

## Suspension And Debarment: FY 2017 By The Numbers

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Full fiscal year 2017 suspension and debarment data is now available in the System for Award Management and, for those willing to spend the time to analyze the raw data, fascinating trends emerge. This article presents relevant data points from fiscal year 2017 and trends when tracking the data over the past two fiscal years.

But first, a few important caveats. This information is gleaned directly from SAM by searching for exclusions entered over a specific fiscal year (e.g., Oct. 1, 2016, through Sept. 30, 2017, for fiscal year 2017). This analysis relies on the accuracy of the information within SAM and may be impacted by SAM's idiosyncrasies. For example, at the time of this writing, the General Services Administration is listed twice as an excluding agency in SAM. Also, agencies that have not been historically active in the discretionary suspension and debarment space are omitted. Finally, the analysis of whether or not a business is small is as much an art as a science. Whenever possible, the company's own SAM certifications regarding size guide the analysis. But in the cases where that information is not available, this analysis relies on publicly available business intelligence tools that estimate revenues and employees, such as Manta.com.



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Working with these numbers, we can discern a few things. First, we need to subtract from the totals the U.S. Department of the Navy's unique practice of entering multiple spellings and aliases of individuals into SAM to arrive at more accurate exclusion numbers. By reviewing the names of individuals entered into SAM, it appears that the Navy excluded 138 unique individuals. 622 others appeared to be similar spellings of those unique names, and therefore should be removed from the count. That reduces the number of individuals appearing in SAM from 1,415 to 793 and total numbers of exclusion actions from 1,878 to 1,256. Second, the number of "special entities" that are excluded are also significant. Special entities are those that do not have DUNS numbers or CAGE codes or other identifiers required of traditional government contractors such that they can be listed in SAM. In short, these are "just in case" exclusions, entered to protect the government from these entities becoming contractors in the future. Setting aside the question of whether "special entities" are contractors at all and therefore eligible for exclusion, at a minimum we can further reduce the total count of annual exclusions to 1,055 traditional

## FY 2017 at a Glance

2017 System for Award Management Exclusion Data					
Agency	Total Exclusions	Firms	Individuals	Special Entities	Percentage Individuals
Agriculture	44	11	24	9	55%
AID	45	6	26	13	58%
Commerce	0	0	0	0	N/A
DoD - Air Force	113	16	74	23	65%
DoD - Army	386	65	264	57	68%
DoD - DLA	89	39	46	4	52%
DoD - Navy*	811	22	760	29	94%
Education	7	0	7	0	100%
Energy	13	4	7	2	54%
EPA	180	69	82	29	46%
GSA	96	17	48	31	50%
Interior	8	1	7	0	88%
NASA	7	3	4	0	57%
NSF	16	2	13	1	81%
SBA	19	8	10	1	53%
State	44	11	31	2	70%
VA	32	16	16	0	50%
<b>TOTALS</b>	<b>1878</b>	<b>262</b>	<b>1415</b>	<b>201</b>	<b>75%</b>

\*138 seemingly unique names, multiple spellings for names entered per Navy practice to reach 760

government contracting companies (i.e., those listed as “firms”) and individuals (presumably) engaged in the government contracting industry.

It is also worth noting that the Navy’s practice stands out from the rest of the government. On average, individual respondents in Navy suspension and debarment actions have 5.5 different spellings of their names. The Navy dramatically increases the number of entries in SAM, and might mistakenly list completely innocent and uninvolved individuals and subject them to the reputational harm that comes with a SAM listing. This harm can include delayed hiring for jobs, decreased availability of credit, and possible loss of federal assistance such as federally backed mortgage insurance.

For example, on April 13, 2017, the Navy entered a remarkable 13 different spellings of the name Alexander Posobilova. In the Navy's view, all of these entries presumably exist to safeguard the government from a single nonresponsible individual by making it harder for this individual to obtain jobs with government contractors. But this practice raises questions. Is this thorough approach to SAM listing appropriate, or might it seem like punishment to a reviewing court? And what about the other twelve spellings of Alexander Posobilova? Does the government really need protection from those names enough to risk harming the due process protections of more than a dozen potentially unrelated name spellings? And does the Navy have a preponderance of evidence that their individual respondents use multiple spellings of their names? Interpreting the governmentwide SAM listings, it is difficult to understand how individuals engaged in nonresponsible behavior over which the Navy has lead agency are the only ones who are nearly uniformly likely to use multiple spellings of their names to further their misbehavior.

Separately, cross-referencing SAM exclusion data with available business size information shows the following:

Agency	Firms	US Firms - Large	US Firms - Small	US Firms - Unknown	Percentage US Firms Small (of known)
Agriculture	11	1	7	3	88%
AID	6	0	0	0	N/A
Commerce	0	0	0	0	N/A
DoD - Air Force	16	0	16	0	100%
DoD - Army	65	2	38	4	62%
DoD - DLA	34	9	24	1	73%
DoD - Navy	22	0	15	6	94%
Energy	4	2	1	0	25%
EPA	69	11	36	22	77%
GSA	17	0	12	5	100%
Interior	1	0	1	0	100%
NASA	3	1	2	0	67%
NSF	2	0	2	0	100%
SBA	8	0	8	0	100%
State	11	0	0	0	N/A
VA	16	0	16	0	100%
<b>TOTALS</b>	<b>262</b>	<b>26</b>	<b>178</b>	<b>41</b>	

As in prior years, the probability of being excluded from government contracting by suspension, proposed debarment or debarment is inversely proportional to business size. Small businesses continue to be more likely to be excluded than large businesses. But, as noted above, this analysis is more art than science, and requires taking into account a number of publicly available data points to assess business size. That data is primarily available for U.S.-based companies. It is more difficult to assess the

business size of international companies and as such they are excluded from the analysis. Readers may wish to know that the U.S. Agency for International Development, the U.S. Department of State and the Army (as the agency in charge of contracting in Iraq/Afghanistan/etc) are three agencies that frequently exclude international companies. Additionally, readers should keep in mind that this analysis does not separate out statutory debarments from discretionary debarments. That means that the small business exclusion percentage listed for the U.S. Environmental Protection Agency does not provide as strong a prediction of how likely a small business is to be excluded in a discretionary debarment action as it might for other agencies that do not have statutory debarment authority.

### Comparison to FY 2016 Numbers

Rather than repeat the tables from my fiscal year 2016 Law360 analysis, which are available here, the following summary detail may be more helpful.

	<b>Total Exclusions</b>	<b>Firms</b>	<b>Individuals</b>	<b>Special Entities</b>
<b>FY 2016 SAM Data</b>	<b>2,229</b>	<b>284</b>	<b>1,738</b>	<b>207</b>
<b>FY 2017 SAM Data</b>	<b>1,878</b>	<b>262</b>	<b>1,415</b>	<b>201</b>
<b>Change</b>	<b>(351)</b>	<b>(22)</b>	<b>(323)</b>	<b>(6)</b>

The government excluded fewer contractors in every category in fiscal year 2017 compared to fiscal year 2016. There were fewer total exclusions including fewer firms, fewer individuals, and fewer special entities excluded from the marketplace. This across-the-board reduction applies even accounting for the Navy's unique practice with respect to individuals in each year. Individuals continue to be the most likely to be excluded. And the percentage of U.S. companies that have some indicia of being engaged in government contracting (e.g., firms rather than special entities) of total actions continues to be relatively low, accounting for 13 percent of overall actions in fiscal year 2016 and 14 percent in fiscal year 2017.

While small businesses continue to be more likely to be excluded than large businesses, there was greater variation in the percentages in fiscal year 2017 than in fiscal year 2016.

	<b>FY 2016 Percentage of U.S. Businesses Excluded That Were Small (of those able to be determined)</b>	<b>FY 2017 Percentage of U.S. Businesses Excluded That Were Small (of those able to be determined)</b>
<b>Dept. of the Army</b>	<b>98%</b>	<b>62%</b>
<b>Dept. of the Navy</b>	<b>96%</b>	<b>94%</b>
<b>Defense Logistics Agency</b>	<b>94%</b>	<b>73%</b>
<b>Dept. of the Air Force</b>	<b>90%</b>	<b>100%</b>
<b>General Services Admin.</b>	<b>84%</b>	<b>100%</b>

Other than examining SAM and understanding the underlying data, the only available aggregation of suspension and debarment data is the Interagency Suspension and Debarment Committee's annual report. This annual report is a collective, collaborative interagency effort to explain the number of individual suspension, proposed debarment, and debarment actions by agency. It also contains other details about the number of referrals agencies received and the number acted upon, as well as details about nonexclusionary interactions such as show cause letters, requests for information, and administrative agreements. But the ISDC annual report can double- and triple-count the number of exclusions by listing suspensions, proposed debarments, and debarments of a single respondent as multiple actions. For example, if an agency suspends an individual, then proposes the individual for debarment, and debars the individual, that would count as three separate actions in the ISDC annual report. Unless and until the ISDC adjusts its data collection methods, detailed analysis of the SAM data is perhaps a more productive method of understanding the government's suspension and debarment tendencies.

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