

113TH CONGRESS
2D SESSION

H. R. 5278

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

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2014

Ms. DELAURO (for herself, Mr. DOGGETT, and Mr. LEVIN) 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 “No Federal Contracts
5 for Corporate Deserters Act of 2014”.

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 to—

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

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

18 “(2) SUBCONTRACTS.—

19 “(A) IN GENERAL.—The head of an execu-
20 tive agency shall include in each contract
21 awarded by the executive agency with a value in
22 excess of \$10,000,000, other than a contract
23 for exclusively commercial items, a clause that
24 prohibits the prime contractor on such contract
25 from—

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

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

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

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

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

24 “(b) INVERTED DOMESTIC CORPORATION.—

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

5 “(A) the entity completes before, on, or
6 after May 8, 2014, the direct or indirect acqui-
7 sition 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 May 8, 2014.

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 May 8, 2014,
11 but applied by treating all references in such
12 regulations to ‘foreign country’ and ‘relevant
13 foreign country’ as references to ‘the United
14 States’. The Secretary of the Treasury (or the
15 Secretary’s delegate) may issue regulations de-
16 creasing the threshold percent in any of the
17 tests under such regulations for determining if
18 business activities constitute significant domes-
19 tic business activities for purposes of this para-
20 graph.

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 “(e) DEFINITIONS AND SPECIAL RULES.—

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

1 is owned by a foreign incorporated entity that
2 such head has determined is an inverted domes-
3 tic corporation or any subsidiary of such entity.

4 “(2) SUBCONTRACTS.—

5 “(A) IN GENERAL.—The head of an execu-
6 tive agency shall include in each contract
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8 excess of \$10,000,000, other than a contract
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13 with a value greater than 10 percent of the
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15 tity or joint venture described in paragraph
16 (1); or

17 “(ii) structuring subcontract tiers in a
18 manner designed to avoid the limitation in
19 paragraph (1) by enabling an entity or
20 joint venture described in paragraph (1) to
21 perform more than 10 percent of the total
22 value of the prime contract as a lower-tier
23 subcontractor.

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

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16 after May 8, 2014, the direct or indirect acqui-
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21 “(ii) substantially all of the assets of,
22 or substantially all of the properties consti-
23 tuting a trade or business of, a domestic
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6 domestic corporation by reason of
7 holding stock in the domestic corpora-
8 tion; or

9 “(II) in the case of an acquisition
10 with respect to a domestic partner-
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12 mestic partnership by reason of hold-
13 ing a capital or profits interest in the
14 domestic partnership; or

15 “(ii) the management and control of
16 the expanded affiliated group which in-
17 cludes the entity occurs, directly or indi-
18 rectly, primarily within the United States,
19 as determined pursuant to regulations pre-
20 scribed by the Secretary of the Treasury,
21 and such expanded affiliated group has
22 significant domestic business activities.

23 “(2) EXCEPTION FOR CORPORATIONS WITH
24 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
25 COUNTRY OF ORGANIZATION.—

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

11 “(B) SUBSTANTIAL BUSINESS ACTIVI-
12 TIES.—The Secretary of the Treasury (or the
13 Secretary’s delegate) shall establish regulations
14 for determining whether an affiliated group has
15 substantial business activities for purposes of
16 subparagraph (A), except that such regulations
17 may not treat any group as having substantial
18 business activities if such group would not be
19 considered to have substantial business activi-
20 ties under the regulations prescribed under sec-
21 tion 7874 of the Internal Revenue Code of
22 1986, as in effect on May 8, 2014.

23 “(3) SIGNIFICANT DOMESTIC BUSINESS ACTIVI-
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12 cated in the United States; or

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14 rived in the United States.

15 “(B) DETERMINATION.—Determinations
16 pursuant to subparagraph (A) shall be made in
17 the same manner as such determinations are
18 made for purposes of determining substantial
19 business activities under regulations referred to
20 in paragraph (2) as in effect on May 8, 2014,
21 but applied by treating all references in such
22 regulations to ‘foreign country’ and ‘relevant
23 foreign country’ as references to ‘the United
24 States’. The Secretary of the Treasury (or the
25 Secretary’s delegate) may issue regulations de-

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2 tests under such regulations for determining if
3 business activities constitute significant domes-
4 tic business activities for purposes of this para-
5 graph.

6 “(c) WAIVER.—

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

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

18 “(d) APPLICABILITY.—

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

23 “(2) TASK AND DELIVERY ORDERS.—This sec-
24 tion shall apply to any task or delivery order issued
25 after the date of the enactment of this section pur-

1 suant to a contract entered into before, on, or after
2 such date of enactment.

3 “(e) DEFINITIONS AND SPECIAL RULES.—

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

9 “(2) SPECIAL RULES.—In applying subsection
10 (b) of this section for purposes of subsection (a) of
11 this section, the rules described under 835(c)(1) of
12 the Homeland Security Act of 2002 (6 U.S.C.
13 395(c)(1)) shall apply.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
15 tions at the beginning of chapter 137 of title 10,
16 United States Code, is amended by inserting after
17 the item relating to section 2337 the following new
18 item:

“2338. Prohibition on awarding contracts to inverted domestic corporations.”.

19 (c) REGULATIONS REGARDING MANAGEMENT AND
20 CONTROL.—

21 (1) IN GENERAL.—The Secretary of the Treas-
22 ury (or the Secretary’s delegate) shall, for purposes
23 of section 4713(b)(1)(B)(ii) of title 41, United
24 States Code, and section 2338(b)(1)(B)(ii) of title
25 10, United States Code, as added by subsections (a)

1 and (b), respectively, prescribe regulations for pur-
2 poses of determining cases in which the management
3 and control of an expanded affiliated group is to be
4 treated as occurring, directly or indirectly, primarily
5 within the United States. The regulations prescribed
6 under the preceding sentence shall apply to periods
7 after May 8, 2014.

8 (2) EXECUTIVE OFFICERS AND SENIOR MAN-
9 AGEMENT.—The regulations prescribed under para-
10 graph (1) shall provide that the management and
11 control of an expanded affiliated group shall be
12 treated as occurring, directly or indirectly, primarily
13 within the United States if substantially all of the
14 executive officers and senior management of the ex-
15 panded affiliated group who exercise day-to-day re-
16 sponsibility for making decisions involving strategic,
17 financial, and operational policies of the expanded
18 affiliated group are based or primarily located within
19 the United States. Individuals who in fact exercise
20 such day-to-day responsibilities shall be treated as
21 executive officers and senior management regardless
22 of their title.

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