

**STATEMENT OF
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BEFORE THE

**OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
HOUSE OF REPRESENTATIVES**

CONCERNING

**SUSPENSION AND DEBARMENT ACTIONS AT THE
DEPARTMENT OF TRANSPORTATION**

MARCH 18, 2010

Chairman Towns, Ranking Member Issa, and Members of the Committee:

I am pleased to appear before the Committee today with Inspector General Scovel to discuss the U.S. Department of Transportation's commitment to vigorous enforcement of the suspension and debarment requirements of Federal law that protect our acquisition, grant-making, and comparable programs from fraudulent behavior, favoritism, and other threats to effective stewardship of taxpayer funds.

The Department administers some of the most significant grant-making programs in the Federal government, and Secretary LaHood has made clear that maintaining the integrity of these programs, and of our acquisition actions, is one of our most fundamental responsibilities. The Inspector General's comprehensive January report on this responsibility, and his earlier "ARRA Advisory" in May 2009, have been instrumental in bringing a new focus to the systematic implementation of suspension and debarment requirements across the Department.

I would like to review for the Committee the steps we have taken to strengthen the Department's implementation of the suspension and debarment program along the lines addressed in the Inspector General's January Report. Significantly, we have just issued an updated and more comprehensive Department Order that lays the groundwork for better management of the enforcement program across the Department. A copy of our new Order, "Suspension and Debarment Procedures and Ineligibility," has been provided to the Committee.

The new Order clarifies and strengthens the oversight and management role of the Senior Procurement Executive. The Order clearly requires that the Department take action to suspend or debar within 45 days of a referral by the Inspector General or others, or to document the reasons why action is not being taken. Adherence to the suspension and debarment evidence standards provided under Federal regulations is also clearly specified. The Department's Operating Administrations are also improving their programs, with an emphasis on ensuring that responsibilities are clearly delineated, information is well disseminated, and up-to-date procedures are employed to carry out timely suspension and debarment actions. Secretary LaHood and the leadership of the Department are committed to ensuring that the Department is effectively fulfilling its responsibilities for this important program.

We are also improving the Office of the Secretary's SharePoint monitoring system for suspension and debarment actions. Action is underway to update the existing tracking system with one that provides enhanced capabilities with regard to tracking and transparency, including automatic notice of needed actions. While the system is at the prototype stage, we believe that it will assist us in strengthening management controls to better ensure timely action on referrals across the Department.

Management has also taken action to ensure that timely, accurate, and complete information is entered into the government-wide Excluded Parties List System (EPLS). Immediately upon issuance of the OIG's ARRA Advisory, the Office of the Senior Procurement Executive created a dedicated website to systematize the reporting of all suspension and debarment actions by the Operating Administrations and by the offices within the Office of the Secretary. This data reporting also enabled the Department to maintain a centralized data collection point to monitor the full inventory of the Department's open suspension and debarment cases. Both of those functions are being incorporated into the new SharePoint System for monitoring and reporting on suspension and debarment activity in the Department of Transportation.

The Federal Highway Administration, which manages our largest grant programs, received considerable attention in the Inspector General's report. FHWA has been particularly aggressive in implementing process and management improvements to better ensure timely and appropriate action is taken on suspension and debarment referrals.

Specifically, last Spring FHWA established a dedicated team within the Office of Chief Counsel to work with FHWA's debarring official to identify, review and dispose of all referrals within established deadlines. New protocols were instituted, which call for suspension or proposed debarment orders within 45 days of notification of an indictment from any source, or providing a written justification of why a suspension or proposed debarment order is not warranted under the circumstances.

In addition, the FHWA has undertaken a number of other important measures to improve case processing. The Office of Chief Counsel has--

- increased the resources devoted to case processing;
- developed an action plan for dealing with priority cases, as well as the remaining open cases;
- established an electronic database and tracking system; and
- developed regularly updated case reports for review by FHWA management.

The FHWA Chief Counsel's Office also developed revised detailed procedures for case processing – in the field and at headquarters – intended to ensure prompt action after a referral and timely follow-up actions.

These actions by FHWA are showing results.

- Beginning in May 2009, the Office of the Chief Counsel reviewed and updated a comprehensive inventory of 56 open cases. The initial inventory identified 22 cases for priority treatment, and the FHWA has initiated actions in all those cases except two, which require additional information to proceed.
- As of March 10, 2010, action undertaken by FHWA has reduced the open cases to 32. In order to ensure that taxpayer funds are fully and effectively protected as these cases are being pursued, all of these firms, with the exception of the two lacking full information, have been suspended, pending final decision on debarment.
- Of the six cases identified in the OIG ARRA advisory, three are now closed, two parties have been suspended, and FHWA is pursuing information on the final case prior to final disposition.
- Since the issuance of the Office of Inspector General report, FHWA has received three new referrals from the OIG. Action in all three of these new cases was initiated within 45 days, in accord with the new protocols and Departmental Order.

As you know, a suspension is effective immediately, which means a suspension protects federal monies as completely as a debarment in the first instance. I can therefore assure the Committee, notwithstanding the delays that occurred in closing open suspension cases that, except for the two cases noted above, respondents are now suspended in every open FHWA case, and the public is protected.

I would like to offer a clarification and updated information regarding a conclusion by the Inspector General's Office that Recovery Act funds were awarded to companies affiliated with individuals under indictment, as indicated in today's testimony. The contracts supported by the Recovery Act funds in question were awarded by Kentucky to firms that shared an address with a company controlled by an individual that, at the time, was under indictment but has since been acquitted. Also, the son of that indicted individual had an interest in both of the firms referred by the IG that received the Kentucky contracts in question. Although we examined all of the facts about interconnections between these firms and the indicted individual, we could not conclude, based on the existing standards of evidence, that this constituted an "affiliation" that justified suspension and debarment.

The indicted individual was one of three who have since been acquitted or have had charges dismissed. They received no Recovery Act funds individually or as a principal in a business. These three individuals were suspended in July 2009 based on the September 2008 referral. We recognize this gap is unacceptably long and, as I described earlier, we have taken steps to prevent this from happening again. The effectiveness of our new process is borne out by the facts. FHWA's new procedures in place have resulted in the three new referrals received by FHWA since the May 2009 to be acted upon within the 45-day deadline.

The Department will take strong and prompt action to protect public funds. As the Inspector General recommends, we will move swiftly to suspend affiliates of suspended or debarred contractors. We believe, however, that the commitment does not diminish the due process rights of targeted firms or individuals.

Significant grant-making and acquisition actions are also carried out by the Federal Aviation Administration and the Federal Transit Administration. These two Operating Administrations have also agreed to commit the resources needed to fully address the recommendations of the Inspector General's report.

In conclusion Mr. Chairman, we believe we have taken to heart the essential elements of the Inspector General's report -- to commit high-level management and more resources to suspension and debarment cases in order to ensure rigorous enforcement, and to take definitive action in a timely manner. On behalf of Secretary LaHood and the other employees of the Department of Transportation, I want to assure you that we understand the importance of our duty to safeguard the public's money and their trust.

Working together with the Inspector General, we will work still harder so that the unscrupulous cannot participate in our grant programs and acquisitions, and potentially others across government.

Thank you again for the opportunity to discuss these important matters. I would be pleased to answer any questions you may have.