

[DISCUSSION DRAFT]

OCTOBER 25, 2013

113TH CONGRESS
1ST SESSION

H. R. _____

To amend title 31, United States Code, to consolidate 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 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 suspension and debarment offices.

- Sec. 3. Interagency Suspension and Debarment Committee.
- Sec. 4. Single case management system.
- Sec. 5. Single regulation for procurement and nonprocurement programs.
- Sec. 6. Government Accountability Office review.
- Sec. 7. Coordination of remedies for fraud and corruption related to procurement and grant activities.
- Sec. 8. Transfer, redesignation, and amendment of other provision of law relating to debarment and suspension.
- Sec. 9. Definitions.
- Sec. 10. Authorization of appropriations.
- Sec. 11. Effective date.

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

3 (a) ESTABLISHMENT OF BOARD OF SUSPENSION AND
4 DEBARMENT.—

5 (1) IN GENERAL.—Subtitle V of title 31,
6 United States Code, is amended by inserting after
7 chapter 63 the following new chapter:

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

“Sec.

“6401. Board of Suspension and Debarment.

“6402. Interagency Suspension and Debarment Committee.

“6403. Single regulation for suspension and debarment for procurement and nonprocurement programs.

“6404. Uniform suspension, debarment, or exclusion from procurement or nonprocurement activity.

10 **“§ 6401. Board of Suspension and Debarment**

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

15 “(b) PURPOSES.—The purposes of the Board are to
16 serve as a centralized body to manage all executive agency

1 suspension and debarment activities and improve the sus-
2 pension and debarment system through—

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

5 “(2) the effective oversight of the Government-
6 wide database containing the list of all excluded par-
7 ties ineligible for Federal programs pursuant to Ex-
8 ecutive Orders No. 12549 and No. 12689, including
9 oversight to ensure receipt of information from other
10 agencies and to ensure timeliness, accuracy, and
11 completeness of the database;

12 “(3) the consistent and fair treatment of all
13 persons and entities subject to suspension or debar-
14 ment proceedings, including small businesses with
15 limited resources; and

16 “(4) active engagement with remedy coordina-
17 tion officials (as defined in section 2307(i)(10) of
18 title 10 and section 4506 of title 41) within execu-
19 tive agencies for efficient referral of contractors,
20 grantees, or other recipients of Federal financial as-
21 sistance suspected of committing wrongful actions or
22 repeatedly performing poorly.

23 “(c) EFFECT OF DETERMINATIONS OF BOARD.—

24 “(1) CONCLUSIVE ON GOVERNMENTWIDE
25 BASIS.—The determination by the Board on whether

1 or not to debar or suspend a contractor, grantee, or
2 other recipient of Federal financial assistance is con-
3 clusive on a Governmentwide basis. No other agency
4 may take a contrary action on a Governmentwide
5 basis with respect to the same contractor, grantee,
6 or other recipient based on the facts and cir-
7 cumstances in the administrative record considered
8 by the Board.

9 “(2) CONSIDERATION OF NEW OR ADDITIONAL
10 EVIDENCE.—In considering any new or additional
11 evidence of nonresponsibility of a contractor, grant-
12 ee, or other recipient of Federal financial assistance
13 not previously considered by the Board, an agency,
14 in determining whether to award another grant or
15 contract or other Federal financial assistance to
16 such contractor, grantee, or other recipient, may
17 consider the cumulative effect of the facts and cir-
18 cumstances previously considered by the Board.

19 “(d) MEMBERSHIP.—

20 “(1) APPOINTMENT.—The Board shall consist
21 of members appointed by the Administrator of Gen-
22 eral Services (in consultation with the Administrator
23 for Federal Procurement Policy) from a register of
24 applicants maintained by the Administrator of Gen-
25 eral Services, in accordance with rules issued by the

1 Administrator of General Services (in consultation
2 with the Administrator for Federal Procurement
3 Policy) for establishing and maintaining a register of
4 eligible applicants and selecting members. The Ad-
5 ministrator of General Services shall appoint a mem-
6 ber without regard to political affiliation and solely
7 on the basis of the professional qualifications re-
8 quired to perform the duties and responsibilities of
9 a member.

10 “(2) CHAIR.—The Administrator of General
11 Services shall designate one member of the Board to
12 serve as Chair of the Board. The position of Chair
13 of the Board shall be a Senior Executive Service po-
14 sition (as defined by section 3132(a)(2) of title 5).

15 “(3) REMOVAL.—The Administrator of General
16 Services, with the consent of the Administrator for
17 Federal Procurement Policy, may remove the Chair
18 or any other member of the Board.

19 “(e) SHARING OF RESOURCES.—The Administrator
20 of General Services shall provide to the Board such admin-
21 istrative resources as are necessary for the Board to carry
22 out its functions. In carrying out this subsection, the Ad-
23 ministrator may provide for the sharing of administrative
24 resources of the Civilian Board of Contract Appeals, such

1 as the Board's information technology infrastructure, case
2 management system, legal resources, and facilities.

3 “(f) PARTICIPATION BY ADDITIONAL ENTITIES.—

4 The Board may enter into an agreement with any other
5 entity that receives Federal funds for the Board to per-
6 form suspension and debarment activities on behalf of the
7 entity.

8 “(g) ANNUAL REPORT TO CONGRESS.—

9 “(1) IN GENERAL.—Not later than October 30
10 of each year, the Chair of the Board shall submit to
11 the relevant congressional committees a report con-
12 taining the following:

13 “(A) A summary of the activities and ac-
14 complishments of the Board in the Government-
15 wide suspension and debarment system, includ-
16 ing the total number of referrals, timeliness of
17 case disposition, and breakdown of discretionary
18 and nondiscretionary cases.

19 “(B) Recommendations to improve the sus-
20 pension and debarment system.

21 “(2) FORM OF REPORT.—The Chair of the
22 Board may combine the report with the report re-
23 quired by section 6402(c)(7) of this title.

24 “(h) DEFINITIONS.—In this section:

1 “(1) EXECUTIVE AGENCY.—The term ‘executive
2 agency’ has the meaning provided in section 133 of
3 title 41.

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

7 “(A) The Committee on Oversight and
8 Government Reform of the House of Represent-
9 atives.

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

12 “(3) INTERAGENCY SUSPENSION AND DEBAR-
13 MENT COMMITTEE.—The term ‘Interagency Suspen-
14 sion and Debarment Committee’ means the com-
15 mittee established under section 6402 of this title.”.

16 (2) DEADLINE FOR APPOINTMENT OF BOARD
17 MEMBERS.—The members of the Board of Suspen-
18 sion and Debarment under section 6401 of title 31,
19 United States Code, as added by paragraph (1),
20 shall be appointed not later than one year after the
21 date of the enactment of this Act.

22 (3) CLERICAL AMENDMENT.—The table of
23 chapters at the beginning of subtitle V of title 31,
24 United States Code, is amended by inserting after

1 the item relating to chapter 63 the following new
2 item:

“64. Suspension and Debarment 6401”.

3 (b) TERMINATION OF EXECUTIVE AGENCY SUSPEN-
4 SION AND DEBARMENT OFFICES.—

5 (1) IN GENERAL.—Except as provided in para-
6 graphs (2) and (3), effective on October 1, 2016, the
7 suspension and debarment office or function in each
8 executive agency shall terminate.

9 (2) WAIVERS.—

10 (A) REQUIRED WAIVERS.—Notwith-
11 standing paragraph (1), the Director of the Of-
12 fice of Management and Budget shall grant a
13 waiver to any executive agency listed in section
14 901(b) of title 31, United States Code, or sec-
15 tion 102 of title 5, other than the General Serv-
16 ices Administration, that has demonstrated the
17 existence of the following within the agency:

18 (i) A dedicated suspension and debar-
19 ment program and staff.

20 (ii) Detailed agency-specific policies
21 and procedures relating to suspension and
22 debarment.

23 (iii) Practices that encourage an ac-
24 tive suspension and debarment referral
25 process.

1 (iv) In the case of an agency with
2 multiple bureaus, offices, or subordinate
3 organizations, a consolidated suspension
4 and debarment program with only one in-
5 dividual with the title and designation of
6 “Suspension and Debarment Officer” for
7 the entire agency.

8 (v) Average annual disposition of dis-
9 cretionary suspension and debarment cases
10 of 50 or more, regardless of the outcome,
11 during the three preceding fiscal years.

12 (B) LENGTH OF WAIVER.—A waiver under
13 this paragraph shall be for five years and may
14 be renewed more than once.

15 (3) SMALL BUSINESS ADMINISTRATION.—Not-
16 withstanding paragraphs (1) and (2), the Small
17 Business Administration shall maintain its inde-
18 pendent authority and function relating to suspen-
19 sion and debarment pursuant to section 16(d) of the
20 Small Business Act (15 U.S.C 645). Any other sus-
21 pension and debarment activities unrelated to such
22 section 16(d) shall terminate in accordance with
23 paragraph (1).

24 (c) GUIDANCE.—Within 6 months after the date of
25 the enactment of this Act, the Director of the Office of

1 Management and Budget, in consultation with the Chief
2 Acquisition Officers Council, shall issue guidance address-
3 ing the scope and operation of the Board of Suspension
4 and Debarment. The guidance shall address, at a min-
5 imum, the following:

6 (1) The size, structure, and organization of the
7 Board to efficiently manage all executive agency sus-
8 pension and debarment actions.

9 (2) Procedures for appointment of the Chair of
10 the Board, including appropriate instructions to ap-
11 point without regard to political affiliation and solely
12 on the basis of the professional qualifications re-
13 quired to perform the duties and responsibilities of
14 the Chair of the Board.

15 (3) Procedures for handling new and existing
16 suspension and debarment cases to accomplish time-
17 ly transfer of all functions to the Board.

18 **SEC. 3. INTERAGENCY SUSPENSION AND DEBARMENT COM-**

19 **MITTEE.**

20 (a) ESTABLISHMENT.—Chapter 64 of title 31,
21 United States Code, as inserted by section 2(a) of this
22 Act, is further amended by adding at the end the following
23 new section:

1 **“§ 6402. Interagency Suspension and Debarment**
2 **Committee**

3 “(a) ESTABLISHMENT.—There is established the
4 Interagency Suspension and Debarment Committee (in
5 this section referred to as the ‘Interagency Committee’
6 which shall replace the committee constituted under sec-
7 tions 4 and 5 of Executive Order No. 12549.

8 “(b) CHAIR AND VICE CHAIRS.—

9 “(1) CHAIR.—The Administrator for Federal
10 Procurement Policy shall serve as Chair of the Inter-
11 agency Committee.

12 “(2) VICE CHAIRS.—There are at least 2 Vice
13 Chairs of the Interagency Committee. The Chair of
14 the Board of Suspension and Debarment shall serve
15 as a Vice Chair. The Secretary of Defense shall des-
16 ignate one official from the Department of Defense
17 to serve as a Vice Chair.

18 “(c) DUTIES.—The Interagency Committee shall—

19 “(1) resolve issues regarding which of several
20 Federal agencies is the lead agency having responsi-
21 bility to initiate suspension or debarment pro-
22 ceedings, including with respect to contracts in con-
23 nection with contingency operations;

24 “(2) coordinate actions among interested agen-
25 cies with respect to such action;

1 “(3) encourage and assist Federal agencies in
2 entering into cooperative efforts to pool resources
3 and achieve operational efficiencies in the Govern-
4 mentwide suspension and debarment system;

5 “(4) recommend to the Office of Management
6 and Budget changes to the Government suspension
7 and debarment system and its rules, if such rec-
8 ommendations are approved by a majority of the
9 Interagency Committee;

10 “(5) authorize the Office of Management and
11 Budget to issue guidelines that implement those rec-
12 ommendations;

13 “(6) authorize the Chair of the Interagency
14 Committee to establish subcommittees as appro-
15 priate to best enable the Interagency Committee to
16 carry out its functions; and

17 “(7) not later than October 30 of each year,
18 submit to Congress an annual report on—

19 “(A) the progress and efforts to improve
20 the suspension and debarment system;

21 “(B) member agencies’ active participation
22 in the Interagency Committee’s work; and

23 “(C) a summary of each agency’s activities
24 and accomplishments in the Governmentwide
25 suspension and debarment system, including

1 the total number of referrals, timeliness of case
2 disposition, and breakdown of discretionary and
3 nondiscretionary cases.

4 “(d) DEFINITION.—In this section, the term ‘contin-
5 gency operation’ has the meaning given that term in sec-
6 tion 101(a)(13) of title 10.”.

7 (b) CONFORMING REPEAL OF SUPERSEDED PROVI-
8 SION.—Section 873 of Public Law 110–417 (31 U.S.C.
9 6101 note) is hereby repealed. The table of contents con-
10 tained in section 2 of Public Law 110–417, and at the
11 beginning of title VIII of such public law, is amended by
12 striking the item relating to section 873.

13 **SEC. 4. SINGLE CASE MANAGEMENT SYSTEM.**

14 (a) REQUIREMENT TO ESTABLISH SYSTEM.—Not
15 later than one year after the date of the enactment of this
16 Act, the Administrator for General Services (in consulta-
17 tion with the Administrator for Federal Procurement Pol-
18 icy) shall establish and maintain a Web-based suspension
19 and debarment case management system for use by the
20 Board of Suspension and Debarment and appropriate ex-
21 ecutive agency officials having authority over suspension
22 and debarment.

23 (b) REQUIREMENT FOR USE OF SYSTEM.—The head
24 of each executive agency shall ensure that all cases re-
25 ferred to either the Board or the agency’s suspension and

1 debarment office (in the case of an agency granted a waiver
2 er under section 2(b)(2)) are logged into the case manage-
3 ment system and that the case status and the name of
4 the employee handling the case are updated at least once
5 each month.

6 (c) AVAILABILITY OF INFORMATION.—Any pre-
7 decisional information related to a suspension or debar-
8 ment case, including the names of the entities or individ-
9 uals referred to, shall not be made public unless the Chair
10 of the Board or the suspension and debarment official of
11 an executive agency granted a waiver under section
12 2(b)(2) determines that the release of such information
13 is necessary to protect the interest of the Government.

14 (d) EXECUTIVE AGENCY DEFINED.—In this section,
15 the term “executive agency” has the meaning provided in
16 section 133 of title 41, United States Code.

17 **SEC. 5. SINGLE REGULATION FOR PROCUREMENT AND**
18 **NONPROCUREMENT PROGRAMS.**

19 (a) SINGLE REGULATION REQUIRED.—Chapter 64 of
20 title 31, United States Code, as inserted by section 2(a)
21 of this Act, is further amended by adding at the end the
22 following new section:

1 **“§ 6403. Single regulation for suspension and debar-**
2 **ment for procurement and nonprocure-**
3 **ment programs**

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

8 “(b) REQUIREMENTS.—

9 “(1) IN GENERAL.—The regulation maintained
10 pursuant to subsection (a) shall provide, at a min-
11 imum, for the procedures and other requirements set
12 forth in paragraphs (2) through (8).

13 “(2) ADVANCE NOTICE OF ADVERSE ACTION.—
14 The regulation shall provide procedures for the
15 Board to provide advance notice of adverse action
16 before any adverse action may be taken against a
17 private entity or individual, unless the Chair of the
18 Board of Suspension and Debarment or the suspen-
19 sion and debarment officer of an executive agency
20 granted a waiver under section 2(b)(2) of the SUS-
21 PEND Act determines that an expedient action is
22 necessary to protect the interest of the Government.

23 “(3) TRANSPARENT HANDLING OF CASES.—The
24 regulation shall provide procedures for transparent
25 handling of all cases, including public availability
26 of—

1 “(A) the outcome of all referred cases, in-
2 cluding the rationale for the decision to take or
3 not take an adverse action; and

4 “(B) the administrative agreements en-
5 tered into by the Government in order to re-
6 solve a suspension or debarment proceeding.

7 “(4) **TIMELY REFERRALS.**—The regulation
8 shall provide procedures to strengthen timely refer-
9 ral of cases, including the role of the agency remedy
10 coordination official (as required in section 8 of the
11 **SUSPEND Act**).

12 “(5) **CONSISTENT STANDARDS AND PROCE-**
13 **DURES.**—The regulation shall provide procedures to
14 ensure consistent standards and procedures that
15 treat all alleged violators fairly and expeditiously, in-
16 cluding small businesses with limited legal resources.

17 “(6) **REPEATED FAILURE TO PERFORM.**—The
18 regulation shall provide procedures to strengthen the
19 identification and referral (for suspension or debar-
20 ment consideration) of contractors and grantees that
21 repeatedly fail to perform.

22 “(7) **CONTINGENCY PROCEDURES.**—The regula-
23 tion shall provide procedures for an expedited review
24 process to handle contract or grant fraud in a non-

1 traditional or time-sensitive environment, either in a
2 military or non-military setting.”.

3 (b) REQUIREMENT AND DEADLINE TO COMBINE
4 REGULATIONS.—Not later than 1 year after the date of
5 the enactment of this Act, the Director of the Office of
6 Management and Budget shall combine the separate sus-
7 pension and debarment regulations for procurement and
8 nonprocurement programs into one generally applicable
9 regulation.

10 **SEC. 6. GOVERNMENT ACCOUNTABILITY OFFICE REVIEW.**

11 (a) REVIEW.—The Comptroller General of the United
12 States shall review and assess the effectiveness in meeting
13 the requirements of this Act and the amendments made
14 by this Act of—

- 15 (1) the Board of Suspension and Debarment;
16 (2) the suspension and debarment office of each
17 executive agency granted a waiver under section
18 2(b)(2); and
19 (3) the case management system established
20 under section 4.

21 (b) REPORT.—Not later than 2 years after the estab-
22 lishment of the Board of Suspension and Debarment, the
23 Comptroller General shall submit to the relevant congres-
24 sional committees a report containing—

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

3 (2) recommendations to improve the Govern-
4 mentwide suspension and debarment system, includ-
5 ing identification and assessment of the efficiency of
6 agency-specific requirements that are unnecessary or
7 inconsistent with the Governmentwide system.

8 **SEC. 7. COORDINATION OF REMEDIES FOR FRAUD AND**
9 **CORRUPTION RELATED TO PROCUREMENT**
10 **AND GRANT ACTIVITIES.**

11 (a) **GUIDANCE REQUIRED.**—Within 6 months after
12 the date of the enactment of this Act, the head of each
13 executive agency and the Inspector General of the agency
14 shall jointly issue guidance that establishes policies, proce-
15 dures, and responsibilities for the agencywide coordination
16 of criminal, civil, contractual, and administrative remedies
17 stemming from investigations of fraud or corruption re-
18 lated to procurement and grant activities.

19 (b) **MATTERS COVERED.**—

20 (1) **COORDINATION.**—For each significant in-
21 vestigation of fraud or corruption related to procure-
22 ment or grant activities affecting an executive agen-
23 cy, the guidance under subsection (a) shall require
24 that the remedy coordination official of the agency

1 be promptly informed and appropriately empowered
2 to carry out the requirements of this section.

3 (2) ROLE OF REMEDY COORDINATION OFFI-
4 CIAL.—The remedy coordination official of the agen-
5 cy shall—

6 (A) ensure that all appropriate contracting
7 and grant officials, officials of the Office of In-
8 spector General of the agency, and officials of
9 the Department of Justice are kept informed
10 about all possible criminal, civil, contractual,
11 and administrative remedies, and that appro-
12 priate remedies (including parallel criminal,
13 civil, regulatory, contractual, and administrative
14 proceedings) are pursued expeditiously;

15 (B) ensure timely preparation and submis-
16 sion of suspension and debarment case files by
17 appropriate agency officials; and

18 (C) serve as a primary point of contact on
19 behalf of the executive agency for the Board of
20 Suspension and Debarment or the agency sus-
21 pension and debarment office, as applicable,
22 throughout the review of the referred cases.

23 (3) CONTRACTUAL OR ADMINISTRATIVE REM-
24 EDIES.—The guidance under subsection (a) shall re-
25 quire that, in appropriate cases of fraud or corrup-

1 tion related to procurement or grant activities affect-
2 ing the agency, and with advance notice to all nec-
3 essary officials, contractual or administrative rem-
4 edies be taken before final resolution of any criminal
5 or civil case.

6 **SEC. 8. TRANSFER, REDESIGNATION, AND AMENDMENT OF**
7 **OTHER PROVISION OF LAW RELATING TO DE-**
8 **BARMENT AND SUSPENSION.**

9 (a) TRANSFER, REDESIGNATION, AND AMENDMENT
10 OF SECTION 2455 OF PUBLIC LAW 103–355.—Section
11 2455 of Public Law 103–355 (31 U.S.C. 6101 note) is
12 hereby—

13 (1) transferred to the end of chapter 64 of title
14 31, United States Code, as inserted by section 2(a)
15 of this Act and amended by preceding provisions of
16 this Act;

17 (2) redesignated as section 6404; and

18 (3) amended—

19 (A) in subsection (c)(1), by striking “sec-
20 tion 35(c) of the Office of Federal Procurement
21 Policy Act (41 U.S.C. 431(c))” and inserting
22 “section 104 of title 41”; and

23 (B) in subsection (c)(3), by striking “title
24 5, United States Code” and inserting “title 5”.

25 (b) CLERICAL AMENDMENTS.—

1 (1) The heading of section 6404 of title 31,
2 United States Code, as transferred by subsection
3 (a), is amended to read as follows:

4 **“§ 6404. Uniform suspension, debarment, or exclusion**
5 **from procurement or nonprocurement ac-**
6 **tivity”.**

7 (2) The table of contents contained in section
8 2 of Public Law 103–355 is amended by striking the
9 item relating to section 2455.

10 (c) CONFORMING AMENDMENT.—Section
11 8902a(b)(5) of title 5, United States Code, is amended
12 by striking “section 2455 of the Federal Acquisition
13 Streamlining Act of 1994” and inserting “section 6404
14 of title 31”.

15 **SEC. 9. DEFINITIONS.**

16 In this Act:

17 (1) EXECUTIVE AGENCY.—The term “executive
18 agency” has the meaning provided in section 133 of
19 title 41, United States Code.

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

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

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

3 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated \$2,000,000
5 for each of fiscal years 2015 through 2021—

6 (1) to carry out the functions of the Board of
7 Suspension and Debarment established under sec-
8 tion 6401 of title 31, United States Code (as added
9 by section 2), that are in addition to functions al-
10 ready carried out by personnel of the General Serv-
11 ices Administration as of October 1, 2013; and

12 (2) for implementation of the case management
13 system required under section 4.

14 **SEC. 11. EFFECTIVE DATE.**

15 This Act, and the amendments made by this Act,
16 shall take effect on October 1, 2014.