



The Office of Inspector General Exclusion Program

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Exclusions Director – Eastern Region
Exclusions Branch



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Plan

- Exclusions Branch
- What is an exclusion?
- How do we exclude?
- Why do we exclude?



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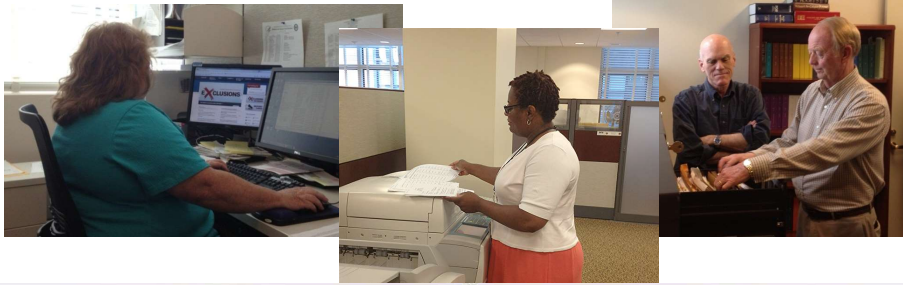
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Exclusion Branch



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Exclusions Branch

- Mission: To protect the Department's programs and the beneficiaries that the programs serve.
- 20 Investigative analysts and 4 Managers located in DC and Regional Offices.
- Investigate and adjudicate exclusion actions.
- Final review for OIG-based referrals to the Department for suspension and debarment.
- Publish and maintain the List of Excluded Individuals and Entities.




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Exclusion Regions

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As of Jan 1, 2017

San Francisco Regional Office
Patricia Davis
925-356-7820
NOCAI, AK, ID, OR, WA

Chicago Regional Office
Annette Bepko
MN, OH
312-353-3742
Bernice Smith (W)
IL
312-353-8344
Cynthia Wade (W)
IN, WI
312-353-3664

Boston Regional Office
Amy Flynn (E)
CT, MA, RI
617-565-2973
Richard DeRobertis (E)
MA, NH, VT
617-565-1568

Office of Investigations' Regional Boundaries




Dallas Regional Office
1300 Elizabeth Delchin (W)
TX
214-767-3676

Atlanta Regional Office
Doreilly (South) (E)
GA, MS, NC, SC
404-562-7816

Philadelphia Regional Office
Charlene Robinson (E)
DE, MD, VA
215-861-4659
Terry Hoffman (E)
PA, DC, WV
215-861-4537

Washington, DC
Tom Sovinski, SAC/RO
Todd Echols, OIG
Peter Clark, Supervisor-West
Charles Grant, Supervisor-East
Veronica Brandley (AL, AR, CA, DE, HI, IL, IN, MS, NY, OH, RI, SC, SD, VA, WA, WI, WV, WY)
Jokanne Francis (AZ, SS, CA, IA, MT, NE, NV, UT, VT)
Tamera Johnson (MI, MO)
Kathleen Pettit (AL, AR, CT, DE, HI, IL, IN, MS, NY, OH, RI, SC, SD, VA, WA, WI, WV, WY)
Ron Salisbury (AK, AS, ND, SD)
Jacqueline Freeman (LH, E)
W


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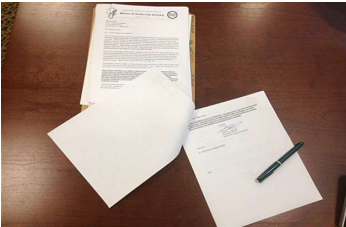

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What is an exclusion?

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Exclusions Big Picture

- Administrative action based on statutes and investigation
- Derivative
- Remedial, not punitive
- Nationwide applicability
 - But not government-wide applicability

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Key Points

- Implementing Exclusions for over 30 Years
- Over 65,000 individuals and entities currently excluded
- OIG exclusion affects all federal health care programs including Medicare and Medicaid.

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Exclusions

Effect of an action

- No payment will be made by any Federal health care program for any –
 - For any item or service –
 - Furnished, ordered, or prescribed (including prescription medications, tests, and referrals)
 - By an excluded individual or entity.
- Applies to the excluded person
 - Anyone who employs/contracts –
 - Anywhere the excluded party could provide services.

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Effect of Exclusion

Individuals and entities are excluded from

- Medicare (Title XVIII)
- Medicaid (Title XIX)
- Maternal & Child Health Services Block Grants (Title V)
- Block Grants to States for Social Services (Title XX)
- State Children's Health Insurance Program (Title XXI)
- All Federal Health Care Programs

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Effect of Exclusion

(continued)

- Exclusion applies to the individual, not the profession
- Remedial in purpose -- Protect Federal health care programs and beneficiaries from
 - Improper payments
 - Improper/abusive practices
 - No further program remuneration
- Does NOT affect ability to receive benefits as a beneficiary



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Effect of Exclusion

(continued)

- No Federal health care program payment for any item or service furnished, ordered or prescribed in any capacity
- Prohibited from submitting claims or causing claims to be submitted
- No payment for administrative or management services
- No payment for salary, expenses or fringe benefits



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Employing an Excluded Subject

- Balanced Budget Act (BBA) authorizes the imposition of CMPs against health care providers and entities that employ or enter into contracts with excluded parties to provide items or services to Federal program beneficiaries (section 1128A(a)(6) of the Act; 42 CFR 1003.102(a)(2))
- Providers such as hospitals and nursing homes may face CMP exposure if they submit claims to a Federal health care program for health care items or services provided, directly or indirectly, by excluded parties



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Employing an Excluded Subject

- A provider or entity that receives Federal health care funding may only employ an excluded individual in limited situations, including instances in which the provider is both able to pay the individual exclusively with private funds or from other non-federal funding sources, and where the services furnished by the excluded individual relate solely to non-federal program patients



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Exclusions

Legal basis

- Section 1128 of the Social Security Act
- Section 1156 of the Social Security Act
- Includes amendments to the Act
 - The Medicare and Medicaid Patient and Program Protection Act of 1987
 - The Health Insurance Portability and Accountability Act of 1996 (HIPAA)
 - The Balanced Budget Act of 1997 (BBA)
- 42 Code of Federal Regulation (CFR), Sections 1001 et seq



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Exclusions

Types of Exclusions

- Mandatory
 - Required by law to implement
 - 1128(a) SSA
 - 42 CFR 1001.101 et seq
- Permissive
 - Discretion to implement
 - 1128(b) SSA
 - 42 CFR 1001.201 et seq



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Exclusions

Mandatory Exclusions

- Minimum period of exclusions – 5 years.
- Can increase based upon presence of aggravating and mitigating factors (42 CFR 1001.102).
 - Restitution
 - Incarceration
 - Length of Scheme
 - Cooperation
 - 3 or less misdemeanors/<\$1,500



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Exclusions

Mandatory Exclusions

- Conviction of program-related crime - 1128(a)(1) SSA/42 CFR 1001.101(a).
 - Any conviction (felony or misdemeanor)
 - Any court (State/Local/Federal)
 - Related to the delivery of an item or service
 - Under Title XVIII or any State health care program



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Definition of a “Conviction”

- Judgment entered against a subject by a Federal, State or local court, regardless of whether
 - An appeal or post-trial motion is pending
 - The record has been expunged or otherwise removed
- Federal, State or local court has
 - Made a finding of guilt
 - Accepted a plea of guilty or *nolo contendere*
 - Subject has entered into a first offender, deferred adjudication, or other program where judgment of conviction has been withheld
 - Court has granted probation before judgment, transfer to various drug courts, Alford pleas, but not deferred prosecution.



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Exclusions Mandatory Exclusions

- Conviction related to patient abuse -
1128(a)(2) SSA/42 CFR 1001.101(b).
 - Any conviction (felony or misdemeanor)
 - Any court (State/Local/Federal)
 - Related to neglect or abuse (physical, mental, sexual, but not financial)
 - In connection with the delivery of an item or service



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Exclusions

Mandatory Exclusions

- Conviction related health care fraud - 1128(a)(3) SSA/42 CFR 1001.101(c).
 - Felony conviction only
 - Any court (State/Local/Federal)
 - In the delivery of an item or service, or with respect to any act or omission in any government health care program or agency
 - Related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct

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- Conviction relating to controlled substances - 1128(a)(4) SSA/42 CFR 1001.101(d).
 - Felony conviction only
 - Any court (State/Local/Federal)
 - Related to unlawful manufacture, distribution, prescription, or dispensing of a controlled substance

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Period of Exclusion

- Minimum Periods of Exclusion
 - ❑ 5 years – 1st conviction
 - ❑ 10 years – 2nd conviction
 - ❑ Permanent – 3rd conviction
- Aggravating and mitigating factors
 - ❑ May adjust the period of exclusion, but
 - ❑ Never below 5 years



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Aggravating Factors

- Aggravating Factors
 - ❑ Actual/intended loss greater than \$50,000 (formerly \$5,000)
 - ❑ Length of scheme over 1 year
 - ❑ Adverse physical, mental, or financial impact
 - ❑ Premeditated, continuing pattern of behavior, non-consensual acts (1128(a)(2) only)
 - ❑ Incarceration
 - ❑ Prior criminal, civil, or administrative record
 - ❑ Previous similar conviction
 - ❑ Other convicted counts or other adverse actions



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Mitigating Factors

- Mitigating Factors
 - Convicted of 3 or fewer misdemeanors and loss of less than \$1,500
 - Mental, emotional, or physical condition before or during the commission of the offense that reduced culpability
 - Cooperation resulting in
 - Others being convicted or excluded
 - Additional cases investigated or reports issued
 - Imposition of a CMP or assessment against others



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Exclusions

Permissive Exclusions

- 16 permissive exclusion authorities.
- OIG has discretion to impose these sanctions or to close the matter.
- Varied basis for actions / periods of exclusion.



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Permissive Exclusions

Permissive exclusions based on convictions

- 1128(b)(1) – Fraud
 - (a) – Similar to 1128(a)(3); health care fraud (M)
 - (b) – Any non-health care government program fraud (F/M)
- 1128(b)(2) - Obstruction of Justice (F/M)
 - Interference or obstruction of any investigation
 - Regarding 1128(a)(or 1128(b)(1)
- 1128(b)(3) - Controlled Substance (M)
 - Similar to 1128(a)(4)



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Conviction-Based Permissives

Length of Exclusion

- 3-year benchmark
- Can be increased or decreased based on aggravating and mitigating factors



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Additional Permissive Exclusion Authorities

- 1128(b)(4) - License Revocation or Suspension
- 1128(b)(5) - Exclusion or Suspension from a Federal or State Health Care Program
- 1128(b)(6) - Excessive Claims, Unnecessary Items and Services, Failure to Provide Medically Necessary Items and Services
- 1128(b)(7) - False Claims, Fraud, Kickbacks, etc.
- 1128(b)(8) - Entities Controlled by Sanctioned Individual



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Additional Permissive Exclusion Authorities (continued)

- 1128(b)(9) - Failure to Disclose Required Information
- 1128(b)(10) - Failure to Supply Requested Information
- 1128(b)(11) - Failure to Supply Payment Information
- 1128(b)(12) - Failure to Grant Immediate Access
- 1128(b)(13) - Failure to Take Corrective Action
- 1128(b)(14) - Default on HEAL or Scholarship Obligations
- 1128(b)(15) - Individual Controlling a Sanctioned Entity
- 1128(b)(16) - Making a false statement or misrepresentation of material fact



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1128(b)(4) - License Revocation or Suspension

- Final license discipline
 - Any individual or entity whose license has been revoked, suspended, otherwise lost or voluntarily surrendered
 - For reasons bearing on professional competence, professional performance or financial integrity
- Length of Exclusion
 - Indefinite, but not less than the period of loss
 - Eligible for reinstatement once license reinstated, or has obtained a new license in the same state, or three (3) years have elapsed



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Section 1128(b)(5): Exclusion or Suspension from a Government Health Care Program

- Any individual or entity which has been excluded, suspended, otherwise sanctioned from participation in any Federal or State health care program
- For reasons bearing on professional competence, professional performance or financial integrity
- Length of exclusion is indefinite but not less than the period of state exclusion
- Eligible for reinstatement once subject is eligible for reinstatement by disciplining agency



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Sections 1128(b)(8) & (b)(15)

(b)(8) - Entities Owned or Controlled by Sanctioned Individual

- Associated with an individual
 - Convicted under 1128(a) or 1128(b)
 - Had CMP or assessment imposed under 1128A
 - Excluded
- Direct or indirect ownership or control interest of 5% or more in the entity, etc.

(b)(15) - Individuals with Ownership or Control Interest in Sanctioned Entities

- Who knows or should know of action constituting the basis for exclusion or conviction



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Sections 1128(b)(8) & (b)(15)

(continued)

- Length of exclusion:
 - Same as individual's or entity's exclusion
 - Eligible for reinstatement once relationship between individual and entity no longer exists (as by a sale of the entity)



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1128(b)(12) – Failure to grant immediate access.

- Applicable to any individual or entity failing to grant immediate access upon reasonable request or failing to provide a compelling reason why such access may not be granted
- Available to OIG and state agencies (such as MFCUs and state survey agencies)
- Not the same as a search warrant
 - Only grants access to view/copy records
 - Used when there is a sense that records will be altered/destroyed
 - Contact Exclusions Staff and OCIG immediately
 - OCIG must approve the written request before it is served on the subject



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How do we exclude?




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Exclusions Process

- Most are derivative actions
- Investigative in nature
 - Receive referrals for various sources
 - Gather documentation
 - Present for supervisory review
 - Final adjudication
- Details matter



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Exclusions Process

- Direct tie to the statute/regulation
 - Only convicted counts
 - Language in the documentation
- Legal opinions
 - Office of Counsel / Department Appeals Board
 - Can change over time
- Notice to subject/professional boards/MFCU
- Published to the List of Excluded Individuals and Entities (LEIE).


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Notification

- Letters sent to
 - Subject
 - Licensing board
 - Title XIX
- Effective date of exclusion
 - 20 days from the date of the final notice
 - Not retroactive



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Dissemination of Information

List of Excluded Individuals/Entities (LEIE)

- Downloadable site available since September 1995
- Online searchable site available since March 1999
- Updated monthly
- Contains only exclusion actions currently in effect
- Contains only exclusion actions taken by the OIG
- Does NOT contain actions taken by any other agencies

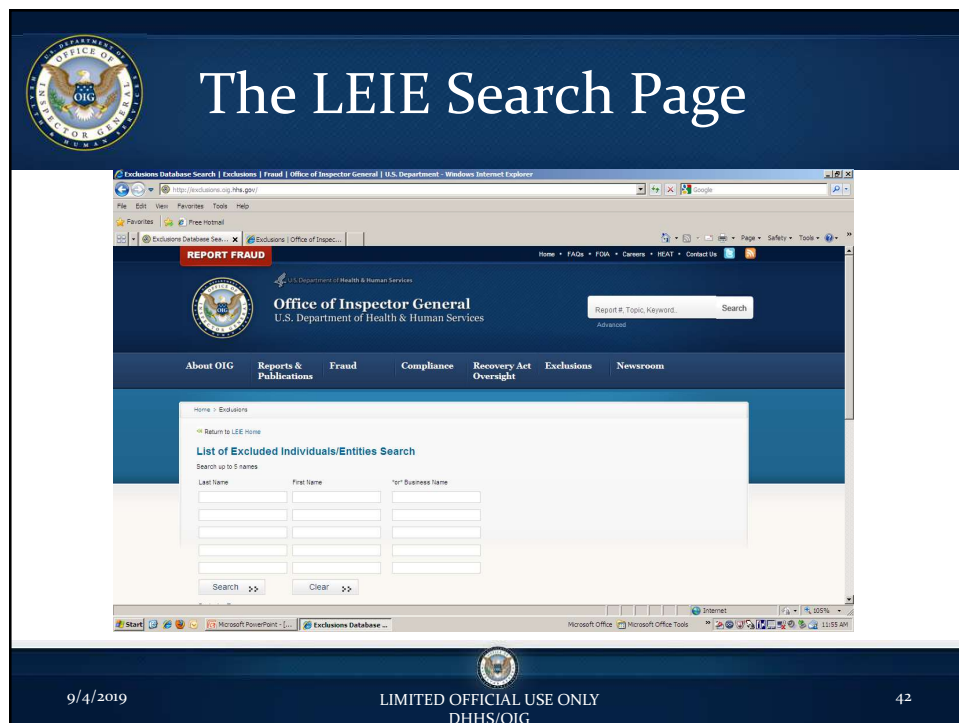
<http://oig.hhs.gov/fraud/exclusions.asp>



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Appeal

- Exclusion remains in effect during appeal (limited exceptions)
- Written request for hearing within 60 days
- HHS Departmental Appeals Board (ALJ to Appellate Division) to Federal Court
- Standard of proof is preponderance of evidence
- Issues before ALJ
 - Whether basis for exclusion exists
 - Whether the length of exclusion is unreasonable (except mandatory minimum 1128(a) exclusions)
 - Underlying determination (e.g., conviction) is NOT reviewable and cannot be collaterally attacked



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Reinstatement

- Process for allowing an excluded provider to receive payment from federal health care programs.
- Not automatic.
- Application process.
- Investigative in nature.
- Potential for CMP / referrals.



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Waiver

- Mandatory exclusions (except 1128(a)(2))
 - ☐ Sole community physician or
 - ☐ Sole source of essential specialized services in a community
- Permissive exclusions - imposition of exclusion not in the public's interest
- Written request from Federal or State health care program
- Limited area - exclusion remains in effect elsewhere
- Waiver rescinded if basis for waiver no longer exists



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Why do we exclude?



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Exclusions Why we exclude...

- Relates to the Branch mission:
 - Protection of the Department's programs
 - Largest grant agency / 3rd largest contracting agency
 - Medicare – \$685b in 2016
 - Medicaid – \$344b
 - Protection of the program beneficiaries
 - Medicare – 55 million
 - Medicaid – 70 million
 - 4,112 Exclusions in 2016

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Example – Dr. Farid Fata

- Detroit-area doctor pleaded guilty to:
 - giving cancer treatments to misdiagnosed patients (administered thousands of unnecessary treatments)
 - 13 counts of Medicare fraud
 - one count of conspiracy to pay or receive kickbacks and two counts of money laundering.
- 60 year Exclusion (Oct 2015)
 - 540 Months Incarceration
 - >17M Restitution
 - Significant adverse physical, mental and financial impact on program beneficiaries



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Example – David Allen Russell

- Russell was a chiropractor practicing in McKinney, Texas.
- Subject was convicted of one count sexual assault of a child, two counts sexual assault, and three counts indecency with a child related to his practice.
 - Sentence included 23 years incarceration
- Subject was excluded effective Feb 2015 for 65 years under 1128(a)(2)



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Example – Long Island Railroad Retirement Board

- Massive fraud scheme in which Long Island Railroad ("LIRR") workers claimed to be disabled upon early retirement. Estimated potential loss >\$1B if all benefits had paid out.
- 32 Subjects; > 23 convicted. 5 Exclusions
 - Joseph Rutigliano, 50 Year Exclusion (Jan 2015), 96 Mo Incarceration; >\$82M Restitution
 - Retired LIRRB employee & LIRRB Union head collected fees for facilitating false disability claims
 - Dr Peter Lesniewski, 50 Year exclusion (Dec 2014), 96 Mo incarceration; >\$70M Restitution
 - Dr Peter Ajemian; 50 year exclusion (Jan 2014); 96 Mo Incarceration; >\$116M Restitution
 - Dr Steven Gagliano; 8 year exclusion (May 2016); Plea/probation; >\$242K Restitution
 - Physicians received approximately \$800 to \$1,200 for each fraudulent assessments and narratives; unnecessary medical treatments and fees for preparing fraudulent medical support for the claimed disabilities.
 - Marie Baran; 50 year exclusion (Jan 2015); 60 Mo Incarceration; >\$31M Restitution
 - Facilitator between physicians and employees submitting false claims



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Contact Information

GENERAL PUBLIC CONTACT INFORMATION

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Thank you for your time.



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