

116TH CONGRESS  
2D SESSION

# S. 3425

To provide incentives for businesses to keep jobs in America, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 10, 2020

Mrs. GILLIBRAND (for herself, Ms. BALDWIN, and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide incentives for businesses to keep jobs in America, 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 “End Outsourcing Act”.

5 **SEC. 2. OUTSOURCING STATEMENT IN WORKER ADJUST-**  
6 **MENT AND RETRAINING NOTICE.**

7 (a) OUTSOURCING STATEMENT.—Section 3 of the  
8 Worker Adjustment and Retraining Notification Act (29  
9 U.S.C. 2102) is amended by adding at the end the fol-  
10 lowing:

1 “(e) OUTSOURCING STATEMENT.—

2 “(1) IN GENERAL.—For purposes of subsection  
3 (a), the employer shall include an outsourcing state-  
4 ment in the notice described in that subsection. The  
5 outsourcing statement shall specify whether part or  
6 all of the positions held by affected employees cov-  
7 ered by subsection (a) will be moved to a country  
8 outside the United States, regardless of whether the  
9 positions are moved within the business enterprise  
10 involved or to another business enterprise. The em-  
11 ployer shall make the determination of whether the  
12 positions are being so moved in accordance with reg-  
13 ulations issued by the Secretary. The employer shall  
14 serve the notice as required under subsection (a) and  
15 submit the notice to the Secretary of Labor.

16 “(2) LIST.—Not less often than annually, the  
17 Secretary shall publish and make available on the  
18 website of the Department of Labor, a list including  
19 each employer who—

20 “(A) has included an outsourcing state-  
21 ment in a notice under paragraph (1); or

22 “(B) has incurred liability under section 5,  
23 in part or in whole, because the employer or-  
24 dered a plant closing or mass layoff without  
25 having served a notice that is required, under

7       “(a) STUDY.—The Comptroller General of the United  
8 States shall conduct a study of the implementation of sec-  
9 tion 3(e) of the Worker Adjustment and Retraining Notifi-  
10 cation Act (29 U.S.C. 2102(e)) by the Department of  
11 Labor.

16 SEC. 3. DENIAL OF DEDUCTION FOR OUTSOURCING EX-  
17 PENSES.

**21 “SEC. 280I. OUTSOURCING EXPENSES.**

•S 3425 IS

1       “(b) SPECIFIED OUTSOURCING EXPENSE.—For pur-  
2 poses of this section—

3               “(1) IN GENERAL.—The term ‘specified out-  
4 sourcing expense’ means—

5                       “(A) any eligible expense paid or incurred  
6 by the taxpayer in connection with the elimi-  
7 nation of any business unit of the taxpayer (or  
8 of any member of any expanded affiliated group  
9 in which the taxpayer is also a member) located  
10 within the United States, and

11                      “(B) any eligible expense paid or incurred  
12 by the taxpayer in connection with the estab-  
13 lishment of any business unit of the taxpayer  
14 (or of any member of any expanded affiliated  
15 group in which the taxpayer is also a member)  
16 located outside the United States,

17 if such establishment constitutes the relocation of  
18 the business unit so eliminated. For purposes of the  
19 preceding sentence, a relocation shall not be treated  
20 as failing to occur merely because such elimination  
21 occurs in a different taxable year than such estab-  
22 lishment.

23               “(2) ELIGIBLE EXPENSES.—The term ‘eligible  
24 expenses’ means—

1           “(A) any amount for which a deduction is  
2           allowed to the taxpayer under section 162, and

3           “(B) permit and license fees, lease broker-  
4           age fees, equipment installation costs, and, to  
5           the extent provided by the Secretary, other  
6           similar expenses.

7           Such term does not include any compensation which  
8           is paid or incurred in connection with severance  
9           from employment and, to the extent provided by the  
10          Secretary, any similar amount.

11          “(3) BUSINESS UNIT.—The term ‘business unit’  
12          means—

13               “(A) any trade or business, and

14               “(B) any line of business, or functional  
15               unit, which is part of any trade or business.

16          “(4) EXPANDED AFFILIATED GROUP.—The  
17          term ‘expanded affiliated group’ means an affiliated  
18          group as defined in section 1504(a), determined  
19          without regard to section 1504(b)(3) and by sub-  
20          stituting ‘more than 50 percent’ for ‘at least 80 per-  
21          cent’ each place it appears in section 1504(a). A  
22          partnership or any other entity (other than a cor-  
23          poration) shall be treated as a member of an ex-  
24          panded affiliated group if such entity is controlled  
25          (within the meaning of section 954(d)(3)) by mem-

1       bers of such group (including any entity treated as  
2       a member of such group by reason of this para-  
3       graph).

4           “(5) OPERATING EXPENSES NOT TAKEN INTO  
5       ACCOUNT.—Any amount paid or incurred in connec-  
6       tion with the ongoing operation of a business unit  
7       shall not be treated as an amount paid or incurred  
8       in connection with the establishment or elimination  
9       of such business unit.

10       “(c) SPECIAL RULES.—

11           “(1) APPLICATION TO DEDUCTIONS FOR DE-  
12       PRECIATION AND AMORTIZATION.—In the case of  
13       any portion of a specified outsourcing expense which  
14       is not deductible in the taxable year in which paid  
15       or incurred, such portion shall neither be chargeable  
16       to capital account nor amortizable.

17           “(2) POSSESSIONS TREATED AS PART OF THE  
18       UNITED STATES.—For purposes of this section, the  
19       term ‘United States’ shall be treated as including  
20       each possession of the United States (including the  
21       Commonwealth of Puerto Rico and the Common-  
22       wealth of the Northern Mariana Islands).

23       “(d) REGULATIONS.—The Secretary shall prescribe  
24       such regulations or other guidance as may be necessary  
25       or appropriate to carry out the purposes of this section,

1 including regulations which provide (or create a rebuttable  
 2 presumption) that certain establishments of business units  
 3 outside the United States will be treated as relocations  
 4 (based on timing or such other factors as the Secretary  
 5 may provide) of business units eliminated within the  
 6 United States.”.

7 (b) LIMITATION ON SUBPART F INCOME OF CON-  
 8 TROLLED FOREIGN CORPORATIONS DETERMINED WITH-  
 9 OUT REGARD TO SPECIFIED OUTSOURCING EXPENSES.—  
 10 Subsection (c) of section 952 of such Code is amended  
 11 by adding at the end the following new paragraph:

12 “(4) EARNINGS AND PROFITS DETERMINED  
 13 WITHOUT REGARD TO SPECIFIED OUTSOURCING EX-  
 14 PENSES.—For purposes of this subsection, earnings  
 15 and profits of any controlled foreign corporation  
 16 shall be determined without regard to any specified  
 17 outsourcing expense (as defined in section  
 18 280I(b)).”.

19 (c) CLERICAL AMENDMENT.—The table of sections  
 20 for part IX of subchapter B of chapter 1 of such Code  
 21 is amended by adding at the end the following new item:

“Sec. 280I. Outsourcing expenses.”.

22 (d) EFFECTIVE DATE.—The amendments made by  
 23 this section shall apply to amounts paid or incurred after  
 24 the date of the enactment of this Act.

1 **SEC. 4. DENIAL OF CERTAIN DEDUCTIONS AND ACCOUNT-**  
 2 **ING METHODS FOR OUTSOURCING EMPLOY-**  
 3 **ERS.**

4 (a) IN GENERAL.—Part IX of subchapter B of chap-  
 5 ter 1 of the Internal Revenue Code of 1986, as amended  
 6 by section 3, is amended by adding at the end the fol-  
 7 lowing new section:

8 **“SEC. 280J. LIMITATIONS FOR OUTSOURCING EMPLOYERS.**

9 “(a) IN GENERAL.—During the disallowance period,  
 10 an applicable taxpayer—

11 “(1) may not use the method provided in sec-  
 12 tion 472(b) in inventorying goods,

13 “(2) may not use the lower of cost or market  
 14 method of determining inventories for purposes of  
 15 determining income, and

16 “(3) shall not be allowed any deduction under  
 17 section 163 for interest paid or accrued on indebted-  
 18 ness.

19 “(b) APPLICABLE TAXPAYER.—For purposes of sub-  
 20 section (a), the term ‘applicable taxpayer’ means a tax-  
 21 payer which—

22 “(1) during the taxable year, has served written  
 23 notice under subsection (a) of section 3 of the Work-  
 24 er Adjustment and Retraining Notification Act  
 25 which includes an outsourcing statement described  
 26 in subsection (e) of such section, and



1           “(2) the cumulative employment loss (excluding  
 2           any part-time employees) for positions at facilities  
 3           owned by such taxpayer which will be moved to a  
 4           country outside of the United States, as determined  
 5           pursuant to any outsourcing statements served by  
 6           such taxpayer during such taxable year, exceeds 50  
 7           employees.

8           “(c) DISALLOWANCE PERIOD.—For purposes of sub-  
 9           section (a), the disallowance period is the period of 3 tax-  
 10          able years after the taxable year in which the statements  
 11          described in subsection (b)(2) are required to be served.

12          “(d) EXPANDED AFFILIATED GROUP TREATED AS  
 13          SINGLE TAXPAYER.—For purposes of this section, the  
 14          members of an expanded affiliated group (as defined in  
 15          section 280I(b)(4)) shall be treated as a single taxpayer.

16          “(e) REGULATIONS.—The Secretary shall prescribe  
 17          such regulations or other guidance as may be necessary  
 18          or appropriate to carry out the purposes of this section.”.

19          (b) CLERICAL AMENDMENT.—The table of sections  
 20          for part IX of subchapter B of chapter 1 of the Internal  
 21          Revenue Code of 1986, as amended by section 3, is  
 22          amended by adding at the end the following new item:

“Sec. 280J. Limitations for outsourcing employers.”.

23          (c) EFFECTIVE DATE.—The amendments made by  
 24          this section shall apply to taxable years beginning after  
 25          the date of the enactment of this Act.

1 **SEC. 5. AUTHORITY FOR FEDERAL AGENCIES TO TAKE THE**  
2 **OUTSOURCING OF JOBS FROM THE UNITED**  
3 **STATES INTO ACCOUNT FOR GRANTS, LOANS,**  
4 **AND LOAN GUARANTEES.**

5 (a) DISCLOSURE OF OUTSOURCING OF JOBS.—

6 (1) IN GENERAL.—The head of any Federal  
7 agency, or their delegate, shall require any entity  
8 that submits a request for an applicable agency ac-  
9 tion to disclose in the request if such entity, or any  
10 subsidiary of such entity, owns a facility for which  
11 there is an outsourcing event during the 3-year pe-  
12 riod ending on the date of the submission of the re-  
13 quest.

14 (2) OUTSOURCING EVENT.—For purposes of  
15 paragraph (1), the term “outsourcing event” means  
16 a plant closing or mass layoff (as described in sec-  
17 tion 2(a) of the Worker Adjustment and Retraining  
18 Notification Act) in which the employment loss (ex-  
19 cluding any part-time employees) for positions which  
20 will be moved to a country outside of the United  
21 States, as determined pursuant to the outsourcing  
22 statement (as described in paragraph (1) of such  
23 section 3(e) of such Act), exceeds 50 employees.

24 (b) CONSIDERATION AUTHORITY.—

25 (1) IN GENERAL.—In considering a request by  
26 an entity for an applicable agency action, the head

1 of any Federal agency, as well as any officers, em-  
2 ployees, and contractors of such Agency, shall take  
3 into account any disclosure made pursuant to sub-  
4 section (a) for purposes of such request.

5 (2) NEGATIVE PREFERENCE.—The head of any  
6 Federal agency shall establish a negative preference  
7 of not less than 10 percent of the scoring evaluation  
8 for any request for an applicable agency action by  
9 an entity that makes a disclosure pursuant to sub-  
10 section (a).

11 (c) SENSE OF CONGRESS.—It is the sense of Con-  
12 gress that Federal agencies should, in considering requests  
13 by entities for any applicable agency action, exclude enti-  
14 ties making a disclosure of an outsourcing event pursuant  
15 to subsection (a) on the grounds that the actions described  
16 in the disclosures are against the public interests of the  
17 United States.

18 (d) ANNUAL REPORT.—The head of each Federal  
19 agency shall submit to Congress each year a report on the  
20 following:

21 (1) The number of entities making a disclosure  
22 of an outsourcing event pursuant to subsection (a)  
23 in regards to a request for applicable agency action  
24 during the preceding year.

1           (2) The number of requests for applicable agen-  
 2           cy action which were granted by the agency during  
 3           the preceding year in which such disclosures were  
 4           taken into account.

5           (e) APPLICABLE AGENCY ACTION.—For purposes of  
 6 this section, the term “applicable agency action” means  
 7 any grant, loan, or loan guarantee awarded or issued by  
 8 a Federal agency.

9   **SEC. 6. RECAPTURE OF CREDITS FOR OUTSOURCING EM-**  
 10                           **PLOYERS.**

11           (a) IN GENERAL.—Part IV of subchapter A of chap-  
 12 ter 1 of the Internal Revenue Code of 1986 is amended  
 13 by adding at the end the following new subpart:

14   **“Subpart H—Recapture of Credits for Outsourcing**  
 15                           **Employers**

“Sec. 54. Recapture of credits for outsourcing employers.

16   **“SEC. 54. RECAPTURE OF CREDITS FOR OUTSOURCING EM-**  
 17                           **PLOYERS.**

18           “(a) IN GENERAL.—Pursuant to regulations pre-  
 19 scribed by the Secretary, in the case of a taxpayer which  
 20 owns a facility for which there is an outsourcing event dur-  
 21 ing the taxable year, the tax under this chapter for such  
 22 taxable year shall be increased by the amount equal to  
 23 the sum of—

1           “(1) any credits allowed under this chapter re-  
 2           lating to expenses for design, construction, oper-  
 3           ation, or maintenance of such facility during the 5  
 4           taxable years preceding such taxable year, and

5           “(2) any grants provided by the Secretary in  
 6           lieu of credits described in paragraph (1) during the  
 7           5 taxable years preceding such taxable year.

8           “(b) OUTSOURCING EVENT.—For purposes of sub-  
 9           section (a), the term ‘outsourcing event’ means a plant  
 10          closing or mass layoff (as described in section 2(a) of the  
 11          Worker Adjustment and Retraining Notification Act) in  
 12          which the employment loss (excluding any part-time em-  
 13          ployees) for positions which will be moved to a country  
 14          outside of the United States, as determined pursuant to  
 15          the outsourcing statement (as described in paragraph (1)  
 16          of such section 3(e) of such Act) served by the taxpayer  
 17          during the taxable year, exceeds 50 employees.

18          “(c) EXPANDED AFFILIATED GROUP TREATED AS  
 19          SINGLE TAXPAYER.—For purposes of this section, the  
 20          members of an expanded affiliated group (as defined in  
 21          section 280I(b)(4)) shall be treated as a single taxpayer.”.

22          (b) CLERICAL AMENDMENT.—The table of subparts  
 23          for part IV of subchapter A of chapter 1 of such Code  
 24          is amended by adding at the end the following new item:

“SUBPART H—RECAPTURE OF CREDITS FOR OUTSOURCING EMPLOYERS”.

1 (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to taxable years beginning after  
 3 the date of the enactment of this Act.

4 **SEC. 7. CREDIT FOR INSOURCING EXPENSES.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-  
 6 chapter A of chapter 1 of the Internal Revenue Code of  
 7 1986 is amended by adding at the end the following new  
 8 section:

9 **“SEC. 45T. CREDIT FOR INSOURCING EXPENSES.**

10 “(a) IN GENERAL.—For purposes of section 38, the  
 11 insourcing expenses credit for any taxable year is an  
 12 amount equal to 20 percent of the eligible insourcing ex-  
 13 penses of the taxpayer which are taken into account in  
 14 such taxable year under subsection (d).

15 “(b) ELIGIBLE INSOURCING EXPENSES.—For pur-  
 16 poses of this section—

17 “(1) IN GENERAL.—The term ‘eligible insoure-  
 18 ing expenses’ means—

19 “(A) eligible expenses paid or incurred by  
 20 the taxpayer in connection with the elimination  
 21 of any business unit of the taxpayer (or of any  
 22 member of any expanded affiliated group in  
 23 which the taxpayer is also a member) located  
 24 outside the United States, and

“(B) eligible expenses paid or incurred by the taxpayer in connection with the establishment of any business unit of the taxpayer (or of any member of any expanded affiliated group in which the taxpayer is also a member) located within—

“(i) a HUBZone (as defined in section 3(p)(2) of the Small Business Act (15 U.S.C. 632(p)(2))), or

“(ii) a low-income community (as described in section 45D(e)),

if such establishment constitutes the relocation of the business unit so eliminated. For purposes of the preceding sentence, a relocation shall not be treated as failing to occur merely because such elimination occurs in a different taxable year than such establishment.

“(2) ELIGIBLE EXPENSES.—The term ‘eligible expenses’ means—

“(A) any amount for which a deduction is allowed to the taxpayer under section 162, and

“(B) permit and license fees, lease brokerage fees, equipment installation costs, and, to the extent provided by the Secretary, other similar expenses.

1       Such term does not include any compensation which  
2       is paid or incurred in connection with severance  
3       from employment and, to the extent provided by the  
4       Secretary, any similar amount.

5               “(3) BUSINESS UNIT.—The term ‘business unit’  
6       means—

7                       “(A) any trade or business, and

8                       “(B) any line of business, or functional  
9       unit, which is part of any trade or business.

10               “(4) EXPANDED AFFILIATED GROUP.—The  
11       term ‘expanded affiliated group’ means an affiliated  
12       group as defined in section 1504(a), determined  
13       without regard to section 1504(b)(3) and by sub-  
14       stituting ‘more than 50 percent’ for ‘at least 80 per-  
15       cent’ each place it appears in section 1504(a). A  
16       partnership or any other entity (other than a cor-  
17       poration) shall be treated as a member of an ex-  
18       panded affiliated group if such entity is controlled  
19       (within the meaning of section 954(d)(3)) by mem-  
20       bers of such group (including any entity treated as  
21       a member of such group by reason of this para-  
22       graph).

23               “(5) EXPENSES MUST BE PURSUANT TO  
24       INSOURCING PLAN.—Amounts shall be taken into ac-  
25       count under paragraph (1) only to the extent that



1       such amounts are paid or incurred pursuant to a  
2       written plan to carry out the relocation described in  
3       paragraph (1).

4               “(6) OPERATING EXPENSES NOT TAKEN INTO  
5       ACCOUNT.—Any amount paid or incurred in connec-  
6       tion with the on-going operation of a business unit  
7       shall not be treated as an amount paid or incurred  
8       in connection with the establishment or elimination  
9       of such business unit.

10       “(c) INCREASED DOMESTIC EMPLOYMENT REQUIRE-  
11       MENT.—No credit shall be allowed under this section un-  
12       less the number of full-time equivalent employees of the  
13       taxpayer for the taxable year for which the credit is  
14       claimed exceeds the number of full-time equivalent em-  
15       ployees of the taxpayer for the last taxable year ending  
16       before the first taxable year in which such eligible  
17       insourcing expenses were paid or incurred. For purposes  
18       of this subsection, full-time equivalent employees has the  
19       meaning given such term under section 45R(d) (and the  
20       applicable rules of section 45R(e)). All employers treated  
21       as a single employer under subsection (b), (c), (m), or (o)  
22       of section 414 shall be treated as a single employer for  
23       purposes of this subsection.

24       “(d) CREDIT ALLOWED UPON COMPLETION OF  
25       INSOURCING PLAN.—

1           “(1) IN GENERAL.—Except as provided in para-  
 2           graph (2), eligible insourcing expenses shall be taken  
 3           into account under subsection (a) in the taxable year  
 4           during which the plan described in subsection (b)(5)  
 5           has been completed and all eligible insourcing ex-  
 6           penses pursuant to such plan have been paid or in-  
 7           curred.

8           “(2) ELECTION TO APPLY EMPLOYMENT TEST  
 9           AND CLAIM CREDIT IN FIRST FULL TAXABLE YEAR  
 10          AFTER COMPLETION OF PLAN.—If the taxpayer  
 11          elects the application of this paragraph, eligible  
 12          insourcing expenses shall be taken into account  
 13          under subsection (a) in the first taxable year after  
 14          the taxable year described in paragraph (1).

15          “(e) POSSESSIONS TREATED AS PART OF THE  
 16          UNITED STATES.—For purposes of this section, the term  
 17          ‘United States’ shall be treated as including each posses-  
 18          sion of the United States (including the Commonwealth  
 19          of Puerto Rico and the Commonwealth of the Northern  
 20          Mariana Islands).

21          “(f) REGULATIONS.—The Secretary shall prescribe  
 22          such regulations or other guidance as may be necessary  
 23          or appropriate to carry out the purposes of this section.”.

24          (b) CREDIT TO BE PART OF GENERAL BUSINESS  
 25          CREDIT.—Subsection (b) of section 38 of such Code is

1 amended by striking “plus” at the end of paragraph (31),  
 2 by striking the period at the end of paragraph (32) and  
 3 inserting “, plus”, and by adding at the end the following  
 4 new paragraph:

5 “(33) the insourcing expenses credit determined  
 6 under section 45T(a).”.

7 (c) CLERICAL AMENDMENT.—The table of sections  
 8 for subpart D of part IV of subchapter A of chapter 1  
 9 of such Code is amended by adding at the end the fol-  
 10 lowing new item:

“Sec. 45T. Credit for insourcing expenses.”.

11 (d) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply to amounts paid or incurred after  
 13 the date of the enactment of this Act.

14 (e) APPLICATION TO UNITED STATES POSSES-  
 15 SIONS.—

16 (1) PAYMENTS TO POSSESSIONS.—

17 (A) MIRROR CODE POSSESSIONS.—The  
 18 Secretary of the Treasury shall make periodic  
 19 payments to each possession of the United  
 20 States with a mirror code tax system in an  
 21 amount equal to the loss to that possession by  
 22 reason of section 45T of the Internal Revenue  
 23 Code of 1986. Such amount shall be determined  
 24 by the Secretary of the Treasury based on in-

1           formation provided by the government of the re-  
2           spective possession.

3           (B) OTHER POSSESSIONS.—The Secretary  
4           of the Treasury shall make annual payments to  
5           each possession of the United States which does  
6           not have a mirror code tax system in an  
7           amount estimated by the Secretary of the  
8           Treasury as being equal to the aggregate bene-  
9           fits that would have been provided to residents  
10          of such possession by reason of section 45T of  
11          such Code if a mirror code tax system had been  
12          in effect in such possession. The preceding sen-  
13          tence shall not apply with respect to any posses-  
14          sion of the United States unless such possession  
15          has a plan, which has been approved by the  
16          Secretary of the Treasury, under which such  
17          possession will promptly distribute such pay-  
18          ment to the residents of such possession.

19          (2) COORDINATION WITH CREDIT ALLOWED  
20          AGAINST UNITED STATES INCOME TAXES.—No cred-  
21          it shall be allowed against United States income  
22          taxes under section 45T of such Code to any per-  
23          son—

1 (A) to whom a credit is allowed against  
 2 taxes imposed by the possession by reason of  
 3 such section, or

4 (B) who is eligible for a payment under a  
 5 plan described in paragraph (1)(B).

6 (3) DEFINITIONS AND SPECIAL RULES.—

7 (A) POSSESSIONS OF THE UNITED  
 8 STATES.—For purposes of this section, the  
 9 term “possession of the United States” includes  
 10 the Commonwealth of Puerto Rico and the  
 11 Commonwealth of the Northern Mariana Is-  
 12 lands.

13 (B) MIRROR CODE TAX SYSTEM.—For pur-  
 14 poses of this section, the term “mirror code tax  
 15 system” means, with respect to any possession  
 16 of the United States, the income tax system of  
 17 such possession if the income tax liability of the  
 18 residents of such possession under such system  
 19 is determined by reference to the income tax  
 20 laws of the United States as if such possession  
 21 were the United States.

22 (C) TREATMENT OF PAYMENTS.—For pur-  
 23 poses of section 1324(b)(2) of title 31, United  
 24 States Code, the payments under this section  
 25 shall be treated in the same manner as a refund

1           due from sections referred to in such section  
2           1324(b)(2).

3 **SEC. 8. AUTHORITY FOR FEDERAL CONTRACTING OFFI-**  
4 **CERS TO TAKE THE OUTSOURCING OF JOBS**  
5 **FROM THE UNITED STATES INTO ACCOUNT**  
6 **IN AWARDING CONTRACTS.**

7       (a) DEPARTMENT OF DEFENSE AND RELATED  
8 AGENCY CONTRACTS.—

9           (1) CONSIDERATION OF OUTSOURCING.—

10           (A) IN GENERAL.—Chapter 137 of title  
11       10, United States Code, is amended by insert-  
12       ing after section 2327 the following new sec-  
13       tion:

14 **“§ 2327a. Contracts: consideration of outsourcing of**  
15 **jobs**

16       “(a) DISCLOSURE OF OUTSOURCING OF JOBS.—

17           “(1) IN GENERAL.—The head of an agency  
18       shall require a contractor that submits a bid or pro-  
19       posal in response to a solicitation issued by the  
20       agency to disclose in that bid or proposal if the con-  
21       tractor, or a subsidiary of the contractor, owns a fa-  
22       cility for which there is an outsourcing event during  
23       the three-year period ending on the date of the sub-  
24       mittal of the bid or proposal.

1           “(2) OUTSOURCING EVENT.—For purposes of  
2       paragraph (1), the term ‘outsourcing event’ means a  
3       plant closing or mass layoff (as described in section  
4       2(a) of the Worker Adjustment and Retraining Noti-  
5       fication Act) in which the employment loss (exclud-  
6       ing any part-time employees) for positions which will  
7       be moved to a country outside of the United States,  
8       as determined pursuant to the outsourcing state-  
9       ment (as described in paragraph (1) of such section  
10      3(e) of such Act) served by the taxpayer during the  
11      taxable year, exceeds 50 employees.

12       “(b) CONSIDERATION AUTHORIZED.—(1) Agency  
13      contracting officers considering bids or proposals in re-  
14      sponse to a solicitation issued by the agency shall take  
15      into account any disclosure made pursuant to subsection  
16      (a) in such bids and proposals.

17       “(2) The head of an agency shall establish a negative  
18      preference of no less than 10 percent of the cost of a con-  
19      tract for purposes of evaluating a bid or proposal of a con-  
20      tractor that makes a disclosure pursuant to subsection (a).

21       “(c) SENSE OF CONGRESS.—It is the sense of Con-  
22      gress that agency contracting officers should, using sec-  
23      tion 2304(b)(3) of this title, exclude contractors making  
24      a disclosure pursuant to subsection (a) in response to so-  
25      licitations issued by the agency from the bidding process

1 in connection with such solicitations on the grounds that  
 2 the actions described in the disclosures are against the  
 3 public interests of the United States.

4 “(d) ANNUAL REPORT.—The head of each agency  
 5 shall submit to Congress each year a report on the fol-  
 6 lowing:

7 “(1) The number of solicitations made by the  
 8 agency during the preceding year for which disclo-  
 9 sures were made pursuant to subsection (a) in re-  
 10 sponsive bids or proposals.

11 “(2) The number of contracts awarded by the  
 12 agency during the preceding year in which such dis-  
 13 closures were taken into account in the contract  
 14 award.”.

15 (B) CLERICAL AMENDMENT.—The table of  
 16 sections at the beginning of chapter 137 of such  
 17 title is amended by inserting after the item re-  
 18 lating to section 2327 the following new item:

“2327a. Contracts: consideration of outsourcing of jobs.”.

19 (2) EXCLUSION OF FIRMS FROM SOURCES.—  
 20 Section 2304(b) of such title is amended—

21 (A) by redesignating paragraphs (3) and  
 22 (4) as paragraphs (4) and (5), respectively;

23 (B) by inserting after paragraph (2) the  
 24 following new paragraph:



1       “(3) The head of an agency may provide for the pro-  
 2       curement of property and services covered by this chapter  
 3       using competitive procedures but excluding a source mak-  
 4       ing a disclosure pursuant to section 2327a(a) of this title  
 5       in the bid or proposal in response to the solicitation issued  
 6       by the agency if the head of the agency determines that  
 7       the actions described by disclosure are against the public  
 8       interests of the United States and the source is to be ex-  
 9       cluded on those grounds. Any such determination shall  
 10      take into account the sense of Congress set forth in section  
 11      2327a(c) of this title.”; and

12                   (C) in paragraph (4), as so redesignated,  
 13                   by striking “paragraphs (1) and (2)” and in-  
 14                   serting “paragraphs (1), (2), and (3)”.

15      (b) OTHER FEDERAL CONTRACTS.—

16           (1) CONSIDERATION OF OUTSOURCING.—Chap-  
 17      ter 35 of title 41, United States Code, is amended  
 18      by inserting after section 3303 the following new  
 19      section:

20      **“§ 3303a. Bidders outsourcing jobs: disclosure of out-**  
 21                   **sourcing; consideration of outsourcing in**  
 22                   **award; exclusion from sources**

23           “(a) DISCLOSURE OF OUTSOURCING OF JOBS.—

24                   “(1) IN GENERAL.—The head of an executive  
 25      agency shall require a contractor that submits a bid

1 or proposal in response to a solicitation issued by  
2 the executive agency to disclose in that bid or pro-  
3 posal if the contractor, or a subsidiary of the con-  
4 tractor, owns a facility for which there is an out-  
5 sourcing event during the three-year period ending  
6 on the date of the submittal of the bid or proposal.

7 “(2) OUTSOURCING EVENT.—For purposes of  
8 paragraph (1), the term ‘outsourcing event’ means a  
9 plant closing or mass layoff (as described in section  
10 2(a) of the Worker Adjustment and Retraining Noti-  
11 fication Act) in which the employment loss (exclud-  
12 ing any part-time employees) for positions which will  
13 be moved to a country outside of the United States,  
14 as determined pursuant to the outsourcing state-  
15 ment (as described in paragraph (1) of such section  
16 3(e) of such Act) served by the taxpayer during the  
17 taxable year, exceeds 50 employees.

18 “(b) CONSIDERATION AUTHORIZED.—(1) Con-  
19 tracting officers of an executive agency considering bids  
20 or proposals in response to a solicitation issued by the ex-  
21 ecutive agency shall take into account any disclosure made  
22 pursuant to subsection (a) in such bids and proposals.

23 “(2) The head of an executive agency shall establish  
24 a negative preference of no less than 10 percent of the  
25 cost of a contract for purposes of evaluating a bid or pro-

1 posal of a contractor that makes a disclosure pursuant to  
2 subsection (a).

3 “(c) EXCLUSION FROM SOURCES.—

4 “(1) IN GENERAL.—The head of an executive  
5 agency may provide for the procurement of property  
6 and services using competitive procedures but ex-  
7 cluding a source making a disclosure under sub-  
8 section (a) in the bid or proposal in response to the  
9 solicitation issued by the executive agency if the  
10 head of the executive agency determines that the ac-  
11 tions described by disclosure are against the public  
12 interests of the United States and the source is to  
13 be excluded on those grounds. Any such determina-  
14 tion shall take into account the sense of Congress  
15 set forth in paragraph (2).

16 “(2) SENSE OF CONGRESS.—It is the sense of  
17 Congress that contracting officers of executive agen-  
18 cies may use paragraph (1) to exclude contractors  
19 making a disclosure pursuant to subsection (a) in re-  
20 sponse to a solicitation issued by the executive agen-  
21 cy from the bidding process in connection with the  
22 solicitation on the grounds that the actions described  
23 by the disclosure are against the public interests of  
24 the United States.

1       “(d) ANNUAL REPORT.—The head of each executive  
2 agency shall submit to Congress each year a report on the  
3 following:

4           “(1) The number of solicitations made by the  
5 executive agency during the preceding year for which  
6 disclosures were made pursuant to subsection (a) in  
7 responsive bids or proposals.

8           “(2) The number of contracts awarded to con-  
9 tractors that disclosed having outsourced more than  
10 50 jobs during the preceding three years.”.

11       (2) CLERICAL AMENDMENT.—The table of sec-  
12 tions at the beginning of chapter 35 of such title is  
13 amended by inserting after the item relating to sec-  
14 tion 3303 the following new item:

“3303a. Bidders outsourcing jobs: disclosure of outsourcing; consideration of  
outsourcing in award; exclusion from sources.”.

15       (3) CONFORMING AMENDMENT.—Section  
16 3301(a) of such title is amended by inserting  
17 “3303a(c),” after “3303,”.

18       (c) REGULATIONS.—

19       (1) IN GENERAL.—Not later than 180 days  
20 after the date of the enactment of this Act, the Fed-  
21 eral Acquisition Regulatory Council, in consultation  
22 with the heads of relevant agencies, shall amend the  
23 Federal Acquisition Regulation and the Defense  
24 Federal Acquisition Regulation Supplement to carry

1 out the requirements of section 3303a of title 41,  
 2 United States Code, and section 2327a of title 10,  
 3 United States Code, as added by this section.

4 (2) DEFINITION OF OUTSOURCING.—For pur-  
 5 poses of defining outsourcing pursuant to paragraph  
 6 (1), the Federal Acquisition Regulatory Council may  
 7 utilize regulations prescribed by the Secretary of  
 8 Labor.

9 (d) RULE OF CONSTRUCTION.—This section, and the  
 10 amendments made by this section, shall be applied in a  
 11 manner consistent with United States obligations under  
 12 international agreements.

13 **SEC. 9. CURRENT YEAR INCLUSION OF NET CFC TESTED IN-**  
 14 **COME.**

15 (a) REPEAL OF TAX-FREE DEEMED RETURN ON IN-  
 16 VESTMENTS.—

17 (1) IN GENERAL.—Section 951A(a) of the In-  
 18 ternal Revenue Code of 1986 is amended by striking  
 19 “global intangible low-taxed income” and inserting  
 20 “net CFC tested income”.

21 (2) CONFORMING AMENDMENTS.—

22 (A) Section 951A of such Code is amended  
 23 by striking subsections (b) and (d).

24 (B) Section 951A(e)(1) of such Code is  
 25 amended by striking “subsections (b),

1           (c)(1)(A), and” and inserting “subsections  
2           (c)(1)(A) and”.

3           (C) Section 951A(f) of such Code is  
4           amended to read as follows:

5           “(f) TREATMENT AS SUBPART F INCOME FOR CER-  
6 TAIN PURPOSES.—

7           “(1) IN GENERAL.—Except as provided in para-  
8 graph (2), any net CFC tested income included in  
9 gross income under subsection (a) shall be treated in  
10 the same manner as an amount included under sec-  
11 tion 951(a)(1)(A) for purposes of applying sections  
12 168(h)(2)(B), 535(b)(10), 851(b), 904(h)(1), 959,  
13 961, 962, 993(a)(1)(E), 996(f)(1), 1248(b)(1),  
14 1248(d)(1), 6501(e)(1)(C), 6654(d)(2)(D), and  
15 6655(e)(4).

16           “(2) EXCEPTION.—The Secretary shall provide  
17 rules for the application of paragraph (1) to other  
18 provisions of this title in any case in which the de-  
19 termination of subpart F income is required to be  
20 made at the level of the controlled foreign corpora-  
21 tion.”.

22           (D) Section 960(d)(2)(A) of such Code is  
23 amended by striking “global intangible low-  
24 taxed income (as defined in section 951A(b))”

1           and inserting “net CFC tested income (as de-  
2           fined in section 951A(c))”.

3           (b) REPEAL OF REDUCED RATE OF TAX ON NET  
4 CFC TESTED INCOME.—

5           (1) IN GENERAL.—Part VIII of subchapter B  
6           of chapter 1 of such Code is amended by striking  
7           section 250 (and by striking the item relating to  
8           such section in the table of sections of such part).

9           (2) CONFORMING AMENDMENTS.—

10           (A) Section 59A(c)(4)(B)(i) of such Code  
11           is amended by striking “section 172, 245A, or  
12           250” and inserting “section 172 or 245A”.

13           (B) Section 172(d) of such Code is amend-  
14           ed by striking paragraph (9).

15           (C) Section 246(b)(1) of such Code is  
16           amended—

17           (i) by striking “subsection (a) and (b)  
18           of section 245, and section 250” and in-  
19           serting “and subsection (a) and (b) of sec-  
20           tion 245”; and

21           (ii) by striking “subsection (a) and  
22           (b) of section 245, and 250” and inserting  
23           “and subsection (a) and (b) of section  
24           245”.

1 (D) Section 469(i)(3)(F)(iii) is amended  
 2 by striking “222, and 250” and inserting “and  
 3 222”.

4 (c) NET CFC TESTED INCOME DETERMINED WITH-  
 5 OUT REGARD TO HIGH TAX FOREIGN INCOME.—Section  
 6 951A(c)(2)(A)(i) of such Code is amended by redesign-  
 7 ating subclauses (IV) and (V) as subclauses (V) and  
 8 (VI), respectively, and by inserting after subclause (III)  
 9 the following new subclause:

10 “(IV) any item of income subject  
 11 to an effective rate of income tax im-  
 12 posed by a foreign country greater  
 13 than the maximum rate of tax speci-  
 14 fied in section 11,”.

15 (d) REPEAL OF EXCLUSION OF FOREIGN OIL AND  
 16 GAS EXTRACTION INCOME FROM THE DETERMINATION  
 17 OF TESTED INCOME.—Section 951A(c)(2)(A)(i) of such  
 18 Code, as amended by subsection (c) is amended—

19 (1) by adding “and” at the end of subclause  
 20 (IV);

21 (2) by striking “and” at the end of subclause  
 22 (V) and inserting “over”; and

23 (3) by striking subclause (VI).

24 (e) INCREASE IN DEEMED PAID CREDIT FOR TAXES  
 25 PROPERLY ATTRIBUTABLE TO TESTED INCOME.—



1           (1) IN GENERAL.—Section 960(d) of such Code  
2 is amended by striking “80 percent of”.

3           (2) CONFORMING AMENDMENT.—Section 78 of  
4 such Code is amended by striking “(determined  
5 without regard to the phrase “80 percent of” in sub-  
6 section (d)(1) thereof)”.

7           (f) EFFECTIVE DATE.—

8           (1) IN GENERAL.—Except as otherwise pro-  
9 vided in this subsection, the amendments made by  
10 this section shall apply to taxable years of foreign  
11 corporations beginning after December 31, 2019,  
12 and to taxable years of United States shareholders  
13 in which or with which such taxable years of foreign  
14 corporations end.

15           (2) REPEAL OF REDUCED RATE OF TAX; IN-  
16 CREASE IN DEEMED PAID CREDIT.—The amend-  
17 ments made by subsection (b) and (e) shall apply to  
18 taxable years beginning after December 31, 2019.

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