

## Suspension and Debarment: FY 2021 By The Numbers

By **David Robbins and Sati Harutyunyan** (November 19, 2021, 11:49 AM EST)

With another government fiscal year behind us, it's time to examine full fiscal year suspension and debarment data available in the System for Award Management, or SAM. As has been the case annually since the close of fiscal year 2016, this article provides a first look at how active the government's suspension and debarment program was during government fiscal year 2021.

As always, this review focuses on the agencies that are most actively suspending and debarring government contractors. Many other agencies have statutory or discretionary suspension and debarment programs, but do not act frequently against contractors.

The only other source of data on the governmentwide suspension and debarment system is the annual report to Congress published by the Interagency Suspension and Debarment Committee, or ISDC. However, the ISDC's latest report, issued in January, included data for fiscal year 2019 only and did not cover fiscal year 2020.

As such, reviewing the raw data in SAM is the only way to obtain a real-time understanding of activity in the federal suspension and debarment system.

Plus, SAM provides more comprehensive data than what is available in the ISDC report. This additional information helps contractors understand their enforcement climate better, and casts light on important trends when the data is analyzed year over year.

Going into fiscal year 2021, one might have expected another pandemic-affected year with some declines in numbers offset by increases in referrals from stimulus-related misconduct.

But what emerged was a staggering drop of 29% in year-over-year numbers from fiscal year 2020, which itself reflected a 14% drop over fiscal year 2019.

Indeed, since this series first began in 2016, suspension and debarment activity has dropped an unbelievable 61%.

Stated differently, the federal suspension and debarment system is less than 40% as active now as it was in fiscal year 2016.



David Robbins



Sati Harutyunyan

## SAM Data Versus the ISDC Data

The data reviewed in this article differs substantially from information that the ISDC publishes in its report to Congress. The ISDC report lists separately the numbers of suspensions, debarments and proposed debarments by an agency. As such, the ISDC report measures the total number of times an agency issues any kind of action during a fiscal year.

For example, if an agency suspended, proposed for debarment and debarred a single contractor in a year, that counts as three actions in the ISDC report. But that tally does not help us understand the number of companies or individuals that were subjected to exclusions. Nor does it tell us anything about the types of entities against which the government directed its exclusionary authority.

Therefore, we continue to need to dive deeply into the SAM data in order to understand how the suspension and debarment system really functions. While the ISDC report is prepared for Congress, this deep dive into the SAM data presents information that helps contractors assess risks and adjust their conduct.

As always, there are caveats and assumptions that accompany this data. This information is exported directly from SAM. It relies on the accuracy of the information input into SAM by the government, and the functionality of the SAM system itself. The analysis continues to require searching the exclusions tab on SAM using a date restriction for fiscal year 2021, exporting the data to Excel and analyzing the output.

### *Fiscal Year 2021 at a Glance*

Agency	Total	Firms	Individuals	Special Entities	Percentage Individuals
Agriculture	16	8	7	1	44%
USAID	22	6	13	2	59%
Commerce	2	1	1	0	50%
DOD-AF	56	17	31	8	55%
DOD-Army	196	41	123	32	63%
DOD-Navy	245	41	180	24	73%
DOD-DLA	65	29	35	1	54%
Education	14	0	14	0	100%
Energy	22	5	16	1	72%
EPA	142	48	74	20	52%
GSA	51	15	23	13	45%
Interior	3	1	2	0	67%
NASA	10	0	10	0	100%
NSF	9	3	6	0	67%
SBA	7	2	5	0	71%
State	2	0	2	0	100%
VA	22	9	11	2	50%

In fiscal year 2020, we took a year off from evaluating the size of firms excluded because we were unsure how much the pandemic might have affected agency willingness to exclude larger contractors and the associated workload involved with processing those actions. We return to that analysis this year.

As it is every year, analyzing business size is more art than science. We looked up every domestic firm excluded during the fiscal year in open-source business intelligence platforms like Buzzfile and others. Percentages of small businesses excluded over time are as follows:

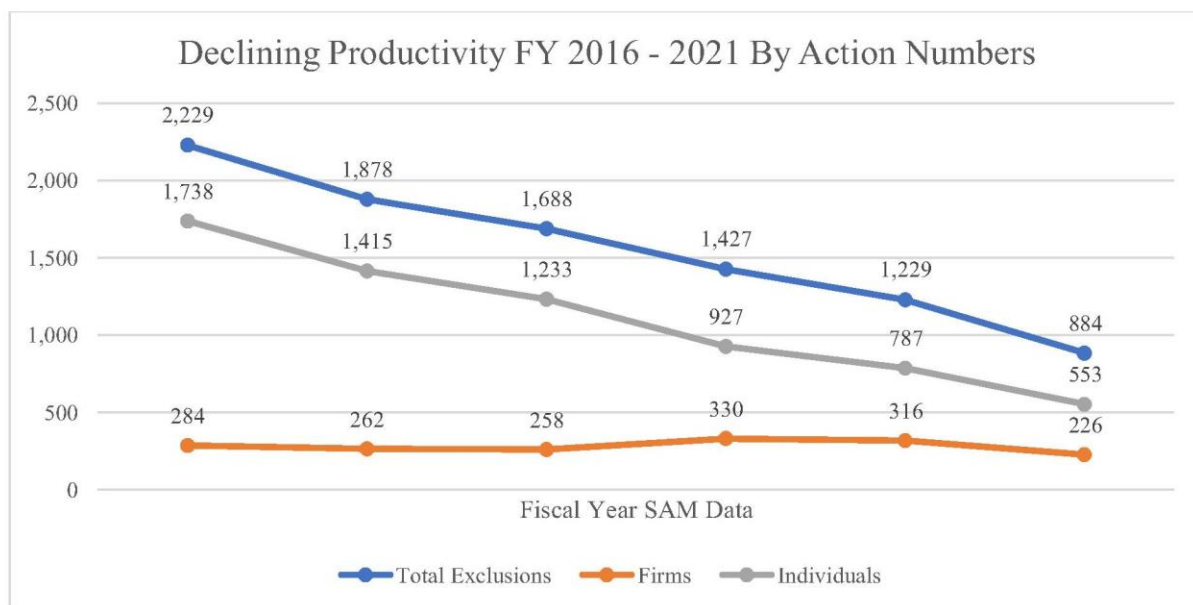
Agency	% Small 2021*	% Small 2019	% Small 2018	% Small 2017
Agriculture	100%	100%	100%	88%
USAID	100%	NA	NA	NA
Commerce	100%	100%	100%	NA
DOD-AF	88%	92%	100%	100%
DOD-Army	100%	91%	98%	62%
DOD-Navy	97%	100%	94%	94%
DOD-DLA	92%	97%	91%	73%
Education	NA	NA	NA	NA
Energy	100%	NA	100%	25%
EPA	97%	87%	98%	77%
GSA	100%	100%	97%	100%
Interior	100%	100%	50%	100%
NASA	NA	0%	100%	67%
NSF	100%	100%	100%	100%
SBA	100%	100%	100%	100%
State	NA	100%	100%	NA
VA	100%	100%	100%	100%
* 2020 numbers are not included due to unknown pandemic impacts.				

As has been the case every year we have performed this analysis, the probability of being excluded from government contracting by suspension, proposed debarment or debarment is inversely proportional to business size.

***Comparison of Fiscal Year 2016 to Fiscal Year 2021 Numbers***

Fiscal Year	Total Exclusions	Firms	Individuals	Special Entities
2016	2,229	284	1,738	207
2017	1,878	262	1,415	201
2018	1,688	258	1,233	197
2019	1,427	330	927	188
2020	1,229	316	787	128
2021	884	226	553	104

Illustrated graphically, the trend lines come into even sharper focus:



We have now seen six government fiscal years with substantial and accelerating declines in suspension and debarment numbers.

A natural reaction might be to conclude that the system itself is in decline. But maybe the reaction should be that the government is measuring the wrong things.

Through Section 873 of the Duncan Hunter National Defense Authorization Act, Congress requires the ISDC to submit an annual report that contains, among other things, a "summary of each agency's activities and accomplishments in the Government-wide debarment system."

Perhaps "activities and accomplishments" encompasses more than just numbers and should include other factors that are worth measuring and discussing.

*David Robbins is a partner and co-chair of the government contracts practice at Jenner & Block LLP.*

*Sati Harutyunyan is a senior associate at the firm.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*