



October 11, 2022

To the Members of the United States Senate:

The U.S. Chamber of Commerce supports the substitute amendment to S. 4543, the “National Defense Authorization Act for Fiscal Year 2023,” which would authorize \$847 billion in discretionary spending for national defense commitments at home and abroad. Passage of this important legislation would strengthen and advance the National Defense Strategy and ensure that unfunded procurement, research, and readiness priorities of the services are met. This legislation should serve as a model for bipartisan cooperation as members of both parties have worked together to produce a bill that ensures that America’s servicemembers have the resources they need to defend freedom. We appreciate the Committee’s work in crafting this legislation and ask that you consider our recommendations.

We strongly support a robust defense industrial base and flexibility for federal contractors to provide the goods and services that the Department of Defense needs. Chamber members represent an overwhelming majority of the federal contracting supply chain, from the smallest components to the largest weapon systems for the Department of Defense.

The U.S. Chamber of Commerce supports the bipartisan and bicameral Investing in American Defense Technologies Act of 2022, a version of which is included in the Senate Armed Services Committee-passed National Defense Authorization Act for Fiscal Year 2023 (the Public-Private Partnership Technology Investment Program) and a version of which is included in the House Armed Services Committee-passed National Defense Authorization Act for Fiscal Year 2023 (the Department of Defense Advanced Technology Investment Incentive Pilot Program). The Chamber supports the bill language introduced in the Investing in American Defense Technologies Act and the defense appropriations required to execute the program. Passage of this critical legislation would strengthen the National Security Industrial and Innovation Base and accelerate the development, transition, and acquisition of advanced technology for national security solutions. This public-private partnership program would incentivize investment in innovative U.S. small businesses and startups developing advanced technologies critical to our national security, leveraging America’s entrepreneurial and innovative spirit to counter ongoing threats.

In addition, the Chamber believes S. 4543 would be improved if it were amended in several key areas:

Strengthening the National Security Industrial and Innovation Base: The Chamber strongly supports a robust defense industrial base (DIB) and flexibility for federal contractors to provide the goods and services that the Department of Defense needs.

Chamber members represent all segments of the federal contracting supply chain, from the smallest components to the largest weapon systems for the Department of Defense. The Chamber commends inclusion of section 1042, which would require the Department of Defense to treat previously held security clearances as active within 1 year of an individual separating from the Armed Forces or the Department of Defense. This change would provide better employment avenues for recently separated service members and allow them to utilize their skills in the private sector to support America's national security mission. In addition, the Chamber supports the inclusion of amendments that further support the NSIB, including provisions that would provide the Department of Defense the statutory flexibility to reimburse its contractor workforce for unforeseen facility closures during a declared emergency. This unique authority would be modeled after section 3610 of the CARES Act (P. L. 116-136), which was essential to ensuring the resiliency of the defense industrial base and provided for the delivery of mission critical military equipment and services.

Modification to Special Defense Acquisition Fund: The Chamber supports modification to Special Defense Acquisition Fund (SDAF) and recommends the Department of Defense (DoD) reprogram its appropriations to infuse additional funding into the Special Defense Acquisition Fund (SDAF) up to the authorized limit of \$3.5 billion. We also recommend that DoD work with Congress to increase the current fund limit from a proposed \$3.5 billion to \$4 billion. An SDAF increase would allow the Administration to acquire platforms necessary for national defense in a time of heightened hostility from Russia and China. The DIB is under vast pressure to ramp up production, often at risk, which is unfeasible for most businesses. Overwhelming bipartisan support for increased defense spending highlights nation-wide endorsement for a sustained and well-funded DIB, as reflected in the FY22 National Defense Authorization Act (NDAA).

Domestic Source Requirements: The Chamber is concerned with acquisition mandates in the bill, which would impose numerous changes to the conditions under which U.S. defense companies could source materials and components to support production and services. Specifically, section 803 would impose additional domestic content requirements for major defense procurement programs. As Congress is seeking to mitigate the broad economic challenges confronting the United States, such additive compliance regimes would strain already fragile supply chains with direct impact upon small business subcontractors. Moreover, by constraining the ability of defense companies to source materials, reduced availability would raise costs and negatively affect production and delivery schedules. "Buy America" mandates now in place are already extensive in scope, and the Chamber is concerned that extending these rules to new product categories and new levels of restrictiveness would have negative impacts on U.S. innovation and competitiveness. As of today, 97% of the federal government's procurements by value already go to U.S. firms, and strict, longstanding rules in the defense sector already require U.S. production. In this context, implementing even more rigorous "Buy America" regulations threatens to drive up the cost of government projects, undermining their potential to create jobs and spur

economic growth. Such legislative changes may also elicit retaliation by foreign governments and encourage them to discriminate against U.S. companies in their own government procurement practices, reducing their purchases from U.S. firms. Finally, expanding the reach of “Buy America” legislation is an insufficient incentive to re-shore supply chains given that most U.S. government procurements already go to U.S. firms. We urge Congress to consider the harmful effects additional “Buy America” rules would have on U.S. businesses and to invite the DIB into conversations shaping these mandates to ensure U.S. industry fully understands the challenges and implications for both our Allied and friendly nation supply chains, as well as potential adverse impacts on innovation.

Working Group on Digital Assets: We support this amendment which would require the Securities and Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC) to establish a working group on digital assets to analyze the current regulatory landscape and issue recommendations to improve the market. Importantly, the working group on digital assets would include representatives from the private sector to inform its analysis and recommendations. We believe the private sector perspective is critical, especially individuals with hands-on experience with confronting regulatory ambiguities or challenges that are inhibiting innovation. The scope of the analysis and reports required for the working group on digital assets is appropriately tailored and balances innovation with investor protection.

Critical Minerals: We support amendments that increase the security and stability of our domestic critical and strategic mineral supply. This includes amendments that would expand the critical minerals list to include both non-fuel and fuel sources such as uranium. This is a key step in breaking our dependence on critical minerals from foreign countries including Russia and China. The Chamber also supports the regulatory streamlining of domestic critical mineral production and processing to expand our energy independence, increase our national security, and strengthen the struggling supply chain.

Offshore Energy: We strongly support the bipartisan amendment to reverse the Presidential withdrawal in the South Atlantic, Straits of Florida, and the Mid Atlantic Planning Areas of the Outer Continental Shelf for the purposes of granting leases for offshore wind development. Additionally, we oppose any amendments to further restrict access to leasing the Outer Continental Shelf for energy development.

Update Permitting Process: We support amendments that provide more transparency and resources to help speed up the federal environmental permitting process through the Permitting Council established under the Fixing America’s Surface Transportation Act (FAST-41) provisions. This includes amendments that would use the resources of the Permitting Council to help facilitate agency coordination of permitting timelines and environmental documents as well as post agency progress on a public dashboard to enhance process transparency. These amendments would enable the United States to be a global leader in the industries of the future such as the domestic production and processing

of critical minerals needed for the energy transition as well as domestic manufacturing of semiconductors, artificial intelligence, and cybersecurity.

INFORM Consumers Act: We support this amendment, which adds the provisions of H.R.5502, the INFORM Consumers Act (INFORM), including revisions by the amendment sponsors. INFORM would help to address the twin scourges of organized retail crime and counterfeiting by providing transparency and accountability when criminal actors attempt to sell illicit goods on online marketplaces. The amendment would require online marketplaces to authenticate the identity of high-volume third-party sellers by obtaining and verifying information including the seller's name, tax ID, bank account information, and contact information, while ensuring that consumers have sufficient information to identify and contact these third-party sellers following a purchase. Illicit trade is a growing threat to consumer confidence, health, and safety, as well as to legitimate businesses, jobs, and supply chains, including military and high-tech procurements. INFORM is a crucial step in taking control of this challenge and enjoys broad support from online marketplaces and brick and mortar retailers alike, along with major business associations.

National Climate Adaptation and Resilience Strategy Act: The Chamber supports inclusion of S. 3531, National Climate Adaptation and Resilience Strategy Act as an amendment to the NDAA. This important bipartisan legislation, led by Sens. Coons and Murkowski, calls for the development of a national resilience strategy and a Chief Resilience Officer based out of the White House. It would improve interagency coordination and engagement with the broad stakeholder community to reduce the risks from climate change for companies and communities across the United States, prepare ahead of the next crises, and strengthen our national security.

Relief for Children of Foreign National Workers in the U.S.: We strongly supported the inclusion of the bipartisan House NDAA amendment that would provide certainty for over 200,000 young individuals that are the children of long-term, legal nonimmigrant workers in the U.S. These young people face the risk of being removed from the country for the crime of growing up at a time when our immigration system's visa backlogs are so long that they cannot obtain permanent residency before they reach 21 years of age. There is no logical reason as to why the United States would separate these families and force young people that grew up and were educated in the U.S. to return to countries they barely remember. Inclusion of this amendment would ensure these young people can maintain their legal status in the country and continue building their lives and pursuing their dreams in the country they call "home."

The Chamber urges you to oppose efforts to weaken this important legislation, including provisions and amendments related to:

Arbitration and Class Action Litigation: We strongly oppose amendments, such as the Blumenthal Amendment (SA 6064), that would limit the availability and usage of pre-dispute arbitration clauses or would prohibit or otherwise limit class action waivers. The Chamber also opposes anti-arbitration language contained in Sections 5205 and 5891-93 of

the House passed version of the NDAA. Arbitration is a fair, efficient, and effective system of dispute resolution and the Chamber believes that such limitations would lead to more costly, time-consuming, and adversarial litigation for service members and veterans while only serving to enrich the plaintiffs' bar.

Per-and polyfluoroalkyl substances (PFAS): We oppose amendments and provisions of the bill that would circumvent existing, well-established regulatory processes and predetermine outcomes related to cleanup of PFAS contaminated sites. We ask you to oppose amendments and language that would further restrict the procurement of PFAS-containing products, the temporary ban on incineration by the Department of Defense, and mandates on Environmental Protection Agency (EPA) effluent guidelines that bypass established regulatory processes. The Chamber will continue to support the ongoing EPA process to evaluate sites, establish appropriate regulatory standards supported by sound science, and facilitate expeditious cleanups.

Language on Contractor Debarment: We oppose the proposed amendment which would bypass and complicate the existing suspension and debarment process that federal contracting officers may already use. This amendment is unnecessary and redundant. Furthermore, the Fair Labor Standards Act (FLSA) provides for remedies and penalties for contractors in violation, which are vigorously pursued by the Department of Labor, that are applied to employers when they violate the FLSA. There is no need for more penalties. Finally, this amendment would invite opponents of a contractor to generate FLSA violation allegations to undermine that contractor's position.

Card Check and Binding Arbitration: We oppose the proposed amendment language which would strip away the ability of workers to vote in a secret ballot election on unionization, instead imposing a "card check" scheme that could expose workers to harassment and intimidation. This amendment would also force employers into binding first contract arbitration, which could allow government-appointed arbitrators to dictate the terms of a contract. This could not only saddle employers with an unworkable contract, but would also deprive workers of the ability to vote on the terms and conditions of employment imposed by such a contract.

NLRA Enforcement: We oppose language that would prohibit the Secretary of Defense from "enter[ing] into a contract" with an employer found to have violated the National Labor Relations Act during the three-year period preceding the proposed date of award of the contract. It would also prohibit a contract award to any company under investigation for violations of the NLRA on the proposed date of award of the contract. These prohibitions are waived if the employee of such an employer is represented by a labor organization for purposes of collective bargaining and the labor organization certifies the employer complies with any relevant CBA or has bargained and will bargain in good faith to reach a CBA. This language would incentivize frivolous charges against employers, interfere with the existing contractor compliance regime established by Congress, and

improperly add a new penalty structure to the NLRA that Congress had not included in any amendments to that law.

Credit Reporting Transparency: We oppose amendments which would prevent creditors from making available a full picture of a borrower's risk of default, which could cause them to be offered a loan they are unable to repay. This approach may unintentionally hurt servicemembers, their spouses, and other consumers, by prohibiting information important to creditors, such as adverse actions, from appearing in those reports. Interventions by Congress into the information that should be reported to credit bureaus or used by financial institutions is not in the best interest of the consumers it purports to help.

Credit Reporting Ombudsman: We oppose this amendment as it is unnecessary given existing authority and resources of the Consumer Financial Protection Bureau (CFPB) to assist servicemembers and veterans in resolving credit reporting errors. The CFPB already supervises the largest consumer reporting agencies to ensure they are complying with consumer protection laws, including the Fair Credit Reporting Act. Additionally, the CFPB already has an Office of Servicemember Affairs which works to help military families overcome unique financial challenges by providing educational resources, monitoring complaints, and working with other agencies to solve problems faced by servicemembers.

General Services Administration Federal Procurement Prohibitions: We oppose the amendment that would establish an arbitrary size limitation for private sector companies to provide goods and services to the General Services Administration (GSA) through the e-commerce portal program. This approach would severely limit the GSA from getting the best value for the federal government thus increasing prices. Furthermore, the amendment as drafted would jeopardize small and mid-size businesses who partner with large third-party resellers in support of GSA acquisition objectives.

Software bill of materials (SBOMs): The Chamber has significant concerns with section 1627, which would require DoD to establish requirements for a SBOMs. Congress and the administration are taking a notably uncoordinated approach to policymaking on SBOMs, which is detrimental to the goal of maturing the SBOMs ecosystem. The Senate would set requirements for DoD, and the House would set requirements for the Department of Homeland Security. Meanwhile, the White House is urging agencies to consider requiring SBOMs based on comparatively vague federal guidance. Left unchecked, these varying approaches can be expected to conflict in both design and execution. Instead of rushing to regulate, DoD should study the usefulness and suitability of acquiring a SBOMs for noncommercial, commercial, and open-source software. The legislation also needs to account for federal policies, including the president's 2021 cybersecurity executive order, and evolving standards and best practices for managing the risk-based disclosure of software vulnerabilities.

Joint Cyber Warfighting Architecture (JCWA): We support funding for the JCWA consistent with the funding levels included in the House-passed version of the FY23 NDAA. U.S. Cyber Command originally created the JCWA as an overarching vision for all cyber systems. It will serve as a guiding concept for the acquisition and integration of the Department of Defense's (DoD) cyber warfighting systems as well as the means to address DoD's evolving technological and operational mission requirements. As such, the JCWA will play a critical role in how and why DoD acquires certain digital technologies and cyber defense systems from the commercial sector. Fully funding the JCWA will provide needed clarity to commercial sector providers of cybersecurity hardware and allow DoD's partners to better support America's national security mission as well as defend against constantly evolving threats to U.S. critical infrastructure and digital assets, and give DoD the necessary resources to perform its cyber mission.

Federal Contracting Prohibition and Russia Sanctions: A measure included in the House NDAA bill to prohibit the federal government from entering or renewing contracts with companies that do business in Russia ("The Federal Contracting for Peace and Security Act") is likely to conflict significantly with existing U.S. sanctions, cast confusion over humanitarian exceptions established in U.S. law, and frustrate vitally important efforts to coordinate with allies. The approach to exceptions in this measure is quite distinct from that in U.S. sanctions already in place, and it would complicate the maintenance of exemptions for humanitarian trade (relating to medicine, medical devices, telecommunications, and the agri-food sector) that the White House has explicitly said it will maintain. A large majority of U.S. firms have left the Russian market already or have mostly or entirely suspended their operations, and others are working to exit despite a host of practical and U.S. legal obstacles slowing their doing so. In this context, enacting this measure will heap new difficulties on the application of U.S. and allied sanctions without adding significantly to the substantial pressure sanctions are imposing on the Putin regime. On a related note, an amendment was recently filed to the Senate NDAA package by Sen. Josh Hawley that would prohibit entities contracting with the federal government from doing business in China, which is the third largest market for U.S. exports. This would cause massive disruptions to U.S. commerce and procurement while doing little to address China's non-market-oriented behavior.

Corporate Board Diversity. The Chamber supports the inclusion of language from the previous House passed bipartisan legislation, Improving Corporate Governance Through Diversity Act of 2019, that would establish a model to organically boost diversity on boards through disclosure, rather than the counterproductive quota-driven strategies that some jurisdictions have attempted, and establish an advisory group that would carry out a study to provide recommendations on private sector strategies to increase gender, racial and ethnic diversity among boards of directors.

Disclosures for Public Companies. This amendment, based on the "Reveal Risky Business in Russia Act," is broader than described and is at odds with the purposes of securities law. The amendment will require U.S. public companies to publicly disclose in their financial

statement if they do business with or in Russia or any country that “invades a sovereign nation state or annexes sovereign territory in an unprovoked war of aggression.” This would mean that publicly listed companies would need to update their securities disclosures to reflect any business they might do in Russia, not necessarily with the Russian state; for example, if they sell their products to Russian citizens or if their goods are produced in the country. This amendment improperly uses the securities laws to achieve foreign policy objectives that should be accomplished via other means. For example, the U.S. has sanctions on some sectors of the Russian economy, export controls are in place, and financial sanctions limit the activity of Russian banks. Furthermore, this would conflict with the White House commitment, reiterated on April 6th, “to exempt[ing] essential humanitarian and related activities that benefit the Russian people and people around the world.”

The Chamber supports S. 4543, the “National Defense Authorization Act for Fiscal Year 2023.” We believe that passage of this bipartisan legislation is a critical step to ensuring our national defense commitments remain strong in a challenging global environment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley", with a large, stylized flourish at the end.

Neil L. Bradley
Executive Vice President, Chief Policy Officer,
and Head of Strategic Advocacy
U.S. Chamber of Commerce