

CONTRACTING AND TAX ACCOUNTABILITY ACT OF 2015

APRIL 14, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 1562]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 1562) to prohibit the awarding of a contract or grant in excess of the simplified acquisition threshold unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that the contractor or grantee has no seriously delinquent tax debts, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The Contracting and Tax Accountability Act of 2015 (H.R. 1562) is designed to increase tax compliance by federal contractors and grantees. The federal government spends \$1 trillion on contracts and grants annually (in FY 2014, \$444 billion in contracts and \$591 in grants).¹ It is important to ensure that the federal contracts and grants, funded by the taxpayer, are only awarded to responsible businesses and individuals.

The bill would require any agency that issues a solicitation or that offers a grant in an amount greater than the simplified acquisition threshold (currently \$150,000) to require each person submitting a proposal to: (1) certify that such person does not have a seriously delinquent tax debt; and (2) authorize the Secretary of Treasury to disclose information limited to describing whether such person has a seriously delinquent tax debt. Self-certification of a seriously delinquent tax debt or a finding by the agency that the contractor has misrepresented its tax status would be considered definitive proof that a contractor is not a responsible party (41 U.S.C. 113) or, in the case of a grantee, is a high risk grant applicant—meaning a contractor is not eligible for new contracts and a grantee is subject to special oversight attention.

If a contractor or grantee is found to have a seriously delinquent tax debt (whether identified by self-certification or by Treasury verification), the bill requires agencies to initiate suspension or debarment proceedings.² The agency may exercise a waiver to stop such proceedings, if the agency makes a written finding of “urgent and compelling circumstances significantly affecting the interests of the United States.” A report on the exercise of this waiver authority must be provided to Congress within 30 days of exercising the waiver.

The term “seriously delinquent tax debt” is defined in the bill as “a Federal tax liability that has been assessed by the Secretary of the Treasury under the Internal Revenue Code of 1986 and may be collected by the Secretary by levy or by a proceeding in court.”³ The definition does not include certain tax debts where: (1) tax debts are being paid in a timely manner under an approved installment agreement or offer and compromise agreement with the IRS; (2) there is a collection due process hearing requested or pending, or where the taxpayer has received debt relief because the debt is not attributable to the taxpayer because, for example, they are an innocent spouse; (3) a debt subject to continuous levy has been issued (i.e. that debt is being collected by levy); and (4) a debt has been released because the Secretary has determined that levy is

¹ USASPENDING (April 8, 2015).

² For suspension and debarments proceedings, contractors would be subject to proceedings under Federal Acquisition Regulation (FAR) 9.4 and grantees would be subject to such proceedings under 2 CFR Chap. 1, Part 180, Subparts G and H (and as these rules may be further revised).

³ The Federal Acquisition Regulation at 9.406–2(b)(1) includes a definition of delinquent federal taxes as an amount that exceeds \$3,000 and notes the point at which such taxes are considered delinquent to be when the tax liability is (1) “finally determined” and (2) when the taxpayer is delinquent in making payments. The Committee does not consider this definition inconsistent with the definition in the bill.

creating an economic hardship due to the financial condition of the taxpayer.

The Committee notes that with respect to the definition of “seriously delinquent tax debt,” in practice the IRS does not typically issue a notice of lien unless the debt exceeds \$10,000. Thus, in practice, this definition would cover debts of \$10,000 or more.

The bill also defines the term “Executive Agency” by referencing 41 U.S.C. 133. This definition in the code is a broad definition covering the Department of Defense. This definition is important because it makes clear this bill would have government-wide application.

BACKGROUND AND NEED FOR LEGISLATION

The Government Accountability Office (GAO) has repeatedly found thousands of government contractors had substantial amounts of unpaid federal taxes. Specifically, GAO has reported:

- Over 30,000 Medicaid providers paid during FY 2006 owed over \$1 billion in unpaid federal taxes. GAO–08–17 (2007).
- Tens of thousands of recipients of federal grant and direct assistance programs collectively owed \$790 million in federal taxes (as of September 2006). GAO–08–31 (2007).
- Approximately 27,000 defense contractors, 33,000 civilian agency contractors, and 3,800 General Services Administration contractors owed about \$3 billion, \$3.3 billion, and \$1.4 billion in unpaid taxes, respectively. GAO–07–742T (2007).
- Over 27,000 Medicare providers paid during the calendar year 2006 owed over \$2 billion in federal taxes. Most of the unpaid taxes owed by the providers were payroll taxes that are used to fund the Medicare program. GAO–08–618 (2008).
- At least 3,700 Recovery Act contract and grant recipients owed more than \$750 million in known unpaid federal taxes while receiving over \$24 billion in Recovery Act funds. GAO–11–485 (2011).
- Over 83,000 DOD employees and contractors who held or were eligible for national security clearances had unpaid tax debt totaling more than \$712 million as of 2012. Note: About 40 percent of the 83,000 had a repayment plan for their debt. GAO–14–686R (2014).

GAO’s findings, over an extended period of time, indicate contractor tax compliance remains a significant problem. Contractors, like other taxpayers, must pay their fair share. Failure to pay federal taxes by some contractors also puts those contractors who do pay their fair share of taxes at a competitive disadvantage.

In response to the GAO reports and Congressional attention, the Federal Acquisition Regulation (FAR) was revised in April 2008. The revised FAR rule required that for any contracts over the simplified acquisition threshold (currently \$150,000), (1) offerors would have to certify tax delinquency status; and (2) where an offeror indicates the existence of “an indictment, charge, conviction, or civil judgment or Federal tax delinquency in an amount that exceeds \$3,000” an agency suspension and debarment official is notified.⁴ This bill is intended to codify existing FAR provisions and provide

⁴ FAR Part 9.104–5 *Certification regarding Responsibility Matters*.

authority to Treasury in order to verify the contractors' self-certification.

In January 2010, the Administration reacted by publishing a memo pushing for greater tax compliance by tasking the Commissioner for the Internal Revenue Service to conduct a review of self certifications submitted pursuant to the 2008 FAR revision. The President, in announcing this effort said, "by issuing this directive, all of us in Washington will be required to be more responsible stewards of your tax dollars" and added that paying taxes is "a fundamental responsibility of citizenship" and that the steps he was taking to improve tax compliance were just "common sense."⁵

In response to GAO reports and related developments, Congress also enacted several general provisions in appropriation acts.⁶ The purpose of these general provisions was to improve contractor tax compliance. The goal of this bill is to apply a government-wide standard for improving contractor tax compliance.

LEGISLATIVE HISTORY

On March 24, 2015, Chairman Jason Chaffetz (R-UT) introduced the Contracting and Tax Accountability Act of 2015 (H.R. 1562). Congresswoman Jackie Speier (D-CA) is an original cosponsor. The bill was referred to the Committee on Oversight and Government Reform and on March 25, 2015, the Committee ordered H.R. 1562 to be favorably reported by a voice vote. The Subcommittee on Government Operations held a hearing to discuss contractor and federal employee tax compliance on March 18, 2015.

In past Congresses, similar bills and amendments to appropriations bills seeking to improve contractors and grantees' tax compliance have been considered.

In the 113th Congress, Chairman Chaffetz introduced H.R. 882 on February 28, 2013.⁷ On April 12, 2013, H.R. 882 was ordered favorably reported by the Committee on Oversight and Government Reform.⁸ On April 15, 2013, H.R. 882 was approved by the House under suspension of the rules by a vote of 407–0. Senator Claire McCaskill (D-MO) introduced a similar bill in the Senate (S. 2247) on April 10, 2014. No further action was taken on these bills in the 113th Congress.

In the 112th Congress, an identical version of H.R. 882, H.R. 829, was ordered favorably reported by the Committee on Oversight and Government Reform on April 13, 2011. In the 111th Congress, Congressman Brad Ellsworth (D-IN) introduced a similar bill, H.R. 572, and Senator McCaskill introduced S. 265. Similar measures were also introduced in the 110th Congress by Congressman Ellsworth (D-IN) (H.R. 1986, H.R. 4881). In the Senate, S. 2519 was introduced by then-Senator Barack Obama (D-IL).

⁵ President Obama Directs Administration to Crack Down on Tax Cheats Seeking Government Contracts, January 20, 2010. <https://www.whitehouse.gov/the-press-office/president-obama-directs-administration-crack-down-tax-cheats-seeking-government-con>. Memorandum for Heads of Executive Departments and Agencies, January 20, 2010. <https://www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-1>

⁶ See Legislative History section for description of these General Provisions. Other developments include press reports, such as a 2012 report that two owners of one of the largest U.S. contractors operating in Afghanistan owed more than \$4 million in unpaid Federal taxes. <http://usatoday30.usatoday.com/news/washington/story/2012-04-15/carper-lionie-industries-taxes/54302070/1>

⁷ H.R. 882 is almost identical to H.R. 1562.

⁸ H. Rept. 113–35.

Several appropriations bills over the last several years have included general provisions to address federal contractors' tax compliance. In the FY2012 Consolidated Appropriations Act (P.L. 112–74), there were at least five general provisions in different parts of the Act to address tax compliance for Federal contractors. Generally, these provisions prohibited contracting with entities that had unpaid tax debts unless the covered agency suspension and debarment official had reviewed the case and determined suspension and debarment were not necessary to protect the government's interest. The language was sometimes slightly different in these provisions.

In the FY2015 Consolidated and Continuing Appropriations Act (P.L. 113–235), there were at least two general provisions on contractor tax compliance. In the general government section of Division E, Section 744 took a government-wide approach to contractor tax compliance. In some ways, Section 744 took a broader approach than H.R. 1562 by applying its requirements beyond contracting and grants to include cooperative agreements, loans or loan guarantees, or memorandum of understanding. Section 744 language was generally consistent with the language of past general provisions, which prohibits the above mentioned transactions with entities that had unpaid tax liabilities, where the agency is aware of unpaid tax liability, unless the suspension and debarment official has reviewed the case and determined further action is not necessary to protect the interests of the government.⁹

The second general provision in FY2015 to address contractor tax compliance appears in Division B (covering Commerce, Justice, State appropriations). This general provision (Section 523) has different certification requirements and triggers from other general provisions in appropriations acts. For example, it covers only those contracts and grants over \$500,000 and the certification includes a requirement to certify no criminal offense conviction under the Internal Revenue Code of 1986 over the last three years. Given multiple general provisions and varying language, the Committee expects that H.R. 1562 will mitigate any confusion in these general provisions and other provisions of law.

SECTION-BY-SECTION

Section 1. Short title

Contracting and Tax Accountability Act of 2015.

Section 2. Purpose

This section makes clear that no government contracts or grants shall be awarded to individuals or companies with seriously delinquent federal tax debt.

Section 3. Disclosure and evaluation of contract offers from delinquent federal debtors

This section requires contractors when submitting a proposal: (1) to certify they do not have seriously delinquent tax debt (as defined in Sec. 5(3)); and (2) to authorize the Secretary of Treasury to disclose to the head of the agency information limited to determining

⁹Section 744 of P.L. 113–235 also includes the words, “none of the funds made available by this or any other act,” indicating permanence and an authorization on an appropriations law.

whether the contractor has seriously delinquent tax debt. This certification applies to contracts valued over the simplified acquisition threshold (\$150,000).

If by self-certification or the agency finds the contractor has seriously delinquent tax debt, this will be definitive proof that the contractor is not a “responsible source,” meaning they are not eligible for new contracts with the federal government. The term “responsible source” is a term of art defined in law (41 U.S.C. 113). Contractors must be “responsible” in order to contract with the federal government.

Next, this section provides that upon finding there is a seriously delinquent tax debt, the head of the agency must “shall initiate a suspension or debarment proceeding” under the rules of the FAR against the contractor. However, the head of the agency may waive the requirement to initiate a suspension or debarment proceeding. The waiver authority may be exercised, if the agency head provides a written finding of “urgent and compelling circumstances significantly affecting the interests of the United States.” The agency must also submit to Congress a report within 30 days after the waiver is made. The report must contain the rationale and information supporting the waiver.

Finally, no later than 270 days after enactment the FAR must be revised to reflect the requirements of this section.

Section 4. Disclosure and evaluation of grant applications from delinquent federal debtors

This section covers grants and largely provides for the same processes as in Section 3. The language directs agencies offering grants (in excess of the simplified acquisition threshold) to require grant applicants to certify their tax status when submitting grant applications. If the grant applicant does have a seriously delinquent tax debt, this is definitive proof the grant applicant will be considered “high risk” (which is a term of art for grants). If the applicant is “high risk” and if the applicant is awarded the grant, the agency must take appropriate measures under Office of Management and Budget (OMB) guidelines for enhanced oversight of high-risk grantees. If the grant applicant is found “high risk,” the head of the agency is required to initiate suspension or debarment proceedings against the grant applicant (2 CFR Subtitle A, Part 180 Subpart G & H).

Like the contracts provision, there is also waiver authority to stop the referral to initiate suspension or debarment proceedings. The waiver authority may be used if the agency provides a written determination that there are “urgent and compelling circumstances significantly affecting the interests of the United States.” Then, within 30 days after the waiver is made, the agency must submit a report with the written determination and other supporting information. Finally, OMB is directed to revise OMB guidelines to reflect the requirements of this bill.

Section 5. Definitions and special rules

This section provides definitions for terms. The definition of “person” includes an individual, a partnership, and a corporation. A “partnership” would be treated as a person with seriously delinquent tax debt when the partnership has a partner who holds an

ownership interest of 50% or more in the partnership and has the seriously delinquent tax debt. A “corporation” would be treated as a person with seriously delinquent tax debt when the corporation has an officer or shareholder who holds 50% or more or a controlling interest that is less than 50 percent of the outstanding shares of corporate stock in that corporation. The definition of “executive agency” includes all executive agencies, military departments, independent agencies, and government corporations (5 U.S.C. 133).

The definition of “seriously delinquent tax debt” means a federal tax liability that has been assessed by the Secretary of Treasury under the Internal Revenue Code of 1986 and may be collected by the Secretary by levy or by a proceeding in court.

There are several exceptions to the term seriously delinquent tax debt to ensure the bill does not cover certain types of debt. For example, the definition “seriously delinquent tax debt” does not cover debt where: (1) the person has entered into an installment plan agreement or an offer and compromise agreement with the IRS and is making timely payments; (2) there is a collection due process hearing requested or pending, or where the taxpayer has received debt relief because they proved the debt is not attributable to them under, for example, the innocent spouse theory; (3) a debt subject to continuous levy has been issued (i.e. that debt is being collected by levy); and (4) a debt has been released because the Secretary has determined that levy is creating an economic hardship due to the financial condition of the taxpayer.

Section 6. Effective date

This section provides the effective date of the bill as 270 days after enactment.

EXPLANATION OF AMENDMENTS

No amendments were offered during Full Committee consideration of the bill.

COMMITTEE CONSIDERATION

On March 25, 2015, the Committee met in open session and ordered reported favorably the bill, H.R. 1562, by voice vote, a quorum being present.

ROLL CALL VOTES

There were no recorded votes during Full Committee consideration of the bill.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill prohibits the awarding of a contract or grant in excess of the simplified acquisition threshold unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that the contractor or grantee has no seriously delinquent tax debts. As such, this bill

does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of the bill is to prohibit the awarding of a contract or grant in excess of the simplified acquisition threshold unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that the contractor or grantee has no seriously delinquent tax debts.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Section 3(e) of the bill requires the Federal Acquisition Regulation to be revised not later than 270 days after enactment. Section 4(e) requires the Office of Management and Budget to revise applicable regulations as necessary to incorporate the requirements of Section 4, not later than 270 days after enactment.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

H.R. 1562—Contracting and Tax Accountability Act of 2015

H.R. 1562 would prohibit federal agencies from awarding contracts or grants to persons or companies that have seriously delinquent tax debt. The legislation defines seriously delinquent tax debt to the federal government as Internal Revenue Service (IRS) assessments that may be collected by levy or through a court proceeding. Tax debt that is being paid in a timely manner, or is part of a requested or pending collection-due-process hearing, would not be considered seriously delinquent. Under the bill, certain contractors and grantees that receive federal funds would have to certify that they do not have such tax debt, and the IRS would be authorized to confirm or refute those claims on behalf of the federal agencies involved.

Based on information from the Office of Management and Budget, the IRS, and the staff of the Joint Committee on Taxation (JCT), CBO estimates that implementing H.R. 1562 would increase federal administrative costs by less than \$500,000 annually, assuming the availability of appropriated funds. The bill would affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates that any net increase in direct spending by such agencies would not be significant. JCT staff estimate that enacting the bill would have a negligible effect on revenues.

Most provisions of the bill would codify current practices used to collect tax debt. The federal government currently collects financial information on its contractors and grant recipients through a variety of databases. In addition, the IRS provides data on tax liens and tax debt to various Treasury Department programs which withhold or reduce certain federal payments to collect delinquent tax (and nontax) debt owed to federal agencies. Consequently, CBO estimates that implementing this bill would not significantly increase administrative costs to federal agencies.

H.R. 1562 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

