

March 31, 2015

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) 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) 2014.

The ISDC plays a lead role in 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 special emphasis on promoting best practices and on helping agencies with developing programs to leverage the experience of agencies with well-established programs.

These efforts have demonstrated results. In May 2014, the Government Accountability Office (GAO) reported that Federal agencies have improved their suspension and debarment programs.² Of particular note, GAO found that the seven agencies it reviewed showed the characteristics associated with active and effective suspension and debarment programs – namely, dedicated staff, detailed policies and procedures, and an active referral process. Just three years earlier, in 2011, GAO found that six of these agencies either had no program or had significant weaknesses. These improvements are evidence of agencies' commitment to using their mission knowledge to make timely 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 and taking action, when necessary, to protect the government's interest.

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/>.

² See GAO Report No. 14-513, *FEDERAL CONTRACTS AND GRANTS: Agencies Have Taken Steps to Improve Suspension and Debarment Programs* (May 2014) available at <http://www.gao.gov/products/GAO-14-513>.

Data on agency activity for FY 2014, which is set forth in the appendices, shows an increase in suspensions and debarments from the prior year (e.g., 1,929 debarment actions in FY 2014 compared to 1,696 in FY 2013) and a continued upward trend compared to FY 2009, when the ISDC formally began to collect data on suspensions and debarments. Agencies also reported a significant number of referrals commensurate with the levels seen in FY 2013 (i.e., 3,465 referrals in FY 14 vs. 3,942 in FY 13). A referral is a written request prepared in accordance with agency procedures and guidelines, supported by documentary evidence, and presented to the suspending and debarring official (SDO) for issuance of a notice of suspension or notice of proposed debarment. In its 2014 report, the GAO noted that agencies have adopted effective practices to support referrals, including case management tools.

As it has been previously reported, 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. 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 – 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.

In FY 2014, the ISDC and its members took a number of steps to build on the progress of prior years in strengthening agency suspension and debarment programs and the ISDC as an effective body to support these efforts. These steps included:

- Adding a second vice chair to increase agency involvement in the management of the ISDC and enhance collaboration and coordination generally;³
- Creating a liaison with the Council of Inspectors General for Integrity and Efficiency (CIGIE), in recognition of the important role Inspectors General (IGs) play in identifying activities that may warrant consideration of suspension and debarment;
- Devoting significant resources to training, with a particular emphasis on promoting greater procedural consistency. Six training programs were conducted during FY 2014, including a one day session, co-sponsored with CIGIE, for government suspension and debarment practitioners. These sessions covered a wide range of topics, including: preparation of notice letters, creation of the administrative record, documents and materials that should be provided to a respondent during the proceedings, the circumstances triggering the need for a fact-finding hearing, and the level of factual and analytical detail that should be contained in the final decision;
- Working with agencies in considering the use of administrative agreements, which may be appropriate in some cases as an alternative to suspension and debarment. The

³ Currently, the Chair of the ISDC is from the Department of Interior. The Vice Chairs are from the National Aeronautics and Space Administration and the Department of Defense.

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;

- Conducting outreach with interested stakeholders, including congressional staffers, industry, academia and public interest groups to discuss ISDC initiatives and allow for an exchange of ideas and perspectives from members of the broader suspension and debarment community; and
- Adding information to its new public website at <http://isdc.sites.usa.gov>, including key suspension and debarment regulations.

In FY 2015, the ISDC is continuing 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.

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 IGs, program officials and contracting officers);
- identify recommendations for strengthening the lead agency coordination process. This process is used to coordinate suspension and debarment actions among agencies when two or more agencies have an interest in initiating suspension and debarment proceedings pertaining to the same contractors;
- collaborate with the Federal Acquisition Regulatory Council and the Office of Management and Budget (OMB) on rules to implement 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;⁴ and
- work with ISDC members to add additional content to its webpage, including a link to online agency suspension and debarment resources.

⁴ These requirements are set forth in sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235).

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,

David M. Sims, Chair
ISDC

Duc H. Nguyen, Vice Chair
ISDC

Sandra K. Ross, Vice Chair
ISDC

Enclosure

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

Definitions and Counting Conventions

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

Definitions

“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” means an 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” 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 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” 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” is a term expressly used only in the non-procurement rule 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 on the 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 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 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 2014 *

Agency/Department	Suspensions	Proposed Debarments	Debarments**
Agriculture	37	51	32
AID	7	15	12
Commerce	2	2	4
Defense			
Air Force	109	177	138
Army	131	392	279
Defense Logistics Agency	15	164	110
Navy	145	262	208
Education	33	15	27
Energy	42	42	21
Environmental Protection Agency	119	176	148
General Services Administration	11	56	50
Health and Human Services	7	32	32
Homeland Security	10	338	339
Housing and Urban Development	197	272	278
Interior	11	39	42
Justice	9	8	8
Labor	0	0	0
NASA	13	18	8
National Science Foundation	9	33	25
Nuclear Regulatory Commission	0	0	0
Office of Personnel Management	14	12	15
Small Business Administration	27	26	21
Social Security Administration	0	0	0
State	16	28	24
Transportation	43	51	47
Treasury	0	6	36
Veterans Affairs	2	26	25
Total Actions	1,009	2,241	1,929

* 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.

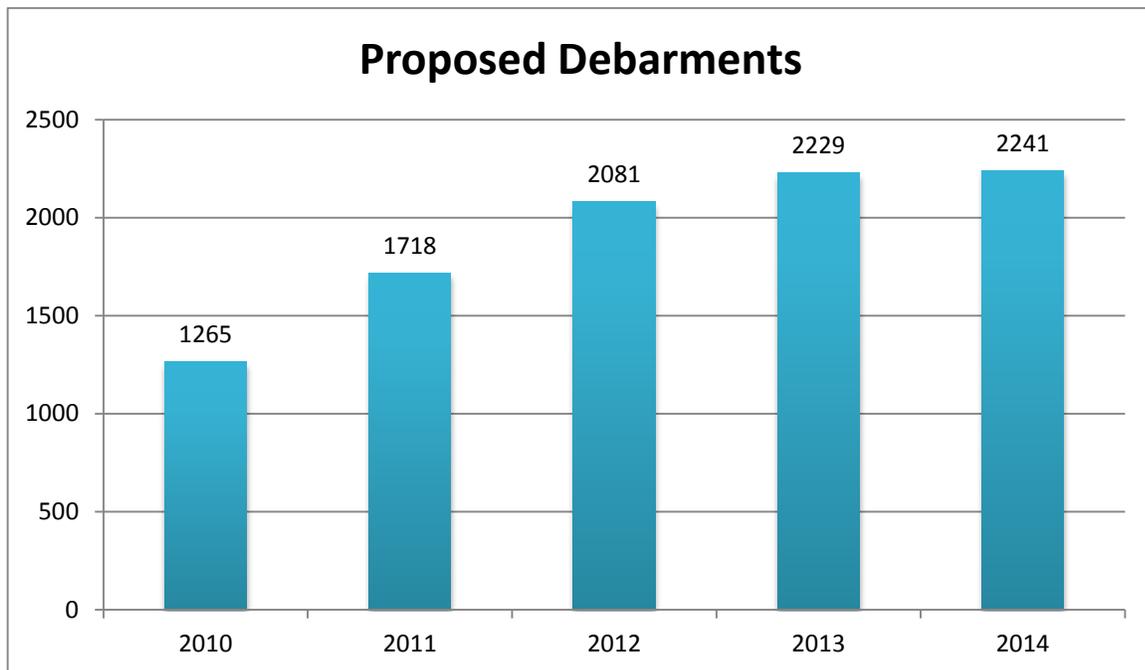
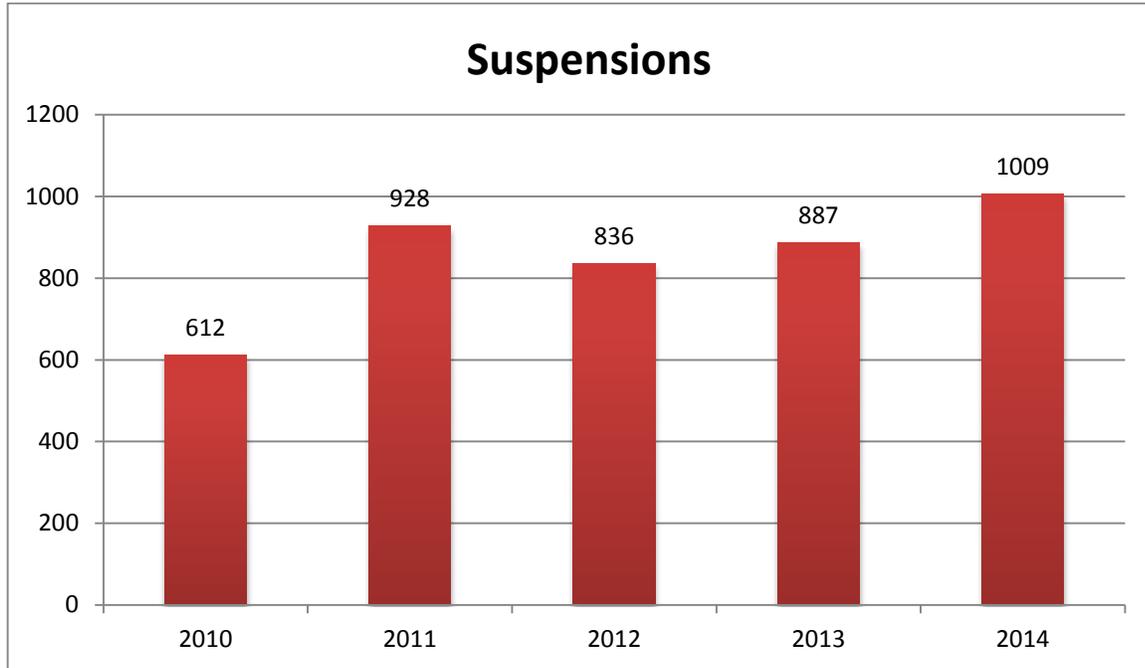
Appendix 2
Actions Related to Suspension and Debarment in FY 2014*

Agency/Department	Show Cause Notices	Referrals**	Declinations**	Administrative Agreements	Voluntary Exclusions
Agriculture	0	87	12	0	2
AID	2	28	0	1	0
Commerce	0	2	0	0	0
Defense					
Air Force	35	286	2	3	0
Army	15	807	5	5	0
Defense Logistics Agency	1	180	0	0	0
Navy	27	457	0	3	0
Education	0	77	0	4	4
Energy	42	48	4	0	0
Environmental Protection Agency	0	255	38	3	1
General Services Administration	9	128	0	2	0
Health and Human Services	0	45	1	1	0
Homeland Security	5	385	1	1	0
Housing and Urban Development	1	348	234	0	0
Interior	2	54	1	3	0
Justice	4	15	0	0	0
Labor	0	0	0	0	0
NASA	7	40	1	3	0
National Science Foundation	0	27	0	1	2
Nuclear Regulatory Commission	0	0	0	0	0
Office of Personnel Management	1	19	1	0	0
Small Business Administration	5	60	4	6	0
Social Security Administration	2	0	0	0	0
State	1	44	0	0	0
Transportation	0	53	7	11	1
Treasury	1	6	3	0	0
Veterans Affairs	1	14	1	0	0
Total Actions	161	3,465	315	47	10

* 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- 2014



Debarments

