

115TH CONGRESS
1ST SESSION

H. R. 3424

To prohibit the award of Federal Government contracts to inverted domestic corporations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2017

Ms. DELAURO (for herself, Mr. LEVIN, and Mr. DOGGETT) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Armed Services, 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

A BILL

To prohibit the award of Federal Government contracts to inverted domestic corporations, 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 “American Business for
5 American Companies Act of 2017”.

6 **SEC. 2. PROHIBITION ON AWARDING CONTRACTS TO IN-**
7 **VERTED DOMESTIC CORPORATIONS.**

8 (a) CIVILIAN CONTRACTS.—

1 (1) IN GENERAL.—Chapter 47 of title 41,
2 United States Code, is amended by adding at the
3 end the following new section:

4 **“§ 4713. Prohibition on awarding contracts to in-**
5 **verted domestic corporations**

6 “(a) PROHIBITION.—

7 “(1) IN GENERAL.—The head of an executive
8 agency may not award a contract for the procure-
9 ment of property or services to—

10 “(A) any foreign incorporated entity that
11 such head has determined is an inverted domes-
12 tic corporation or any subsidiary of such entity;
13 or

14 “(B) any joint venture if more than 10
15 percent of the joint venture (by vote or value)
16 is held by a foreign incorporated entity that
17 such head has determined is an inverted domes-
18 tic corporation or any subsidiary of such entity.

19 “(2) SUBCONTRACTS.—

20 “(A) IN GENERAL.—The head of an execu-
21 tive agency shall include in each contract for
22 the procurement of property or services award-
23 ed by the executive agency with a value in ex-
24 cess of \$10,000,000, other than a contract for
25 exclusively commercial items, a clause that pro-

1 hibits the prime contractor on such contract
2 from—

3 “(i) awarding a first-tier subcontract
4 with a value greater than 10 percent of the
5 total value of the prime contract to an en-
6 tity or joint venture described in paragraph
7 (1); or

8 “(ii) structuring subcontract tiers in a
9 manner designed to avoid the limitation in
10 paragraph (1) by enabling an entity or
11 joint venture described in paragraph (1) to
12 perform more than 10 percent of the total
13 value of the prime contract as a lower-tier
14 subcontractor.

15 “(B) PENALTIES.—The contract clause in-
16 cluded in contracts pursuant to subparagraph
17 (A) shall provide that, in the event that the
18 prime contractor violates the contract clause—

19 “(i) the prime contract may be termi-
20 nated for default; and

21 “(ii) the matter may be referred to
22 the suspension or debarment official for
23 the appropriate agency and may be a basis
24 for suspension or debarment of the prime
25 contractor.

1 “(b) INVERTED DOMESTIC CORPORATION.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion, a foreign incorporated entity shall be treated as
4 an inverted domestic corporation if, pursuant to a
5 plan (or a series of related transactions)—

6 “(A) the entity completes on or after May
7 8, 2014, the direct or indirect acquisition of—

8 “(i) substantially all of the properties
9 held directly or indirectly by a domestic
10 corporation; or

11 “(ii) substantially all of the assets of,
12 or substantially all of the properties consti-
13 tuting a trade or business of, a domestic
14 partnership; and

15 “(B) after the acquisition, either—

16 “(i) more than 50 percent of the stock
17 (by vote or value) of the entity is held—

18 “(I) in the case of an acquisition
19 with respect to a domestic corpora-
20 tion, by former shareholders of the
21 domestic corporation by reason of
22 holding stock in the domestic corpora-
23 tion; or

24 “(II) in the case of an acquisition
25 with respect to a domestic partner-

1 ship, by former partners of the do-
2 mestic partnership by reason of hold-
3 ing a capital or profits interest in the
4 domestic partnership; or

5 “(ii) the management and control of
6 the expanded affiliated group which in-
7 cludes the entity occurs, directly or indi-
8 rectly, primarily within the United States,
9 as determined pursuant to regulations pre-
10 scribed by the Secretary of the Treasury,
11 and such expanded affiliated group has
12 significant domestic business activities.

13 “(2) EXCEPTION FOR CORPORATIONS WITH
14 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
15 COUNTRY OF ORGANIZATION.—

16 “(A) IN GENERAL.—A foreign incorporated
17 entity described in paragraph (1) shall not be
18 treated as an inverted domestic corporation if
19 after the acquisition the expanded affiliated
20 group which includes the entity has substantial
21 business activities in the foreign country in
22 which or under the law of which the entity is
23 created or organized when compared to the
24 total business activities of such expanded affili-
25 ated group.

1 “(B) SUBSTANTIAL BUSINESS ACTIVI-
2 TIES.—The Secretary of the Treasury (or the
3 Secretary’s delegate) shall establish regulations
4 for determining whether an affiliated group has
5 substantial business activities for purposes of
6 subparagraph (A), except that such regulations
7 may not treat any group as having substantial
8 business activities if such group would not be
9 considered to have substantial business activi-
10 ties under the regulations prescribed under sec-
11 tion 7874 of the Internal Revenue Code of
12 1986, as in effect on January 18, 2017.

13 “(3) SIGNIFICANT DOMESTIC BUSINESS ACTIVI-
14 TIES.—

15 “(A) IN GENERAL.—For purposes of para-
16 graph (1)(B)(ii), an expanded affiliated group
17 has significant domestic business activities if at
18 least 25 percent of—

19 “(i) the employees of the group are
20 based in the United States;

21 “(ii) the employee compensation in-
22 curred by the group is incurred with re-
23 spect to employees based in the United
24 States;

1 “(iii) the assets of the group are lo-
2 cated in the United States; or

3 “(iv) the income of the group is de-
4 rived in the United States.

5 “(B) DETERMINATION.—Determinations
6 pursuant to subparagraph (A) shall be made in
7 the same manner as such determinations are
8 made for purposes of determining substantial
9 business activities under regulations referred to
10 in paragraph (2) as in effect on January 18,
11 2017, but applied by treating all references in
12 such regulations to ‘foreign country’ and ‘rel-
13 evant foreign country’ as references to ‘the
14 United States’. The Secretary of the Treasury
15 (or the Secretary’s delegate) may issue regula-
16 tions decreasing the threshold percent in any of
17 the tests under such regulations for deter-
18 mining if business activities constitute signifi-
19 cant domestic business activities for purposes of
20 this paragraph.

21 “(c) WAIVER.—

22 “(1) IN GENERAL.—The head of an executive
23 agency may waive subsection (a) with respect to any
24 Federal Government contract under the authority of

1 such head if the head determines that the waiver is
2 required in the interest of national security.

3 “(2) REPORT TO CONGRESS.—The head of an
4 executive agency issuing a waiver under paragraph
5 (1) shall, not later than 14 days after issuing such
6 waiver, submit a written notification of the waiver to
7 the relevant authorizing committees of Congress and
8 the Committees on Appropriations of the Senate and
9 the House of Representatives.

10 “(d) APPLICABILITY.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), this section shall not apply to any con-
13 tract entered into before the date of the enactment
14 of this section.

15 “(2) TASK AND DELIVERY ORDERS.—This sec-
16 tion shall apply to any task or delivery order issued
17 after the date of the enactment of this section pur-
18 suant to a contract entered into before, on, or after
19 such date of enactment.

20 “(3) SCOPE.—This section applies only to con-
21 tracts subject to regulation under the Federal Acqui-
22 sition Regulation.

23 “(e) DEFINITIONS AND SPECIAL RULES.—

24 “(1) DEFINITIONS.—In this section, the terms
25 ‘expanded affiliated group’, ‘foreign incorporated en-

1 tity’, ‘person’, ‘domestic’, and ‘foreign’ have the
 2 meaning given those terms in section 835(c) of the
 3 Homeland Security Act of 2002 (6 U.S.C. 395(c)).

4 “(2) SPECIAL RULES.—In applying subsection
 5 (b) of this section for purposes of subsection (a) of
 6 this section, the rules described under 835(c)(1) of
 7 the Homeland Security Act of 2002 (6 U.S.C.
 8 395(c)(1)) shall apply.”.

9 (2) CLERICAL AMENDMENT.—The table of sec-
 10 tions at the beginning of chapter 47 of title 41,
 11 United States Code, is amended by inserting after
 12 the item relating to section 4712 the following new
 13 item:

“4713. Prohibition on awarding contracts to inverted domestic corporations.”.

14 (b) DEFENSE CONTRACTS.—

15 (1) IN GENERAL.—Chapter 137 of title 10,
 16 United States Code, is amended by adding at the
 17 end the following new section:

18 **“§ 2340. Prohibition on awarding contracts to in-**
 19 **verted domestic corporations**

20 “(a) PROHIBITION.—

21 “(1) IN GENERAL.—The head of an agency may
 22 not award a contract for the procurement of prop-
 23 erty or services to—

24 “(A) any foreign incorporated entity that
 25 such head has determined is an inverted domes-

1 tic corporation or any subsidiary of such entity;
2 or

3 “(B) any joint venture if more than 10
4 percent of the joint venture (by vote or value)
5 is owned by a foreign incorporated entity that
6 such head has determined is an inverted domes-
7 tic corporation or any subsidiary of such entity.

8 “(2) SUBCONTRACTS.—

9 “(A) IN GENERAL.—The head of an execu-
10 tive agency shall include in each contract for
11 the procurement of property or services award-
12 ed by the executive agency with a value in ex-
13 cess of \$10,000,000, other than a contract for
14 exclusively commercial items, a clause that pro-
15 hibits the prime contractor on such contract
16 from—

17 “(i) awarding a first-tier subcontract
18 with a value greater than 10 percent of the
19 total value of the prime contract to an en-
20 tity or joint venture described in paragraph
21 (1); or

22 “(ii) structuring subcontract tiers in a
23 manner designed to avoid the limitation in
24 paragraph (1) by enabling an entity or
25 joint venture described in paragraph (1) to

1 perform more than 10 percent of the total
2 value of the prime contract as a lower-tier
3 subcontractor.

4 “(B) PENALTIES.—The contract clause in-
5 cluded in contracts pursuant to subparagraph
6 (A) shall provide that, in the event that the
7 prime contractor violates the contract clause—

8 “(i) the prime contract may be termi-
9 nated for default; and

10 “(ii) the matter may be referred to
11 the suspension or debarment official for
12 the appropriate agency and may be a basis
13 for suspension or debarment of the prime
14 contractor.

15 “(b) INVERTED DOMESTIC CORPORATION.—

16 “(1) IN GENERAL.—For purposes of this sec-
17 tion, a foreign incorporated entity shall be treated as
18 an inverted domestic corporation if, pursuant to a
19 plan (or a series of related transactions)—

20 “(A) the entity completes on or after May
21 8, 2014, the direct or indirect acquisition of—

22 “(i) substantially all of the properties
23 held directly or indirectly by a domestic
24 corporation; or

1 “(ii) substantially all of the assets of,
2 or substantially all of the properties consti-
3 tuting a trade or business of, a domestic
4 partnership; and

5 “(B) after the acquisition, either—

6 “(i) more than 50 percent of the stock
7 (by vote or value) of the entity is held—

8 “(I) in the case of an acquisition
9 with respect to a domestic corpora-
10 tion, by former shareholders of the
11 domestic corporation by reason of
12 holding stock in the domestic corpora-
13 tion; or

14 “(II) in the case of an acquisition
15 with respect to a domestic partner-
16 ship, by former partners of the do-
17 mestic partnership by reason of hold-
18 ing a capital or profits interest in the
19 domestic partnership; or

20 “(ii) the management and control of
21 the expanded affiliated group which in-
22 cludes the entity occurs, directly or indi-
23 rectly, primarily within the United States,
24 as determined pursuant to regulations pre-
25 scribed by the Secretary of the Treasury,

1 and such expanded affiliated group has
2 significant domestic business activities.

3 “(2) EXCEPTION FOR CORPORATIONS WITH
4 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
5 COUNTRY OF ORGANIZATION.—

6 “(A) IN GENERAL.—A foreign incorporated
7 entity described in paragraph (1) shall not be
8 treated as an inverted domestic corporation if
9 after the acquisition the expanded affiliated
10 group which includes the entity has substantial
11 business activities in the foreign country in
12 which or under the law of which the entity is
13 created or organized when compared to the
14 total business activities of such expanded affili-
15 ated group.

16 “(B) SUBSTANTIAL BUSINESS ACTIVI-
17 TIES.—The Secretary of the Treasury (or the
18 Secretary’s delegate) shall establish regulations
19 for determining whether an affiliated group has
20 substantial business activities for purposes of
21 subparagraph (A), except that such regulations
22 may not treat any group as having substantial
23 business activities if such group would not be
24 considered to have substantial business activi-
25 ties under the regulations prescribed under sec-

1 tion 7874 of the Internal Revenue Code of
2 1986, as in effect on January 18, 2017.

3 “(3) SIGNIFICANT DOMESTIC BUSINESS ACTIVI-
4 TIES.—

5 “(A) IN GENERAL.—For purposes of para-
6 graph (1)(B)(ii), an expanded affiliated group
7 has significant domestic business activities if at
8 least 25 percent of—

9 “(i) the employees of the group are
10 based in the United States;

11 “(ii) the employee compensation in-
12 curred by the group is incurred with re-
13 spect to employees based in the United
14 States;

15 “(iii) the assets of the group are lo-
16 cated in the United States; or

17 “(iv) the income of the group is de-
18 rived in the United States.

19 “(B) DETERMINATION.—Determinations
20 pursuant to subparagraph (A) shall be made in
21 the same manner as such determinations are
22 made for purposes of determining substantial
23 business activities under regulations referred to
24 in paragraph (2) as in effect on January 18,
25 2017, but applied by treating all references in

1 such regulations to ‘foreign country’ and ‘rel-
2 evant foreign country’ as references to ‘the
3 United States’. The Secretary of the Treasury
4 (or the Secretary’s delegate) may issue regula-
5 tions decreasing the threshold percent in any of
6 the tests under such regulations for deter-
7 mining if business activities constitute signifi-
8 cant domestic business activities for purposes of
9 this paragraph.

10 “(c) WAIVER.—

11 “(1) IN GENERAL.—The head of an agency may
12 waive subsection (a) with respect to any Federal
13 Government contract under the authority of such
14 head if the head determines that the waiver is re-
15 quired in the interest of national security.

16 “(2) REPORT TO CONGRESS.—The head of an
17 agency issuing a waiver under paragraph (1) shall,
18 not later than 14 days after issuing such waiver,
19 submit a written notification of the waiver to the
20 Committees on Armed Services and Appropriations
21 of the Senate and the House of Representatives.

22 “(d) APPLICABILITY.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), this section shall not apply to any con-

1 tract entered into before the date of the enactment
2 of this section.

3 “(2) TASK AND DELIVERY ORDERS.—This sec-
4 tion shall apply to any task or delivery order issued
5 after the date of the enactment of this section pur-
6 suant to a contract entered into before, on, or after
7 such date of enactment.

8 “(3) SCOPE.—This section applies only to con-
9 tracts subject to regulation under the Federal Acqui-
10 sition Regulation and the Defense Supplement to the
11 Federal Acquisition Regulation.

12 “(e) DEFINITIONS AND SPECIAL RULES.—

13 “(1) DEFINITIONS.—In this section, the terms
14 ‘expanded affiliated group’, ‘foreign incorporated en-
15 tity’, ‘person’, ‘domestic’, and ‘foreign’ have the
16 meaning given those terms in section 835(c) of the
17 Homeland Security Act of 2002 (6 U.S.C. 395(c)).

18 “(2) SPECIAL RULES.—In applying subsection
19 (b) of this section for purposes of subsection (a) of
20 this section, the rules described under 835(c)(1) of
21 the Homeland Security Act of 2002 (6 U.S.C.
22 395(c)(1)) shall apply.”.

23 (2) CLERICAL AMENDMENT.—The table of sec-
24 tions at the beginning of chapter 137 of title 10,
25 United States Code, is amended by inserting after

1 the item relating to section 2339 the following new
2 item:

“2340. Prohibition on awarding contracts to inverted domestic corporations.”.

3 (c) REGULATIONS REGARDING MANAGEMENT AND
4 CONTROL.—

5 (1) IN GENERAL.—The Secretary of the Treas-
6 ury (or the Secretary’s delegate) shall, for purposes
7 of section 4713(b)(1)(B)(ii) of title 41, United
8 States Code, and section 2340(b)(1)(B)(ii) of title
9 10, United States Code, as added by subsections (a)
10 and (b), respectively, prescribe regulations for pur-
11 poses of determining cases in which the management
12 and control of an expanded affiliated group is to be
13 treated as occurring, directly or indirectly, primarily
14 within the United States. The regulations prescribed
15 under the preceding sentence shall apply to periods
16 after May 8, 2014.

17 (2) EXECUTIVE OFFICERS AND SENIOR MAN-
18 AGEMENT.—The regulations prescribed under para-
19 graph (1) shall provide that the management and
20 control of an expanded affiliated group shall be
21 treated as occurring, directly or indirectly, primarily
22 within the United States if substantially all of the
23 executive officers and senior management of the ex-
24 panded affiliated group who exercise day-to-day re-
25 sponsibility for making decisions involving strategic,

1 financial, and operational policies of the expanded
2 affiliated group are based or primarily located within
3 the United States. Individuals who in fact exercise
4 such day-to-day responsibilities shall be treated as
5 executive officers and senior management regardless
6 of their title.

○