

# AUDIT REPORT

## AUDIT OF SBA'S SUSPENSION AND DEBARMENT PROCESS





# EXECUTIVE SUMMARY

## AUDIT OF SBA'S SUSPENSION AND DEBARMENT PROCESS

Report No.  
19-18

September  
18, 2019

### What OIG Reviewed

Suspension and debarment actions are designed to protect the federal government from potential harm posed by individuals or entities who demonstrate a lack of business integrity. Entities suspended, debarred, declared ineligible, or otherwise excluded from participating in government programs are maintained in the System for Award Management (SAM). Our audit objective was to determine whether the Small Business Administration (SBA) had sufficient controls in place to prevent suspended or debarred entities from receiving federal contracts through SBA's preference contracting programs and small business loans. To accomplish our objective, we analyzed contracts, grants, and loan data to determine whether suspended or debarred entities participated in SBA programs. We also reviewed loan files to determine whether lending partners maintained evidence to support a review of SAM prior to approving SBA-guaranteed loans. Lastly, we reviewed 223 cases referred to SBA's suspending and debarment officials (SDOs) from December 2012 to September 2018.

### What OIG Found

SBA has not established sufficient controls over its suspension and debarment process to prevent ineligible individuals or entities from participating in small business programs or to control the risk presented by potentially irresponsible entities participating in federal government programs. Specifically, an entity convicted of a Clean Water Act violation and included on the exclusion list received an SBA 7(a) loan valued at \$2.9 million. Also, lending partners did not always review SAM to verify the eligibility of entities to participate in SBA's loan programs prior to approving SBA-guaranteed loans valued at \$3.8 million nor did they maintain evidence to support they had reviewed the system. In addition, SDOs' delayed action to process referrals for debarment resulted in \$80.3 million in contract awards to entities who demonstrated causes for debarment. We identified 15 referrals for suspension and debarment that had been pending review without action by SDOs for an average of 620 days. During that time, federal agencies awarded contracts to three entities that were referred for debarment because

they circumvented federal contracting rules to gain access to the 8(a) Business Development Program.

Also, by not documenting the basis of their declinations of suspension or debarment referrals, including explanation for declinations, SDOs could expose SBA to adverse legal action. We identified four cases involving an entity who used a qualified 8(a) participant to act as a passthrough to obtain an 8(a) contract. However, despite a state court finding of misrepresentation, the SDO decided not to suspend or debar the entities and did not document the basis of the decision. Finally, SDO's inaction affected the federal government's ability to collect a \$100,000 settlement in monetary penalties. In February 2019, OIG referred to the SDO an entity and an individual who were negotiating a civil settlement with the federal government and had agreed to pay \$100,000 to resolve the allegations. The SDO had until the end of March 2019 to assess whether an administrative agreement was appropriate. However, in May 2019, the United States Attorney's Office (USAO) informed OIG that the SDO had neither made nor communicated the status of that assessment. The USAO closed the matter due to SBA's inaction.

### OIG Recommendations

We made six recommendations to improve the oversight and management of SBA's suspension and debarment program to prevent ineligible entities from participating in SBA's contracting and loan programs.

### Agency Response

SBA management agreed with two of the six recommendations and partially agreed with the other four recommendations. Management's planned actions resolved three recommendations. Management plans to revise and finalize internal suspension and debarment policies, review the appropriateness of rescinding the loan guaranty, dedicate resources to monitor and process referrals, and improve the tracking system. We did not reach resolution on recommendations 2, 3, and 6. While SBA agreed or partially agreed with the three recommendations, the proposed actions did not fully address the recommendations.



**U.S. SMALL BUSINESS ADMINISTRATION  
OFFICE OF INSPECTOR GENERAL  
WASHINGTON, D.C. 20416**

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**Final Report Transmittal**  
Report Number: 19-18

**DATE:** September 18, 2019

**TO:** Christopher M. Pilkerton  
Acting Administrator and General Counsel

**FROM:** Hannibal "Mike" Ware  
Inspector General 

**SUBJECT:** Audit of SBA's Suspension and Debarment Process

This report presents the results of our audit on the Small Business Administration's suspension and debarment process. We considered management comments on the draft of this report when preparing the final report. Management partially agreed to address all six recommendations identified in the report.

We appreciate the courtesies and cooperation extended to us during this audit. If you have any questions, please contact me at (202) 205-6586 or Andrea Deadwyler, Assistant Inspector General for Audits, at (202) 205-6616.

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## Introduction

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Suspension and debarment are tools designed to protect the federal government from potential harm posed by individuals or business entities whose conduct indicates a lack of honesty, integrity, or poor performance. Suspension is an action taken by a federal agency to immediately prohibit a recipient from participating in federal procurement and nonprocurement transactions for a temporary period pending completion of an investigation or judicial or administrative proceeding.<sup>1</sup> Debarment is an action taken by a federal agency to prohibit a recipient from participating in procurement and nonprocurement transactions. The System for Award Management (SAM) maintains entities activities involving contracts, grants, past performance reporting and suspension and debarment.

The federal government has two sets of regulations that control suspension and debarment matters. These regulations are similar, but not identical. Exclusions under either set of regulations have the same general, governmentwide effect.

The Federal Acquisition Regulation (FAR) establishes procedures related to procurement matters. According to the FAR, agencies shall create appropriate procedures to implement the debarment, suspension, and ineligibility procedures. The FAR also requires contracting officers to review SAM, after receiving contractors' bids or proposals and prior to awarding contracts. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action. Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the government as agents or representatives of other contractors.

The Nonprocurement Common Rule refers to the procedures used by federal executive agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions. Some examples of nonprocurement transactions include grants, loans, and loan guarantees. Entities suspended or debarred are prohibited from receiving contracts, grants, and loans unless the agency head determines that there is a compelling reason for such action.

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.<sup>2</sup> This Order mandates Executive departments and agencies to do the following:

- Participate in a governmentwide system for debarment and suspension from programs and activities involving federal financial and nonfinancial assistance and benefits.
- Issue regulations with governmentwide criteria and minimum due process procedures when debarring or suspending participants.
- Enter debarred and suspended participants' identifying information in the system that evolved into the General Services Administration Excluded Parties List System, now included in SAM. Agencies issuing the suspension or debarment are responsible for information placed on SAM.

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<sup>1</sup> Recipient means any individual, corporation, partnership, association, unit of government (except a federal agency), or legal entity, however organized, that receives an award directly from a federal agency.

<sup>2</sup> Executive Order 12549 (February 18, 1986).

The ISDC reports to Congress annually on the status of the federal suspension and debarment system, pursuant to section 873 of Public Law 110-417.<sup>3</sup> ISDC must submit to Congress an annual report on the

- progress and efforts to improve the suspension and debarment system,
- member agencies' active participation in the committee's work, and
- a summary of each agency's activities and accomplishments in the governmentwide debarment system.

In FY 2017, federal agencies awarded over \$105 billion to small businesses through small business prime contracting. In addition, SBA managed small business loan guaranties and a direct loan portfolio valued at nearly \$132 billion. SBA designated two suspending and debarring officials (SDOs) to process suspension and debarment referrals.

### **Prior Work**

GAO 14-513, Federal Grants and Contracts: Agencies Have Taken Steps to Improve Suspension and Debarment Process (May 21, 2014). GAO was asked to review actions taken to implement the recommendations in a report issued in August 2011.<sup>4</sup> This report examined (1) actions taken by six agencies to incorporate characteristics of active suspension and debarment programs;<sup>5</sup> (2) changes in the level of suspension and debarment activity; and (3) actions taken to improve oversight and governmentwide efforts. GAO found that agencies took action to incorporate characteristics associated with active suspension and debarment programs. Also, suspension and debarment activity at agencies had increased. In addition, the Office of Management and Budget and the ISDC<sup>6</sup> had acted to strengthen governmentwide suspension and debarment efforts.

### **Objective**

Our audit objective was to determine whether SBA had sufficient controls in place to prevent suspended or debarred entities from receiving federal contracts through SBA's preference contracting programs and small business loans.

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<sup>3</sup> Public Law 110-417.

<sup>4</sup> GAO 11-739, Suspension and Debarment: Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved (August 31, 2011).

<sup>5</sup> SBA was not one of the six agencies included in the GAO report.

<sup>6</sup> ISDC's mission is to help agencies build and maintain the expertise necessary to manage effective suspension and debarment programs.

## **Finding 1: SBA Lending Partners Approved \$6.7 Million in Loans to Entities Without Reviewing the System for Award Management**

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SBA has not established sufficient controls over its suspension and debarment process to prevent ineligible individuals or entities from participating in small business programs. Specifically, an entity convicted of a Clean Water Act violation and included on the excluded parties list in SAM received a loan valued at \$2.9 million. SBA's standard operating procedure (SOP) states that individuals and entities suspended, debarred, revoked, or otherwise excluded under SBA or governmentwide debarment regulations are not permitted to conduct business with SBA.<sup>7</sup> We examined 14 additional loan files and found that 11 files did not have documentation to support that lending partners reviewed SAM for exclusions prior to loan approval. For two loans, the lending partners reviewed SAM after the loans were approved. According to an SBA official, lenders routinely retained and provided a printout of SAM to SBA representatives responsible for verifying a review of the system during the lender review process. However, the SOP does not explicitly require lenders to review SAM to determine whether potential borrowers are suspended, debarred, or otherwise excluded, or to document their review. As a result, SBA does not have assurance that lenders consistently verify the present responsibility of entities participating in SBA loan programs.

### **An SBA Lending Partner Disbursed a \$2.9 Million Loan to an Entity Convicted of a Clean Water Act Violation**

During the loan review process, an entity falsely certified that neither it nor its principals were presently debarred, suspended, declared ineligible, or otherwise excluded from participation in the SBA loan program by any federal department or agency. However, the entity was convicted of a Clean Water Act violation and listed on the exclusion list.

The Clean Water Act<sup>8</sup> forbids federal agencies from entering into any contract, loan, or benefit to any person or company who

- has been convicted of an offense under the Clean Water Act;
- intends to use the place where or from which the offense happened for the contract, loan, or benefit; and
- owns, leases, or supervises the facility where or from which the offense occurred at the time when a decision about the contract, loan, or benefit is made.

We determined that all three conditions of the Clean Water Act exclusion were present at the time of the loan approval and the entity was ineligible to receive the loan. Specifically,

- according to SAM, the entity was convicted of the Clean Water Act violation on July 30, 2012;
- the entity's address in SAM was identical to the address submitted in the loan file; and
- at the time of loan approval, the entity owned, leased, or supervised the violating facility.

In addition, according to the Nonprocurement Common Rule, a federal agency official may not enter into a covered transaction with an excluded person without an exception or waiver.<sup>9</sup> Also, a federal agency official must check if a person is excluded or disqualified before entering or approving

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<sup>7</sup> SOP 50 10 5 (J), Lender and Development Company Loan Programs, effective January 1, 2018.

<sup>8</sup> 33 U.S.C. § 1251, et seq.

<sup>9</sup> 2 CFR § 180.400

others to enter into covered transactions.<sup>10</sup> According to the lending partner, during the underwriting process there was no mention or reference to [reviewing] the entity's name [in] SAM to confirm the prospective borrower's status. As a result, the lending partner disbursed a \$2.9 million SBA-guaranteed loan to an ineligible entity. SBA's loan portfolio is valued at nearly \$132 billion. In addition, SBA guarantees up to 85 percent of 7(a) loans; therefore, lending partners must exercise due diligence to ensure the eligibility of entities participating in SBA loan programs. Because the lender disbursed a loan to an ineligible entity, we consider the \$2.9 million as questioned costs.<sup>11</sup> We referred the entity to the OIG Investigations Division for further review and provided the lender's information to the SBA SDO.

### **Lending Partners Did Not Always Verify the Eligibility of Entities Before Approving SBA-Guaranteed Loans Valued at \$3.8 Million**

According to an SBA official, lenders routinely retained and provided a printout of SAM to SBA representatives responsible for verifying a review of the system during the lender review process. However, we determined that lenders did not always maintain documentation to support their review of SAM for the additional 14 loan files we reviewed. Three files showed sufficient evidence of review; however, for two of the loans, lenders generated a screen print of their SAM search results after the loan approvals. The remaining nine lenders did not include any evidence to support a review of the system. The 11 loan files that did not have evidence of a review of SAM totaled \$3.8 million.

The SOP states that individuals and entities suspended, debarred, revoked, or otherwise excluded under SBA or governmentwide debarment regulations are not permitted to conduct business with SBA. However, the SOP does not explicitly require lenders to review SAM to determine whether potential borrowers are suspended, debarred, or otherwise excluded, or to document their review. Therefore, SBA officials do not have assurance that lenders consistently verify the present responsibility of entities participating in SBA loan programs.

### **Recommendations**

We recommend that the Administrator require the Associate Administrator for the Office of Capital Access to:

1. Update SOP 50 10 5 (J) to include an express requirement for lending partners to review the System for Award Management for applicants' and borrowers' eligibility and to maintain documentation in the loan file to support their review.
2. Rescind the SBA loan guaranty for the \$2.9 million loan and assess the lender's eligibility for continued participation in the SBA lending program.

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<sup>10</sup> 2 CFR §§ 180.425 and 180.430.

<sup>11</sup> A cost that is questioned because of an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds.

## **Finding 2: Suspending and Debarring Officials' Delayed Action Resulted in \$80.3 Million in Contracts to Entities Who Demonstrated Causes for Debarment**

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SDOs did not always timely update SAM to ensure that only responsible individuals or entities participated in SBA small business contracting and loan programs or promptly address present responsibility referrals. In 2011, OMB directed agencies to maintain effective internal controls and tracking capabilities;<sup>12</sup> however, SBA officials did not establish procedures to outline their internal suspension and debarment referral processes as required by the procurement and nonprocurement regulations and did not follow OMB directives to develop a tracking system to effectively monitor referrals. Consequently, SBA SDOs, by not promptly addressing suspension and debarment referrals, exposed the federal government to potential harm from individuals or business entities who lacked present responsibility.

### **Suspending and Debarring Officials Did Not Timely Update the System for Award Management**

We identified two cases involving debarred entities where the SDO did not update SAM timely after closing the official record. According to the SDO, the referenced entities were debarred on November 30, 2018. However, the SDO did not update SAM until December 6, 2018. As a result of the delay to update SAM, other federal agencies would not have been aware of the entities' debarment status and could have awarded contracts and grants or approved loans to the debarred entities. According to the Nonprocurement regulations, the SDO must update SAM within 3 business days after agreeing with or declining a proposal to debar an entity.<sup>13</sup>

### **Present Responsibility Referrals Were Pending Review for an Average of 620 Days**

We analyzed 223 cases referred to the SDOs from December 2012 to September 2018 and determined 15 cases remained open and had been pending action for an average of 620 days as of March 8, 2019.<sup>14</sup> During that time, federal agencies awarded \$80.3 million in contracts to three of the entities involved in these cases.

- One entity, which was pending review for 604 days, was referred for soliciting an 8(a) program participant to act as a passthrough to gain access to the 8(a) program. As of March 8, 2019, the entity received \$1.8 million in contract awards from other federal agencies.
- A second entity, which was pending review for 556 days, was referred for making false certifications regarding its size to gain access to 8(a) contracts. After the SDO received the referral, the entity received \$40.8 million in contract awards from federal agencies as of March 8, 2019. The Department of the Army subsequently assumed responsibility for the case after SBA received the referral. On May 22, 2019, the Department of the Army suspended the entity.

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<sup>12</sup> OMB Memorandum M-12-02 (November 15, 2011).

<sup>13</sup> 2 CFR §180.520(c), Nonprocurement Common Rule.

<sup>14</sup> These cases have been pending review with the procurement SDO between 162 to 1568 days.

- A third entity, which was pending review for 396 days, was referred for misrepresenting the nature of its withdrawals in response to the SBA's Early Graduation proceedings from the 8(a) program. As a result of the entity's misrepresentation, the firm remained in the 8(a) program, to the detriment of other program beneficiaries. As of March 8, 2019, the entity received \$37.7 million in federal contract awards.

During the exit conference, SBA officials stated that for two cases, they declined to suspend or debar the referred entities. For the other case, SBA officials said that they declined the referral, but later stated that they had deferred action on the referral because they found the information accompanying the referral to be insufficient and was waiting for the completion of an ongoing investigation. However, prior to the exit conference, SBA officials had not conveyed their decisions or concerns to OIG. In addition, twice a year, OIG requests information from the SDOs in preparation for OIG's semiannual reports, which include the Agency's present responsibility activities, including any declined referrals. The SDOs reported zero declinations from April 1, 2017, to September 30, 2018. Further, SBA submits information concerning its SDO actions to the ISDC for the annual report to Congress required by section 873 of Public Law 110-417. SBA did not report any declinations to the ISDC for the 2017 and 2018 reports to Congress.

According to the FAR, agencies shall establish appropriate procedures to implement suspension and debarment policies.<sup>15</sup> Further, according to the OMB Memorandum 12-02, agencies shall ensure that they maintain effective internal controls and tracking capabilities, taking into consideration the agency's mission, organizational structure, and level of procurement activities.<sup>16</sup> Also, the ISDC reports to Congress annually on the status of the federal government's suspension and debarment system. The report describes governmentwide progress in improving the suspension and debarment process and provides a summary of each agency's suspension and debarment activities.

SBA officials had not established official procedures to define their suspension and debarment referral processes and did not develop a tracking system. According to an SBA official, due to limited resources, referred cases were prioritized based on immediate risk to SBA's programs. However, the SBA official needed to take into consideration the governmentwide risk. As a result, other federal agencies awarded \$80.3 million in contracts to three entities who circumvented the requirements to gain access to the 8(a) program. Because the three entities did not follow the 8(a) program requirements, we questioned the value of the contracts awarded to the entities.<sup>17</sup>

### **Management Action**

During the audit, both SBA officials took corrective action to develop and implement tracking mechanisms to monitor referrals. In addition, SBA officials developed and provided the OIG their internal policies; however, the policies need to be finalized.

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<sup>15</sup> FAR § 9.402(e).

<sup>16</sup> OMB Memorandum M-12-02 (November 15, 2011).

<sup>17</sup> A cost that is questioned because of an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds.

## **Recommendations**

We recommend that the Administrator require the suspending and debarring officials to:

3. Finalize internal suspension and debarment policies and include guidelines for timely processing of referrals and updating the System for Award Management.
4. Dedicate resources to monitor and process suspension and debarment referrals.
5. Establish and implement controls to ensure the accuracy of reporting on suspension and debarment actions to OIG, Interagency Suspension and Debarment Committee, and Congress.

## **Finding 3: Failure to Document Suspension and Debarment Decisions Could Expose SBA to Legal Action**

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We identified four cases based on civil judgment that the SDO decided not to suspend or debar but did not document the basis of the decision. The SDO told us that there was no requirement to document the declination decision. According to the FAR, agencies shall establish procedures governing the debarment decision making process that are consistent with principles of fundamental fairness.<sup>18</sup>

Furthermore, according to the Nonprocurement regulations, an indictment, conviction, civil judgment, or other official findings by federal, state, or local bodies that determine factual or legal matters, constitutes adequate evidence for purpose of suspension actions.<sup>19</sup> In instances where the SDO decides not to suspend an entity in the face of an indictment or civil judgment, the SDO should document the basis of the decision. If SBA SDOs cannot demonstrate consistent application of procedures in their decisions, SBA could be exposed to legal actions by entities who believe they are arbitrarily suspended and debarred.

### **Management Action**

During the audit, on April 4, 2019, the SDO instructed the personnel under his purview to document their declination decisions; however, to ensure continuity and consistency in the process, the instructions need to be included in an official policy.

### **Recommendation**

We recommend that the Administrator require the suspending and debarring officials to:

6. Establish and implement formal policy requiring SBA suspending and debarring officials to document and retain their declination decisions.

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<sup>18</sup> FAR Subpart 9.406-3, Procedures.

<sup>19</sup> 2 CFR § 180.705(b), Nonprocurement Common Rule.

## **Other Matters: SBA's Inaction Impacted the Government's Ability to Collect a \$100,000 Settlement**

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On February 6, 2019, OIG referred to the SDO an entity and an individual that had agreed to pay the federal government a settlement of \$100,000 pending the execution of an administrative agreement by SBA. The entity and the individual allegedly made false statements to gain access to the 8(a) program. According to the United States Attorney's Office (USAO), the parties were prepared to end negotiations if SBA did not take action to process the administrative agreement and concur with the settlement. On March 19, 2019, OIG informed the SDO that according to the USAO, unless SBA took action to process the administrative agreement by March 31, 2019, the USAO would drop the settlement. On May 20, 2019, the USAO informed OIG that the SDO did not act. Consequently, the USAO closed the case and declined taking further action.

The suspension and debarment process is intended to protect the federal government from fraud, waste, and abuse by using several tools to avoid doing business with non-responsible entities. Suspensions, proposals for debarment, and debarments are the most widely known tools as these actions are visible to the public through SAM. To increase accountability and ensure consistency in the governmentwide suspension and debarment program, it is essential for SBA suspending and debarring officials to take prompt action to process referrals and effectively coordinate with other agencies.

## **Analysis of Agency Response**

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SBA management provided formal comments, which are included in their entirety in appendix III. SBA management agreed with recommendations 1 and 6 and partially agreed with recommendations 2, 3, 4, and 5. Management's proposed corrective actions resolved recommendations 1, 4, and 5; however, their proposed corrective actions for recommendations 2, 3, and 6 did not fully address the recommendations. In accordance with our audit followup policy, we will attempt to reach agreement with SBA management on the unresolved recommendations within 60 days after the date of this final report. If we do not reach agreement, OIG will notify the audit followup official of the disputed issues. SBA management also provided comments on the audit findings that we considered in preparing our final report.

### **Summary of Actions Necessary to Close the Recommendations**

The following provides the status of the recommendations and the necessary actions to close them.

1. **Resolved.** SBA management agreed with our recommendation, stating that it will update the SOP 50 10 5 (J) to include a requirement for lending partners to review SAM for applicants' and borrowers' eligibility and to maintain documentation in the loan file to support their review. Management plans to complete final action on this recommendation by January 31, 2020. This recommendation can be closed once management provides evidence that it has updated the SOP to include the recommended changes.
2. **Unresolved.** SBA management partially agreed with our recommendation, stating that it will work with the lender to gather additional documentation to determine if it is appropriate to rescind the loan guaranty for the \$2.9 million loan. Management plans to complete final action on this recommendation by January 31, 2020. Management's response did not address the part of the recommendation pertaining to assessing the lender's eligibility for continued participation in the SBA lending program. This recommendation can be closed when management provides evidence that it completed its review to determine whether to rescind the loan guaranty and when management provides evidence that it assessed the lender's eligibility to continue participation in the SBA lending program.
3. **Unresolved.** SBA management partially agreed with our recommendation.

SBA agreed with our recommendation relative to the Suspension and Debarment Official for All Other Programs (SDO-AOP), stating that the SDO-AOP will finalize their internal suspension and debarment policies. Management also stated that the SDO-AOP will revise their SOP to address timely processing of referrals and updating SAM.

However, SBA disagreed with our recommendation relative to the Suspension and Debarment Official for Financial Assistance Programs (SDO-FAP), stating that the SDO-FAP already had sufficient policies and tracking mechanisms in place, including guidelines for timely processing of referrals and updating SAM. In addition, the SDO-FAP stated that they had revised and approved their suspension and debarment desk manual on August 2, 2019, to include adding the 3 business-day timeframe requirement in 2 CFR 180.520, and provided a copy to OIG. The desk manual that SDO-FAP provided, however, did not include an effective date or signature. SBA management also did not agree with the \$80.3 million in questioned costs but did not provide an explanation.

Management plans to complete final action on this recommendation by January 31, 2020. This recommendation can be closed when management provides evidence that the SDO-AOP and the SDO-FAP finalized their internal suspension and debarment policies. In addition, management must demonstrate how the associated entities that were awarded the \$80.3 million through the 8(a) program were eligible to receive those contracts.

4. **Resolved.** SBA management partially agreed with our recommendation, stating that the SDO-AOP had added a new paralegal to oversee many suspension and debarment functions and procedures. Management also stated that the SDO-FAP has dedicated resources already in place to monitor and process suspension and debarment referrals and did not need additional resources. Management plans to complete final action on this recommendation by October 31, 2019. This recommendation can be closed once management provides evidence that SDO-AOP hired a new paralegal whose duties include monitoring and processing suspension and debarment.
5. **Resolved.** SBA management partially agreed with our recommendation. Management stated that the SDO-AOP already developed and deployed a new tracking system and will continue to make improvements to the system. In addition, SDO-AOP stated that the new procedures they will implement should lead to more timely and more accurate reports. The SDO-FAP stated that while OIG did not raise concerns with their accuracy of reporting on suspension and debarment during the audit, they will submit an annual status report of the suspension and debarment actions directly to ISDC. Management plans to complete final action on this recommendation by January 31, 2020. This recommendation can be closed once management provides evidence that the SDO-AOP implemented the new procedures.
6. **Unresolved.** SBA management agreed with our recommendation. The SDO-AOP stated that they sent a formal memo to staff implementing the policy to document and retain declination decisions and it will add this requirement their updated SOP. The SDO-FAP stated they revised their desk manual to require documentation and retention of the declination decisions effective August 2, 2019. However, the desk manual that the SDO-FAP provided to OIG did not include an effective date or signature. Management plans to complete final action on this recommendation by January 31, 2020. This recommendation can be closed once management provides evidence that the SDO-AOP updated and finalized the SOP. In addition, SBA must provide a copy of the SDO-FAP desk manual that includes a signature and effective date.

## **Response to Agency's Comments on the Audit Findings**

The following provides our response to the Agency's comments detailed in appendix III.

### *1. Inaccurate depiction of the facts*

SBA believes that the statement on page 5 of the draft audit report that "SBA's SDOs, by not promptly addressing suspension and debarment referrals, exposed the federal government to potential harm from individuals or business entities who lacked present responsibility" is an inaccurate depiction of the facts. SBA management asserted that they promptly concluded that the referrals did not substantiate the imposition of an exclusionary action. SBA also contended that it held the cases open awaiting additional facts that might warrant a debarment or suspension action but did not receive additional evidence. Further, SBA management took exception with the title of finding 2 asserting that it was not any "delayed action" that caused harm, and it disagrees that the

referrals “demonstrated causes for debarment.” SBA concluded that the referrals from OIG did not adequately support debarment or suspension.

As previously stated in the report, until the exit conference, OIG had no knowledge of the SDO-AOP’s deferrals or expectation of additional evidence to supplement OIG’s referrals.<sup>20</sup> The OIG had sent several followup emails to the SDO-AOP’s office regarding the open cases and was told the cases were under consideration. Further, based on SBA’s written comments on the draft report, because OIG had no record or recollection of a request for additional evidence on those referrals, we sought clarification from the SDO-AOP. We asked the SDO-AOP to specify when and from whom his office requested any additional evidence in support of the referrals. The SDO-AOP responded that his office did not specifically request additional evidence from OIG, but leaving the cases open implicitly informed OIG the SDO-AOP’s office hoped for additional information at some point. OIG does not view this expectation as reasonable given the fact that the SDO-AOP’s office repeatedly told OIG the cases were under consideration whenever OIG requested status updates.

## *2. Other matters*

SBA management asserted that the issue raised in the “Other Matters” section is inappropriate because the alleged settlement is outside the scope of the audit. It noted that the draft audit report specifies that our audit covered the period of December 2012 to September 2018 and that the action discussed occurred in February 2019. The OIG conducted this audit from November 2018 to June 2019, in accordance with generally accepted government auditing standards. Although this action was outside the original scope of the audit, it occurred during our fieldwork phase. We deemed this action as a breach of SBA’s internal controls over the suspension and debarment process and elected to report it.

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<sup>20</sup> OIG’s present responsibility referrals include a cover sheet containing pertinent background information and a draft notice for action along with supporting evidence such as copies of indictments, convictions, civil judgments, and other pertinent documents.

## Appendix I: Objective, Scope, and Methodology

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This report presents the results of our audit of SBA's suspension and debarment process. Our objective was to determine whether SBA has sufficient controls in place to prevent suspended or debarred entities from receiving federal contracts through SBA's preference contracting programs and small business loans. To accomplish the audit objective, we:

- Obtained and reviewed SBA's policies, procedures, and guidance pertaining to the suspension and debarment process.
- Obtained and analyzed data from USASpending.gov,<sup>21</sup> Federal Procurement Data System-Next Generation,<sup>22</sup> Capital Access Financial System (CAFS),<sup>23</sup> OIG Office of Counsel Referrals Tracking System, and System for Award Management to determine whether ineligible entities were participating in government programs.
- Obtained and reviewed loan files from SBA lending partners.
- Analyzed 223 procurement- and nonprocurement-related cases referred to the SDOs from December 2012 to September 2018.
- Interviewed SBA suspending and debarring officials and members of the ISDC.

We conducted this audit from November 2018 to June 2019, 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

### Use of Computer-Processed Data

We relied on computer-processed data from USASpending.gov to obtain contracts, loans, and grants awarded by SBA for FYs 2015–2018. We verified the accuracy of the information by using Thomson Reuters CLEAR,<sup>24</sup> CAFS, and Federal Procurement Data System. We also verified the loan data by comparing the loan information to the source documents obtained from the lending partners. Since we were able to verify the USASpending.gov data in each system and were able to validate the loan information to the source files, we considered the information sufficiently reliable for the purposes of our audit.

### Review of Internal Controls

SBA's internal control systems SOP provides guidance on implementing and maintaining effective internal control systems, as required by OMB Circular A-123.<sup>25</sup> OMB Circular A-123 provides guidance to federal managers on improving the accountability and effectiveness of federal programs and operations by establishing, assessing, correcting, and reporting on internal controls.<sup>26</sup> Accordingly, we assessed internal controls and compliance with laws and regulations to the extent necessary to satisfy the audit objective. Specifically, we interviewed SBA officials responsible for oversight and management of the suspension and debarment process and reviewed policies and procedures to understand the suspension and debarment process.

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<sup>21</sup> A government source for data on federal grants, contracts, loans, and other financial assistance.

<sup>22</sup> The federal government's primary repository for procurement data.

<sup>23</sup> A web-based application suite encompassing several systems that support the loan accounting process.

<sup>24</sup> A collection of public and proprietary records related to people, businesses, assets, and affiliations.

<sup>25</sup> SOP 00 02, Internal Control Systems (January 1986).

<sup>26</sup> OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control (July 15, 2016).

## Appendix II: Questioned Costs

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### OIG Schedule of Monetary Impact

Description	Amount	Explanation
Questioned Costs <sup>27</sup>	\$80,300,000	Federal agencies awarded contracts to entities who demonstrated causes for debarment because SBA's SDOs did not take prompt action to address the referrals for proposed suspension or debarment.
Questioned Costs	\$2,900,000	An SBA lender approved and disbursed a loan to an ineligible entity.
<b>Total</b>	<b>\$83,200,000</b>	

Source: OIG analysis of suspension and debarment referrals, SAM, and Federal Procurement Data System – Next Generation contract and loan data.

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<sup>27</sup> Costs questioned because of an alleged violation of a provision of a law, regulation, contract, grant cooperative agreement, or other agreement or document governing the expenditure of funds.

**SBA RESPONSE TO AUDIT REPORT**



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**DATE:** September 10, 2019

**TO:** Hannibal “Mike” Ware  
Inspector General, Office of Inspector General (OIG)

**FROM:** William M. Manger  
Associate Administrator, Office of Capital Access (OCA)  
Susan Streich  
Suspension and Debarment Official for Financial Assistance Programs (SDO-FAP), Office of Credit Risk Management, Office of Capital Access  
John W. Klein  
Suspension and Debarment Official for All Other Programs (SDO-AOP),  
Office of General Counsel (OGC)

**SUBJECT:** SBA Response - Audit of SBA’s Suspension and Debarment Process, Project No. 19003

Thank you for the opportunity to respond to OIG’s Draft Report entitled, “*SBA’s Suspension and Debarment Process (Project Number 19003)*” dated July 8, 2019. OIG’s audit objective for this report was to determine whether SBA had sufficient controls in place to prevent suspended or debarred entities from receiving federal contracts through SBA’s preference contracting programs and small business loans. The Agency disagrees with some of the findings, analysis and conclusions found in the Audit Report.

For example, SBA believes that the statement on page 5 of the Audit Report that “SBA SDOs, by not promptly addressing suspension and debarment referrals, exposed the federal government to potential harm from individuals or business entities who lacked present responsibility” is an inaccurate depiction of the facts. OIG believed that certain individuals or entities lacked present responsibility. SBA’s SDO-AOP disagreed. The SDO-AOP promptly concluded that the referrals did not substantiate the imposition of an exclusionary action. The SDO-AOP held the case open awaiting additional facts that might warrant a debarment or suspension action, but no additional facts were ever received. Moreover, the title of the finding under which this statement appears is itself misleading. The title of Finding 2 on page 5 of the Report states that “Suspending and Debarring Officials’ Delayed Action Resulted in \$80.3 Million in Contracts to Entities Who Demonstrated Causes for Debarment.” (Emphasis added). It was not any “delayed action” that caused harm, and SBA disagrees that the



referrals “demonstrated causes for debarment.” Again, the SDO-AOP concluded that the referrals from OIG did not adequately support debarment or suspension.

In addition, the section of the draft Audit Report referred to as “Other Matters” on page 9 raises an issue with regard to an alleged settlement that the SDO-AOP purportedly prevented. SBA believes that the inclusion of this section in the draft Audit Report is inappropriate as being outside the scope of the audit. The draft Audit Report specifies that its review covers the period December 2012 to September 2018. The action discussed occurred in February 2019. It seems that recommendations pertaining to such action should be dealt with separate and apart from this Audit Report.

The table below summarizes OCA’s and OGC’s clear responses on whether they agree or disagree with the recommendations. {Note: The SDO-FAP is in OCA. The SDO-AOP is in OGC.} Below the table are OCA’s and OGC’s responses to the recommendations with planned corrective actions for each to include target dates for completion, where applicable.

Recommendation Number	Program Office	Agree/Disagree	Program Office	Agree/Disagree	Final Action Date
1	OCA	Agree	OGC	N/A – applies only to OCA	1/31/2020
2	OCA	Partially Agree	OGC	N/A – applies only to OCA	1/31/2020
3.1	OCA	Disagree	OGC	Agree	1/31/2020
3.2	OCA	Agree	OGC	Agree	1/31/2020
4-1	OCA	N/A – Disagree	OGC	Agree	10/31/2019
5-1	OCA	N/A – Disagree	OGC	Agree	1/31/2020
6-1	OCA	Agree	OGC	Agree	1/31/2020

**Recommendation 1 – SBA Agrees**

Update SOP 50 10 5 (J) to include an express requirement for lending partners to review the System for Award Management (SAM) for applicants’ and borrowers’ eligibility and to maintain documentation in the loan file to support their review.

**OCA/Office of Financial Assistance (OFA) Response - Agrees**

OCA will include the recommended changes in SOP 50 10, when it is next amended.



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### **Recommendation 2 – SBA Partially Agrees**

Rescind the SBA loan guaranty for the \$2.9 million loan and assess the lender’s eligibility for continued participation in the SBA lending program.

#### **OCA Response – Partially Agrees**

OCA will work with the lender to gather additional documentation to determine if it is appropriate to rescind the guaranty for the identified loan.

### **Recommendation 3 – SBA Partially Agrees**

- 3.1.** Finalize internal suspension and debarment policies; and
- 3.2.** Include guidelines for timely processing of referrals and updating the System for Award Management.

#### **SBA Response for Recommendation 3– Partially Agree**

**3.1.** – Partially Agree. SBA agrees to finalize internal suspension policies applicable to the All Other Programs suspension and debarment office (“SDO-AOP”); however, SBA does not agree to finalize such policies for the Financial Assistance Programs suspension and debarment office (“SDO-FAP”) because there are already sufficient policies and tracking mechanisms in place for the SDO-FAP. SBA does not agree with the \$80.3 million amount shown as questioned costs in Appendix II.

**3.2.** - Agree. For the SDO-AOP, SBA will revise standard operating procedures to address timely processing of referrals and SAS updates. The SDO-FAP has guidelines for timely processing of referrals and updating the System for Award Management. Attached is the updated Suspension and Debarment Desk Manual, which was approved by the SDO-FAP on 8/02/2019. It includes the three business day timeframe in 2 CFR 180.520.

### **Recommendation 4 – SBA Partially Agrees**

Dedicate resources to monitor and process suspension and debarment referrals.

#### **OCA Response - Disagree**

The premise for Recommendation 4 is not accurate. The draft Audit Report states: “SBA officials did not establish procedures to outline their internal suspension and debarment referral processes as required by the procurement and non-procurement



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regulations and did not follow OMB directives to develop a tracking system to effectively monitor referrals.”

OCA has dedicated resources already in place to monitor and process suspension and debarment referrals. Furthermore, during the audit, three members of OCA completed the Interagency Suspension and Debarment Committee (ISDC) recommended Suspension and Debarment Training provided by the Department of Homeland Security.

**OGC Response - Agree**

The SDO-AOP has recently added a new paralegal to oversee many of the functions and procedures recommended by OIG. As a result, we anticipate that communication between the two offices will greatly improve.

**Recommendation 5 - SBA Partially Agrees**

Establish and implement controls to ensure the accuracy of reporting on suspension and debarment actions to OIG, Interagency Suspension and Debarment Committee, and Congress.

**OCA Response - Disagree**

Recommendation 5 does not appear to be relevant for OCA as a non-procurement office. This issue was never raised with the non-procurement office during the audit. OCA contends that it has sufficient controls in place to ensure the accuracy of reporting on suspension and debarment actions to all required stakeholders. Based on the Audit Exit Conference meeting, it does not appear that inaccuracies in reporting is an issue that OIG has identified at OCA.

Henceforth, OCA will annually submit a status report of the suspension and debarment system for financial assistance programs directly to ISDC, which will then report to Congress on behalf of SBA (reporting required pursuant to Section 873 of Public Law 110-417).

**OGC Response - Agree**

OGC has already developed and deployed a new tracking system, which has been shared with OIG. OGC will continue to provide updates as the system is improved and



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welcome any feedback from OIG on how to improve it. The office's new procedures will be treating referrals and cases differently going forward, especially those referrals that are part of ongoing investigations. This should lead to few items being open for long periods of time, thereby making accurate reporting timelier.

The basics of the new procedures will be that the SDO-AOP will evaluate all referrals on the strength of the evidence provided and make a timely decision on next steps. If it is decided that the information as presented does not warrant an exclusionary action at that time, the SDO-AOP will issue a declination rather than wait for more evidence to supplement the record. If new evidence does become available or can be shared with the SDO-AOP, a new referral/case can be opened and the SDO-AOP will consider the new evidence and make a new determination.

#### **Recommendation 6 - SBA Agrees**

Establish and implement formal policy requiring SBA suspending and debaring officials to document and retain their declination decisions.

#### **OCA Response - Agree**

OCA Agrees. OCA has revised the Desk Manual effective August 2, 2019, to reflect this new requirement.

#### **OGC Response - Agree**

SBA agrees. The SDO-AOP has already sent a formal memo to staff implementing the policy. The office will also be adding this requirement to the updated SOP.

Changing the policy to immediately decline a referral that does not present a sufficient basis to initiate an exclusionary action (instead of keeping a case open and allowing additional information to be gathered to support an exclusionary action) will eliminate the disconnect between the OIG tracking a case as 'pending' for an indefinite period of time, and giving the impression that no action has been or is being taken, and SBA believing that it is taking appropriate actions regarding the case.

#### **Attachment:**

SBA Forms 1824 for Recommendations 1, 2, 3, 4, 5 and 6.