
Intern	6	28	367%	28	39	39%	23
Intern	-	-	-	-	6	-	-
Intern	-	-	-	-	2	-	-
Intern	1	-	-	-	-	-	-
Unassigned	-	-	-	-	-	-	2
<b>Total cases</b>	<b>278</b>	<b>341</b>	<b>23%</b>	<b>341</b>	<b>290</b>	<b>-15%</b>	<b>69</b>
<b>Total full-time analysts</b>	<b>6</b>	<b>6</b>	<b>0%</b>	<b>6</b>	<b>5</b>	<b>-17%</b>	<b>4</b>

Of the 978 referrals, 841 (86 percent) were from HUD OIG’s Office of Investigation and Office of Audit. The remaining 137 cases were referred by OGC, HUD Homeownership Centers, PIH, DEC satellite offices, CPD, FHEO, HUD field and regional offices, other, and the U.S. Department of Justice (DOJ). See appendix B for a breakdown of the referrals.

<sup>3</sup> As of September 30, 2010, an additional 969 cases had been referred to the DEC.

## Five Phases for Processing Referrals

The process used by the Compliance Division to determine whether a referral for administrative sanction warrants a suspension and/or debarment consists of the following phases:

- Phase 1 - suspension notice development
- Phase 2 - suspension concurrence
- Phase 3 - opening pending
- Phase 4 - debarment concurrence
- Phase 5 - governmentwide exclusion

The 5 phases contain a total of 11 steps, starting with receipt of the referral for administrative sanction. If a suspension or debarment is deemed appropriate, the process ends with entry of information on the excluded individual or entity into the Excluded Parties List System (EPLS).<sup>4</sup> The division uses the Compliance Tracking System (CTS) to store information and to track the status of referred cases. During each phase, information pertaining to a referral is entered into the system by the assigned analyst. See appendix C for a detailed description of the suspension and debarment process.

## Scope and Methodology

We interviewed officials and staff of DEC's Compliance Division to gain an understanding of their operations and the suspension and debarment process. We also reviewed applicable laws and regulations related to Federal Government suspensions and debarments for nonprocurement transactions. The evaluation fieldwork was performed at DEC's Compliance Division located in Washington, DC.

Between October 1, 2006, and December 9, 2009, the Compliance Division received a total of 978 suspension and/or debarment referrals (cases) from HUD OIG, various HUD program offices, and DOJ. The 978 cases consisted of 321 completed cases, 291 closeouts, and 366 cases in process.<sup>5</sup> We sampled 83 cases for review to determine whether suspension and debarment referrals were processed in a timely manner and to identify ways to improve case management. The division was unable to provide 21 of 83 case files requested for review (see observation 3). Therefore, the results of this evaluation are based on review of 62 cases (21 completed cases, 18 closeouts, and 23 cases in process) and the related CTS entries.

We conducted the evaluation in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

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<sup>4</sup> EPLS is a governmentwide electronic database, operated by the General Services Administration, which identifies those parties excluded from receiving Federal contracts or certain subcontracts and from certain types of Federal financial and nonfinancial assistance and benefits. EPLS is accessible by the public at <https://www.epls.gov/>.

<sup>5</sup> A completed case is when all suspension and/or debarment actions are complete and no more actions are necessary. A closeout case occurs when it is determined that a suspension and/or debarment action is not warranted and no actions are taken. A case in process is still in the suspension and the debarment process.

## Observations

### **Observation 1 - Suspension and Debarment Referrals Were Not Processed in a Timely Manner**

Review of 62 cases disclosed that suspension and debarment referrals were not processed in a timely manner by DEC's Compliance Division. Specifically, suspension and debarment notices were not issued promptly after receipt of a referral and/or charging document. Immediate actions to suspend and/or debar individuals or entities were not taken in some cases, although the standards of evidence under Federal regulations had been met. Notices of final determination were not issued promptly. Lastly, cases in which it was determined that a suspension or debarment was not warranted were not closed in a timely manner. A delay in suspension and debarment decisions ultimately places HUD and other Federal agencies at an increased risk of awarding contracts, grants, and other subsidies to unethical, dishonest, and irresponsible parties.

#### **Suspension and Proposed Debarment Notices**

Notices of suspension, notices of proposed debarment and suspension, and notices of proposed debarment were not issued in a timely manner after receipt of referrals and/or charging documents. Regulations at 2 CFR 180.715 state that after deciding to suspend an individual, the suspension official promptly sends out a notice of suspension.<sup>6</sup> In 36 cases reviewed, the Compliance Division took between 12 and 681 days to process the notices.

#### **Immediate Action Was Not Taken**

Immediate actions to suspend and/or to debar individuals or entities were not taken by the Compliance Division in 11 of 47 cases referred by the HUD OIG Office of Investigation. Regulations at 2 CFR 180.705 and 180.850 provide the standards of evidence for suspensions and debarments. The regulations permit suspension upon the receipt of an indictment and debarment upon conviction or receipt of a civil judgment.

Example #1: A title agent was indicted on February 3, 2009, for closing fraudulent loans. The referral for suspension from HUD OIG was received by the Compliance Division on October 19, 2009. A notice of suspension could have been issued because the indictment constituted adequate evidence to immediately stop the title agent from doing business with HUD; however, the division chose to wait until November 27, 2009, when the judgment and conviction document was provided by OIG, to proceed with a proposed debarment. The notice of proposed debarment was not issued until May 7, 2010, which was 198 days after the division received the referral.

Example #2: A real estate agent, who knowingly and willingly submitted fraudulent documentation for unqualified borrowers of Federal Housing Administration-insured loans, was

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<sup>6</sup> Other than requiring the suspension official to promptly send out a notice of suspension, the regulations are silent as to the amount of time that is permitted for sending out the notices. Regardless, notices should be sent promptly to individuals or entities when it is determined a suspension is warranted or a debarment and/or suspension is proposed.



indicted on June 20, 2008. The referral for administrative sanction from HUD OIG was received by the Compliance Division, along with the “information” and “plea agreement” documents, on July 30, 2008. A notice of suspension could have been issued immediately; however, the division has not taken action to date. There is a note in the case file that states, “Hold for Sentence 9/10/10.”

Example #3: Two HUD program recipients were indicted on August 22, 2007, and convicted on September 19, 2008, of theft of government funds and false statements. The referral for administrative sanction from HUD OIG was received by the Compliance Division on October 1, 2008. The indictment and conviction constituted adequate evidence to suspend and/or debar the two individuals. However, the Compliance Division took 174 days to issue a notice of proposed debarment and suspension, which was issued on March 25, 2009. The two HUD program recipients appealed the proposed debarment and suspension. They were subsequently debarred for 3 years, effective August 31, 2009, which was 330 days after the division received the case.

### Notice of Final Determination

Notices of final determination for debarment were not issued in a timely manner due to late follow-up by the assigned analyst with the docket clerk regarding the hearing status of respondents. Regulations at 2 CFR 180.870 state that the debarring official must issue a written decision regarding whether to debar within 45 days of closing of the official record. The official record closes upon the debarring official’s receipt of final submissions, information, and findings of fact, if any. A debarment is not effective until the debarring official issues a decision. We reviewed 15 cases in which notices were sent by DEC’s Compliance Division to exclude individuals, and of those notices, only two met the 45-day requirement. The remaining 13 notices were sent to the debarred individuals between 12 and 316 days beyond the 45-day requirement (see the following table).

	Notice of proposed debarment date	45-day final determination date	Debarment effective date	Days exceeding 45-day requirement
1	7/30/2007	9/13/2007	10/11/2007	28
2	6/30/2009	8/14/2009	9/10/2009	26
3	5/14/2008	6/28/2008	7/30/2008	32
4	4/29/2009	6/13/2009	9/30/2009	107
5	4/29/2009	6/13/2009	4/29/2010	<b>316</b>
6	10/26/2006	12/10/2006	12/22/2006	<b>12</b>
7	1/25/2008	3/10/2008	3/26/2008	16
8	4/23/2009	6/7/2009	9/25/2009	108
9	1/15/2010	3/1/2010	4/29/2010	58
10	12/10/2007	1/24/2008	2/26/2008	32
11	7/13/2007	8/27/2007	11/15/2007	78
12	11/15/2007	12/30/2007	2/11/2008	41
13	10/1/2008	11/15/2008	12/9/2008	24

Example (# 8 above): A straw buyer was indicted on February 27, 2007. The straw buyer was suspended and then proposed for debarment. The notice of proposed debarment and continuation of existing suspension was issued on April 23, 2009. The analyst did not ask the docket clerk whether the respondent had requested a hearing until it was brought to the analyst's attention by HUD OIG on September 25, 2009, which was 152 days after issuance of the notice. Further, the respondent did not appeal the proposed debarment. The notice of final determination was issued that day. The effective date of the debarment exceeded the 45-day final determination date by 108 days. It was an oversight on the part of the analyst.

### **Closeout Cases**

Closeout cases were not closed in a timely manner. On average, DEC's Compliance Division took 309 days to close a case when it was determined that a suspension or debarment action was not warranted. We reviewed 18 closeout cases, of which only 2 were closed within 60 days. The remaining 16 (88 percent) cases took from 96 to 740 days to close as shown in the table below.

<b>45 days or less</b>	<b>46 - 60 days</b>	<b>61 - 100 days</b>	<b>101 - 200 days</b>	<b>201 - 365 days</b>	<b>366 days or more</b>	<b>Average days</b>	<b>Range</b>
0	2	1	6	3	6	309	50 - 740 days

### **Delays in Processing**

Delays in processing of suspension and debarment referrals by DEC's Compliance Division were not only caused by limited staff resources and the lack of formal written policies and procedures,<sup>7</sup> but also by inadequate coordination and communication between the division and its customers/partners.

HUD OIG: Cases were not always referred to the Compliance Division in a timely manner. Of the 62 cases reviewed, 53 (47 by the Office of Investigation and 6 by the Office of Audit) were referred by HUD OIG. Thirty-one (66 percent) of the 47 cases referred involving an indictment and/or conviction were submitted more than 30 days after the individuals or entities had been either indicted or convicted.

For example, a housing authority official was indicted on August 26, 2008, and convicted on March 27, 2009. However, the division did not receive the referral for suspension from OIG until September 17, 2009, which was 352 days after the submission due date for the indictment and 141 days after the submission due date for the conviction.<sup>8</sup> A referral for debarment was not

<sup>7</sup> Regulations at 2 CFR Part 180 require DEC to establish policies and procedures for the agency's nonprocurement debarment and suspension programs and activities that are consistent with OMB guidance. Lack of internal policies leaves the timeliness of suspension and debarment open to interpretation.

<sup>8</sup> OIG policy at the time required submission of referrals for administrative sanctions as soon as practicable during an investigation. To determine a due date for submission based on the date of indictment or conviction, we used 30 days.

made by OIG. The DEC analyst retrieved the judgment and conviction document from Public Access to Court Electronic Records (PACER)<sup>9</sup> and proceeded with a proposed debarment.

Further, HUD OIG did not respond to the division's requests in a timely manner and sometimes not at all. For example, in two cases, when the assigned analyst requested additional information from OIG, responses were not received. The analyst had to seek alternative means to obtain the needed information.

HUD Office of Program Enforcement and Hearing Official:<sup>10</sup> The waiting period for appeals was protracted. When the notice of proposed debarment is issued, the respondent has 30 days to contest the proposed debarment. The respondent may request an informal hearing. We reviewed five cases in which the respondents chose to contest their proposed debarments. The waiting period for the hearings took an average of 140 days, with one case taking 206 days.

Also, the deliberation period between the hearing and the suspension and debarring official determination was lengthy. According to 2 CFR 180.870, the debarring official must issue a written decision regarding whether to debar within 45 days of closing of the official record. The official record closes upon the debarring official's receipt of final submissions, information, and findings of fact, if any. We noted that the suspension and debarring official did not make a decision within the required 45-day timeframe in three of the five cases reviewed. On average, the suspension and debarring official took 57 days to reach a decision; in one case it took 75 days.

HUD program offices: Obtaining concurrence from HUD program offices increased the processing time for suspension and debarment referrals considerably. When the notice of suspension or notice of proposed debarment is drafted, the notice goes through HUD's Office of Program Enforcement (OPE) for legal sufficiency review. In some cases, the concurrence from the respective HUD program office is recommended before proceeding to the suspension or proposed debarment action. If this is the case, the assigned analyst contacts the appropriate HUD program office to obtain concurrence.

- Example #1: A Section 8 landlord was indicted on February 27, 2007, and the HUD OIG referral was received by DEC's Compliance Division on March 19, 2007. The notice of suspension was processed within a reasonable amount of time by the division. Also, the notice of proposed debarment and continuation of existing suspension was drafted in a timely manner after the judgment and conviction became available in PACER. However, before the division could proceed with the proposed debarment, concurrence from PIH was needed according to OPE's recommendation. A considerable amount of time (64 days) had passed before the Compliance Division requested PIH's approval.

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<sup>9</sup> PACER is an electronic public access service that allows users to obtain case and docket information from Federal appellate, district, and bankruptcy courts and the PACER Case Locator via the Internet. PACER is provided by the Federal judiciary in keeping with its commitment to providing public access to court information via a centralized service.

<sup>10</sup> OPE, within HUD OGC, provides legal support to the Compliance Division. OPE reviews all suspension and debarment notices for legal sufficiency before sending them to the respondents. In addition, OPE schedules hearings for individuals or entities who wish to appeal a suspension or debarment. Further, OPE attorneys represent HUD during hearings.

Communications started on November 29, 2007. The response from PIH was not received by the division until January 17, 2008, 48 days later.

- Example #2: A housing authority contractor was indicted on January 22, 2008. Before the Compliance Division could proceed with a proposed debarment, concurrence from PIH was needed. The concurrence was requested on March 27, 2008. The response was not received until September 17, 2008, 170 days later. E-mail trails revealed that the division's request was forwarded to multiple PIH officials before concurrence was obtained.

Interagency Suspension and Debarment Committee and other Federal agencies: Coordination with the Interagency Suspension and Debarment Committee (ISDC) and other Federal agencies also increased the processing time for suspension and debarment referrals. When the indictment cites more than one Federal agency, the agencies involved may consider designating one agency as the lead agency to pursue the suspension or debarment action. ISDC was established by Executive Order 12549 to coordinate the efforts of the lead agency. However, we found that the coordination was protracted and by the time the approval was obtained from other agencies, the suspension was no longer feasible.

As discussed above, a housing authority contractor was indicted on January 22, 2008. Before DEC could proceed with a proposed debarment, the Director of the Compliance Division suggested that concurrence be obtained from the U.S. Department of Education (ED). The analyst contacted the point of contact at ED and the vice chair of ISDC. Communications started on March 27, 2008, with concurrence obtained on January 8, 2009, more than 281 days later. During this period, the DEC analyst drafted the suspension notice. However, because coordination took too long, the analyst was asked to put the case on hold until the subject was convicted.

## **Observation 2 - Federal Requirements for Entry of Excluded Parties Were Not Met**

Information on 14 (40 percent) of 35 individuals against whom DEC took a suspension and/or debarment action were not entered into EPLS by the Compliance Division within 5 working days as required.<sup>11</sup> As a result, there was an increased risk that the Federal Government's interests were not protected. The suspended or debarred individuals could potentially have been awarded contracts or financial subsidies from HUD or other Federal agencies since a search of EPLS would not reveal that these individuals had been excluded.

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<sup>11</sup> Regulations at 2 CFR 180.520(c) generally requires Federal agency officials who take actions to exclude persons or officials who are responsible for identifying disqualified persons to enter information about those persons into EPLS within 5 working days after (1) taking an exclusion action, (2) modifying or rescinding an exclusion action, (3) finding that the person is disqualified, or (4) finding that there has been a change in status of a person who is listed as disqualified.

## Late Entries

Of the 62 cases reviewed, DEC took suspension and/or debarment actions against 35 individuals or entities. Searches in EPLS revealed that information for 14 (40 percent) of the 35 excluded individuals or entities had not been entered into the database in a timely manner.

For the 14 individuals, 16 suspensions (7) and/or debarments (9) were not entered into EPLS within the 5 working days as required. The days elapsed ranged from 6 to 114 days for suspensions and 1 to 394 days for debarments. For two individuals (#4 and #7 below), entry of suspension and debarment information entered in EPLS occurred after OIG informed the Compliance Division that the information was missing. The following table provides the results for the 14 individuals.

	Suspension				Debarment			
	Suspended	Due in EPLS	Entered into EPLS	Days elapsed	Debarred	Due in EPLS	Entered into EPLS	Days elapsed
1	3/25/2009	4/1/2009	4/23/2009	16	8/31/2009	9/7/2009	3/22/2010	140
2					9/10/2009	9/17/2009	1/7/2010	80
3	10/1/2008	10/8/2008	10/7/2008	0	9/30/2009	10/7/2009	1/7/2010	66
4					7/9/2010	7/16/2010	8/4/2010	13
5	10/24/2007	10/31/2007	10/24/2007	0	9/25/2009	10/2/2009	1/7/2010	69
6	9/6/2007	9/13/2007	9/11/2007	0	2/26/2008	3/4/2008	3/5/2008	1
7	12/19/2008	12/26/2008	1/5/2009	6	1/29/2009	2/5/2009	8/11/2010	394
8	10/1/2008	10/8/2008	10/7/2008	0	12/9/2008	12/16/2008	1/5/2009	14
9					4/3/2009	4/10/2009	4/14/2009	2
10	7/24/2009	7/31/2009	1/7/2010	114				
11	9/10/2009	9/17/2009	1/7/2010	80				
12	4/30/2010	5/7/2010	6/2/2010	18				
13	1/14/2009	1/21/2009	2/3/2009	9				
14	7/27/2009	8/3/2009	1/7/2010	113				

The late EPLS entries were caused by (1) clerical oversight due to limited staff resources, (2) lack of formal policies and procedures, and (3) password confusion. On January 7, 2010, the Compliance Division became aware that EPLS entries had not been entered for about 6 months due to password confusion. A review was conducted by the division, and all EPLS entries for that period were made.

## Observation 3 - Record Keeping Needs Improvement

Suspension and debarment case files consist of correspondence, memorandums, and other documents pertaining to the suspension or debarment of an individual. These records may also contain sensitive and/or personally identifiable information. Of the 83 referrals selected for review, the Compliance Division was unable to locate 21 of the related case files and had to

reconstruct two case files that were provided.<sup>12</sup> Also, DEC's policies and procedures for the retention and disposition of related suspension and debarment records had not been formalized.<sup>13</sup>

Without controlled access and handling to safeguard against a breach of information, sensitive and/or personally identifiable information may be disclosed. Absent a complete record of the deliberative process used to take or deny a suspension or debarment action, there is an increased risk that DEC did not consider all relevant information. Also, insufficient record keeping makes it difficult for DEC to provide a basis for its actions.

### **Missing Case Files**

The Compliance Division was unable to provide case files for 21 (25 percent) of 83 suspension and/or debarment referrals selected for review. The 21 missing case files represented 7 completed cases, 9 closeouts, and 5 cases in process. Seven of the case files were archived; however, the division could not retrieve the files because their location was unknown. In addition, 2 of the 63 case files provided by the division were reconstructed because the original files could not be located. Both cases were assigned to the same analyst.

According to Compliance Division officials, limited staff resources have made it difficult for the division to "...keep up with the demand for filing and archiving of records that is inherent with an office that has the volume of work...[the division has]. In this situation, it is inevitable that records will on occasion be misfiled and/or misplaced." Further, there are instances in which entry of information into CTS does not require a corresponding hardcopy record.

### **Recommendations**

Delays in the processing of suspension and debarment actions and late entry of information on excluded individuals or entities into EPLS ultimately places HUD and other Federal agencies at an increased risk of awarding contracts, grants, and other subsidies to unethical, dishonest, and irresponsible parties. Further, missing case files makes it difficult for DEC to support suspension or debarment actions taken or denied. To improve the effectiveness of HUD's suspension and debarment program, steps must be taken by DEC to ensure timely suspension and debarment actions.

We recommend that the Director of HUD's Departmental Enforcement Center

1. Develop formal written policies and procedures for the Compliance Division to ensure that suspension and debarment referrals are processed consistently and in a timely

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<sup>12</sup> GAO/AIMD-00-21.3.1, November 1999. Under GAO's [the Government Accountability Office] Standards for Internal Controls in the Federal Government, internal controls and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained.

<sup>13</sup> Regulations at 36 CFR 1220.32 require agencies to create and maintain authentic, reliable, and usable records and ensure that they remain so for the length of their authorized retention period.

manner in accordance with 2 CFR Parts 180 and 2424. The policies and procedures should require but are not limited to

- A. Sending suspension and debarment notices to excluded individuals or entities promptly after receipt of referrals and/or charging documents.
  - B. Following the standards of evidence (i.e., indictment for suspension and conviction or civil judgment for debarment) provided under the Federal regulations for taking suspension and debarment actions.
  - C. Sending notices of final determination for debarments to excluded individuals or entities within 45 days of closing of the official record as required.
  - D. Entry of information on suspended and debarred individuals or entities into EPLS within 5 working days as required.
2. To effectively address the volume of cases referred to the Compliance Division with its limited staff resources, ensure that the policies and procedures include ways to improve the efficiency of the suspension and debarment process. The Director should incorporate internal controls and process validation for the various phases and steps involved, ensuring that individuals or entities are suspended and debarred in a timely manner (e.g., establish queues by case type, implement deadlines for phase and step(s) completion, prepare results/status reports for management oversight, perform periodic reconciliation of suspension and debarment information to EPLS).
  3. Develop department wide guidance that provides general procedures to ensure that suspension and debarment actions are processed consistently and in a timely manner. The guidance should outline the responsibilities and department wide procedures to be followed. For example, when the Compliance Division requests information or seeks concurrence for a suspension or debarment action from a customer/partner, there should be a timeframe established for response to the division's request.
  4. Establish a uniform record keeping system that provides for a complete historical record of the suspension and debarment process and results and ensures that the records, regardless of format, are protected in a safe and secure environment and removal or destruction is carried out only as authorized in accordance with established records schedules for retention and disposition.

## **Comments and OIG Response**

We provided a draft copy of the report to HUD's General Counsel on October 12, 2010. The DEC generally agreed with our observations and concurred with the related recommendations (appendix A). We recognize the DEC's efforts to improve its processing of suspension and debarment referrals and consider the planned corrective actions to be responsive to recommendations 1 through 4. However, the recommendations remain open pending verification of corrective actions. OIG will follow-up with the DEC to determine the status of the corrective actions taken.



## Appendix A – HUD Departmental Enforcement Center’s Comments<sup>14</sup>

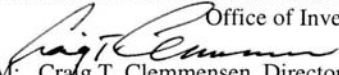


Office of General Counsel  
Departmental Enforcement Center

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-3000

OCT 27 2010

MEMORANDUM FOR: Jennifer L. Sorenson, Director, Inspections and Evaluations Division,  
Office of Investigations, GIH

FROM:  Craig T. Clemmensen, Director, Departmental Enforcement Center, CACB

SUBJECT: Evaluation of Suspension and Debarment Referrals- IED-10-007

This memorandum serves to respond to the aforementioned Inspection and Evaluation Report. The evaluation was of the suspension and debarment process within the Departmental Enforcement Center’s (DEC) Compliance Division.

The act of suspending and debarment are actions that the government takes to prevent certain businesses and individuals from obtaining government contracts and nonprocurement transactions such as grants. Suspension and debarment is a discretionary, yet critical, function by an executive branch agency. I take this responsibility seriously yet the reality of the available resources forces me to re-evaluate our capabilities. For instance, the DEC currently is operating within a protocol with the Office of Inspector General that was executed in 1998. At that time the Compliance Division had nine analysts. We are currently operating with a staff of four analysts and the likelihood of the DEC increasing this staff is very remote.

Generally, I agree with the inspections observations and will address the three major areas individually:

**Observation 1 - Suspension and debarment referrals were not processed in a timely manner.**

The timeliness of processing referrals is dependent upon a number of factors. Manpower, response to inquiries by analysts to the referrers and concurrence “turn-around” all factor into the processing of referred matters. Given the reality of no additional FTE’s its necessary that I address the process itself. I intend to immediately implement a set of guidelines for the acceptance of referrals and procedural steps to support them. The Guidelines will address:

- a. The risk the referrals actually pose. Given available resources, referrals not posing sufficient risk to the Department will not be considered. At the current staffing levels the following categories of participants will be accepted:

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<sup>14</sup> Names of individuals contained within in the body of the response have been redacted.

Group 1

Executive Directors  
Chief Executive Officers  
Chief Operating Officers  
Presidents

Group 2

Deputy Executive Directors  
Vice-Presidents  
Treasurers  
Chief Financial Officers

Group 3

Underwriters  
Senior Housing Authority Employees  
Loan Officers  
Loan Processors  
Landlords

Any participant not falling into one of these categories but the referrer feels that they, nonetheless, pose significant risk should contact the Division Director before forwarding.

- b. The evidence supporting the referral. Referrals that are not provided consistent with the published referral guidelines will not be assigned until missing documentation is provided. Once accepted and assigned, when additional information is received if the analyst is not contacted within 5 working days, the referral will be closed.
- c. Review for Legal Sufficiency: The majority of cases are based, usually, on either, an Indictment or Conviction. This, in of itself, establishes its legal sufficiency<sup>1</sup>. The DEC will institute a process utilizing an attorney internal to the DEC which will help alleviate another area of loiter.
- d. HUD-OIG: Very preliminary conversations have been held with [REDACTED] on the feasibility of electronically passing the OI referral to the DEC through CMIS. This is not something that will happen soon but is well worth continuing a dialogue on.
- e. HUD Program Offices: Though concurrence isn't a requirement, some program participants may fall within a category that necessitates coordination with program offices. The DEC will strive to establish comment deadlines where appropriate and, where not appropriate, ensure that a timely response is requested.

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<sup>1</sup> 2 C.F.R. §180.705 (b); 2 C.F.R. §180.850(b)

- f. Interagency Suspension and Debarment Committees (ISDC) and Other Federal Agencies. Coordinating with the ISDC and other agency partners is required.<sup>2</sup> The DEC will work towards achieving more effective response times from the ISDC and other federal agencies.

#### **Observation 2 - Federal Requirements for Entry of Excluded Parties Not Met.**

Being the actual goal of the Division I am confident that the current procedure being used to ensure the entry of excluded persons is failing us. I intend to reassign the duties with adequate safeguards in place to quickly verify that entries are made “generally within five working days”.<sup>3</sup>

#### **Observation 3 - Record Keeping Needs Improvement**

Up until this point Suspension and Debarment files were kept comingled with files belonging to four different offices. Three of the offices at any point in time might be involved with a particular debarment case. This, I feel, was the main catalyst in what resulted in poor records management. By January 1<sup>st</sup> the DEC will assume full control over the file room and institute formal checkout procedures.

#### **Recommendations –**

1. Concur – New procedures will be authored.
2. Concur – New internal controls will be instituted.
3. Concur – Current guidance will be updated.
4. Concur – Records maintenance procedures will be instituted.

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• <sup>2</sup> Section 4 of Executive Order 12549 on Debarment and Suspension directed the establishment of the Interagency Suspension and Debarment Committee (ISDC) to monitor implementation of the Order. This Order mandates Executive departments and agencies to: participate in a government-wide system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits,

• <sup>3</sup> 22 C.F.R 180.520 (c) Information about an excluded or disqualified person, generally within five working, after-...

**Appendix B – Suspension and/or Debarment Referrals – October 1, 2006, Through December 9, 2009**

Referral source		Number of cases
HUD OIG		841
Office of Investigation	763	
Office of Audit	78	
HUD OGC		52
HUD Homeownership Centers (HOC)		35
Atlanta HOC	12	
Philadelphia HOC	12	
Denver HOC	9	
Santa Ana HOC	2	
HUD PIH		22
HUD DEC satellite offices		6
Chicago satellite office	4	
Los Angeles satellite office	2	
HUD CPD		3
HUD FHEO		1
HUD field office referral		3
HUD regional office referral		1
Other		9
DOJ		5
<b>Total</b>		<b>978</b>

## **Appendix C – Suspension and Debarment Process**

The process described by DEC’s Compliance Division to determine whether a referral for administrative sanction warrants a suspension and/or debarment consists of 5 phases, with a total of 11 steps. The first phase begins with step 1, the receipt of a referral for administrative sanction. If an administrative sanction is deemed appropriate, the process is completed during the fifth phase with step 11, entry of information on an excluded (suspended or debarred) individual or entity into EPLS.

### **Phase I – Suspension Notice Development Phase**

#### **Step 1. Receipt of Referral**

When a referral is received from a “customer” (e.g., HUD program office), the Director of the Compliance Division reviews the referral and assigns it to an analyst. The administrative assistant then enters the header information (name, address, occupation of the participant, etc.) into CTS. The referral is then forwarded to the assigned analyst.

#### **Step 2. Verification of Information**

The analyst assembles the administrative folder (case file) and then enters basic information into CTS and verifies the information as an official chronological record. At the same time, the analyst reviews the referral for essential documents and legal charging documents such as indictment, information, judgment, etc. For fact-based cases, the analyst reviews the information submitted and determines whether additional information is needed to support the administrative sanction. If additional documents are required, the analyst contacts the appropriate program officials to locate the necessary documents.

For all referrals, the analyst quickly establishes a HUD nexus by answering three questions:

- 1) Is the individual or entity in the referral a HUD participant?<sup>15</sup>
- 2) What was the covered transaction(s)?
- 3) Does the referral relate to a mandatory grant award? (If yes, then this could potentially be a closeout because of Executive Order 12549.<sup>16</sup> If the case becomes a closeout due to the grant source being nondiscretionary, a closeout memorandum will be sent to the originating source of the referral.)

In cases in which an individual or entity was previously suspended by DEC, a termination of suspension letter is prepared and sent to that individual or entity.

Next, the analyst researches and verifies other pertinent background information such as the last known address with the Federal Bureau of Prisons or the U.S. Marshals Service if the defendant

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<sup>15</sup> Participant means any person who submits a proposal or who enters into a covered transaction, including an agent or representative of a participant.

<sup>16</sup> Executive Order 12549, “Debarment and Suspension,” explicitly states that it does not cover “direct Federal statutory entitlements or mandatory awards.”

is in custody. Also, the analyst performs a search for affiliates in Lexis-Nexis and the respective department of state Web page where the individual or entity is located.

If the indictment also cites, along with HUD, other Federal agencies, coordination with other Federal agencies and ISDC may be needed.<sup>17</sup> If a particular Federal agency is contemplating a legal action, HUD would wait on the sanction.

## **Phase II – Suspension Concurrence Phase**

### **Step 3. Concurrence From HUD Program Office**

If an individual or entity violated the rules of a HUD program, concurrence for suspension needs to be obtained from the respective HUD program office. For example, if a Section 8 landlord is indicted, concurrence is obtained from PIH before a suspension notice can be prepared.

### **Step 4. Creation of Notice of Suspension**

The analyst creates the notice of suspension and forwards it to the Director of the Compliance Division for review. The Director initials the notice and forwards it to OPE for a legal sufficiency review.

### **Step 5. Hearing**

The suspension notice allows the individual or entity (respondent) to contest a suspension within 30 days after the respondent received the notice.<sup>18</sup> If a respondent wishes to contest the suspension, OPE appoints an attorney to represent HUD. During a hearing, the respondent presents information and his/her argument to the hearing official. The hearing official then decides whether a genuine dispute over facts exists. If a genuine dispute over facts does not exist, the suspending official determines that the respondent should be suspended.

If during the hearing the respondent raises a genuine dispute over facts to the suspension, the respondent has an additional opportunity to contest the suspension. The suspending official must conduct a fact-finding proceeding to resolve the dispute.

### **Step 6. Suspending Official's Determination**

After the hearing, the hearing official will make a recommendation to the suspending official. The suspending official will then make a decision regarding whether to suspend the respondent.

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<sup>17</sup> ISDC was created by Executive Order 12549. It facilitates lead agency coordination, serves as a forum to discuss current suspension- and debarment-related issues, and assists in developing unified Federal policy. ISDC serves as a regulatory drafting body for revisions to the governmentwide nonprocurement suspension and debarment common rule.

<sup>18</sup> The respondent is a person against whom a Federal agency has initiated a debarment or suspension action.

### **Phase III – Opening Pending Phase**

The opening pending phase is the period between the issuance of a suspension and receipt of the conviction. During this period, the analyst routinely monitors the criminal case through the PACER Web site. This monitoring is required since the forwarding of conviction/sentencing documents can be overlooked by the referrer.

DEC's Compliance Division processes two types of referrals, criminal-based and fact-based. The criminal-based cases are generally referred by HUD OIG's Office of Investigation, and the court documents are usually submitted with the referrals. With criminal-based cases, minimal background research and information verification are required. On the other hand, the fact-based cases are usually referred by HUD's program offices and OIG's Office of Audit. The referral can start out as an article in the newspaper, which requires the analyst to "build the case" by researching additional information to ensure that adequate evidence exists to pursue an administrative sanction. The criminal-based cases can be processed more quickly as the fact-based cases require additional time.

### **Phase IV – Debarment Concurrence Phase**

#### Step 7. Creation of Proposed Debarment Notice

After the receipt of the conviction, the analyst creates the proposed debarment notice. While preparing the notice, the analyst determines whether the individual's or entity's actions warrant a debarment of 3 years or longer. In the case of longer debarments, the analyst must substantiate reasons for a longer debarment in a memorandum to the DEC Director. After the proposed debarment notice has been reviewed and sent to the respondent, the analyst contacts the docket clerk in OPE within 45 days to find out whether the respondent has requested a hearing.

#### Step 8. Hearing

The proposed debarment notice allows the respondent to contest a proposed debarment within 30 days after the respondent received the notice. As with suspension, if a respondent wishes to contest the proposed debarment, OPE appoints an attorney to represent HUD. During a hearing, the respondent presents information and his/her argument to the hearing official. The hearing official then decides whether a genuine dispute over facts exists. If a genuine dispute over facts does not exist, the debarring official determines that the respondent should be debarred.

If during the hearing, the respondent raises a genuine dispute over facts to the debarment, the respondent has an additional opportunity to contest the proposed debarment. The debarring official must conduct a fact-finding proceeding to resolve those facts.

#### Step 9. Debarring Official's Determination

After the hearing, the hearing official will make a recommendation to the debarring official. The debarring official will then make a decision regarding whether to debar the respondent.

#### Step 10. Creation of Debarment Notice

After 45 days, the analyst checks with the docket clerk from OPE to find out the status of the appeal. If the respondent has not appealed, the final debarment notice is prepared and mailed to the respondent. If the respondent has appealed the debarment, the analyst contacts the docket clerk to obtain the status of the hearing. At the conclusion of the appeal process, the docket clerk provides a copy of the debarring official's determination to the analyst.

### **Phase V – Governmentwide Exclusion**

#### Step 11. Excluded Parties List System

After an individual or entity has been suspended or debarred, the information on the excluded individual or entity is entered into EPLS.