EXIM
EXPORT-IMPORT BANK
OF THE UNITED STATES

Office of Inspector General
Export-Import Bank
of the United States

Audit of EXIM's Suspension and Debarment Program

September 30, 2020
OIG-AR-20-06

The Export-Import Bank of the United States (EXIM or the Agency) is the official export credit agency of the United States (U.S.). EXIM is an independent, self-financing executive agency and a wholly-owned U.S. government corporation. EXIM's mission is to support jobs in the United States by facilitating the export of U.S. goods and services. EXIM provides competitive export financing and ensures a level playing field for U.S. exports in the global marketplace.

The Office of Inspector General (OIG), an independent office within EXIM, was statutorily created in 2002 and organized in 2007. The mission of the EXIM OIG is to conduct and supervise audits, investigations, inspections, and evaluations related to the Agency's programs and operations; provide leadership and coordination as well as recommend policies that will promote economy, efficiency, and effectiveness in such programs and operations; and prevent and detect fraud, waste, abuse, and mismanagement.

This audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

EXIM
EXPORT-IMPORT BANK OF THE UNITED STATES

Office of Inspector General

To: John Connor
Assistant General Counsel for Litigation, Fraud, and Compliance

From: Jennifer Fain
Acting Inspector General

Subject: Audit of EXIM's Suspension and Debarment Program

Date: September 30, 2020

Attached is the final report on the audit of EXIM's Suspension and Debarment (S&D) program. The objective of this audit was to determine whether EXIM's S&D program is operating and performing in accordance with applicable (1) EXIM policies and procedures and (2) federal laws, regulations, and guidelines. The audit was conducted in accordance with generally accepted government auditing standards.

This report contains two recommendations to improve the efficiency and effectiveness of EXIM's S&D program. EXIM management concurred with both recommendations (see Appendix B). Prior to issuance of this report, EXIM provided information and a walkthrough of corrective actions taken to address and close recommendation two. We consider management's proposed actions for recommendation one to be responsive. Therefore, this recommendation will be closed upon completion and verification of the implementation of the proposed actions.

We appreciate the courtesies and cooperation extended to us during this audit. If you have any questions or comments regarding this audit report, please contact me at (202) 565-3439 or jennifer.fain@exim.gov or Courtney Potter at (202) 565-3976 or courtney.potter@exim.gov. You can obtain additional information about EXIM OIG and the Inspector General Act of 1978 at www.exim.gov/about/oig.

EXECUTIVE SUMMARY

Audit of EXIM's Suspension and Debarment Program
OIG-AR-20-06, September 30, 2020

Why We Did This Audit

Suspensions and debarments are administrative exclusions by federal agencies designed to prevent a person or entity that is not presently responsible from doing business with the federal government. They are nonpunitive discretionary actions imposed by a delegated agency official to protect the public interest by limiting fraud, waste, and abuse that may be committed by irresponsible parties utilizing federal programs and services.

We initiated this audit as part of our annual work plan. The objective of this audit was to determine whether EXIM's Suspension and Debarment (S&D) program is operating and performing in accordance with applicable (1) EXIM policies and procedures and (2) federal laws, regulations, and guidelines.

What We Recommend

To improve the efficiency and effectiveness of the S&D program, we made two recommendations:

1. Update, finalize, and implement internal procedures to ensure that the S&D referrals are processed consistently and in accordance with a designated timeframe; and
2. Develop and implement a record keeping system that provides for a complete historical record of S&D actions.

Management concurred with both recommendations.

What We Found

EXIM's S&D program effectively resulted in the suspension and/or debarment of parties from entering into contracts or participating in programs involving the U.S. government. We found that EXIM generally conducted S&D proceedings in accordance with agency policies and procedures, and federal requirements. However, referrals for S&D were not processed in a timely manner. Specifically, there were delays in (1) the actions taken for suspension and/or debarment, (2) the time between the Suspension and Debarment Official's decision and notification sent to the affected parties, and (3) the entry of excluded parties in the System for Award Management.

EXIM received 62 S&D referrals during the period of October 1, 2015 through June 30, 2019. We analyzed the processing times for the 62 cases, and found when EXIM took suspension actions, it took on average 158 days to suspend, 15 days to send notification to the affected parties, and 22 days to enter the exclusion into SAM. When EXIM took debarment actions, it took on average 297 days to debar. Such delays could result in other federal agencies unknowingly awarding federal assistance to an irresponsible party.

Further, EXIM's internal procedures were documented in draft form, and had not been finalized at the time of our review. The draft procedures, for example, did not address processing times to ensure the completion of S&D determinations. Lastly, recordkeeping for S&D actions can be improved. We found that 40 of the case files reviewed were incomplete as documents were either missing or inaccessible.

For additional information, contact the Office of Inspector General at (202) 565-3908 or visit www.exim.gov/about/oig

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INTRODUCTION

This report presents the results of our audit of the Export Import Bank of the United States (EXIM or Agency) Suspension and Debarment (S&D) program. We initiated the audit as part of our annual work plan. The objective of this audit was to determine whether EXIM's S&D program is operating and performing in accordance with applicable (1) EXIM policies and procedures and (2) federal laws, regulations, and guidelines. This is the first audit of the S&D program.

SCOPE AND METHODOLOGY

To accomplish the audit objective, we researched and assessed laws, regulations, guidelines, policies, and procedures applicable to EXIM's S&D program. We interviewed Agency officials to gain an understanding of the S&D program and associated processes.

S&D actions are generally administered under two sets of federal regulations: (1) the Federal Acquisition Regulation (FAR) for procurement actions at 48 CFR Subpart 9.4, *Debarment, Suspension, Ineligibility*; and (2) the Office of Management and Budget (OMB) regulations for nonprocurement actions at 2 CFR Part 180, *OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)*. To determine compliance with the applicable requirements, we selected 14 S&D cases from a universe of 62 referrals covering the period October 1, 2015 through June 30, 2019 for review. The referrals were nonprocurement-related and comprised of 17 fact-based and 45 conviction-based (nine indictments and 36 convictions) referrals. We examined key documents in the case files for the 62 referrals to determine whether the processing and decisions were made timely and in accordance with the provisions of the OMB regulations and EXIM's policies and procedures.

We assessed the significance of internal controls necessary to satisfy the audit objective. In particular, we identified and assessed two internal control components (control activities and monitoring) and their underlying principles. However, because our review was limited to these internal control components and their underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit. See appendix A for more details.

We performed our audit work from June 2019 through August 2020 at EXIM headquarters in Washington, D.C. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

BACKGROUND

The government-wide system of S&D for nonprocurement transactions and activities was established by Executive Order 12549.[1] Suspensions and debarments are administrative exclusions by federal agencies designed to prevent a person or entity that is not presently responsible from doing business with the federal government. They are nonpunitive discretionary actions imposed by a delegated agency official to protect the public interest by limiting fraud, waste, and abuse that may be committed by irresponsible parties utilizing federal programs and services. The decision for a suspension or debarment is generally informal and carried out consistent with the principles of fundamental fairness (i.e., due process).[2] A suspension or debarment has government-wide reciprocal effect in federal procurement and nonprocurement program activities.

> Suspension: A suspension is an action taken by a federal agency to immediately prohibit a person and/or entity from participating in federal programs for a temporary period (i.e., generally up to 12 months, not to exceed 18 months) pending completion of an investigation or legal proceeding (judicial or administrative). A suspension may be imposed when adequate evidence (such as an indictment or conviction) exists for an offense or cause for debarment and immediate action is necessary to protect the public interest. It could lead to a debarment based on the outcome of the investigation or legal proceeding.
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> Debarment: A debarment is an action taken by a federal agency to prohibit a person and/or entity from participating in federal programs, with a general duration of three years. A conviction or civil judgement meets the standard of proof to propose debarment, the facts of which cannot be challenged by the debarred party.[3]

The System for Award Management (SAM) is a federal database that maintains records on individuals or entities excluded from participating in covered transactions. Any exclusion action taken by a federal agency is required to be entered in SAM within three business days of the decision. The entry is immediately available to the general public and utilized by federal agency officials to check whether an individual or entity is ineligible to participate in federal procurement and nonprocurement program activities.

Suspension and Debarment Referrals

S&D cases are categorized by type— either fact-based or conviction-based. A fact-based referral is based on the development of facts by EXIM absent an indictment, conviction, or civil judgement. A conviction-based referral is when an admission of guilt by the party or a criminal/civil charge against the party has occurred. Fact-based referrals require more

[1] Exec. Order No. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189 (1986).

[2] 2 CFR § 180.610.

[3] 2 CFR §§ 180.800(a) and 180.830(a).

time to process as opposed to conviction-based cases which already have the facts of the case laid out in the statement of record.

Suspension and Debarment Responsibilities

The EXIM Office of General Counsel's (OGC) Litigation Fraud and Compliance (LFC) group is responsible for managing S&D referrals. During the period of review, the staffing levels fluctuated between one to three staff members in this unit, including the Assistant General Counsel who serves in a role equivalent to a program manager. The Chief Ethics Officer is the agency official authorized through delegated authority to impose S&D actions and is recognized as the suspension and debarment official (SDO) for EXIM.

In managing the operations of the S&D program, the OGC's LFC group is specifically responsible for (1) the processing of S&D matters, including compiling the administrative record for the SDO, (2) the preliminary review of the information to determine if adequate evidence exists for suspension or a preponderance of the evidence supports a cause for debarment, (3) consulting with the referring party if additional information if necessary, (4) making all entries in SAM, (5) notifying the referring party of an exclusion, and (6) acting as the Agency's representative with the Interagency Suspension and Debarment Committee (ISDC).[4]

The SDO is responsible for (1) determining if a request for information should be sent to the party, (2) determining if no action should be taken, (3) determining if EXIM should enter into a performance agreement with the referred party, and (4) rendering a decision as to whether a party should be suspended or debarred.

AUDIT RESULTS

EXIM's S&D program effectively resulted in the suspension and/or debarment of parties from entering into contracts or participating in programs involving the U.S. government. However, we found that (1) referrals for S&D were not processed in a timely manner during the period of review, (2) procedures for S&D should be updated and formalized, and (3) record keeping for S&D actions needs to be improved. This report contains two recommendations to improve the effectiveness and efficiency of EXIM's S&D program.

Finding 1: Suspension and Debarment Referrals Were Not Processed in a Timely Manner

For the 62 referrals, EXIM generally conducted suspension and debarment proceedings in accordance with its policies and procedures, and federal requirements. However, we found that S&D referrals were not processed in a timely manner. Specifically, in some cases, there

[4] Executive Order 12549 established the ISDC to monitor implementation of the order. Also, the ISDC coordinates the process to determine which federal agency should act as the lead agency for S&D actions.

were delays in taking suspension and/or debarment actions, even though the standards for evidence under the federal regulations had been met.[5] Further, there were delays between the time the SDO reached a decision and the time that notices of suspension and/or proposed debarment and debarment notices were issued. Lastly, exclusions were not entered into SAM within three business days as required. Delays in the processing of S&D referrals and late entry of excluded individuals or entities ultimately places EXIM and other federal agencies at risk of doing business with irresponsible parties.

Suspension and Debarment Referrals and Notices

The SDO reached a decision on 42 of the 62 referrals to impose a suspension and/or debarment (26), transfer the referral to a lead agency (2), or take no exclusion action (14) according to the log maintained by the LFC group. Of the referrals, 21 resulted in a suspension and 26 resulted in a debarment. We analyzed the processing times for the 62 referred cases, from the reported date of referral to the date of the:

1. ISDC notification – The ISDC was established by Executive Order 12549 to monitor implementation of the order and facilitate lead agency coordination. The LFC group is responsible for notifying other federal agencies that EXIM has an interest in a referred entity and is considering suspension and/or debarment. The LFC group sends a coordination request to the ISDC, which then notifies all federal agencies of EXIM's proposed request to take the lead on S&D matters related to the referred entity.

2. OGC memo and record – The LFC group within OGC conducts a preliminary review to document evidence necessary to support a suspension and/or debarment. This review is documented in a memorandum and record of action.[6] The memo provides a written summary of the facts, how the referred parties conduct reflects on their present responsibility, the cause for debarment, basis for suspension, and mitigating factors for the SDO's consideration. The OGC memo and the compiled documents constitute the record of action sent to the SDO.

3. SDO decision – SDO decisions are governed by the FAR and OMB regulations for procurement and nonprocurement actions, respectively. The SDO reviews the memo and record of action in order to determine whether a suspension, debarment, administrative agreement, or exclusion action should be taken or whether no action is warranted. The SDO is not required, but can consider aggravating and mitigating factors including, but not limited to, those set forth in the FAR and OMB regulations.

From the date of referral, it took on average 98 days to the date of ISDC notification, 123 days to the date of the OGC memo and record, and 164 days to the date of the SDO decision. The combined processing time including the LFC group's preliminary review and the SDO

[5] 2 CFR §§ 180.700 and 180.800.

[6] Record of Action is considered the official record as defined in 2 CFR § 180.750a(1)-(3) and 2 CFR § 180.845b(1)-(3).

decision, took on average 158 days to suspend and 297 days to debar parties from the date of referral.

We also analyzed the processing times for actions taken once the SDO reached a decision on a case. As stated at 2 CFR § 180.715, after the suspending official decides to suspend, the notice should promptly be sent to the affected party. It took on average 15 days (between one and 65 days) for EXIM to issue notices of suspension and/or proposed debarment once the SDO reached a decision. Similarly, 2 C.F.R. § 180.870(a) requires that the debarring official make "a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any." EXIM did not track when the official record closed in its debarment cases. Therefore, we could not determine whether the SDO's decision to debar was made consistent with the 45 day requirement. From the notice of proposed debarment, it took the SDO on average 110 days (between 36 and 307 days) to debar.

Delays in Suspension and Debarment Actions

There were delays in suspension and/or debarment actions in some cases even though the standards for evidence under the federal regulations had been met. Of the 47 suspension and debarment actions taken in conviction-based referrals, on average it took EXIM 158 days (between 43 and 202 days) to suspend and 297 days (between 218 and 504 days) to debar from the time of referral.

The basis for a suspension or debarment can be a judicial proceeding such as a fraud indictment or conviction for a suspension or a fraud conviction for a debarment.[7] An SDO also has the authority to suspend a person immediately based on the existence of an indictment, information or adequate evidence involving crimes such as fraud or falsification of records.[8] Further, the regulation allows for a suspension or debarment if the facts show the individual or entity lacks present responsibility to participate in federal transactions or programs.[9]

Analysis of the referral log showed that the preliminary review by the LFC group accounted for 123 days or approximately three-quarters of the time from referral to the date of the OGC memo and record. During this phase, the assigned program attorney determines whether adequate evidence exists to suspend or a preponderance of the evidence exists to debar, including aggravating and mitigating factors, prior to submitting the referral to the SDO for a decision. The SDO decision memo and the Notice of Suspension and/or Proposed Debarment cited as required "[i]mmediate action is necessary to protect the public interest." The following are examples of delays in suspension and/or debarment actions.

Example 1: A former associate of an exporter was indicted on February 15, 2012,

[7] 2 CFR §§ 180.700 and 180.800.

[8] 2 CFR § 180.705(b).

[9] 2 CFR §§ 180.700(b) and 180.800(d).

and pled guilty on December 7, 2015, for conspiracy to commit offenses of money laundering and engaging in a scheme to defraud lenders. The S&D referral from EXIM OIG was dated June 6, 2017. A notice of suspension could have been issued because the indictment and plea constituted adequate evidence to impose suspension. However, the SDO did not impose suspension until November 20, 2017, 167 days (120 business days) after the referral. The LFC group's preliminary review accounted for 106 days of this time.

Example 2: An EXIM insured exporter and the entity's principal owner pled guilty to false claims on January 17, 2018, in a U.S. district court. The S&D referral from EXIM OIG for both parties was dated August 16, 2018. The SDO proposed debarment on March 14, 2019, 210 days after the receipt of the referral. The decision to debar could have been made, and the debarment entered, at any time after 30 day right to contest expired. However, the SDO did not decide to debar and the notice was not sent until May 10, 2019, 51 days after the notice of proposed debarment. Additionally, the preliminary review by the LFC group accounted for 203 days from the date of the referral.

Example 3: A managing member of an EXIM insured export company was convicted for engaging in a scheme to defraud and conspiracy to commit money laundering on February 1, 2016, in a U.S. District Court. The S&D referral from EXIM OIG was dated June 6, 2017. The SDO imposed suspension on November 20, 2017. Entry of the suspension in SAM occurred on May 9, 2018, 123 days after the effective date of suspension.

Requirements for Entry of Excluded Parties Not Met

Regulations at 2 CFR §180.520 require federal agency officials to enter exclusion information into SAM within three business days after taking an exclusion action. A suspension is effective when the suspending official signs the decision to suspend and a debarment is effective generally 30 days after the debarring official issues a decision (2CFR §§§ 180.710, 180.810, and 180.820). We found that entries by the LFC group were not timely. Specifically, the days elapsed ranged from three to 123 days for 19 suspensions—more than three months after the decision to impose an exclusion took place—and one to six days for three debarments.

EXIM's internal procedures and internal controls did not address processing times to ensure the completion of S&D determinations. As demonstrated above, suspensions and debarments were not processed by EXIM in a timely manner, even though the standards for evidence under the federal guidance had been met. Lastly, entry of excluded parties in SAM was delayed. In some instances, the case files included evidence where the LFC group followed up with the referral source; however, the follow up did not support the additional time it took to process referrals.

We attribute these delays in processing and taking S&D actions to limited staff resources; specifically, the competing responsibilities acknowledged by the SDO and program

attorneys. For example, the SDO's primary responsibility is that of the Chief Ethics Officer, which included Freedom of Information Act processing and the onboarding of new political appointees. The SDO delegation order does not allow for further delegation of authority to any other official or person within EXIM. Additional responsibilities for the program attorneys include due diligence reviews, sanctions and corruption compliance, fraud prevention and detection, and the collection of debt for OGC. The purpose of the S&D program is to protect the public interest and the integrity of federal programs. Delays in the processing of S&D actions and late entry of excluded individuals or entities ultimately places EXIM and other federal agencies at risk of doing business with irresponsible parties.

RECOMMENDATION, MANAGEMENT COMMENTS AND OIG RESPONSE

To improve the efficiency and effectiveness of the Suspension and Debarment program, we recommend that EXIM:

1. Update, finalize, and implement internal procedures to ensure that S&D referrals are processed consistently and in accordance with a designated time-frame. The internal procedures should require but are not limited to:

    a. Establish preliminary and SDO review timelines for processing of referrals differentiated by case types.

    b. Implement a process to alert responsible staff to send timely notification of suspension, proposed debarment, and debarment decisions to affected parties.

    c. Require entry of excluded individuals into SAM within 3 business days as required and sending timely notification of decisions to the affected parties.

    d. Include controls and process validation for the various phases and steps involved (e.g., queues by case type, milestones or follow-up dates for phase and step(s) completion, monitoring reports, and periodic reconciliation of exclusion information to SAM).

    Management Comments:

    Management agrees with this recommendation. EXIM will update, finalize, and implement internal procedures to ensure that S&D referrals are processed consistently and in accordance with a designated time-frame.

    OIG Response:

    Management's proposed actions are responsive to the recommendation. Therefore, the recommendation is considered resolved and will be closed upon completion and verification of the proposed actions.

Finding 2: Suspension and Debarment Procedures Should be Updated and Formalized

EXIM met federal requirements and guidelines for establishing a regulation and policies and procedures for its nonprocurement suspension and debarment program and activities. Specifically, EXIM adopted the regulations outlined in subparts A through I of OMB's guidelines at 2 CFR Part 180 as its S&D policies and procedures and prepared internal procedures to operationalize compliance with the regulations. However, EXIM should update and formalize its internal S&D procedures.

Federal Requirements and Guidance Met

As required by section 3 of Executive Order 12549, EXIM issued regulations at 12 CFR Part 413 to address the debarment and suspension of parties in federal programs in November 26, 2003. OMB issued interim final guidelines for nonprocurement transactions on August 31, 2005, subsequently updated the guidelines, and issued the final regulations at 2 CFR Part 180 on November 15, 2006. Agencies were required to establish policies and procedures for their nonprocurement debarment and suspension programs and activities consistent with OMB's standards to ensure the effectiveness of S&D actions.[10] EXIM complied with this requirement by adopting OMB's regulations on July 2, 2007, at 2 CFR Part 3513.

Draft Internal Procedures for S&D

Our review found that EXIM adopted the standards set out in subparts A through I of OMB's guidelines as its S&D policies and procedures[11] and developed internal procedures to operationalize its compliance with the regulations at 2 CFR Part 180. For example, draft internal procedures describe the steps followed when processing S&D referrals and provide a general description of the Agency's review to determine whether adequate evidence exists to support a suspension or a preponderance of evidence that a cause for debarment exists. However, the internal procedures were documented in draft form, and had not been finalized at the time of our review. Further, although the procedures state that both the LFC group and the SDO will act "promptly," but "consistent with [their]" other obligations and commitments; the procedures do not define the length of time that would be considered "prompt" to ensure the completion of S&D actions in a timely manner.

In accordance with the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government,* management is responsible for establishing and maintaining an effective internal control system.[12] In January 2019, measures were added to the referral log maintained by the LFC group for each of the steps (i.e., number of days to

[10] 2 CFR §§ 180.10 and 180.25.

[11] 2 CFR § 3513.10.

[12] GAO-14-704G (Sept. 2014).

complete a task from completion of the prior step) within the S&D process. However, the measures were not being used to monitor and/or improve the processing times to ensure referrals to the SDO and the notices to the respondents were prompt (see finding 1). The measures were used to provide status information to the managing official on how long various tasks were taking (e.g., lead agency notice, OGC referral memorandum to the SDO, SDO decision). Interviews with the SDO and a program attorney confirmed the absence of time requirements for completing S&D actions.

Adopting applicable sections of guidance to comply with a requirement or developing a program without procedures that provide for timely determinations and appropriate ongoing monitoring could expose EXIM and the federal government to increased risk. Well-defined procedures will adhere to the S&D standards and provide for consistency in application of policy. As demonstrated above, EXIM would benefit from updating and formalizing its internal S&D procedures. For example, the measures from the referral log could be used to identify significant milestones or follow-up dates to monitor the overall progress of S&D actions. Further, the information could be used to define "prompt" from a controls perspective and determine what is a reasonable timeline for completion, in particular, as it relates to the preliminary review phase (see finding 1). Moreover, this information could be used to identify resource limitations and support the need for additional resources to ensure the completion of S&D actions in a timely manner.

According to senior management, EXIM experienced multiple instances of turnover in executive leadership. The internal S&D procedures were not a priority of the new executive personnel compared to the other responsibilities of the Agency. The internal procedures were presented to EXIM's Executive Working Committee for review and approval but were tabled.[13] At the end of fieldwork, EXIM did not have a plan to update or finalize the procedures.

RECOMMENDATIONS, MANAGEMENT COMMENTS AND OIG RESPONSE

See recommendation 1d. above.

Finding 3: Suspension and Debarment Record Keeping Needs Improvement

During the audit, we requested access to the case files for the 62 S&D referrals recorded on the referral log. The LFC group utilizes a filing scheme of subfolders for cases that aligns with each of the specific steps for S&D actions (e.g., referral documents, lead agency notification, OGC memo to the SDO, SDO determination, etc.). We found that 40 of the case files reviewed were incomplete as documents were either missing or inaccessible. For example, the SDO decision memorandum was missing for one case, and the Notices of

[13] The Executive Working Committee serves as a mechanism by which EXIM's senior management reviews both new and changes to existing policies, products, and procedures.

Suspension and/or Proposed Debarment were missing in two cases. Further, the draft internal procedures do not address the retention and disposition of S&D documentation.

GAO's Standards for Internal Control in the Federal Government requires that "Management clearly documents internal control and all transactions and other significant events in a manner that allows documentation to be readily available for examination. The documentation may appear in the management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained."[14]

Missing documentation or case files make it difficult for EXIM to support suspension or debarment actions taken or denied. The proper management and maintenance of records provides evidence to confirm that appropriate processes and controls are in place for S&D determinations. Absent a complete record, there is an increased risk that the SDO did not consider all relevant information in the decision-making processes. Moreover, insufficient record keeping makes it difficult for EXIM to provide a basis for its actions or inactions.

RECOMMENDATIONS, MANAGEMENT COMMENTS AND OIG RESPONSE

To improve the efficiency and effectiveness of the Suspension and Debarment program, we recommend that EXIM:

2. Develop and implement a record keeping system that provides for a complete historical record of S&D actions.

Management Comments:

Management agrees with this recommendation. EXIM has taken action and provided the OIG with supporting documentation to address this recommendation.

OIG Response:

During our audit, EXIM developed a record keeping system for S&D actions. After our audit, internal procedures that outlined the process for filing and maintaining records were developed and distributed to staff. The agency provided a walkthrough of the record keeping system and the internal procedures after the close of fieldwork. Based on our review, the corrective actions are consistent with the intent of the recommendation. Therefore, we consider this recommendation closed.

[14] *Supra* note 12.

CONCLUSION

EXIM's S&D program effectively resulted in the suspension and/or debarment of parties from entering into contracts or participating in programs involving the U.S. government. We found that EXIM generally conducted S&D proceedings in accordance with agency policies and procedures, and federal requirements. However, referrals for S&D were not processed in a timely manner. Specifically, there were delays in (1) the actions taken for suspension and/or debarment, (2) the time between the SDO decision and notification sent to the affected parties, and (3) the entry of excluded parties in SAM. Such delays could result in other federal agencies unknowingly awarding federal assistance to an irresponsible party. Further, EXIM's internal procedures were documented in draft form, and had not been finalized at the time of our review. Lastly, recordkeeping for S&D actions could be improved. Therefore, we made two recommendations, of which one was closed at issuance of this report, to improve the effectiveness and efficiency of EXIM's S&D program.

APPENDICES

Appendix A: Objective, Scope, and Methodology

The objective of this audit was to determine whether EXIM's S&D program is operating and performing in accordance with applicable (1) EXIM policies and procedures and (2) federal laws, regulations, and guidelines. To accomplish the audit objective, we employed a combination of qualitative and quantitative techniques, including documentation reviews.

1. Researched and assessed laws, regulations, guidelines, policies, and procedures applicable to EXIM's S&D program.

    - Executive Order 12549, *Debarment and Suspension*
    - FAR for procurement actions at 48 CFR Subpart 9.4
    - OMB regulation for nonprocurement actions at 2 CFR Part 180
    - EXIM regulations for S&D at 12 CFR Part 413 (former) and 2 CFR Part 3513
    - EXIM draft internal procedures for S&D
    - GAO's *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014)
    - OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control* (M-16-17, July 15, 2016)

2. Interviewed EXIM management and staff in OGC's LFC group, the Office of Ethics, and Agency staff responsible for underwriting, risk monitoring, and managing contractors to gain an understanding of the S&D program and associated processes.

3. Selected 14 S&D cases for review to determine compliance with the applicable requirements and confirm our understanding of EXIM's S&D program. The cases were selected from a universe of 62 referrals covering the period October 1, 2015 through June 30, 2019. The referrals were nonprocurement-related and comprised of 17 fact-based and 45 conviction-based (nine indictments and 36 convictions) referrals.

4. Examined key documents in the case files for the 62 referrals to determine whether the processing and decisions were made timely and in accordance with the provisions of the OMB regulations, and EXIM's policies and procedures.

We relied in part, on S&D data contained in a log maintained by the LFC group. We assessed the reliability of the data by manually checking it against available source documents. We resolved inconsistencies identified with staff of the LFC group and determined that the data were sufficiently reliable for our reporting purposes.

In planning and performing the audit, we obtained an understanding of internal controls to the extent necessary to satisfy the audit objective. We assessed the five internal control components and identified the following internal control components and underlying principles significant to the audit objective:[15]

Internal Control	
Components	**Underlying Principles**
Control Activities	10. Management should design control activities to achieve objectives and respond to risks. 11. Management should design the entity's information system and related control activities to achieve objectives and respond to risks. 12. Management should implement control activities through policies.
Monitoring	16. Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results. 17. Management should remediate identified internal control deficiencies on a timely basis.

We performed our audit work from June 2019 through August 2020 at EXIM headquarters in Washington, D.C. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

[15] *Supra* note 12. The federal internal control standards are organized into five components (control environment, risk assessment, control activities, information and communication, and monitoring) and 17 related principles (requirements).

Appendix B: Management Comments

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DATE: September 24, 2020

TO: Jennifer Fain, Acting Inspector General Office of Inspector General

THROUGH: Mary Jean Buhler, SVP & Chief Financial Officer

FROM: Adam Martinez, Chief Management Officer

SUBJECT: EXIM Management Response to the draft report, *Audit of EXIM's Suspension and Debarment Program* (OIG-AR-20-06)

Thank you for providing the Export-Import Bank of the United States ("EXIM Bank" or "EXIM") management with the Office of the Inspector General's ("OIG") draft report, *Audit of EXIM's Suspension and Debarment Program*, OIG-AR-20-06, dated September 1, 2020.

EXIM appreciates that the Report recognized that, even with scarce resources, EXIM's Suspension and Debarment program "effectively resulted in the suspension and/or debarment of parties from entering into contracts or participating in programs involving the U.S. government," and that "EXIM generally conducted suspension and debarment proceedings in accordance with agency policies and procedures, and Federal requirements."

EXIM notes that, according to the Interagency Suspension and Debarment Committee Report to Congress (the "873 Report"), dated October 30, 2019, EXIM has among the most active Suspension and Debarment programs of all small federal agencies. EXIM's level of Suspension and Debarment activity exceeds what is expected from small federal agencies per OMB Memorandum M-12-02 – Suspension and Debarment – dated November 15, 2011, the most recent OMB directive on the topic.

Recommendation 1:

EXIM agrees with Recommendation 1 of the Report that "EXIM should update, finalize and implement internal procedures to assure that Suspension and Debarment referrals are processed consistently and in accordance with a designated time-frame." EXIM will endeavor to designate a timeframe for processing suspension and debarment referrals that is consistent with and complements EXIM's efforts to protect EXIM's transactions from bad actors.

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The processing of Suspension and Debarment referrals is only one part of a robust Suspension and Debarment program. Arguably the more important part of such a program is conducting the due diligence to assure that parties that have already been suspended or debarred by any federal agency do not participate in federal programs such as EXIM Bank's. Such due diligence is part and parcel of EXIM's efforts to screen bad actors from participating in EXIM transactions.

Recommendation 2:

EXIM also agrees with Recommendation 2 of the Report that EXIM should "Develop and implement a record keeping system that provides for a complete historical record of Suspension and Debarment actions." As noted in the draft report, EXIM has taken action and provided the OIG with supporting documentation to address this recommendation. This recommendation has been closed by the OIG.

CC:

Lauren Fuller, Senior Advisor to the President and Chairman
David Fogel, Chief of Staff
Ryan McCormack, Deputy Chief of Staff
David Slade, SVP and General Counsel
Henry Pitney, Deputy General Counsel
John Connor, Assistant General Counsel for Litigation, Fraud and Compliance
Kenneth Tinsley, SVP and Chief Risk Officer
Walter Hill, Vice President, Credit Policy and Compliance Division
Lisa Terry, SVP and Chief Ethics Officer
Cris Dieguez, Director, Internal Controls and Compliance

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Appendix C: Distribution List

Kimberly Reed, President and Chairman
Ryan McCormack, Chief of Staff
Adam Martinez, Chief Management Officer
Lauren Fuller, Senior Advisor to the President and Chairman
Stephen Renna, Chief Banking Officer
Kenneth Tinsley, Senior Vice President and Chief Risk Officer
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ACKNOWLEDGEMENTS

This report was prepared by the Office of Audits and Evaluations, Office of Inspector General for EXIM. Several individuals contributed to this report including Arinee Tackoor, Jaquone Miller, Courtney Potter, and Jennifer Fain.

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