

[DISCUSSION DRAFT]

FEBRUARY 5, 2013

113TH CONGRESS
1ST SESSION**H. R.** _____

To amend title 31, United States Code, to consolidate civilian agency suspension and debarment offices, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 31, United States Code, to consolidate civilian agency suspension and debarment offices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Stop Unworthy Spending Act” or the “SUSPEND Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Consolidation of Civilian Agency Suspension and Debarment Offices.
- Sec. 3. Single regulation for procurement and non-procurement programs.
- Sec. 4. Government Accountability Office review.
- Sec. 5. Coordination of remedies for fraud and corruption related to procurement and grant activities.
- Sec. 6. Definitions.
- Sec. 7. Transfer, predesignation, and amendment of other provisions of law relating to debarment and suspension.
- Sec. 8. Effective date.

1 **SEC. 2. CONSOLIDATION OF CIVILIAN AGENCY SUSPENSION**
2 **AND DEBARMENT OFFICES.**

3 (a) ESTABLISHMENT OF BOARD OF CIVILIAN SUS-
4 PENSION AND DEBARMENT.—Subtitle V of title 31,
5 United States Code, is amended by inserting after chapter
6 63 the following new chapter:

7 **“CHAPTER 64—SUSPENSION AND**
8 **DEBARMENT**

“Sec.

“6401. Board of Civilian Suspension and Debarment.

9 **“§ 6401. Board of Civilian Suspension and Debarment**

10 “(a) ESTABLISHMENT.—There is established in the
11 General Services Administration a board for suspension
12 and debarment to be known as the Board of Civilian Sus-
13 pension and Debarment (in this section referred to as the
14 ‘Board’).

15 “(b) PURPOSES.—The purposes of the Board are to
16 serve as a centralized body to manage all civilian executive
17 agency suspension and debarment activities and improve
18 the suspension and debarment system through—

1 “(1) the transparent and efficient handling of
2 cases;

3 “(2) the effective oversight of the database of
4 Federal awardee information required by section
5 6403 of this title [note: this is former 41 U.S.C.
6 2323, transferred by section 7], including oversight
7 to ensure receipt of information from other agencies;

8 “(3) the consistent and fair treatment of all
9 persons and entities subject to suspension or debar-
10 ment proceedings, including small businesses with
11 limited resources; and

12 “(4) active engagement with Federal officers
13 who award contracts, grants, or other Federal finan-
14 cial assistance for efficient referral of contractors,
15 grantees, or other recipients of Federal financial as-
16 sistance suspected of committing wrongful actions or
17 repeatedly performing poorly.

18 “(c) MEMBERSHIP.—

19 “(1) APPOINTMENT.—

20 “(A) The Board shall consist of members
21 appointed by the Administrator of General
22 Services (in consultation with the Administrator
23 for Federal Procurement Policy) from a register
24 of applicants maintained by the Administrator
25 of General Services, in accordance with rules

1 issued by the Administrator of General Services
2 (in consultation with the Administrator for
3 Federal Procurement Policy) for establishing
4 and maintaining a register of eligible applicants
5 and selecting members. The Administrator of
6 General Services shall appoint a member with-
7 out regard to political affiliation and solely on
8 the basis of the professional qualifications re-
9 quired to perform the duties and responsibilities
10 of a member.

11 “(B) Notwithstanding subparagraph (A),
12 any suspension or debarment employee serving
13 in a civilian agency suspension and debarment
14 office on the date of the enactment of this
15 chapter may serve as a member of the Board.

16 “(2) CHAIR.—The Administrator of General
17 Services shall designate one member of the Board to
18 serve as Chair of the Board. The position of Chair
19 of the Board shall be a Senior Executive Service po-
20 sition (as defined by section 3132(a)(2) of title 5,
21 United States Code).

22 “(3) REMOVAL.—The Administrator of General
23 Services, with the consent of the Administrator for
24 Federal Procurement Policy, may remove the Chair
25 or any other member of the Board.

1 “(d) SHARING OF RESOURCES.—The Administrator
2 of General Services shall, to the maximum extent prac-
3 ticable, provide to the Board such administrative resources
4 as are necessary for the Board to carry out its functions.
5 In carrying out this subsection, the Administrator may
6 provide for the sharing of administrative resources of the
7 Civilian Board of Contract Appeals, such as the Board’s
8 case management system, legal resources, and facilities.

9 “(e) INTERAGENCY COMMITTEE ON DEBARMENT
10 AND SUSPENSION.—The Chair of the Board shall serve
11 as the Chair of the Interagency Committee on Debarment
12 and Suspension. The Chair of the Board may combine the
13 report required by subsection (g) with the report required
14 by section 6404(a)(7) [Note: this is former section
15 873(a)(7) of Public Law 110–417 (31 U.S.C. 6101 note),
16 which is transferred and redesignated as section 6404 by
17 section 7 of this bill].

18 “(f) PARTICIPATION BY ADDITIONAL ENTITIES.—
19 The Board may enter into an agreement with an entity
20 other than a civilian executive agency to perform suspen-
21 sion and debarment activities on behalf of the entity.

22 “(g) ANNUAL REPORT TO CONGRESS.—Not later
23 than October 30 of each year, the Chair of the Board shall
24 submit to the relevant congressional committees a report
25 containing the following:

1 “(1) A summary of the activities and accom-
2 plishments of the Board in the Governmentwide sus-
3 pension and debarment system.

4 “(2) Recommendations to improve the suspen-
5 sion and debarment system.

6 “(h) DEFINITIONS.—In this section:

7 “(1) CIVILIAN EXECUTIVE AGENCY.—The term
8 ‘civilian executive agency’ has the meaning provided
9 the term ‘executive agency’ in section 105 of title 5,
10 except the term does not include the Department of
11 Defense.

12 “(2) RELEVANT CONGRESSIONAL COMMIT-
13 TEES.—The term ‘relevant congressional commit-
14 tees’ means each of the following:

15 “(A) The Committee on Oversight and
16 Government Reform of the House of Represent-
17 atives.

18 “(B) The Committee on Homeland Secu-
19 rity and Governmental Affairs of the Senate.

20 “(3) INTERAGENCY COMMITTEE ON DEBAR-
21 MENT AND SUSPENSION.—The term ‘Interagency
22 Committee on Debarment and Suspension’ means
23 such committee constituted under sections 4 and 5
24 of Executive Order No. 12549.”.

1 (b) TERMINATION OF CIVILIAN AGENCY SUSPENSION
2 AND DEBARMENT OFFICES.—Effective on October 1,
3 2014, the suspension and debarment office or function in
4 each civilian executive agency shall terminate.

5 (c) GUIDANCE.—Within 6 months after the date of
6 the enactment of this Act, the Director of the Office of
7 Management and Budget, in consultation with the Chief
8 Acquisition Officers Council, shall issue guidance address-
9 ing the scope and operation of the Board of Civilian Sus-
10 pension and Debarment (hereafter in this subsection re-
11 ferred to as the “Board”). The guidance shall address,
12 at a minimum, the following:

13 (1) The size, structure, and organization of the
14 Board to efficiently manage all civilian executive
15 agency suspension and debarment actions.

16 (2) Procedures for appointment of the Chair of
17 the Board, including appropriate instructions to ap-
18 point without regard to political affiliation and solely
19 on the basis of the professional qualifications re-
20 quired to perform the duties and responsibilities of
21 the Chair of the Board.

22 (3) Procedures for handing new and existing
23 suspension and debarment cases to accomplish time-
24 ly transfer of all functions to the Board.

1 (4) Procedures for transparent handling of all
2 cases, including public availability of—

3 (A) the status and the outcome of all
4 cases; and

5 (B) the administrative agreements entered
6 into by the Government in order to resolve a
7 suspension or debarment proceeding.

8 (5) Procedures to strengthen timely referral of
9 cases by agency contracting and grant offices to the
10 Board.

11 (6) The assignment of accountability to the
12 Board to ensure currency and completeness of the
13 database of Federal awardee information required
14 under section 6403 of title 31, United States Code.

15 (7) Procedures to ensure consistent standards
16 and procedures that treat all alleged violators fairly
17 and expeditiously, including small businesses with
18 limited legal resources.

19 (8) Procedures to strengthen suspension or de-
20 barment by identifying contractors and grantees that
21 repeatedly fail to perform.

22 (9) Procedures for an expedited review process
23 to handle contract or grant fraud in a non-tradi-
24 tional or time-sensitive environment, either in a mili-
25 tary or non-military setting.

1 (10) Procedures to maintain agency participa-
2 tion, both formal and informal, as an integral part
3 of a suspension or debarment proceeding.

4 **SEC. 3. SINGLE REGULATION FOR PROCUREMENT AND**
5 **NON-PROCUREMENT PROGRAMS.**

6 (a) SINGLE REGULATION REQUIRED.—

7 (1) IN GENERAL.—Chapter 64 of title 31,
8 United States Code, as inserted by section 2(a) of
9 this Act, is further amended by adding at the end
10 the following new section:

11 **“§ 6402. Single regulation for suspension and debar-**
12 **ment for procurement and nonprocure-**
13 **ment programs**

14 “(a) SINGLE REGULATION.—The Director of the Of-
15 fice of Management and Budget shall maintain one gen-
16 erally applicable regulation on suspension and debarment
17 for procurement and nonprocurement programs.

18 “(b) REQUIREMENTS.—The regulation maintained
19 pursuant to subsection (a) shall provide, at a minimum,
20 that—

21 “(1) the determination by the Board of Civilian
22 Suspension and Debarment on whether or not to
23 debar or suspend a contractor, grantee, or other re-
24 cipient of Federal financial assistance is conclusive
25 on a Governmentwide basis;

1 “(2) no other agency may take a contrary ac-
2 tion with respect to the same contractor, grantee, or
3 other recipient based on the facts and circumstances
4 in the administrative record considered by the
5 Board; and

6 “(3) in considering any new or additional evi-
7 dence of non-responsibility of a contractor, grantee,
8 or other recipient of Federal financial assistance not
9 previously considered by the Board, an agency, in
10 determining whether to award another grant or con-
11 tract or other Federal financial assistance to such
12 contractor, grantee, or other recipient, may consider
13 the cumulative effect of the facts and circumstances
14 previously considered by the Board.”.

15 (2) CLERICAL AMENDMENT.—The table of sec-
16 tions at the beginning of chapter 64 of title 31,
17 United States Code, as inserted by section 2(a) of
18 this Act, is amended by inserting the following item
19 after the item relating to section 6401:

 “6402. Single regulation for suspension and debarment for procurement and
 nonprocurement programs.”.

20 (b) REQUIREMENT AND DEADLINE TO COMBINE
21 REGULATIONS.—Not later than 1 year after the date of
22 the enactment of this Act, the Director of the Office of
23 Management and Budget shall combine the separate sus-
24 pension and debarment regulations for procurement and

1 non-procurement programs into one generally applicable
2 regulation.

3 **SEC. 4. GOVERNMENT ACCOUNTABILITY OFFICE REVIEW.**

4 (a) REVIEW.—The Comptroller General of the United
5 States shall review and assess the effectiveness of the
6 Board of Civilian Suspension and Debarment in meeting
7 the requirements of this Act and the amendments made
8 by this Act.

9 (b) REPORT.—Not later than 2 years after the estab-
10 lishment of the Board of Civilian Suspension and Debar-
11 ment, the Comptroller General shall submit to the relevant
12 congressional committees a report containing—

13 (1) the findings of the review and assessment
14 required by subsection (a); and

15 (2) recommendations to improve the Govern-
16 mentwide suspension and debarment system, includ-
17 ing identification and elimination of agency-specific
18 requirements that are unnecessary or inconsistent
19 with the Governmentwide system.

20 **SEC. 5. COORDINATION OF REMEDIES FOR FRAUD AND**
21 **CORRUPTION RELATED TO PROCUREMENT**
22 **AND GRANT ACTIVITIES.**

23 (a) GUIDANCE REQUIRED.—Within 6 months after
24 the date of the enactment of this Act, the head of each
25 civilian executive agency shall issue guidance that estab-

1 lishes policies, procedures, and responsibilities for the
2 agency-wide coordination of criminal, civil, contractual,
3 and administrative remedies stemming from investigations
4 of fraud or corruption related to procurement and grant
5 activities.

6 (b) MATTERS COVERED.—

7 (1) COORDINATION AND MONITORING.—For
8 each significant investigation of fraud or corruption
9 related to procurement or grant activities affecting
10 the agency, the guidance under subsection (a) shall
11 require that there be timely, central coordination
12 and monitoring of the investigation from its incep-
13 tion. The monitoring shall ensure that all relevant
14 contracting and grant officials, officials of the Office
15 of Inspector General of the agency, and officials of
16 the Department of Justice are kept informed about
17 all possible criminal, civil, contractual, and adminis-
18 trative remedies, and that appropriate remedies (in-
19 cluding simultaneous legal and administrative ac-
20 tions) are pursued expeditiously.

21 (2) REVIEW FOR RECOVERY OF FUNDS.—The
22 guidance under subsection (a) shall require that all
23 investigations of fraud or corruption related to pro-
24 curement or grant activities affecting the agency be
25 reviewed to determine and implement the appro-

1 appropriate contractual and administrative actions that
2 are necessary to expeditiously recover funds lost
3 through fraud or corruption.

4 (3) CONTRACTUAL OR ADMINISTRATIVE REM-
5 EDIES.—The guidance under subsection (a) shall re-
6 quire that, in appropriate cases of fraud or corrup-
7 tion related to procurement or grant activities affect-
8 ing the agency, and with advance notice to all nec-
9 essary officials, contractual or administrative rem-
10 edies be taken before final resolution of any criminal
11 or civil case.

12 **SEC. 6. DEFINITIONS.**

13 In this Act:

14 (1) CIVILIAN EXECUTIVE AGENCY.—The term
15 “civilian executive agency” has the meaning pro-
16 vided the term “executive agency” in section 105 of
17 title 5, United States Code, except the term does not
18 include the Department of Defense.

19 (2) RELEVANT CONGRESSIONAL COMMIT-
20 TEES.—The term “relevant congressional commit-
21 tees” means each of the following:

22 (A) The Committee on Oversight and Gov-
23 ernment Reform of the House of Representa-
24 tives.

1 (B) The Committee on Homeland Security
2 and Governmental Affairs of the Senate.

3 **SEC. 7. TRANSFER, REDESIGNATION, AND AMENDMENT OF**
4 **OTHER PROVISIONS OF LAW RELATING TO**
5 **DEBARMENT AND SUSPENSION.**

6 (a) TRANSFER, REDESIGNATION, AND AMENDMENT
7 OF SECTION 2313 OF TITLE 41.—

8 (1) IN GENERAL.—Section 2313 of title 41,
9 United States Code, is hereby—

10 (A) transferred to the end of chapter 64 of
11 title 31, United States Code, as inserted by sec-
12 tion 2(a) of this Act;

13 (B) redesignated as section 6403; and

14 (C) amended by adding at the end the fol-
15 lowing new subsection:

16 “(h) DEFINITIONS.—The definitions that apply in
17 subtitle I and division B of title 41, as set forth in sections
18 101 to 134 of such title 41, apply in this section.”.

19 (2) CLERICAL AMENDMENT.—The table of sec-
20 tions for chapter 23 of title 41, United States Code,
21 is amended by striking the item relating to section
22 2313.

23 (b) TRANSFER, REDESIGNATION, AND AMENDMENT
24 OF SECTION 873 OF PUBLIC LAW 110–417.—

1 (1) IN GENERAL.—Section 873 of Public Law
2 110–417 (31 U.S.C. 6101 note) is hereby—

3 (A) transferred to the end of chapter 64 of
4 title 31, United States Code, as inserted by sec-
5 tion 2(a) of this Act and amended by subsection
6 (a) of this section;

7 (B) redesignated as section 6404; and

8 (C) amended by striking “and” after “sec-
9 tions 4 and 5” in subsection (b).

10 (2) CLERICAL AMENDMENTS.—Section 6404 of
11 title 31, United States Code, as transferred by para-
12 graph (1), is amended—

13 (A) in the enumerator, by striking “**SEC.**”
14 and inserting “§”; and

15 (B) in the section heading—

16 (i) by striking the period at the end;

17 and

18 (ii) by conforming the typeface and
19 typestyle, including capitalization, to the
20 typeface and typestyle as used in the sec-
21 tion heading of section 6403 of such title.

22 (c) TRANSFER, REDESIGNATION, AND AMENDMENT
23 OF SECTION 2455 OF PUBLIC LAW 103–355.—

24 (1) IN GENERAL.—Section 2455 of Public Law
25 103–355 (31 U.S.C. 6101 note) is hereby—

1 (A) transferred to the end of chapter 64 of
2 title 31, United States Code, as inserted by sec-
3 tion 2(a) of this Act and amended by sub-
4 sections (a) and (b) of this section;

5 (B) redesignated as section 6405; and

6 (C) amended—

7 (i) in subsection (c)(1), by striking
8 “section 35(c) of the Office of Federal
9 Procurement Policy Act (41 U.S.C.
10 431(c))” and inserting “section 104 of title
11 41”; and

12 (ii) in subsection (c)(3), by striking
13 “title 5, United States Code” and inserting
14 “title 5”.

15 (2) CLERICAL AMENDMENTS.—Section 6405 of
16 title 31, United States Code, as transferred by para-
17 graph (1), is amended—

18 (A) in the enumerator, by striking “**SEC.**”
19 and inserting “**§**”; and

20 (B) in the section heading—

21 (i) by striking the period at the end;
22 and

23 (ii) by conforming the typeface and
24 typestyle, including capitalization, to the

1 typeface and typestyle as used in the sec-
2 tion heading of section 6403 of such title.

3 (d) **ADDITIONAL CLERICAL AMENDMENTS.**—The
4 table of sections at the beginning of chapter 64 of title
5 31, United States Code, as inserted by section 2(a) of this
6 Act, is amended by inserting the following items after the
7 item relating to section 6402:

“6403. Database for Federal agency contract and grant officers and suspension
and debarment officials.

“6404. Role of Interagency Committee on Debarment and Suspension.

“6405. Uniform suspension, debarment, or exclusion from procurement or non-
procurement activity.”.

8 **SEC. 8. EFFECTIVE DATE.**

9 This Act, and the amendments made by this Act,
10 shall take effect on October 1, 2013.