



# **AUDIT OF STATUTORY SUSPENSION AND DEBARMENT ACTIVITIES WITHIN THE DEPARTMENT OF JUSTICE**

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# AUDIT OF STATUTORY SUSPENSION AND DEBARMENT ACTIVITIES WITHIN THE DEPARTMENT OF JUSTICE

## EXECUTIVE SUMMARY

Suspension and debarment are tools established by executive order or statute to protect the government's financial interest from unethical, dishonest, or otherwise irresponsible entities, and to reduce fraud, waste, and abuse in federal programs.<sup>1</sup> Suspension and debarment cover both procurement and non-procurement activities, and can have a government-wide, reciprocal effect to limit affected parties' ability to obtain federal funding. Suspension and debarment decisions are made either administratively, by each agency's Suspension and Debarment Official (SDO), or statutorily, as a matter of law as a result of convictions for qualifying offenses.<sup>2</sup> This audit examined the Department of Justice's (DOJ) implementation and oversight of statutory debarment activities during fiscal years (FY) 2005 through 2010.<sup>3</sup>

DOJ administers two types of statutory debarments: fraud or felony convictions arising out of a contract with the Department of Defense (DOD) pursuant to 10 U.S.C. § 2408, and drug trafficking or possession convictions pursuant to 21 U.S.C. § 862.<sup>4</sup> Debarment under 10 U.S.C. § 2408 prohibits an individual from being involved with a defense contract or first-tier

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<sup>1</sup> Executive Order 12549 designated the Office of Management and Budget (OMB) as the federal agency responsible for establishing administrative non-procurement suspension and debarment guidelines for all Executive branch agencies. Subpart 9.4 of the Federal Acquisition Regulation (FAR) sets forth guidelines covering administrative suspension and debarment for procurement activities. Executive Order 12689 expanded the scope of administrative procurement and non-procurement suspension and debarment actions and mandated government-wide, reciprocal effect.

<sup>2</sup> Debarment is a final exclusion decision for a specified period of time, generally as a result of a conviction, while suspension is a temporary action immediately effective to protect public interest pending the completion of an investigation or legal proceedings.

<sup>3</sup> Administrative suspension and debarment within DOJ is the subject of a prior Office of the Inspector General audit: U.S. Department of Justice Office of the Inspector General, *Audit of Administrative Suspension, Debarment, and Other Internal Remedies Within the Department of Justice*, Audit Report 12-01 (October 2011).

<sup>4</sup> 10 U.S.C. § 2408 and 21 U.S.C. § 862 mandate debarment, therefore DOJ is not responsible for any statutory suspensions.

subcontract of a defense contract.<sup>5</sup> Debarment under 21 U.S.C. § 862 precludes an individual convicted of trafficking in or possession of drugs from receiving all or selected federal benefits.<sup>6</sup>

In 1993, the Attorney General established the Defense Procurement Fraud Debarment (DPFD) Clearinghouse as the repository for information regarding an individual's exclusion status and assigned the responsibility of administering exclusions under 10 U.S.C. § 2408 to the Bureau of Justice Assistance (BJA).<sup>7</sup> The Attorney General also delegated administration of exclusions pursuant to 21 U.S.C. § 862 to the Assistant Attorney General for the Office of Justice Programs (OJP), which in turn assigned the responsibility to the BJA. This program is known as the Denial of Federal Benefits (DFB) Clearinghouse. The DFB and DPFD Clearinghouses are two legally distinct clearinghouses. However, both the DFB and DPFD Clearinghouses (collectively, the Clearinghouse) share a single point of contact that uses the same staff and follows a single set of policies and procedures to receive and report both DFB and DPFD qualifying cases. Information regarding excluded individuals from both the DFB and DPFD Clearinghouses is maintained in a single database (Clearinghouse database).

The BJA is responsible for receiving, maintaining, and responding to inquiries from federal agencies, contractors, or subcontractors regarding exclusions pursuant to 10 U.S.C. § 2408 and 21 U.S.C. § 862. Qualifying DOD cases may be submitted to the BJA for inclusion in the Clearinghouse database by DOJ litigating divisions, and qualifying drug cases may be submitted by federal and state courts. The information contained within the Clearinghouse database is also entered by a BJA contractor into the Excluded Parties Listing System (EPLS), which is maintained by the General Services Administration. However, individual agencies are responsible for entry and maintenance of the individual records contained within the EPLS database. Suspension and debarment actions are communicated to all government

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<sup>5</sup> Federal Acquisition Regulation Subpart 22.801 defines a first-tier subcontractor as a subcontractor holding a subcontract awarded directly by a federal government prime contractor.

<sup>6</sup> 21 U.S.C. § 862(d)(1) defines the term "federal benefit" as "the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States." However, 21 U.S.C. § 862(d)(2) states that the definition "does not include any retirement, welfare, Social Security, health, disability, veterans benefits, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility."

<sup>7</sup> Although the authority for the DPFD Clearinghouse Program was established in 1993, the program guide used to implement the DPFD Clearinghouse Program was not published until June 2000.

agencies through the EPLS. The Clearinghouse database records regarding exclusions pursuant to 21 U.S.C. § 862 are also provided directly to the Department of Education and the Federal Communications Commission to help ensure that sanctioned drug offenders are excluded from receiving benefits.<sup>8</sup>

## **Office of the Inspector General Audit Approach**

The objectives of our audit were to determine: (1) the extent that cases qualifying for statutory debarment are reported for inclusion in the EPLS by DOJ litigating divisions; (2) the completeness and accuracy of records entered into the EPLS for statutory debarment actions maintained by DOJ; and (3) the timeliness of reporting statutory debarment actions to the EPLS.

To accomplish the objectives of our audit, we performed work at DOJ litigating divisions to identify qualifying cases. We also conducted interviews with officials at the Criminal Division, Antitrust Division, and 5 of the 94 U.S. Attorneys' Offices (USAO) to determine how cases are identified and tracked, as well as what policies and procedures exist to ensure all qualifying cases are submitted to the Clearinghouse within the BJA.<sup>9</sup>

We analyzed the Clearinghouse database and the EPLS data maintained by the BJA to determine the reliability, completeness, accuracy, and timeliness of entry of the data. We also interviewed BJA officials to determine what policies and procedures exist for qualifying case receipt, entry into the Clearinghouse database, and transmission to the EPLS.

The results of our audit are detailed in the Findings and Recommendations section of this report. Appendix I contains a more detailed description of our audit objectives, scope, and methodology.

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<sup>8</sup> DOJ and the Department of Education have determined that querying potential award recipients against the Clearinghouse database is more efficient and effective than searching for individuals in the EPLS.

<sup>9</sup> Litigating divisions within DOJ include: the USAOs, Criminal Division, Civil Division, Civil Rights Division, Antitrust Division, Tax Division, and the Environmental and Natural Resources Division. Audit work was performed at the USAOs for the districts of Colorado, Kansas, Arizona, Eastern Virginia, and Southern California; the Executive Office for U.S. Attorneys; Criminal Division; and Antitrust Division. During our preliminary audit work, Civil Division officials confirmed that the Civil Division litigates cases involving DOD contracts, but because 10 U.S.C. § 2408 does not apply to civil cases, the Civil Division was excluded from the scope of our audit.

## **Results in Brief**

An adequate system has not been established to ensure that DOJ fulfills its responsibilities pursuant to statutory requirements under 10 U.S.C. § 2408 and 21 U.S.C. § 862. Specifically, we found:

- Not all qualifying cases are submitted to the Clearinghouse by DOJ litigating divisions;
- Not all cases submitted to the Clearinghouse are entered into the Clearinghouse database, the EPLS, or both;
- Non-qualifying cases were inappropriately entered into the EPLS by the Clearinghouse;
- Data entered into the Clearinghouse database and the EPLS is not always accurate or complete, and corresponding records in each database are not always identical; and
- Data entry into the Clearinghouse database and the EPLS is not consistently performed in a timely manner.

In sum, we found that statutory exclusions pursuant to 10 U.S.C. § 2408 and 21 U.S.C. § 862 are not completely and accurately reported, aggregated, and shared with the relevant federal agencies to inform their award decisions. These shortcomings create the possibility that federal funding may be inadvertently and inappropriately awarded to excluded individuals.

Our report includes 21 recommendations to improve the effectiveness of the two statutory debarment programs administered by DOJ. The remaining sections of this Executive Summary describe our audit findings in more detail.

### **Qualifying Cases Not Consistently Submitted to the BJA**

During our audit, we found that not all qualifying cases were submitted by DOJ litigating divisions or sentencing courts to the BJA for inclusion in the Clearinghouse database and the EPLS.

The Criminal Division's Public Integrity Section, Antitrust Division, and four of the five USAOs we visited were unaware of the reporting requirements for statutory debarment under 10 U.S.C. § 2408, in part because the BJA had performed limited outreach using outdated contact

information. Additionally, we found that these divisions and USAOs did not have policies and procedures in place to identify and report qualifying statutory debarments.<sup>10</sup> One of the five USAOs we visited did have policies and procedures in place to identify and report cases qualifying for statutory debarment pursuant to 10 U.S.C. § 2408. However, during our audit of this USAO, we found that 8 of its 19 cases qualifying for statutory debarment pursuant to 10 U.S.C. § 2408 (42 percent) were not reported to the EPLS by any agency.

We also found that the BJA had not performed any outreach to state and federal courts to request cases where the court had imposed statutory debarment as a result of drug trafficking and possession convictions pursuant to 21 U.S.C. § 862. Although our sample was limited, we identified five federal cases in which the denial of federal benefits had been imposed by a judge, but had not been submitted to the Clearinghouse for entry into the Clearinghouse database and the EPLS.

If qualifying cases under 10 U.S.C. § 2408 and 21 U.S.C. § 862 are not submitted to the BJA, the BJA cannot enter them into the Clearinghouse database or the EPLS, thus creating the risk that federal agencies, contractors, and first-tier subcontractors may inadvertently and inappropriately award DOD contract funds or federal benefits to excluded individuals.

### **Submissions Not Entered into the Clearinghouse Database or the EPLS**

To ensure that all cases submitted to the BJA were entered into the Clearinghouse database and the EPLS, we compared DOJ litigating divisions' submissions of cases qualifying for debarment pursuant to 10 U.S.C. § 2408 to the Clearinghouse database and the EPLS. We did

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<sup>10</sup> Criminal Division's Fraud Section was added to the DPFDF outreach listing in April 2009. However, prior to April 2009 the BJA did not request Fraud Section cases because the guidelines established at the inception of the DPFDF program directed the BJA to only accept cases from USAOs.

Additionally, the Antitrust Division was not aware of the reporting requirements for statutory debarment under 10 U.S.C. § 2408 until informed in late 2008 by a DOD official. In December 2008, the Antitrust Division instructed its attorneys to submit qualifying cases to the Clearinghouse. However, Antitrust Division attorneys did not consistently report qualifying cases to the Clearinghouse because they mistakenly believed that the subsequent administrative debarment and reporting of their cases by DOD components to the EPLS fulfilled statutory debarment reporting requirements. Antitrust Division officials stated that they were not informed by the BJA of the reporting requirements and never received a quarterly request for qualifying cases prior to April 2012.

not obtain a list of drug cases submitted by federal and state courts to the BJA because our review was limited to DOJ components, and the federal and state court systems are outside of the jurisdiction of the OIG. Therefore, our review specifically covered only the qualifying DOD cases submitted by the DOJ litigating divisions.

We found that not all the qualifying cases submitted to the BJA were entered into the Clearinghouse database, the EPLS, or both. According to BJA officials, this occurred because USAOs had submitted incomplete case files and had not responded to the Clearinghouse's requests for additional information on submitted cases. Federal agencies, DOD contractors, and first-tier subcontractors query the Clearinghouse database to determine an individual's employment or contract eligibility. Additionally, the EPLS is used by government agencies and the public to identify those individuals excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits. Therefore, maintaining an incomplete list of excluded individuals in the Clearinghouse database or the EPLS creates the potential that DOD contract funds or federal benefits could be awarded to ineligible individuals.

### **Data Discrepancies Between the Clearinghouse Database and the EPLS**

During our audit, we found that data was not consistently entered into both the Clearinghouse database and the EPLS. We identified records that had been entered into the Clearinghouse database or the EPLS, but not both. We also found cases that did not qualify for exclusion yet were entered into the EPLS, creating the potential for these individuals to be improperly denied federal benefits. Finally, we reviewed source documentation for cases entered into the Clearinghouse database and found that data was not always accurately or completely entered into that database. Our review identified errors in the following fields: last name, first name, middle name, social security number, address, denial start date, denial end date, and the EPLS Cause and Treatment Code. We calculated the estimated exception rate of records with at least one error in the tested data fields to be 10.76 percent.<sup>11</sup> We did not test the accuracy of records in the EPLS as compared to source documentation. However, records entered into the

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<sup>11</sup> We computed an estimate of the exception rate of records with at least 1 error in the tested data fields and projected the number of exceptions to the sample universe of 5,618 records at 95 percent confidence. This calculation resulted in an estimated exception rate of 10.76 percent.

Clearinghouse database are uploaded to the EPLS, and any inaccuracies contained within the data in the Clearinghouse database could potentially be carried forward to the EPLS when uploading occurs.<sup>12</sup>

We brought these discrepancies to the BJA's attention and were told that that they generally resulted from data entry errors, and from the contractor's failure to perform semi-annual data reconciliations between the Clearinghouse database and the EPLS and otherwise ensure the accuracy of the data entered into the Clearinghouse database. Incomplete, inaccurate, and inconsistent data within the Clearinghouse database and the EPLS increases the risk of federal agencies, contractors, and first-tier subcontractors unknowingly awarding DOD contract funds or federal benefits to an excluded individual.

### **Timeliness of Entry of Data into the EPLS**

For the Clearinghouse database and the EPLS to be effective, excluded individuals' information must be communicated to the user communities in a timely manner. Although timeliness of entry into the EPLS is not defined under 10 U.S.C. § 2408 or 21 U.S.C. § 862, according to BJA policy, qualifying DOD cases are requested from the USAOs quarterly and manually entered into the Clearinghouse database and the EPLS within 5 working days of the receipt of a complete case file. Data for drug cases are entered into the Clearinghouse database within 5 working days of receiving a case file and then transmitted on a monthly basis for inclusion in the EPLS.

During our audit, we found that generally cases were not entered into the Clearinghouse database within the timeframes established in the BJA's policy. BJA policy requires that qualifying DOD cases be entered into the Clearinghouse and EPLS within 5 working days of receipt, and that qualifying drug cases are entered into the Clearinghouse within 5 days of receipt and uploaded to the EPLS on a monthly basis. We found that only 39 percent of qualifying DOD cases and 67 percent of qualifying drug cases were entered in a timely manner, and that on average it took 38 working days to enter a qualifying DOD case from the Clearinghouse database into the EPLS and 158 days to upload a qualifying drug case to the EPLS from the Clearinghouse database.

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<sup>12</sup> BJA officials explained that defense-related cases are manually entered into the EPLS and Clearinghouse databases within 5 working days of receiving the complete information. In cases that are manually entered into both databases instead of automatically uploaded from the Clearinghouse database, data could potentially be correctly reported in the EPLS, but incorrectly reported in the Clearinghouse database.

Additionally, despite a requirement in the contract to track when cases are received, several cases were missing date stamps, and we were therefore unable to evaluate the timeliness of those entries into the Clearinghouse database and the EPLS. We found that 90 of the 292 cases (approximately 31 percent) provided by the BJA for testing did not have a date of receipt recorded.

Although BJA policy and the requirements of the contract specify internal control measures to ensure timeliness of entry, it does not appear that the contractor is adhering to these policies and procedures, nor is the BJA identifying and bringing these deficiencies in the operation of the internal controls to the contractor's attention. Without timely entry of cases into the Clearinghouse database and the EPLS, federal agencies, contractors, and first-tier subcontractors may be awarding DOD contract funds or federal benefits to excluded individuals.

## **Conclusions and Recommendations**

DOJ did not report all cases qualifying for statutory debarment as a result of conviction for fraud or any felony in association with a DOD contract to the EPLS for the mandatory 5-year debarment in accordance with 10 U.S.C. § 2408. This reporting shortfall was the result of the BJA's inadequate outreach and communication of reporting responsibilities to DOJ litigating components, USAOs not submitting complete case files, and a lack of a reliable mechanism within the USAOs and other DOJ litigating divisions to identify and report all cases qualifying for statutory debarment.

Additionally, inadequate outreach and education by the BJA to state and federal courts regarding the reporting of drug trafficking and possession cases pursuant to 21 U.S.C. § 862 resulted in excluded individuals' information not being forwarded to the BJA for inclusion in the Clearinghouse database and the EPLS.

We also found that the BJA failed to adequately ensure that exclusions reported to the Clearinghouse were accurately and completely added to the Clearinghouse database and the EPLS in a timely manner. This problem appears to be the result of inadequate oversight of the contractor to ensure compliance with BJA policies and contractor requirements. These deficiencies create the potential for federal agencies, contractors, and first-tier subcontractors to unknowingly and inappropriately award DOD contract funds or federal benefits to ineligible individuals.

Finally, individuals convicted of crimes not qualifying for debarment pursuant to 10 U.S.C. § 2408 and 21 U.S.C. § 862 were incorrectly reported

to the EPLS by the Clearinghouse. As a result, although we did not identify any specific instances during our audit, the potential exists for these individuals to be improperly denied federal benefits.

Our audit work and findings resulted in 21 recommendations to DOJ and its components to improve the effectiveness of statutory debarment programs within DOJ. These recommendations include the development and implementation of additional policies and procedures to improve the completeness and accuracy of the reporting of debarment actions pursuant to 10 U.S.C. § 2408 and 21 U.S.C. § 862, the correction of errors and omissions identified in DOJ records maintained in the EPLS and Clearinghouse databases, and the enhancement of the monitoring of Clearinghouse contractors and staff to include more frequent data checks and evaluations of contractor performance.

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## INTRODUCTION

Suspension and debarment are serious actions that a federal agency may take to preclude individuals or entities from transacting with the government on procurements, grants, and other government funding mechanisms. Suspension and debarment cover both procurement and non-procurement activities, and can have a government-wide, reciprocal effect to limit affected parties' ability to obtain federal funding.<sup>1</sup> Suspension and debarment decisions are made either administratively, by each agency's Suspension and Debarment Official (SDO), or statutorily, as a matter of law as a result of convictions for qualifying offenses.

Administrative exclusions are discretionary actions taken under the Federal Acquisition Regulation (FAR), under specific agency regulations, or under the Government-wide Non-procurement Suspension and Debarment Common Rule.<sup>2</sup> These actions are related to awards made by an agency and are taken at the discretion of the SDO. These actions are not punitive, but rather actions taken to protect the public from irresponsible individuals and entities. Debarment is a final decision to exclude an individual or entity for a specified period from receiving federal funding after a formalized process and determination by a federal agency's debarring official. Suspension is a temporary action effective immediately to protect public interest pending the completion of an investigation or legal proceedings.

Actions taken as a result of violations of a statute or executive order are considered statutory. Unlike administrative exclusions, statutory suspensions and debarments are punitive. Statutory debarments are generally mandatory for a fixed period of time specified by each individual statute, while statutory suspensions are imposed until such time as a designated official finds the individual is no longer in violation of the statute. The Department of Justice (DOJ) administers two types of statutory debarments: fraud or felony convictions arising out of a contract with the

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<sup>1</sup> Executive Order 12549 designated the Office of Management and Budget (OMB) as the federal agency responsible for establishing administrative non-procurement suspension and debarment guidelines for all Executive branch agencies. Subpart 9.4 of the Federal Acquisition Regulation (FAR) set forth guidelines covering administrative suspension and debarment for procurement activities. Executive Order 12689 expanded the scope of administrative procurement and non-procurement suspension and debarment actions and mandated government-wide, reciprocal effect.

<sup>2</sup> Government-wide Non-procurement Suspension and Debarment Common Rule is codified in 2 C.F.R. § 180 and the Department of Justice's (DOJ) adoption of the Common Rule is codified in 28 C.F.R. § 67. Additionally, DOJ policy on administrative suspension and debarment is defined in Justice Acquisition Regulations, 48 C.F.R. 2809.

Department of Defense (DOD) pursuant to 10 U.S.C. § 2408, and drug trafficking or possession convictions pursuant to 21 U.S.C. § 862.<sup>3</sup>

## **Excluded Parties List System**

The Excluded Parties Listing System (EPLS) is an electronic, web-based system maintained by the General Services Administration (GSA).<sup>4</sup> The EPLS contains government-wide information concerning suspension and debarment actions and identifies parties excluded from receiving federal awards. The EPLS is available to government agencies and the public. Entry and maintenance of individual records within the EPLS are the responsibility of each federal agency.

As of October 12, 2011, the EPLS database contained a total of 128,194 records, representing 80,182 currently excluded parties and 48,012 exclusions that have expired. DOJ maintains 12,631 of the total 128,194 records, 12,570 statutory debarments and 61 administrative debarments. Awarding officials are required to review the EPLS prior to making awards to ensure that no award is made to suspended or debarred parties.

## **DOD Fraud and Felony Convictions**

Under 10 U.S.C. § 2408, individuals convicted of fraud or any other felony arising out of a contract with the DOD shall be prohibited from being involved with a defense contract or first-tier subcontract of a defense contract.<sup>5</sup> This includes: (1) working in a management or supervisory capacity, (2) serving on the board of directors, (3) serving as a consultant, or (4) being involved in any other way, as determined under regulations prescribed by the Secretary of Defense, with a defense contract or first-tier

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<sup>3</sup> 10 U.S.C. § 2408 and 21 U.S.C. § 862 mandate debarment, therefore DOJ is not responsible for any statutory suspensions. Administrative suspension and debarment within DOJ is the subject of a prior Office of the Inspector General audit: U.S. Department of Justice Office of the Inspector General, *Audit of Administrative Suspension, Debarment, and Other Internal Remedies Within the Department of Justice*, Audit Report 12-01 (October 2011).

<sup>4</sup> The web address for the EPLS is <http://www.EPLS.gov>.

<sup>5</sup> The Bureau of Justice Assistance (BJA) defines "arising out of a contract" as an act in connection with attempting to obtain, obtaining, or performing a contract or first-tier subcontract of any agency, department, or component of the DOD in accordance with 48 C.F.R. § 252.203-7001(a)(1).

subcontract.<sup>6</sup> The debarment is mandatory and lasts for a period of 5 years after the date of conviction unless the Secretary of Defense determines that the 5-year period should be waived in the interest of national security.<sup>7</sup>

The statute requires the Attorney General to establish a single point of contact for defense contractors and subcontractors to promptly obtain information regarding a person's exclusion status. In 1993, the Attorney General established the Defense Procurement Fraud Debarment (DPFD) Clearinghouse as the repository for information regarding an individual's exclusion status and assigned the responsibility of administering exclusions under 10 U.S.C. § 2408 to the Bureau of Justice Assistance (BJA).

Quarterly, the BJA requests each of the 94 United States Attorneys' Offices (USAO) to submit cases prosecuted by the district that resulted in a fraud or felony conviction arising out of a contract with the DOD and qualify for exclusion under 10 U.S.C. § 2408. For each qualifying case, the BJA requests that the district forward the judgment and commitment order, the indictment, and the individual's social security number, date of birth, and mailing address, to the DPFD Clearinghouse. DOJ litigating divisions can also submit qualifying cases to the DPFD Clearinghouse once a conviction is received rather than waiting for the BJA's quarterly request.<sup>8</sup>

After receiving a case, DPFD Clearinghouse staff review the information for completeness and enter the required information into the DPFD Clearinghouse database. This information is then transmitted to GSA for inclusion in the EPLS. In addition to collecting the information related to convicted individuals and maintaining the database of excluded individuals, the BJA responds to inquiries from federal agencies, DOD contractors, and first-tier subcontractors to determine an individual's employment or contract eligibility.

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<sup>6</sup> The prohibition does not apply to a contract that is less than or equal to the simplified acquisition threshold, a contract for the acquisition of commercial items, or a subcontract under a contract that is less than or equal to the simplified acquisition threshold or for commercial items. Federal Acquisition Regulation Subpart 22.801 defines a first-tier subcontractor as a subcontractor holding a subcontract awarded directly by a federal government prime contractor. Defense Federal Acquisition Regulation Supplement Subpart 203.507-2(a) prescribes policies and procedures to implement 10 U.S.C. § 2408.

<sup>7</sup> The BJA defines "conviction date" as the date the judgment is entered against an individual in accordance with 48 C.F.R. § 252.203-7001(a)(3).

<sup>8</sup> DOJ litigating divisions include the: USAOs, Criminal Division, Civil Division, Civil Rights Division, Antitrust Division, Tax Division, and Environmental and Natural Resources Division.

## Drug Trafficking and Possession Convictions

The Denial of Federal Benefits (DFB) Program is based on 21 U.S.C. § 862, which provides federal and state courts the ability to deny all or selected federal benefits to individuals convicted of trafficking in or possession of drugs in combination with other sanctions.<sup>9</sup> The denial of federal benefits sanction helps ensure that individuals found guilty of violating the Controlled Substances Act will, at the courts' discretion, forfeit their claims to most taxpayer-supported economic benefits and other privileges. The program serves as a warning to casual drug users that, as students, they can lose their student loans; as broadcasters, they can lose their Federal Communications Commission licenses; as physicians, they can lose their authority to prescribe medicine; as pilots, they can lose their Federal Aviation Administration licenses; and as business owners, they can lose their Small Business Administration loans or the right to contract with the federal government.

Drug related debarments are generally discretionary decisions of the court and carry different implications depending on the number of possession or trafficking convictions an individual has received. At the court's discretion, for a drug possessor's first conviction of any federal or state offense involving the possession of a controlled substance, the individual shall be ineligible for any or all federal benefits for up to 1 year, and up to 5 years for a second or subsequent conviction for such an offense. At the discretion of the court, for a drug trafficker's first conviction of any federal or state offense consisting of the distribution of controlled substances, the individual shall be ineligible for any or all federal benefits for up to 5 years after such conviction, and up to 10 years for the second offense. Upon a third or subsequent conviction for such an offense, an individual shall be permanently ineligible for all federal benefits.

As required by the statute, a plan was submitted by former President George H. W. Bush to Congress outlining the implementation of the program. The plan assigned general supervision and direction of the DFB Program to the Attorney General, who delegated administration to the Assistant Attorney General for the Office of Justice Programs (OJP), which in turn delegated administration to the BJA. The BJA maintains an "information

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<sup>9</sup> 21 U.S.C. § 862(d)(1) defines the term "federal benefit" as "the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States." However, 21 U.S.C. § 862(d)(2) states that the definition "does not include any retirement, welfare, Social Security, health, disability, veterans benefits, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility."

clearinghouse" of all state and federal courts provided information regarding sentences of drug traffickers or possessors that include denial of benefits, known as the DFB Clearinghouse.

After a judgment to deny federal benefits is imposed as a result of a conviction for a qualifying offense, the sentencing court submits information related to the convicted individual to the DFB Clearinghouse at the BJA. The DFB Clearinghouse information is: (1) forwarded to GSA for inclusion in the EPLS; (2) provided directly to the Department of Education, the Federal Communications Commission, and other providers of federal benefits; and (3) used by DFB Clearinghouse staff to respond to inquiries from federal agencies and contractors regarding a specific individual's denial status.<sup>10</sup>

### **The BJA's Implementation of Statutory Responsibilities**

In addition to obtaining qualifying cases from federal and local courts and the DOJ litigating divisions, the BJA is responsible for the entry and maintenance of records in the DFB and DPFDF Clearinghouses and the EPLS. According to BJA officials, a contractor provides operations, maintenance, and information service support services to the DFB and DPFDF Clearinghouses.<sup>11</sup> The DFB and DPFDF Clearinghouses are two legally distinct clearinghouses. However, both the DFB and DPFDF Clearinghouses (collectively, the Clearinghouse) share a single point of contact that utilizes the same staff and follow a single set of policies and procedures to receive and report both DFB and DPFDF qualifying cases. Information regarding excluded individuals from both the DFB and DPFDF Clearinghouses is maintained in a single database (Clearinghouse database).<sup>12</sup>

According to BJA policy, the BJA receives a qualifying case from the DOJ litigating divisions or the courts, which are collected weekly by the contractor.<sup>13</sup> The contractor reviews the file for qualification and completeness. If there is a question regarding a case's eligibility, the contractor submits the case to the BJA Program Director for follow-up with the submitting court or prosecutor. However, the Clearinghouse relies upon the legal determination of the court or prosecutor responsible for the case as

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<sup>10</sup> DOJ and the Department of Education have determined that matching against the DOJ database is more efficient and effective than searching for individuals in EPLS.

<sup>11</sup> REI Systems, Inc. has been the contractor for the BJA since November 2004.

<sup>12</sup> Throughout the report we will refer to the single database as the Clearinghouse database.

<sup>13</sup> Qualifying cases may also be submitted directly to the contractor by fax, mail, or e-mail.

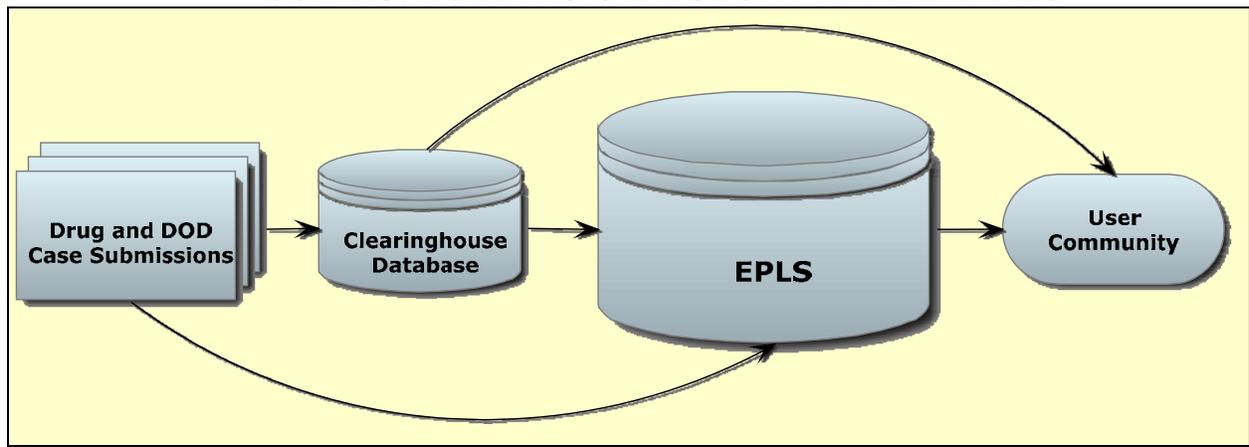
to whether a legal justification exists for inclusion in the Clearinghouse database and the EPLS. If the case file does not contain complete information, the contractor contacts the submitting court or DOJ litigating component to obtain additional information. After receiving a complete qualifying case file, the contractor enters the individual's information into the Clearinghouse database. After each case or batch of cases has been entered, a report is generated by the contractor and compared to the court documents that were submitted. Additionally, the BJA verifies and signs off on the accuracy of each record. The contractor is required to track the verification process of each record entered into the Clearinghouse database, including the date the case is received from the BJA, the date the case is verified by contractor staff, and the date the BJA verifies the accuracy and signs off on the record.

Data is transmitted monthly to the EPLS in the form of an Extensible Markup Language (XML) printout, which is e-mailed to GSA and automatically uploaded to the EPLS. Following the e-mail submission, the status of an upload submission, whether the submission has been accepted or rejected, is reported to the contractor. For all rejected submissions, the contractor manually uploads the profiles into EPLS.<sup>14</sup> According to the DFB and DPFDP Program Procedure Manual, only the cases that have been entered into the Clearinghouse database since the last e-mailed data transmission are entered into the EPLS. BJA officials explained that, although most individuals' information is entered into the EPLS in this manner, for defense-related cases, staff manually enters an individual's information into the EPLS and Clearinghouse database within 5 working days of receiving the complete information. Exhibit 1 illustrates the process by which qualifying cases are communicated to the Clearinghouse database and the EPLS.

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<sup>14</sup> If an upload contains records that are not in the correct XML format, as prescribed by GSA, the uploaded information is rejected by the EPLS. The DFB and DPFDP Program manual states that the most common reason for rejection is because there was no social security number for the individual.

## EXHIBIT 1: BJA PROCESS FOR COMMUNICATING STATUTORY DEBARMENTS



Source: BJA

Since the Clearinghouse database and the EPLS are used by different external users, ensuring data is accurately and completely entered into the Clearinghouse database and the EPLS enables the government to prevent DOD contract funds or federal benefits from being awarded to excluded individuals.<sup>15</sup> The contractor is required to verify the accuracy and security of the data transmissions. Every 6 months, the contractor is required to ensure the data in the EPLS matches the data in the Clearinghouse database. Additionally, the DFB Program Guide states that the BJA is responsible for ensuring the accuracy of entries in the EPLS, by performing a monthly review and comparing the entries in the EPLS to the information in the Clearinghouse database.

### Office of the Inspector General Audit Approach

The objectives of our audit were to determine: (1) the extent that cases qualifying for statutory debarment are reported for inclusion in the EPLS by DOJ litigating divisions; (2) the completeness and accuracy of records entered into the EPLS for statutory debarment actions maintained by DOJ; and (3) the timeliness of reporting statutory debarment actions to the EPLS.

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<sup>15</sup> As previously stated, the Clearinghouse data related to individuals convicted of drug trafficking or possession is provided directly to the Department of Education, the Federal Communications Commission, and other providers of federal benefits to help ensure that sanctioned drug offenders are excluded from receiving benefits. The Clearinghouse responds to inquires from federal agencies, DOD contractors, and first-tier subcontractors to determine an individual's employment or contract eligibility for DOD contract funding. The EPLS is available to government agencies and the public.

To accomplish these objectives, we performed work at DOJ litigating divisions to identify qualifying cases. We also conducted interviews with officials at the Criminal Division, Antitrust Division, and 5 of the 94 USAOs to determine how cases are identified and tracked as well as what policies and procedures exist to ensure all qualifying cases are submitted to the Clearinghouse within the BJA.<sup>16</sup>

We analyzed the Clearinghouse database and the EPLS data maintained by the BJA to determine the reliability, completeness, and accuracy of the data. We also interviewed BJA officials to determine what policies and procedures exist for qualifying case receipt, entry into the Clearinghouse database, and transmission to the EPLS. Appendix I contains a more detailed description of our audit objectives, scope, and methodology.

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<sup>16</sup> Audit work was performed at the USAOs for the districts of Colorado, Kansas, Arizona, Eastern Virginia, and Southern California; Executive Office for U.S. Attorneys; Criminal Division; and Antitrust Division. During our preliminary audit work, Civil Division officials confirmed that Civil Division litigates cases involving DOD contracts, but because 10 U.S.C. § 2408 does not apply to civil cases, the Civil Division was excluded from the scope of our audit.

## **FINDINGS AND RECOMMENDATIONS**

### **I. QUALIFYING CASES NOT CONSISTENTLY SUBMITTED TO THE BJA**

During our audit, we found that the Public Integrity Section of the Criminal Division, the Antitrust Division, and four of the five USAOs visited were unaware of the reporting requirements for statutory debarment under 10 U.S.C. § 2408 because the BJA had performed limited outreach and was using outdated contact information. Individuals qualifying for debarment under 10 U.S.C. § 2408 were not reported to the BJA for inclusion in the Clearinghouse database and the EPLS. Additionally, we found that these divisions and USAOs did not have policies and procedures to identify and report qualifying statutory debarments to the BJA for inclusion into the EPLS. We also found that the BJA had not performed any outreach to state and federal courts to request cases where the court had imposed statutory debarment as a result of drug trafficking and possession convictions pursuant to 21 U.S.C. § 862. As a result, we identified drug cases and DOD-related fraud and felony cases that qualified for statutory debarment but had not been entered into the EPLS. If qualifying cases are not entered into the Clearinghouse database or the EPLS, federal agencies, contractors, and first-tier subcontractors may be awarding DOD contract funds or federal benefits to excluded individuals.

#### **Fraud and Other Felony Convictions Related to a DOD Contract**

Fraud or felony cases involving DOD procurement can be federally prosecuted by DOJ litigating divisions. During site visits to the USAOs for the districts of Colorado, Kansas, Arizona, Southern California, and Eastern Virginia, we reviewed documentation and conducted interviews to determine what policies and procedures are in place to ensure compliance with reporting requirements under 10 U.S.C. § 2408. Under the statute, individuals convicted of fraud or any other felony arising out of a contract with the DOD are prohibited from receiving DOD contract funds. To meet the statutory reporting requirement, the BJA sends a quarterly reminder to the USAOs requesting all cases qualifying for debarment under 10 U.S.C. § 2408 be forwarded for inclusion in the Clearinghouse database and the EPLS. According to BJA officials, although a reminder is sent quarterly, the USAOs may report qualifying cases as they are identified.

To determine if all qualifying cases were submitted to the BJA for inclusion in the Clearinghouse database and the EPLS, we requested a list of cases that have resulted in convictions related to DOD contracts from fiscal years (FY) 2005 to 2010 from each DOJ litigating division within the scope of our audit. We also requested a list from the Clearinghouse of all DOD cases that had been submitted by DOJ litigating divisions. We then compared the two lists to identify any cases that qualified but were not submitted to the Clearinghouse.

### *Antitrust Division's Participation*

The Antitrust Division provided a list of 71 cases qualifying for debarment under 10 U.S.C. § 2408 that involved 66 individuals and 21 companies. According to the statute, only individuals qualify for exclusion, therefore the 66 individuals convicted of fraud or a felony in connection with a DOD contract qualify for debarment and should have been forwarded to the Clearinghouse.

According to Antitrust Division officials, the Antitrust Division was not aware of the reporting requirements for statutory debarment under 10 U.S.C. § 2408 until informed in late 2008 by a DOD official. Additionally, Antitrust Division officials indicated that they were never informed by the BJA of the reporting requirements and never received a quarterly request for qualifying cases during the scope of our audit. In December 2008, after being informed of the requirements by a DOD official, the Antitrust Division instructed its attorneys to submit qualifying cases to the Clearinghouse. However, Antitrust Division attorneys did not subsequently report qualifying cases to the Clearinghouse because they mistakenly believed that the subsequent administrative debarment and reporting of their cases by DOD components to the EPLS fulfilled statutory debarment reporting requirements pursuant to 10 U.S.C. § 2408. As such, the Antitrust Division did not have specific procedures to refer cases resulting in convictions related to a fraud or felony arising out of a contract with the DOD to the Clearinghouse.

Although Antitrust Division officials told the OIG that it did not receive quarterly requests from the BJA, it had submitted 3 of the 66 qualifying individuals to the Clearinghouse. We asked Antitrust Division officials why 3 of the 66 individuals were submitted despite not knowing of the reporting requirements. We were told that the Antitrust Division works very closely with agents from affected agencies in an investigation and previously relied upon military officials involved with investigating violations relating to DOD contracts to report matters for exclusion. However, for these three individuals, all related to one case, the DOD requested that the Antitrust Division submit the individuals to the Clearinghouse.

Since the Antitrust Division mistakenly relied on the affected agency to impose a suspension or debarment, we searched the EPLS to determine whether the 66 individuals had been administratively excluded by the DOD, statutorily excluded by the Clearinghouse, or never entered into the EPLS. Of the 66 individuals, we found as of June 9, 2011: 7 had been entered for statutory exclusion by the Clearinghouse; 19 individuals had been entered for administrative exclusion by the affected agency, but the exclusion was for longer than required under the statute; 27 individuals were entered for administrative exclusion by the affected agency, but the exclusion was shorter than required under the statute; and 13 individuals were never entered into the EPLS by any agency.<sup>17</sup>

Although 46 of the 66 individuals were entered into the EPLS by the affected agency, these individuals were not entered into the Clearinghouse database. Therefore, direct users of the Clearinghouse database—federal agencies, DOD contractors, and first-tier subcontractors—would not be aware of these exclusions and could potentially award DOD contract funds to excluded individuals. Additionally, the 27 individuals who were administratively excluded by the affected agency for less time than required by the statute could result in these individuals obtaining DOD contract funding before their statutory debarment had expired. Finally, an agency SDO may reduce the original period of debarment as prescribed by the FAR, Subpart 9.406-4. Therefore, the potential exists that the debarment period for the 19 individuals that were administratively excluded by the affected agency for longer than required under the statute may be reduced, which could result in an individual obtaining DOD funding before the statutory debarment had expired.

### *Criminal Division's Participation*

Two sections of the Criminal Division indicated that they prosecute cases involving DOD procurement: the Fraud Section and the Public Integrity Section. The Fraud Section provided a listing of 34 individuals qualifying for debarment under 10 U.S.C. § 2408, and the Public Integrity Section provided a listing of 29 individuals.<sup>18</sup> According to Criminal Division

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<sup>17</sup> Three of the seven cases entered into the EPLS by the Clearinghouse were submitted by the Antitrust Division. The remaining four cases entered by the Clearinghouse were submitted by the USAOs.

<sup>18</sup> Two qualifying cases provided by the Public Integrity Section were jointly prosecuted with the Fraud Section and the Antitrust Division and were also on the Fraud Section's and Antitrust Division's lists of qualifying cases. In addition, six qualifying cases provided by the Public Integrity Section were jointly prosecuted with the Antitrust Division and were also on its list of qualifying cases.

officials, prior to April 2009, the Fraud Section had not received any requests for qualifying DOD cases from the BJA.<sup>19</sup> However, the Criminal Division provided documentation demonstrating that they notified the Clearinghouse in 2007 that DOJ's reporting of debarments under 10 U.S.C. § 2408 may not be complete.

We asked BJA officials why they had not requested qualifying cases from the Criminal Division and were informed that when the DPFDP Program was first established the decision was made to only request cases from USAOs. Although this decision was made more than 10 years ago, the BJA continued to follow these established guidelines even after they became aware that other components within DOJ litigate some qualifying cases independently of any USAO. Later, in 2009, the Criminal Division and the DOD met with the BJA to express concerns that the Clearinghouse was not accepting qualifying cases from all DOJ litigating divisions. As a result, the Fraud Section was added to the outreach listing for quarterly case requests. Despite the BJA's awareness of qualifying cases originating from outside the USAOs, it did not perform any additional outreach to obtain qualifying cases from other DOJ litigating divisions. As of November 2011, the BJA had not contacted the Antitrust Division or Public Integrity Section of the Criminal Division.

From April 2009 to December 2011, the Fraud Section submitted 16 qualifying cases to the Clearinghouse.<sup>20</sup> According to Fraud Section officials, qualifying cases are identified through its internal case management system as well as quarterly e-mails to prosecuting attorneys of the Fraud Section requesting any qualifying cases. We compared the list of qualifying cases provided by the Fraud Section to the list of cases submitted to the Clearinghouse and identified three DOD cases that were on the list submitted to the Clearinghouse, but were not included on the list of qualifying cases the Fraud Section provided to the OIG. Additionally, we identified seven qualifying DOD cases that had not been submitted to the Clearinghouse. The Fraud Section also provided another 13 qualifying cases that were not submitted to the Clearinghouse because they occurred prior to 2009, when the BJA first requested qualifying cases from the Fraud Section... Fraud Section officials explained that the discrepancy between the number of cases provided to the OIG as qualifying and the number

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<sup>19</sup> The first BJA request the Fraud Section received was for the submission of all qualifying cases for the third quarter of fiscal year 2009, which is April 2009 through June 2009.

<sup>20</sup> One case was submitted by the Fraud Section in two separate responses to the BJA's quarterly request for qualifying cases.

submitted to the Clearinghouse arose due to different staff preparing the listing of qualified cases provided to the OIG and the submissions to the BJA. Fraud Section officials further explained that the majority of the cases not submitted were convictions related to bribery, and that the Fraud Section would promptly submit the missing cases to the Clearinghouse.

Public Integrity Section officials told us they were unaware of their obligations under 10 U.S.C § 2408. They also informed us that they were never contacted by the BJA regarding the reporting requirements for qualifying convictions. Because they were unaware of their obligations to report qualifying cases, the Public Integrity Section did not have specific procedures to refer qualifying cases to the Clearinghouse.

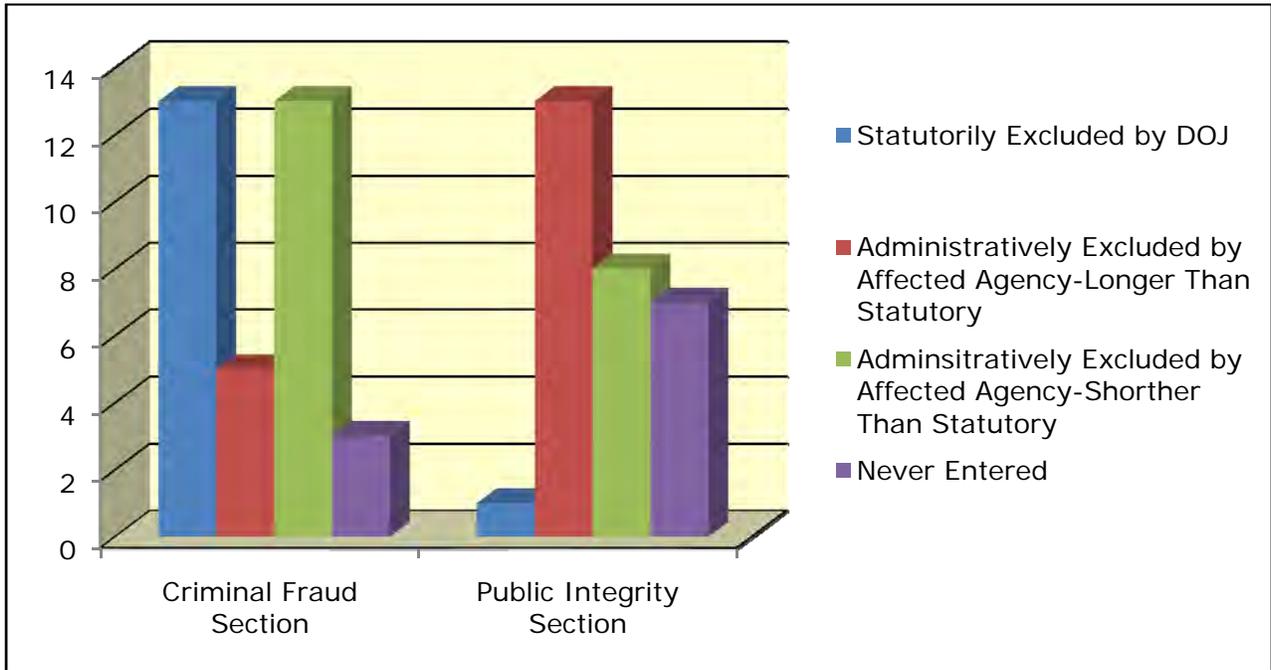
Of the qualifying cases provided by the Fraud Section and Public Integrity Section, we searched the EPLS to determine which individuals had been administratively excluded by the DOD, statutorily excluded by the Clearinghouse, or never entered into the EPLS. Of the 34 individuals prosecuted by the Fraud Section, we found that as of June 27, 2011: 13 individuals had been statutorily excluded by the Clearinghouse; 5 individuals had been administratively excluded by the affected agency, but the exclusion was for longer than required under the statute; 13 individuals were administratively excluded by the affected agency, but the exclusion was shorter than required under the statute; and 3 individuals were never entered into the EPLS by any agency.<sup>21</sup> Of the 29 individuals prosecuted by the Public Integrity Section, we found that as of June 27, 2011: 1 individual had been statutorily excluded by the Clearinghouse; 13 individuals had been administratively excluded by the affected agency, but the exclusion was for longer than required under the statute; 8 individuals were administratively excluded by the affected agency, but the exclusion was shorter than required under the statute; and 7 individuals were never entered into the EPLS by any agency, creating the potential for federal agencies, DOD contractors, and first-tier subcontractors to unknowingly award DOD contract funds to an ineligible individual, as shown in Exhibit 2.<sup>22</sup>

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<sup>21</sup> The Fraud Section submitted 7 of the 13 DOD cases entered into the EPLS by the Clearinghouse. The remaining six cases entered by the Clearinghouse were submitted by the USAOs.

<sup>22</sup> The one DOD case entered into the EPLS by the Clearinghouse was submitted by the USAOs.

**EXHIBIT 2: DEBARMENT REPORTED TO THE EPLS FOR QUALIFYING CRIMINAL DIVISION CASES**



Source: Criminal Division

Although 18 of the Fraud Section’s 34 cases and 21 of the Public Integrity Section’s 29 cases were entered into the EPLS by the affected agency, these cases were not entered into the Clearinghouse database. Given that the Clearinghouse database may be utilized directly by federal agencies, DOD contractors, and first-tier subcontractors to determine employment or contract eligibility, such users would not be aware of these exclusions and could potentially award funds to excluded individuals. Additionally, 13 individuals from the Fraud Section and 8 individuals from the Public Integrity Section were administratively excluded by the affected agency for less time than required by the statute, which means these individuals could obtain DOD contract funding before their statutory debarment has expired. Finally, an agency SDO may reduce the original period of debarment as prescribed by the FAR, Subpart 9.406-4. Therefore, the potential exists that the debarment period of the 5 individuals from the Fraud Section and 13 individuals from the Public Integrity Section that were administratively excluded by the affected agency for longer than required under the statute may be reduced, which could result in an individual obtaining DOD funding before the statutory debarment had expired.

## *United States Attorneys' Participation*

We were unable to obtain a list of all USAOs' qualifying cases under 10 U.S.C. § 2408 from the Executive Office for U.S. Attorneys (EOUSA).<sup>23</sup> Information related to USAO cases is maintained in the Legal Information Network System (LIONS), a case management system. EOUSA officials explained that a data query in LIONS will not identify the source of funding associated with convictions and therefore is unable to identify qualifying DOD cases pursuant to 10 U.S.C. § 2408. Due to the limitations of the LIONS data, we judgmentally selected a sample of five USAOs to conduct site visits to review case files and determine whether or not a case qualified for debarment and should have been forwarded to the BJA for inclusion in the EPLS. USAOs were selected based upon the number of drug and DOD related conviction within each district and imposition of the Denial of Federal Benefits by courts within the districts. For the USAOs selected, we obtained a list of all convictions in which the lead investigative agency in LIONS was the DOD.<sup>24</sup> We used this list to judgmentally select a sample of cases for review to determine eligibility for debarment under 10 U.S.C. § 2408. DOD related cases were selected based upon conviction status and the description of the offense provided in LIONS.

### Identification of Qualifying Cases

Our testing at the USAOs for the districts of Colorado, Kansas, and Arizona, did not identify any DOD cases that qualified for exclusion under 10 U.S.C. § 2408. However, officials at the USAOs for these districts told us that their office had not received the quarterly requests from the BJA to submit qualifying cases to the Clearinghouse prior to our audit, and were unaware of their obligations under 10 U.S.C. § 2408 to forward cases to the BJA for inclusion in the Clearinghouse database and the EPLS.

At the USAO for the district of Southern California, we identified three individuals that qualified for debarment under 10 U.S.C. § 2408. We searched the EPLS to determine which individuals had been administratively excluded by the affected agency, statutorily excluded by the Clearinghouse,

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<sup>23</sup> To obtain information from all USAOs, we worked with the EOUSA, which serves as the liaison between DOJ in Washington, D.C., and the 94 USAOs located throughout the 50 states, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the U. S. Virgin Islands.

<sup>24</sup> The data generated from LIONS was used solely for the selection of a sample for additional testing and review. Therefore, we did not perform any audit work related to the data reliability of LIONS.

or never entered into the EPLS. We found that as of October 24, 2011, one individual had been administratively excluded by the affected agency, but the exclusion was for longer than required under the statute; and two individuals were never entered into the EPLS by any agency. According to officials at this USAO, prior to our audit, their office had never received a quarterly request from the BJA to submit qualifying cases to the Clearinghouse. Instead, they generally rely on the affected agencies' SDOs to pursue debarment.

At the USAO for the district of Eastern Virginia, we identified 19 individuals that qualified for debarment under 10 U.S.C. § 2408. We searched the EPLS to determine which individuals had been administratively excluded, statutorily excluded by the Clearinghouse, or never entered into the EPLS. We found that as of October 5, 2011, five individuals had been entered by the Clearinghouse; two had been entered by the affected agency, but the exclusion was for longer than required under the statute; four had been entered by the affected agency, but the exclusion was shorter than required under the statute; and eight were never entered into the EPLS by any agency.

According to officials at the USAO for the district of Eastern Virginia, they have received quarterly requests from BJA, although not on a regular basis. However, this district submits qualifying cases quarterly to the BJA regardless of receiving BJA requests. Cases are identified by a paralegal who reviews the weekly report sent out by the USAO for the district of Eastern Virginia providing an update from every attorney about every case. If a case qualifies, the paralegal enters the case information into a spreadsheet to track the status of the case. Upon conviction, the case is forwarded to the BJA in the quarter a sentence is received. Since all cases are reported in the weekly report, officials at the USAO for the district of Eastern Virginia believed that the tracking system was adequate to ensure that all qualifying cases were forwarded to the BJA.

#### Submission of Qualifying Cases

To verify if qualifying cases had been submitted to the BJA by the USAOs for the districts of Southern California and Eastern Virginia, we requested the submissions of qualifying cases from the USAOs to the BJA for comparison to the qualifying cases identified during our review. We found that four of the five USAOs we visited were never informed of the reporting requirement due to an outdated contact list used by the BJA, and therefore did not submit any qualifying cases. According to the EOUSA, after its

review of the BJA's e-mail contact list for each USAO, at least 20 districts had a point of contact listed that was no longer employed at the USAO.

As described above, we identified 10 DOD cases, 8 cases from the USAO for the district of Eastern Virginia, and 2 cases from the USAO for the district of Southern California that qualified under 10 U.S.C. § 2408 but had not been reported to the EPLS by any agency. However, due to data limitations and incomplete documentation described above, we were unable to identify the specific cause for cases that were not reported for inclusion in the Clearinghouse database and the EPLS. During our audit, for those USAOs that had qualifying cases, we were able to identify general causes for the qualifying cases not being reported in the EPLS such as: (1) the USAOs did not submit all qualifying cases under 10 U.S.C. § 2408; (2) USAOs submitted qualifying cases by e-mail to the BJA that failed to reach the intended recipient; and (3) the BJA failed to enter qualifying cases received from DOJ litigating divisions into the EPLS, Clearinghouse database, or both.<sup>25</sup>

## **Drug Trafficking and Possession Convictions**

The denial of federal benefits can be imposed by a judge in a federal or state court as a result of a conviction for trafficking or possession of drugs. Because our audit was limited to DOJ components, we did not have access to information from the courts related to the total number of cases in which the denial of federal benefits had been imposed. To identify qualifying cases, we judgmentally selected USAOs in the districts of Colorado, Kansas, Arizona, and Southern California to review case files and identify any cases where the denial of federal benefits had been imposed but the case had not been submitted to the BJA.<sup>26</sup> For the USAOs selected, we obtained a listing of all drug-related convictions for FYs 2006 through 2010 from LIONS. For each USAO district, we randomly selected 100 drug cases and reviewed the Judgment and Commitment orders to determine if denial of federal benefits had been imposed.<sup>27</sup>

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<sup>25</sup> Item 3 is discussed in greater detail in Finding II of this report.

<sup>26</sup> We did not review drug cases in the district of Eastern Virginia. Due to the high number of DOD-related cases prosecuted by the Eastern district of Virginia, we limited our review to only DOD-related cases.

<sup>27</sup> For the USAO for the district of Colorado a total sample size of 100 cases was selected, including 84 drug cases. However, because judgment and commitment orders were readily available for a drug case, our sample size was subsequently increased to include 100 drug cases for the remaining districts.

We identified seven cases from the district of Kansas and three cases from the district of Arizona where the judge had denied the individual's federal benefits.<sup>28</sup> Of those cases, one case from the district of Kansas and three cases from the district of Arizona had not been entered into the Clearinghouse database or the EPLS.<sup>29</sup> Because the court system is outside of the jurisdiction of the OIG, we were unable to identify a specific cause for these omissions. However, the omission of cases from the EPLS could potentially be attributed to: (1) a lack of knowledge of whom to report denial of federal benefits to, (2) a failure by the courts to submit qualifying cases, or (3) a failure by the BJA to enter submitted cases. Although we did not identify any specific instances of these potential causes occurring during our audit, we asked what outreach the BJA had performed to ensure courts were aware of the Clearinghouse. BJA officials stated that the BJA had not performed any outreach to state or federal courts since 2005 because there is no way of knowing which judges are imposing the denial of federal benefits. As a result of this lack of outreach by the BJA, there is an increased likelihood that individual courts may not be familiar with reporting requirements for the denial of federal benefits.

Although our review of drug cases was limited, we determined that not all individuals that have been denied federal benefits were entered into the Clearinghouse database or the EPLS. These omissions are significant because they potentially allow individuals to inappropriately receive federal benefits.<sup>30</sup>

## **Conclusion**

We found that not all qualifying cases are being submitted by DOJ litigating divisions or sentencing courts to the BJA for inclusion in the

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<sup>28</sup> In the districts of Colorado and Southern California we did not identify any cases where the judge denied the federal benefits of an individual.

<sup>29</sup> Officials from the USAO for the district of Kansas provided an additional case that was not requested in the sample where the minutes of the proceedings indicated that federal benefits were denied. However, the judgment and committal order did not specify that these benefits were denied. We determined that this drug case had not been entered into the Clearinghouse database or the EPLS.

<sup>30</sup> An analysis performed by the Department of Education on its use of the Clearinghouse database to identify ineligible applicants for student financial aid for 2008 identified 79 individuals who did not qualify for federal student financial assistance, but who would have otherwise received aid had the match not existed. This example demonstrates that when the information provided to the Department of Education from the Clearinghouse database is incomplete or inaccurate, the potential exists for individuals to inappropriately receive federal benefits.

Clearinghouse database and the EPLS. For the DOD cases, DOJ litigating divisions generally do not have a system to identify and track qualifying cases. Additionally, not all DOJ litigating divisions and USAOs were aware of their obligations under 10 U.S.C. § 2408 due to a lack of outreach performed by the BJA.

For qualifying drug cases, our limited sample identified five federal cases in which the denial of federal benefits had been imposed by the judge but had not been entered in the Clearinghouse database or the EPLS. We also found that the BJA had not performed any outreach to federal or state courts since prior to 2005 in order to ensure qualifying drug cases are submitted to the Clearinghouse.<sup>31</sup> If qualifying cases under 10 U.S.C. § 2408 and 21 U.S.C. § 862 are not entered into the Clearinghouse database or the EPLS, federal agencies, contractors, and first-tier subcontractors are unable to ensure excluded individuals are not awarded DOD contract funds or federal benefits.

## **Recommendations**

We recommend that the Criminal Division, the Antitrust Division, and the USAOs:

1. Develop and implement policies and procedures to accurately identify and track qualifying DOD cases.
2. Develop and implement a system to ensure qualifying DOD cases are submitted timely to the BJA.
3. Submit all qualifying cases that should be actively excluded.

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<sup>31</sup> According to BJA officials, they are currently in the process of completing a new web-based system to replace the current Clearinghouse database, and to help improve the efficiency of the process for entering excluded individuals' information into the EPLS. Since the system was not complete at the time of our audit, we did not perform an evaluation of the system. However, in order for the new system to be effective, the BJA will need to perform sufficient outreach and education to inform users of the availability and functionality of the new system.

We recommend that the BJA:

4. Increase outreach to provide information on the DFB Program to state and federal courts through such means as the Administrative Office of the United States Courts, state judicial associations, National District Attorneys Association, etc.
5. Increase outreach to DOJ litigating divisions so that they are aware of the Clearinghouse and the requirements under 10 U.S.C. § 2408 using means sufficient to reach all criminal attorneys within the DOJ litigating divisions, including using the National Advocacy Center and online training.
6. Develop and implement policies and procedures to ensure the list of contacts used for outreach is complete, accurate, and regularly updated, and includes all DOJ litigating divisions.
7. Update its policy to only accept qualifying DOD cases from the USAOs to include accepting qualifying DOD cases from all litigating divisions of DOJ.

## II. SUBMISSIONS NOT ENTERED INTO THE CLEARINGHOUSE DATABASE OR THE EPLS

To ensure that all qualifying cases submitted to the BJA were entered into the Clearinghouse database and the EPLS, we compared the submissions from DOJ litigating divisions to the Clearinghouse database and the EPLS. We found that the BJA did not enter all ineligible individuals' information into the Clearinghouse database, the EPLS, or both. According to BJA officials, this occurred because USAOs had submitted incomplete case files and had not responded to the Clearinghouse's requests for additional information on submitted cases. Maintaining an incomplete list of excluded individuals in both the Clearinghouse database and the EPLS increases the risk that ineligible individuals will be awarded DOD contract funding or federal benefits.

According to BJA officials, a contractor provides operations, maintenance, and information service support services to the DFB and DPFDP Programs. Contractor staff is responsible for collecting qualifying cases submitted by DOJ litigating divisions or the courts from the BJA mail room weekly.<sup>32</sup> Contractor staff reviews the information for completeness and enters the case into the Clearinghouse database and the EPLS.<sup>33</sup>

To verify that all cases submitted to the BJA were entered into the Clearinghouse database and the EPLS, we requested all submissions obtained by the BJA from DOJ litigating divisions and compared the cases submitted to the Clearinghouse database and the EPLS. We found two cases submitted by the Criminal Division and three cases submitted by the USAOs that were in the Clearinghouse database but had not been entered into the EPLS.<sup>34</sup> Also, we found five cases submitted by the Criminal Division and two cases submitted by the USAOs that were in the EPLS but not in the

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<sup>32</sup> Qualifying cases may also be submitted directly to the contractor by fax, mail, or e-mail.

<sup>33</sup> Per BJA policy, DOD cases are entered directly into the Clearinghouse database and the EPLS within 5 working days of receipt. Drug cases are entered into the Clearinghouse database within 5 days of receipt and uploaded monthly to the EPLS.

<sup>34</sup> Two of the three DOD cases from the USAOs were submitted by both the Criminal Division and the USAO. Therefore, a total of three cases were entered into the Clearinghouse database but not entered into the EPLS.

Clearinghouse database.<sup>35</sup> In addition, we found four cases from the Criminal Division and eight cases from the USAOs that had been submitted to and received by the BJA, but not entered into either the Clearinghouse database or the EPLS.

After reviewing the submissions provided by the BJA, we requested the list of qualifying DOD cases submitted to the Clearinghouse from all USAOs for FYs 2005 through 2010. While compiling the requested data, we were informed by EOUSA officials that several USAOs had never been informed of the reporting requirement, and therefore had not submitted any qualifying cases. Additionally, at least 7 of the 94 USAO districts reported that they had submitted responses to the quarterly requests from the BJA but did not retain the documentation. As such, we could not obtain a complete list of submissions by the USAOs to the Clearinghouse. Because of these data limitations, we were unable determine whether a USAO was contacted by the BJA regarding its reporting responsibilities or if it was aware of its reporting responsibilities but did not submit any qualifying cases. Despite this data limitation, we were able to obtain a list of 84 cases that had been submitted to the Clearinghouse from FYs 2005 through 2010 as well as a list of 22 qualifying cases that were identified as a result of our audit request.<sup>36</sup>

We compared the 84 cases submitted by the USAOs to the Clearinghouse database and found that as of October 15, 2010, 24 cases (29 percent) had been submitted but never entered into the Clearinghouse database. We also compared the 84 cases to DOJ records in the EPLS and found that as of January 19, 2011, 26 cases (31 percent) had been submitted but never entered into the EPLS.<sup>37</sup>

We provided the BJA with a list of the missing records identified during our audit. BJA officials provided the following responses as to why these omissions had occurred.

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<sup>35</sup> One of the two DOD cases from the USAOs was submitted by both the Criminal Division and the USAO. Therefore, a total of six cases were entered into the EPLS but not entered into the Clearinghouse database.

<sup>36</sup> Ten cases were identified by the district of Southern California, three cases were identified by the district of Maine, three cases were identified by the district of Northern Alabama, one case was identified by the district of Eastern Texas, and five cases were identified by the district of Northern Ohio.

<sup>37</sup> Twenty-four of the 84 cases (29 percent) had been submitted but not entered into either the Clearinghouse database or the EPLS.

The BJA provided the following reasons for records missing in the Clearinghouse, the EPLS, or both:

- Cases identified as not having a record in either the Clearinghouse database or the EPLS had been entered, but due to data entry errors or differences between the names listed on court documents and those submitted by the USAOs, the records did not match.
- Cases had not been entered into the Clearinghouse database or the EPLS because incomplete case files had been submitted by the USAOs. The BJA requested the missing information. However, some USAOs did not respond to the BJA's requests. Because the BJA does not have the authority to force the USAOs to comply with requests for information the only course of action is to continue to perform outreach. Cases are entered into the Clearinghouse database and the EPLS upon receipt of the missing information.
- Cases not in the Clearinghouse, the EPLS, or both had a conviction date within the scope of the OIG audit, but had not submitted to the BJA during the scope. Therefore the cases had not been entered into the Clearinghouse database or the EPLS at the time of our analysis, but have since been entered.
- The BJA did not have any record of two cases being submitted to the Clearinghouse.

## **Conclusion**

Of the cases that were submitted to the BJA, we found that not all the individuals' information was entered into the Clearinghouse database, the EPLS, or both. Federal agencies, DOD contractors, and first-tier subcontractors query the Clearinghouse database to determine an individual's employment or contract eligibility. Additionally, the EPLS is available to government agencies and the public to identify those individuals excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits. Therefore, maintaining an incomplete list of excluded individuals in both the Clearinghouse database and the EPLS creates the potential that DOD contract funds or federal benefits could be awarded to ineligible individuals.

## **Recommendations**

We recommend that the Criminal Division, the Antitrust Division, and the USAOs:

8. Develop policies to ensure case information submitted to the BJA contains all required information for entry into the Clearinghouse database and the EPLS.
9. Promptly respond to inquiries from Clearinghouse staff related to submitted cases.

We recommend that the BJA:

10. Ensure that it is adequately monitoring Clearinghouse staff to ensure all submitted cases are entered into both the Clearinghouse database and the EPLS.
11. Enhance its policies and procedures to ensure that all qualifying cases submitted are entered into both the Clearinghouse database and the EPLS.
12. Immediately enter any qualifying cases identified in this audit to both the Clearinghouse database and the EPLS, and identify and enter any additional cases that may have been submitted but not entered.

### **III. DATA DISCREPANCIES BETWEEN THE CLEARINGHOUSE DATABASE AND THE EPLS**

As stated previously, in order for the Clearinghouse and the EPLS to be effective in ensuring excluded individuals do not receive DOD contract funds or federal benefits the data entered must be complete, accurate, and consistent between the two databases. During our audit we found data discrepancies between both databases, including differences in name spellings, social security numbers, and dates of exclusion. Additionally, we found that as of October 15, 2010, the number of records contained in the Clearinghouse database exceeded the number of DOJ records reported to the EPLS by 3,238. We also found cases that did not qualify for exclusion were entered into the EPLS, creating the potential for these individuals to be improperly denied federal benefits. Based on a review of source documentation from cases entered into the Clearinghouse database, we found that data was not always accurately or completely entered into the Clearinghouse database. Incomplete, inaccurate, and inconsistent data within the Clearinghouse database and the EPLS increases the risk of federal agencies, contractors, and first-tier subcontractors unknowingly awarding DOD contract funds or federal benefits to an excluded individual.

#### **Clearinghouse Data Entry Process**

BJA officials explained that after the contractor's staff reviews a case for eligibility and completeness, an individual's information is entered into the Clearinghouse database within 5 working days of receiving a qualifying case. The information requested for entry includes the individual's: full name, first, middle, and last; social security number; date of birth; address; EPLS Cause and Treatment Code; and exclusion start and end dates.<sup>38</sup> Entry into the Clearinghouse database requires at least a first and last name, EPLS Cause and Treatment Code, and the exclusion period. Once the information is entered, the contractor is required to verify and validate the record entered into the Clearinghouse database. After each case or batch of cases

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<sup>38</sup> According to the GSA, the EPLS Cause and Treatment Code provides users with information regarding the reason for the exclusion. The cause indicates the authority by which the action was taken and the treatment provides information on the procedure(s) to apply to the action. The GSA's description of the EPLS Cause and Treatment Code states that users should review the record's EPLS Cause and Treatment Code(s) to determine the conditions of the exclusion.

has been entered, the contractor generates a report and the information in the report is compared to the documents submitted by the court. Additionally, the BJA Program Manager will verify and sign off on the accuracy of each record after the contractor has completed its review. The contractor is required to track the verification process of each record entered into the Clearinghouse database, including the date the qualifying case is received, the date it is reviewed by contractor staff, and the date the BJA Program Manager verifies the record.

Individuals' information entered into the Clearinghouse database is transmitted to the EPLS monthly, after which the status of an uploaded submission, meaning whether the submission has been accepted or rejected, is reported to the contractor. For all rejected submissions, the contractor manually uploads the records into the EPLS.<sup>39</sup> According to the BJA's DFB and DPFDF Program Procedure Manual, only the cases that have been entered into the Clearinghouse database since the last e-mailed data transmission are uploaded to the EPLS. Officials explained that although most individuals' information is entered into the EPLS in this manner, for the defense-related cases, staff directly enters an individual's information into the EPLS within 5 working days of receiving the complete information.

The contractor is required to verify the accuracy and security of the data transmissions and, every 6 months, the contractor is required to ensure the data in the EPLS matches the data in the Clearinghouse database. According to BJA officials, every few years an audit is performed by the contractor in which randomly selected EPLS entries are printed and compared to case information received from the courts or the USAOs. Upon requesting all audits performed during the scope of our audit, the BJA informed the OIG that one audit was performed in 2007, but was unable to locate the documentation of the audit. We were provided the documentation for an audit that was completed in October 2010.

The Clearinghouse database and the EPLS are both used by external users, and as reported previously, ensuring data is accurately and completely entered into both databases enables the government to prevent DOD contract funds or federal benefits from being awarded to excluded individuals.<sup>40</sup> To ensure data was consistently entered into the

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<sup>39</sup> If an upload contains records that are not in the correct format, as prescribed by the GSA, the uploaded information is rejected by the EPLS. The DFB and DPFDF Program Procedural Manual states that the most common reason for rejection is an absence of a social security number for an individual.

<sup>40</sup> The Clearinghouse data related to individuals convicted of drug trafficking or possession is provided directly to the Department of Education, the Federal Communications

Clearinghouse database and the EPLS, we compared the data maintained in both databases. The results of our comparison follow.

### **Clearinghouse Entries for DOD Cases**

In order to verify the accuracy and completeness of the Clearinghouse database entries, we first compared the DOD records of individuals in the Clearinghouse database listed as currently excluded, as well as inactive records with debarment start dates between FYs 2005 and 2010, to the records in the EPLS. Our search was based on the individual's first, middle, and last names; the individual's social security number; EPLS Cause and Treatment Code; and the dates of the individual's exclusion. Based on this extraction there were 107 DOD records. We found that 81 of the 107 DOD records in the Clearinghouse database matched entries in the EPLS. Of the remaining 26 records:

- 2 had no record in the EPLS;
- 1 had a discrepancy between the social security numbers;
- 2 had discrepancies between the EPLS Cause and Treatment Codes;
- 11 had discrepancies between the exclusion dates;
- 7 had discrepancies between the names; and
- 3 had discrepancies in multiple fields.<sup>41</sup>

Next, since information for individuals convicted of fraud or felony arising out of a DOD contract is directly entered into the EPLS and the Clearinghouse database, as shown in Exhibit 3, we also compared the EPLS records of individuals excluded for fraud or a felony conviction arising out of

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Commission, and other providers of federal benefits to help ensure that sanctioned drug offenders are excluded from receiving benefits. The Clearinghouse responds to inquires from federal agencies, DOD contractors, and first-tier subcontractors to determine an individual's employment or contract eligibility for DOD funding. The EPLS is used by all federal agencies and the public to determine an individual's or entity's eligibility.

<sup>41</sup> The two DOD cases in the Clearinghouse database that were not in the EPLS are in addition to the three cases submitted by the USAOs previously identified in this report. The three cases were entered into the Clearinghouse database as non-qualifying cases and therefore are not considered Clearinghouse records. The analysis performed in this section only compared Clearinghouse database records to the EPLS. As a result, the three previously identified cases were excluded from this analysis based on their coding as non-qualifying.

a DOD contract where the debarment start date was between FYs 2005 and 2010 to the Clearinghouse database. Our search was based on the individual's first, middle, and last names; the individual's social security number; EPLS Cause and Treatment Code; and the dates of the individual's exclusion. We found 25 of the 107 records contained data discrepancies between the EPLS and the Clearinghouse database. Of these, 20 records were previously identified in our comparison of the Clearinghouse records to the EPLS, 4 had no record in the Clearinghouse database, and 1 had a discrepancy between the EPLS Cause and Treatment Codes.<sup>42</sup>

We provided the BJA with the list of records for which we identified discrepancies and explained that the analysis was not intended to include all records with discrepancies since our review was limited to a select number of fields in the Clearinghouse database and the EPLS. The BJA reviewed the source documentation for each record and corrected errors as necessary in either the Clearinghouse database or the EPLS. Additionally, the BJA informed us that the two cases identified as having no record in the EPLS were non-qualifying cases. Therefore, they were correctly not entered into the EPLS. Additionally, two of the four cases in the EPLS with no record in the Clearinghouse database were entered into the Clearinghouse after our analysis. The remaining two cases were entered into the EPLS then subsequently deleted, one because the offender had not yet been sentenced and the other did not have a reason documented in the file. According to BJA officials, generally, the discrepancies were caused by data entry errors. Also, contractor staff informed the OIG that the required semi-annual reconciliations of data in the Clearinghouse database and the EPLS had not been performed due to an oversight on their part.

### **Clearinghouse Entries for Drug Cases**

In order to verify the accuracy and completeness of the Clearinghouse database entries, we first compared the Clearinghouse database records of individuals currently excluded for drug trafficking or possession, as well as inactive records with debarment start dates between FYs 2005 and 2010, to the records in the EPLS. Our search was based on the individual's first, middle, and last names; the individual's social security number; EPLS Cause and Treatment Code; and the dates of the individual's exclusion. We found that 5,229 of the 5,817 records contained in the Clearinghouse database had matched entries in the EPLS. Of the remaining 588 records:

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<sup>42</sup> Two of the four DOD records that were in the EPLS but not in the Clearinghouse database were previously identified in this report.

- 212 had no record in the EPLS;
- 36 had a discrepancy between the social security numbers;
- 11 had discrepancies between the EPLS Cause and Treatment Codes;
- 149 had discrepancies between the exclusion dates;
- 136 had discrepancies between the names;
- 41 had discrepancies in multiple fields; and
- 3 appear to be duplicate Clearinghouse database records.

Next, we compared the EPLS records of individuals excluded from receiving federal benefits because of a drug trafficking or possession conviction where the debarment start date was between FYs 2005 and 2010 to the Clearinghouse database. Our search was based on the individual's first, middle, and last names; the individual's social security number; EPLS Cause and Treatment Code; and the dates of the individual's exclusion. We found 335 of the 4,981 records contained data discrepancies between the EPLS and the Clearinghouse database. Of the 335 records with data discrepancies, 274 were previously identified in our comparison of the Clearinghouse database records to the EPLS. Of the 61 remaining records:

- 10 had no record in the Clearinghouse;
- 16 had a discrepancy between the social security numbers;
- 1 had a discrepancy between the EPLS Cause and Treatment Codes;
- 5 had discrepancies between the exclusion dates;
- 13 had discrepancies between the names;
- 3 had discrepancies in multiple fields; and
- 13 appear to be duplicate EPLS records.

We again provided the BJA with a list of all records that contained discrepancies and explained that the analysis was not intended to include all records with discrepancies because our review was limited to a select number of fields in Clearinghouse database and the EPLS. The BJA reviewed the source documentation for each record and corrected the information as

necessary in either the Clearinghouse database or the EPLS. According to BJA officials, the majority of discrepancies were caused by data entry errors as a result of manual entry into the EPLS for those records that were not automatically transmitted to the EPLS or transmissions to the EPLS being performed before proofing occurred, after which an error was identified and corrected in the Clearinghouse database but not in the EPLS. Additional reasons for discrepancies provided by the BJA were: denial end date changes due to case rescissions that were updated in the Clearinghouse database but not the EPLS; duplicate entry of records in the Clearinghouse database with minor variations; and case amendments that were incorrectly entered in the Clearinghouse database as a new case. For those records identified as missing from the Clearinghouse database, the BJA explained that records were, generally, in the Clearinghouse database, but due to data entry errors in the name fields, the records were not identified in the OIG's analysis. Additionally, for those records identified as missing from the EPLS, the BJA explained that in many instances, it appeared the data transmission to the EPLS was not successful. Finally, in some instances a record did exist in the EPLS, but due to data entry errors in the name fields the records were not identified in the OIG's analysis. Contractor staff also informed the OIG that they did not perform required semi-annual reconciliations of data in the Clearinghouse database and the EPLS.

### **Non-qualifying Cases Entered into the EPLS**

Before entering an individual's information into the Clearinghouse database, the documents are reviewed to verify that the case qualifies for statutory debarment pursuant to 10 U.S.C. § 2408 or 21 U.S.C. § 862. Contractor staff, however, do not have the authority to make legal decisions regarding the qualification of individuals for debarment and rely on the prosecutor to determine an individual's eligibility for debarment under 10 U.S.C. § 2048. However, if the case is determined to be non-qualifying under either 10 U.S.C. § 2408 or 21 U.S.C. § 862, it is entered into the Clearinghouse database as a non-qualifying case. This entry is made so the BJA can maintain a record of the case being submitted, although it does not qualify for exclusion.

From the universe of 14,792 records in the Clearinghouse database as of October 15, 2010, we compared the 177 records designated as non-qualifying in the Clearinghouse database to the EPLS. Our comparison was based on an individual's first and last name and social security number. We identified 32 records designated as non-qualifying that were entered into the EPLS, meaning these eligible individuals were potentially inappropriately denied federal benefits. We provided the listing of cases to the BJA and were informed that:

- 21 cases were non-qualifying cases that had been incorrectly added to the EPLS;
- 6 records had been inappropriately designated as non-qualifying cases in the Clearinghouse database; and
- 5 records had a duplicate record in the Clearinghouse database, which was qualifying and matched the EPLS record.

The BJA removed all non-qualifying records for all currently excluded individuals from the EPLS, and corrected each record inappropriately designated as non-qualifying in the Clearinghouse database. According to BJA officials, generally, the entries were caused by an incorrect active status in Clearinghouse database, which led to the individuals being incorrectly added to the EPLS. Also, contractor staff informed the OIG that the required semi-annual reconciliations of data in the Clearinghouse database and the EPLS had not been performed due to an oversight on their part.

### **Clearinghouse Records Compared to Source Documentation**

We performed a preliminary risk analysis of the reliability of data contained in the EPLS. In February 2009, the Government Accountability Office (GAO) released a report in which it assessed the reliability of the data within the EPLS.<sup>43</sup> In its report, the GAO assessed the reliability of the EPLS data and found the data to be insufficiently reliable for determining how many excluded parties received new federal awards during their period of exclusion because of the number of missing entries in certain data fields and the lack of a historical archive as a result of record modifications. In addition to a review of the GAO report, we performed limited tests on a judgmentally selected sample of EPLS records. Criteria for our judgmental sample included records without obvious data discrepancies, anomalies identified within the database, and potentially duplicative entries. Based on the analysis, we determined that the risk level for the accuracy and completeness of the data is very high and that the data contained in the EPLS is not sufficiently reliable for our audit work. Since the BJA also maintains the Clearinghouse database for upload into the EPLS system, we requested the complete database from the BJA in order to determine if that data was more reliable than the EPLS. We then selected a sample of

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<sup>43</sup> U.S. Government Accountability Office, *Excluded Parties List System; Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds*, GAO-09-174 (February 2009), 26-27.

Clearinghouse database records to test in order to verify if the cases had been completely and accurately entered.

We reviewed the source documentation for the sample of cases from the Clearinghouse database to verify if the cases had been completely and accurately entered. The universe for the review consisted of 5,690 records of cases, both active and inactive, with either entry date or denial start date between October 1, 2004, and October 15, 2010. The sample design consisted of selecting two samples. The first sample of 72 cases was a judgmental sample of records selected based on anomalies identified within the database, such as invalid dates, to verify the accuracy of the identified anomalies. The second sample was a stratified sample totaling 232 records statistically selected from the sample universe of 5,618 records to statistically project the error rates for the data fields within the Clearinghouse database that were tested.<sup>44</sup>

From the statistically selected sample of 232 cases, the BJA could not provide supporting documentation for 8 cases for our review.<sup>45</sup> Of the remaining 224 cases, we compared the data entered into the Clearinghouse database to the source documentation to determine whether each case's data was completely and accurately entered into the Clearinghouse database.

Despite the verification process performed by the BJA and the contractor on each case, we found errors in the following fields: last name, first name, middle name, Social Security number, address, denial start date, denial end date, and the EPLS Cause and Treatment Code. The results of our review of a statistical sample of 232 cases were analyzed and an estimated exception rate and 95 percent confidence interval was calculated for each field tested.<sup>46</sup> The results are shown in Exhibit 3 below:

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<sup>44</sup> Appendix I provides a more detailed description of our sampling methodology and discussion of the judgmentally selected sample.

<sup>45</sup> BJA policy requires all records be maintained in both paper and electronic format at the contractor's facility for a period of 100 years. We asked BJA officials why they were unable to locate the source documentation and were informed that during the transition to the current contractor from the previous support contractor, the former Clearinghouse Program Manager directed the new contractor to destroy all expired drug cases. Additionally, the contractor was unable to locate the scanned files for these records.

<sup>46</sup> According to BJA officials, they are currently in the process of completing a new web-based system to replace the current Clearinghouse database, to help improve the efficiency of the process by which excluded individuals are communicated to the EPLS. However, since the system was not complete at the time of the audit, we did not perform an evaluation of the system.

**EXHIBIT 3: ESTIMATED EXCEPTION RATE FOR THE STATISTICAL SAMPLE OF EACH FIELD IN THE CLEARINGHOUSE DATABASE**

TESTED VARIABLE	ESTIMATED EXCEPTION RATE	95% CONFIDENCE INTERVAL LIMITS OF ESTIMATED EXCEPTION RATES	
		LOWER	UPPER
LNAME	4.72%	2.05%	7.40%
FNAME	5.15%	2.39%	7.92%
MNAME	4.29%	1.75%	6.83%
SSN	3.87%	1.44%	6.30%
ADDRESS	7.31%	4.03%	10.60%
COUNTRY	3.87%	1.44%	6.30%
CITY	4.72%	2.06%	7.38%
ST	4.73%	2.04%	7.42%
ZIP	5.16%	2.37%	7.96%
DEN START	4.30%	1.73%	6.87%
DEN END	6.03%	3.02%	9.04%
EPLS CODE	3.87%	1.43%	6.31%

Source: OIG Office of Advanced Audit Techniques

We informed BJA officials and the contractor that we had identified an exception rate of approximately 5 percent for each data field in Exhibit 3 and asked why this occurred despite the verification of data performed by the contractor and the BJA Program Manager. Both the contractor and the BJA were surprised to hear that errors were still present despite the quality control processes in place. In 2009, the BJA Program Manager noticed an increase in errors and discussed the increase with the contractor. The BJA and the contractor both stated their opinions that the exception rate has since decreased. Because the statistical sample was based on 2-year strata, for active and inactive cases, we analyzed the exception rate for each 2-year period to verify whether the exception rate had decreased.<sup>47</sup>

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<sup>47</sup> The observed exception rate from our case review was calculated by dividing the number of records with at least one exception by the total number of cases reviewed in each 2-year period.

**EXHIBIT 4: EXCEPTION RATE OF EACH STRATA FOR ACTIVE AND INACTIVE CASES IN THE CLEARINGHOUSE DATABASE**

<b>STRATUM OF ACTIVE AND INACTIVE CASES</b>	<b>SAMPLE SIZE</b>	<b>AT LEAST ONE EXCEPTION</b>	<b>EXCEPTION RATE</b>
Active and Inactive FY 05 and FY 06	52	7	13%
Active and Inactive FY 07 and FY 08	80	6	8%
Active and Inactive FY 09 and FY 10	100	12	12%

Source: OIG Office of Advanced Audit Techniques

As shown in Exhibit 4, the exception rate did not show a specific pattern of decreasing error rates. Additionally, we computed an estimate of the exception rate of records with at least one error in the tested data fields and projected the number of exceptions to the sample universe of 5,618 records at 95 percent confidence. This calculation resulted in an estimated exception rate of 10.76 percent. Based on this projection, we estimate that 604 records out of the universe of 5,618 would contain at least one error.<sup>48</sup>

We also reviewed the Clearinghouse database case numbering system, which sequentially assigns a case identification number to each case received by the Clearinghouse. If a defendant has a subsequent offense, he or she is assigned a new case identification number. We identified 85 instances where the sequential case identification numbering skipped one or more numbers. A total of 118 numbers were missing from the sequential case identification system. When we asked BJA officials about the gaps in the case identification numbers, they informed us that if they need to abort the entry of a case after hitting the <save> button, the sequence case identification number would already have been generated. Therefore deleting a case creates a gap in the sequential case identification numbers. Also, the system does not allow changing the status to or from non-qualifying, so if a case is incorrectly entered, the record must be deleted or a new case is entered creating a duplicate record.

As of October 15, 2010, the number of records contained in the Clearinghouse database exceeded the number of DOJ records reported in the EPLS by 3,238.<sup>49</sup> As previously described, the Clearinghouse database

<sup>48</sup> As of October 15, 2010, the Clearinghouse database contained a total of 14,792 records. Of those, 5,690 records fell within the scope of our audit. The 5,618 records were used as the sample frame universe for selecting statistical sample and the 72 records were judgmentally selected.

<sup>49</sup> As of October 15, 2010, the EPLS contained 11,554 records, and the Clearinghouse database contained 14,792 records.

tracks non-qualifying cases but does not report them to the EPLS, which would explain a portion of this discrepancy. As of October 15, 2010, the Clearinghouse database contained 177 non-qualifying records. Since not all non-qualifying cases were entered into the EPLS, the non-qualifying cases stored only in the Clearinghouse database would cause the total number of records in the Clearinghouse database to be higher when compared to the EPLS.

Also, during our review of source documentation, we found two instances where it appeared as though an original record was overwritten with a new case. BJA officials informed us that, in one case, it appeared that the original record was updated with information from the individual's new conviction, rather than entering a new record. In the other case, it appeared that the original record had been overwritten with new case information. The BJA and the contractor do not appear to be consistently following the case identification number assignment policy, which has resulted in the destruction of historic records. As a result, records that are overwritten in the Clearinghouse database would cause the number of records stored in the Clearinghouse database to be lower when compared to the number of records in the EPLS.

While we were able to identify two causes that partially explain the discrepancy between the total records contained in the Clearinghouse database and the records in the EPLS, the Clearinghouse database does not contain a unique identifier common to both databases. Because of this, we were unable to identify a comprehensive listing of specific records that made up the discrepancy between the total number of records in the Clearinghouse database and the EPLS. Without such a listing, we were unable to determine the total number of discrepancies.

## **Conclusion**

As of October 15, 2010, the number of records contained in the Clearinghouse database exceeded the number of DOJ records reported in the EPLS by 3,238. Based on the overall number of records in the databases as well as our comparison of Clearinghouse database records to the EPLS records, there appears to be discrepancies between the records contained in the databases. Since we did not compare these records to source documentation, we were unable to determine which record, if either, was accurate. However, because the Clearinghouse database and the EPLS serve the same purpose for different users, the records in the Clearinghouse database should agree with those records in the EPLS to ensure consistency across all federal agencies.

In addition, the records in the Clearinghouse database and the EPLS must be accurate to ensure that contracts and benefits are not awarded to excluded parties. Yet after reviewing the source documentation of a sample of Clearinghouse database records, we found that approximately 11 percent of the Clearinghouse database records contain at least one error in at least one data field. The inaccurate records in the Clearinghouse database are then transmitted to the EPLS, creating the potential for inaccuracies in both databases.

It also appears that the contractor is not adequately performing the duties required under the contract. Specifically, we found that contractor is:

- not ensuring the data in the EPLS matches the data in the Clearinghouse database;
- uploading non-qualifying cases to the EPLS; and
- not ensuring the accuracy of the data entered into the Clearinghouse database.

Furthermore, we found that the BJA Program Manager is not sufficiently reviewing, verifying, and signing off on the accuracy of records that have been entered into the Clearinghouse database or providing adequate oversight of the contractor to ensure compliance with the contract requirements. Inaccurate or incomplete reporting creates the potential for users of the Clearinghouse database and the EPLS to inadvertently make improper awards of DOD contract funds or federal benefits to ineligible individuals.

## **Recommendations**

We recommend that the BJA:

13. Immediately enter missing records into the Clearinghouse database and the EPLS, and correct any errors in data already stored in the EPLS.
14. Immediately remove non-qualifying records from the EPLS.
15. Enhance policies and procedures to ensure that all records in the Clearinghouse and the EPLS are complete, accurate, and properly communicated to other agencies.

16. Improve quality controls of the Clearinghouse database to reduce future data entry inaccuracies.
17. Ensure it is adequately monitoring Clearinghouse contractors and staff, including more frequent data checks and evaluations of contractor performance.

#### **IV. TIMELINESS OF ENTRY OF DATA INTO THE EPLS**

For the Clearinghouse database and the EPLS to be effective in providing information regarding excluded individuals who should not receive DOD contract funding or other federal benefits, these exclusions must be communicated timely to the user communities. Although timeliness of entry into the EPLS is not defined under 10 U.S.C. § 2408 or 21 U.S.C. § 862, according to BJA policy, qualifying DOD cases are requested quarterly from the USAOs and manually entered into the Clearinghouse database and the EPLS within 5 working days of the receipt of a complete case file. Data for drug cases are entered into the Clearinghouse database by the contractor within 5 working days of the BJA receiving a case file and then transmitted to the GSA for inclusion in the EPLS on a monthly basis. During our audit, we found that, generally, cases were not entered into the Clearinghouse database within the time required by BJA policy, indicating a lack of oversight of the contractor by the BJA and breakdowns in the internal controls intended to ensure compliance with BJA policy.

#### **BJA Policy for Timely Entry of Cases into the EPLS**

Although 10 U.S.C. § 2408 and 21 U.S.C. § 862 do not contain criteria that address the timeliness of entry into the EPLS, the BJA has established a policy for qualifying DOD cases and drug cases. For DOD cases, the BJA stated that qualifying cases are requested from the USAOs quarterly, although the USAOs can also submit qualifying cases to the Clearinghouse once a conviction is received rather than waiting for the BJA's quarterly request. The contractor collects any qualifying cases that are mailed to the BJA on a weekly basis.<sup>50</sup> After reviewing the documentation, if the information provided is complete and accurate, the contractor staff manually enters the case into the Clearinghouse database and the EPLS within 5 working days of the receipt of a complete case file. If the case is received within 5 working days of the monthly upload performed for drug cases, the contractor will enter the case into the Clearinghouse database first, which is uploaded automatically to the EPLS.

For drug cases, the BJA receives a judgment from a state, local, or federal court informing it that an individual has been statutorily debarred. The court forwards the BJA the judgment and the contractor collects the

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<sup>50</sup> Qualifying cases may also be submitted directly to the contractor by fax, mail, or e-mail.

judgments from the BJA weekly. After reviewing the documentation for eligibility and completeness, the contractor enters the data into the Clearinghouse database within 5 working days of receipt. Monthly, the Clearinghouse database is uploaded to the EPLS system. This policy was adopted when the EPLS was still paper-based and published monthly for external users. Following the submission to the EPLS system, the status of an upload submission, whether the submission has been accepted or rejected, is reported to contractor. For all rejected submissions, the contractor will manually upload the profiles into the EPLS.

## **DOD Cases**

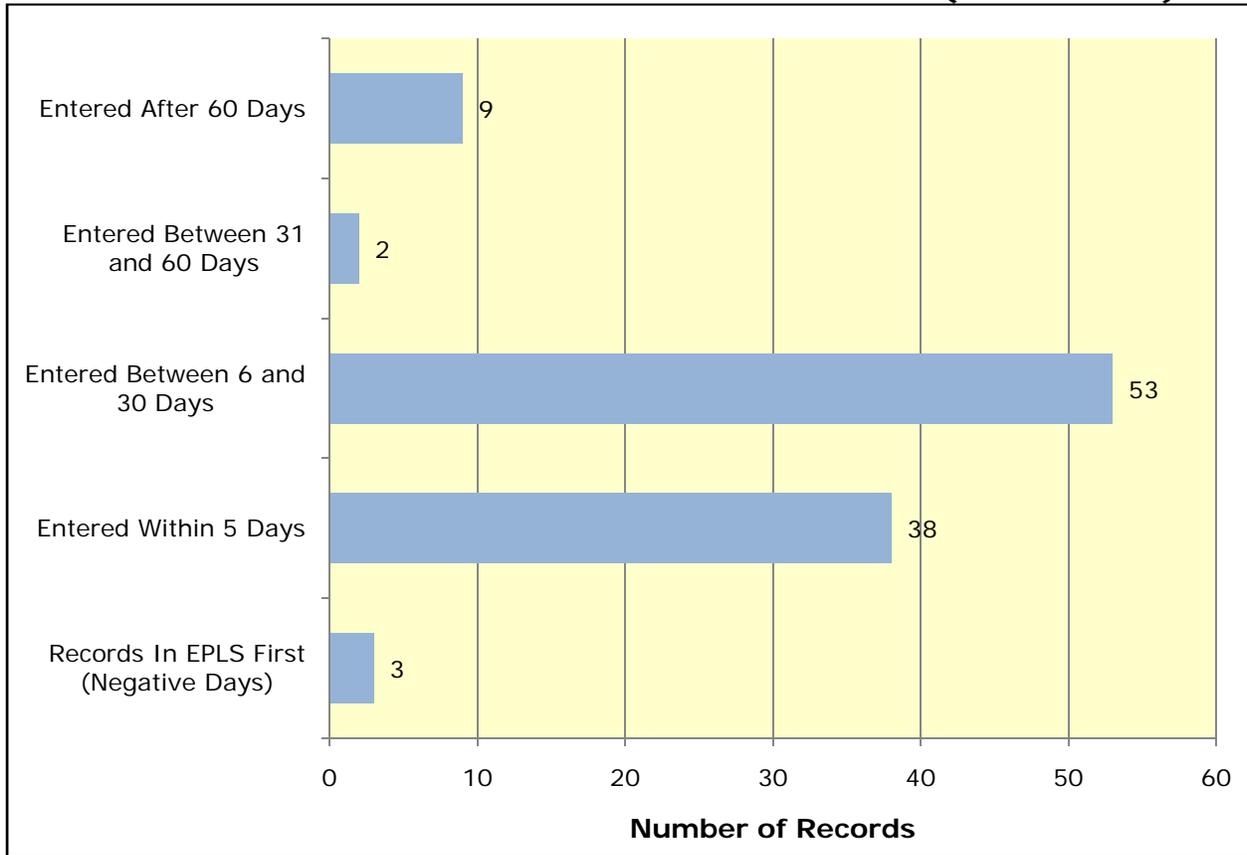
Both the Clearinghouse database and the EPLS automatically generate a date stamp when the record is entered. To determine the length of time it took the BJA to upload cases entered into the Clearinghouse database to the EPLS, we compared the entry dates from both databases. Our analysis was limited to the records in the Clearinghouse database that had a matching record in the EPLS, which were identified previously.<sup>51</sup> Of the 105 cases in the Clearinghouse database with a record in the EPLS, 102 cases were entered into the Clearinghouse database first and then into the EPLS. Of the 3 cases entered into the EPLS first, one case was entered into the Clearinghouse database 4 working days after it was entered into the EPLS, one was entered 218 working days later, and one was entered 459 working days later. For the remaining 102 cases, it took between 1 and 787 working days for the BJA to enter the record into the EPLS from the Clearinghouse.<sup>52</sup> We found that only 39 percent of the DOD cases entered into the Clearinghouse database had been uploaded to the EPLS within the BJA's 5 working day requirement. Exhibit 5 provides a breakdown of the number of working days from entry of a case into the Clearinghouse database until entry into the EPLS. On average, it took 38 working days to enter a case from the Clearinghouse database into the EPLS.

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<sup>51</sup> Of the 107 total DOD records in the Clearinghouse database, 81 had previously been matched to the records in the EPLS using commercially available relational database software, and 2 records had never been entered into the EPLS. The remaining 26 records contained errors that prevented an exact match using the relational database software and were therefore manually matched in our analysis of timeliness.

<sup>52</sup> The calculation was based on the number of working days between two dates.

**EXHIBIT 5: WORKDAYS BETWEEN ENTRY INTO THE CLEARINGHOUSE DATABASE AND THE EPLS (DOD CASES)**



Source: BJA

Although the BJA does not record the date a court order is received in the Clearinghouse database, the contractor is required to track the verification process of each record entered into the Clearinghouse database, including the date the case is received. During our review of the case files for our total sample of 304 Clearinghouse database records, we recorded the date from the handwritten stamp used to record when a case was received. Nine of the cases in the sample were DOD cases. For these nine cases, we reviewed the date stamp to determine if these individuals' information was entered into the EPLS within 5 working days of receipt, in accordance with BJA's policy. Of the nine DOD records, three were not stamped as received and one could not be located for us to review. Therefore, we were unable to calculate the time it took for cases to be entered into the EPLS after receipt for these four records. Of the remaining five records with a date stamp, only one was entered within 5 working days of receipt. The other four cases were entered between 7 and 11 working days.

We also compared the exclusion start date to the EPLS entry date to see how long it took for cases to be entered into the EPLS after debarment

has been imposed. We found that for qualifying DOD cases it took between 17 days and 1,251 days after the debarment start date for cases to be communicated to the EPLS.<sup>53</sup> On average it took 211 days or 7 months from the debarment start date to enter DOD cases into the EPLS.

## **Drug Cases**

To determine if drug cases were entered into the EPLS from the Clearinghouse database within 30 days, in accordance with the BJA's policy to upload to the EPLS on a monthly basis, we calculated the length of time it took the BJA to upload cases entered into the Clearinghouse database to the EPLS by comparing the entry dates from both databases. BJA officials informed us the EPLS system was updated in 2005. As a result, on April 7, 2005, all DOJ records related to statutory debarments were reloaded into the EPLS system from the Clearinghouse database. We determined that reviewing the time that elapsed before entry into the EPLS for any records with an entry date in the EPLS of April 7, 2005, would not provide an accurate assessment of timeliness. Therefore, our review consisted of all drug cases with a record in the EPLS that matched the Clearinghouse database on first, middle, last name; social security number; EPLS Cause and Treatment Code; and exclusion start and end dates, excluding those records with an entry date of April 7, 2005. Of the 4,920 records in the Clearinghouse database with a record in the EPLS, 22 records were entered into the EPLS first and then into the Clearinghouse database.<sup>54</sup> For the remaining 4,898 it took between 1 and 5,968 days for the BJA to enter the record into the EPLS.<sup>55</sup> On average, it took 158 days or 5 months for cases to be entered into the EPLS from the Clearinghouse database. Exhibit 6 shows that 3,284 of the 4,898 records (67 percent) were entered into the EPLS within 30 days, per BJA's policy.

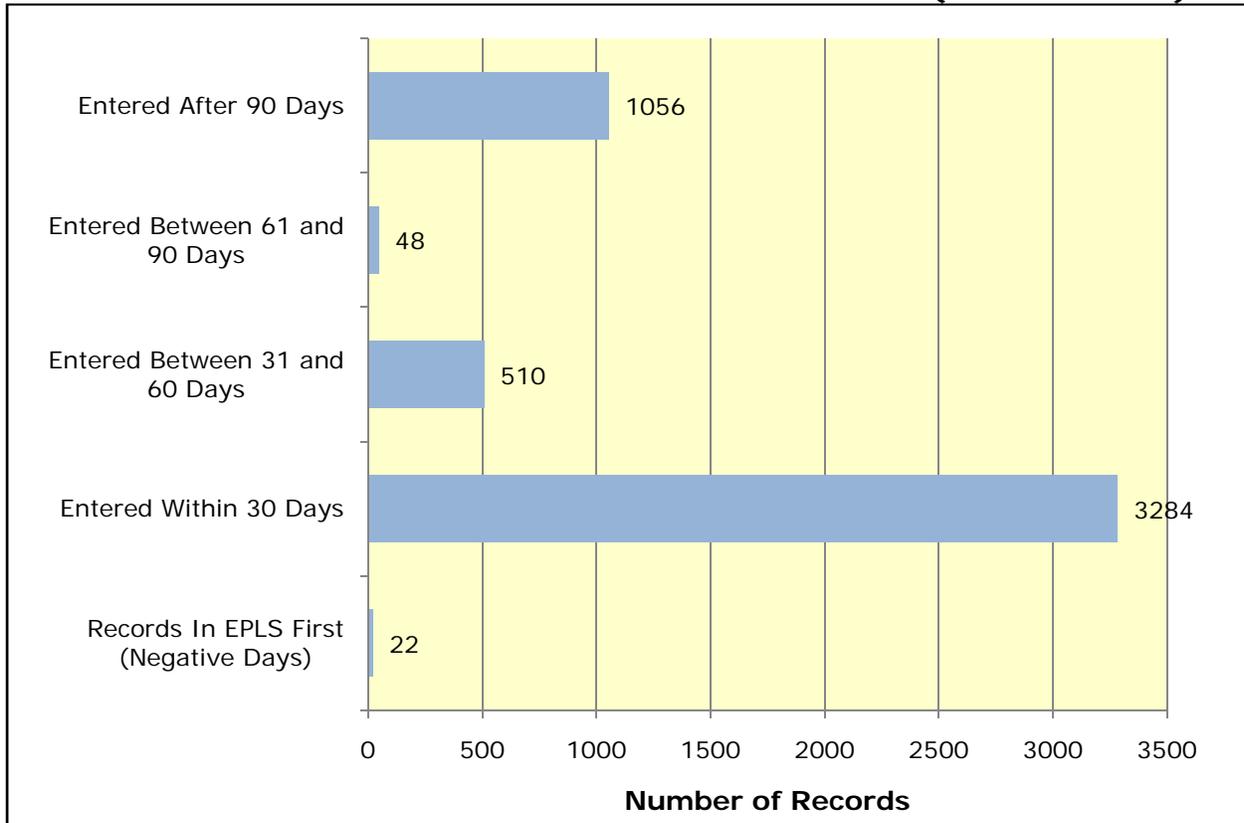
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<sup>53</sup> The calculation was based on a 360-day year, 30 days per month.

<sup>54</sup> We identified 5,229 drug records in the Clearinghouse database with a match in the EPLS. The contractor entered 309 of those records into the EPLS on April 7, 2005, leaving a total of 4,920 drug records in the Clearinghouse database that were used in our analysis of timeliness.

<sup>55</sup> The calculation was based on a 360-day year, 30 days per month.

**EXHIBIT 6: DAYS BETWEEN ENTRY INTO THE CLEARINGHOUSE DATABASE AND THE EPLS (DRUG CASES)**



Source: BJA

We also compared the exclusion start date to the EPLS entry date to determine how long it took for drug cases to be communicated to the EPLS after debarment had been imposed, and found that it took between 3 and 5,975 days after the debarment start date for cases to be entered into the EPLS.<sup>56</sup> On average it took 309 days or 10 months from the debarment start date to entry into the EPLS.

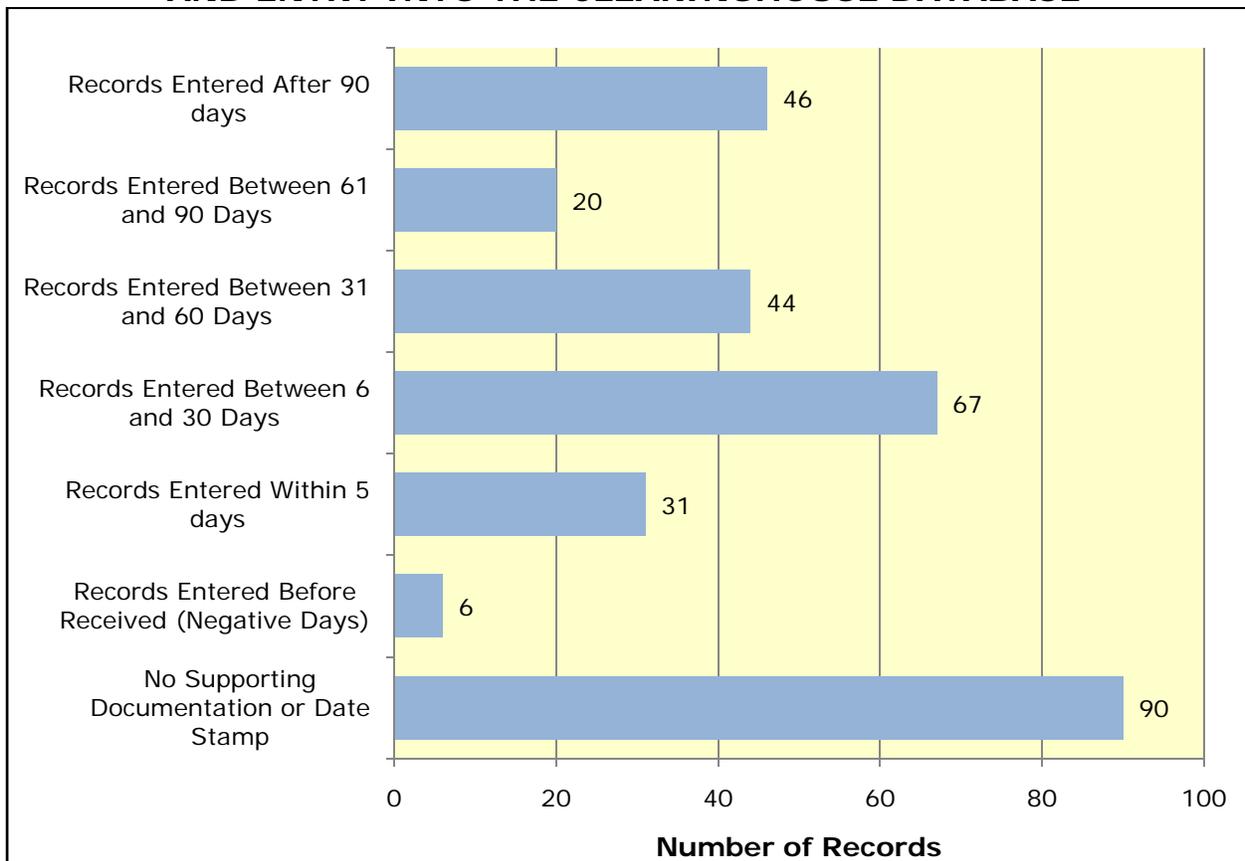
**Receipt of Case File to Entry into the Clearinghouse Database**

For DOD cases and drug cases, BJA policy requires the contractor to enter the record into the Clearinghouse database within 5 working days of receiving the case file. The contractor informed us that they can enter a case into the Clearinghouse database with less information than is required for entry into the EPLS. Therefore, contractor staff will enter incomplete cases into the Clearinghouse database while waiting for missing information

<sup>56</sup> Two of the 4,920 records did not have a valid start date, therefore this analysis was performed on 4,918 records. The calculation was based on a 360-day year, 30 days per month.

for entry into the EPLS. As previously explained, during our review of the case files for our total selected sample of 304 Clearinghouse database records, we recorded the date the case was received by the BJA. In order to determine the length of time it took the BJA to enter the data into the Clearinghouse database after receiving a qualifying case, we compared the date received stamped on the source documentation to the Clearinghouse database entry date. Supporting documentation for 12 of the 304 cases could not be located for our review and 78 cases did not have the date received documented; therefore, our analysis of timeliness was based on the remaining 214 cases.

**EXHIBIT 7: WORKDAYS BETWEEN DATE RECEIVED AND ENTRY INTO THE CLEARINGHOUSE DATABASE**



Source: BJA

We found that only 17 percent of the cases reviewed had been entered into the Clearinghouse database within 5 working days of receipt by the BJA. Six of these cases were entered into the Clearinghouse database before they were received. These appear to be instances in which an old case was overridden with new case information.<sup>57</sup> Exhibit 7 provides a breakdown of

<sup>57</sup> The BJA confirmed that one of the six records had been overridden.

the number of working days from receipt of a case by the BJA until entry into the Clearinghouse database. Excluding the negative entry dates, it took the BJA, an average of 122 working days to enter a record into the Clearinghouse database after receiving a case from the court or DOJ litigating division.

## **Conclusion**

Based on our review, it appears that individuals excluded under 10 U.S.C. § 2408 or 21 U.S.C. § 862 are, generally, not timely communicated to the Clearinghouse database or the EPLS, creating the potential for government agencies, contractors, and first-tier subcontractors to unknowingly award DOD contract funds or federal benefits to excluded individuals. Delays in communication appear to be caused by lack of compliance with the BJA's policies; breakdowns in the communication between the BJA and submitting court or DOJ litigating division to obtain missing information for entry into the EPLS; and a lag from when a conviction is received for DOD cases or debarment imposed by a judge for drug cases to when the case is forwarded to the BJA for inclusion in the Clearinghouse database and the EPLS.<sup>58</sup>

## **Recommendations**

We recommend that the Criminal Division, the Antitrust Division, and the USAOs:

18. Develop and implement a system to ensure qualifying DOD cases are submitted timely to the BJA with all required information for entry into the Clearinghouse database and the EPLS.

We recommend that the BJA:

19. Update current policy to reflect modern capabilities of the EPLS system.
20. Enhance policies and procedures to ensure that all records are communicated to the Department of Education, the Federal Communications Commission, and the EPLS in a timely manner.

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<sup>58</sup> According to BJA officials, they are currently in the process of completing a new web-based system to replace the current Clearinghouse database. This system is designed to help improve the efficiency of the process by which excluded individuals are communicated to the EPLS. However, since the system was not complete at the time of the audit, we did not perform an evaluation of the system.

21. Ensure it is adequately monitoring Clearinghouse contractors and staff to include more frequent evaluations of the timeliness of entry of individuals' information into the Clearinghouse database and the EPLS.

## STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the Department of Justice's (DOJ) internal controls was *not* made for the purpose of providing assurance on its internal control structure as a whole. Each DOJ component's management is responsible for the establishment and maintenance of internal controls.

As noted in the Findings and Recommendations section of this report, we identified deficiencies in the U.S. Attorneys' Offices (USAOs) internal controls that are significant within the context of the audit objectives and, based upon the audit work performed, that we believe adversely affect the USAO's ability to track and report qualifying convictions pursuant to 10 U.S.C. § 2408. During our audit we found that several USAOs were unaware of their obligations to report qualifying convictions pursuant to 10 U.S.C. § 2408, and as a result did not have any policies or procedures in place to track and report qualifying cases. In addition, the current information system utilized by the USAOs does not have the capability to provide complete and accurate information necessary to meet the requirements of 10 U.S.C. § 2408.

We also identified deficiencies in the Antitrust Division's internal controls that are significant within the context of the audit objective and, based upon the audit work performed, that we believe adversely affect the Antitrust Division's ability to track and report qualifying convictions pursuant to 10 U.S.C. § 2408. During our audit we found that the Antitrust Division mistakenly believed that the subsequent administrative debarment and reporting of their cases by DOD components to the EPLS fulfilled statutory debarment reporting requirements pursuant to 10 U.S.C. § 2408, and as a result did not have adequate policies or procedures in place to track and report qualifying cases.

We also identified deficiencies in the Criminal Division Fraud Section's internal controls that are significant within the context of the audit objective and, based upon the audit work performed, that we believe adversely affect Criminal Division's ability to track and report qualifying convictions pursuant to 10 U.S.C. § 2408. During our audit we identified several qualifying cases pursuant to 10 U.S.C. § 2408 that were not reported to the Bureau of Justice

Assistance (BJA) for inclusion in the Excluded Parties Listing System (EPLS). According to Criminal Division officials, the discrepancy between cases qualifying for debarment and those reported was a result of two different individuals' interpretation of 10 U.S.C. § 2408. Because the controls in place do not allow management or staff to prevent or detect misstatement of qualifying cases, we identified this as a significant deficiency in the design of this control.

We also identified deficiencies in the Criminal Division Public Integrity Section's internal controls that are significant within the context of the audit objective and, based upon the audit work performed, that we believe adversely affect Criminal Division's ability to track and report qualifying convictions pursuant to 10 U.S.C. § 2408. During our audit we found that the Public Integrity Section was unaware of their obligations to report qualifying convictions pursuant to 10 U.S.C. § 2408, and as a result did not have any policies or procedures in place to track and report qualifying cases.

We also identified deficiencies in the BJA's internal controls that are significant within the context of the audit objective and, based upon the audit work performed, that we believe adversely affect the BJA's ability to accurately and completely inform stakeholders of ineligible parties through the Clearinghouse Database and the EPLS pursuant to 10 U.S.C. § 2408 and 21 U.S.C. § 862. During our audit we identified several errors and omissions in the data reported by DOJ in the Clearinghouse database and the EPLS. The design of internal controls related to completeness of the reporting by the BJA requires that outreach is done to ensure all qualifying cases are received and reported by the BJA. The design of internal controls related to accuracy requires ongoing data checks and data audits performed by contract staff and BJA Program Managers to ensure the completeness and accuracy of each record. However, because the controls in place do not allow management or staff to prevent or detect misstatement of qualifying cases, we identified this as a significant deficiency in the operation of these controls.

Because we are not expressing an opinion on the DOJ's internal control structure as a whole, this statement is intended solely for the information and use of the auditee. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

## STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that DOJ's management complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. DOJ's management is responsible for ensuring compliance with applicable federal laws and regulations. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditee and that were significant within the context of the audit objectives:

- 10 U.S.C. § 2408 – Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors, and
- 21 U.S.C. § 862 – Denial of federal benefits to drug traffickers and possessors.

Our audit included examining, on a test basis, DOJ's compliance with the aforementioned laws and regulations that could have a material effect on DOJ's operations, through interviewing auditee personnel, analyzing data, and assessing internal control procedures.

As noted in the Findings and Recommendations section of this report, we found that DOJ did not fully comply with requirements of 10 U.S.C. § 2408. Specifically, DOJ failed to report all individuals convicted of fraud or any felony in association with a Department of Defense contract to the EPLS for the mandatory 5-year debarment specified by the statute.

### OBJECTIVES, SCOPE, AND METHODOLOGY

#### Objectives

The objectives of this audit were to: (1) determine the extent that cases qualifying for statutory debarment are reported for inclusion in the EPLS by the DOJ litigating divisions, (2) determine the completeness and accuracy of records entered into the EPLS for statutory debarment actions maintained by the Department, and (3) determine the timeliness of reporting statutory debarment actions to the EPLS.

#### Scope and Methodology Section

We conducted this performance audit 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit generally covered, but was not limited to, fiscal years (FY) 2005 through 2010, and included four DOJ components: (1) the BJA, within the Office of Justice Programs; (2) the USAOs; (3) the Criminal Division; and (4) the Antitrust Division. There are seven DOJ litigating divisions: the USAOs, Criminal Division, Civil Division, Civil Rights Division, Antitrust Division, Tax Division, and Environmental and Natural Resources Division. In addition to the divisions stated above where we performed audit work, we also initially selected the Civil Division. During preliminary audit work, however, Civil Division officials confirmed that it has litigated cases involving DOD contracts, but because 10 U.S.C. § 2408 does not apply to civil cases, the Civil Division was subsequently omitted from the scope of our audit.

Our analyses used a data download of the Clearinghouse database from the BJA as of October 15, 2010, and a data download of DOJ records contained in the EPLS from the GSA as of January 19, 2011.

## **Qualifying Cases Not Consistently Submitted to the BJA**

From the Executive Office for U.S. Attorneys (EOUSA), Criminal Division, and Antitrust Division, we requested a complete list of all cases that resulted in a conviction for fraud or any felony conviction in connection with Department of Defense contracts for FYs 2005 through 2010. The Criminal Division and Antitrust Division provided the requested list of cases. However, EOUSA informed us that USAO case information is tracked within the U.S. Attorneys' case management system, the Legal Information Office Network System (LIONS), which does not have the capability to identify a funding source in connection with a conviction. Therefore, EOUSA was not able to provide a comprehensive listing of cases qualifying for statutory debarment pursuant to 10 U.S.C. § 2408.

### *Criminal and Antitrust Divisions*

Using the data provided by the Criminal and Antitrust Divisions on cases qualifying for debarment pursuant to 10 U.S.C. § 2408, we manually searched in the EPLS using the online search function of the EPLS provided by the General Services Administration (GSA) using the first and last names of the list of individuals. We also conducted interviews with officials from the Criminal and Antitrust Divisions about existing policies and procedures to track and report cases qualifying for debarment pursuant to 10 U.S.C. § 2408.

### *U.S. Attorneys' Offices*

To evaluate the extent that cases qualifying for statutory debarment are reported for inclusion in the EPLS by the USAOs, we judgmentally selected five USAOs for a review of case files. USAOs were selected based upon the number of drug and DOD related conviction within each district and imposition of the Denial of Federal Benefits by courts within the districts. We selected the USAOs for the districts of Colorado, Kansas, Arizona, Eastern Virginia, and Southern California. For each of the five districts selected, EOUSA provided a data file of all cases listing the Department of Defense as the referring agency where the defendant was found guilty of at least one charge. From this list, we judgmentally selected a sample of cases where the lead charge, program category, and comment field appeared to be a conviction for fraud or any felony in association with a Department of Defense contract. We tested internal controls related to the identification and reporting of qualifying cases pursuant to 10 U.S.C. § 2408 by the USAOs. The test was not designed to provide a comprehensive list of all cases qualifying for debarment pursuant to 10 U.S.C. § 2408. We did not verify the validity of the data reported by LIONS, nor did we rely on this

computer-generated data as the basis of our findings. In addition to our review of case files, we interviewed officials at each USAO selected about policies and procedures in place to track and report cases qualifying for debarment pursuant to 10 U.S.C. § 2408.

### *Drug Cases*

Because state and federal courts are not within the purview of the OIG, we did not have access to a comprehensive list of cases where a judge imposed the denial of federal benefits pursuant to 21 U.S.C. § 862. Additionally, LIONS did not have a designation built into the system to identify such cases from drug convictions obtained by the USAOs. To identify cases where a judge imposed the denial of federal benefits, we chose a random sample of 100 drug cases from USAOs for the districts of Colorado, Kansas, Arizona, and Southern California.<sup>71</sup> For each of the cases selected in our sample we reviewed the judgment and commitment orders to identify cases where the judge had imposed the denial of federal benefits. Those cases were then cross referenced to the Clearinghouse database and the EPLS to identify any cases that qualified for debarment pursuant to 21 U.S.C. § 862 but had not been entered.

### **Submissions Not Entered into the Clearinghouse Database or the EPLS**

We requested the submissions to the Clearinghouse from all USAOs for FYs 2005 through 2010. While compiling the requested data, we were informed by EOUSA officials that several USAOs had never been informed of the reporting requirement, and therefore had not submitted any qualifying cases. We were also informed that seven districts had submitted cases but did not retain the documentation. As such, we could not obtain a complete listing of submissions by the USAOs to the Clearinghouse. However, despite this data limitation, we were provided what documentation was available. Because this was the only source for the data submitted by the USAOs, the data was used in our analysis. The list of cases provided by the USAOs as well as all DOJ litigating component submissions to the BJA were compared to the data in the Clearinghouse database and to the DOJ records in the

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<sup>71</sup> For the district of Colorado, a total sample size of 100 cases was selected, including 84 drug cases. However, because judgment and commitment orders were readily available for drug cases, our sample size was subsequently increased to 100 drug cases for the remaining districts. The District of Eastern Virginia was omitted from our analysis of cases qualifying for debarment pursuant to 21 U.S.C. § 862 due to the high number of defense-related cases within that district.

EPLS by matching records to first name and last name using commercially available relational database software.

### **Data Discrepancies Between the Clearinghouse and the EPLS**

The Clearinghouse database and the EPLS were compared to each other using commercially available relational database software to identify any discrepancies between the two databases. Our search was conducted by matching the individual's first, middle, and last names; the individual's social security number; EPLS Cause and Treatment Code; and the dates of the individual's exclusion.

This analysis identified records that contained differences in the data housed in the Clearinghouse database as compared to the EPLS, but was not designed to identify all records containing data errors. This comparison would not, nor was it designed to, identify records that matched within the Clearinghouse database and the EPLS but did not accurately report information from the original source documentation.

We performed a preliminary risk analysis of the reliability of data contained in the EPLS. In February 2009, the Government Accountability Office (GAO) released a report in which it assessed the reliability of the data within the EPLS.<sup>72</sup> In its report, the GAO assessed the reliability of the EPLS data and found the data to be insufficiently reliable for determining how many excluded parties received new federal awards during their period of exclusion because of the number of missing entries in certain data fields and the lack of an historical archive as a result of record modifications. In addition to a review of the GAO report, we performed limited tests on a judgmentally selected sample of EPLS records. Records were chosen based on anomalies identified within the database such as duplicate records or invalid date values. Based on the analysis, we determined that the risk level for the accuracy and completeness of the data is very high and that the data contained in the EPLS is not sufficiently reliable for our audit work. Because the BJA maintains the Clearinghouse database for upload into the EPLS system, we performed all testing of the accuracy of records on the Clearinghouse database. In order to assess the accuracy of information contained within the Clearinghouse database we selected a sample of cases to compare to source documentation.

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<sup>72</sup> U.S. Government Accountability Office, *Excluded Parties List System; Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds*, GAO-09-174 (February 2009), 26-27.

The universe for the sample design consisted of 5,690 cases, both active and inactive, with either entry date or denial start date between October 1, 2004, and October 15, 2010. The sample design consisted of selecting two samples. The first sample of 72 cases was an information-based, judgmental sample. The second sample was a stratified statistical sample.

The judgmentally selected cases were selected after information based analysis and comparisons were performed on the records in the universe to identify those that contained one or more of the eight types of anomalies that were present in the records. The eight anomalies identified were:

1. Cases with invalid data value of start and end date of denial;
2. Cases that were inactive, but had a denial end date after the download date of October 15, 2010;
3. Cases where the entry date in the database was after the denial end date;
4. Cases where the denial start and end dates were the same;
5. Cases where the entry date was before the denial start date;
6. Cases where the entry date was after the denial start date by more than 2,000 days;
7. Cases where the denial start date was after the denial end date by one day; and
8. Cases where the denial start date was after the download date of October 15, 2010.

The BJA could not provide supporting documentation for 4 of the 72 judgmentally selected cases, and one of the selected cases was found to be a duplicated case. Of the remaining 67 judgmentally selected cases, we compared the data entered into the Clearinghouse database to the source documentation to determine whether the data associated to each case was completely and accurately entered into the Clearinghouse database.

The data fields of the Clearinghouse database that we reviewed were last name, first name, middle name, social security number, address, denial start date, denial end date, and the EPLS Cause and Treatment Code. The following table shows the exceptions found and the rates for each of the

12 fields of the 71 cases, including the cases without supporting documentation.

**EXCEPTIONS AND EXCEPTION RATES OF THE FIELDS TESTED IN THE JUDGMENTAL SAMPLE**

TESTED VARIABLE	NUMBER OF EXCEPTIONS	EXCEPTION RATE
LNAME	6	8.45%
FNAME	6	8.45%
MNAME	7	9.86%
SSN	6	8.45%
ADDRESS	11	15.49%
COUNTRY	6	8.45%
CITY	9	12.68%
ST	7	9.86%
ZIP	7	9.86%
DEN START	20	28.17%
DEN END	29	40.85%
EPLS CODE	22	30.99%

Source: OIG Office of Advanced Audit Techniques

As presented in the test results' exhibits above, the exception rates found in the 72 information based judgmentally selected cases are much higher than the exception rates found in the randomly selected statistical sample for each of the same 12 variables tested. In the sample of 72, each record has one or more data anomalies. As such, the error rates in the judgmental sample are higher than the error rates in the statistical sample presented in Exhibit 3 of this report.

The universe for the stratified sample consisted of the remaining 5,618 cases. In order to provide an effective coverage of the universe and to obtain accurate estimates of the tests' results, stratified sample design was employed. The stratified sample design incorporated a confidence level of 95 percent, and exception rate of 15 percent with 5 percent precision including Bonferroni correction. As described below, there were six strata and the sample allocations to these strata are given in the following table:

## STRATIFIED SAMPLE DESIGN

STRATUM	DESCRIPTION	STRATUM SIZE	SAMPLE SIZE
1	Active FY 05 and FY 06	385	16
2	Active FY 07 and FY 08	1,526	63
3	Active FY 09 and FY 10	2,211	91
4	Inactive FY 05 and FY 06	873	36
5	Inactive FY 07 and FY 08	404	17
6	Inactive FY 09 and FY 10	219	9
<b>Total</b>		<b>5,618</b>	<b>232</b>

Source: OIG Office of Advanced Audit Techniques

The test results were projected to the universe of 5,618 cases at a 95 percent confidence level.

### Timeliness of Entry of Data into the EPLS

Three different comparisons were performed in our analysis of the timeliness of entry: (1) time from receipt of case file by the BJA to upload into the Clearinghouse database, (2) time from entry into the Clearinghouse database to upload in the EPLS, and (3) time from start of exclusion to entry into the EPLS.

#### *Time From Receipt to Upload in Clearinghouse Database*

Each source document file is manually stamped by the BJA when it is received. We recorded the manual date stamp placed on each case file from the records reviewed in our sample as previously described. The Clearinghouse database automatically generates a date stamp when a record is created. This date is contained in the data field "Entry Date." We compared the date recorded from each source document to the date automatically assigned by the Clearinghouse database system using commercially available database software.

#### *Time From Entry in Clearinghouse Database to Upload in the EPLS*

The EPLS reports the date of creation for each record in the field "EPLS Create Date." The field "EPLS Create Date" is automatically date stamped by the system. The Clearinghouse database automatically generates a date stamp when a record is created. This date is contained in the data field "Entry Date."

The Clearinghouse database and the EPLS were compared against each other using commercially available relational database software to

identify the length of time from entry into Clearinghouse database until upload to the EPLS by comparing the dates reported in the EPLS in the field "EPLS Create Date" and the dates reported in the Clearinghouse database in the field "Entry Date." Our review consisted of all cases with a record in the EPLS that matched a record in the Clearinghouse database. Due to the lack of a unique identifier common to both databases, the match was made based on first, middle, last name; social security number; EPLS Cause and Treatment Code; and exclusion start and end dates.

#### *Time From Start of Exclusion to Upload in the EPLS*

The EPLS reports the start of an exclusion in the field "Action Date," and the date of creation for each record in the field "EPLS Create Date." "Action Date" is a user entered field, while "EPLS Create Date" is automatically date stamped by the system.

We compared the "Action Date" to the "EPLS Start Date" in the EPLS to identify the length of time from the start of an exclusion until it was entered into the EPLS using commercially available relational database software.

Additionally, our analysis excluded drug cases, designated by the Cause and Treatment Codes AA and BB, with an entry date of April 7, 2005. BJA officials informed us that due to changes in GSA's data requirements for the EPLS, it was determined that it would be more efficient to remove all Clearinghouse cases from the EPLS and re-submit an all inclusive data upload of the Clearinghouse database. This inclusive data upload was performed on April 7, 2005, thus changing the entry date from the original to April 7, 2005.

**OFFICE OF JUSTICE PROGRAMS  
RESPONSE TO THE DRAFT REPORT**



U.S. Department of Justice

Office of Justice Programs

*Washington, D.C. 20531*

08 JUN 2012

MEMORANDUM TO: Michael E. Horowitz  
Inspector General  
United States Department of Justice

THROUGH: Raymond J. Beaudet  
Assistant Inspector General for Audit  
Office of the Inspector General  
United States Department of Justice

FROM: Mary Lou Leary   
Acting Assistant Attorney General

SUBJECT: Response to the Office of the Inspector General's Draft Audit Report, *Audit of Statutory Suspension and Debarment Activities Within the Department of Justice*

This memorandum provides a response to the Office of the Inspector General's (OIG's) May 16, 2012 draft audit report, entitled *Audit of Statutory Suspension and Debarment Activities Within the Department of Justice*. The Office of Justice Programs (OJP) appreciates the opportunity to review and comment on the draft report.

OJP was assigned responsibility for the Denial of Federal Benefits (DFB) program on January 8, 1990, via memorandum from the Deputy Attorney General at that time. According to the memorandum, "Section 5301 of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4310 (Act), provides for denial of certain Federal benefits to persons convicted of Federal and State offenses relating to drug trafficking and possession. Pursuant to this statute, the President submitted a Report to the Congress on August 30, 1989 (House Document 101-90), setting forth a plan for the implementation of Section 5301. Specifically, the President directed the Department of Justice to assume the role of 'information clearinghouse' for the Federal and State courts and to coordinate the participation of State courts in this program."

The President's proposal, submitted to Congress as required by the Act, names the U.S. Sentencing Commission as a lead organization in communicating the provisions of Section 5301 to the federal courts and encouraging full participation. The President's proposal names the Office of National Drug Control Policy (ONDCP) as the executive branch component with the authority to review implementation of this Section and determine if additional changes or modifications are needed in the future.

On February 22, 1993, via memorandum from Stuart Gerson, the Acting Attorney General to S. S. Ashton, the Acting Assistant Attorney General for the Office of Justice Programs, OJP was assigned responsibility for serving as the “‘point of contact’ from which defense contractors may learn whether an individual has been disqualified from defense contract participation, as provided in 10 U.S.C. § 2408. Specifically, the point of contact will collect and maintain in a secure database a current list of all individuals so disqualified.” This responsibility was reportedly derived from Sections 815 and 819 of the Defense Authorization Act.

As OJP’s statutory mission remains focused on providing the state, local, and tribal justice community with funding and other resources to improve their justice systems, we are concerned that these suspension and debarment responsibilities were assigned to OJP, which has no administrative oversight or other relevant information collection role with federal courts or other federal entities, and is not involved with state courts in such a way that facilitates this type of information collection. In the broader context of OJP, the DFB and Defense Procurement Fraud Debarment (DPFD) programs do not appear to be well placed and require OJP to create and provide resources for an information collection infrastructure that likely duplicates what other entities have already established and are better suited to maintain. OJP is not aware of any specific appropriation or staff ever being received for either of the programs examined by this review. OJP believes that, ultimately, these programs may be better and more efficiently implemented by other offices or agencies that have more direct administrative or information collection relationships with the entities handling these types of cases, and have established information collection roles, resources, and interests. In fact, other existing suspension and debarment systems may now be capable of serving as the repository of this information, suggesting that a consolidated clearinghouse may be more possible today than when these systems were authorized and assigned to OJP.

However, OJP agrees with the audit recommendations as they relate to OJP’s assigned responsibilities for managing the DFB and DPFD Clearinghouses programs. As stated in the draft audit report, the DFB and DPFD Clearinghouses (collectively known as the Clearinghouse) are two legally distinct clearinghouses, sharing a single point of contact that uses the same staff, and follows a single set of policies and procedures to receive and report qualifying cases under both programs.

While OJP believes that these programs may be more effectively and efficiently implemented by other components or agencies, OJP is committed to carefully considering each OIG recommendation, and taking appropriate steps to ensure optimal utilization of OJP’s limited available resources for administering the records of the Clearinghouse programs.

The draft audit report contains 21 recommendations and no questioned costs, of which Recommendation Numbers 4-7, 10-17, and 19-21 pertain to OJP. For ease of review, these recommendations are restated in bold and are followed by OJP's response.

4. **We recommend that BJA increase outreach to provide information on the DFB Program to state and federal courts through such means as the Administrative Office of the United States Courts, state judicial associations, National District Attorneys Association, etc.**

The Office of Justice Programs agrees with the recommendation. BJA is in the process of preparing a communication and outreach plan, and anticipates completing the Plan's actions by September 30, 2012. This information dissemination will be administered through or in coordination with components and entities that have established information collection relationships with federal and state courts as well as associations in support of these entities. Such components and entities include the Administrative Office of the United States Courts, United States Attorneys' Offices and the Executive Office for United States Attorneys, state judicial associations, the National Center for State Courts, the National District Attorneys Association, and others. The purpose of the plan is to provide information on the DFB program where the court has imposed statutory debarment as a result of drug trafficking and possession convictions pursuant to 21 U.S.C. § 862. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

5. **We recommend that BJA increase outreach to DOJ litigating divisions so that they are aware of the Clearinghouse and the requirements under 10 U.S.C. § 2408 using means sufficient to reach all criminal attorneys within the DOJ litigating divisions, including using the National Advocacy Center and online training.**

The Office of Justice Programs agrees with the recommendation. By September 30, 2012, BJA, in coordination with the Department, anticipates completing such information dissemination to the Department of Justice's (DOJ) litigating divisions to increase awareness of the Clearinghouse and the requirements under 10 U.S.C. § 2408. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

6. **We recommend that BJA develop and implement policies and procedures to ensure the list of contacts used for outreach is complete, accurate, and regularly updated, and includes all DOJ litigating divisions.**

The Office of Justice Programs agrees with the recommendation. By September 30, 2012, BJA anticipates developing and implementing procedures to ensure the list of contacts used for outreach is complete, accurate, regularly updated, and includes all DOJ litigating divisions. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

7. **We recommend that BJA update its policy to only accept qualifying DOD cases from the USAOs to include accepting qualifying DOD cases from all litigating divisions of DOJ.**

The Office of Justice Programs agrees with the recommendation. By September 30, 2012, BJA anticipates updating its policies and procedures to ensure that qualifying Department of Defense (DOD) cases are accepted from any litigating division of DOJ. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

10. **We recommend that BJA ensure that it is adequately monitoring Clearinghouse staff to ensure all submitted cases are entered into both the Clearinghouse database and the EPLS.**

The Office of Justice Programs agrees with the recommendation. By September 30, 2012, BJA anticipates developing and implementing procedures to ensure adequate monitoring of Clearinghouse activities, including verifying that all submitted cases are entered into both the Clearinghouse database and the Excluded Parties List System (EPLS). The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

11. **We recommend that BJA enhance its policies and procedures to ensure that all qualifying cases submitted are entered into both the Clearinghouse database and the EPLS.**

The Office of Justice Programs agrees with the recommendation. By September 30, 2012, BJA anticipates developing and implementing policies and procedures to ensure that all qualifying cases are entered into both the Clearinghouse database and the EPLS. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

12. **We recommend that BJA immediately enter any qualifying cases identified in this audit to both the Clearinghouse database and the EPLS, and identify and enter any additional cases that may have been submitted but not entered.**

The Office of Justice Programs agrees with the recommendation. By June 30, 2012, BJA plans to enter any qualifying cases identified in this audit into both the Clearinghouse database and the EPLS, and identify and enter any other complete and qualified cases, which may have been submitted but not yet entered, into the Clearinghouse database and the EPLS. Additionally, by July 31, 2012, BJA plans to conduct outreach on cases that are incomplete to obtain missing information needed to enter the cases into the Clearinghouse database and the EPLS. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

13. **We recommend that BJA immediately enter missing records into the Clearinghouse database and the EPLS, and correct any errors in data already stored in the EPLS.**

The Office of Justice Programs agrees with the recommendation. BJA plans to work with the submitting agencies to ensure record completeness and obtain any missing information. By September 30, 2012, BJA anticipates that all qualifying cases will be entered into the Clearinghouse database and the EPLS, and correction of any errors in data already stored in the EPLS. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

14. **We recommend that BJA immediately remove non-qualifying records from the EPLS.**

The Office of Justice Programs agrees with the recommendation. BJA has worked with the Clearinghouse contractor, and as of October 27, 2011, all non-qualifying records have been deleted in the EPLS. However, there is no process to completely expunge a record from the EPLS; deleted records will still show up in the EPLS archives, but are clearly marked "Deleted." The Office of Justice Programs considers this recommendation closed and requests written acceptance of this action from your office.

15. **We recommend that BJA enhance policies and procedures to ensure that all records in the Clearinghouse and the EPLS are complete, accurate, and properly communicated to other agencies.**

The Office of Justice Programs agrees with the recommendation. By September 30, 2012, BJA anticipates developing and implementing policies and procedures to ensure that all records in the Clearinghouse and the EPLS are complete, accurate, and properly communicated to other agencies. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

16. **We recommend that BJA improve quality controls of the Clearinghouse database to reduce future data entry inaccuracies.**

The Office of Justice Programs agrees with the recommendation. By September 30, 2012, BJA anticipates developing and implementing policies and procedures to strengthen controls over the Clearinghouse database to reduce future data entry inaccuracies. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

17. **We recommend that BJA ensure it is adequately monitoring Clearinghouse contractors and staff, including more frequent data checks and evaluations of contractor performance.**

The Office of Justice Programs agrees with the recommendation. By September 30, 2012, BJA anticipates developing and implementing procedures to ensure adequate monitoring of Clearinghouse activities, including more frequent data checks and regular evaluations of contractor performance. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

19. **We recommend that BJA update current policy to reflect modern capabilities of the EPLS system.**

The Office of Justice Programs agrees with the recommendation. By September 30, 2012, BJA anticipates updating its policies and procedures to ensure its current process reflects the modern capabilities of the EPLS. Additionally, once the System for Award Management (a new General Services Administration system, which is consolidating eight of the Federal Procurement Systems, including the EPLS) is implemented, BJA will further update its policies and procedures, as needed. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

20. **We recommend that BJA enhance policies and procedures to ensure that all records are communicated to the Department of Education, the Federal Communications Commission, and the EPLS in a timely manner.**

The Office of Justice Programs agrees with the recommendation. By September 30, 2012, BJA anticipates developing and implementing policies and procedures to ensure that all records are communicated to the Department of Education, the Federal Communications Commission, and the EPLS in a timely manner. Currently files are transferred every 30 days. BJA will explore the costs and practicality of transmitting cases more frequently. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

21. **We recommend that BJA ensure it is adequately monitoring Clearinghouse contractors and staff to include more frequent evaluations of the timeliness of entry of individuals' information into the Clearinghouse database and the EPLS.**

The Office of Justice Programs agrees with the recommendation. By September 30, 2012, BJA anticipates developing and implementing procedures to ensure adequate monitoring of Clearinghouse contractors and staff, including conducting more frequent evaluations of the timeliness of entry of individuals' information into the Clearinghouse database and the EPLS. BJA anticipates setting a goal for entry of case information into the system within five business days of receipt of the complete case information. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

Thank you for your continued support and assistance. If you have any questions regarding this response, please contact Maureen A. Henneberg, Director, Office of Audit, Assessment, and Management, on (202) 616-3282.

cc: James H. Burch, II  
Deputy Assistant Attorney General  
for Operations and Management

Denise O'Donnell  
Director  
Bureau of Justice Assistance

Leigh Benda  
Chief Financial Officer

Maureen A. Henneberg  
Director  
Office of Audit, Assessment, and Management

Phillip K. Merkle  
Director  
Office of Administration

Jeffery A. Haley  
Deputy Director, Audit and Review Division  
Office of Audit, Assessment, and Management

Louise M. Duhamel, Ph.D.  
Acting Assistant Director, Audit Liaison Group  
Justice Management Division

cc: Anna Martínez  
Senior Advisor to the Associate Attorney General  
Office of the Associate Attorney General

OJP Executive Secretariat  
Control Number 20120671

**EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS  
RESPONSE TO THE DRAFT REPORT**



**U.S. Department of Justice**

Executive Office for United States Attorneys

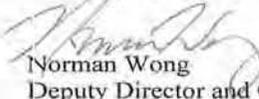
Office of the Director

*Room 2261, RFK Main Justice Building (202) 252-1000  
950 Pennsylvania Avenue, NW  
Washington, DC 20530*

**MEMORANDUM**

DATE: June 6, 2012

TO: Raymond J. Beaudet  
Assistant Inspector General for Audit  
Office of the Inspector General  
U.S. Department of Justice

FROM:   
Norman Wong  
Deputy Director and Counsel to the Director  
Executive Office for United States Attorneys

SUBJECT: Response to the Report entitled, "Statutory Suspension and Debarment Activities Within the Department of Justice"

The Executive Office for United States Attorneys appreciates the audit undertaken by the Department of Justice, Office of the Inspector General (OIG) regarding the Department's statutory debarment activities. In the report, entitled "Statutory Suspension and Debarment Activities Within the Department of Justice," OIG examined, among other things, the process by which the Department provides information on individuals "convicted of fraud or any other felony arising out of a contract with the Department of Defense," as outlined in 10 U.S.C. § 2408(a)(1), to the Defense Procurement Fraud Debarment Clearinghouse, which is administered by the Bureau of Justice Assistance (BJA). The Clearinghouse then places that information into the Excluded Parties Listing System, which serves to communicate suspension and debarment activities of all types to all government agencies.

In addition to examining the process used by the litigating sections in the Criminal Division and the Antitrust Division to report this conviction information, OIG evaluated the process by which the United States Attorneys' offices (USAOs) report this information. The OIG team made site visits to five USAOs and reviewed case files to identify which cases qualified for debarment. The team then checked with the Clearinghouse to see if the qualifying cases had been reported. The team found that three of the five USAOs visited did not have any cases that qualified for debarment. Of the two USAOs that had qualifying cases, not all such cases had been reported to the Clearinghouse, nor did the reports always contain full and complete information. Importantly, the audit noted that the Clearinghouse did not timely notify or remind USAOs of their obligation to report this information.

In the report OIG makes six recommendations for the United States Attorneys' offices (USAOs), and an additional 15 recommendations for the Bureau of Justice Affairs. The recommendations for the USAOs are as follow (maintaining the numbering utilized in the report):

1. Develop and implement policies and procedures to accurately identify and track qualifying DOD cases.
2. Develop and implement a system to ensure qualifying DOD cases are submitted timely to the BJA.
3. Submit all qualifying cases that should be actively excluded.
8. Develop policies to ensure case information submitted to the BJA contains all required information for entry into the Clearinghouse database and the EPLS.
9. Promptly respond to inquiries from Clearinghouse staff related to submitted cases.
18. Develop and implement a system to ensure qualifying DOD cases are submitted timely to the BJA with all required information for entry into the Clearinghouse database and the EPLS.

We agree with these recommendations. EOUSA will, after a period of consultation and review, issue a memorandum to all United States Attorneys outlining these recommendations and providing suggestions on steps that USAOs may take to meet them.

**CRIMINAL DIVISION  
RESPONSE TO THE DRAFT REPORT**



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 5, 2012

**MEMORANDUM**

**TO:** Raymond J. Beaudet  
Assistant Inspector General for Audit  
Office of the Inspector General

**FROM:** Mythili Raman *MR*  
Principal Deputy Assistant Attorney General and Chief of Staff  
Criminal Division

**SUBJECT:** The Criminal Division's Response to Recommendations Contained in the Office of the Inspector General's Draft Audit Report—Audit of Statutory Suspension and Debarment Activities Within the Department of Justice

This memorandum responds to the Office of the Inspector General's Draft Audit Report entitled "Audit of Statutory Suspension and Debarment Activities Within the Department of Justice" (Draft Report). The Criminal Division takes seriously its responsibility to assist the Bureau of Justice Assistance (BJA) with its obligation to administer exclusions under 10 U.S.C. § 2408. As the Draft Report notes, the BJA was directed to accept cases qualifying for debarment under § 2408 only from United States Attorneys' Offices (USAOs), *see* Draft Report at v. n.10, and thus the BJA only requested qualifying cases from the USAOs even after it became aware that other Department components litigate qualifying cases independently of any USAO, *id.* at 12. Because the BJA's limited outreach was causing it not to be informed of all qualifying cases, the Criminal Division affirmatively notified the BJA in 2007 that the Department's reporting of debarments under § 2408 may not be complete, and Criminal Division attorneys met with the BJA in 2009 to express our concerns that the BJA was not accepting qualifying cases from all Department litigating divisions. *Id.* It was as a result of this meeting that, in April 2009, the BJA began requesting qualifying cases from the Criminal Division's Fraud Section, though it did not make the same request of the Criminal Division's Public Integrity Section. *Id.*

Nonetheless, we agree that the Criminal Division can do more to identify and report qualifying cases to the BJA. We address the resolution of each of the Draft Report's proposed recommendations applicable to the Criminal Division below.

### Responses to Recommendations

**Recommendation 1.** *Develop and implement policies and procedures to accurately identify and track qualifying Department of Defense cases.*

**Recommendation 2.** *Develop and implement a system to ensure qualifying Department of Defense cases are submitted timely to the Bureau of Justice Assistance.*

**Recommendation 3.** *Submit all qualifying cases that should be actively excluded.*

**Recommendation 8.** *Develop policies to ensure case information submitted to the Bureau of Justice Assistance contains all required information for entry into the Clearinghouse database and the Excluded Parties Listing System.*

**Recommendation 9.** *Promptly respond to inquiries from Clearinghouse staff related to submitted cases.*

**Recommendation 18.** *Develop and implement a system to ensure qualifying Department of Defense cases are submitted timely to the Bureau of Justice Assistance with all required information for entry into the Clearinghouse database and the Excluded Parties Listing System.*

**Response:** We agree with these recommendations. By a memorandum issued on May 11, 2012, the Assistant Attorney General for the Criminal Division instructed each of the Criminal Division's sections that handles fraud or other felony prosecutions arising out of Department of Defense contracts to ensure that convictions giving rise to debarment under § 2408 are timely submitted to the BJA. Specifically, the Assistant Attorney General instructed our sections to (1) identify and track potentially qualifying cases; (2) collect and transmit the required information to the BJA; and (3) submit qualifying convictions to the BJA in a timely fashion after judgment is entered. Criminal Division sections were further instructed to promptly respond to inquiries from the BJA about submitted cases.

The Criminal Division's Office of Administration is working with the sections that handle cases potentially qualifying for debarment under § 2408, including our Fraud and Public Integrity Sections, to determine how best to track qualifying cases in the Division's Automated Case Tracking System (ACTS). For example, we anticipate adding a "qualifying defense-related felony" program category code for cases that could qualify for debarment under § 2408, and a "BJA notified" event code indicating that a qualifying case has been submitted to the BJA. For those cases potentially qualifying for debarment, the specific information required by the BJA—such as the defendant's social security number and date of birth—will also be entered into ACTS.

Our Office of Administration also intends to run regular reports listing cases that have been identified as potentially qualifying for debarment under § 2408; those reports will be provided to the Division's litigating sections, who will review them to determine whether any of the listed cases need to be submitted to the BJA. Therefore, the Division's litigating sections will strive to submit qualifying cases to the BJA as they are identified, rather than waiting for the BJA's quarterly request. When we receive the BJA's quarterly request, the Office of Administration will both check ACTS and reach out to the attorneys in our sections that handle

potentially qualifying cases to ensure that we have submitted all qualifying cases to the BJA. We have informed the BJA that it should send its quarterly request to:

Debra Frary  
Criminal Division, Office of Administration  
Room 5124  
1400 New York Avenue N.W.  
Washington, D.C. 20530  
(t) (202) 305-4967  
(f) (202) 514-1792  
debra.frary@usdoj.gov

If you have any questions, please contact Senior Counsel to the Assistant Attorney General Daniel Lenerz at (202) 532-6045 or Denise Turcotte, the Division's Audit Liaison, at (202) 616-9318.

**ANTITRUST DIVISION  
RESPONSE TO THE DRAFT REPORT**

U.S. Department of Justice

Antitrust Division

*Office of the General Counsel**Washington, D.C. 20530*

June 6, 2012

FEDERAL EXPRESS

David M. Sheeren  
Regional Audit Manager  
Denver Regional Audit Office  
Office of the Inspector General  
U.S. Department of Justice  
1120 Lincoln Street, Suite 1500  
Denver, CO 80203

Dear Mr. Sheeren:

The Antitrust Division ("Division") appreciates the opportunity to respond to the Office of the Inspector General ("OIG") draft report on the Audit of Statutory Suspension and Debarment Activities Within the Department of Justice. We ask that this letter be appended to OIG's final report.

As noted in the audit report, the Division became aware of the Defense Procurement Fraud Debarment Clearinghouse reporting requirements in late 2008. At that time, the Division instructed its attorneys to report defendants qualifying for debarment under 10 U.S.C. § 2408 to the Clearinghouse. However, in large part Division attorneys failed to do so because they were aware of debarment of the same individuals by the Department of Defense and were unaware that administrative debarment by DoD was distinct from debarment under 10 U.S.C. § 2408. The audit report notes that the Division reported to OIG 66 individuals who qualified for debarment under 10 U.S.C. § 2408. Further examination of Division records reveals that eight of the individuals who were not reported to the Clearinghouse did not in fact qualify for debarment under 10 U.S.C. § 2408 and thus were properly not reported to the Clearinghouse. Further, as noted in the Division's original response to OIG, 14 of the individuals were not sentenced until after fiscal year 2010 and thus were not reportable during the audit period, and three individuals still have not been sentenced and are not yet reportable.

The Division agrees with the audit report's recommendations for the Antitrust Division, which are recommendations 1-3, 8-9, and 18. Those recommendations are to develop and implement policies and procedures to accurately identify and track

qualifying DoD cases, to develop and implement a system to ensure qualifying DoD cases are submitted timely to the Clearinghouse, to submit all qualifying cases that should be actively excluded, to develop policies to ensure all required case information is submitted to the Clearinghouse, and to promptly respond to inquiries from Clearinghouse staff.

In response to these recommendations, the Division has provided expanded instructions to its attorneys on the requirements of 10 U.S.C. § 2408 and also on the fact that administrative debarment by DoD does not substitute for reporting and debarment under 10 U.S.C. § 2408. The Division has implemented a system to track on at least a quarterly basis the identification of qualifying cases under 10 U.S.C. § 2408 and the submission of qualifying cases to the Clearinghouse. The Division has also developed a certification form for attorneys to complete and submit to the Division's Office of Operations once a report on a qualifying defendant has been made to the Clearinghouse. In this form, the attorney must certify that the defendant qualifies for debarment under 10 U.S.C. § 2408 and that the required information has been submitted to the Clearinghouse. The certification form lists the information that must be submitted to the Clearinghouse. The Division has encouraged its attorneys to submit the cases as soon as possible after they receive a defendant's judgment and conviction form but no later than the deadline for the Clearinghouse's quarterly request for qualifying cases and has instructed its attorneys to respond promptly to any inquiries from the Clearinghouse. The Division has submitted to the Clearinghouse all qualifying cases from the audit period that should be actively excluded, as well as all qualifying cases from fiscal year 2011 and the first and second quarters of fiscal year 2012.

Thank you for the opportunity to respond to OIG's draft report. Please contact me if you need further assistance.

Sincerely,



Belinda A. Barnett  
Criminal Deputy General Counsel  
Antitrust Division

**OFFICE OF THE INSPECTOR GENERAL  
ANALYSIS AND SUMMARY OF ACTIONS  
NECESSARY TO CLOSE THE REPORT**

**Office of Justice Programs**

The OIG provided a draft of this audit report to the Office of Justice Programs (OJP). OJP's response is incorporated in Appendix II of this final report. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

**Recommendation Number:**

- 4. Resolved.** OJP concurred with our recommendation that the BJA increase outreach to provide information on the DFB Program to state and federal courts. OJP stated in its response that the BJA is in the process of preparing a communication and outreach plan, and anticipates completing the plan's actions by September 30, 2012.

This recommendation can be closed when we receive a copy of the BJA's communication and outreach plan, and evidence that the BJA has increased outreach to provide information on the DFB Program to state and federal courts.

- 5. Resolved.** OJP concurred with our recommendation that the BJA increase outreach to DOJ litigating divisions so that they are aware of the Clearinghouse and the requirements under 10 U.S.C. § 2408. OJP stated in its response that by September 30, 2012, the BJA, in coordination with the Department, anticipates completing such information dissemination to DOJ's litigating divisions to increase awareness of the Clearinghouse and the requirements under 10 U.S.C. § 2408.

This recommendation can be closed when we receive evidence of the BJA's increased outreach communications and that DOJ litigating divisions are aware of the Clearinghouse and the requirements under 10 U.S.C. § 2408.

- 6. Resolved.** OJP concurred with our recommendation that the BJA develop and implement policies and procedures to ensure the list of contacts used for outreach is complete, accurate, and regularly updated, and includes all DOJ litigating divisions. OJP stated in its response that by September 30, 2012, the BJA anticipates developing and implementing such procedures.

This recommendation can be closed when we receive the BJA's updated policies and procedures, and evidence that the list of contacts used for outreach is complete, accurate, and regularly updated, and includes all DOJ litigating divisions.

7. **Resolved.** OJP concurred with our recommendation that the BJA update its policy to only accept qualifying DOD cases from the USAOs to include accepting qualifying DOD cases from all litigating divisions of DOJ. OJP stated in its response that by September 30, 2012, the BJA anticipates updating these policies and procedures.

This recommendation can be closed when we receive the BJA's updated policies and procedures, and evidence that the BJA accepts qualifying DOD cases from all litigating divisions of DOJ.

10. **Resolved.** OJP concurred with our recommendation that the BJA ensure that it is adequately monitoring Clearinghouse staff to ensure all submitted cases are entered into both the Clearinghouse database and the EPLS. OJP stated in its response that by September 30, 2012, the BJA anticipates developing and implementing procedures to ensure adequate monitoring of Clearinghouse activities, including verifying that all submitted cases are entered into both the Clearinghouse database and the EPLS.

This recommendation can be closed when we receive the BJA's updated policies and procedures, and evidence indicating it is monitoring Clearinghouse activities.

11. **Resolved.** OJP concurred with our recommendation that the BJA enhance its policies and procedures to ensure that all qualifying cases submitted are entered into both the Clearinghouse database and the EPLS. OJP stated in its response that by September 30, 2012, the BJA anticipates developing and implementing policies and procedures to ensure that all qualifying cases are entered into both the Clearinghouse database and the EPLS.

This recommendation can be closed when we receive the BJA's updated policies and procedures, and evidence that the BJA ensures that all qualifying cases submitted are entered into both the Clearinghouse database and the EPLS.

12. **Resolved.** OJP concurred with our recommendation that the BJA immediately enter any qualifying cases identified in this audit to both the Clearinghouse database and the EPLS, and identify and enter any additional cases that may have been submitted but not entered. OJP stated in its response that by June 30, 2012, the BJA plans to enter any qualifying cases identified in this audit into both the Clearinghouse database and the EPLS, and identify and enter into

the Clearinghouse database and the EPLS any other complete and qualified cases which may have been submitted but not yet entered. Additionally, by July 31, 2012, the BJA plans to conduct outreach on cases that are incomplete to obtain missing information needed to enter the cases into the Clearinghouse database and the EPLS.

This recommendation can be closed when we receive a copy of the Clearinghouse database reflecting the addition of submitted cases. OIG auditors will obtain a copy of the EPLS from the GSA to verify that Clearinghouse records have also been uploaded to the EPLS.

- 13. Resolved.** OJP concurred with our recommendation that the BJA immediately enter missing records into the Clearinghouse database and the EPLS, and correct any errors in data already stored in the EPLS. OJP stated in its response that the BJA plans to work with the submitting agencies to ensure record completeness and will obtain any missing information. By September 30, 2012, the BJA anticipates that all qualifying cases will be entered into the Clearinghouse database and the EPLS, and any errors in data already stored in the EPLS will be corrected.

This recommendation can be closed when we receive a copy of the Clearinghouse database reflecting the corrected records. OIG auditors will obtain a copy of the EPLS from the GSA to verify that errors and omissions have also been corrected in the EPLS.

- 14. Resolved.** OJP concurred with our recommendation that the BJA immediately remove non-qualifying records from the EPLS. OJP stated in its response that the BJA has worked with the Clearinghouse contractor, and as of October 27, 2011, all non-qualifying records had been deleted in the EPLS database. However, there is no process to completely expunge a record from the EPLS database; deleted records will still show up in the EPLS archives, but are clearly marked "Deleted."

This recommendation can be closed after OIG auditors obtain a copy of the EPLS from the GSA to verify that non-qualifying records have been designated as "Deleted" within the EPLS.

- 15. Resolved.** OJP concurred with our recommendation that the BJA enhance policies and procedures to ensure that all records in the Clearinghouse and the EPLS are complete, accurate, and properly communicated to other agencies. OJP stated in its response that by September 30, 2012, the BJA anticipates developing and implementing such procedures.

This recommendation can be closed when we receive the BJA's updated policies and procedures, and evidence that the BJA ensures that all records in the Clearinghouse and the EPLS are complete, accurate, and properly communicated to other agencies.

- 16. Resolved.** OJP concurred with our recommendation that the BJA improve quality controls of the Clearinghouse database to reduce future data entry inaccuracies. OJP stated in its response that by September 30, 2012, the BJA anticipates developing and implementing policies and procedures to strengthen controls over the Clearinghouse database to reduce future data entry inaccuracies.

This recommendation can be closed when we receive evidence that the BJA has improved quality controls of the Clearinghouse databases to reduce future data entry inaccuracies.

- 17. Resolved.** OJP concurred with our recommendation that the BJA ensure it is adequately monitoring Clearinghouse contractors and staff, including more frequent data checks and evaluations of contractor performance. OJP stated in its response that by September 30, 2012, the BJA anticipates developing and implementing procedures to ensure adequate monitoring of Clearinghouse activities, including more frequent data checks and regular evaluations of contractor performance.

This recommendation can be closed when we receive the BJA's updated policies and procedures, and evidence that the BJA has increased the frequency of data checks and initiated recurring contractor performance evaluations.

- 19. Resolved.** OJP concurred with our recommendation that the BJA update current policy to reflect modern capabilities of the EPLS system. OJP stated in its response that by September 30, 2012, the BJA anticipates updating its policies and procedures to ensure its current process reflects the modern capabilities of the EPLS. Additionally, once the System for Award Management (a new General Services Administration system, which is consolidating eight of the Federal Procurement Systems, including the EPLS) is implemented, the BJA will further update its policies and procedures, as needed.

This recommendation can be closed when we receive evidence that the BJA's updated policies and procedures and current processes reflect the modern capabilities of the EPLS system.

- 20. Resolved.** OJP concurred with our recommendation that the BJA enhance policies and procedures to ensure that all records are communicated to the

Department of Education, the Federal Communications Commission, and the EPLS in a timely manner. OJP stated in its response that by September 30, 2012, the BJA anticipates developing and implementing policies and procedures to ensure that all records are communicated to the Department of Education, the Federal Communications Commission, and the EPLS in a timely manner. Currently files are transferred every 30 days. The BJA will explore the costs and practicality of transmitting cases more frequently.

This recommendation can be closed when we receive the BJA's updated policies and procedures, and evidence that the BJA is communicating all records in a timely manner.

- 21. Resolved.** OJP concurred with our recommendation that the BJA ensure it is adequately monitoring Clearinghouse contractors and staff to include more frequent evaluations of the timeliness of entry of individuals' information into the Clearinghouse database and the EPLS. OJP stated in its response that by September 30, 2012, the BJA anticipates developing and implementing procedures to ensure adequate monitoring of Clearinghouse contractors and staff, including conducting more frequent evaluations of the timeliness of entry of individuals' information into the Clearinghouse database and the EPLS. The BJA anticipates setting a goal for entry of case information into the system within 5 business days of receipt of the complete case information.

This recommendation can be closed when we receive evidence that the BJA is adequately monitoring Clearinghouse contractors and staff and conducting more frequent evaluations of the timeliness of entry of information into the Clearinghouse database and the EPLS.

## **Executive Office for U.S. Attorneys**

The OIG provided a draft of this audit report to the Executive Office for United States Attorneys (EOUSA). EOUSA's response is incorporated in Appendix III of this final report. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

We made six recommendations to EOUSA in this report. EOUSA concurred with the recommendations and, in its response to each recommendation, stated that it will, after a period of consultation and review, issue a memorandum to all United States Attorneys outlining these recommendations and providing suggestions on steps that USAOs may take to meet them.

## Recommendation Number:

1. **Resolved.** EOUSA concurred with our recommendation to develop and implement policies and procedures to accurately identify and track qualifying DOD cases.

This recommendation can be closed when we receive EOUSA's updated policies and procedures, and evidence that the USAOs accurately identify and track qualifying DOD cases.

2. **Resolved.** EOUSA concurred with our recommendation to develop and implement a system to ensure qualifying DOD cases are submitted timely to the BJA.

This recommendation can be closed when we receive evidence that the USAOs timely submit qualifying DOD cases to the BJA.

3. **Resolved.** EOUSA concurred with our recommendation to submit all qualifying cases that should be actively excluded.

This recommendation can be closed when we receive evidence that the USAOs submit to the Clearinghouse all qualifying cases that should be actively excluded.

8. **Resolved.** EOUSA concurred with our recommendation to develop policies to ensure case information submitted to the BJA contains all required information for entry into the Clearinghouse database and the EPLS.

This recommendation can be closed when we receive EOUSA's updated policies and procedures, and evidence that the case information the USAOs submit to the BJA contains all required information for entry into the Clearinghouse database and the EPLS.

9. **Resolved.** EOUSA concurred with our recommendation to promptly respond to inquiries from Clearinghouse staff related to submitted cases.

This recommendation can be closed when we receive evidence that the USAOs promptly respond to inquiries from Clearinghouse staff related to submitted cases.

18. **Resolved.** EOUSA concurred with our recommendation to develop and implement a system to ensure qualifying DOD cases are submitted timely to the BJA with all required information for entry into the Clearinghouse database and the EPLS.

This recommendation can be closed when we receive evidence that the USAOs ensure qualifying DOD cases are submitted timely to the BJA with all required information for entry into the Clearinghouse database and the EPLS.

## **Criminal Division**

The OIG provided a draft of this audit report to the Criminal Division (CRM). CRM's response is incorporated in Appendix IV of this final report. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

We made six recommendations to CRM in this report. CRM concurred with the recommendations and, in its response to each recommendation, stated that the Assistant Attorney General for Criminal Division has issued a memorandum instructing CRM's sections to (1) identify and track potentially qualifying cases; (2) collect and transmit the required information to the BJA; and (3) submit qualifying convictions to the BJA in a timely fashion after judgment is entered. CRM's sections were further instructed to respond promptly to inquiries from the BJA about submitted cases.

Additionally, CRM stated that its Office of Administration is working with the sections that handle cases potentially qualifying for debarment under 10 U.S.C. § 2408, including the Fraud and Public Integrity Sections, to determine how best to track qualifying cases in CRM's Automated Case Tracking System (ACTS). CRM also stated that its litigating sections will strive to submit qualifying cases to the BJA as they are identified, rather than waiting for the BJA's quarterly request. When the BJA's quarterly request is received, CRM stated that the Office of Administration will both check ACTS and contact the attorneys within the sections that handle potentially qualifying cases to ensure that all qualifying cases are submitted to the BJA.

### **Recommendation Number:**

- 1. Resolved.** CRM concurred with our recommendation to develop and implement policies and procedures to accurately identify and track qualifying DOD cases.

This recommendation can be closed when we receive a copy of CRM's final policies and procedures, and evidence that it is accurately identifying and tracking qualifying DOD cases.

- 2. Resolved.** CRM concurred with our recommendation to develop and implement a system to ensure qualifying DOD cases are submitted timely to the BJA.

This recommendation can be closed when we receive a copy of CRM's final policies and procedures, and evidence that it is timely submitting qualifying DOD cases to the BJA.

- 3. Resolved.** CRM concurred with our recommendation to submit all qualifying cases that should be actively excluded.

This recommendation can be closed when we receive evidence that CRM is submitting to the Clearinghouse all qualifying cases that should be actively excluded.

- 8. Resolved.** CRM concurred with our recommendation to develop policies to ensure case information submitted to the BJA contains all required information for entry into the Clearinghouse database and the EPLS.

This recommendation can be closed when we receive a copy of the Assistant Attorney General's memorandum to Criminal Division's sections, any updated policies and procedures, and evidence that the case information submitted to the BJA contains all required information for entry into the Clearinghouse database and the EPLS.

- 9. Resolved.** CRM concurred with our recommendation to promptly respond to inquiries from Clearinghouse staff related to submitted cases.

This recommendation can be closed when we receive evidence that CRM promptly respond to inquiries from Clearinghouse staff related to submitted cases.

- 18. Resolved.** CRM concurred with our recommendation to develop and implement a system to ensure qualifying DOD cases are submitted timely to the BJA with all required information for entry into the Clearinghouse database and the EPLS.

This recommendation can be closed when we receive evidence that CRM timely submits qualifying DOD cases to the BJA with all required information for entry into the Clearinghouse database and the EPLS.

## **Antitrust Division**

The OIG provided a draft of this audit report to the Antitrust Division (ATR). ATR's response is incorporated in Appendix V of this final report. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

We made six recommendations to ATR in this report. ATR concurred with the recommendations and, in its response to each recommendation, ATR stated that it has provided expanded instructions to its attorneys on the requirements of 10 U.S.C. §2408 and also on the fact that administrative debarment by DOD does not substitute for reporting and debarment under 10 U.S.C. § 2408. Additionally, ATR stated that it has implemented a system to track on at least a quarterly basis the identification of qualifying cases under 10 U.S.C. § 2408 and the submission of qualifying cases to the Clearinghouse. ATR stated that it has also developed a certification form for attorneys listing the information that must be submitted to the Clearinghouse to be completed and submitted to ATR's Office of Operations once a report on a qualifying defendant has been made to the Clearinghouse. ATR stated that it has encouraged its attorneys to submit the cases as soon as possible after they receive a defendant's judgment and conviction form, but no later than the deadline for the Clearinghouse's quarterly request for qualifying cases, and has instructed its attorneys to respond promptly to any inquiries from the Clearinghouse. ATR also stated that it has submitted to the Clearinghouse all qualifying cases from the audit period that should be actively excluded, as well as all qualifying cases from fiscal year 2011 and the first and second quarters of fiscal year 2012.

**Recommendation Number:**

1. **Resolved.** ATR concurred with our recommendation to develop and implement policies and procedures to accurately identify and track qualifying DOD cases.

This recommendation can be closed when we receive a copy of ATR's updated policies and procedures, and evidence that it has implemented procedures to accurately identify and track qualifying DOD cases.

2. **Resolved.** ATR concurred with our recommendation to develop and implement a system to ensure qualifying DOD cases are submitted timely to the BJA.

This recommendation can be closed when we receive a copy of ATR's updated policies and procedures, and evidence that it has implemented procedures to ensure the timely submission of qualifying DOD cases.

3. **Resolved.** ATR concurred with our recommendation to submit all qualifying cases that should be actively excluded.

This recommendation can be closed when we receive evidence that ATR is submitting to the Clearinghouse all qualifying cases that should be actively excluded.

- 8. Resolved.** ATR concurred with our recommendation to develop policies to ensure case information submitted to the BJA contains all required information for entry into the Clearinghouse database and the EPLS.

This recommendation can be closed when we receive a copy of ATR's updated policies and procedures, and evidence that it ensures case information submitted to the BJA contains all required information for entry into the Clearinghouse database and the EPLS.

- 9. Resolved.** ATR concurred with our recommendation to promptly respond to inquiries from Clearinghouse staff related to submitted cases.

This recommendation can be closed when we receive a copy of ATR's updated policies and procedures, and evidence that ATR is promptly responding to inquiries from Clearinghouse staff related to submitted cases.

- 18. Resolved.** ATR concurred with our recommendation to develop and implement a system to ensure qualifying DOD cases are submitted timely to the BJA with all required information for entry into the Clearinghouse database and the EPLS.

This recommendation can be closed when we receive a copy of ATR's updated policies and procedures, and evidence that ATR is timely submitting to the BJA qualifying DOD cases with all required information for entry into the Clearinghouse database and the EPLS.