

FY 2020

## Interagency Suspension & Debarment Committee (ISDC) Section 873 Report to Congress



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### Varying Agency Missions and Business Lines

- Federal agencies' missions, programs, business lines, industries, and other considerations vary significantly.
- Agencies' Suspending and Debarment Officials and corresponding suspension and debarment program are strategically situated to understand their respective agency's unique operations and needs and evaluate such considerations relative to the risk(s) posed by a business entity or individual, including coordination with impacted programs, procurement, etc.



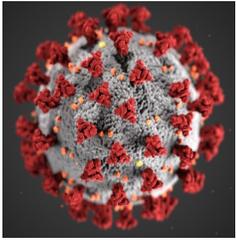
### Who We Are

- Interagency body established by Executive Order 12549 consisting of Federal agencies that pool resources, experience, and promising practices to provide support for suspension and debarment programs throughout the Federal Government
- Mission: To protect the Government's business interests from potential harm posed by individuals or entities whose conduct indicates either serious poor performance or lack of business honesty or integrity
- All committee work handled by agency representatives who volunteer their time to support ISDC efforts in addition to their regular agency duties
- For more information, see [www.acquisition.gov/isdc-home](http://www.acquisition.gov/isdc-home)

### FY 2020 Summary Highlights

- Agencies faced new challenges during the COVID-19 pandemic and exercised flexible procedures to ensure continuity of operations and suspension and debarment activities (such as issuance of Civilian Agency Acquisition Council letter authorizing agencies to increase flexibilities and conduct virtual presentations of matters in opposition (PMIOs)).
- Compared to last year, overall, there was a Governmentwide increase in debarments despite the pandemic, but a decrease in suspensions and proposed debarments due, in part, to delays in mail service, travel restrictions, and postponements in court proceedings. 13 agencies reported an increase in the number of suspensions.
- There was a significant increase in total reported numbers of voluntary exclusions, which more than doubled, and of declinations.
- The total number of administrative agreements entered in FY 2020 increased, notwithstanding that negotiations of administrative agreements require significant additional resources.
- Governmentwide use of alternatives to suspension or debarment exceeded the reported average for 12 years. These alternatives properly addressed business risks and promoted competition and retention of jobs for Americans. Agencies that executed such remedies varied from the prior year, underscoring that agencies tailor and apply administrative remedies on a case-by-case basis.
- Agencies also reported increased post-notice engagements with respondents.

Chair: Lori Vassar  
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\*Federal agencies have varying missions and business lines. Examples include and are not limited to:

- ◇ Issuance of Federal guidance and grants to support research and societal navigation of COVID-19 and other diseases, and Federal loans to provide pandemic recovery assistance (e.g., by Department of Health and Human Services—Centers for Disease Control and Prevention, National Institute of Health; Small Business Administration)
- ◇ Oil and gas leases (Department of Interior)
- ◇ Contracts to build ships, aircraft, hospitals, and child care centers, and conduct environmental restoration (e.g., Department of Defense branch components and Army Corps of Engineers)
- ◇ U.S. Space Program, aeronautics, sustainability of space exploration and planetary sciences (e.g., National Aeronautics and Space Administration and National Science Foundation).

## Federal Suspension, Debarment, and Related Administrative Activities: An Overview

Federal suspension and debarment-related administrative actions are remedies designed to protect the Government’s business interests from potential harm posed by individuals or entities whose conduct indicates either serious poor performance or a lack of business honesty or integrity. The Government uses suspension and debarment procedures to exercise business judgment in accordance with principles of fairness and due process. These procedures give Federal officials discretion to exclude parties from participation in certain transactions as needed to protect Government operations and financial resources, while affording those parties due process. Unlike some suspension and debarment systems in other countries, these Federal remedies are based upon the interests of protecting the Government and taxpayer funds against prospective business risk, including the mitigation of fraud, waste, and abuse; they are not exercises in punitive action. Under this Federal system, if sufficient corrective actions are taken, then present responsibility may be demonstrated.

Agency Suspending and Debarring Officials (SDOs) consider suspension and debarment actions against both business entities and individuals,<sup>1</sup> and coordinate Governmentwide exclusions with impacted offices, such as procurement and nonprocurement award offices and other agencies. Suspension and Debarment Programs are located within their respective agencies and, as a result, are strategically situated to understand and coordinate actions serving their agencies’ unique operations and needs, including consideration of a Federal agency’s missions, programs, business lines, industries, and other factors that can vary significantly between agencies and impact the assessment of risk(s) posed by a business entity or individual whose conduct is referred to a suspension and debarment program.\*

Agencies exclude contractors and participants who engage in serious misconduct and fail to demonstrate an appropriately altered pattern of conduct, effective controls, and corrective actions to protect Federal activities and to ensure present and prospective business honesty, integrity, and performance. The exclusion of individuals, in turn, ensures that the persons in question do

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<sup>1</sup> Suspension and debarment of individuals may be appropriate whether that misconduct is committed on behalf of a business or for the individual’s interest. A significant portion of those who are subject to a debarment action were first convicted, having already been afforded due process through the criminal justice system by the time of administrative action. Individuals are routinely, and appropriately, subject to actions since business entities engage in misconduct through individuals acting on behalf of the business entity.

The ISDC's past and ongoing efforts focus on refining the suspension and debarment process, promoting Governmentwide awareness, understanding, and effective implementation of the full spectrum of available Federal remedial tools.

Notwithstanding the COVID-19 pandemic and resulting delays in mail service, travel restrictions, and postponements in court proceedings, Federal Suspending and Debarment Offices implemented greater procedural flexibilities to communicate with respondents and to ensure continuity of operations and a more modernized workforce.

not pose a current risk to the Government by temporarily barring the ability to serve as an agent or representative of another entity in Government transactions, and prevents the formation of a new entity to evade award ineligibility. This approach helps to mitigate risks to taxpayer funds or interests in accordance with the purpose of suspension and debarment: to protect the Government; not to punish wrongdoers. The suspension, debarment, and other related administrative remedies equip agencies with an array of tailored tools coordinated Governmentwide by which business entities and individuals may demonstrate that, past problematic conduct notwithstanding, a present risk does not exist, including, but not limited to, alternate resolution via agreement.

## **FY 2020 Governmentwide Activities and Efforts: Year in Review**

During FY 2020, the ISDC continued to focus on four strategic objectives:

- (1) promoting the fundamental fairness of the suspension and debarment process;
- (2) increasing transparency and consistency through training, engagement, and outreach;
- (3) enhancing Federal suspension and debarment practices, and alternatives by identifying and developing resources available to the ISDC community; and
- (4) encouraging the development of more effective compliance and ethics programs by Government contractors and nonprocurement participants to address business risks.

A few examples of ISDC member agencies' collective efforts included:

- identifying and recruiting volunteer instructors to train Federal employees with the Federal Law Enforcement Centers (FLETC) on suspension, debarment, and other related administrative remedies;
- collaborating with the Federal Inspectors General community to provide volunteer speakers and materials for an interagency virtual training on administrative remedies and COVID-19 fraud developments led by the Council of Inspectors General on Integrity and Efficiency (CIGIE);
- continuous updating on relevant legal developments;
- conducting coordination of voluminous multi-agency lead agency coordination requests (LACRs), including efforts to advance the proposal to modernize and streamline the LACR process in collaboration with the Office of Management and Budget through development of an online portal;

- continuing engagement with governmental stakeholders and outreach to non-governmental stakeholders through deliberative bodies by providing speakers for panels hosted by the American Bar Association and others and maintaining the ISDC’s public website to promote transparency; and
- adopting and increasing reliance on additional flexibilities permitting electronic notice and virtual meetings with respondents (such as issuance of Civilian Agency Acquisition Council letter authorizing agencies to increase flexibilities and conduct virtual presentations of matters in opposition (PMIOs)).

### **Improving Consistency Between Procurement and Nonprocurement Suspension and Debarment Procedures**

The ISDC created a subcommittee to provide recommendations and technical assistance to the Federal Acquisition Regulatory Council (FAR Council) drafting team to better align coverage in the Federal Acquisition Regulation (FAR) with the Nonprocurement Common Rule (NCR) in support of a more consistent set of procedures for both procurement and nonprocurement suspensions and debarments. The input, which is part of FAR Case 2019-15, will support the issuance of a proposed rule. The Committee believes the use of more consistent practices between the procurement and nonprocurement communities would generally enhance transparency and increase efficiency. In particular, the majority of Chief Financial Officers Act agencies report reliance on both the FAR and NRC.<sup>2</sup>

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<sup>2</sup> In addition, for FY 2020, four agencies and five Defense branch components reported operating primarily pursuant to the FAR, while one agency operated exclusively within the NCR. Of the remaining agencies generally utilizing both debarment regulations, two reported exclusive reliance on the procurement debarment regulation, and six reported sole reliance on the nonprocurement regulation for this particular year. Six agencies also reported statutory and regulatory authorities in addition to the FAR and NCR for exclusions. Such data reflects the varying business portfolios of Federal agencies.

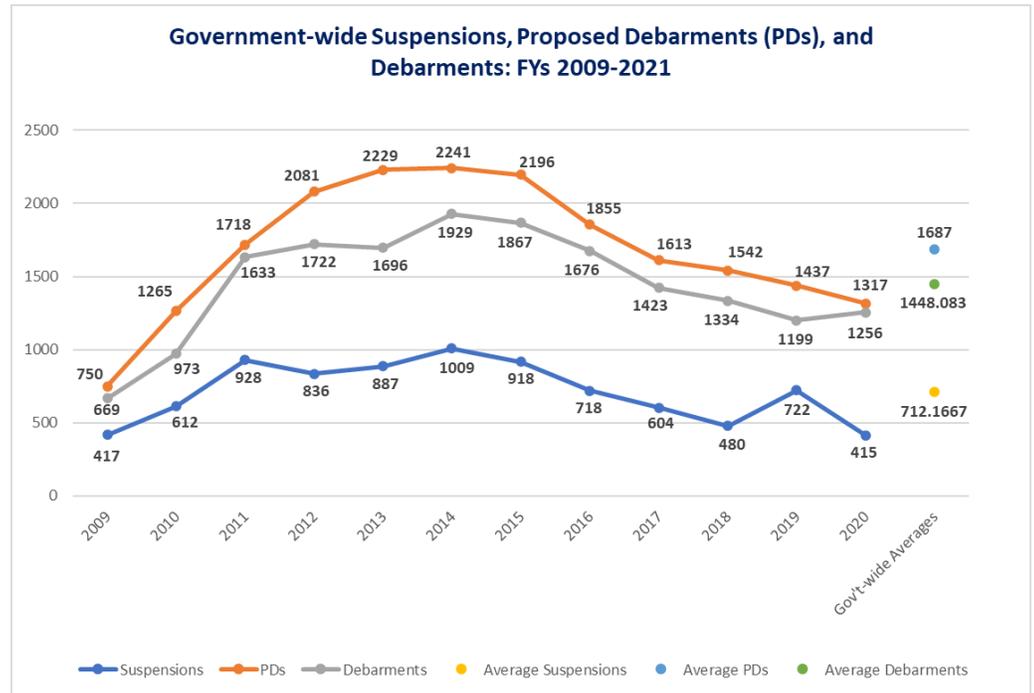
## FY 2020 Metrics: Summary Highlights

Agencies reported issuing 415 suspensions, 1,317 proposed debarments, and 1,256 debarments Governmentwide in FY 2020, notwithstanding the COVID-19 pandemic and dispersed, remote, or socially distanced workforce. Federal agencies also reported a total receipt of 2,446 referrals and the issuance of 183 declinations Governmentwide. Agencies also reported an approximately 20% increase of total post-notice engagements with respondents from the preceding year. Agencies that executed administrative remedies varied from the prior year. This underscores that agencies tailor and apply administrative remedies on a case-by-case basis. Such increased or fluctuating interactions were further reflected, in part, by the FY 2020 total, which reported 58 administrative agreements entered, 103 pre-notice letters issued, and 21 voluntary exclusions reported. (See Figures 1, 2, and 3. For activities by agency, see Appendices 2 and 3.)

**Figure 1**

### FY 2020 in context:

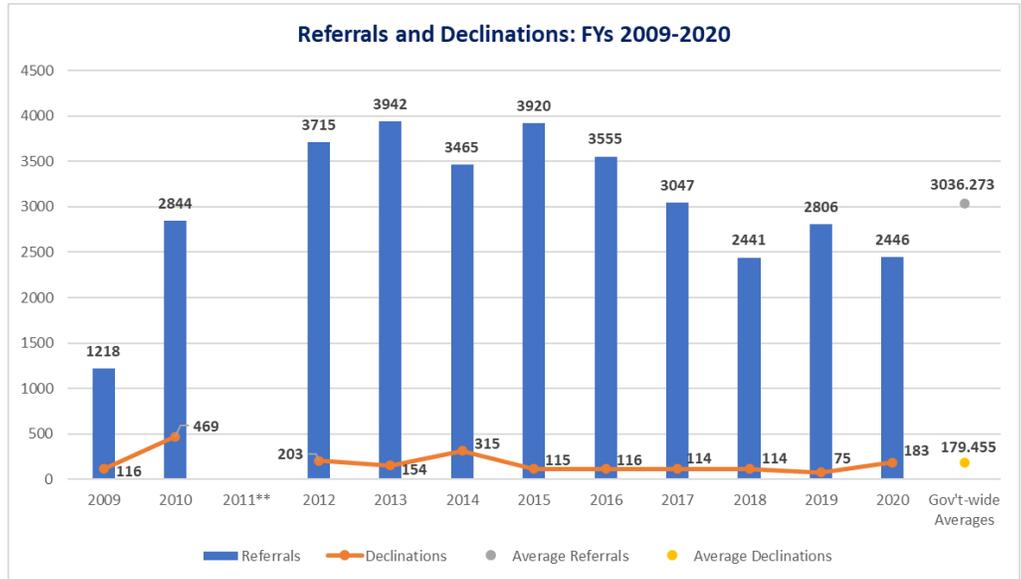
- ◇ Total reported debarments increased slightly from the prior year, whereas the total number of proposed debarments decreased.
- ◇ Reported totals for suspensions in FY 2020 declined almost by half from FY 2019; however, 13 agencies reported increases in their total suspensions from the preceding FY.



**FY 2020 in context:**

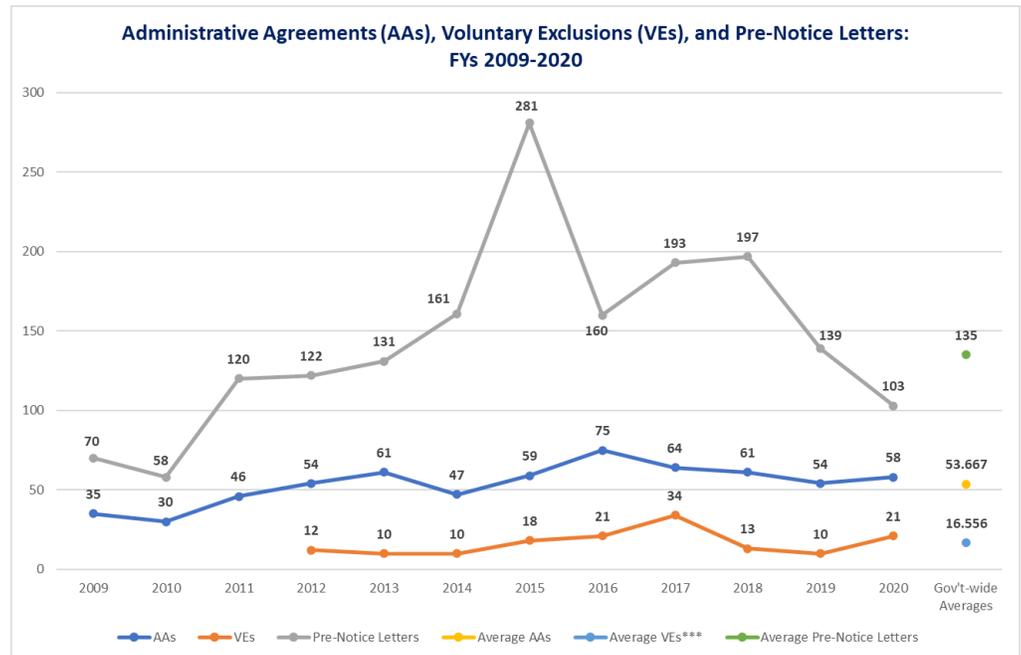
- ◇ While the overall number of referrals Governmentwide also decreased from FY 2019, the number of declined referrals almost tripled in FY 2020 and exceeded the average number of declinations reported to date.
- ◇ The total number of issued pre-notice letters declined from the prior year and fell below the 12-year reported average; however, executed administrative agreements and voluntary exclusions exceeded their corresponding year-to-date reported averages. The total number of administrative agreements entered in FY 2020 increased and voluntary exclusions more than doubled Governmentwide since FY 2019, notwithstanding that negotiations of such agreements require significant additional resources.
- ◇ After more than a decade of ISDC reporting and ongoing efforts to establish, coordinate, and enhance suspension and debarment programs, agencies are more actively engaging a broader range of remedial tools afforded in the Federal system than seen in earlier reported years, when some suspension and debarment programs were either nonexistent or developing.

**Figure 2**



*\*\*In FY 2011, agencies reported adopting new systems to ensure or streamline tracking of referrals; averages account only for years reported (i.e. exempting FY 2011).*

**Figure 3**



*\*\*\*Average number of VEs accounts only for years reported (i.e., exempting FYs 2009-2011)*

The FY 2020 data, similar to other years, shows that agencies' reliance upon suspensions, debarments, and related administrative remedies fluctuated as such actions are considered case-by-case and applied as necessary to protect the Government's business interests. Variation is

attributable to a number of factors. Compared to last year, overall, there was a Governmentwide increase in debarments despite the pandemic, but a decrease in suspensions, proposed debarments, and referrals of new matters due, in part, to delays in mail service, travel restrictions, and postponements in court proceedings. However, 13 agencies reported an increase in the number of suspensions. With the increased use of more pre-notice letters and suspensions issued in FY 2019, agencies subsequently reported greater reliance on alternatives to the suspension and debarment remedies (*e.g.*, post-notice engagements and declinations) in FY 2020. Similarly, a larger and different group of agencies relied on certain alternatives to the suspension and debarment remedies in lieu of immediate and/or continued imposition of an exclusion under both the FAR and NCR during FY 2020.

Alternative remedies (*e.g.*, administrative agreements, voluntary exclusions, and pre-notice letters) require significant additional time and resources. Nonetheless, the Government's use of these remedies exceeded year-to-date reported averages except for pre-notice letters. These alternatives properly address business risks and promoted competition and retention of jobs for Americans. Agencies that executed these alternatives varied from the prior year, demonstrating that agencies consider, tailor, and apply these remedies on a case-by-case basis.

Of those voluntarily reporting, 15 agencies reported that criminal indictments or information constituted a basis for a portion of the FY 2020 suspensions. Of those reporting, 16 agencies similarly reported reliance on criminal convictions for reported debarments in FY 2020. This data reflects that parties are referred for cause consistent with the regulations and are receiving further due process in the judicial system.

***Proactive Engagements by Entities and Individuals:*** Companies and individuals proactively contacted or self-disclosed matters to a greater number of agencies in FY 2020 than the prior year. The ISDC continued to engage in outreach with stakeholders internal and external to the Government. As a result of the ISDC's ongoing efforts, individuals and entities have continued to proactively reach out to SDOs to provide information relating to their present responsibility, particularly, when an entity identified possible misconduct within its operations. Such activity makes possible even earlier consideration of present responsibility factors by agency SDOs and allows both sides to focus on corrective measures taken by an entity or individual to address any misconduct and concerns, along with efforts to improve internal controls, enhance compliance programs, and promote a culture of ethics and accountability. For the agencies that track such information, in FY 2020, 10 member-agencies reported 36 instances of proactive engagement initiated by potential respondents, an increase from FY 2019's 8 reporting agencies. Agencies that reported proactive engagements varied from the prior year. This underscores that companies and individuals are more aware of these administrative remedies and how to proactively address business risks on a case-by-case basis.

***Agency Pre-Notice Letters:*** Pre-notice letters, which include SDO show cause letters, requests for information, and similar types of communication, are used to inform an individual or entity that the agency's suspension and debarment program is reviewing matters for potential suspension or debarment action. These notices identify assertion(s) of misconduct or history of poor performance, and give the recipient(s) an opportunity to respond and implement corrective action(s) prior to formal SDO action. Responses to these letters help agencies better assess the risk to the Government's programs and determine what measures are necessary to protect the Government's interest(s) without immediately imposing an exclusion action. In FY 2020, 14 agencies reported issuing 103 pre-notice letters to potential respondents. (See Appendix 3.) Of the agencies reporting use of such notices in FYs 2019 and 2020, four had not in both years, showing an evolving and increasingly diverse implementation of this tool Governmentwide.

***Post-Notice Engagements:*** Compared to the prior year and despite any delays or adjustments due to the pandemic, agencies that tracked such information reported an approximately 20% increase in post-notice engagements, which present further opportunities for agencies and respondents to discuss and resolve suspension and debarment concerns. Counted by the number of respondents who submit a challenge to a notice of suspension, a notice of proposed debarment, or a debarment decision, in FY 2020, 18 agencies reported such engagements with 571 respondents. This number represents an increase from the total 480 respondents who similarly engaged agencies in the preceding reported year and signifies greater communication and outreach between SDOs and respondents.

***Administrative Agreements:*** Administrative agreements are increasingly used as an alternative to suspension and debarment and 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. The terms of administrative agreements are tailored to the nature of the issues giving rise to an agency's suspension or debarment action or concerns. With the appropriate provisions, agreements may be entered into with individuals or entities where such resolution is in the best business interest of the Government.

Administrative agreements may also arise at different points in the process, whether as the result of proactive, pre-notice engagements or in resolution of and following the issuance of an exclusion notice. Therefore, the viability of an administrative agreement as the appropriate outcome of a matter will always be a case-specific determination depending on the circumstances of the action. The terms of an administrative agreement for an individual or a small business entity may differ from those appropriate for a large business entity — one size does not necessarily fit all. This tool can be effective in situations where award eligibility would further the Government's interests, such as increasing competition for procurement opportunities. Administrative agreements provide that certain verifiable actions are taken in a prescribed

timeframe to mitigate business risks, such as the implementation of enhanced internal corporate governance practices and procedures and/or the use of independent third-party monitors. Where appropriate as a resolution of Government exclusion concerns, an administrative agreement can provide an outcome beneficial to all parties while ensuring protection for the Government.

In FY 2020, 13 agencies reported entering into 58 administrative agreements. (See Appendix 3.) Comparing FYs 2019 and 2020, seven of the agencies reporting administrative agreements did not enter into agreements in both years; four agencies reported entering into administrative agreements only in FY 2020. The ebb and flow in agencies' exercise of this remedy is a function of its tailored application, the terms of which reflect and address the Government's concerns and interests as well as those of the countersigning respondent(s). In addition, based on voluntary input of the agencies with administrative agreements executed in FY 2020, eight agencies reported entering into administrative agreements with individuals to resolve suspension or debarment concerns. Of those agencies that entered into administrative agreements with individuals in FY 2020, three agencies reported that the administrative agreements were based on procurement matters, while three agencies reported actions were based on nonprocurement matters.

***Voluntary Exclusions:*** Like administrative agreements, voluntary exclusions provide protections for agencies and equip them with additional flexibilities and alternative means to resolve suspension or debarment concerns. In FY 2020, the number of voluntary exclusions reported doubled the preceding year's total with 8 agencies reporting the use of voluntary exclusions to resolve suspension or debarment concerns involving 21 parties. In addition, the overall number of agencies applying this remedy also increased from FY 2019 to FY 2020 by three, showing further yearly variation: six of the agencies reporting voluntary exclusions for FY 2020 had not done so in the prior year; three agencies reported agreements in FY 2019 alone; and two agencies entered into voluntary exclusion agreements in both years. The variations in agency exercise of this remedy again reflect its tailored application such that the terms of such exclusions address the concerns and interests of the Government as well as the representations and interests of the countersigning respondents.

Additional data regarding the FY 2020 actions are available in the enclosed appendices. The ISDC looks forward to its continued work with agencies to better protect taxpayer programs and operations from fraud, waste, and abuse through effective Governmentwide suspension and debarment programs.

## Appendix 1 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 resolves an exclusion or potential exclusion matter. The election to enter into an administrative agreement is solely within the discretion of the SDO and is used only if the administrative agreement appropriately furthers the Government’s interest. Agreements may be entered into with any respondent, whether an individual person or organization when it is appropriate to do so. 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-related 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”* - an SDO’s determination after receiving a referral that issuing a suspension or debarment notice is not necessary to protect the Government’s interests. 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 debarment programs organized as coordination of 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.

*“Agency Pre-Notice Letters”* - includes show cause letters, requests for information, and similar types of letters used to inform the recipient that the agency debarment program is reviewing matters for potential SDO action, identify the alleged misconduct, and give the recipient an opportunity to respond prior to formal SDO action. This is a discretionary tool employed when appropriate to the circumstances of the matter under consideration.

*“Post-Notice Engagements”* - the contested suspension or debarment actions, counted and reported herein by the number of respondents.

*“Voluntary Exclusion”* - a term used under 2 C.F.R. Part 180 referring to the authority of 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 Governmentwide reciprocal effect and, generally, bars the respondent from participating in procurement and nonprocurement transactions with the Government. Agencies must enter all voluntary exclusions in the General Services Administration’s System for Award Management (SAM).

## **Appendix 1**

### **Glossary and Counting Conventions (continued)**

#### 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 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 referrals or actions regarding individuals as one action per individual regardless of the number of associated pseudonyms and AKAs ("also known as") associated with the individual. Businesses operating under different names or that have multiple DBAs ("doing business as") are counted separately as separate business entities or units for counting suspensions and debarments.

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 nonprocurement awards.

The report addresses the discretionary suspension and debarment actions taken under the Government-wide regulations 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 2**  
**Suspension and Debarment Actions in FY 2020**

Agency/Department	Suspensions	Proposed Debarments	Debarments
Agency for International Development	0	17	2
Department of Agriculture	27	49	39
Department of Commerce	1	13	11
Department of Defense			
U.S. Air Force	34	57	55
U.S. Army	15	139	109
Fourth Estate*	30	184	178
U.S. Navy	58	167	142
Department of Education	7	21	14
Department of Energy	8	3	3
Department of Health and Human Services	2	16	15
Department of Homeland Security	2	231	215
Department of Housing and Urban Development	23	41	33
Department of the Interior	3	9	17
Department of Justice	3	9	8
Department of Labor	9	64	92
Department of State	15	35	39
Department of Transportation	26	26	18
Department of the Treasury	8	0	0
Department of Veterans Affairs	21	33	52
Environmental Protection Agency	66	88	98
Export-Import Bank	2	4	2
General Services Administration	15	28	60
National Aeronautics and Space Administration	7	6	5
National Nuclear Security Administration	0	46	6
National Science Foundation	2	5	10
Nuclear Regulatory Commission	0	0	0
Office of Personnel Management	3	0	4
Small Business Administration	28	26	29
Social Security Administration	0	0	0
<b>Total Actions</b>	<b>415</b>	<b>1317</b>	<b>1256</b>

*\*The Department of Defense Fourth Estate includes other Defense subcomponents, including, but not limited to, Defense Logistics Agency, Defense Health Agency, and Defense Advanced Research Projects Agency.*

**Appendix 3**  
**Other Actions Related to Suspension and Debarment in FY 2020**

Agency/Department	Show Cause/Pre-Notice Letters	Referrals	Declinations	Administrative Agreements	Voluntary Exclusions
Agency for International Development	3	17	0	1	0
Department of Agriculture	0	99	83	1	0
Department of Commerce	6	42	5	6	6
Department of Defense					
U.S. Air Force	4	91	0	3	2
U.S. Army	2	268	5	4	0
Fourth Estate*	1	213	0	6	0
U.S. Navy	28	511	0	2	0
Department of Education	0	42	0	0	0
Department of Energy	1	3	0	0	0
Department of Health and Human Services	2	21	0	0	5
Department of Homeland Security	12	233	0	2	1
Department of Housing and Urban Development	0	175	27	4	0
Department of the Interior	0	14	0	0	0
Department of Justice	0	6	0	2	0
Department of Labor	0	73	0	5	0
Department of State	1	50	0	0	0
Department of Transportation	6	31	1	8	2
Department of the Treasury	0	2	0	0	0
Department of Veterans Affairs	1	71	0	0	0
Environmental Protection Agency	16	263	58	5	1
Export-Import Bank	0	10	0	0	0
General Services Administration	7	136	0	5	0
National Aeronautics and Space Administration	5	13	0	3	2
National Nuclear Security Administration	0	4	0	0	0
National Science Foundation	0	14	4	0	2
Nuclear Regulatory Commission	0	0	0	0	0
Office of Personnel Management	0	0	0	0	0
Small Business Administration	3	44	0	1	0
Social Security Administration	5	0	0	0	0
<b>Total Actions</b>	<b>103</b>	<b>2446</b>	<b>183</b>	<b>58</b>	<b>21</b>

*\*The Department of Defense Fourth Estate includes other Defense subcomponents, including, but not limited to, Defense Logistics Agency, Defense Health Agency, and Defense Advanced Research Projects Agency.*

# Common Misconceptions about Suspension and Debarment — Frequently Asked Questions



**Question:** Can the suspension and debarment remedy be used for punishment or penalties, or as an enforcement tool?

**Answer:** No. The suspension and debarment remedies are used prospectively to protect the Government's interests and assess business risk.

**Question:** Can the Interagency Suspension and Debarment Committee (ISDC) promulgate regulations and rules for suspension and debarment?

**Answer:** No. The ISDC provides recommendations and technical guidance to the Federal Acquisition Regulatory Council and the Office of Management and Budget, which, in turn, consider and are responsible for the issuance of Governmentwide procurement and nonprocurement suspension and debarment regulations and rules, respectively. Agencies adopt and promulgate rules accordingly.

**Question:** Do Suspending and Debarring Officials (SDOs) independently initiate suspension and debarment actions?

**Answer:** No. SDOs do not conduct audits and investigations. In practice, SDOs generally rely on referrals from award officials, law enforcement officials, and others to establish administrative records and determine whether administrative actions should be recommended.

**Question:** Do Federal SDOs set goals for the use of suspension and debarment based on the prior year's totals or another benchmark?

**Answer:** No. There are no targets, quotas, or numeric goals for the use of suspension and debarment. SDOs consider and tailor administrative actions as appropriate to the circumstances of and corrective actions taken by parties before them. Government protection and mitigation of business risks to the Government are the ultimate goals.

**Question:** Are Federal suspension and debarment actions deliberately targeted at individuals more than entities, or vice versa?

**Answer:** No. SDOs consider administrative actions for matters referred to them on a case-by-case basis, tailoring actions to any misconduct or reformed conduct instead of by categories (such as whether the subject of review is an individual or entity). Suspension and debarment of individuals may be appropriate whether that misconduct is committed on behalf of a business or for the individual's interest. A significant portion of those who are subject to a debarment action generally are convicted of crimes. Individuals are routinely, and appropriately, subject to actions because the only way a business entity engages in misconduct is through the individuals who act on the business's behalf.

**Question:** Does being referred for SDO review automatically result in an exclusion action?

**Answer:** No. The Federal suspension and debarment system provides for case-by-case reviews, an opportunity to contest and be heard, and findings or determinations prior to SDO administrative action. SDOs take actions ranging from declinations to exclusions as appropriate to protect the public interest. The use of remedies in lieu of suspension and debarment is a reflection that respondents provided information on their present responsibility and corrective actions to address risks.

**Question:** Are agencies prohibited from initiating suspension or debarment actions without criminal indictments or convictions?

**Answer:** No. Fact-based cases may be initiated based on adequate evidence when immediate action is necessary to protect the Government's interest for a suspension, or a preponderance of evidence for a debarment.

**Questions:** Do SDOs conduct or have access into ongoing law enforcement investigations?

**Answer:** No. Law enforcement investigations are separate and distinct functions from the responsibilities of SDOs. Not all investigations result in a finding of wrongdoing. SDOs rely on investigators to make referrals and provide appropriate records for suspension or debarment when there is cause for action.



March 22, 2022

The Honorable Gary C. Peters  
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 to report to Congress annually on the status of the Federal suspension and debarment system, pursuant to Section 873 of Public Law 110-417.<sup>1</sup> As required by Section 873, this report describes Governmentwide progress in improving the suspension and debarment process and provides a summary of each member agency's suspension and debarment-related activities for Fiscal Year (FY) 2020.<sup>2</sup>

Suspension and debarment-related actions are remedies designed to protect the Government's business interests from potential harm posed by individuals or entities whose conduct indicates either serious poor performance or a lack of business honesty or integrity. Agencies' Suspending and Debarring Officials (SDOs) consider suspension and debarment actions against both business entities and individuals. Agencies' SDOs ensure present responsibility by excluding persons who engage in serious misconduct and fail to demonstrate an appropriate approach and commitment to business honesty, integrity, and performance. This process helps to reduce business risks to taxpayer funds or interests. SDOs are also vested with an array of tools, such as alternate resolution through an administrative agreement, by which business entities and individuals may demonstrate that, past problematic conduct notwithstanding, a present risk does not exist.

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<sup>1</sup> The ISDC is an unfunded interagency body created by Executive Order 12549, consisting chiefly 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), as amended, are standing members of the ISDC. Additional independent Federal agencies and corporations participate in the ISDC. Together, ISDC member agencies are responsible for nearly all Federal procurement and discretionary assistance, loan, and benefit (nonprocurement) transactions.

<sup>2</sup> The ISDC is responsible for the discretionary procurement and nonprocurement suspension and debarment system governed, respectively, by the Federal Acquisition Regulation (FAR) at 48 C.F.R. Subpart 9.4 and the Nonprocurement Common Rule (NCR) at 2 C.F.R. Part 180. Accordingly, the data collected for this report reflect activity levels related only to use of the discretionary Governmentwide suspension and debarment remedy. However, the System for Award Management (SAM) includes additional types of exclusions distinct in scope and/or extent of application. In addition to those business risk-focused exclusions with Governmentwide reciprocal effect imposed under the FAR and NCR, there are narrower prohibitions and restrictions, such as those mandated by, or as an automatic collateral consequence of, violations of various statutes and/or regulatory compliance regimes, and agency-specific prohibitions and restrictions.

This report also addresses the ISDC's strategic objectives and activities, outreach, and member agencies' reported data or implementation of the available suspension and debarment-related remedial tools. Additional data regarding the FY 2020 actions is provided in the enclosed appendices, summary highlights, and common misconceptions document. For more information on the ISDC, please see its homepage at <https://www.acquisition.gov/isdc-home>.

The ISDC looks forward to its continued work with agencies to better protect taxpayer programs and operations from fraud, waste, and abuse through effective suspension and debarment programs.

Sincerely,

/s/

Lori Y. Vassar, Chair  
ISDC

/s/

Monica Aquino-Thieman, Vice-Chair  
ISDC

Enclosures

Identical Letter Sent to: The Honorable Rob Portman, The Honorable Carolyn B. Maloney, and  
The Honorable James Comer