



October 30, 2019

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) reports to Congress annually on the status of the Federal suspension and debarment system, pursuant to Section 873 of Public Law 110-417.¹ As required by Section 873, this report describes Governmentwide progress in improving the suspension and debarment process and provides a summary of each agency's suspension and debarment activities for Fiscal Year (FY) 2018. This is the ISDC's tenth year of reporting.

The ISDC's mission is to help agencies build and maintain the expertise necessary to manage effective suspension and debarment programs. Suspension and debarment 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 consider suspension and debarment action against both business entities and individuals.²

Agencies exclude individuals who engage in serious past misconduct and fail to demonstrate an appropriately altered attitude as to business honesty, integrity, and performance. This ensures that this individual does not pose a current risk to the Government and cannot serve as an agent or representative of another entity in Government transactions or create a new entity to evade award ineligibility. This approach helps to reduce business risk to taxpayer funds or interests in accordance with the purpose of suspension and debarment: to protect the Government; not to punish wrongdoers. The suspension and debarment remedy gives agencies an array of tools (including alternate resolution through administrative agreement), which allow business entities and individuals to demonstrate that, past problematic conduct notwithstanding, a present risk does not exist.

¹ The ISDC is an 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) are standing members of the ISDC. Over 18 additional independent Federal agencies and corporations participate in the ISDC. Together, ISDC member agencies are responsible for virtually all Federal procurement and discretionary assistance, loan, and benefit (non-procurement) transactions. For additional general background on the ISDC, see its homepage at <https://www.acquisition.gov/isde-home>.

² 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. 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.

Strategic Objectives and Activities

The ISDC's work focuses around four strategic objectives:

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

To further these objectives, the ISDC pursued the following activities in FY 2018:

- Provided member program training with a particular emphasis on current legal developments affecting suspension and debarment programs and identifying best practices to promote programmatic integrity, greater procedural consistency, transparency, and fairness in suspension and debarment programs across the Federal Government.
- Strengthened understanding and awareness of suspension and debarment activities within the Federal acquisition and financial assistance communities by --
 - inviting stakeholders to make presentations at monthly ISDC meetings on perceived remedy process issues and evaluation of corporate compliance programs; and
 - ensuring continuation of the ISDC's public website to promote transparency.
- Improved the effectiveness of ISDC operations by:
 - formalizing new subcommittees to address specific needs within the ISDC and within the Government as a whole, including a subcommittee for tracking and reporting to the membership on cybersecurity contractor compliance issues and developments;
 - collaborating with the Council of the Inspectors General on Integrity and Efficiency and the Federal Law Enforcement Training Center to provide additional training opportunities;
 - advancing its proposal to modernize and streamline the lead agency coordination process in collaboration with the Office of Management and Budget through development of an internal, online lead agency coordination portal; and
 - disseminating regular updates on items of interest to the ISDC community, such as relevant case law and regulatory and legislative developments.

Outreach

The ISDC engaged in outreach with public and private sector stakeholders to discuss ISDC initiatives and exchange ideas and perspectives from members of the broader suspension and debarment community including, but not limited to, the Government Accountability Office and various external stakeholders.

Improving Consistency Between Procurement and Nonprocurement Suspension and Debarment Procedures

The ISDC continued to explore the development of a consistent set of procedures for both procurement and nonprocurement suspensions and debarments, including the use of pre-notice tools in the FAR and enhancing the discussion of decision factors at FAR 9.406-1(a) by adopting the mitigating and aggravating circumstances at 2 C.F.R. § 180.860. The Committee believes the use of consistent practices between the procurement and nonprocurement communities may help to reduce procedural inconsistency and is considering the benefits and drawbacks of utilizing the nonprocurement approach.

Based on input from 29 agencies (*see* Appendices 2 and 6), 20 agencies, or approximately 69% of Federal agencies, use both procurement and nonprocurement debarment regulations. Eight agencies, or approximately 29% of Federal agencies, use only the procurement debarment regulation. The ISDC is exploring with the FAR Council how to bring the procurement and nonprocurement suspension and debarment processes into closer procedural alignment.

Fiscal Year Metrics

Suspensions and debarments fluctuate from year to year as such actions are considered and used when necessary to protect the Government's business interests. To that end, the ISDC's efforts have continued to focus on refining the suspension and debarment process and promoting Governmentwide agencies' awareness, understanding, and effective implementation of the remedial tool.³ Overall, agencies reported receipt of 2,444 total referrals with 114 declinations in FY 2018. Agencies also reported issuing 480 suspensions, 1,542 proposed debarments, and 1,334 debarments. As set forth in Appendix 4, the total number of suspensions, proposed debarments, and debarments in FY 2018 represents nearly double the activity level reported in FY 2009,⁴ when the ISDC formally commenced data tracking and at a time when

³ 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, data collected for this report reflects activity levels related only to use of the discretionary Governmentwide suspension and debarment remedy. However, the System for Award Management (SAM) also 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 Subpart 9.4 and Part 180, there are also narrower prohibitions and restrictions including those mandated by, or as an automatic collateral consequence of, violations of various statutes and/or regulatory compliance regimes, agency-specific prohibitions and restrictions, voluntary exclusions, etc.

⁴ In FY 2009, agencies reported 417 suspensions, 750 proposed debarments, and 669 debarments. FY 2009 represents the baseline and the first year ISDC tracked such information Governmentwide. Please note that the number of debarments originally reported in FY 2009 was subsequently corrected to conform with current reporting and counting criteria.

some Agency suspension and debarment programs either did not exist or were still developing. Compared to FY 2009 results, agencies reported greater reliance on the administrative remedies identified below as alternatives to immediate and/or continued imposition of suspension and debarment during FY 2018.⁵

Proactive engagements by entities and individuals: As a result of ISDC outreach efforts, individuals and entities continued to reach out to Suspending and Debarring Officials (SDOs) proactively to provide information relating to their present responsibility, particularly, when a company has identified possible misconduct within its operations. This activity makes possible even earlier consideration of present responsibility factors by agency SDOs; it allows both sides to focus on corrective measures taken by the company to address the misconduct, along with efforts by the company to improve internal controls, enhance compliance programs, and to promote a culture of ethics. For those agencies that track such information, eight (8) member-agencies reported 40 instances of proactive engagement initiated by potential respondents during FY 2018.⁶

Agency Pre-notice Letters: Pre-notice letters, which include show cause letters, requests for information, and similar types of letters, are used to inform an individual or entity 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.⁷ Use of these letters helps agencies better assess the risk to Government programs and determine what measures are necessary to protect the Government's interest without immediately imposing an exclusion action. For FY 2018, agencies reported issuing 197 pre-notice letters to potential respondents, approximately tripling the total of 70 first reported in FY 2009. (See Appendix 5.) The number of agencies reporting the use of such letters also more than doubled, increasing from seven in FY 2009 to 16 in FY 2018.

Administrative Agreements: Administrative agreements are 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. Agreements may be entered with any respondent, whether an individual or an organization with appropriate provisions, where such resolution is in the best business interest of the Government. The viability of an administrative agreement as the appropriate outcome of a matter will always be case-specific to the circumstances of the action. This tool can be effective in situations where award eligibility would further the Government's interests such as, for example, in increasing competition for procurement opportunities. Administrative agreements provide that certain verifiable actions are taken in a prescribed timeframe, such as implementation of enhanced internal corporate governance practices and procedures and/or use of independent third-party monitors.

⁵ See Appendixes 4 and 5.

⁶ The number of proactive engagements is based on voluntary agency submissions as the information is not readily available from all agencies and is not currently a standard reporting element.

⁷ Show cause letters issued by SDOs under FAR 9.4 and 2 C.F.R. Part 180 are distinct from and unrelated to the show cause letters issued by contracting officers.

Agreement terms are tailored to the nature of the issues giving rise to the action agency's concerns. The ISDC also understands that, as to appropriate provisions, "one size does not fit all." Terms of an agreement for an individual or a small business may look very different from those appropriate to a large organization. Agreements may arise at different points in the process: either out of proactive pre-notice engagement or in resolution of an issued action notice.

Fourteen (14) agencies reported entering into 61 administrative agreements in FY 2018. In contrast, in FY 2009, only 35 administrative agreements were utilized by five agencies to resolve suspension or debarment concerns. Of the 14 agencies entering into administrative agreements in FY 2018, six reported entering into agreements with individuals to resolve suspension or debarment concerns. Where appropriate as a resolution of Government debarment concerns, the administrative agreement tool, while ensuring protection for the Government, can provide a resolution beneficial to all parties.

Additional data regarding the FY 2018 actions is available in the enclosed appendices. Among these is a chart displaying the results of all ten ISDC reporting years to date. 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/

David M. Sims, Chair
ISDC

/s/

Lori Y. Vassar, Vice Chair
ISDC

/s/

Monica Aquino-Thieman, Vice Chair
ISDC

Enclosures

Identical Letter Sent to:
The Honorable Ron Johnson
The Honorable Gary C. Peters
The Honorable Carolyn B. Maloney
The Honorable Jim Jordan

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 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. Agreements may potentially be entered into with any respondent, whether an individual person or organization where 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 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” - a 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” - 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.

“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 assertion of misconduct, and give the recipient an opportunity to respond prior to formal SDO action. This is a discretionary tool employed where appropriate to the circumstances of the matter under consideration.

“Voluntary Exclusion” - a term expressly used only under 2 C.F.R. Part 180 referring to the authority for an agency to enter into a voluntary exclusion with a respondent in lieu of suspension or debarment. A voluntary exclusion, like a debarment, carries the same Government-wide reciprocal effect and bars the respondent from participating in procurement and non-procurement transactions with the Government. Agencies must enter all voluntary exclusions in the General Services Administration’s System for Award Management (SAM).

Counting Conventions

Consistent with previous years' Section 873 reports, the number of suspensions, proposed debarments, and debarment actions are broken out as separate exclusion actions even if they relate to the same respondents. With each of these exclusion actions, both FAR Subpart 9.4 and 2 C.F.R. Part 180 require an analysis performed by program personnel involving separate procedural and evidentiary considerations. Furthermore, a suspension may resolve without proceeding to a notice of proposed debarment, a notice of proposed debarment may commence without a prior suspension action, and a proposed debarment may resolve without an agency SDO necessarily imposing a debarment. Moreover, separate "referrals" are typically generated for suspensions and proposed debarments. Finally, suspension and debarment actions trigger separate notice and other due process requirements by the agency.

Agencies were instructed to count individuals as one action regardless of the number of associated pseudonyms and AKAs ("also known as"). 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 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 non-procurement awards.

The report addresses the discretionary suspension and debarment actions taken under the Governmentwide 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 2018

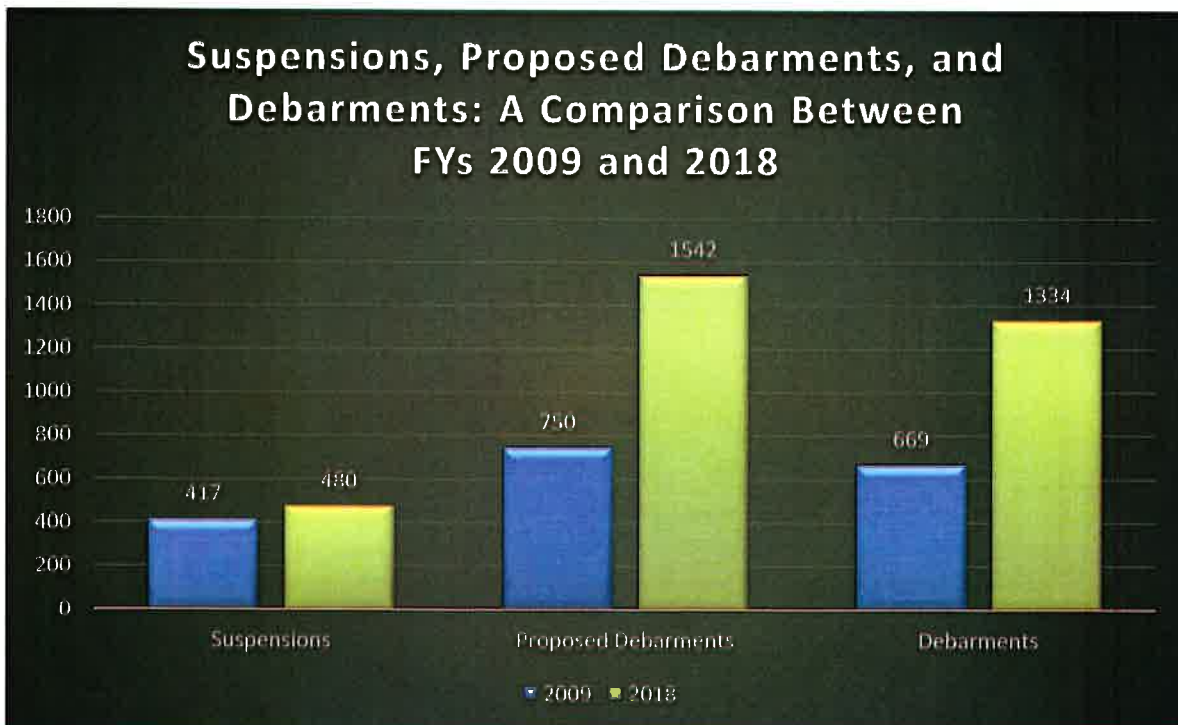
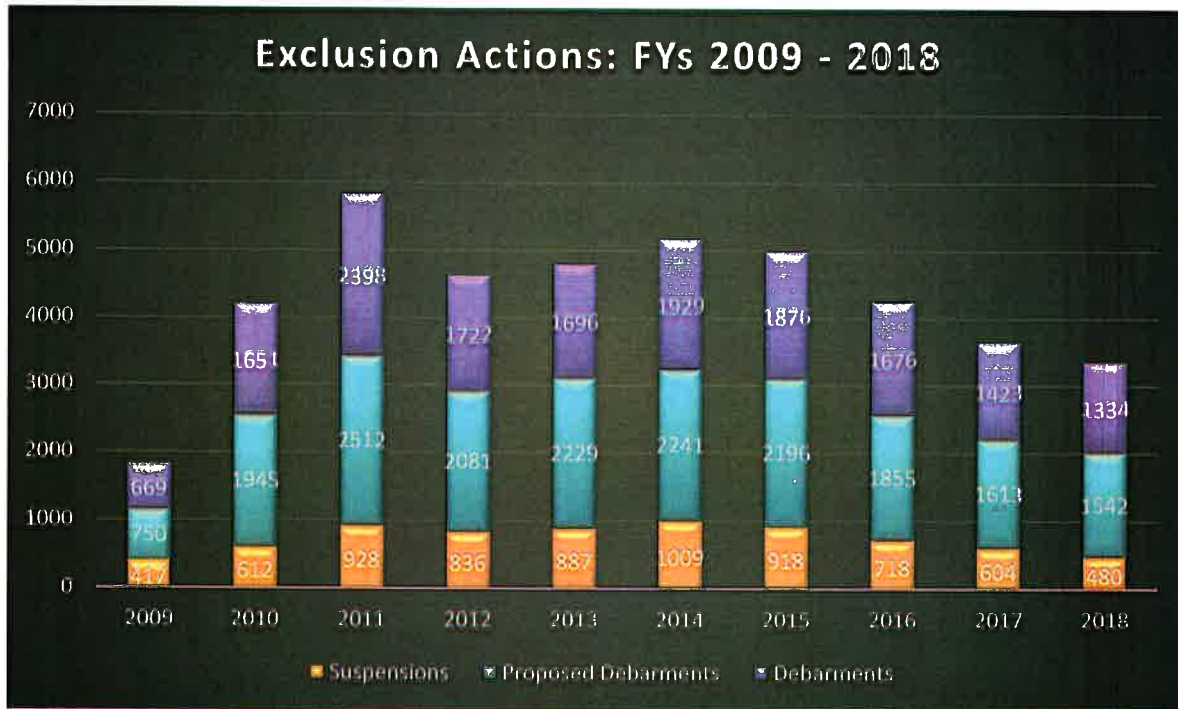
Agency/Department	Suspensions	Proposed Debarments	Debarments*
Agency for International Development	1	43	32
Department of Agriculture	11	59	43
Department of Commerce	0	6	1
Department of Defense			
(U.S. Air Force)	19	60	67
(U.S. Army)	32	197	174
(Defense Logistics Agency)	6	111	46
(U.S. Navy)	64	166	149
Department of Education	6	11	9
Department of Energy	25	25	25
Department of Health and Human Services	13	40	24
Department of Homeland Security	16	177	129
Department of Housing and Urban Development	74	201	218
Department of the Interior	1	23	22
Department of Justice	5	6	7
Department of Labor	21	5	15
Department of State	9	27	39
Department of Transportation	67	72	64
Department of the Treasury	2	4	4
Department of Veterans Affairs	8	16	2
Environmental Protection Agency	34	75	112
Export-Import Bank	13	13	8
General Services Administration	20	134	96
National Aeronautics and Space Administration	3	7	4
National Nuclear Security Administration	0	5	5
National Science Foundation	9	10	8
Nuclear Regulatory Commission	0	0	0
Office of Personnel Management	0	4	2
Small Business Administration	21	45	29
Social Security Administration	0	0	0
Total Actions	480	1542	1334

*The number of debarments does not include voluntary exclusion actions, which are reported in Appendix 3. As noted in the text above, voluntary exclusions appear only under 2 C.F.R. Part 180, but have the same Governmentwide reciprocal effect as a debarment and are entered in SAM.

Appendix 3
Other Actions Related to Suspension and Debarment in FY 2018

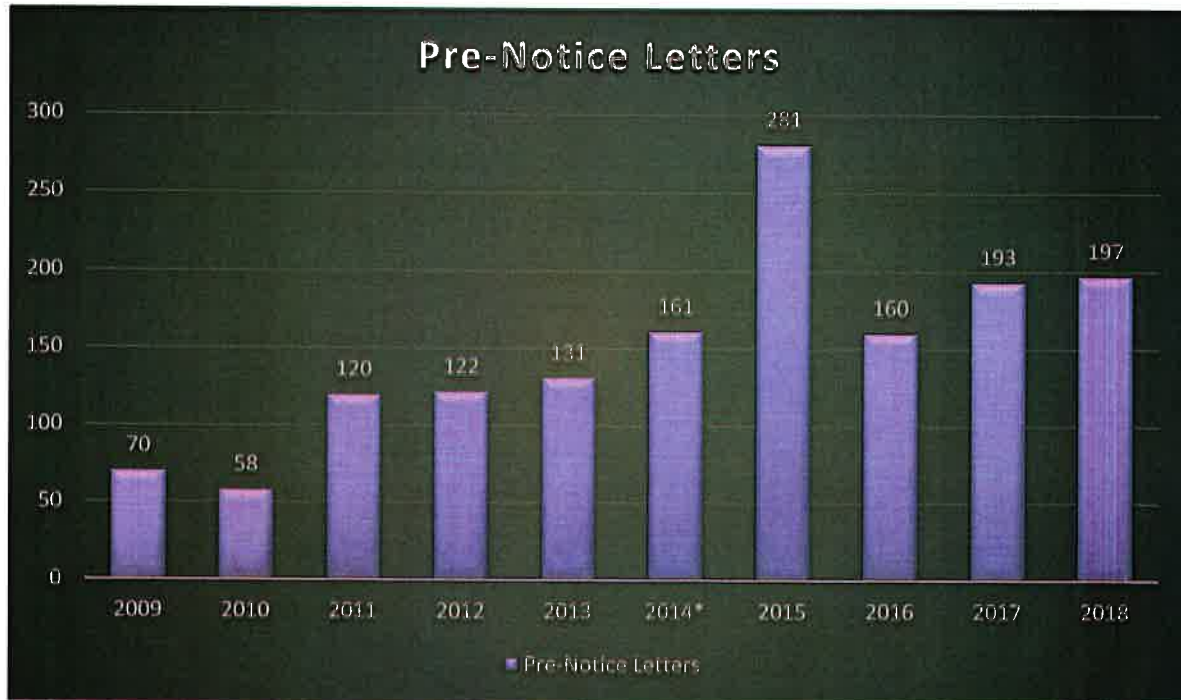
Agency/Department	Show Cause Notices	Referrals	Declinations	Administrative Agreements	Voluntary Exclusions
Agency for International Development	3	43	0	0	0
Department of Agriculture	3	70	27	0	0
Department of Commerce	0	6	0	0	0
Department of Defense					
(U.S. Air Force)	6	79	0	2	0
(U.S. Army)	17	410	7	3	0
(Defense Logistics Agency)	1	31	1	1	0
(U.S. Navy)	32	398	0	4	0
Department of Education	0	21	0	0	0
Department of Energy	0	10	1	0	0
Department of Health and Human Services	0	23	0	0	4
Department of Homeland Security	41	215	0	1	0
Department of Housing and Urban Development	0	154	0	5	0
Department of the Interior	0	24	0	1	0
Department of Justice	1	15	0	3	0
Department of Labor	0	43	2	0	0
Department of State	0	36	0	0	0
Department of Transportation	5	170	22	14	3
Department of the Treasury	0	0	4	0	0
Department of Veterans Affairs	1	24	0	3	0
Environmental Protection Agency	17	140	41	10	6
Export-Import Bank	1	17	9	0	0
General Services Administration	39	392	0	5	0
National Aeronautics and Space Administration	5	10	0	2	0
National Nuclear Security Administration	0	7	0	0	0
National Science Foundation	0	19	0	0	0
Nuclear Regulatory Commission	0	0	0	0	0
Office of Personnel Management	0	0	0	0	0
Small Business Administration	9	84	0	7	0
Social Security Administration	16	0	0	0	0
Total Actions	197	2441	114	61	13

**Appendix 4
Governmentwide Suspensions, Proposed Debarments, & Debarments**

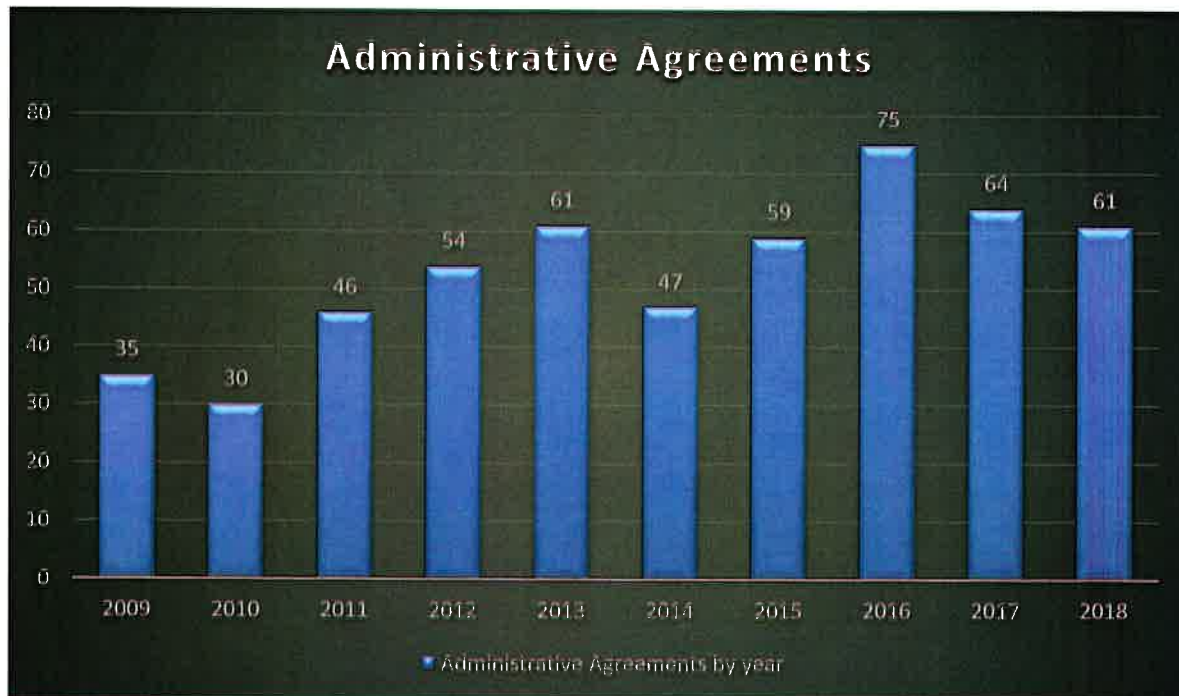


Appendix 5

Agency Pre-Notice Letters and Administrative Agreements During FYs 2009 - 2018



*Since FY 2014, the ISDC Questionnaire has requested that agencies report their use of “Pre-Notice Letters” defined as letter requests for information including, but not limited to, show cause letters. Prior to FY 2014, the ISDC Questionnaire asked about only show cause letters.

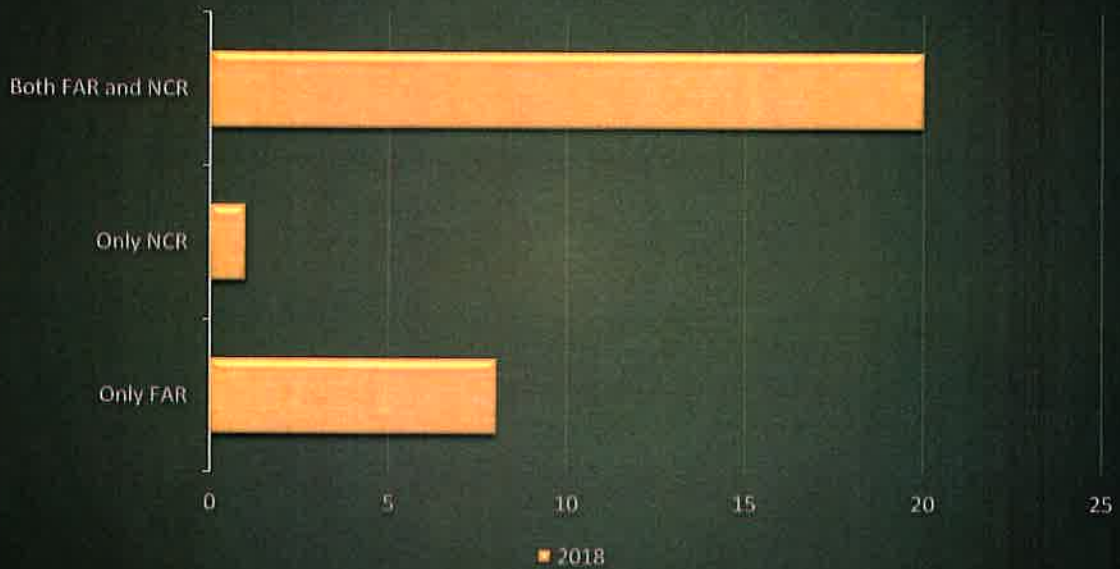


Appendix 6
Use of Agency Exclusion Authority by FAR, NCR, or Both

**Proportion of Exclusion Authorities Utilized
in FY 2018**



Exclusion Authorities Utilized in FY 2018



Appendix 7
Agency Exclusion Actions by Type

