



July 31, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Interagency Suspension and Debarment Committee (ISDC) reports to Congress annually on the status of the Federal suspension and debarment system, pursuant to Section 873 of Public Law 110-417.¹ As required by Section 873, this report describes Governmentwide progress in improving the suspension and debarment process and provides a summary of each agency's suspension and debarment activities for Fiscal Year (FY) 2017.

The ISDC's mission is to help agencies build and maintain the expertise necessary to manage effective suspension and debarment programs. Suspension and debarment are remedies designed to protect the Government's business interests from potential harm posed by individuals or entities whose conduct indicates either a lack of business honesty or integrity or serious, poor performance. Agencies consider suspension and debarment action against both business entities and individuals who commit misconduct. Individual suspension or debarment may be appropriate whether that misconduct is committed on behalf of a business, or for individual interest. This approach helps to reduce business risk to taxpayer funds or interests. Because suspension and debarment are meant to protect the Government – not to punish wrongdoers – the suspension and debarment remedy accords a process, including tools such as alternate resolution through administrative agreement, under which both business entities and individuals can demonstrate that, past problematic conduct notwithstanding, a present risk does not exist.

The ISDC's work focuses around four strategic objectives:

- promoting the fundamental fairness of the suspension and debarment process;
- increasing transparency and consistency through training, engagement, and outreach;

¹ The ISDC is an interagency body created by Executive Order 12549, consisting chiefly of representatives from Executive-branch organizations that work together to provide support for suspension and debarment programs throughout the Government. The 24 agencies covered by the Chief Financial Officers Act (CFO Act) are standing members of the ISDC. Over 18 additional independent Federal agencies and corporations participate in the ISDC. Together, ISDC member agencies are responsible for virtually all Federal procurement and discretionary assistance, loan, and benefit (non-procurement) transactions. For additional general background on the ISDC, see its homepage at <http://acquisition.gov>.

- enhancing Federal suspension and debarment practices, and alternatives to them, by developing resources available to the ISDC community; and
- encouraging the development of more effective compliance and ethics programs by Government contractors and nonprocurement participants to address business risks.

To achieve these objectives, the ISDC pursued the following activities in FY 2017:

- Provided member program training with a particular emphasis on promoting greater procedural consistency, transparency of practice, and fairness in suspension and debarment programs across the Federal Government.
- Strengthened understanding and awareness of suspension and debarment activities within the Federal acquisition and financial assistance communities by --
 - inviting private sector stakeholders to make presentations at monthly ISDC meetings on perceived remedy process issues and evaluation of corporate compliance programs; and
 - ensuring continuation of the ISDC's public website to promote transparency.
- Improved the effectiveness of ISDC operations by:
 - formalizing subcommittees to address specific needs within the ISDC and within the Government as a whole, including a subcommittee devoted to exploring the viability and potential options for a unified (procurement and non-procurement) rule;
 - initiating an effort to modernize and streamline the lead agency coordination process in collaboration with the Office of Management and Budget by developing an online lead agency coordination request portal; and
 - disseminating regular updates on items of interest to the ISDC community, such as relevant case law and regulatory and legislative developments.

In FY 2017, agency use of suspension and debarment decreased modestly from the prior year, while application of mechanisms to ensure these remedies are used only as a last resort stayed constant. In particular, agencies reported 604 suspensions, 1613 proposed debarments, and 1423 debarments in FY 2017.² Cumulatively, this represents an approximately 14 percent decrease from FY 2016 activity, but still represents nearly double the activity reported in FY 2009,³ when the ISDC formally commenced data tracking and when suspension and debarment

² The ISDC is responsible for the discretionary procurement and nonprocurement suspension and debarment system governed, respectively, by 48 C.F.R. Subpart 9.4 and 2 C.F.R. Part 180. Accordingly, data collected for this report reflects activity levels related only to use of the discretionary Governmentwide suspension and debarment remedy. However, the System for Award Management (SAM) also includes additional types of exclusions distinct in scope and/or extent of application. In addition to those business risk focused exclusions with Governmentwide reciprocal effect imposed under Subpart 9.4 and Part 180, there are also narrower prohibitions and restrictions including those mandated by, or as an automatic collateral consequence of, violations of various statutes and/or regulatory compliance regimes, agency-specific prohibitions and restrictions, voluntary exclusions, etc.

³ In FY 2009, agencies reported 417 suspensions, 750 proposed debarments, and 669 debarments.

programs either did not exist or had significant weaknesses at a number of Cabinet agencies. Suspensions and debarments are based on need and accordingly will naturally fluctuate from year to year. Most important is whether these remedies were considered and used when necessary to protect the Government’s business interests.

Agencies reported essentially the same overall number of actions in FY 2017 involving alternative tools to help avoid immediate and/or continued imposition of suspension and debarment, albeit use of individual tools varied. The most significant of these tools (as highlighted in past ISDC reports) is summarized in the table below.

Action	FY 2016	FY 2017
Proactive Individual & Entity Engagements with SDOs	76	53
Agency Pre-notice Letters	160	193
Administrative Agreements	75	64
Total	311	310

Proactive engagements by entities and individuals: As the result of ISDC outreach efforts, individuals and entities continued to proactively reach out to the SDOs to provide information relating to their present responsibility, particularly, when a company has identified possible misconduct within its operations. This activity makes possible even earlier consideration of present responsibility factors by agency SDOs; it allows both sides to focus on corrective measures taken by the company to address the misconduct, along with efforts by the company to improve internal controls, enhance compliance programs, and to promote a culture of ethics. In FY 2017, the ISDC was made aware by 14 member-agencies of 53 instances of proactive engagement initiated by potential respondents in FY 2017.⁴

Agency Pre-notice Letters: Pre-notice letters, which include show cause letters, requests for information, and similar types of letters, are used to inform an individual or entity that the agency debarment program is reviewing matters for potential SDO action, identify the assertion of misconduct, and give the recipient an opportunity to respond prior to formal SDO action.⁵ Use of these letters helps the agency better assess the risk to Government programs and determine what measures are necessary to protect the Government’s interest without immediately imposing an exclusion action. From FY 2016 to FY 2017, the ISDC saw a 21% increase in the use of pre-notice letters to potential respondents – an almost three-fold increase since FY 2009 (from 70 letters to 193 letters).⁶ From FY 2009 to 2017, the number of agencies using such letters doubled, from 7 to 14.

The ISDC is exploring the development of a consistent set of procedures for both procurement and nonprocurement suspensions and debarments, including pre-notice tools and the application of exclusion concerning notices of proposed debarment. For example, under the current nonprocurement rule, a notice of proposed debarment does not automatically have the impact of excluding the respondent pending completion of administrative proceedings.

⁴ The number of proactive engagements is based on voluntary agency submissions as the information is not readily available from all agencies and is not currently a standard reporting element.

⁵ Show cause letters issued by SDOs under FAR 9.4 and 2 C.F.R. Part 180 are distinct from, and unrelated to, the show cause letters issued by contracting officers.

⁶ FY 2009 represents the base-line – the first year ISDC tracked such information government-wide. Note: the number of debarments originally reported in FY 2009 was subsequently corrected. See, Consolidated FY 2012-2013 Section 873 Report.

Meanwhile the same type of action under the Federal Acquisition Regulation results in immediate exclusion. The Committee believes standardizing practices between the procurement and nonprocurement communities can help to reduce procedural inconsistency and is considering the benefits and drawbacks of utilizing the nonprocurement approach.⁷

Administrative agreements: Administrative agreements are used as an alternative to suspension and debarment and typically mandate the implementation of several provisions to improve the ethical culture and corporate governance processes of a respondent, often with the use of independent third-party monitors. The viability of an administrative agreement as the appropriate outcome of a matter will always be case-specific to the circumstances of the action. The tool can be effective in situations where award eligibility would further the Government's interests, for example in increased competition for procurement opportunities. Administrative agreements provide that certain verifiable actions are taken in a prescribed timeframe, such as implementation of enhanced internal corporate governance practices and procedures and/or use of independent third-party monitors.

Fourteen agencies reported entering into 64 administrative agreements in FY 2017. In contrast, in FY 2009, only 35 administrative agreements were utilized by five agencies to resolve suspension or debarment concerns. In addition, at least 17 agencies indicate that over the past five years they have entered into administrative agreements with individuals.

Additional data regarding the FY 2017 actions is available in the enclosed appendices. The ISDC looks forward to its continued work with agencies to better protect taxpayer programs and operations from fraud, waste, and abuse through effective suspension and debarment programs.

Sincerely,

David M. Sims, Chair
ISDC

Lori Y. Vassar, Vice Chair
ISDC

Monica Aquino-Thieman, Vice Chair
ISDC

Enclosures

Identical Letter Sent to: The Honorable Trey Gowdy; The Honorable Elijah E. Cummings;
The Honorable Claire C. McCaskill

⁷ As noted, notices of proposed debarment under Part 180 do not impose immediate exclusion. However, the nonprocurement process permits the imposition of a suspension, where immediate need exists, pursuant to 2 C.F.R. § 180.715.

Appendix 1

Glossary and Counting Conventions

For consistency and clarity, the ISDC used the following in preparing the Appendices to this report.

Glossary

“Administrative agreement” - also known as an administrative compliance agreement, refers to a document that is ordinarily negotiated after the recipient has responded to a notice of suspension or proposed debarment. The election to enter into an administrative agreement is solely within the discretion of the SDO and will only be used if the administrative agreement appropriately furthers the government’s interest. While administrative agreements vary according to the SDO’s concerns regarding each respondent, these agreements typically mandate the implementation of several provisions to improve the ethical culture and corporate governance processes of a respondent in a suspension or debarment proceeding. Agreements may also call for the use of independent third-party monitors or the removal of individuals associated with a violation from positions of responsibility within a company. Administrative agreements are made publicly available online in the Federal Awardee Performance and Integrity Information System (FAPIIS).

“Declination” - a SDO’s determination after receiving a referral that issuing a suspension or debarment notice is inappropriate. Placing a referral on hold in anticipation of additional evidence for future action is not a declination.

“Referral” - a written request prepared in accordance with agency procedures and guidelines, supported by documentary evidence, presented to the SDO for issuance of a notice of suspension or notice of proposed debarment as appropriate under FAR Subpart 9.4 and 2 C.F.R. Part 180.

Note: This definition is designed to eliminate potential variations due to differences in agency tracking practices and organizational structures. For example, agency programs organized as fraud remedies divisions (responsible for the coordination of the full spectrum of fraud remedies: criminal, civil, contractual and administrative) may not have a common starting point for tracking case referrals as agency programs exclusively performing suspension and debarment functions.

“Agency pre-notice letters” - includes show cause letters, requests for information and similar types of letters used to inform the recipient that the agency debarment program is reviewing matters for potential SDO action, identify the assertion of misconduct, and give the recipient an opportunity to respond prior to formal SDO action. This is a discretionary tool employed where appropriate to the circumstances of the matter under consideration.

“Voluntary exclusion” - a term expressly used only under 2 C.F.R. Part 180 referring to the authority for an agency to enter into a voluntary exclusion with a respondent in lieu of suspension or debarment. A voluntary exclusion, like a debarment, carries the same government-wide reciprocal effect from participating in procurement and non-procurement transactions with the government. Agencies must enter all voluntary exclusions in the General Services Administration’s System for Award Management (SAM).

Counting conventions

Consistent with previous years' Section 873 reports, the number of suspensions, proposed debarments, and debarment actions are broken out as separate exclusion actions even if they relate to the same respondents. With each of these exclusion actions, both FAR Subpart 9.4 and 2 C.F.R. Part 180 require an analysis performed by program personnel involving separate procedural and evidentiary considerations. Furthermore, a suspension may resolve without proceeding to a notice of proposed debarment, a notice of proposed debarment may commence without a prior suspension action, and a proposed debarment may resolve without an agency SDO necessarily imposing a debarment. Moreover, separate "referrals" are typically generated for suspensions and proposed debarments. Finally, suspension and debarment actions trigger separate notice and other due process requirements by the agency.

Agencies were instructed to count individuals as one action regardless of the number of associated pseudonyms and "AKAs." Businesses operating under different names or that have multiple DBAs ("doing business as") are counted separately as separate business entities or units for counting suspensions debarments.

The data in the appendices focus on the suspension and debarment activities of the 24 agencies and departments subject to the CFO Act. These are the agencies and departments with the highest activity levels in procurement and non-procurement awards.

The report addresses the discretionary suspension and debarment actions taken under the government-wide rules at FAR Subpart 9.4 and 2 C.F.R. Part 180. The Report does not track statutory or other nondiscretionary debarments outside of the scope of these regulations.

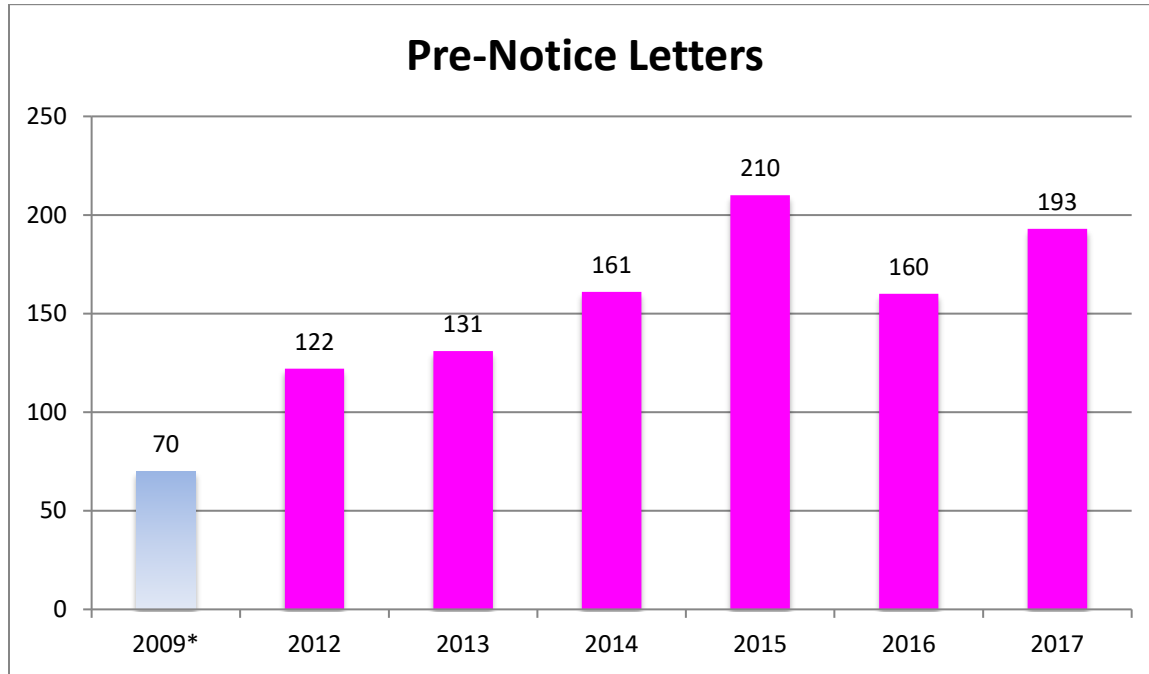
Appendix 2
Suspension and Debarment Actions in FY 2017

Agency/Department	Suspensions	Proposed Debarments	Debarments
Agriculture	29	56	48
AID	7	55	42
Commerce	0	0	0
Defense			
Air Force	47	85	52
Army	32	283	269
Defense Logistics Agency	4	96	95
Navy	41	185	145
Education	31	6	13
Energy	11	11	10
Environmental Protection Agency	97	106	80
Export Import Bank	13	13	8
General Services Administration	9	91	63
Health and Human Services	16	40	50
Homeland Security	0	128	170
Housing and Urban Development	147	210	188
Interior	0	17	26
Justice	14	21	8
Labor	8	13	17
NASA	3	5	5
National Nuclear Security Administration	0	12	10
National Science Foundation	6	15	10
Nuclear Regulatory Commission	0	0	0
Office of Personnel Management	2	9	8
Small Business Administration	17	29	25
Social Security Administration	0	0	0
State	19	43	32
Transportation	39	23	14
Treasury	6	7	5
Veterans Affairs	6	54	30
Total Actions	604	1613	1423

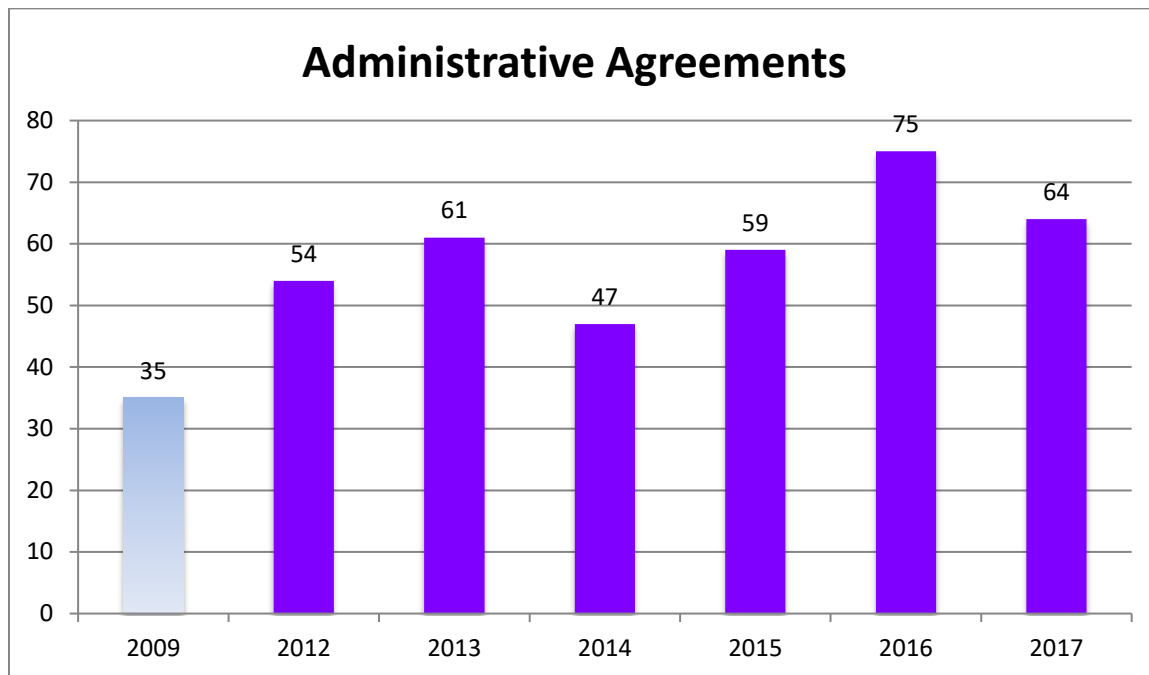
Appendix 3
Other Actions Related to Suspension and Debarment in FY 2017

Agency/Department	Agency Pre-notice Letters	Referrals**	Declinations**	Administrative Agreements	Voluntary Exclusions
Agriculture	3	158	40	1	17
AID	2	125	0	2	0
Commerce	0	1	0	0	0
Defense					
Air Force	19	132	0	3	0
Army	16	592	8	3	0
Defense Logistics Agency	0	119	0	3	0
Navy	63	573	0	1	0
Education	0	43	0	0	0
Energy	0	13	0	0	0
Environmental Protection Agency	31	354	45	15	0
Export Import Bank	1	17	9	0	0
General Services Administration	32	113	0	0	0
Health and Human Services	0	20	0	0	0
Homeland Security	3	130	0	1	1
Housing and Urban Development	1	251	9	9	7
Interior	1	17	0	1	0
Justice	0	21	0	2	0
Labor	0	27	0	0	0
NASA	4	9	0	2	0
National Nuclear Security Administration	0	10	0	0	0
National Science Foundation	0	18	3	0	7
Nuclear Regulatory Commission	0	0	0	0	0
Office of Personnel Management	9	16	0	0	0
Small Business Administration	8	106	0	6	0
Social Security Administration	0	0	0	0	0
State	0	62	0	0	0
Transportation	0	73	0	15	2
Treasury	0	4	0	0	0
Veterans Affairs	0	43	0	0	0
Total Actions	193	3047	114	64	34

Appendix 4
Agency Pre-Notice Letters and Administrative Agreements
FY 2012 - 2017



*2009 data shown for base-line comparative purposes.



Appendix 5
Government-Wide Suspensions, Proposed Debarments & Debarments
FY 2012- 2017

