

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Modernizing Suspension and Debarment Rules*, Docket No. GN 19-309.

I fully support this proposal to streamline and strengthen our suspension and debarment rules, generally consistent with the Office of Management and Budget (OMB) Guidelines. In addition to harmonizing our rules with those of the rest of the federal government, expansion of our authority to suspend or debar offending parties through adoption of the Guidelines should also help protect the integrity of the Commission's subsidy programs and ratepayers' hard-earned investments. The Commission has a fundamental duty to eliminate waste, fraud, and abuse within all of our programs and the more tools in our arsenal to do so, the better.

Adoption of the OMB Guidelines would enable the Commission to engage in suspension or debarment procedures more expeditiously than under our current rules. However, our mandate to act expeditiously should work both ways, and, like in the supply chain item where we included language to provide more certainty for those listed as designated entities, the Commission shouldn't be able to indefinitely delay responding to a party's Petition for Reconsideration or Application for Review in response to a suspension or debarment. Otherwise, we could be creating regulatory quicksand, punishing subjected entities without proper due process. I am therefore grateful to the Chairman and his staff for adding language to the draft seeking comment on implementing a deadline by which the debarring or suspending official or the Commission would be required to act. While I suspect we are going to need more certainty than "make every effort" as contemplated in the text, it appropriately opens the door for discussion. A time limitation is necessary as a matter of good governance and to protect parties' ability to seek judicial review. While I have full confidence in this Commission's staff, such measures are necessary to prevent future potentially questionable staff from abusing power and leaving affected parties without viable options to move forward.

I also thank the Chair for clarifying that serious and repeat violations of Commission rules, including our prohibitions against "slamming" and "cramming," would fall within the ambit of the Guidelines. In the past, I've spoken out in favor of the need for expanded authority to combat such activity, since imposing fines is often inadequate and futile. In turn, I have advocated for the ability to revoke a provider's section 214 authorization in such instances—and understand that Commissioner Rosenworcel and former Commissioner Clyburn have pushed for the same. While I would have preferred to include section 214 authorizations within the scope of covered transactions in the present instance, the additional authority that the Guidelines would provide to punish slamming and cramming is at least a step in the right direction. It also means that I will continue my push to disqualify those abusing Commission rules from our authorization processes.

Finally, I would highlight the need to carefully consider separation of powers principles and neutrality concerns in determining which entity should be responsible for designating suspensions or debarments. While the Enforcement Bureau currently occupies that role, it can only pursue a suspension or debarment action following a court judgment or conviction, and thus exercises its role in a non-discretionary and largely ministerial manner. Adoption of the OMB Guidelines would render this role much more adjudicatory and discretionary, which would in turn raise concerns over concentrating the functions of designating suspensions or debarments and prosecuting or investigating the underlying conduct within the same entity. Granted, concentration of powers in the same hands is an issue that permeates the entire structure of federal independent agencies, but that is of course a topic for another day.

I vote to approve.