



July 13, 2022

To the Members of the U.S. House of Representatives:

The U.S. Chamber of Commerce supports H.R. 7900, the “National Defense Authorization Act for Fiscal Year 2023,” which would authorize \$840 billion for national defense commitments at home and abroad. Passage of this important legislation will strengthen and advance the National Defense Strategy and ensure that unfunded procurement, research, and readiness priorities of the services are met. We support the Committee’s decision to increase the authorizing level of the bill so that the Department of Defense has the resources to adapt to emerging threats as inflation has weakened the Department’s buying power. This legislation serves as a model for bipartisan cooperation as members of both parties worked together to advance critical national priorities. We appreciate the Committee’s work in crafting this legislation and ask that you consider our recommendations.

The Chamber believes H.R. 7900 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 will 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 Russian 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 showcases 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 807 would impose additional domestic content requirements for major defense procurement programs. As Congress is seeking to mitigate the broad economic challenges confronting the nation, 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 will 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 will 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, ultimately 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 will 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 an important 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 in order 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 of 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. 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 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 Section 5205 of the legislation. The Chamber believes that limitations would lead to costly, time-consuming, and adversarial litigation for service members and veterans while only serving to enrich the class action 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 is in compliance 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 Transparency:** We oppose this amendment which would prevent creditors from being made 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 amendment’s approach could unintentionally hurt servicemembers and their spouses by prohibiting information important to creditors, such as adverse actions or inaction on their credit report, from appearing in those reports.

**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.

**Cybersecurity amendments need review, regular order scrutiny, and a better policy balance:** We believe several cyber-related amendments filed for consideration require more consideration through the regular order committee process. First, an amendment regarding systemically important entities focuses on government-industry collaboration to mitigate significant cyberattacks, but many businesses' core policy goals are left out of this legislation. Examples include legal liability protections vis-à-vis existing regulations and future performance goals and express national preemption of state cybersecurity and data protection laws/requirements. Second is an amendment that calls on defense industry contractors to disclose ransomware payments to the Cybersecurity and Infrastructure Security Agency (CISA). CISA is writing a rule to implement the newly enacted cyber incident reporting law, which the Chamber supported, and this process needs time to thoughtfully unfold before similar requirements are written into law.

The Chamber has generally supported the Administration's multistakeholder software bill of materials (BOM) process. However, a more expansive BOM effort—which is part of a larger amendment to this legislation—is not ready for prime time. It should not be implemented broadly through the Department of Defense. Policymakers should understand that while a software BOM is advancing well in some areas of the economy, any new BOM program needs more time to mature and prove its workability.

Lastly, we oppose an amendment calling for establishing a federal office of cybersecurity statistics within CISA, as this proposal needs further examination. It would single out insurers for mandatory reporting of paid covered claims to the government. This amendment would add substantial costs on the insurers (e.g., having them retool their systems to acquire detailed information about a policyholder's cyber incident) and create an adversarial relationship between insurers and their customers, which would be detrimental to U.S. cybersecurity.

The Chamber supports H.R 7900, 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,



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