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CONGRESS PREPARES TO SEND MAJOR GIFT TO AMAZON, WHILE TRUMP BATTLES “AMAZON WASHINGTON POST”

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Photo: Mark Makela/Getty Images

UNDER PRESSURE FROM anti-monopolists, House and Senate negotiators

tweaked the controversial “Amazon amendment” this week, but waved it through nonetheless. The provision seeks to turn over federal procurement of commercial off-the-shelf items, a \$53 billion market, to e-commerce portals. And with Amazon as the runaway leader in that space, critics say that even with the modifications, the provision still favors the online retail giant, giving it a pathway to billions of dollars in new revenue.

The gift bound for Amazon underscores the limits of President Donald Trump’s Twitter politics, as his [routine denunciations](#) of the company for its affiliation with The Washington Post have done little to dampen its clout in Congress. (Amazon founder Jeff Bezos owns the Post.)

As The Intercept [reported last week](#), the House-passed version of the National Defense Authorization Act, the annual bill setting defense policy, would let Pentagon purchasing officials acquire office supplies or furniture from private-sector websites, instead of through long-term contracts with suppliers or a government catalog managed by the General Services Administration. The stated goal was intuitive: to reduce costs and create simplicity in procurement, as well as to eventually roll out the program across the government.

The Senate did not include the provision in their version of the bill, but it made it into the [conference report](#), which was posted to the House Rules Committee website on Thursday.

Congressional aides insisted Amazon would not be the sole winner from the deal. “Legislative intent was never to restrict participation to Amazon/Walmart-like one-stop shop portals, but to include specialized vendors as well,” said Claude Chafin, a spokesperson for the House Armed Services Committee. He cited the reference to industrial supply company W.W. Grainger in the [committee’s summary](#) of the legislation as proof that plenty of online sellers would be eligible.

To the extent that that’s true, it’s because lawmakers changed the language in the conference report. The House’s version stated that eligible platforms must offer multiple suppliers for the same product, with constantly changing selection and

prices. That requirement for third-party sellers would have limited marketplaces to Amazon and to a lesser extent Walmart.

But that language is no longer in the final text. Gone is the phrase “online marketplaces” in favor of “e-commerce portals.” Among the explicit goals of the new system is “enhancing competition.” The only requirements for eligible portals are that they are “widely used in the private sector” and feature what everyone has come to expect from online retail (updated selection, reviews, customer service).

The other major change is a drawn-out implementation plan, which replaces much of the amendment’s more detailed language. The plan requires deep analysis of portal functionality and customization, integration with existing federal law, supply-chain risks, data security, which products will be allowed for purchase, and what fees will be imposed for participation. The General Services Administration has at least two years to award contracts and finalize implementation and oversight of the program.

Despite this more deliberate process, critics still see the program as tailor-made for Amazon to dominate. First of all, no online retailer has as large a footprint as Amazon, which is responsible for [almost half of all e-commerce sales](#). Procurement officials are as likely to lean on Amazon as any other consumer, especially because of the array of third-party sellers supplying at least a semblance of competition in one site.

However, Amazon charges third-party sellers for the privilege of using its platform, anywhere between 15 and 20 percent of gross sales. If Pentagon procurement, and potentially all federal procurement, shifts predominantly to Amazon, it would collect billions of dollars annually without doing much of anything.

And in addition to hosting third-party sales, Amazon competes against those third parties with its in-house brands, armed with superior data to know what gets purchased and what doesn’t. Procurement officials will be susceptible to Amazon’s usual suite of behavioral nudges, like adjusting search results or controlling what gets into the “buy box,” the top option it suggests for purchases.

Plus, the whole concept of relying on web portals for everyday purchases gives away the government's leverage to buy commercial items in bulk at a superior price to the open market.

Meanwhile, Amazon has focused intensely on government procurement of late. Amazon Business, the company's business-to-business platform, has leaped to over \$1 billion in sales in just two years of operation. It recently [introduced a Prime membership](#) with free two-day shipping, an announcement that [tanked Grainger stock](#).

Amazon [hired](#) the former chief acquisitions officer of the United States, Anne Rung, to run Amazon Business's public sector division and has signed numerous [local government contracts](#) and [federal agreements](#). The company has [lobbied on the NDAA](#) and the "modernization of the procurement process" this year, according to federal disclosures.

"This amendment looks like it will crown Amazon as an official gatekeeper to government procurement," said Lina Khan of the Open Markets Institute. "Government spending that was previously dispersed across hundreds of distinct companies will now instead all be channeled through one company, with Amazon collecting a tax."

The amendment retains the language that using the portals can satisfy small business purchasing requirements. Because Amazon charges third-party sellers for use of the platform, it means a significant portion of what small businesses earn from government spending would leak through to Amazon.

The NDAA, one of the few bills Congress passes every year, now goes to the House and Senate for final approval. It's not expected to face much opposition. Few members of the conference committee [interviewed by The Hill](#) even knew of the existence of the Amazon amendment, let alone rank-and-file representatives.

Top photo: A worker boxes orders at the Amazon Fulfillment Center on August 1, 2017 in Robbinsville, New Jersey.