I

115TH CONGRESS
2D SESSION

H. R. 7294

To establish the obligations of certain large business entities in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2018

Mr. BEN RAY LUJÁN of New Mexico (for himself, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. LYNCH, Mr. POCAN, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Financial Services, House Administration, and Education and the Workforce, 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 establish the obligations of certain large business entities in the United States, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Accountable Capitalism Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) DIRECTOR.—The term “Director” means the Director of the Office.

(2) LARGE ENTITY.—

(A) IN GENERAL.—The term “large entity” means an entity that—

(i) is organized under the laws of a State as a corporation, body corporate, body politic, joint stock company, or limited liability company;

(ii) engages in interstate commerce; and

(iii) in a taxable year, according to information provided by the entity to the Internal Revenue Service, has more than $1,000,000,000 in gross receipts.

(B) AGGREGATION RULES.—All entities treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986, or subsection (m) or (o) of section 414 of such Code, shall be treated as 1 entity for the purposes of subparagraph (A).

(3) OFFICE.—The term “Office” means the Office of United States Corporations established under section 3.

(4) OFFICER.—The term ''officer'' means, with respect to a United States corporation—

(A) the president of the United States corporation;

(B) the principal operating officer of the United States corporation;

(C) the principal accounting officer of the United States corporation or, if the United States corporation does not have such an accounting officer, the controller of the United States corporation; and

(D) any vice president in charge of a principal business unit, division, or function of the United States corporation.

(5) STATE.—The term ''State'' means—

(A) each of the several States of the United States;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico;

(D) Guam;

(E) the United States Virgin Islands;

(F) American Samoa; and

(G) the Commonwealth of the Northern Mariana Islands.

(6) UNITED STATES CORPORATION.—The term "United States corporation" means a large entity with respect to which the Office has granted a charter under section 3.

SEC. 3. OFFICE OF UNITED STATES CORPORATIONS.

(a) ESTABLISHMENT.—There is established within the Department of Commerce the Office of United States Corporations.

(b) DIRECTOR.—

(1) ESTABLISHMENT OF POSITION.—There is established the position of Director of the Office, who shall be the head of the Office.

(2) APPOINTMENT; TERM.—

(A) APPOINTMENT.—Except as provided in subparagraph (E), the Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(B) TERM.—The Director shall be appointed for a term of 4 years, unless removed before the end of that term by the President.

(C) VACANCY.—A vacancy in the position of Director that occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established under subparagraph (A), and the Director appointed to fill that vacancy shall be appointed only for the remainder of that term.

(D) SERVICE AFTER END OF TERM.—An individual may serve as the Director after the expiration of the term for which the individual was appointed until a successor has been appointed.

(E) INITIAL DIRECTOR.—The Secretary of Commerce shall appoint an individual to serve as the Director until an individual is appointed to serve as the Director in accordance with subparagraph (A).

(c) DUTIES.—The Office shall—

(1) review and grant charter applications for large entities;

(2) monitor whether large entities have obtained a charter in accordance with this Act;

(3) except as provided in paragraph (4)(B), refer any violation of this Act to the appropriate Federal agency for enforcement with respect to that violation; and

(4) when appropriate—

(A) rescind the charters of United States corporations under section 4(b);

(B) revoke the charters of United States corporations under sections 6(c)(2)(B)(ii), 8(c)(2), and 9; and

(C) issue rules to prevent entities from taking action to intentionally avoid qualifying as large entities.

(d) DISCLOSURE OF TAXPAYER IDENTITY INFORMATION FOR USE BY OFFICE.—

(1) IN GENERAL.—Section 6103(m) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"(8) OFFICE OF UNITED STATES CORPORATIONS.—Upon written request by the Director of the Office of United States Corporations, the Secretary shall disclose taxpayer identity information to officers and employees of the Office of United States Corporations solely for purposes of identifying any taxpayer that satisfies the requirement under section 2(2)(A)(iii) or 4(b) of the Accountable Capitalism Act for the most recent taxable year for which information is available.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the date of enactment of this Act.

SEC. 4. REQUIREMENT FOR LARGE ENTITIES TO OBTAIN CHARTERS.

(a) LARGE ENTITIES.—

(1) IN GENERAL.—An entity that is organized as a corporation, body corporate, body politic, joint stock company, or limited liability company in a State shall obtain a charter from the Office as follows:

(A) If the entity is a large entity with respect to the most recently completed taxable year of the entity before the date of enactment of this Act, the entity shall obtain the charter not later than 2 years after the date of enactment of this Act.

(B) If the entity is a large entity with respect to any taxable year of the entity that begins after the date of enactment of this Act, the entity shall obtain the charter not later than 1 year after the last day of that taxable year.

(2) FAILURE TO OBTAIN CHARTER.—An entity to which paragraph (1) applies and that fails to obtain a charter from the Office as required under that paragraph shall not be treated as a corporation, body corporate, body politic, joint-stock company, or limited liability company, as applicable, for the purposes of Federal law during the period beginning on

the date on which the entity is required to obtain a charter under that paragraph and ending on the date on which the entity obtains the charter.

(b) RESCISSIONS.—

(1) IN GENERAL.—An entity that has obtained a charter as a United States corporation and, with respect to a subsequent taxable year of the entity, is not a large entity may file a petition with the Office to rescind the charter of the United States corporation.

(2) DETERMINATION.—Not later than 180 days after the date on which the Office receives a petition that an entity files under paragraph (1), the Office shall grant the petition if the Office determines that the entity, with respect to the most recently completed taxable year of the entity preceding the date on which the petition was filed, was not a large entity.

SEC. 5. RESPONSIBILITIES OF UNITED STATES CORPORATIONS.

(a) DEFINITIONS.—In this section:

(1) GENERAL PUBLIC BENEFIT.—The term ‘‘general public benefit’’ means a material positive impact on society resulting from the business and

operations of a United States corporation, when taken as a whole.

(2) SUBSIDIARY.—The term ''subsidiary'' means, with respect to a person, an entity in which the person owns beneficially or of record not less than 50 percent of the outstanding equity interests of the entity, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

(b) CHARTER REQUIREMENTS.—

(1) IN GENERAL.—The charter of a large entity that is filed with the Office shall state that the entity is a United States corporation.

(2) CORPORATE PURPOSES.—A United States corporation shall have the purpose of creating a general public benefit, which shall be—

(A) identified in the charter of the United States corporation; and

(B) in addition to the purpose of the United States corporation under the articles of incorporation in the State in which the United States corporation is incorporated, if applicable.

(c) STANDARD OF CONDUCT FOR DIRECTORS AND OFFICERS.—

(1) CONSIDERATION OF INTERESTS.—In discharging the duties of their respective positions, and in considering the best interests of a United States corporation, the board of directors, committees of the board of directors, and individual directors of a United States corporation—

(A) shall manage or direct the business and affairs of the United States corporation in a manner that—

(i) seeks to create a general public benefit; and

(ii) balances the pecuniary interests of the shareholders of the United States corporation with the best interests of persons that are materially affected by the conduct of the United States corporation; and

(B) in carrying out subparagraph (A)—

(i) shall consider the effects of any action or inaction on—

(I) the shareholders of the United States corporation;

(II) the employees and workforce of—

(aa) the United States corporation;

(bb) the subsidiaries of the United States corporation; and

(cc) the suppliers of the United States corporation;

(III) the interests of customers and subsidiaries of the United States corporation as beneficiaries of the general public benefit purpose of the United States corporation;

(IV) community and societal factors, including those of each community in which offices or facilities of the United States corporation, subsidiaries of the United States corporation, or suppliers of the United States corporation are located;

(V) the local and global environment;

(VI) the short-term and long-term interests of the United States corporation, including—

(aa) benefits that may accrue to the United States corporation from the long-term plans of the United States corporation; and

(bb) the possibility that those interests may be best served by the continued independence of the United States corporation; and

(VII) the ability of the United States corporation to accomplish the general public benefit purpose of the United States corporation;

(ii) may consider—

(I) other pertinent factors; or

(II) the interests of any other group that are identified in the articles of incorporation in the State in which the United States corporation is incorporated, if applicable; and

(iii) shall not be required to give priority to a particular interest or factor described in clause (i) or (ii) over any other interest or factor.

(2) STANDARD OF CONDUCT FOR OFFICERS.—Each officer of a United States corporation shall balance and consider the interests and factors de-

scribed in paragraph (1)(B)(i) in the manner described in paragraph (1)(B)(iii) if—

(A) the officer has discretion to act with respect to a matter; and

(B) it reasonably appears to the officer that the matter may have a material effect on the creation by the United States corporation of a general public benefit identified in the charter of the United States corporation.

(3) EXONERATION FROM PERSONAL LIABILITY.—Except as provided in the charter of a United States corporation, neither a director nor an officer of a United States corporation may be held personally liable for monetary damages for—

(A) any action or inaction in the course of performing the duties of a director under paragraph (1) or an officer under paragraph (2), as applicable, if the director or officer was not interested with respect to the action or inaction; or

(B) the failure of the United States corporation to pursue or create a general public benefit.

(4) LIMITATION ON STANDING.—Neither a director nor an officer of a United States corporation

shall have any duty to a person that is a beneficiary of the general public benefit purpose of the United States corporation because of the status of the person as such a beneficiary.

(5) BUSINESS JUDGMENTS.—A director or an officer of a United States corporation who makes a business judgment in good faith shall be deemed to have fulfilled the duty of the director under paragraph (1) or the officer under paragraph (2), as applicable, if the director or officer—

(A) is not interested in the subject of the business judgment;

(B) is informed with respect to the subject of the business judgment to an extent that the director reasonably believes to be appropriate under the circumstances; and

(C) rationally believes that the business judgment is in the best interests of the United States corporation.

(d) RIGHT OF ACTION.—

(1) LIMITATION ON LIABILITY OF CORPORATION.—A United States corporation shall not be liable for monetary damages under this section for any failure of the United States corporation to pursue or create a general public benefit.

(2) STANDING.—A proceeding to enforce the requirements of this section may be commenced or maintained only—

(A) directly by the United States corporation to which the proceeding applies; or

(B) derivatively, under the laws of the State in which the United States corporation is organized, by a person, or a group of persons, that own—

(i) beneficially or of record not less than 2 percent of the total number of shares of a class or series outstanding at the time of the act or omission that is the subject of the proceeding; or

(ii) beneficially or of record not less than 5 percent of the outstanding equity interests in an entity of which the United States corporation is a subsidiary at the time of the act or omission that is the subject of the proceeding.

(3) RULE OF CONSTRUCTION REGARDING BENEFICIAL OWNERSHIP.—For the purposes of this subsection, a person shall be construed to be the beneficial owner of shares or equity interests if the

shares or equity interests are held in a voting trust or by a nominee on behalf of the person.

(e) APPLICATION.—

(1) RULE OF CONSTRUCTION REGARDING GENERAL CORPORATE LAW.—Nothing in this section may be construed to affect any provision of law that is applicable to a corporation, body corporate, body politic, joint stock company, or limited liability company, as applicable, that is not a United States corporation.

(2) APPLICABILITY OF OTHER LAWS.—

(A) STATE LAW.—Except as otherwise provided in this section, the law of the State in which a United States corporation is organized shall apply with respect to the United States corporation.

(B) FEDERAL LAW.—If any provision of Federal law is inconsistent with the requirements of this section with respect to a United States corporation, the requirements of this section shall supersede that provision.

(3) ORGANIC RECORDS.—A provision of the articles of incorporation in the State in which a United States corporation is incorporated, if applicable, or in the bylaws of a United States corporation may

not limit, be inconsistent with, or supersede a provision of this section.

SEC. 6. BOARD REPRESENTATION.

(a) RULEMAKING.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission, in consultation with the National Labor Relations Board, shall issue rules to ensure that director elections at United States corporations are fair and democratic.

(b) UNITED STATES CORPORATION ELECTIONS.—

(1) IN GENERAL.—Not less than ⅖ of the directors of a United States corporation shall be elected by the employees of the United States corporation using an election process that complies with the requirements of the rules issued under subsection (a).

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on the date that is 1 year after the date on which the Securities and Exchange Commission issues the rules required under subsection (a).

(c) ENFORCEMENT.—

(1) SECURITIES AND EXCHANGE COMMISSION.—The Securities and Exchange Commission, in consultation with the National Labor Relations Board, shall ensure that the elections described in

subsection (b)(1) comply with the requirements of the rules issued by the Commission under subsection (a).

(2) DEPARTMENT OF LABOR.—

(A) IN GENERAL.—The Secretary of Labor shall coordinate with the Office to ensure that the representation of the boards of directors of United States corporations comply with the requirements under subsection (b).

(B) PENALTIES.—If the representation with respect to the board of directors of a United States corporation fails to comply with the requirements under subsection (b) for a period that is not less than 180 consecutive days—

(i) the Secretary of Labor—

(I) shall assess a civil money penalty against the United States corporation in an amount that is not less than $50,000 and not more than $100,000 for each day that such representation is not in compliance with those requirements, including for each day during that 180-day period; and

(II) may collect the penalty described in subclause (I) beginning on the day after the date on which that 180-day period ends; and

(ii) the Office may revoke the charter of the United States corporation.

SEC. 7. EXECUTIVE COMPENSATION.

(a) DEFINITIONS.—In this section:

(1) COVERED PERSON.—The term ''covered person'' means an officer or a director of a United States corporation.

(2) EQUITY SECURITY.—The term ''equity security'' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(3) RULE 10B–18 PURCHASE.—The term ''Rule 10b–18 purchase'' has the meaning given the term in section 240.10b–18(a) of title 17, Code of Federal Regulations, as in effect on the date of enactment of this Act.

(4) SUBJECT SECURITY.—The term ''subject security'' means any—

(A) equity security of a United States corporation; or

(B) security, the value of which is derived from, or that otherwise relates to, an equity security described in subparagraph (A).

(b) SALE OF SUBJECT SECURITIES.—

(1) PROHIBITIONS.—Subject to paragraph (2), no covered person with respect to a United States corporation may—

(A) during the 5-year period that begins on the date on which the covered person first owns or beneficially owns a subject security with respect to that United States corporation (or an affiliate of that United States corporation), sell, transfer, pledge, assign, alienate, or hypothecate, in exchange for value, that subject security, other than—

(i) in connection with the sale of the United States corporation or the affiliate, as applicable; or

(ii) through—

(I) a will; or

(II) the laws of descent or distribution; or

(B) during the 3-year period that begins on the date on which that United States corporation, or an affiliate of that United States corporation, effects a Rule 10b–18 purchase, sell any subject security with respect to that United States corporation.

(2) APPLICATION.—The prohibition under paragraph (1) shall not apply with respect to any subject security that a covered person owns or beneficially owns on the day before the date of enactment of this Act.

(c) ENFORCEMENT.—The Securities and Exchange Commission may impose on any covered person that violates subsection (b) a civil penalty in an amount that is—

(1) not less than the fair market value of the subject securities of which the covered person disposes in violation of that subsection, as measured on the date on which the covered person makes the disposition; and

(2) not more than the amount that is 3 times the fair market value of the subject securities of which the covered person disposes in violation of that subsection, as measured on the date on which the covered person makes the disposition.

(d) RULE OF CONSTRUCTION.—For the purposes of this section, a subject security is beneficially owned by a covered person if—

(1) the subject security is held in the name of a bank, broker, or nominee for the account of the covered person;

(2) the subject security is held as a joint tenant, tenant in common, or tenant by the entirety or as community property by the covered person; or

(3) the covered person has a pecuniary interest, by reason of any contract, understanding, or relationship, including an immediate family relationship or arrangement, in subject securities held in the name of another person.

SEC. 8. POLITICAL SPENDING.

(a) DEFINITIONS.—In this section:

(1) ELECTIONEERING COMMUNICATION.—The term ''electioneering communication'' has the meaning given the term in section 304(f)(3) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30104(f)(3)), except that the term ''any public communication'' shall be substituted for ''any broadcast, cable, or satellite communication'' in the matter preceding subclause (I) of subparagraph (A)(i) of such section 304(f)(3).

(2) INDEPENDENT EXPENDITURE.—The term ''independent expenditure'' means an expenditure, as that term is defined in section 301 of the Federal

Election Campaign Act of 1971 (52 U.S.C. 30101), by a person that expressly advocates the election or defeat of a clearly identified candidate, or is the functional equivalent of express advocacy because, when taken as a whole, the expenditure can be interpreted by a reasonable person only as advocating the election or defeat of a candidate, taking into account whether the communication involved—

(A) mentions a candidacy, a political party, or a challenger to a candidate; or

(B) takes a position on character, qualifications, or fitness for office of a candidate.

(3) POLITICAL EXPENDITURE IN SUPPORT OF OR IN OPPOSITION TO ANY CANDIDATE FOR FEDERAL, STATE, OR LOCAL PUBLIC OFFICE.—The term "political expenditure in support of or in opposition to any candidate for Federal, State, or local public office" means an expenditure or series of expenditures totaling more than $10,000 for any single candidate during any single election that—

(A)(i) is an independent expenditure; or

(ii) with respect to a candidate for State or local public office, would be treated as an independent expenditure if the candidate were a candidate for Federal public office;

(B)(i) is an electioneering communication; or

(ii) with respect to a candidate for State or local public office, would be treated as an electioneering communication if the candidate were a candidate for Federal public office; or

(C) are dues or other payments, disbursements, or transfers to any other person that—

(i) are, or could reasonably be anticipated to be, used or transferred to another association or organization for the purposes described in subparagraph (A) or (B); and

(ii) are not investments or payments, disbursements, or transfers made in commercial transactions in the ordinary course of any trade or business.

(b) SHAREHOLDER AND DIRECTOR APPROVAL.—A United States corporation may not make a political expenditure in support of or in opposition to any candidate for Federal, State, or local public office unless—

(1) not less than 75 percent of the shareholders of the corporation and not less than 75 percent of the directors of the corporation approve of the expenditure; and

(2) the approvals required under paragraph (1) occur—

(A) before the date on which the expenditure is made or obligated; and

(B) after the date on which the shareholders and directors described in that paragraph have been informed regarding the precise nature of the proposed expenditure, including—

(i) the amount of the proposed expenditure; and

(ii) the candidate and election to which the proposed expenditure relates.

(c) ENFORCEMENT.—

(1) SHAREHOLDER SUIT.—A shareholder of a United States corporation may bring a civil action in an appropriate district court of the United States to enjoin a United States corporation from making a political expenditure in support of or in opposition to any candidate for Federal, State, or local public office that violates the requirements under subsection (b).

(2) REVOCATION OF CHARTER.—The Office may revoke the charter of a United States corporation that knowingly or repeatedly violates the requirements under subsection (b).

SEC. 9. PETITION FOR REVOCATION OF CHARTER.

(a) FILING OF REVOCATION PETITION.—The attorney general of a State may file a petition with the Office to revoke the charter of a United States corporation that is organized in that State or that does business in that State.

(b) TIMING OF RESPONSE AND DECISION.—If a revocation petition is filed under subsection (a) with respect to a United States corporation—

(1) not later than 180 days after the date on which the petition is filed, the United States corporation may file a response that explains why revoking the charter of the United States corporation is not justified in consideration of the factors described in subsection (c)(2); and

(2) the Director shall issue a ruling with respect to the petition not later than 180 days after the earlier of the date that is—

(A) 180 days after the date on which the petition is filed; or

(B) the date on which the corporation files a response under paragraph (1).

(c) GRANTING REVOCATION PETITION.—

(1) IN GENERAL.—The Director, with the approval of the Secretary of Commerce, and after consideration of the factors described in paragraph (2),

may grant a revocation petition that is filed under subsection (a).

(2) FACTORS.—In determining whether to grant a revocation petition under paragraph (1) with respect to a United States corporation, the Director shall consider whether the United States corporation—

(A) has engaged in repeated, egregious, and illegal misconduct that has caused significant harm to—

(i) the customers, employees, shareholders, or business partners of the United States corporation; or

(ii) the communities in which the United States corporation operates; and

(B) has not undertaken measures to address the causes of the misconduct described in subparagraph (A), such as terminating the employment of any officer or executive of the United States corporation who oversaw that misconduct.

(3) REVIEW OF GRANTING OF PETITION.—A decision by the Director to grant a revocation petition under this subsection—

(A) shall be subject to judicial review under section 706 of title 5, United States Code; and

(B) shall not be subject to the procedure for congressional disapproval under section 802 of title 5, United States Code.

(d) REVOCATION OF CHARTER.—If the Director grants a revocation petition under subsection (c) with respect to a United States corporation, the Office shall revoke the charter of that corporation, which shall be effective beginning on the date that is 1 year after the date on which the Director grants the petition.

(e) RULEMAKING.—The Director may issue any rules that are necessary to carry out this section.

SEC. 10. SEVERABILITY.

If any provision of this Act, or any application of that provision to any person or circumstance, is held to be invalid, the remainder of the provisions of this Act and the application of any such provision to any other person or circumstance shall not be affected.

○