

Union Calendar No. 531

112TH CONGRESS
2^D SESSION

H. R. 4206

[Report No. 112-728, Part I]

To amend the Small Business Act to provide for increased penalties for contracting fraud, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2012

Mr. COFFMAN of Colorado (for himself and Mr. GRAVES of Missouri) introduced the following bill; which was referred to the Committee on Small Business, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 21, 2012

Additional sponsors: Mr. TIPTON and Mrs. ELLMERS

DECEMBER 21, 2012

Reported from the Committee on Small Business with amendments

[Omit the part struck through and insert the part printed in *italic*]

DECEMBER 21, 2012

The Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Small Business Act to provide for increased penalties for contracting fraud, 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.**

4 This Act may be cited as the “Contracting Oversight
5 for Small Business Jobs Act of 2012”.

6 **SEC. 2. INCREASED PENALTIES FOR FRAUD.**

7 (a) IN GENERAL.—Chapter 47 of title 18, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

10 **“§ 1041. Misrepresentation of status as a small busi-**
11 **ness concern**

12 “(a) IN GENERAL.—Whoever knowingly—

13 “(1) falsifies, conceals, or covers up by any
14 trick, scheme, or device a material fact;

15 “(2) makes any materially false, fictitious, or
16 fraudulent statement or representation; or

17 “(3) makes or uses any false writing or docu-
18 ment, including electronically, knowing the same to
19 contain any materially false, fictitious, or fraudulent
20 statement or entry;

21 concerning status as a small business concern or compli-
22 ance with the requirements of the Small Business Act in
23 an effort to obtain, retain, or complete a federal govern-
24 ment contract shall be fined \$1,000,000 or in a sum equal
25 to twice the amount or value of goods or services under

1 the contract or order, whichever is greater, imprisoned not
 2 more than 5 years, or both.”.

3 (b) TECHNICAL AMENDMENT.—The table of sections
 4 for such chapter is amended by inserting after the item
 5 ~~relating to the following section:~~ *relating to section 1040*
 6 *the following:*

“1041. Misrepresentation of status as a small business concern.”.

7 **SEC. 3. SAFE HARBOR FOR GOOD FAITH COMPLIANCE EF-**
 8 **FORTS.**

9 (a) SMALL BUSINESS FRAUD.—Section 16(d) of the
 10 Small Business Act (15 U.S.C. 16(d)) is amended by in-
 11 serting after paragraph (2) the following:

12 “(3) *LIMITATION ON LIABILITY*.—This sub-
 13 section shall not apply to any conduct in violation of
 14 subsection (a) if the defendant acted in reliance on
 15 a written advisory opinion from a licensed attorney
 16 who is not an employee of the defendant.”.

17 (b) MISREPRESENTATION OF STATUS.—Section 1041
 18 of title 18, United States Code, as added by section 2 of
 19 this Act, is amended by inserting after subsection (a) the
 20 following:

21 “(b) EXCEPTION.—This section shall not apply to
 22 any conduct in violation of paragraph (2) or (3) of sub-
 23 section (a) if the defendant acted in reliance on a written
 24 advisory opinion from a licensed attorney who is not an
 25 employee of the defendant.”.

1 (c) REGULATIONS.—Not later than 270 days after
2 the date of enactment of this Act, the Administrator of
3 the Small Business Administration shall issue rules defin-
4 ing what constitutes an adequate advisory opinion for pur-
5 poses of section 16(d)(3) of the Small Business Act.

6 (d) SMALL BUSINESS COMPLIANCE GUIDE.—Not
7 later than 270 days after the date of enactment of this
8 Act, the Administrator of the Small Business Administra-
9 tion shall issue (pursuant to section 212 of the Small
10 Business Regulatory Enforcement Fairness Act of 1996)
11 a compliance guide to assist business concerns in accu-
12 rately determining their status as a small business con-
13 cern. *On the date that the Administrator issues the compli-*
14 *ance guide under this section, the Administrator shall also*
15 *issue a version of the compliance guide translated into*
16 *Spanish and such translation may be provided in digital*
17 *form by the Administrator.*

18 **SEC. 4. OFFICE OF HEARINGS AND APPEALS.**

19 (a) CHIEF HEARING OFFICER.—Section 4(b)(1) of
20 the Small Business Act is amended by adding at the end
21 the following: “One shall be designated at the time of his
22 or her appointment as the Chief Hearing Officer, who
23 shall head and administer the Office of Hearings and Ap-
24 peals within the Administration.”.

1 (b) OFFICE OF HEARINGS AND APPEALS ESTAB-
2 LISHED IN ADMINISTRATION.—Section 5 of the Small
3 Business Act (15 U.S.C. 634) is amended by adding at
4 the end the following:

5 “(i) OFFICE OF HEARINGS AND APPEALS.—

6 “(1) IN GENERAL.—There is established in the
7 Administration an Office of Hearings and Appeals—

8 “(A) to impartially decide such matters,
9 where Congress designates that a hearing on
10 the record is required or which the Adminis-
11 trator designates by regulation or otherwise;
12 and

13 “(B) which shall contain the Administra-
14 tion’s Freedom of Information/Privacy Acts Of-
15 fice.

16 “(2) CHIEF HEARING OFFICER.—The Chief
17 Hearing Officer shall be a career member of the
18 Senior Executive Service and an attorney duly li-
19 censed by any State, commonwealth, territory, or the
20 District of Columbia.

21 “(A) DUTIES.—The Chief Hearing Officer
22 shall—

23 “(i) serve as the Chief Administrative
24 Law Judge; and

1 “(ii) be responsible for the operation
2 and management of the Office of Hearings
3 and Appeals, pursuant to the rules of prac-
4 tice established by the Administrator.

5 “(B) ALTERNATIVE DISPUTE RESOLU-
6 TION.—The Chief Hearing Officer may also as-
7 sign a matter for mediation or other means of
8 alternative dispute resolution.

9 “(3) ADMINISTRATIVE LAW JUDGES.—

10 “(A) IN GENERAL.—An administrative law
11 judge shall be an attorney duly licensed by any
12 State, commonwealth, territory, or the District
13 of Columbia.

14 “(B) CONDITIONS OF EMPLOYMENT.—(i)
15 An administrative law judge shall serve in the
16 excepted service as an employee of the Adminis-
17 tration under section 2103 of title 5, United
18 States Code, and under the supervision of the
19 Chief Hearing Officer.

20 “(ii) Administrative law judge positions
21 shall be classified at Senior Level, as such term
22 is defined in section 5376 of title 5, United
23 States Code.

24 “(iii) Compensation for administrative law
25 judge positions shall be set in accordance with

1 the pay rates of section 5376 of title 5, United
 2 States Code.

3 “(C) TREATMENT OF CURRENT PER-
 4 SONNEL.—An individual serving as a Judge in
 5 the Office of Hearings and Appeals (as that po-
 6 sition and office are designated in section
 7 134.101 of title 13, Code of Federal Regula-
 8 tions (as in effect on January 1, 2012)) on the
 9 effective date of this subsection shall be consid-
 10 ered as qualified to be and redesignated as ad-
 11 ministrative law judges.

12 “(D) POWERS.—An administrative law
 13 judge shall have the authority to conduct hear-
 14 ings in accordance with sections 554, 556, and
 15 557 of title 5, United States Code.”.

16 **SEC. 5. REQUIREMENT FRAUDULENT BUSINESSES BE SUS-**
 17 **PENDED OR DEBARRED.**

18 (a) IN GENERAL.—Section ~~16(d)(2)~~ 16(d)(2)(C) of
 19 the Small Business Act (15 U.S.C. ~~645(d)(3)~~
 20 645(d)(2)(C)) is amended by striking “on the basis that
 21 such misrepresentation indicates a lack of business integ-
 22 rity that seriously and directly affects the present respon-
 23 sibility to perform any contract awarded by the Federal
 24 Government or a subcontract under such a contract” and
 25 inserting “if the misrepresentation is established by a pre-

1 ponderance of the evidence (in the case of debarment) or
2 adequate evidence (in the case of suspension)’’.

3 (b) REVISION TO FAR.—Not later than 270 days
4 after the date of enactment of this Act, the Federal Acqui-
5 sition Regulation shall be revised to implement the amend-
6 ment made by this section.

7 (c) PUBLICATION OF PROCEDURES REGARDING SUS-
8 PENSION AND DEBARMENT.—Not later than 270 days
9 after the date of enactment of this Act, the Administrator
10 shall publish on the Administration’s Web site the stand-
11 ard operating procedures for suspension and debarment
12 in effect, and the name and contact information for the
13 individual designated by the Administrator as the senior
14 individual responsible for suspension and debarment pro-
15 ceedings.

16 (d) REQUIRED REGULATIONS.—Not later than 270
17 days after the date of enactment of this Act, the Adminis-
18 trator of the Small Business Administration shall issue
19 regulations defining the term “adequate evidence” for pur-
20 poses of section 16(d)(2) of the Small Business Act.

21 **SEC. 6. ANNUAL REPORT ON SUSPENSIONS AND**
22 **DEBARMENTS PROPOSED BY SMALL BUSI-**
23 **NESS ADMINISTRATION.**

24 (a) REPORT REQUIREMENT.—The Administrator of
25 the Small Business Administration shall submit each year

1 to the Committee on Small Business and Entrepreneur-
2 ship of the Senate, and the Committee on Small Business
3 of the House of Representatives a report on the suspen-
4 sion and debarment actions taken by the Administrator
5 during the year preceding the year of submission of the
6 report.

7 (b) MATTERS COVERED.—The report required by
8 subsection (a) shall include the following information for
9 the year covered by the report:

10 (1) NUMBER.—The number of contractors pro-
11 posed for suspension or debarment.

12 (2) SOURCE.—The office within a Federal
13 agency that originated each proposal for suspension
14 or debarment.

15 (3) REASONS.—The reason for each proposal
16 for suspension or debarment.

17 (4) RESULTS.—The result of each proposal for
18 suspension or debarment, and the reason for such
19 result.

20 (5) REFERRALS.—The number of suspensions
21 or debarments referred to the Inspector General of
22 the Small Business Administration or another agen-
23 cy, or to the Attorney General (for purposes of this
24 paragraph, the Administrator may redact identifying
25 information on names of companies or other infor-

1 mation in order to protect the integrity of any ongoing
2 criminal or civil investigation).

3 **SEC. 7. SENSE OF CONGRESS.**

4 It is the sense of Congress that the Administrator
5 of the Small Business Administration should present to
6 the Inspector General of the Administration or the Attorney
7 General any evidence of a violation or potential violation
8 of section 1041, title 18, United States Code, or section
9 16(d) of the Small Business Act, presented in a proceeding
10 conducted by the Office of Hearings and Appeals
11 established in section 4 of this Act.

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