[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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
(a) SHORT TITLE.—This Act may be cited as the
“Stop Unworthy Spending Act” or the “SUSPEND Act”.
(b) TABLE OF CONTENTS.—The table of contents for
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 OFFICES.

(a) Establishment of Board of Suspension and Debarment.—

(1) In general.—Subtitle V of title 31, United States Code, is amended by inserting after chapter 63 the following new chapter:

“CHAPTER 64—SUSPENSION AND DEBARMENT

§ 6401. Board of Suspension and Debarment

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

“(b) Purposes.—The purposes of the Board are to serve as a centralized body to manage all executive agency
suspension and debarment activities and improve the sus-
pension and debarment system through—

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

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

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

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

“(e) Effect of Determinations of Board.—

“(1) Conclusive on Governmentwide Basis.—The determination by the Board on whether
or not to debar or suspend a contractor, grantee, or
other recipient of Federal financial assistance is con-
cclusive on a Governmentwide basis. No other agency
may take a contrary action on a Governmentwide
basis with respect to the same contractor, grantee,
or other recipient based on the facts and cir-
cumstances in the administrative record considered
by the Board.

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

“(d) MEMBERSHIP.—

“(1) APPOINTMENT.—The Board shall consist
of members appointed by the Administrator of Gen-
eral Services (in consultation with the Administrator
for Federal Procurement Policy) from a register of
applicants maintained by the Administrator of Gen-
eral Services, in accordance with rules issued by the
Administrator of General Services (in consultation with the Administrator for Federal Procurement Policy) for establishing and maintaining a register of eligible applicants and selecting members. The Administrator of General Services shall appoint a member without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of a member.

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

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

“(e) SHARING OF RESOURCES.—The Administrator of General Services shall provide to the Board such administrative resources as are necessary for the Board to carry out its functions. In carrying out this subsection, the Administrator may provide for the sharing of administrative resources of the Civilian Board of Contract Appeals, such
as the Board’s information technology infrastructure, case
management system, legal resources, and facilities.

“(f) Participation by Additional Entities.—
The Board may enter into an agreement with any other
entity that receives Federal funds for the Board to per-
form suspension and debarment activities on behalf of the
entity.

“(g) Annual Report to Congress.—
“(1) In General.—Not later than October 30
of each year, the Chair of the Board shall submit to
the relevant congressional committees a report con-
taining the following:

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

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

“(2) Form of Report.—The Chair of the
Board may combine the report with the report re-
quired by section 6402(e)(7) of this title.

“(h) Definitions.—In this section:
“(1) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning provided in section 133 of title 41.

“(2) RELEVANT CONGRESSIONAL COMMITTEES.—The term ‘relevant congressional committees’ means each of the following:

“(A) The Committee on Oversight and Government Reform of the House of Representatives.

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

“(3) INTERAGENCY SUSPENSION AND DEBARMENT COMMITTEE.—The term ‘Interagency Suspension and Debarment Committee’ means the committee established under section 6402 of this title.”.

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

(3) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle V of title 31, United States Code, is amended by inserting after
the item relating to chapter 63 the following new item:

"64. Suspension and Debarment .............................................................. 6401".

(b) **Termination of Executive Agency Suspension and Debarment Offices.**—

(1) **In General.**—Except as provided in paragraphs (2) and (3), effective on October 1, 2016, the suspension and debarment office or function in each executive agency shall terminate.

(2) **Waivers.**—

   (A) **Required Waivers.**—Notwithstanding paragraph (1), the Director of the Office of Management and Budget shall grant a waiver to any executive agency listed in section 901(b) of title 31, United States Code, or section 102 of title 5, other than the General Services Administration, that has demonstrated the existence of the following within the agency:

   (i) A dedicated suspension and debarment program and staff.

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

   (iii) Practices that encourage an active suspension and debarment referral process.
(iv) In the case of an agency with multiple bureaus, offices, or subordinate organizations, a consolidated suspension and debarment program with only one individual with the title and designation of “Suspension and Debarment Officer” for the entire agency.

(v) Average annual disposition of discretionary suspension and debarment cases of 50 or more, regardless of the outcome, during the three preceding fiscal years.

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

(3) SMALL BUSINESS ADMINISTRATION.—Notwithstanding paragraphs (1) and (2), the Small Business Administration shall maintain its independent authority and function relating to suspension and debarment pursuant to section 16(d) of the Small Business Act (15 U.S.C. 645). Any other suspension and debarment activities unrelated to such section 16(d) shall terminate in accordance with paragraph (1).

(c) GUIDANCE.—Within 6 months after the date of the enactment of this Act, the Director of the Office of
Management and Budget, in consultation with the Chief Acquisition Officers Council, shall issue guidance addressing the scope and operation of the Board of Suspension and Debarment. The guidance shall address, at a minimum, the following:

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

(2) Procedures for appointment of the Chair of the Board, including appropriate instructions to appoint without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the Chair of the Board.

(3) Procedures for handling new and existing suspension and debarment cases to accomplish timely transfer of all functions to the Board.

SEC. 3. INTERAGENCY SUSPENSION AND DEBARMENT COMMITTEE.

(a) Establishment.—Chapter 64 of title 31, United States Code, as inserted by section 2(a) of this Act, is further amended by adding at the end the following new section:
§ 6402. Interagency Suspension and Debarment Committee

(a) Establishment.—There is established the Interagency Suspension and Debarment Committee (in this section referred to as the ‘Interagency Committee’ which shall replace the committee constituted under sections 4 and 5 of Executive Order No. 12549.

(b) Chair and Vice Chairs.—

(1) Chair.—The Administrator for Federal Procurement Policy shall serve as Chair of the Interagency Committee.

(2) Vice Chairs.—There are at least 2 Vice Chairs of the Interagency Committee. The Chair of the Board of Suspension and Debarment shall serve as a Vice Chair. The Secretary of Defense shall designate one official from the Department of Defense to serve as a Vice Chair.

(c) Duties.—The Interagency Committee shall—

(1) resolve issues regarding which of several Federal agencies is the lead agency having responsibility to initiate suspension or debarment proceedings, including with respect to contracts in connection with contingency operations;

(2) coordinate actions among interested agencies with respect to such action;
“(3) encourage and assist Federal agencies in entering into cooperative efforts to pool resources and achieve operational efficiencies in the Governmentwide suspension and debarment system;

“(4) recommend to the Office of Management and Budget changes to the Government suspension and debarment system and its rules, if such recommendations are approved by a majority of the Interagency Committee;

“(5) authorize the Office of Management and Budget to issue guidelines that implement those recommendations;

“(6) authorize the Chair of the Interagency Committee to establish subcommittees as appropriate to best enable the Interagency Committee to carry out its functions; and

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

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

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

“(C) a summary of each agency’s activities and accomplishments in the Governmentwide suspension and debarment system, including
the total number of referrals, timeliness of case
disposition, and breakdown of discretionary and
nondiscretionary cases.

“(d) DEFINITION.—In this section, the term ‘contingency operation’ has the meaning given that term in section 101(a)(13) of title 10.”.

(b) CONFORMING REPEAL OF SUPERSEDED PROVISION.—Section 873 of Public Law 110–417 (31 U.S.C. 6101 note) is hereby repealed. The table of contents contained in section 2 of Public Law 110–417, and at the beginning of title VIII of such public law, is amended by striking the item relating to section 873.

SEC. 4. SINGLE CASE MANAGEMENT SYSTEM.

(a) REQUIREMENT TO ESTABLISH SYSTEM.—Not later than one year after the date of the enactment of this Act, the Administrator for General Services (in consultation with the Administrator for Federal Procurement Policy) shall establish and maintain a Web-based suspension and debarment case management system for use by the Board of Suspension and Debarment and appropriate executive agency officials having authority over suspension and debarment.

(b) REQUIREMENT FOR USE OF SYSTEM.—The head of each executive agency shall ensure that all cases referred to either the Board or the agency’s suspension and
debarment office (in the case of an agency granted a waiver under section 2(b)(2)) are logged into the case management system and that the case status and the name of the employee handling the case are updated at least once each month.

(c) **Availability of Information.**—Any pre-decisional information related to a suspension or debarment case, including the names of the entities or individuals referred to, shall not be made public unless the Chair of the Board or the suspension and debarment official of an executive agency granted a waiver under section 2(b)(2) determines that the release of such information is necessary to protect the interest of the Government.

(d) **Executive Agency Defined.**—In this section, the term “executive agency” has the meaning provided in section 133 of title 41, United States Code.

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

(a) **Single Regulation Required.**—Chapter 64 of title 31, United States Code, as inserted by section 2(a) of this Act, is further amended by adding at the end the following new section:
§ 6403. Single regulation for suspension and debarment for procurement and nonprocurement programs

(a) SINGLE REGULATION.—The Director of the Office of Management and Budget shall maintain one generally applicable regulation on suspension and debarment for procurement and nonprocurement programs.

(b) REQUIREMENTS.—

(1) IN GENERAL.—The regulation maintained pursuant to subsection (a) shall provide, at a minimum, for the procedures and other requirements set forth in paragraphs (2) through (8).

(2) ADVANCE NOTICE OF ADVERSE ACTION.—The regulation shall provide procedures for the Board to provide advance notice of adverse action before any adverse action may be taken against a private entity or individual, unless the Chair of the Board of Suspension and Debarment or the suspension and debarment officer of an executive agency granted a waiver under section 2(b)(2) of the SUSPEND Act determines that an expedient action is necessary to protect the interest of the Government.

(3) TRANSPARENT HANDLING OF CASES.—The regulation shall provide procedures for transparent handling of all cases, including public availability of—
“(A) the outcome of all referred cases, including the rationale for the decision to take or not take an adverse action; and

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

“(4) Timely referrals.—The regulation shall provide procedures to strengthen timely referral of cases, including the role of the agency remedy coordination official (as required in section 8 of the SUSPEND Act).

“(5) Consistent standards and procedures.—The regulation shall provide procedures to ensure consistent standards and procedures that treat all alleged violators fairly and expeditiously, including small businesses with limited legal resources.

“(6) Repeated failure to perform.—The regulation shall provide procedures to strengthen the identification and referral (for suspension or debarment consideration) of contractors and grantees that repeatedly fail to perform.

“(7) Contingency procedures.—The regulation shall provide procedures for an expedited review process to handle contract or grant fraud in a non-
traditional or time-sensitive environment, either in a
military or non-military setting.”.

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

SEC. 6. GOVERNMENT ACCOUNTABILITY OFFICE REVIEW.

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

(1) the Board of Suspension and Debarment;

(2) the suspension and debarment office of each
executive agency granted a waiver under section
2(b)(2); and

(3) the case management system established
under section 4.

(b) REPORT.—Not later than 2 years after the estab-
lishment of the Board of Suspension and Debarment, the
Comptroller General shall submit to the relevant congres-
sional committees a report containing—
(1) the findings of the review and assessment required by subsection (a); and

(2) recommendations to improve the Governmentwide suspension and debarment system, including identification and assessment of the efficiency of agency-specific requirements that are unnecessary or inconsistent with the Governmentwide system.

SEC. 7. COORDINATION OF REMEDIES FOR FRAUD AND CORRUPTION RELATED TO PROCUREMENT AND GRANT ACTIVITIES.

(a) GUIDANCE REQUIRED.—Within 6 months after the date of the enactment of this Act, the head of each executive agency and the Inspector General of the agency shall jointly issue guidance that establishes policies, procedures, and responsibilities for the agencywide coordination of criminal, civil, contractual, and administrative remedies stemming from investigations of fraud or corruption related to procurement and grant activities.

(b) MATTERS COVERED.—

(1) COORDINATION.—For each significant investigation of fraud or corruption related to procurement or grant activities affecting an executive agency, the guidance under subsection (a) shall require that the remedy coordination official of the agency
be promptly informed and appropriately empowered
to carry out the requirements of this section.

(2) **Role of remedy coordination official.**—The remedy coordination official of the agen-
cy shall—

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

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

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

(3) **Contractual or administrative remedies.**—The guidance under subsection (a) shall re-
quire that, in appropriate cases of fraud or corrup-
tion related to procurement or grant activities affecting the agency, and with advance notice to all necessary officials, contractual or administrative remedies be taken before final resolution of any criminal or civil case.

SEC. 8. TRANSFER, REDESIGNATION, AND AMENDMENT OF OTHER PROVISION OF LAW RELATING TO DEBARMENT AND SUSPENSION.

(a) Transfer, redesignation, and amendment of section 2455 of Public Law 103–355.—Section 2455 of Public Law 103–355 (31 U.S.C. 6101 note) is hereby—

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

(2) redesignated as section 6404; and

(3) amended—

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

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

(b) Clerical Amendments.—
(1) The heading of section 6404 of title 31, United States Code, as transferred by subsection (a), is amended to read as follows:

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

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

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

SEC. 9. DEFINITIONS.

In this Act:

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

(2) RELEVANT CONGRESSIONAL COMMITTEES.—The term “relevant congressional committees” means each of the following:

(A) The Committee on Oversight and Government Reform of the House of Representa-
(B) The Committee on Homeland Security and Governmental Affairs of the Senate.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

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

(1) to carry out the functions of the Board of Suspension and Debarment established under section 6401 of title 31, United States Code (as added by section 2), that are in addition to functions already carried out by personnel of the General Services Administration as of October 1, 2013; and

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

SEC. 11. EFFECTIVE DATE.

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