

June 15, 2016

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

Dear Mr. Chairman:

The Interagency Suspension and Debarment Committee (ISDC) is required by section 873 of Public Law 110-417 to report to Congress annually on the status of the Federal suspension and debarment system.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 from Fiscal Year (FY) 2015.

The ISDC acts in a leadership role helping agencies build and maintain the expertise necessary to consider suspension and debarment as necessary to protect contract and program integrity. 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 activity from FY 2009, when the ISDC formally commenced data collection and reporting, through FY 2014 show a continued year by year increase in suspensions and debarments as agencies implemented or enhanced suspension and debarment programs. Data for FY 2015, set forth in the appendices, shows a plateauing of the number of suspension and debarment actions which may, at least in part, be indicative of programs becoming established throughout the Executive Branch and transitioning from start up into effective programs. Data for FY 2015 also indicate an increase in the use of alternatives to exclusion actions for this period.

As it has been previously reported and emphasized, the ISDC does not consider the overall number of suspensions and debarments to be a metric of success or failure. Rather, the appropriate level of discretionary suspension and debarment activity in any given year is purely a function of need. In this regard, the ISDC reminds its members to regularly review their own actions to determine if the level of activity is reflective of what is necessary to protect their agency and the government from harm. In addition, the ISDC continues to emphasize that suspension and debarment are tools to protect the government's interest – not punishment –

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 Government agencies and corporations participate on 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/>.

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.

The ISDC continues to work with its members to ensure they have systems in place to flag incidents of improper business conduct and to take appropriate action to ensure that only presently responsible persons are eligible for award of contracts and covered transactions. These efforts have addressed the full spectrum of tools available to an agency's suspension and debarment program, ranging from pre-notice engagement, use of administrative agreements, and impositions of exclusions.

Of particular note, the ISDC has emphasized the use of proactive engagement tools, such as pre-notice engagement letters, which give contractors an opportunity to discuss the steps they are taking to address issues, that if left un-remediated, would likely result in suspension and debarment. For example, agencies reported a nearly 30 percent increase from FY 2014 to FY 2015 in the use of show cause or other pre-notice investigative letters. Agencies also reported over 50 instances during the reporting period where federal contractors or recipients proactively reached out to agency suspension and debarment offices to discuss potential issues, rather than waiting for the agency to take action. Finally, use of administrative agreements increased by 25 percent from FY 2014 to FY 2015 (59 in FY 2015 vs. 47 in FY 2014).

Other FY 2015 efforts included the following:

Training. In FY 2015, the ISDC devoted significant resources to training, with a particular emphasis on promoting greater procedural consistency, transparency of practice, and fairness in suspension and debarment programs across the Federal Government. A day-long event focused on providing approximately 150 participants from 32 federal agencies practical approaches for developing, improving, and executing their agencies' programs. Specific training elements included:

- an overview of the basic authorities and procedures underlying suspension and debarment for procurement and non-procurement actions;
- an examination of best practices for executing a successful suspension and debarment program;
- a primer on satisfying agency due process obligations, including practice tips for satisfying notice requirements and considerations for ensuring final decisions include sufficient factual information and legal authorities to support the outcome;
- an overview of the challenges associated with creating, supplementing and administering administrative records; and
- an examination of best practices for conducting meetings with respondents.

Organizers recorded the event and three of the sessions are on the Federal Acquisition Institute Training Application System (FAITAS) website as classes that the acquisition workforce can take for continuing education credits. The ISDC also built reinforcing training modules into five of its monthly meetings in the first half of 2015. In addition, ISDC leadership and members of the ISDC's Training Subcommittee provided one-on-one training and

consultation sessions with several agencies to assist them in strengthening their suspension and debarment practices.

Outreach. The ISDC conducted outreach to hear private practitioner perspectives and concerns regarding process consistency and transparency and invited private sector experts to make presentations to the ISDC on effective evaluation of corporate compliance programs.

Regulatory development support. The ISDC provided input to the Federal Acquisition Regulatory Council on a rule to implement statutory provisions set forth in sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) that require the consideration of suspension and debarment before making an award to a corporation that either has been convicted of a felony under any Federal law within the preceding 24 months or has a federal tax delinquency, where the awarding agency is aware of the conviction or delinquency. The rule requires that all offerors responding to Federal solicitations make a representation regarding those two matters. When an offeror provides an affirmative response in the representation, the contracting officer is required to request additional information from the offeror and notify the agency official responsible for initiating debarment or suspension action. The rule further provides that the contracting officer shall not make an award to the corporation unless an agency suspending or debarring official has considered suspension or debarment of the corporation and determined that this further action is not necessary to protect the interests of the Government.²

Separately, the ISDC provided technical input to OMB on the draft proposed regulations, published in May 2015, to implement Executive Order (E.O.) 13673, *Fair Pay and Safe Workplaces*. This E.O., is designed to promote contractor compliance with Federal labor laws by helping contractors to address their most problematic violations. The ISDC focused its input on the interplay between the debarment process and the EO's proposed implementation mechanisms to reinforce the fairness and due process requirements of the debarment remedy.

Other activities. The ISDC continued to add content to its public website at <http://isdc.sites.usa.gov>, including updated contact information on Suspension and Debarment Officials (SDO) and program points of contact. The ISDC also met with representatives of Public Works and Government Services Canada regarding the Canadian Government's efforts to put in place a corporate integrity regime.

Looking ahead, in FY 2016, the ISDC will continue to pursue initiatives to ensure agencies are able to manage their debarment and suspension programs in the most effective and fair manner possible. The ISDC will emphasize initiatives that promote transparency of process and consistency of practices and procedures.

² A copy of the interim rule, which was published in the Federal Register on December 4, 2015, is available at <https://www.federalregister.gov/articles/2015/12/04/2015-30456/federal-acquisition-regulation-prohibition-on-contracting-with-corporations-with-delinquent-taxes-or>.

In particular, the ISDC will:

- continue to provide training opportunities that address 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 those personnel who are in agency suspension and debarment programs, the ISDC will continue to provide training as part of its monthly meetings focused on best practices;
- build on actions taken to date to promote efficiency and transparency of process, including planning for the third joint debarment workshop with the Council of Inspector Generals for Integrity and Efficiency to strengthen understanding and communication between agency IG offices and suspension and debarment programs and review ways in which technology can be used more effectively to support the lead agency process; and
- further enhance the format of, and work with ISDC members to add additional content to, its public-facing webpage to further help demystify the suspension and debarment process for government contractors.

The ISDC looks forward to its 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,

/s/

David M. Sims, Chair
ISDC

/s/

Duc H. Nguyen, Vice Chair
ISDC

Enclosure

Identical Letter Sent to: The Honorable Thomas R. Carper,
The Honorable Ron Johnson and The Honorable Elijah E. Cummings

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 entered into 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 Service 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 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 1
Suspension and Debarment Actions in FY 2015 *

Agency/Department	Suspensions	Proposed Debarments**	Debarments***
Agriculture	46	87	71
AID	7	5	2
Commerce	0	11	2
Defense			
Air Force	18	123	100
Army	137	429	456
Defense Logistics Agency	48	325	149
Navy	41	155	154
Education	26	35	25
Energy	12	12	20
Environmental Protection Agency	88	137	89
General Services Administration	77	46	32
Health and Human Services	37	28	26
Homeland Security	19	250	243
Housing and Urban Development	170	257	279
Interior	10	36	28
Justice	25	30	19
Labor	0	0	0
NASA	13	6	11
National Geospatial-Intelligence Agency	0	0	0
National Nuclear Security Administration	1	6	6
National Science Foundation	9	24	13
Nuclear Regulatory Commission	0	0	0
Office of Personnel Management	15	35	13
Small Business Administration	9	27	26
Social Security Administration	0	0	0
State	19	81	67
Transportation	66	33	23
Treasury	0	5	6
Veterans Affairs	25	13	13
Total Actions	918	2196	1873

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

** A proposed debarment action and ultimate debarment may cross fiscal years, so a direct comparison between proposed debarments and debarments will not produce a statistically reliable result.

*** 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 2015*

Agency/Department	Show Cause Notices	Referrals**	Declinations**	Administrative Agreements	Voluntary Exclusions
Agriculture	1	173	5	0	4
AID	2	47	0	0	2
Commerce	0	11	1	1	0
Defense					
Air Force	24	141	0	2	0
Army	34	1027	5	4	0
Defense Logistics Agency	49	326	1	1	0
Navy	28	482	0	0	0
Education	0	77	0	1	2
Energy	0	4	0	1	0
Environmental Protection Agency	1	258	9	19	0
General Services Administration	24	180	0	1	0
Health and Human Services	7	68	1	0	3
Homeland Security	3	339	0	1	2
Housing and Urban Development	0	332	82	0	2
Interior	3	54	0	2	0
Justice	3	42	0	0	0
Labor	0	0	0	0	0
NASA	9	19	0	4	0
National Geospatial-Intelligence Agency	0	3	3	0	0
National Nuclear Security Administration	0	7	0	0	0
National Science Foundation	0	30	0	1	2
Nuclear Regulatory Commission	0	0	0	0	0
Office of Personnel Management	0	26	0	0	0
Small Business Administration	4	79	3	5	0
Social Security Administration	71	0	0	0	0
State	3	100	0	0	0
Transportation	2	85	3	16	1
Treasury	8	7	2	0	0
Veterans Affairs	5	3	0	0	0
Total Actions	281	3920	115	59	18

* 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.

Appendix 3
Government-wide Suspension & Debarment Activity
FYs 2010- 2015



