

The Honorable Darrell E. Issa
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 pleased to present its report to Congress on the status of the Federal suspension and debarment system. This report, required by section 873(a)(7) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, discusses federal agencies' suspension and debarment and related activity in FYs 2012 and 2013, as well as the ongoing management steps that the ISDC is supporting to ensure the fair and effective use of suspension and debarment across the Government.

Suspension and debarment are two of the Government's most powerful tools for ensuring contract and program integrity. Through these tools, agency suspending and debarring programs use their mission knowledge to make timely business risk assessments as to whether a potential recipient has the business integrity and ethics worthy of receiving awards of contracts, grants, and other forms of financial assistance.

Reported activity levels for FYs 2012 and 2013 indicate a continued upward trend from the last reporting period and a significant increase when compared to FY 2009, when the ISDC formally began to collect data on suspensions and debarments. This trend is a reflection, in part, of efforts by the ISDC to help agencies make the necessary program improvements so that appropriate attention is given to suspension and debarment in accordance with requirements for administrative due process laid out in regulations governing procurement and non-procurement activities. Special emphasis has been placed on helping agencies with developing programs to leverage the experience of agencies with well-established programs.

As has been previously reported, agencies have taken a number of specific management actions to address any program weaknesses and reinforce best practices in their suspension and debarment programs, as called for by Office of Management and Budget (OMB) Memorandum M-12-02, *Suspension and Debarment of Federal Contractors and Grantees* (November 15, 2011), available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12->

02.pdf. Of particular note, every agency subject to the Chief Financial Officers Act (CFO Act) reports that it has:

- an accountable official in place who is responsible for suspension and debarment activities, including the adequacy of available training and resources;
- taken steps to address resources, policies, or both -- in some cases by dedicating greater staff resources to handle referrals and manage cases and in others by entering into agreements to be mentored by the managers of successful programs; and
- procedures to forward recommendations to their suspending and debarring official for action.

Equally important, every CFO Act agency and a significant number of smaller agencies participate on the ISDC to share best practices, including in the application of administrative due process, seek advice from agency counterparts, and discuss court actions that may highlight areas in need of closer attention.

To improve transparency, the ISDC launched an enhanced web portal, at <https://isdc.sites.usa.gov/>, to allow easier contractor and public access to agency debarment programs and debarment resources. The initial version of the enhanced site includes contact information on agency suspending and debarring officials and ISDC members. Additional information will be added to allow easier access to agency debarment programs and debarment resources.

While important progress has been made, more work remains. The ISDC expects its individual agency members – who are most knowledgeable about their agency’s mission and capabilities – to review their own individual trends to determine if the level of activity is reflective of what is necessary to protect their agency and the government from harm. Through its standing subcommittees and in collaboration with the Council of Inspectors General for Integrity and Efficiency, the ISDC will continue to ensure that educational materials support the needs of the various stakeholders (e.g., offices of general counsel, offices of inspectors general, program officials and contracting officers) who support the debarment process. It will also continue to actively review opportunities to improve practices and processes for coordinating suspension and debarment actions among agencies when two or more agencies have an interest in initiating suspension and debarment proceedings pertaining to the same contractor. The lead agency coordination process helps protect recipients from being subjected to multiple and potentially inconsistent actions while avoiding the waste of federal resources on duplicative actions.

The ISDC looks forward to continuing its support of agencies in their ongoing efforts to manage their debarment and suspension programs in the most effective and fair manner possible and helping the government eliminate fraud, waste and abuse from its programs and operations.

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 Tom Coburn, and The Honorable Elijah E. Cummings

Report by the Interagency Suspension and Debarment Committee On Federal Agency Suspension and Debarment Activities for FY 2012 and FY 2013

The Interagency Suspension and Debarment Committee (ISDC) is required to report to Congress on the status of the Federal suspension and debarment system each year.¹ Specifically, the ISDC must report: 1) progress and efforts to improve the suspension and debarment system; 2) agency participation in the Committee's work; and, 3) a summary of each agency's activities and accomplishments in the government-wide debarment system.

This report discusses the ISDC's progress and efforts to improve the suspension and debarment system by ensuring the fair and effective use of suspension and debarment. It provides data for FY 2012 and FY 2013 on agency suspension and debarment actions, as well as agency participation in the ISDC's work. Individual agency activities and accomplishments are highlighted in the appendices.

I. Ensuring the Fair and Effective Use of Suspension and Debarment

The 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.² All 24 agencies covered by the Chief Financial Officers Act (CFO Act) are standing members of the ISDC. Additionally, 18 independent agencies and government corporations participate on the ISDC. Together, ISDC member agencies are responsible for virtually all federal procurement and non-procurement transactions.

The ISDC promotes the fair and effective use of suspension and debarment in at least three important ways, namely by (1) helping agencies build and maintain their capability to consider suspension and debarment remedies, (2) reinforcing long-standing principles of fairness and due process, and (3) helping to coordinate activities when more than one agency is interested

¹ Section 873(a)(7) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110-417.

² The ISDC was initially created in 1986 to monitor implementation of Executive Order 12549, which established a suspension and debarment system for non-procurement matters such as grants, insurance and guarantees. Since its initial establishment, the ISDC has grown to take cognizance of procurement debarment matters in addition to its original non-procurement jurisdiction. The Federal government uses two debarment rules. The Nonprocurement Rule is codified at Title 2 of the Code of Federal Regulations (CFR) in Part 180 and separate agency enacting pieces promulgated in Subtitle B of that Title. The Federal Acquisition Regulation (FAR), or procurement rule, is found at Title 48 in the C.F.R. at Part 9.4. Both rules have reciprocal effect. A suspension or debarment under either rule renders the respondent ineligible for participation in procurement and nonprocurement transactions throughout the Executive branch.

in suspending or debaring the same contractor or discretionary assistance, loan, and award recipient.³

1. Helping agencies build and maintain the capability to consider suspension and debarment. Suspension and debarment protect taxpayers from fraud, waste and abuse by allowing agencies to exclude entities and individuals that have shown they are presently nonresponsible and unable to conduct business with the Government. For the past several years, the ISDC has accelerated efforts to make sure agencies are properly positioned to give appropriate consideration to these tools. These efforts have been guided by direction provided by the Office of Management and Budget (OMB) which instructed all agencies subject to the Chief Financial Officers Act (CFO Act) to take a number of actions to address any program weaknesses and reinforce best practices. See OMB Memorandum M-12-02, *Suspension and Debarment of Federal Contractors and Grantees* (November 15, 2011), available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-02.pdf>.

While there is more to be done, agencies are taking steps, with the support and active assistance of the ISDC to enhance suspension and debarment programs to better protect the Government from fraud, waste and abuse.

Actions taken by all CFO Act agencies. In FY 2012 and FY 2013 each of the 24 CFO Act agencies reported to the ISDC that:

- The agency has an accountable official for suspension and debarment activities. In the majority of agencies, this official is the suspending and debaring official (SDO).
- The agency took steps to address resources, policies, or both to strengthen the consideration of suspension and debarment. Noteworthy examples include:
 - Formally establishing suspension and debarment programs;
 - Dedicating greater staff resources to handle referrals and manage cases; and
 - Simplifying processes for making referrals and implementing new policies that require automatic referral for suspension or debarment consideration to the agency debarment program in certain situations.
- The agency has internal agency controls in place to support their suspension and debarment efforts. These measures increased transparency and consistency among

³ Hereafter, for purposes of consistency the term "recipient" will be used in this report to refer to both "contractor" as used in FAR Subpart 9.4 and "program participant" as used in 2 CFR Part 180.

agency programs. Internal control measures include supplements to the FAR, standard operating procedures, handbooks, policy papers, bulletins, internal suspension and debarment councils to process referrals and regular conference calls with agency fraud counsel. The internal controls place an increased emphasis on coordination, such as sites to share suspension and debarment information, especially for large decentralized agencies, and cross-functional internal suspension and debarment councils with representatives from procurement, grants, fiscal, IG, and legal communities to review and monitor suspension and debarment activities.

- The agency has procedures to forward actions to the suspending and debarring official (SDO), and to track referrals with the assistance of an automated case management system.

Actions taken by the Department of Defense. Defense agencies, many of which have more mature suspension and debarment programs, continued to refine their practices. For instance:

- The Navy actively pursued fact-based debarments of recipients who had been terminated for default (poor performance) or who had mischarged costs against Navy contracts.
- The Defense Logistics Agency continues to lead efforts to consider suspension and debarment as a remedy in the fight against nonconforming parts entering the DOD supply chain.
- The Army completed a comprehensive revision of its Army regulation addressing procurement fraud to provide guidance to Army field attorneys regarding their responsibilities in closely coordinating with contracting officers, identifying fraud or performance issues, and providing guidance as to what evidence is necessary in order to propose particular recipients for suspension and debarment.
- The Air Force is utilizing tools that enhance transparency and due process. Examples of these tools include: requests for information, show cause letters, and terminations with conditions. A request for information is a tool used to gain information from a company when the SDO has information that is insufficient to move forward with a suspension or debarment, yet there is sufficient information to question the company's present responsibility. Whereas, a show cause letter is a tool to gain information from a company when the SDO has sufficient information to move forward with a suspension or debarment, but allows the company additional due process prior to the initiation of formal administrative proceedings under FAR Subpart 9.4. A termination with conditions is a hybrid administrative agreement that allows a company to continue to do business with the government so long as certain conditions are met but does not involve the expense or burden that an administrative agreement requires.

Actions taken by civilian agencies. Many civilian agencies with recently developed or emerging programs at the start of the Administration have continued to show progress. For example:

- The Agency for International Development (AID) received a positive review from its OIG for its suspension and debarment program. Just a few years earlier, the IG cited the agency for significant weaknesses in its debarment and suspension capabilities. For example, in 2012, AID debarred 16 people for their participation in a scheme to submit fraudulent receipts for the administration of federal foreign assistance to support public health, food aid, and disaster assistance in Malawi. By working with its recipient organization to assure that the unlawfully claimed funds were not reimbursed, USAID was able to avoid waste and abuse of taxpayer funds designed to provide vital assistance to a developing country.
- The Small Business Administration (SBA) has maintained an active suspension and debarment program since 2010 as part of a comprehensive initiative to rid its small business programs of fraud, waste, and abuse, and ensure that the benefits of small business contracting go to the intended communities. Between 2009-2013, SBA has taken 140 debarment actions directly, and regularly assists “lead agencies” in evaluating small business issues to determine if suspension or debarment is necessary.
- The National Aeronautics and Space Administration (NASA) has significantly increased its suspension and debarment actions, as a result of its Acquisition Integrity Program in the Office of the General Counsel, which addresses issues and potential remedies related to procurement and non-procurement fraud. Between 1996 and 2007, NASA debarred 18 contractors. From FYs 2008-13 NASA has taken over 120 administrative actions ranging from suspensions, notices of proposed debarment, debarments, and administrative agreements. In FY 2012, NASA initiated the use of show cause letters to help ensure contractors’ present responsibility. In FY 2013, NASA also conducted comprehensive fraud awareness training, which includes training on suspension and debarment as well as contractual remedies, for the entire NASA workforce.
- The Department of the Interior (DOI) uses enhanced program practices and procedures to support its own investigation and pursuit of suspension and debarment cases – a significant change from the past. Between 2001-2008, DOI took approximately 20 suspension and debarment actions, mostly through referrals to other agencies. From FY 2009 through FY 2013, DOI took 183 suspension and debarment actions, and, for the first time, took advantage of administrative agreements to resolve exclusions while providing the Department with effective oversight over a recipient’s performance.
- The Department of Commerce (DOC) has taken steps to protect the Government’s interest by invigorating its Suspension and Debarment Program. The Department has consulted with other agency officials, collaborated with the Office of Inspector General and the Office of General Counsel in the development of a strong program that effectively leverages DOC’s resources. These efforts include the implementation of a case referral process in addition to the creation of the Suspension and Debarment Coordinator function to ensure that processes and procedures are followed in a timely manner. Recognizing the need for appropriate follow-up and constant communication,

the Department has instituted a suspension and debarment case management tracker which is utilized at monthly meetings between the Office of Acquisition Management, the Office of General Counsel, and the Office of the Inspector General. In FY2012 and again in FY2013, DOC conducted comprehensive fraud awareness outreach and training to the Department's staff through an annual two-day Acquisition Conference. From FY 2011 through 2013, DOC conducted 51 suspension and debarment actions.

- The Department of Health and Human Services (HHS) established a suspension and debarment organization with three dedicated staff. In FY 2012, it began to see an increased volume of referrals as its new robust program guidance, and training for department personnel, took hold. As a result, HHS's activity level rose significantly, from 1 action taken in FY 2012 to 52 actions in FY 2013.
- The Department of Justice (DOJ) issued the Attorney General's January 12, 2012 Memorandum titled "Coordination of Parallel Criminal, Civil, Regulatory, and Administrative Proceedings" to all litigating and investigating components, and presented the Memorandum before the ISDC. DOJ's SDO issued three Procurement Guidance Documents (PGDs) to DOJ Bureau Procurement Chiefs, reminding DOJ of the important role of suspension and debarment in the procurement process and the various processes required in order to ensure DOJ contracts with responsible partners. The SDO also implemented a new electronic case management system to track referrals and follow-up activities to ensure timely disposition of suspension and debarment matters. Activity level for the Department of Justice also saw a significant increase from 37 actions in FY 2012 to 67 actions in FY 2013.
- The Department of State (State) created processes in FY 2012 for tracking referrals and follow-up activities and its SDO instituted quarterly meetings between the SDO and the State OIG. These program enhancements resulted in 50 actions in FY 2012 – more than the number of actions taken in the prior 3 years combined. Furthermore, State's activity level continued to show a significant increase in FY 2013, with a total of 96 actions.
- The Department of the Treasury (Treasury) issued a directive in FY 2012 to enhance the suspension and debarment process, including its referral process, and stood up an oversight council to coordinate and manage cross-functional activities, based on the recommendations of an internal task force that was set up to identify best practices. In FY 2013 Treasury developed and implemented a cutting edge electronic case management system.

Appendix 1 lists key internal controls agencies have in place to promote suspension and debarment programs.

2. Reinforcing long-standing principles of fairness and due process. The ISDC continues to reinforce the principles of fairness and due process by promoting best practices that enhance transparency and consistency in the Government-wide system. Concurrent with its efforts to strengthen agencies' suspension and debarment capabilities, the ISDC seeks to promote and preserve the principles of fairness and due process, as has long been required by both the FAR, which governs procurement actions, and 2 CFR Part 180, which covers non-procurement actions. The ISDC also seeks to help agencies keep processes "as informal as practicable." This informality, which has also been long recognized in regulation, arises out of the very nature of suspension and debarment as discretionary authorities inherent to each government agency's obligation to protect the Government when functioning as a consumer of goods or services. To act as responsible stewards, each agency must have the discretion to use its knowledge about the agency's mission and capabilities to make business risk assessments as to whether a potential government vendor or provider of services lacks integrity or present responsibility.

The ISDC has accelerated efforts to help agencies properly develop their suspension and debarment programs ensuring appropriate attention to administrative due process as laid out in governing regulations. These regulations, which set out a uniform minimum framework for actions, guarantee that:

- The respondent is provided with written notice of the cause for the suspension or debarment action in terms sufficient to put the contractor on notice of the factual conduct or transactional basis for the action, and to whom and how to contest the action.
- The respondent has an opportunity to appear in person, in writing, or through a representative and present information in opposition to the action.
- The respondent has the opportunity for an informal business format type meeting with the SDO, and receives a written final determination on the matter.
- Where facts material to cause for the action are genuinely in dispute, an informal evidentiary proceeding is conducted, transcribed by a court reporter for the administrative record at which the respondent may appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents, and obtain a copy of the administrative record.

Agencies' adherence to these basic requirements has been a key reason why courts have shown deference over the years to the decisions of agency suspension and debarment officials in response to legal challenges. The ISDC devotes significant attention to helping agencies successfully and consistently apply these principles of fairness and due process.

The ISDC maintains an online library of documents that promotes standardization and disseminates agency best practices. The documents include a sample practice manual and action documents, fact-finding procedures, and a case law compendium that illustrate how to implement the basic procedural steps laid out in the FAR and Part 180 described above. These documents reinforce that suspension and debarment are to be applied in the public interest for the government's protection and should not be used as regulatory compliance, enforcement, or costs collection tools. For example, the practice manual reminds agencies that the existence of one or more causes for suspension or debarment does not require an agency to suspend or debar a recipient and further reminds agencies to consider the seriousness of a recipient's acts or omissions and any remedial measures or mitigating factors, such as disciplinary action taken by the recipient or new or stronger internal control procedures that it has instituted.

The ISDC coordinates mentoring by agencies with well-established suspension and debarment processes and offers various other forms of training. As discussed above, over the last several years, agencies across government have successfully developed or strengthened their capabilities to use suspension and debarment in a reasoned and responsible manner. Since the beginning of Fiscal Year 2012, the ISDC consulted with thirteen agencies, including five of the agencies cited in the Government Accountability Office's 2011 report⁴ (Commerce, HHS, DOJ, State, and Treasury). ISDC members continued to serve as instructors for the Federal Law Enforcement Training Center suspension and debarment training courses. The ISDC also joined with the Council of Inspectors General for Integrity and Efficiency (CIGIE) to cosponsor, on an ongoing basis, the joint CIGIE/ISDC annual debarment training workshop. The most recent workshop focused on developing and taking fact based actions, such as actions arising out of poor performance and negative audit findings. In addition, ISDC members provided technical support and trainers to a course the CIGIE Training Institute designed for Auditors and Attorneys. This CIGIE course is designed to enhance the ability of OIG audit, inspection, evaluation and counsel employees within Offices of Inspectors General to identify and produce suspension and debarment referrals. The ISDC also participated in learning and information exchange sessions sponsored by government agencies and private sector associations and met with Congressional oversight staffers to discuss government-wide suspension and debarment members.

The ISDC manages an informal "lead agency" process to help agencies coordinate among themselves when multiple agencies have a potential interest in pursuing suspension and debarment of the same entity. As discussed in greater detail below, the lead agency process helps to protect recipients from being subjected to multiple and potentially inconsistent actions while avoiding waste of federal resources.

⁴See *Suspension and Debarment: Some Agency Programs Need Greater Attention, and Government wide Oversight Could Be Improved* (GAO No. 11-739).

The ISDC is taking steps to make the suspension and debarment process more transparent. The ISDC launched an enhanced web portal, at <https://isdc.sites.usa.gov/>, to allow easier contractor and public access to agency debarment programs and debarment resources. The initial version of the enhanced site includes contact information on agency suspending and debaring officials and ISDC members. Additional information will be added to allow easier access to agency debarment programs and debarment resources.

3. Coordinating agency suspension and debarment actions. In some instances, more than one agency may have an interest in the debarment or suspension of a recipient. Because an agency action taken pursuant to the discretionary rules has government-wide reciprocal effect potentially impacting all federal agencies, ISDC members engage in a “lead agency coordination” process to help designate the lead agency. This informal process aids identification of the agency best situated and with the greatest interest to be the lead agency on a matter. The lead agency coordination process takes into consideration factors such as financial, regulatory, and investigative interests. This lead agency designation process promotes efficient use of federal resources and fairness to respondents.

Lead agency coordination is critical to supporting a government-wide system designed to address systemic problems. OMB and the ISDC are committed to ensuring the effective use of the lead agency coordination process to help agencies and recipients avoid needlessly expending funds for duplicative or inconsistent efforts. All CFO Act agencies have committed to supporting the lead agency process and the ISDC is working with the Small Agency Council to ensure smaller agencies are also actively engaged in this process. (As noted above, 18 government corporations and independent agencies, such as the Peace Corps, the Missile Defense Agency, and the Corporation for National and Community Service are members of the ISDC.) Furthermore, an ISDC standing subcommittee has been tasked with exploring ways to improve the lead agency process.

The ISDC is also working with OMB to apply lead agency concepts in the implementation of new statutory provisions that require the consideration of suspension and debarment before making an award to a corporation that either has been convicted of a felony or has unpaid tax delinquencies. Under these statutory provisions, an award cannot be made unless an SDO has considered suspension or debarment of the corporation and made a determination that further action is not necessary to protect the interests of the government. Sharing of information between SDOs will allow the funding agency to meet its responsibility to consider suspension or debarment by (1) considering another agency’s determination as to why suspension and debarment is not necessary and (2) if it concurs with the other agency’s determination, adopting that determination as its own without conducting an independent review of the entire record or requiring the corporation to appear and make a duplicative presentation. Ordinarily, there should be no need for the funding agency to conduct a further review or initiate

a new independent (*de novo*) review to meet its responsibility if it has reviewed the determination made by the other agency regarding why suspension or debarment is not necessary and is satisfied with the explanation provided in the written record created by the other agency.

In addition to its lead agency coordination efforts, the ISDC continued its efforts to encourage suspension and debarment in parallel with the pursuit or consideration of contractual, civil and criminal remedies. In furtherance of this effort, the ISDC took part in developing the CIGIE training discussed above, and provided member agencies with case studies on the effective use of parallel procedures. The ISDC also provided members with several presentations regarding the Attorney General’s January 30, 2012, memorandum titled “Coordination of Parallel Criminal, Civil, Regulatory, and Administrative Proceedings.” This memorandum directed all United States Attorney’s Office and litigating components of DOJ to ensure early and appropriate coordination of criminal, civil, regulatory and administrative remedies, including suspension and debarment.

II. Suspension, Debarment and Related Actions in FY 2012 and FY 2013.

As has been done for prior reports prepared in response to section 873, the ISDC surveyed agencies to provide data on suspension and debarment actions in Fiscal Year 2012 and FY 2013. The survey also sought information on related actions, including use of administrative agreements and voluntary exclusions.

1. Suspension and debarment actions. As shown in Table 1, CFO Act agencies issued 836 suspensions in Fiscal Year 2012 under the discretionary suspension and debarment rules. The Government proposed 2,081 individuals and entities for debarment, and ultimately debarred 1,722. In FY 2013, CFO Act agencies issued 883 suspensions. The Government proposed 2,244 individuals and entities for debarment, and ultimately debarred 1,715. For a breakdown by agency, see Appendices 2 and 3.

Table 1. CFO Act Agency Debarment and Suspension Actions

Actions	Fiscal Year 2012	Fiscal Year 2013
Suspensions	836	883
Proposed for Debarment	2,081	2,244
Debarments	1,722	1,715
Total Actions	4,639	4842

Seventeen agencies reported issuing a total of 122 “show cause notices/pre-notice investigative letters” in FY 2012 and 131 during FY 2013. See Table 2. These letters are pre-notice communications, which advise an entity that it is being considered for suspension or proposed debarment. These letters typically identify the assertion of misconduct that has been

brought to the attention of the SDO and give an entity an opportunity to respond within a specific period of time before the agency takes action.

Table 2. Show Cause Notices/Pre-Notice Investigative Letters

Agency	Fiscal Year 2012	Fiscal Year 2013
AID	1	1
DOC	4	0
Defense		
ARMY	17	12
AIR FORCE	15	45
DLA	1	3
NAVY	13	27
EPA	3	3
GSA	13	15
HHS	0	3
DHS	9	2
HUD	3	3
DOI	5	3
DOJ	1	0
DOT	4	2
NASA	2	2
SBA	18	4
SSA	10	4
TREASURY	3	2
Total	122	131

2. Administrative agreements. In addition to issuing suspensions, proposed debarments and debarments, Federal agencies reported entering into a total of 54 administrative agreements in FY 2012 and 61 agreements in FY 2013. See Table 3. Administrative agreements, sometimes referred to as administrative compliance agreements, ordinarily are considered 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 suspension or debarment official, and will only be used if the administrative agreement furthers the government's interest. As explained in last year's report, if properly structured, an administrative agreement creates an incentive for a company to improve its ethical culture and business process to avoid debarment. This mechanism allows respondents to demonstrate their present responsibility, when appropriate, in order to remain eligible for awards. Furthermore, the use of administrative agreements increases the Government's access to responsible sources and, thereby, promotes competition in the Federal marketplace.

While administrative agreements will vary by agency and individual settlement, all will require the entity to take certain verifiable actions, such as implementation of enhanced internal

corporate governance practices and procedures, including risk assessment processes, and adoption of compliance, ethics and reporting programs. 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.

Table 3. Administrative Agreements

Agency	FY 2012	FY 2013
USDA	3	0
Defense		
AIR FORCE	3	5
ARMY	3	2
NAVY	1	2
EDUCATION	0	3
ENERGY	0	2
EPA	7	12
GSA	14	5
HHS	1	0
DHS	0	3
HUD	0	4
DOI	0	3
DOJ	4	5
NASA	3	0
NSF	0	1
SBA	5	3
DOT	9	11
VA	1	0
Total	54	61

3. Voluntary exclusions. The nonprocurement rule allows agencies to enter into voluntary exclusions with respondents in lieu of suspension or debarment. These voluntary exclusions prohibit respondents from participating in procurement and nonprocurement transactions government-wide. Agencies must enter all voluntary exclusions on the System for Award Management (SAM). ISDC member Agencies reported 12 voluntary exclusions entered for both FY 2012 and FY 2013. Table 4.

Table 4. Voluntary Exclusions

Agency	FY 2012	FY 2013
USDA	5	2
EPA	2	0
DHS	0	3
HHS	4	3
HUD	1	0
DOI	0	1
NSF	0	1
Total	12	10

4. Referrals and declinations. In FY 2012, member agencies reported more than 3,700 referrals and just over 200 declinations to pursue action. In FY 2013, member agencies reported 3942 referrals and 154 declinations to pursue action. Table 5. Referrals and counting conventions are based upon the common definitions listed in the Methodology section at the end of the report. See Appendix 4 for an agency breakdown of sources of information that resulted in opening suspension and debarment actions in FYs 2012 and 2013. 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.

Table 5. Referrals and Declinations

Agency	FY 2012		FY 2013	
	Referrals	Declinations	Referrals	Declinations
USDA	80	3	88	13
AID	131	0	57	0
DOC	6	1	3	0
Defense				
AIR FORCE	679	0	255	0
ARMY	668	4	660	15
DLA	198	0	375	0
NAVY	344	0	437	0
ED	57	0	71	0
DOE	26	7	35	0
EPA	224	15	338	6
GSA	229	17	361	26
HHS	22	0	42	0
DHS	340	0	444	0
HUD	372	149	381	81
DOI	80	0	49	0
DOJ	24	4	29	2
DOL	3	3	0	0
NASA	15	0	16	0
NSF	18	0	46	0
NRC	0	0	0	0
OPM	0	0	22	8
SBA	67	0	47	3
SSA	0	0	0	0
STATE	39	0	49	0
DOT	30	0	76	0
TREASURY	3	0	7	0
VA	60	0	54	0
Total	3715	203	3942	154

5. Five-year trends. The reported activity levels for FY 2012 and FY 2013 indicate a growing number of agencies with active suspension and debarment programs and a significantly increased number of suspension and debarment actions when compared to activity in FY 2009, when the ISDC formally began to collect data on this activity.⁵ See Figures 1, 2, and 3.

The ISDC does not consider the overall number of suspensions and debarments as a metric of success, as the appropriate level of discretionary suspension and debarment activity in any given year is purely a function of circumstance and need. Instead, the ISDC encourages its individual member agencies – who are most knowledgeable about their agency’s mission and capabilities – to review their own individual trends to determine if the level of activity is reflective of what is necessary to protect their agency and the government from harm.

⁵ Following release of the FY 2011 Report the ISDC became aware of an error in the totaling of the number of reported debarments which resulted in overstating the total by 132. Additionally, in preparing the FY 2012 questionnaire, the ISDC learned that one agency consistently reported in prior years actions which were taken under authorities other than the discretionary suspension and debarment authority at Subpart 9.4 and Part 180. The previous years’ data used in the graphs have been adjusted to correct these errors.

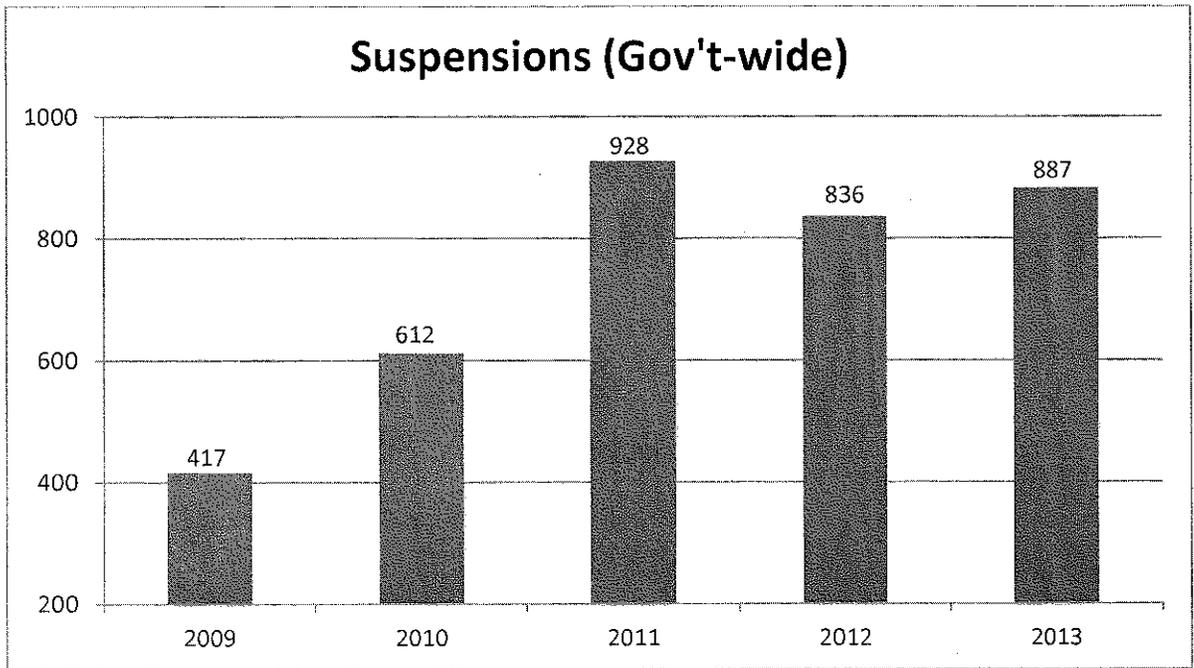


Figure 1

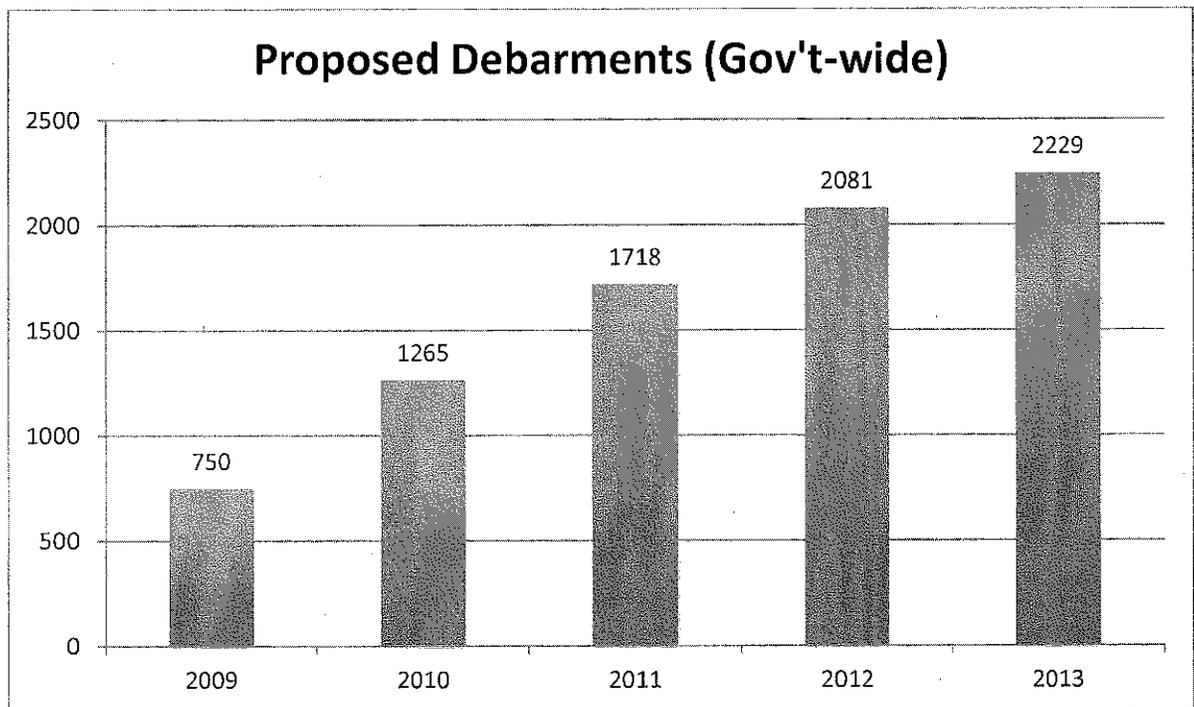


Figure 2

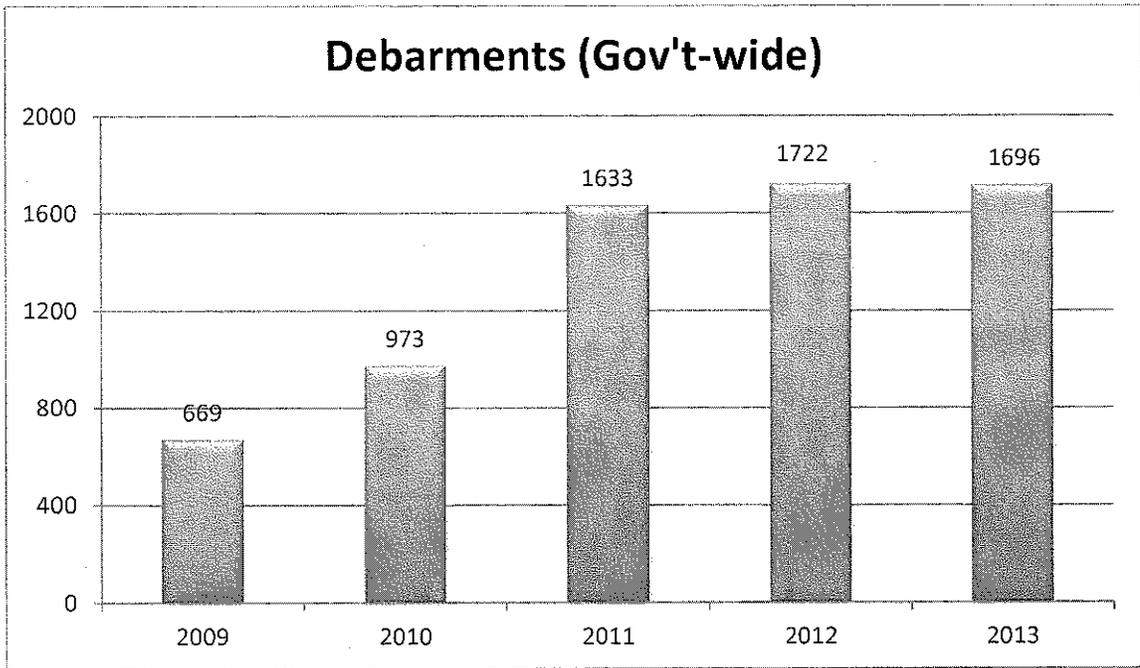


Figure 3

Methodology

To help improve the consistency and accuracy of agency reporting, the ISDC has adopted the following definitions and counting conventions.

Definitions

“Referral” means 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 CFR Part 180.

Note: This definition eliminates 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.

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

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 CFR Part 180 require an analysis to be 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 Chief Financial Officers 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 CFR Part 180. The Report does not track statutory or other nondiscretionary debarments outside of the scope of these regulations.

Appendix 1
Actions and Infrastructure to Support Suspension & Debarment in FYs 2012-2013

Agency	Policies and/or Procedure for S&D	Case Mgmt. System for S&D Cases	Internal agency controls in place			Additional administrative tools used by the agency		
			Procedures to forward actions to the SDO(s)	Are referrals Tracked?	Lead Agency Coordination Participation	Show Cause Notices	Administrative Agreements	Voluntary Exclusions
Agriculture	✓	✓	✓	✓	✓		✓	✓
AID	✓	✓	✓	✓	✓	✓	✓	
Commerce	✓	✓	✓	✓	✓	✓		
Defense								
Air Force	✓	✓	✓	✓	✓	✓	✓	
Army	✓	✓	✓	✓	✓	✓	✓	✓
DLA	✓	✓	✓	✓	✓	✓		
Navy	✓	✓	✓	✓	✓	✓	✓	
Education	✓	✓	✓	✓	✓		✓	
Energy	✓	✓	✓	✓	✓		✓	
EPA	✓	✓	✓	✓	✓	✓	✓	✓
GSA	✓	✓	✓	✓	✓	✓	✓	
HHS	✓	✓	✓	✓	✓	✓	✓	✓
DHS	✓	✓	✓	✓	✓	✓	✓	✓
HUD	✓	✓	✓	✓	✓	✓	✓	✓
Interior	✓	✓	✓	✓	✓	✓	✓	✓
Justice	✓	✓	✓	✓	✓	✓	✓	
Labor	✓	✓	✓	✓	✓			
NASA	✓	✓	✓	✓	✓	✓	✓	
NSF	✓	✓	✓	✓	✓		✓	✓
NRC	✓		✓	✓	✓			
OPM	✓	✓	✓	✓	✓			
SBA	✓	✓	✓	✓	✓	✓	✓	
SSA	✓	✓	✓	✓	✓	✓		
State	✓	✓	✓	✓	✓			
Transportation	✓	✓	✓	✓	✓	✓	✓	✓
Treasury	✓	✓	✓	✓	✓	✓	✓	
VA	✓		✓	✓	✓		✓	

Appendix 2
Suspension & Debarment Actions in FY 2012 ¹

Agency	Suspensions	Proposed for Debarments	Debarments	Administrative Agreements
Agriculture	4	31	23	3
AID	14	46	37	0
Commerce	9	16	9	0
Defense	336	983	768	7
<i>Air Force</i>	76	369	234	3
<i>Army</i>	195	284	186	3
<i>DLA</i>	18	179	202	0
<i>Navy</i>	47	151	146	1
Education	29	22	51	0
Energy	19	19	17	0
EPA	114	138	98	7
GSA	22	101	75	14
HHS	0	1	0	1
DHS	16	300	260	0
HUD	171	234	233	0
Interior	16	43	38	0
Justice	13	16	8	4
Labor	0	0	0	0
NASA	0	8	4	3
NRC	0	0	0	0
NSF	7	8	8	0
OPM	0	0	0	0
SBA	13	14	14	5
SSA	0	0	0	0
State	18	21	11	0
Transportation	13	59	45	9
Treasury	3	0	4	0
VA	19	21	19	1
TOTAL	836	2081	1722	54

¹ 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 the narrative section of this report.

Appendix 3
Suspension & Debarment Actions in FY 2013

Agency	Suspensions	Proposed for Debarments	Debarments	Administrative Agreements
Agriculture	21	83	29	0
AID	11	20	15	0
Commerce	0	4	4	0
Defense	267	911	726	9
Air Force	39	216	192	5
Army	71	316	258	2
DLA	18	190	167	0
Navy	139	189	109	2
Education	38	44	30	3
Energy	15	20	33	2
EPA	196	151	112	12
GSA	10	125	102	5
HHS	8	36	8	0
DHS	32	367	281	3
HUD	175	213	178	4
Interior	19	36	33	3
Justice	13	28	26	5
Labor	0	0	0	0
NASA	4	8	4	0
NSF	6	18	7	1
NRC	0	0	0	0
OPM	0	2	0	0
SBA	9	40	7	3
SSA	0	0	0	0
State	11	38	47	0
Transportation	4	66	44	11
Treasury	2	1	1	0
VA	46	18	9	0
TOTAL	887	2229	1696	61

Appendix 4
Sources of Information that Resulted in Opening
Suspension and Debarment Actions in FYs 2012-2013

Agency	CONTRACTING OFFICERS/CONTRACTING PERSONNEL	Other Agency Personnel/Whistleblowers	Outside Sources	Office of Inspector General
Agriculture	✓	✓	✓	✓
AID	✓	✓	✓	✓
Commerce	✓	✓	✓	✓
Defense				
Air Force	✓	✓	✓	✓
Army	✓	✓	✓	✓
DLA	✓	✓	✓	✓
Navy	✓	✓	✓	✓
Education				✓
Energy	✓	✓		✓
EPA	✓	✓	✓	✓
GSA	✓		✓	✓
HHS	✓		✓	✓
DHS	✓	✓	✓	✓
HUD	✓	✓	✓	✓
Interior	✓	✓	✓	✓
Justice			✓	✓
Labor	✓	✓	✓	✓
NASA	✓	✓		✓
NSF				✓
NRC				
OPM	✓	✓		✓
SBA	✓	✓	✓	✓
SSA				
State	✓	✓		✓
Transportation				✓
Treasury	✓	✓	✓	✓
VA		✓	✓	✓