

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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TO THE MEMBERS OF THE UNITED STATES SENATE:

The U.S. Chamber of Commerce supports the substitute amendment to S. 2792, the “National Defense Authorization Act for Fiscal Year 2022,” which would authorize \$768 billion in discretionary spending 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. 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 nearly all the federal contracting supply chain, from the smallest components to the largest weapon systems for the Department of Defense.

The Chamber supports the following provisions included in S.2792:

Cyber Incident Reporting Act: The Chamber outlined our support for cyber incident reporting legislation in an October 4 coalition letter. We are committed to legislation to strengthen our national security and the protection and resilience of U.S. industry. Such legislation, among other things, must establish a prompt reporting timeline of not less than 72 hours, must confine reporting to confirmed significant incidents, and must include robust protections for reporting incident information, especially protections from legal liability for both the act of reporting and the contents of reporting. The Chamber generally supports the Cyber Incident Reporting Act (S. 2875), sponsored by Sens. Peters and Portman, which is included in this legislation, and looks forward to addressing areas for adjustment in conference.

Growing Climate Solutions Act: The Chamber supports the bipartisan amendment that would add the Senate-passed Growing Climate Solutions Act (GCSA) to S. 2792. The GCSA would facilitate a new, cost-effective option for addressing climate change to reward farmers and other land managers for taking voluntary actions to reduce emissions. Many entities across a broad spectrum of economic sectors are depending on the establishment of such voluntary offset markets to meet their ambitious climate commitments. Promoting responsible resource management and nature-based climate solutions through financial incentives for voluntary conservation and sustainable land-use practices is a win-win policy that will benefit American agriculture, the associated supply chains, the broader business community, and the environment.

In addition, the Chamber believes S. 2792 would be improved if it were amended in several key areas:

Domestic Source Requirements: The Chamber is concerned with certain acquisition mandates in the bill, which would impose new and burdensome reporting requirements. Specifically, section 836 would require businesses to disclose the origination of specific components included in a broad array of products acquired by the Department – regardless of the security risk for these products. Ultimately, these reporting requirements would be one more administrative hurdle, shrinking the pool of businesses able to provide the Department with cutting edge products. Instead, we recommend the Senate accept a House provision that seeks to address similar concerns of this section.

Working Group on Digital Assets: We support this bipartisan House-passed amendment which is identical to H.R. 1602, the “Eliminate Barriers to Innovation Act of 2021.” This legislation passed the House without opposition on April 20, 2021. The bill 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.

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 Sections 559B and 6414 of the House-passed 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 the broad PFAS amendment included in the House-passed NDAA. The Chamber will continue to support the ongoing Environmental Protection Agency (EPA) process to evaluate sites, establish appropriate regulatory standards supported by sound science, and facilitate expeditious cleanups.

Contractor Debarment: The Chamber remains steadfast in opposition to changes in the suspension and debarment process which would underline the existing Fair Labor Standards Act

(FLSA). The Chamber believes the Department of Labor has current authority to pursue actions against contractors in violation of the FLSA with adequate remedies and penalties.

Attempts to Circumvent CFIUS (Committee on Foreign Investment in the United States): The Chamber opposes amendments which would require a CFIUS (Committee on Foreign Investment in the United States) review of real estate transactions by foreign entities or companies controlled by foreign entities from as far away as 100 miles from domestic U.S. military installations and training ranges. While the issues raised are important, they were already addressed in the “Foreign Investment Risk Review Modernization Act of 2018.” CFIUS, in which the Department of Defense maintains a leading role, is fully empowered to write regulations, as needed, to scope the appropriate response to real estate transactions that hold the potential to raise legitimate national security concerns. The amendment’s extremely broad geographic scope and associated mandatory filing would impose a severe administrative burden on the government and on those who manage real estate investments.

National Critical Capabilities Reviews: The Chamber opposes an amendment which would create an ill-defined bureaucracy for the review of certain outbound investments. The complications this amendment would impose on American businesses seeking to compete, grow, and expand in global markets have not been fully assessed. The amendment seeks to address an issue that Congress already tackled in 2018 when it passed the Foreign Investment Risk Review Modernization Act (FIRRMA) and the Export Control Reform Act (ECRA) with strong, bipartisan majorities. The Administration and Congress should continue to prioritize implementation of these recently enacted laws rather than passing new and conflicting legislation. Finally, the amendment would create a Committee on National Critical Capabilities chaired by the United States Trade Representative with new responsibilities for which that office is ill-equipped. USTR’s mission is to develop and coordinate international trade policy and negotiations with other countries, and it lacks the resources and experience to scrutinize U.S. investments abroad for potential national security risks.

Credit Transparency: We oppose provisions in the House-passed bill which would prevent creditors from being made available a full picture of a borrower’s risk, 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.

Medical Debt Collection: We oppose the House-passed amendment that would prohibit the collection of medical debt for two years, including legitimate debts, which would impose an extreme financial strain on healthcare providers that would be passed down to all consumers, including servicemembers, or lead providers to reduce the availability of the critical medical services they provide today. The two-year delay may seem like a brief period, but data shows that the older the debt, the harder it is to collect.

The House-passed amendment would also prohibit debt arising from medically necessary procedures from ever appearing on a servicemember credit report. The Chamber strongly

cautions against the banning of reporting any information related to medical debt (or otherwise) to credit bureaus. This information enables creditors, such as banks and credit unions, to understand a borrower's ability to repay a loan. Not only does this protect the safety and soundness of the financial institution, but it plays a critical consumer protection function since it helps institutions avoid extending credit to borrowers who are likely to default. And while the legislation limits the reporting ban to information relating to debt arising from "medically necessary procedure," that term is constructed so broadly that it would cause significant confusion and prevent reporting of any information about medical debt.

Provisions on Russian Sovereign Debt: The Sherman Amendment would prohibit U.S. persons from purchasing Russian sovereign debt, including ruble-denominated bonds, which would limit the ability of U.S. banks to serve their U.S. corporate clients operating in Russia. Basic business operations in Russia by U.S. persons who must transact in Russian currency would be seriously affected. While intended to impose constraints on the Russian government, the legislation would have insignificant effect on its ability to secure funds in global markets – given the Russian government's strong foreign exchange and gold reserves – while severely harming U.S. companies' operations in Russia and benefitting their competitors based elsewhere.

Ban on Olympic Sponsors: We oppose any amendments that would punish U.S. sponsors of the Olympics, whose support is critical for our athletes. Specifically, we oppose any amendments that would seek to prohibit persons, entities, and municipalities that conduct business of any kind with the International Olympic Committee (IOC) or the Beijing Organizing Committee for the 2022 Olympic and Paralympic Winter Games (BOCOG) from providing goods or services to the federal government and from having their products sold in Department of Defense facilities. We oppose this approach because it could directly harm Team USA athletes and their athletic programming and services. Additionally, withholding private financial support for the Olympic Movement will put Team USA athletes at a significant disadvantage to their international government-funded competitors. It punishes U.S. Olympians and Paralympians while not directly influencing or achieving policy aims or outcomes.

The Chamber supports S. 2792, the "National Defense Authorization Act for Fiscal Year 2022." 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,



Neil L. Bradley