

Summary of Results
Suspension and Debarment Survey
ARRA Funding Agencies
September 2011

I. Background and Results in Brief

In conjunction with the Recovery Accountability and Transparency Board, the Suspension and Debarment Working Group¹ conducted a short survey (between February and March 2011) of suspension and debarment use and practices among agencies that received funds under the American Recovery and Reinvestment Act (ARRA). To a limited extent, the survey also solicited information pertaining to other remedies (i.e., those without government-wide effect), such as agency specific award suspensions and terminations.

As background, government-wide suspensions and debarments² are among the administrative remedies that federal agencies may take in order to protect federal funds from fraud, waste, abuse, poor performance and noncompliance with contract provisions or applicable law. Debarment ensures that for a specific period, the entire federal government will not do additional business with individuals and organizations that are not “presently responsible.” Suspension is a preliminary action taken where there is a need to act to protect the integrity of a federal procurement or nonprocurement process before there is enough information to support a debarment proceeding. The information gathered through this survey is intended to be used to inform efforts to enhance the overall use of these protective tools -- even after ARRA funds have been expended.

Eighteen of the twenty-eight ARRA funding agencies responded to the survey. None of the respondents stated that they had suspended or debarred, or obtained voluntary exclusion³ of, a Recovery Act recipient based on its handling of an ARRA award. However, one respondent had (at the time of the survey) proposed that two entities and their individual owners be debarred. Approximately one-third of the responding agencies said that they had used other remedies (such as award terminations and/or cancellations) to address responsibility issues involving ARRA recipients.

¹ The Working Group was formed in 2010 under the Council of Inspectors General on Integrity and Efficiency, Investigations Committee; it has also been integrated into the Financial Fraud Enforcement Task Force, led by the Department of Justice.

² Discretionary suspension and debarment actions (i.e., those that are not required by statute) are governed by the Federal Acquisition Regulation (FAR) at 48 CFR Part 9.4, which cover procurements, and by the Office of Management and Budget Guidelines for Nonprocurement Suspension and Debarment at 2 CFR Part 180.





³ Voluntary exclusion refers to a person’s (or entity’s) agreement to be excluded from doing business with the government under the terms of a settlement between the person/entity and one or more government agencies. It is a formal action, which has government-wide effect, meaning that the individual/entity is placed on the Excluded Parties List System (EPLS).

About half of the respondents had issued suspension and debarment guidance and/or provided training on these remedies to staff who oversee ARRA awards. Fewer had notified ARRA recipients about the possibility of such action in appropriate circumstances. Slightly over half of those responding said they had issued guidance pertaining to, and informed recipients about, remedies without government-wide effect to address responsibility issues involving Recovery Act recipients. Such remedies include agency suspensions or terminations.

Finally, only one respondent stated that it had received Recovery Act-related suspension or debarment referrals from its Office of Inspector General.



II. Quantitative Responses and Summary of Comments⁴

1. Which instruments has your agency used to make Recovery Act (ARRA) awards? (Check all answers that apply.)

		Response Percent	Response Count
Contracts		87.5%	21
Grants		87.5%	21
Cooperative Agreements		54.2%	13
Loans		25.0%	6
	Other (please explain)		1
		answered question	24
		skipped question	1

⁴ As noted previously, eighteen agencies responded to the survey. However, in some instances, we received additional responses directly from agency components, raising the total number of overall responses.

2. Has your agency suspended or debarred (government-wide), or obtained a voluntary exclusion of, any Recovery Act recipient(s) based on the recipient's handling of an ARRA award?

		Response Percent	Response Count
Yes		4.2%	1
No		95.8%	23

If you selected yes, please provide the recipient's name; briefly describe the basis for the action; and the length of the suspension or debarment or exclusion. 1



answered question	24
skipped question	1

This question on the use of suspension and debarment recognizes that many recipients have both ARRA and non-ARRA awards from the same agency. For focus, it elicited information pertaining only to suspension and debarment use arising from a recipient's handling of an ARRA award (not, for example, a serious violation of a non-ARRA contract with the agency). Only one respondent has pursued such action, explaining that it had issued notices of proposed debarment to two entities and to their individual owners. One of these cases was based entirely on multiple failures to comply with ARRA reporting requirements. The other concerned reporting failures and the recipient's failure to pay a subcontractor. The former action was terminated upon the recipient's compliance, the latter remained pending at the time of the survey.

3. How many orders to show cause have you issued to Recovery Act recipients based on their handling of ARRA awards? In how many cases did such an order favorably resolve agency concerns about the recipient?

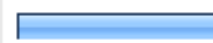

Twenty-three agencies and/or agency components responded to this question. Of these, 4 respondents stated that they had issued orders to show cause, with a total of 16 such orders having been issued between them. In 3 instances, the matters were resolved to the agency's satisfaction after issuance; however, in 10 instances the ARRA contract or grant was ultimately terminated or cancelled, but government-wide action was not taken. The remaining matters were pending at the time of survey.

4. After initially proposing government-wide suspension or debarment based on the recipient's handling of an ARRA award, have you used administrative agreements to obtain remedial action from the recipient?

		Response Percent	Response Count
Yes		0.0%	0
No		100.0%	23
Please explain your answer choice above.			16
answered question			23
skipped question			2

None of the 23 respondents had obtained an administrative agreement from a recipient after having first proposed suspension or debarment. One agency explained that it had proposed that a recipient be debarred for its failure to comply with ARRA reporting, but an administrative agreement was not viewed as an appropriate vehicle to resolve that matter. Another respondent (a grant-making agency) observed that it had “not had any recipient’s handling of an ARRA award rise anywhere near the level of proposing government-wide suspension or debarment.”

5. Has your agency used alternate agency remedies, such as agency suspensions and terminations, in lieu of government-wide action for a responsibility issue involving a Recovery Act recipient?

		Response Percent	Response Count
Yes		33.3%	8
No		66.7%	16
If you answered yes, briefly describe the number of times you have done so and the reasons why government-wide action was not pursued.			10
answered question			24
skipped question			1



In the comments, 6 agencies of the 8 respondents elaborated on the action they had taken.

Of these, 4 respondents explained that they had terminated ARRA contracts (3 respondents noted that the terminations were for default). One respondent explained that the terminations were for default and convenience. Another respondent was non-specific about whether the terminations were for

default and/or convenience. One respondent (which had terminated eight ARRA contracts) explained that the underlying issues were “contract specific” and concerned the “[contractors’] ability to make progress or complete work.” A different respondent expounded that, while it had terminated one contract for default due to the contractor’s failure to perform, government-wide action was not pursued.



Two of the 6 agency comments focused entirely on grants. One of these respondents said that it had cancelled an ARRA grant and placed another grantee on a cost-reimbursable basis. The second explained that it had “withheld grant funds (i.e., for high risk grantees, grantees without approved budgets, grantees with delinquent audit reports).”

6. Has your agency provided any training on government-wide suspension and debarment to staff who oversee Recovery Act awards (e.g., stand alone training or amplification of existing suspension and debarment training to focus on ARRA funds)?

		Response Percent	Response Count
Yes		50.0%	12
No		50.0%	12
If you answered yes, briefly describe.			11
answered question			24
skipped question			1

Eight respondents provided comments to this question. Most stated that standardized suspension and debarment training was provided to staff overseeing ARRA awards, but training was not tailored to the ARRA context. One said that “[t]he Department conducted suspension and debarment training with all staff who oversee Recovery Act awards.” Another agency explained that (at the time of the survey) it planned to provide suspension and debarment training at an “Acquisition, Grants, and Small Business Symposium.” Such training would be provided as a breakout session and would “relate to both ARRA and non-ARRA awards.” Finally, one respondent stated that it had provided ARRA-focused “stand alone” training.

7. Has your agency issued any type of guidance concerning government-wide suspension and debarment to staff who oversee Recovery Act awards?



		Response Percent	Response Count
Yes		54.2%	13
No		45.8%	11
If you answered yes, please describe the nature of such guidance.			14
answered question			24
skipped question			1

The individual responses to this question about agencies’ guidance on suspension and debarment usage to its staff are summarized in the list below.

- Issued grant and acquisition alerts regarding the use of suspension and debarment as potential remedies for failure to comply with OMB ARRA guidance.
- Held numerous town hall meetings with agency staff, as well as numerous meetings with specific divisions.
- Addressed suspension and debarment as a possible remedy “under ARRA recipient reporting non-compliance.”
- Instructed contracting officers handling ARRA awards to refer terminations for default for debarment consideration.
- Disseminated OMB guidance (M-10-17) which discusses suspension and debarment, among other topics), to staff overseeing ARRA awards, and discussed this guidance with them.
- Issued “General Notices” and “Red Alerts” on excluded organizations and individuals.
- Displayed general (non-ARRA specific) guidance on suspension and debarment on the agency’s public website.
- Directed contracting staff to check the Excluded Parties List System (EPLS) before awarding contracts, including those funded by ARRA.
- Updated departmental suspension and debarment “order” to provide “enhanced guidance to ensure that all potential S&D cases are identified and acted upon and that agency S&D staff properly implement S&D regulations for both ARRA procurement and non-procurement transactions.”

- Included policies and procedures on suspension and debarment, including requirements that staff check EPLS before making awards, in the grants manual and other guidance.
- Included information about suspension and debarment in grant conditions issued to recipients and discussed and provided to staff.

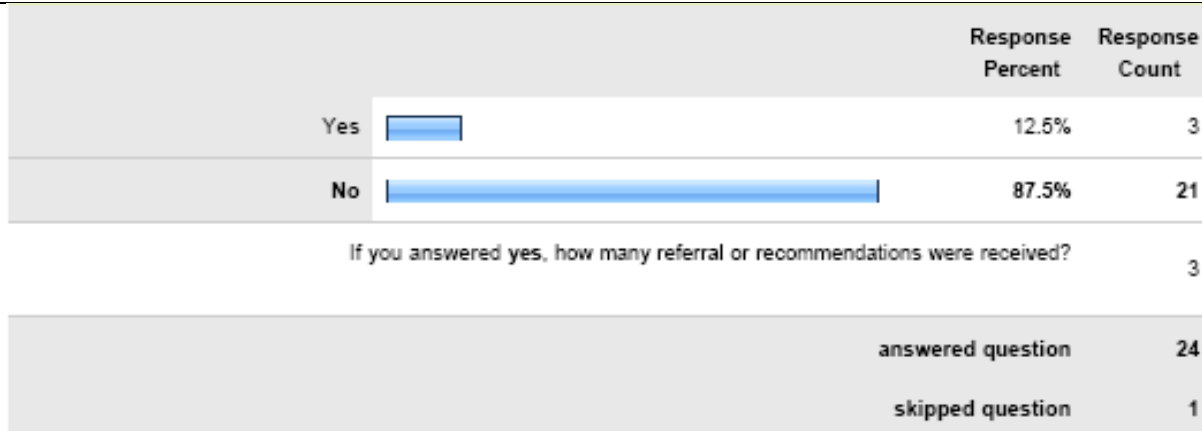
8. Has your agency issued any type of guidance concerning other remedies (i.e., those that are not government wide), such as agency suspensions or terminations to address responsibility issues involving Recovery Act recipients?

		Response Percent	Response Count
Yes		41.7%	10
No		58.3%	14
If you answered yes, please describe the nature of such guidance.			10
answered question			24
skipped question			1

A summary of the individual comments to this question on guidance about other remedies follows:

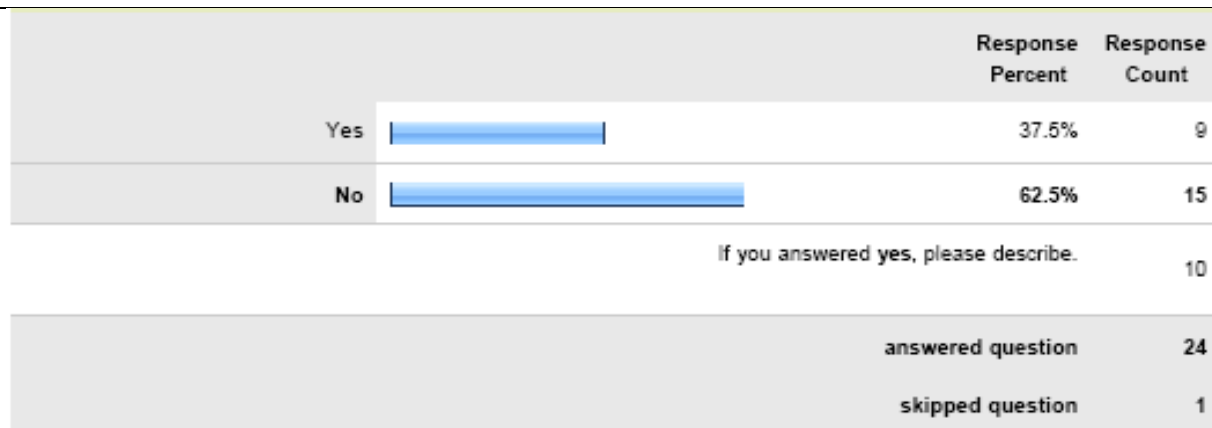
- Held numerous town hall meetings with agency staff, as well as numerous meetings with specific divisions.
- Issued guidance through a national bulletin.
- Strengthened guidance regarding award suspension, withholding new awards, and withholding payment. Discussed this guidance with staff overseeing Recovery Act awards.
- Provided guidance to contracting staff about terminations, “including potential agency remedies for contractors who are non-compliant with recipient reporting.”
- Utilized an existing high-risk designation process. High-risk grantees are identified and the underlying situation is either resolved or terms and conditions to protect the government’s interest are placed on future awards. The high-risk policies and procedures are issued to all staff and associated training is planned. Also, there is other published guidance that lists sanctions available for grantees that fail to comply with award terms and conditions.

9. Have you received any Recovery Act-related suspension or debarment referrals or recommendations from your Office of Inspector General?




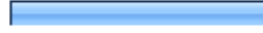
One agency reported that it had received 4 referrals from its Office of Inspector General, which involved two entities and their respective individual owners. A second respondent explained that it had received 3 referrals pertaining to ARRA recipients, but the bases for these referrals did not concern the respondents' handling of their ARRA awards. A third agency responded that it had received referrals, but provided no additional information.

10. In the context of ARRA awards, has your agency informed Recovery Act recipients (e.g., in standard award documents) about the possibility of government-wide suspension or debarment in appropriate circumstances?



Most of those commenting explained that they had informed ARRA recipients about the possibility of suspension and debarment through standard award documents. Some respondents stated that their correspondence with recipients about non-compliance with ARRA reporting requirements mentions the prospect of these remedies.

11. In the context of ARRA awards, has your agency informed Recovery Act recipients (e.g., in standard award documents) about the possibility of agency suspensions or terminations (i.e., actions that are not government wide) in appropriate circumstances?

		Response Percent	Response Count
Yes		54.2%	13
No		45.8%	11
If you answered yes, please explain.			12
answered question			24
skipped question			1

As with the preceding question, most of the comments explained that information about agency-specific suspensions or terminations (i.e., those without government-wide effect) was transmitted to recipients in standard award documents. One respondent noted that the possibility of such action is mentioned in letters concerning noncompliance with ARRA reporting requirements. Finally, one agency stated that, “we strengthened guidance regarding suspension, withholding new awards and withholding payment, which was provided to ARRA award recipients as part of our outreach before and during each quarterly reporting period.”

III. Concluding Observations and Suggestions on Suspension and Debarment

As ARRA funds are expended, issues pertaining to a recipient’s “present responsibility” are likely to arise, providing a basis for suspension or debarment. These matters may be gleaned through Office of Inspector General (OIG) investigations or audits of ARRA recipients, as well as through the agency’s own monitoring and award administration.

Against the backdrop of ARRA’s emphasis on total accountability, it is important for relevant agency and OIG staff -- including auditors and inspectors -- to have a complete and accurate understanding of suspension and debarment. Also, authorized officials should be prepared to use these measures as soon as circumstances warrant. Often, suspension or debarment is pursued only when there is an accompanying indictment, criminal conviction, or civil judgment. However, in many circumstances, such action may be appropriate based entirely on other facts bearing on present responsibility. These circumstances may include indications of fraud, significant internal control deficiencies, serious violations of the terms of a government contract, and multiple failures to comply with ARRA’s quarterly reporting requirements.

Active dialogue between Suspension and Debarment Officials (SDOs) and OIGs is essential to help ensure effective use of these remedies to protect government funds. Among other topics, such discussion could focus on what SDOs would like to see in OIG referrals. For instance, a referral

memorandum (with attachments) that pulls out key facts and discusses them in the context of suspension and debarment criteria could help facilitate timely action. Dialogue could also surface and address any concerns relating to evidence sharing, how contemporaneous proceedings can be protected, and other factors (such as resource constraints or concerns about litigation) that might affect suspension and debarment use. This is particularly true when there is no supporting conviction, indictment, or civil judgment. The prospect of referrals stemming from externally-focused OIG audits or inspections might also be an appropriate area for discussion since, presently, such referrals are relatively uncommon.

Suspension and debarment education for agency staff who oversee awards (such as grant and contracting officers) is also important. The survey noted that only about half of the responding agencies had provided training or other guidance to these individuals. OIGs and SDOs could explore additional ways to “get the word out” within their agencies.

Finally, informing the awardee community about the possibility of suspension and debarment could help prevent circumstances that might jeopardize funds. Only a small percentage of the respondents had provided such information to their ARRA awardees, and this was usually accomplished through language in award documents. In some cases, agencies explained that they mention suspension and debarment in correspondence with recipients who failed to comply with ARRA’s reporting requirements. Exploring and implementing methods to reach the recipient community presents yet another area for OIG and SDO discussion and cooperation.

In short, active dialogue between the SDO and OIG communities, education for those who handle awards, and outreach to recipients will help to advance ARRA’s total accountability mandate. If progress is made in the context of ARRA awards, the lessons learned will continue to pay off after the ARRA money is expended.