

January 12, 2017

The Honorable Jason Chaffetz
Chairman
Committee on Oversight & Government Reform
U.S. House of Representatives
Washington, DC 20515

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 government-wide progress in improving the suspension and debarment process and provides a summary of each agency's suspension and debarment activities for Fiscal Year (FY) 2016.

The ISDC acts in a leadership role to help agencies build and maintain the expertise necessary to protect the government's business interests from harm that could be caused by individuals and entities that are not presently responsible. This support includes assisting agencies with developing the skills and resources to suspend and debar as necessary to protect the government's business interests. It also involves working with agencies to identify other practices that protect the government's interest by promoting contractor and program participant responsibility without the need to impose an exclusion through suspension or debarment. Over the past several years, the ISDC has placed particular emphasis on promoting best practices and on helping agencies with developing programs to leverage the experience of agencies with well-established programs.

Data on agency actions shows a significantly greater number of suspension and debarment actions in each of the past seven years when compared to FY 2009, when the ISDC formally commenced data collection and reporting and before the ISDC initiated its drive to help agencies implement or enhance their suspension and debarment programs. In particular, in FY 2016, there were 718 suspensions, 1855 proposed debarments, and 1676 debarments. By contrast, in FY 2009, there were 417 suspensions, 750 proposed debarments, and 669 debarments. Additional data regarding the FY 2016 actions is available in the attached appendices.

As discussed in previous annual reports, the ISDC does not consider the overall number of suspensions and debarments to be a metric of success. Rather, the appropriate level of discretionary suspension and debarment activity in any given year is purely a function of need.

¹The ISDC is an interagency body consisting 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. An additional 18 independent Federal agencies and corporations participate in the ISDC. Together, ISDC member agencies are responsible for virtually all Federal procurement and non-procurement transactions. For additional general background on the ISDC, see its homepage at <http://isdc.sites.usa.gov/>.

In this regard, the ISDC reminds its members to regularly review their actions to determine if the level of activity is reflective of what is necessary to protect their agency and the government's business interests. In addition, the ISDC continues to emphasize that suspension and debarment are not punitive measures, but rather tools to protect the government's interest which must be applied following principles of fairness and due process set forth in the Federal Acquisition Regulation and 2 C.F.R. Part 180 (addressing procurement and non-procurement activities, respectively).

Equally important, the ISDC has encouraged its members to take into consideration, as appropriate, alternative tools to promote contractor and participant responsibility that do not necessarily require or result in the imposition of suspension or debarment. These tools include the use of pre-notice engagements, Show Cause Letters and Requests for Information, as well as other types of engagements that allow the agency to develop information to better assess the risk to government programs and determine what measures are necessary to protect the government's interest without immediately imposing an exclusion. As a result, agencies again reported significant use of Show Cause Letters, Requests for Information, or other pre-notice investigative engagement letters.

In addition, administrative agreements have continued to be used in a number of cases as an alternative to suspension and debarment. Administrative agreements 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. In FY 2015, agencies reported entering into 44 administrative agreements. Agencies reported entering into 75 administrative agreements in FY 2016. 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 eligibility for award would further the government's interest provided certain verifiable actions are being taken in a prescribed timeframe, such as implementation of enhanced internal corporate governance practices and procedures and/or use of independent third party monitors.

Industry also has shown interest in reaching out proactively to agency Suspending and Debarment Officials (SDOs) to provide information relating to present responsibility matters, 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. The ISDC was made aware of 76 instances of proactive engagement initiated by potential respondents in FY2016, an increase from approximately 50 in FY2015.

In FY 2016, the ISDC leadership continued an ongoing effort to build on prior years' progress in strengthening agency suspension and debarment programs and developing the ISDC as an effective body to support these efforts. Principal efforts addressed:

- 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;

- Assistance to agencies to promote and build program effectiveness;
- Continuation of the ISDC monthly meeting guest presenter program focused on presentations by private sector experts on effective process and evaluation of corporate compliance programs; and
- Outreach with a variety of external stakeholders to discuss ISDC initiatives and allow for an exchange of ideas and perspectives from members of the broader suspension and debarment community of practice.

These efforts included tailored assistance for several agencies, including the Department of Labor, to assist them in establishing or strengthening suspension and debarment programs, practices, and procedures. Continuing a long-standing practice, the ISDC offered training to meet the needs of the various stakeholders to the suspension and debarment process (e.g., offices of general counsel, offices of inspectors general, program officials and contracting officers). For example, the ISDC collaborated with the Council of Inspectors General for Integrity and Efficiency on a debarment workshop, held in the Fall of 2016 for the Federal government community.

The ISDC looks forward in FY 2017 to continued work with agencies in managing their debarment and suspension programs and helping to better protect taxpayer programs and operations from fraud, waste, and abuse.

Sincerely,

David M. Sims, Chair
ISDC

Lori Y. Vassar, Vice Chair
ISDC

Enclosure

Identical Letter Sent to:
The Honorable Jason Chaffetz
The Honorable Elijah E. Cummings
The Honorable Ron Johnson
The Honorable Claire C. McCaskill

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 Suspension and Debarment Official’s (SDO) 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.

“Show cause/pre-notice investigative 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." With regard to the suspension or debarment of business entities, however, businesses operating under different names or that have multiple DBAs ("doing business as") are counted separately as separate business entities or units.

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.

2016 Charts and Graphs

Appendix 1 Suspension and Debarment Actions in FY 2016 *

Agency/Department	Suspensions	Proposed Debarments	Debarments**
Agriculture	34	55	22
AID	14	25	22
Commerce	0	6	12
Defense			
Air Force	27	75	56
Army	83	439	339
Defense Logistics Agency	48	63	55
Navy	24	202	186
Education	59	7	13
Energy	19	19	7
Environmental Protection Agency	59	113	143
General Services Administration	9	66	61
Health and Human Services	50	75	38
Homeland Security	9	260	280
Housing and Urban Development	152	181	192
Interior	10	32	26
Justice	5	8	14
Labor	0	11	1
NASA	2	9	12
National Geospatial-Intelligence Agency	0	1	0
National Nuclear Security Administration	3	5	5
National Science Foundation	10	10	24
Nuclear Regulatory Commission	0	0	0
Office of Personnel Management	2	29	30
Small Business Administration	13	50	32
Social Security Administration	0	0	0
State	21	51	42
Transportation	65	34	31
Treasury	0	3	3
Veterans Affairs	0	26	30
Total Actions	718	1855	1676

* The ISDC obtained this information through a survey of member agencies.

**The number of debarments does not include voluntary exclusion actions, which are reported in Appendix 2.

Appendix 2
Actions Related to Suspension and Debarment in FY 2016*

Agency/Department	Show Cause Notices	Referrals**	Declinations**	Administrative Agreements	Voluntary Exclusions
Agriculture	1	102	16	0	7
AID	6	36	0	0	1
Commerce	0	14	0	2	0
Defense					
Air Force	8	102	0	2	0
Army	23	873	12	14	0
Defense Logistics Agency	1	106	14	5	0
Navy	35	609	0	0	0
Education	0	79	0	1	1
Energy	0	9	0	0	0
EPA	4	271	6	12	0
GSA	22	226	0	0	0
Health and Human Services	8	93	0	1	3
Homeland Security	4	303	1	1	0
Housing and Urban Development	4	270	62	0	5
Interior	0	33	0	1	0
Justice	0	10	0	0	0
Labor	0	13	1	0	0
NASA	4	14	2	3	0
National Geospatial-Intelligence Agency	0	1	0	0	0
National Nuclear Security Administration	0	6	0	1	0
National Science Foundation	1	27	0	5	0
Nuclear Regulatory Commission	0	0	0	0	0
Office of Personnel Management	31	34	1	0	0
Small Business Administration	6	75	0	5	0
Social Security Administration	0***	0	0	0	0
State	1	72	0	0	0
Transportation	0	112	1	21	4
Treasury	0	39	0	0	0
Veterans Affairs	1	26	0	1	0
Total Actions	160	3555	116	75	21

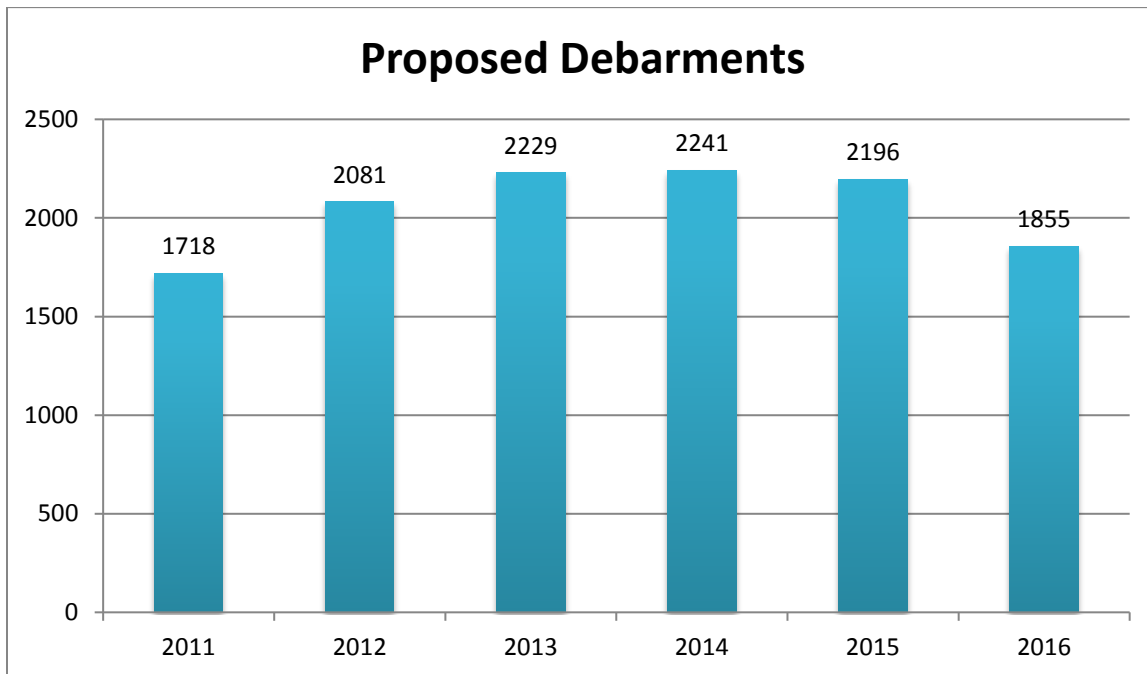
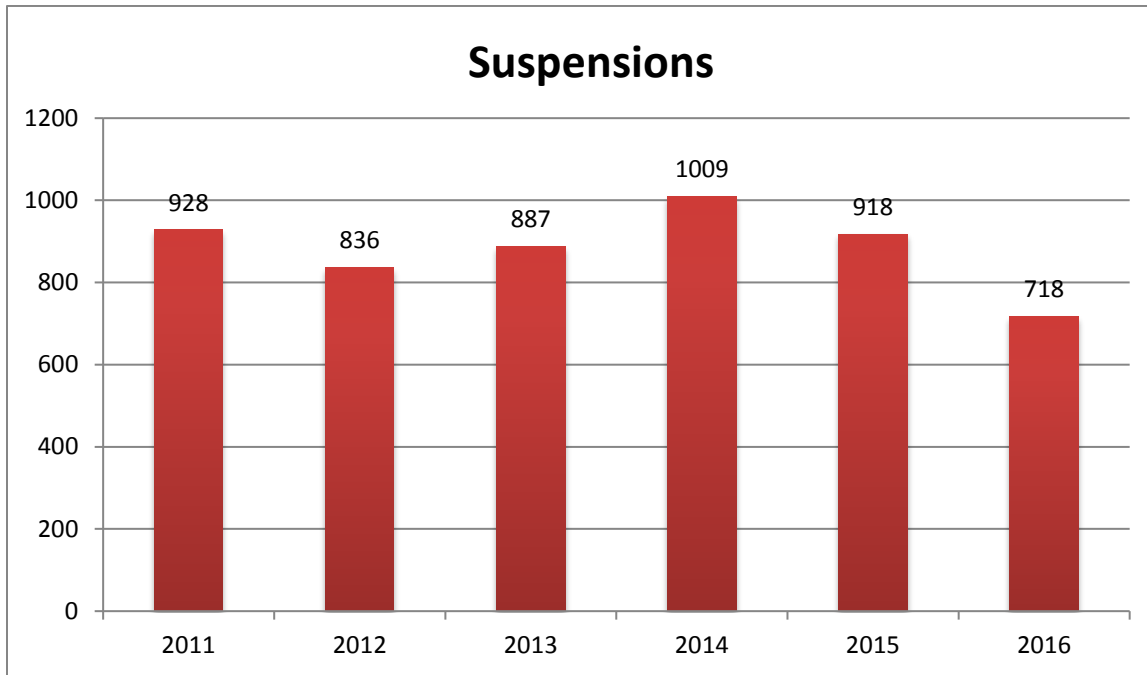
* The ISDC obtained this information through a survey of member agencies.

**A referral and subsequent action or declination by the SDO may cross fiscal years, so a direct comparison between referrals and actions taken will not produce a statistically reliable result.

***Last year SSA reported 71 Show Cause Notices issued. However, upon inquiry it was ascertained that this number referred to contractor officer contract termination show cause actions rather than action by debarment program personnel.

Appendix 3

Government-wide Suspension & Debarment Activity FYs 2011- 2016



Debarments

