



To: Subcommittee on Oversight and Investigations Republican Members
From: Subcommittee on Oversight and Investigations Republican Staff,
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Date: July 25, 2022
Subject: Hybrid Oversight Hearing on “*Preventing Polluters from Getting Government Contracts: Bureau of Land Management’s Corporate Exclusions Lists*”

The Subcommittee on Oversight and Investigations will hold a hybrid oversight hearing titled “*Preventing Polluters from Getting Government Contracts: Bureau of Land Management’s Corporate Exclusions Lists*,” on **Thursday, July 28, 2022, at 10:00 a.m. EDT** in room 1334 Longworth House Office Building and via Cisco WebEx.

Republican Members are encouraged to take advantage of the opportunity to participate in person from the hearing room.

Member offices are requested to notify Sang Yi (Sang.Yi@mail.house.gov) **no later than Wednesday, July 27, 2022, at 4:30 p.m. EDT** if their Member intends to participate in the hearing room or remotely via his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- The Majority has yet again chosen a hearing topic out of touch with the challenges being faced by American families.
- The Bureau of Land Management (BLM) should be held accountable for its failure to hold statutorily mandated lease sales and to timely issue Applications for Permits to Drill (APDs). These actions will help address the ongoing energy crisis resulting from the Democrats’ hampering domestic energy development.
- The Office of Inspector General (OIG) highlighted a systemic failure of employees across BLM not checking the Federal Exclusions List prior to issuing mineral leases. A swift remedy is required to ensure BLM does not contract with lessees who are prohibited from receiving Federal contracts.



- On July 8, 2022, BLM issued guidance requiring employees to verify that lessees have not been suspended, debarred, excluded, or disqualified from receiving Federal contracts or awards.
- The protracted timeframes the BLM proposed to implement the OIG’s recommendations are unacceptable.
 - The OIG expressed concern regarding the March 2024 timeline for BLM to implement recommendations made in the inspection report. Some recommendation implementation timelines are longer than two years from the date of the OIG report.
 - Given the protracted target implementation dates, the OIG recommends that BLM establish immediate mitigating measures.

II. WITNESSES

- The Honorable Mark Greenblatt, Inspector General, U.S. Department of the Interior, Washington, D.C.
- Mr. Michael Nedd, Deputy Director of Operations, Bureau of Land Management, Washington, D.C.

III. BACKGROUND

A Department of the Interior (DOI) Office of Inspector General (OIG) report titled, “The Bureau of Land Management Did Not Review the Federal Exclusions List Before Issuing Federal Mineral Leases” is the basis for this oversight hearing.¹

Federal Exclusions List

Suspension and Department practices are established under the Federal Acquisition Regulation (FAR), and apply to contractors partnering with the federal government.² Under these procedures, if an agency elects to “suspend” or “debar” a contractor, that contractor is no longer eligible to receive new federal contracts or be hired as a government subcontractor.³ A suspension typically does not last longer than 18 months, unless civil or criminal proceedings are initiated against the contractor.⁴ In contrast, a debarment lasts typically no longer than three years.⁵

Suspension and debarment protocols are used to protect the integrity of Federal programs, address poor performance, and prevent waste, fraud, and abuse.⁶ Causes for suspension or

¹ A copy of the report is available [here](#).

² David H. Carpenter, *Selected Legal Tools for Maintaining Gov’t Accountability*, CONG. RESEARCH SERV. (Sept. 26, 2018), available at <https://www.crs.gov/reports/pdf/R45322>.

³ *Id.* at 20-21.

⁴ *Id.* at 20.

⁵ *Id.*

⁶ U.S. DEP’T OF THE INTERIOR, *Suspension and Debarment: Frequently Asked Questions*, <https://www.doi.gov/sites/doi.gov/files/faq-suspension-and-debarment-for-website.pdf> (last visited July 21, 2022).

debarment proceedings may include (1) fraud; (2) embezzlement, theft, forgery, bribery, and tax evasion; and (3) offenses which indicate a lack of business integrity or honesty.⁷

Suspended or debarred contractors are placed on the Federal Exclusions List.⁸ To ensure federal contracts are not awarded to ineligible recipients, agencies must check the Federal Exclusions List before awarding a contract.⁹

Suspension and Debarment Procedures at DOI

Within DOI, the Suspension and Debarment Program is overseen by the Suspending and Debarring Official (SDO).¹⁰ The DOI SDO manages referrals for suspension or debarment within DOI.¹¹ If the SDO determines there is sufficient evidence to support suspension or debarment, proceedings are initiated by issuing a notice to the contractor.¹² Following receipt of information from the contractor, the SDO may hold a fact-finding hearing.¹³ Subsequently, the SDO will determine whether to suspend or debar the contractor, and accordingly submit the contractor's information for inclusion on the Federal Exclusions List.¹⁴

OIG Report Findings

In January 2022, the OIG released its report entitled, "The Bureau of Land Management Did Not Review the Federal Exclusions List Before Issuing Federal Mineral Leases."¹⁵ Upon a BLM employee complaint,¹⁶ the OIG initiated an inspection of BLM's compliance with suspension and debarment regulations.¹⁷ The OIG found that not only did BLM employees fail to check the Federal Exclusions List before issuing a mineral lease, but that BLM also lacked policies requiring employees to determine whether a lessee was suspended or debarred.¹⁸ During the inspection, the OIG discovered that BLM employees were generally unaware of the requirement to reference the Federal Exclusions List prior to issuing leases.¹⁹

⁷ *Supra* note 1 at 20.

⁸ *Id.* at 22.

⁹ *Id.*

¹⁰ U.S. DEP'T OF THE INTERIOR, OFFICE OF ACQUISITION AND PROPERTY MGMT., *Suspension & Debarment Program*, <https://www.doi.gov/pam/suspension-debarment> (last visited July 21, 2022).

¹¹ *Supra* note 5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ U.S. DEP'T OF THE INTERIOR, REPORT NO. 2021-CR-007, THE BUREAU OF LAND MGMT. DID NOT REVIEW THE FED. EXCLUSIONS LIST BEFORE ISSUING FED. MINERAL LEASES (2022).

¹⁶ Briefing from U.S. Dep't of the Interior, Office of Inspector Gen. Staff to H. Comm. on Nat. Res. Republican Staff (July 14, 2022).

¹⁷ *Supra* note 15 at 1.

¹⁸ *Id.*

¹⁹ *Id.* at 3.

In its inspection, the OIG examined 5,168 leases issued to 762 lessees between October 1, 2016, and September 30, 2020.²⁰ Of these lessees, six were identified as potentially matching entities listed on the Federal Exclusions List.²¹ Notably, however, the OIG could not “definitively determine if the lessees [they] identified were the same as those found on the Federal exclusions list given the possibility that a business may have different addresses for different purposes.”²²

Further, the OIG found at a Departmental level, a 2010 Solicitor’s Opinion determined mineral leases were subject to suspension and debarment regulations, and 2015 policies established that the Federal Exclusions List be checked before issuing a lease.²³ Despite, such policies BLM failed to develop processes to verify lessees were not prohibited from contracting with the Federal government.²⁴

Ultimately, the OIG issued four recommendations based on their inspection. The report determined BLM should:

1. Require leasing staff to review the Federal Exclusions List before issuing leases;
2. Implement oversight processes to ensure BLM employees reference the Federal Exclusions List;
3. Develop policies to comply with the 2015 Departmental level requirement that the Federal Exclusions List be checked before issuing a lease; and
4. Update all manuals to reflect the BLM-level requirement.²⁵

At the hearing, Inspector General Greenblatt is expected to describe the parameters of the inspection, the results, and the need to implement the report’s recommendations sooner than BLM’s anticipated timeframe provides. Mr. Nedd is expected to discuss BLM’s response to the OIG’s report. In particular, he may highlight Instruction Memorandum No. 2022-042, issued on July 8, 2022, which directs BLM employees to verify that lessees have not been suspended, debarred, excluded, or disqualified from receiving Federal contracts or awards.²⁶

²⁰ *Supra* note 15 at 3.

²¹ *Id.*

²² *Id.* at 4.

²³ *Id.* (see footnote 10 of the OIG report).

²⁴ *Id.*

²⁵ *Id.* at 5-6.

²⁶ U.S. DEP’T OF THE INTERIOR, BUREAU OF LAND MGMT., Instruction Memorandum, from Ass’t Dir. Energy, Minerals, and Realty Mgmt. to All Field Office Officials, re: Guidance on Reviewing the Fed. Exclusion List and Verifying Eligibility (July 8, 2022) *available at* <https://www.blm.gov/policy/im2022-042>.

IV. REPUBLICAN APPROACH

Providing the appropriate context for the OIG report is imperative. The OIG staff repeatedly expressed to Republican staff that the findings of the report were limited.²⁷ The OIG conducted an inspection, a proceeding which is smaller in scope and less intense than an audit or an investigation.²⁸ While the report highlights a BLM failure, the findings do not support extrapolation beyond the conclusion that BLM staff were unaware of the Federal Exclusions List and that BLM did not have appropriate policies in place to ensure the list was appropriately consulted.²⁹

Republican Members may wish to emphasize the limitations of the OIG report. During a briefing to Republican staff, OIG staff confirmed that they found no evidence of political interference, nor did their inspection reveal any instruction to employees directing them to ignore the Federal Exclusions List.³⁰ Instead, the OIG found a wide-spread lack of awareness that the Federal Exclusions List existed.³¹

Second, during the interview process one employee classified the move of BLM headquarters as a contributing factor in the lack of awareness due to the loss of institutional knowledge.³² However, OIG staff, confirmed their report did not conclude the relocation of BLM headquarters was relevant to their findings.³³

OIG staff clearly stated that they did not assign blame or responsibility to any particular BLM official for the failures noted in their report, nor did they determine any of the actions to be malicious.³⁴ Inspector General Greenblatt is expected to confirm these crucial caveats to the report at the hearing.

This hearing also presents Republican Members with the opportunity to highlight the prompt action BLM must take. BLM's target implementation date for the OIG's recommendations is March 2024.³⁵ Both the OIG and DOI SDO found the timeframes for implementing the OIG's recommendations unacceptable.³⁶ BLM should act quickly to prevent potential waste, fraud, or abuse.

Republican Members may also wish to use this hearing as an opportunity to raise other concerns related to BLM. As American families face increasing energy costs, Republican Members may choose to highlight their opposition to the Biden administration's anti-domestic energy policies.

²⁷ *Supra* note 16.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Supra* note 15 at 5-6.

³⁶ *See id.*; Telephone meeting between H. Comm. on Nat. Res. Republican Staff and Ms. Lori Vassar, Suspending and Debarring Official, U.S. Dep't of the Interior (July 14, 2022).

V. ISSUES DEMOCRATS MAY RAISE

Democrat Issue: The title of this hearing indicates that the Majority will presumably reiterate its opposition to oil and gas development on federal lands. The Majority will also likely place focus on the six potential entities listed on the Federal Exclusions List. The Majority may attempt to use the report's findings to justify pausing the granting of leases until the highlighted issues are resolved or BLM fully implements the OIG's recommendations.

Republican Rebuttal: While Republicans agree the OIG report highlighted an important issue, the context of the report and BLM's response should be considered. The failures highlighted should be promptly addressed. BLM took an important first step in July, by issuing a directive that the Federal Exclusions List be checked before issuing mineral leases. OIG staff confirmed that the failure to check the Federal Exclusions List was a systemic issue,³⁷ however, this directive puts all employees on immediate notice of the newly implemented practices.

Democrat Issue: The Majority may highlight that the inspection analyzed leases issued during the Trump Administration. The Majority may use the report's limited scope to one presidential administration to apply blame on the Trump Administration for failing to implement Federal Exclusions List protocols.

Republican Rebuttal: Failing to implement Federal Exclusions List protocols is a problem that started before the Trump Administration. While a 2010 Solicitor's Opinion determined mineral leases were subject to suspension and debarment regulations, the Obama Administration waited until 2015 to establish policies to check the Federal Exclusions List prior to issuing a lease.³⁸ Despite the earlier awareness of the issue, BLM failed to develop processes to verify lessees were not prohibited from contracting with the Federal government.³⁹

Democrat Issue: The Majority may attempt to expand the implications of the report, using these findings as the basis to assert other oil and gas development procedures at BLM should be halted.

Republican Rebuttal: While no prohibited entity should receive Federal contracts, the OIG only identified six potential prohibited entities, out of 762 lessees, over a four-year time span. Further, OIG staff were adamant that the scope of inspection was limited and that the OIG could not "definitively determine if the [six] lessees identified were the same as those found on the Federal exclusions list given the possibility that a business may have different

³⁷ *Supra* note 16.

³⁸ *Supra* note 15 (see footnote 10 of the OIG report).

³⁹ *Id.*

addresses for different purposes.”⁴⁰ Based on the OIG’s own interpretation of the limits of this report, it is beyond the scope of its findings to justify any pause in the issuance of leases broadly.

⁴⁰ *Id.* at 4.