

116TH CONGRESS
2D SESSION

S. 3215

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

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2020

Ms. WARREN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish the obligations of certain large business entities in the United States, 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 “Accountable Cap-
5 italism Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COVERED EMPLOYEE.—The term “covered
9 employee”—

10 (A) means—

1 (i) an individual who is—

2 (I) an employee (including an ap-
3 plicant), as defined in section 701 of
4 the Civil Rights Act of 1964 (42
5 U.S.C. 2000e);

6 (II) a State employee (including
7 an applicant), as described in section
8 304(a) of the Government Employee
9 Rights Act of 1991 (42 U.S.C.
10 2000e–16c(a));

11 (III) a covered employee (includ-
12 ing an applicant), as defined in sec-
13 tion 101 of the Congressional Ac-
14 countability Act of 1995 (2 U.S.C.
15 1301);

16 (IV) a covered employee (includ-
17 ing an applicant), as defined in sec-
18 tion 411(c) of title 3, United States
19 Code;

20 (V) an employee, as defined in
21 section 11 of the Age Discrimination
22 in Employment Act of 1967 (29
23 U.S.C. 630);

24 (VI) an employee, as defined in
25 section 101 of the Americans with

1 Disabilities Act of 1990 (42 U.S.C.
2 12111);

3 (VII) an employee, as described
4 in section 501(b) of the Rehabilitation
5 Act of 1973 (29 U.S.C. 791(b));

6 (VIII) an employee, as defined in
7 section 3 of the Fair Labor Standards
8 Act of 1938 (29 U.S.C. 203);

9 (IX) an employee or applicant to
10 which section 717(a) of the Civil
11 Rights Act of 1964 (42 U.S.C.
12 2000e–16(a)) applies; or

13 (X) a person (other than an em-
14 ployer) to whom subsections (a) and
15 (b) of section 4311 of title 38, United
16 States Code, apply; and

17 (ii) an individual who is engaged by,
18 or applies for or otherwise seeks a position
19 with, a covered employer or entity, whether
20 or not the individual receives compensa-
21 tion, academic credit, or other remunera-
22 tion from the covered employer or entity,
23 as—

24 (I) an independent contractor; or

1 (II) an intern, fellow, volunteer,
2 or trainee; and

3 (B) does not include a management offi-
4 cial, as defined in section 7103(a)(11) of title 5,
5 United States Code.

6 (2) COVERED EMPLOYER OR ENTITY.—The
7 term “covered employer or entity” means a person,
8 including an entity, regardless of business structure,
9 including organization as a legal or commercial enti-
10 ty, that is—

11 (A) an employer, as defined in section 701
12 of the Civil Rights Act of 1964;

13 (B) an entity employing a State employee
14 described in section 304(a) of the Government
15 Employee Rights Act of 1991;

16 (C) an employing office, as defined in sec-
17 tion 101 of the Congressional Accountability
18 Act of 1995;

19 (D) an employing office, as defined in sec-
20 tion 411(c) of title 3, United States Code;

21 (E) an employer, as defined in section 11
22 of the Age Discrimination in Employment Act
23 of 1967;

24 (F) an employer, as defined in section 101
25 of the Americans with Disabilities Act of 1990;

1 (G) an entity described in section 501(b)
2 of the Rehabilitation Act of 1973 (29 U.S.C.
3 791(b));

4 (H) an employer, as defined in section 3 of
5 the Fair Labor Standards Act of 1938;

6 (I) an entity to which section 717(a) of the
7 Civil Rights Act of 1964 applies; or

8 (J) an employer to whom subsections (a)
9 and (b) of section 4311 of title 38, United
10 States Code, apply.

11 (3) DIRECTOR.—The term “Director” means
12 the Director of the Office.

13 (4) LARGE ENTITY.—

14 (A) IN GENERAL.—The term “large enti-
15 ty” means an entity that—

16 (i) is organized under the laws of a
17 State as a corporation, body corporate,
18 body politic, joint stock company, or lim-
19 ited liability company;

20 (ii) engages in interstate commerce;
21 and

22 (iii) in a taxable year, according to in-
23 formation provided by the entity to the In-
24 ternal Revenue Service, has more than
25 \$1,000,000,000 in gross receipts.

1 (B) AGGREGATION RULES.—All entities
 2 treated as a single employer under subsection
 3 (a) or (b) of section 52 of the Internal Revenue
 4 Code of 1986, or subsection (m) or (o) of sec-
 5 tion 414 of such Code, shall be treated as 1 en-
 6 tity for the purposes of subparagraph (A).

7 (5) OFFICE.—The term “Office” means the Of-
 8 fice of United States Corporations established under
 9 section 3.

10 (6) OFFICER.—The term “officer” means, with
 11 respect to a United States corporation—

12 (A) the president of the United States cor-
 13 poration;

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

16 (C) the principal accounting officer of the
 17 United States corporation or, if the United
 18 States corporation does not have such an ac-
 19 counting officer, the controller of the United
 20 States corporation; and

21 (D) any vice president in charge of a prin-
 22 cipal business unit, division, or function of the
 23 United States corporation.

24 (7) STATE.—The term “State” means—

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

3 (B) the District of Columbia;

4 (C) the Commonwealth of Puerto Rico;

5 (D) Guam;

6 (E) the United States Virgin Islands;

7 (F) American Samoa; and

8 (G) the Commonwealth of the Northern
9 Mariana Islands.

10 (8) UNITED STATES CORPORATION.—The term
11 “United States corporation” means a large entity
12 with respect to which the Office has granted a char-
13 ter under section 3.

14 **SEC. 3. OFFICE OF UNITED STATES CORPORATIONS.**

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

18 (b) DIRECTOR.—

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

22 (2) APPOINTMENT; TERM.—

23 (A) APPOINTMENT.—Except as provided in
24 subparagraph (E), the Director shall be ap-
25 pointed by the President, by and with the ad-

1 vice and consent of the Senate, from among in-
2 dividuals who are citizens of the United States.

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

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

13 (D) SERVICE AFTER END OF TERM.—An
14 individual may serve as the Director after the
15 expiration of the term for which the individual
16 was appointed until a successor has been ap-
17 pointed.

18 (E) INITIAL DIRECTOR.—The Secretary of
19 Commerce shall appoint an individual to serve
20 as the Director until an individual is appointed
21 to serve as the Director in accordance with sub-
22 paragraph (A).

23 (c) DUTIES.—The Office shall—

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

1 (2) monitor whether large entities have ob-
2 tained a charter in accordance with this Act;

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

7 (4) when appropriate—

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

10 (B) revoke the charters of United States
11 corporations under sections 6(c)(2)(B)(ii),
12 8(c)(2), and 9; and

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

16 (d) DISCLOSURE OF TAXPAYER IDENTITY INFORMA-
17 TION FOR USE BY OFFICE.—

18 (1) IN GENERAL.—Section 6103(m) of the In-
19 ternal Revenue Code of 1986 is amended by adding
20 at the end the following:

21 “(8) OFFICE OF UNITED STATES CORPORA-
22 TIONS.—Upon written request by the Director of the
23 Office of United States Corporations, the Secretary
24 shall disclose taxpayer identity information to offi-
25 cers and employees of the Office of United States

1 Corporations solely for purposes of identifying any
 2 taxpayer that satisfies the requirement under section
 3 2(2)(A)(iii) or 4(b) of the Accountable Capitalism
 4 Act for the most recent taxable year for which infor-
 5 mation is available.”.

6 (2) EFFECTIVE DATE.—The amendment made
 7 by this subsection shall take effect on the date of en-
 8 actment of this Act.

9 **SEC. 4. REQUIREMENT FOR LARGE ENTITIES TO OBTAIN**
 10 **CHARTERS.**

11 (a) LARGE ENTITIES.—

12 (1) IN GENERAL.—An entity that is organized
 13 as a corporation, body corporate, body politic, joint
 14 stock company, or limited liability company in a
 15 State shall obtain a charter from the Office as fol-
 16 lows:

17 (A) If the entity is a large entity with re-
 18 spect to the most recently completed taxable
 19 year of the entity before the date of enactment
 20 of this Act, the entity shall obtain the charter
 21 not later than 2 years after the date of enact-
 22 ment of this Act.

23 (B) If the entity is a large entity with re-
 24 spect to any taxable year of the entity that be-
 25 gins after the date of enactment of this Act, the

1 entity shall obtain the charter not later than 1
2 year after the last day of that taxable year.

3 (2) FAILURE TO OBTAIN CHARTER.—An entity
4 to which paragraph (1) applies and that fails to ob-
5 tain a charter from the Office as required under
6 that paragraph shall not be treated as a corporation,
7 body corporate, body politic, joint-stock company, or
8 limited liability company, as applicable, for the pur-
9 poses of Federal law during the period beginning on
10 the date on which the entity is required to obtain a
11 charter under that paragraph and ending on the
12 date on which the entity obtains the charter.

13 (b) RESCISSIONS.—

14 (1) IN GENERAL.—An entity that has obtained
15 a charter as a United States corporation and, with
16 respect to a subsequent taxable year of the entity,
17 is not a large entity may file a petition with the Of-
18 fice to rescind the charter of the United States cor-
19 poration.

20 (2) DETERMINATION.—Not later than 180 days
21 after the date on which the Office receives a petition
22 that an entity files under paragraph (1), the Office
23 shall grant the petition if the Office determines that
24 the entity, with respect to the most recently com-
25 pleted taxable year of the entity preceding the date

1 on which the petition was filed, was not a large enti-
2 ty.

3 **SEC. 5. RESPONSIBILITIES OF UNITED STATES CORPORA-**
4 **TIONS.**

5 (a) DEFINITIONS.—In this section:

6 (1) GENERAL PUBLIC BENEFIT.—The term
7 “general public benefit” means a material positive
8 impact on society resulting from the business and
9 operations of a United States corporation, when
10 taken as a whole.

11 (2) SUBSIDIARY.—The term “subsidiary”
12 means, with respect to a person, an entity in which
13 the person owns beneficially or of record not less
14 than 50 percent of the outstanding equity interests
15 of the entity, calculated as if all outstanding rights
16 to acquire equity interests in the entity had been ex-
17 exercised.

18 (b) CHARTER REQUIREMENTS.—

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

22 (2) CORPORATE PURPOSES.—A United States
23 corporation shall have the purpose of creating a gen-
24 eral public benefit, which shall be—

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

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

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

9 (1) CONSIDERATION OF INTERESTS.—In dis-
 10 charging the duties of their respective positions, and
 11 in considering the best interests of a United States
 12 corporation, the board of directors, committees of
 13 the board of directors, and individual directors of a
 14 United States corporation—

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

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

20 (ii) balances the pecuniary interests of
 21 the shareholders of the United States cor-
 22 poration with the best interests of persons
 23 that are materially affected by the conduct
 24 of the United States corporation; and

25 (B) in carrying out subparagraph (A)—

1 (i) shall consider the effects of any ac-
2 tion or inaction on—

3 (I) the shareholders of the
4 United States corporation;

5 (II) the employees and workforce
6 of—

7 (aa) the United States cor-
8 poration;

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

11 (cc) the suppliers of the
12 United States corporation;

13 (III) the interests of customers
14 and subsidiaries of the United States
15 corporation as beneficiaries of the
16 general public benefit purpose of the
17 United States corporation;

18 (IV) community and societal fac-
19 tors, including those of each commu-
20 nity in which offices or facilities of the
21 United States corporation, subsidi-
22 aries of the United States corporation,
23 or suppliers of the United States cor-
24 poration are located;

1 (V) the local and global environ-
2 ment;

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

6 (aa) benefits that may ac-
7 crue to the United States cor-
8 poration from the long-term
9 plans of the United States cor-
10 poration; and

11 (bb) the possibility that
12 those interests may be best
13 served by the continued inde-
14 pendence of the United States
15 corporation; and

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

20 (ii) may consider—

21 (I) other pertinent factors; or

22 (II) the interests of any other
23 group that are identified in the arti-
24 cles of incorporation in the State in

1 which the United States corporation is
2 incorporated, if applicable; and
3 (iii) shall not be required to give pri-
4 ority to a particular interest or factor de-
5 scribed in clause (i) or (ii) over any other
6 interest or factor.

7 (2) STANDARD OF CONDUCT FOR OFFICERS.—
8 Each officer of a United States corporation shall
9 balance and consider the interests and factors de-
10 scribed in paragraph (1)(B)(i) in the manner de-
11 scribed in paragraph (1)(B)(iii) if—

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

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

19 (3) EXONERATION FROM PERSONAL LIABIL-
20 ITY.—Except as provided in the charter of a United
21 States corporation, neither a director nor an officer
22 of a United States corporation may be held person-
23 ally liable for monetary damages for—

24 (A) any action or inaction in the course of
25 performing the duties of a director under para-

graph (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

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

4 (d) RIGHT OF ACTION.—

5 (1) LIMITATION ON LIABILITY OF CORPORA-
 6 TION.—A United States corporation shall not be lia-
 7 ble for monetary damages under this section for any
 8 failure of the United States corporation to pursue or
 9 create a general public benefit.

10 (2) STANDING.—A proceeding to enforce the re-
 11 quirements of this section may be commenced or
 12 maintained only—

13 (A) directly by the United States corpora-
 14 tion to which the proceeding applies; or

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

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

24 (ii) beneficially or of record not less
 25 than 5 percent of the outstanding equity

1 interests in an entity of which the United
2 States corporation is a subsidiary at the
3 time of the act or omission that is the sub-
4 ject of the proceeding.

5 (3) RULE OF CONSTRUCTION REGARDING BEN-
6 EFICIAL OWNERSHIP.—For the purposes of this sub-
7 section, a person shall be construed to be the bene-
8 ficial owner of shares or equity interests if the
9 shares or equity interests are held in a voting trust
10 or by a nominee on behalf of the person.

11 (e) APPLICATION.—

12 (1) RULE OF CONSTRUCTION REGARDING GEN-
13 ERAL CORPORATE LAW.—Nothing in this section
14 may be construed to affect any provision of law that
15 is applicable to a corporation, body corporate, body
16 politic, joint stock company, or limited liability com-
17 pany, as applicable, that is not a United States cor-
18 poration.

19 (2) APPLICABILITY OF OTHER LAWS.—

20 (A) STATE LAW.—Except as otherwise pro-
21 vided in this section, the law of the State in
22 which a United States corporation is organized
23 shall apply with respect to the United States
24 corporation.

1 (B) FEDERAL LAW.—If any provision of
 2 Federal law is inconsistent with the require-
 3 ments of this section with respect to a United
 4 States corporation, the requirements of this sec-
 5 tion shall supersede that provision.

6 (3) ORGANIC RECORDS.—A provision of the ar-
 7 ticles of incorporation in the State in which a United
 8 States corporation is incorporated, if applicable, or
 9 in the bylaws of a United States corporation may
 10 not limit, be inconsistent with, or supersede a provi-
 11 sion of this section.

12 **SEC. 6. BOARD REPRESENTATION.**

13 (a) RULEMAKING.—Not later than 1 year after the
 14 date of enactment of this Act, the Securities and Ex-
 15 change Commission, in consultation with the National
 16 Labor Relations Board, shall issue rules to ensure that—

17 (1) director elections at United States corpora-
 18 tions are fair and democratic;

19 (2) employee representation is meaningful and
 20 appropriate, taking into consideration—

21 (A) diversity of race, ethnicity, gender, sex-
 22 ual orientation, and gender identity; and

23 (B) the affiliation to historically underrep-
 24 resented groups, including veterans of the
 25 Armed Forces and individuals with disabilities;

1 (3) covered employees that serve as a director
2 of a United States corporation may be dismissed
3 only for just cause; and

4 (4) covered employees receive any disclosure re-
5 quired to be made by the United States corporation
6 to shareholders under the Securities and Exchange
7 Act of 1934 (15 U.S.C. 78a et seq.).

8 (b) UNITED STATES CORPORATION ELECTIONS.—

9 (1) IN GENERAL.—Not less than $\frac{2}{5}$ of the di-
10 rectors of a United States corporation shall be elect-
11 ed by the covered employees of the United States
12 corporation using an election process that complies
13 with the requirements of the rules issued under sub-
14 section (a).

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

19 (c) ENFORCEMENT.—

20 (1) SECURITIES AND EXCHANGE COMMIS-
21 sION.—The Securities and Exchange Commission, in
22 consultation with the National Labor Relations
23 Board, shall ensure that the elections described in
24 subsection (b)(1) comply with the requirements of

1 the rules issued by the Commission under subsection
2 (a).

3 (2) DEPARTMENT OF LABOR.—

4 (A) IN GENERAL.—The Secretary of Labor
5 shall coordinate with the Office to ensure that
6 the representation of the boards of directors of
7 United States corporations comply with the re-
8 quirements under subsection (b).

9 (B) PENALTIES.—If the representation
10 with respect to the board of directors of a
11 United States corporation fails to comply with
12 the requirements under subsection (b) for a pe-
13 riod that is not less than 180 consecutive
14 days—

15 (i) the Secretary of Labor—

16 (I) shall assess a civil money pen-
17 alty against the United States cor-
18 poration in an amount that is not less
19 than \$50,000 and not more than
20 \$100,000 for each day that such rep-
21 resentation is not in compliance with
22 those requirements, including for each
23 day during that 180-day period; and

24 (II) may collect the penalty de-
25 scribed in subclause (I) beginning on

1 the day after the date on which that
 2 180-day period ends; and
 3 (ii) the Office may revoke the charter
 4 of the United States corporation.

5 **SEC. 7. EXECUTIVE COMPENSATION.**

6 (a) DEFINITIONS.—In this section:

7 (1) COVERED PERSON.—The term “covered
 8 person” means an officer or a director of a United
 9 States corporation.

10 (2) EQUITY SECURITY.—The term “equity secu-
 11 rity” has the meaning given the term in section 3(a)
 12 of the Securities Exchange Act of 1934 (15 U.S.C.
 13 78c(a)).

14 (3) RULE 10B–18 PURCHASE.—The term “Rule
 15 10b–18 purchase” has the meaning given the term
 16 in section 240.10b–18(a) of title 17, Code of Federal
 17 Regulations, as in effect on the date of enactment of
 18 this Act.

19 (4) SUBJECT SECURITY.—The term “subject
 20 security” means any—

21 (A) equity security of a United States cor-
 22 poration; or

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

1 (b) SALE OF SUBJECT SECURITIES.—

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

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

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

16 (ii) through—

17 (I) a will; or

18 (II) the laws of descent or dis-
19 tribution; or

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

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

6 (c) ENFORCEMENT.—The Securities and Exchange
7 Commission may impose on any covered person that vio-
8 lates subsection (b) a civil penalty in an amount that is—

9 (1) not less than the fair market value of the
10 subject securities of which the covered person dis-
11 poses in violation of that subsection, as measured on
12 the date on which the covered person makes the dis-
13 position; and

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

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

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

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

4 (3) the covered person has a pecuniary interest,
 5 by reason of any contract, understanding, or rela-
 6 tionship, including an immediate family relationship
 7 or arrangement, in subject securities held in the
 8 name of another person.

9 **SEC. 8. POLITICAL SPENDING.**

10 (a) DEFINITIONS.—In this section:

11 (1) ELECTIONEERING COMMUNICATION.—The
 12 term “electioneering communication” has the mean-
 13 ing given the term in section 304(f)(3) of the Fed-
 14 eral Election Campaign Act of 1971 (52 U.S.C.
 15 30104(f)(3)), except that the term “any public com-
 16 munication” shall be substituted for “any broadcast,
 17 cable, or satellite communication” in the matter pre-
 18 ceding subclause (I) of subparagraph (A)(i) of such
 19 section 304(f)(3).

20 (2) INDEPENDENT EXPENDITURE.—The term
 21 “independent expenditure” means an expenditure, as
 22 that term is defined in section 301 of the Federal
 23 Election Campaign Act of 1971 (52 U.S.C. 30101),
 24 by a person that expressly advocates the election or
 25 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

1 (ii) with respect to a candidate for State or
 2 local public office, would be treated as an elec-
 3 tioneering communication if the candidate were
 4 a candidate for Federal public office; or

5 (C) are dues or other payments, disburse-
 6 ments, or transfers to any other person that—

7 (i) are, or could reasonably be antici-
 8 pated to be, used or transferred to another
 9 association or organization for the pur-
 10 poses described in subparagraph (A) or
 11 (B); and

12 (ii) are not investments or payments,
 13 disbursements, or transfers made in com-
 14 mercial transactions in the ordinary course
 15 of any trade or business.

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

20 (1) not less than 75 percent of the shareholders
 21 of the corporation and not less than 75 percent of
 22 the directors of the corporation approve of the ex-
 23 penditure; and

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

1 (A) before the date on which the expendi-
2 ture is made or obligated; and

3 (B) after the date on which the share-
4 holders and directors described in that para-
5 graph have been informed regarding the precise
6 nature of the proposed expenditure, including—

7 (i) the amount of the proposed ex-
8 penditure; and

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

11 (c) ENFORCEMENT.—

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

20 (2) REVOCATION OF CHARTER.—The Office
21 may revoke the charter of a United States corpora-
22 tion that knowingly or repeatedly violates the re-
23 quirements under subsection (b).

1 **SEC. 9. PETITION FOR REVOCATION OF CHARTER.**

2 (a) FILING OF REVOCATION PETITION.—The attor-
 3 ney general of a State may file a petition with the Office
 4 to revoke the charter of a United States corporation that
 5 is organized in that State or that does business in that
 6 State.

7 (b) TIMING OF RESPONSE AND DECISION.—If a rev-
 8 ocation petition is filed under subsection (a) with respect
 9 to a United States corporation—

10 (1) not later than 180 days after the date on
 11 which the petition is filed, the United States cor-
 12 poration may file a response that explains why re-
 13 voking the charter of the United States corporation
 14 is not justified in consideration of the factors de-
 15 scribed in subsection (c)(2); and

16 (2) the Director shall issue a ruling with re-
 17 spect to the petition not later than 180 days after
 18 the earlier of the date that is—

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

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

23 (c) GRANTING REVOCATION PETITION.—

24 (1) IN GENERAL.—The Director, with the ap-
 25 proval of the Secretary of Commerce, and after con-
 26 sideration of the factors described in paragraph (2),

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

3 (2) FACTORS.—In determining whether to
4 grant a revocation petition under paragraph (1) with
5 respect to a United States corporation, the Director
6 shall consider whether the United States corpora-
7 tion—

8 (A) has engaged in repeated, egregious,
9 and illegal misconduct that has caused signifi-
10 cant harm to—

11 (i) the customers, employees, share-
12 holders, or business partners of the United
13 States corporation; or

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

16 (B) has not undertaken measures to ad-
17 dress the causes of the misconduct described in
18 subparagraph (A), such as terminating the em-
19 ployment of any officer or executive of the
20 United States corporation who oversaw that
21 misconduct.

22 (3) REVIEW OF GRANTING OF PETITION.—A
23 decision by the Director to grant a revocation peti-
24 tion under this subsection—

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

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

7 (d) REVOCATION OF CHARTER.—If the Director
8 grants a revocation petition under subsection (c) with re-
9 spect to a United States corporation, the Office shall re-
10 voke the charter of that corporation, which shall be effec-
11 tive beginning on the date that is 1 year after the date
12 on which the Director grants the petition.

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

15 **SEC. 10. SEVERABILITY.**

16 If any provision of this Act, or any application of that
17 provision to any person or circumstance, is held to be in-
18 valid, the remainder of the provisions of this Act and the
19 application of any such provision to any other person or
20 circumstance shall not be affected.

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