



# **Suspension & Debarment Overview**

**A Fun and Easy Primer for OIG Staff**

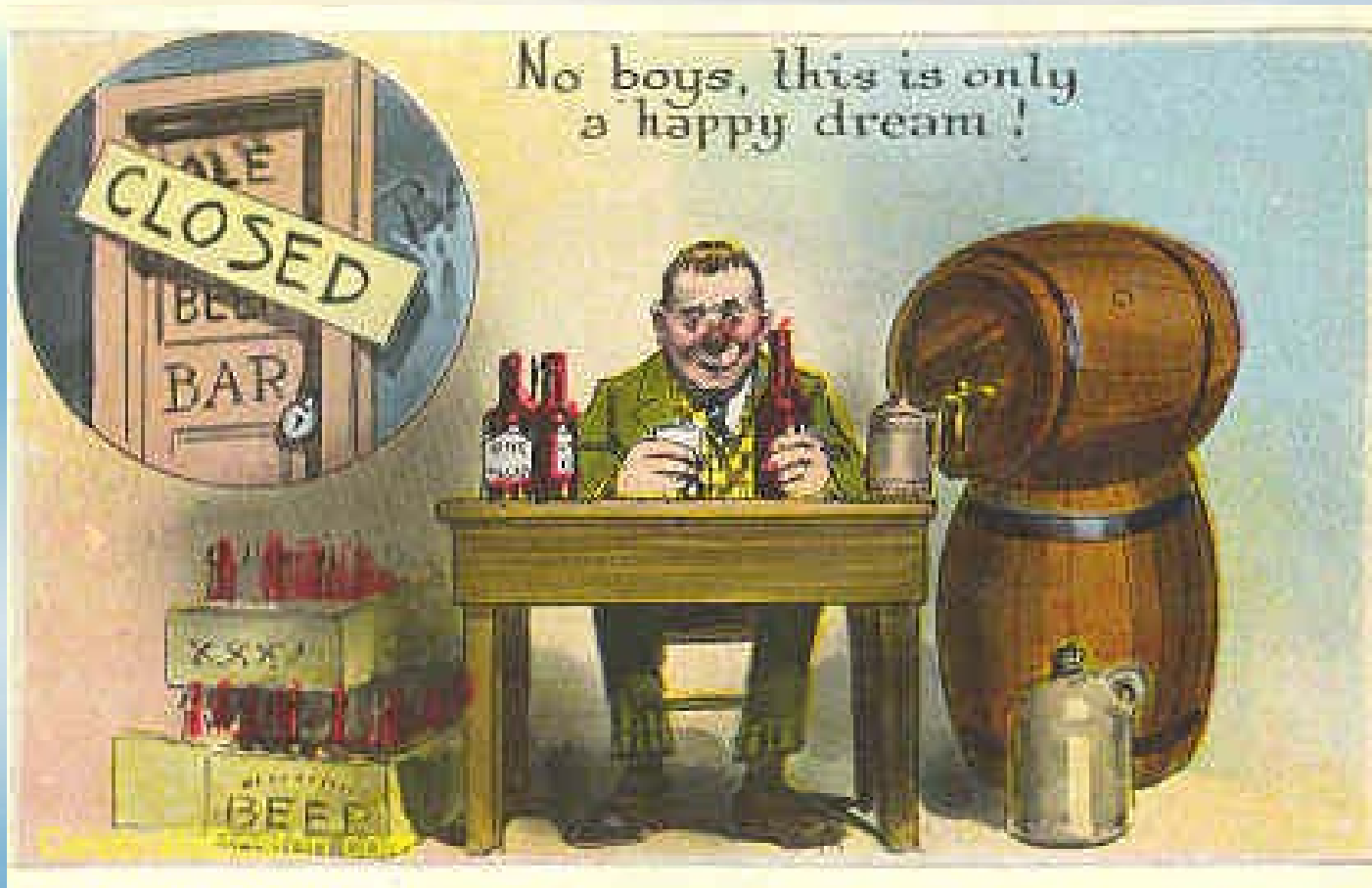
# **Objectives for Today's Lesson**

- **Identify requirements to suspend or debar a business or individual from doing business with the government**
- **Answer the questions:**
  - **What is this stuff and why should I care?**
  - **What does debarment offer an auditor??**

# Key Points

- **S&D exists to “protect the fisc”**
- **To get federal \$\$, a person or entity has to be “presently responsible”**
- **Procedure: Simple due process (notice & opportunity to be heard)**
- **NOT Government Accounting Standards**
- **Suspension: “adequate evidence”**
- **Debarment: “preponderance of evidence”**

# “Debarment”?



**Not this!**

# “Suspension”?



**Nope – this isn’t “suspension,” either!**

# Definitions by the Book

## Debarment

**An action taken by a debarring official under Subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1).**

**A person so excluded is debarred.**

# Definitions by the Book

## Suspension

**An action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue.**

**A person so excluded is suspended.**

# **In other words ...**

- **We **debar** people when we don't want them to receive government contracts or grants for a period of time (1-3 years)**
- **We **suspend** people when we think we need to stop them from receiving contracts or grants right away, until we figure out whether to debar them**



# Where are the Rules?

- **For contracts:**  
**Federal Acquisition Regulation,  
Part 9, Subpart 9.4**
- **For things that aren't contracts:**  
**Code of Federal Regulations,  
Title 2, Part 180**
  - **Grants, cooperative agreements, scholarships,  
fellowships, loans, guarantees, subsidies,  
insurance, etc.**
  - **“Covered transactions”**
- **Reciprocal: No grants ↔ no contracts**

# **How Are We Able to Do This?**

- **Since 1884 Congress has required that contracts be awarded to “responsible” bidders**
- **Performance bonds were originally used to assure responsibility**
- **In 1928 GAO opined that sometimes bonds aren’t enough, and that the power to debar is an inherent authority**

# **Why Should We Do This?**

- **Contractors and awardees who are not “presently responsible” are like the people with sub-prime mortgages who tanked the economy – bad risks**
- **Once the money’s out the door to someone who isn’t responsible, try getting it back**

# **Debarment: NOT A Slap on the Wrist**

**S&D can put a world of hurt on a bad guy, even though it's not a punitive measure – losing access to Federal contracts or grants can **shut a company down** or **ruin a career****

# **Debarment: NOT A Slap on the Wrist**

- **With that kind of impact, debarment may be as consequential, or more so, than criminal conviction or civil false claims liability**
- **Thus, a recommendation for suspension or debarment is a REALLY effective motivator when you want someone to get their financial affairs in order**

# **A Valuable Tool to Have**

- **As you'll see in the following slides, S&D is fast and “easy”**
- **S&D does not foreclose civil or criminal options**
- **IGs need to know and understand this valuable course of action and how it can benefit our efforts**

# Why Debarment Has “Teeth”

- **Every contracting officer and grant officer is required to check the EPLS before awarding a contract or grant**
- **EPLS – Excluded Parties List System**
  - **Public database listing names of individuals and businesses who are suspended or debarred**
  - **Run by GSA**

# Excluded Parties List System

Excluded Parties List System - Windows Internet Explorer

https://www.epls.gov/

File Edit View Favorites Tools Help

Norton Norton Safe Search Search






code of federal regulations Web Search

EPSON Web-To-Page Print Print Preview

Excluded Parties List System

## EPLS

### Excluded Parties List System



**Search - Current Exclusions**

- > Advanced Search
- > Multiple Names
- > Exact Name and SSN/TIN
- > MyEPLS
- > Recent Updates

**View Cause and Treatment Code Descriptions**

- > Reciprocal Codes
- > Procurement Codes
- > Nonprocurement Codes

**Agency & Acronym Information**

- > Agency Contacts
- > Agency Descriptions
- > State/Country Code Descriptions

**Important Notice -- EPLS Help Desk Changes**

On Monday September 21, 2009, the email addresses and phone number to contact the EPLS help desk will change. Beginning on this date, all EPLS help requests will be directed to the GSA Federal Service Desk. The current phone number and email addresses will be discontinued, and any requests made using the current contact information will not receive a response starting on September 21.

**Introduction**

This World Wide Web site is provided as a public service by General Services Administration (GSA) for the purpose of efficiently and conveniently disseminating information on parties that are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404, and each agency's codification of the Common Rule for Nonprocurement suspension and debarment.

**Resources**

- > Search Help
- > Public User's Manual
- > FAQ
- > Acronyms
- > Privacy Act Provisions
- > News

**Reports**

- > Advanced Reports
- > Recent Updates
- > Dashboard

**Archive Search - Past Exclusions**

- > Advanced Archive Search
- > Multiple Names
- > Recent Updates

Done Internet 100%



# www.epls.gov

## Advanced Search

Excluded Parties List System - Windows Internet Explorer

https://www.epls.gov/epls/search.do

File Edit View Favorites Tools Help

Norton Norton Safe Search Search

code of federal regulations Web Search

EPSON Web-To-Page Print Print Preview

Excluded Parties List System

### Search - Current Exclusions

- > Advanced Search
- > Multiple Names
- > Exact Name and SSN/TIN
- > MyEPLS
- > Recent Updates

### View Cause and Treatment Code Descriptions

- > Reciprocal Codes
- > Procurement Codes
- > Nonprocurement Codes

### Agency & Acronym Information

- > Agency Contacts
- > Agency Descriptions
- > State/Country Code Descriptions

### OFFICIAL GOVERNMENT USE ONLY

- > Debar Maintenance
- > Administration
- > Upload Login

### EPLS Advanced Search

Exact Name   
Format: **Last, First Middle** or **Last, First MI.**

Partial Name   
Refer to [Search Help](#) for tips on Partial Name searching.

Action Dates  To

Termination Dates  To

Create Dates  To

Modify Dates  To

DUNS

Classification

Exclusion Type

CT Code (Reciprocal)

CT Code (Procurement)

CT Code (Non-Procurement)

Agency

### Resources

- > Search Help
- > Public User's Manual
- > FAQ
- > Acronyms
- > Privacy Act Provisions
- > News

### Reports

- > Advanced Reports
- > Recent Updates
- > Dashboard

### Archive Search - Past Exclusions

- > Advanced Archive Search
- > Multiple Names
- > Recent Updates

### Contact Information

- > For Help: Federal Service Desk

# Debarment is Public

Excluded Parties List System - Windows Internet Explorer

https://www.epls.gov/epls/search.do

File Edit View Favorites Tools Help

Norton Norton Safe Search Search

code of federal regulations Web Search

EPSON Web-To-Page Print Print Preview

Excluded Parties List System

Search - Current Exclusions

- > Advanced Search
- > Multiple Names
- > Exact Name and SSN/TIN
- > MyEPLS
- > Recent Updates

View Cause and Treatment Code Descriptions

- > Reciprocal Codes
- > Procurement Codes
- > Nonprocurement Codes

Agency & Acronym Information

- > Agency Contacts
- > Agency Descriptions
- > State/Country Code Descriptions

OFFICIAL GOVERNMENT USE ONLY

- > Debar Maintenance
- > Administration
- > Upload Login

EPLS Search Results

Results 1 - 20 of 25

### Search Results for Parties Excluded by

Agency : NSF  
As of 08-Nov-2009 7:43 PM EST  
Save to MyEPLS  
Page: 1 2 Next

# A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

<b>Name</b>	Bourne, Godfrey
<b>Classification</b>	Individual
<b>Exclusion Type</b>	Reciprocal
<b>Description</b>	none

Address(es) --

Verify Street 1	<input type="text"/>
Verify Street 2	<input type="text"/>
Address	St. Louis, MO, 63121
DUNS	none

CT Action(s) --

<b>Action Date</b>	22-May-2009
<b>Termination Date</b>	31-Aug-2010
<b>CT Code</b>	A
<b>Agency</b>	NSF
<b>Agency POC</b>	NSF Contacts
<b>EPLS Create Date</b>	28-May-2009
<b>EPLS Modify Date</b>	

**Name** Bynum, Marjorie  
**Classification** Individual

Resources

- > Search Help
- > Public User's Manual
- > FAQ
- > Acronyms
- > Privacy Act Provisions
- > News

Reports

- > Advanced Reports
- > Recent Updates
- > Dashboard

Archive Search - Past Exclusions

- > Advanced Archive Search
- > Multiple Names
- > Recent Updates

Contact Information

- > For Help: Federal Service Desk

Internet 100%

# **NSF: 32 Active Debarments**

- **For, among other things:**
  - **Data fabrication**
  - **Criminal convictions for fraud**
  - **SBIR fraud**
  - **Impersonation of NSF officials**
  - **Grant-related purchase card fraud**

# **Data Fabrication**

- **Grad student working on masters**
- **Working for NSF-funded PI**
- **Made up data to get approval for thesis research topic**
- **Then made up data used in thesis**
- **University dismissed her**
- **NSF debarred for 3 years**

# **Criminal Conviction for Fraud**

- **University PI misused NSF funds for her own private consulting activities**
- **Turned down offer to plead**
- **So she got charged with mail/wire fraud related to use of NSF funds to pay university employees to do work for her private consulting enterprise**
- **Pled guilty to false statements; 6 months home confinement, 2 years probation, \$25K restitution**
- **Debarred for 3 years**

# **SBIR Fraud**

- **Small Business Innovation Research**
- **Done in phases**
- **Phase II depends on successful completion of Phase I**
- **PI falsely claimed, as part of request for Phase II award, that her company was a “spin-off” of the company that completed Phase I**
- **Not prosecuted, in part due to AUSA awareness of debarment remedy**
- **PI and company debarred for 3 years**

# **Impersonation of NSF Officials**

- **San Francisco resident used internet ads to seek people to participate in fake NSF research project**
- **Pretended to be NSF official**
- **3 women responded**
- **Engaged in salacious (but non-assaultive) activities in hotel room as “research”**
- **Pled guilty to 18 USC 912 violation**
- **5 years probation, \$80K fines & penalties**
- **Debarred for 5 years**

# **Grant-Related P-Card Fraud**

- **Employee with purchase card authority**
- **Used P-card to buy over 3,800 personal items worth over \$316,000**
- **Used fake receipts and other documents to bill these to university accounts and NSF grant**
- **Pled guilty to 22 counts of mail and wire fraud and federal program fraud**
- **Jail 32 months, \$316K restitution**
- **Debarred for 5 years**



# Case Studies Wrap-Up

- **NSF had the primary interest in these cases because it suffered the most harm or had the most \$\$\$ at stake, so it acted as lead agent for all agencies**
- **In one case NSF debarred both a principal investigator and her company, imputing the PI's misconduct to the company**

# **What is a “Cause” That Justifies Imposing Suspension or Debarment?**

- **Conviction (or civil judgment):**
  - **Fraud in agreements or transactions**
  - **Antitrust violations**
  - **Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice**
  - **Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects present responsibility**

## **Causes (continued)**

- **Serious violation of terms of public agreement**
  - **Willful failure to perform agreement**
  - **History of poor performance**
  - **Willful violation of statutory or regulatory requirement applicable to agreement**
- **Miscellaneous causes (e.g. debts, but *not* IRS)**
- **“Any other cause of so serious or compelling a nature that it affects your present responsibility”**

# Suspensions

- **The standard of proof for a suspension is either “Adequate Evidence” or an indictment**
- **Adequate Evidence is roughly analogous to “probable cause”**
- **Question is whether there is “immediate need” to act**
- **Suspensions are issued “ex parte”**
- **The Government does not have to share its evidence with a suspended party**
- **Suspensions can’t last more than 12 months (or 18 months with a federal prosecutor request) unless legal proceedings are already underway**

# Debarments

- **Classic administrative due process**
- **Starts w/ Notice of Proposed Debarment**
- **30 days to provide matters in opposition**
- **Fact finding occurs if S/D not based on conviction or civil judgment (formal rules of evidence don't apply)**
- **Burden on government to show cause exists, then on respondent to show that it is nonetheless "presently responsible"**
- **Preponderance of evidence standard**

# Mitigating or Aggravating Factors

- **Actual or potential harm from wrongdoing**
- **Number of incidents or duration**
- **Pattern or prior history**
- **Excluded before for similar stuff**
- **Entered into settlement (admin agreement) for similar stuff**
- **Were you the “big brain” of the misconduct**
- **Did you accept responsibility and are you remorseful**
- **Have you paid or agreed to pay liabilities and restitution**
- **Have you cooperated fully with the government**
- **Was the wrongdoing pervasive in organization**
- **Positions of individuals involved (bigwigs or peons)**

## **More Factors ...**

- **Organizational remedial measures (ethics training, new programs)**
- **Did principals tolerate wrongdoing**
- **Did you 'fess up to the feds in a timely manner**
- **Did you do your own investigation and provide copy of report to debarring official**
- **Were effective standards of conduct and internal control systems in place**
- **Has appropriate discipline been taken against the bad guys**
- **Have you had enough time to clean up the mess**
- **"Other factors that are appropriate to the circumstances of a particular case"**

# Any Questions So Far?





# Statutory Debarment

- **Process described so far is completely discretionary and applies in general**
- **Various statutes have specific debarment provisions:**
  - **Drug-Free Workplace**
  - **Buy America Act**
  - **Davis-Bacon Act**
  - **Service Contract Act**
  - **Contract Work Hours and Safety Standards Act**
  - **Clean Air and Clean Water Acts**
  - **Medicare provider exclusions**

## **Potential Statutory Debarment Provisions**

- **In the last few years members of Congress have introduced legislation that, if enacted, would mandate debarment for things like using undocumented laborers, trafficking in sex slaves, and the like**
- **Debarment is increasingly favored as an adverse outcome of choice in legislation**

# **Appeals & Judicial Review**

- **A respondent can request reconsideration**
- **He/she can also file suit for review under the Administrative Procedures Act (must show debarment is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”)**
- **Good luck with that**
- **Flip side – extension of debarment**

# **Settlements – Cutting a Deal**

- **Where respondent succeeds in showing present responsibility**
- **“Administrative agreements”**
- **Considerations/terms:**
  - **Bad guy/gal tossed overboard**
  - **Ethics and compliance programs**
  - **More internal controls and remedies**
  - **Reports and monitoring**

# Compliance Plans

- **Best *strategic* administrative remedy**
- **Purpose is to create, or strengthen, ethics and compliance programs of institutions**
  - **Ethics policy for institution**
  - **Code of Conduct for employees**
  - **Internal reporting mechanisms**
  - **Awareness training**
  - **Emphasis by leadership (“culture”)**
- **Useful in grant cases where there are institutional management issues**
- **<http://www.dii.org/resources/dii-toolkit.pdf>**

# Parallel Proceedings

- **Sometimes AUSAs discourage suspension and debarment proceedings, because they don't want to lose control over discovery**
- **Conversely, debarment officials don't want AUSAs discussing S & D in agreements settling criminal or civil issues**
- **The Interagency Suspension & Debarment Committee (ISDC) has reference material on the issue that may help work out issues**
- **Bottom line, *coordinate efforts.***
- **Lots of experience on the I-side and we're glad to help.**

# **Interagency Suspension and Debarment Committee**

- **Also known as Interagency Committee on Debarment and Suspension**
- **EO 12549**
- **<http://www.epa.gov/isdc/index.htm>**
- **Meets ~once a month at EPA**

# ISDC Website

ISDC/Welcome - Windows Internet Explorer

US EPA http://www.epa.gov/isdc/index.htm

File Edit View Favorites Tools Help

Norton interagency committee suspe Search

Y! interagency committee suspension d Web Search

EPSON Web-To-Page Print Print Preview

Favorites Excluded Parties List System US EPA ISDC/Welcome National Defense Authoriz...

## Interagency Suspension and Debarment Committee

Home

Member List

Executive Orders

Case Law

Regulations

EPLS

Related Links

Contact Us

November 8, 2009

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,
- issue regulations with government-wide criteria and minimum due process procedures when debarring or suspending participants, and
- enter debarred and suspended participants' identifying information on the General Services Administration list of excluded persons, now known as [Excluded Parties List System \(EPLS\)](#). Information placed on the EPLS is the responsibility of the Agency issuing the suspension or debarment.

The Committee also facilitates lead agency coordination, serves as a forum to discuss current suspension and debarment related issues, and assists in developing unified Federal policy. When requested by OMB, the Committee serves as a regulatory drafting body for revisions to the government-wide nonprocurement suspension and debarment common rule.



[home](#) • [member list](#) • [executive orders](#) • [case law](#) • [regulations](#) • [epls](#) • [related links](#) • [contact us](#)

Internet

100%



# Agency Officials

- **Most agencies have a suspension and debarment official/staff**
- **List at ISDC website**
- **Big players: EPA, DoD (Army, Navy, Air Force, Defense Logistics Agency), NASA, GSA (EPLS), OMB (policy)**
- **Each agency enters data into EPLS**

# Summary

- **Debarment is a legitimate and powerful remedy for OIG auditors and investigators**
- **Procedures are not overly complex or bureaucratic**
- **OIG has lots of experience in S & D**
- **Don't shy away from fact cases**

# Questions?



Steve Bross, NSF OIG – [sbross@nsf.gov](mailto:sbross@nsf.gov) – 703-292-4990

Mona Mafi, EPA OIG – [mafi.mona@epa.gov](mailto:mafi.mona@epa.gov) – 202-566-2061