



July 12, 2023

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

The U.S. Chamber of Commerce supports H.R. 2670, the “National Defense Authorization Act for Fiscal Year 2024,” which would authorize \$886 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 the Department’s procurement, research, and readiness priorities of the services are met. The National Defense Authorization Act should serve as a model for bipartisan cooperation as members of both parties have worked together to produce a bill that ensures that our nation’s servicemembers have resources they need to protect our country. We appreciate Congress’ work in crafting this legislation and ask that you consider our recommendations.

The Chamber believes H.R. 2670 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 and flexibility for federal contractors to provide the goods and services that the Department of Defense needs. Chamber members represent all the federal contracting supply chain, from the smallest components to the largest weapon systems for the Department of Defense. Furthermore, the Chamber commends inclusion of Section 831 such that amounts authorized by this Act may be used to provide an economic price adjustment by modifying the terms and conditions of a contract or contract option. The current inflationary environment post pandemic has been especially difficult for small companies within the defense industrial base. Any effort to address the financial impact on these vulnerable companies by encouraging the use of authorities and appropriations to make economic adjustments to existing contracts helps bolster our national security industrial base.

Inclusion of Section 853: 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.

Inclusion of Section 801: This provision would allow upon the request of a contractor a copy of the contracting officer’s commercial nature determination memorandum. Commercial item determinations and the associated determination of price reasonableness associated with such a determination is a complicated process whereby transparency for industry is critical to effectively contracting with the DoD. There have been instances where one contracting officer within the DoD has reached a decision about the commerciality of an item that is inconsistent

with a determination made for the same or similar item elsewhere in the Department. Section 801 will ensure companies have clarity with respect to the determination process and can engage the DoD more effectively to address confusion and inconsistencies.

Commercial Satellite Intelligence, Surveillance and Reconnaissance (ISR) Procurement:

The Chamber supports the Committee's view on the value of space-based commercial imagery to DOD ISR missions and the Committee's ongoing commitment to commercial imagery procurement in support of the warfighter.

Camp Lejeune Litigation: The Chamber supports efforts to limit attorney's fees in Camp Lejeune-related litigation authorized under last Congress' Honoring Our PACT Act ("PACT Act") so more money can make its way to injured veterans and their families rather than plaintiffs' attorneys. The PACT Act does not contain any limits on attorney's fees for this type of litigation and that is why trial lawyers are targeting veterans and their families through mass advertising and marketing. According to an article in Bloomberg Law, "[a] historic number of possible claimants and a new era in legal marketing have turned the Camp Lejeune tainted water litigation into a potential record-setter for the amount invested and spent on advertising." The ads are ubiquitous and so misleading that some veteran advocacy groups are warning vets to be informed before signing up with an attorney. Plaintiffs' lawyers have a financial incentive to file as many claims as possible—the more claims filed, the more money they can get through fees. But to add insult to injury, if the attorney's fees are not limited, some veterans may be in a worse financial position than if they had not sued in the first place.

Domestic Source Requirements: The Chamber is concerned with acquisition mandates contained 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 869 (b) Enhanced Domestic Content Requirement 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, 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 defense

industrial base (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.

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

Arbitration, Class Action Litigation and Private Rights of Action: We strongly oppose amendments and language that would limit the availability and usage of pre-dispute arbitration clauses, prohibit, or otherwise limit class action waivers or affirmatively provide litigation-expanding private rights of action. The Chamber believes that these provisions would lead to costly, time-consuming, and adversarial litigation for service members and veterans while only serving to enrich the class action plaintiffs' bar and should not be included in the legislation.

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 and the temporary ban on incineration by the Department of Defense. 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 risk, and facilitate expeditious cleanups. We also support public-private partnerships in research, development, and deployment in innovative treatment, disposal, and destruction technologies.

Language on Contractor Debarment: Language imposing a ban on federal contracting with firms for violations of the Fair Labor Standards Act (FLSA) is unnecessary and redundant as a suspension and debarment process is already in place that federal contracting officers can utilize. This amendment would bypass and complicate that process. Furthermore, the FLSA provides for remedies and penalties for contractors in violation, which are vigorously pursued by the Department of Labor, and applied to employers when they violate the FLSA. There is no need for additional penalties. Finally, this amendment would invite opponents of a contractor to generate FLSA violation allegations to undermine that contractor's position and ability to compete for federal work.

Demographic Reporting of Highest Compensated Executives for Sub-contractors: Such language would effectively revive the discredited compensation reporting requirement imposed by the Equal Employment Opportunity Commission known as Component 2 of the EEO-1 form. Data collected by such a reporting requirement has no utility for identifying compensation discrimination, imposes a significant administrative burden, and cannot be adequately protected from being released to the general public.

Codifying Executive Order 14026: E.O. 14026, issued by President Biden, raised the minimum wage for all employees of federal contractors and indexed it to inflation. That minimum wage now stands at \$16.20/hour. Codifying the E.O. would mean it could not be amended or repealed by a subsequent president.

Prohibiting Inquiries on Criminal History by Federal Contractors: Language directing the Office of Federal Contract Compliance Programs at DOL (Department of Labor) to create procedures for prohibiting federal contractors from making inquiries about criminal histories of applicants and employees could result in employees being hired with backgrounds that are incompatible with working in areas with sensitive defense information, or putting other employees at risk due to violent or other dangerous past behavior. Further, there are other approaches to encouraging second chance hiring that are more likely to improve employment opportunities for the formerly incarcerated.

Mandatory Additions to the Commerce Department's Entity List: We oppose amendments that would make mandatory the addition of many entities to the Department of Commerce's Entity List, with enormous impacts on U.S. and allied companies' business. It would do so without sufficient assessment that the entities are involved in activities contrary to U.S. national security or foreign policy as is normally required for adding companies to the Entity List. While some entities on the Non-SDN Chinese Military-Industrial Complex Companies List (NS-CMIC List) have been placed on the Entity list, the wholesale addition of NS-CMIC entities to the Entity List would result in significant, highly damaging commercial impacts on U.S. and allied companies because of their role as significant customers and in global supply chains. Future additions to the entity list should continue to require comprehensive assessments of risk to U.S. national security that also thoroughly weigh the benefits and economic costs of such additions.

Protection of National Critical Capabilities: The debate over the proper framing of an outbound investment screening mechanism has continued to advance in Washington, with progress being made toward a measure that carefully targets technologies with a clear national security nexus and are not readily available in global markets. Such a measure must also be administrable, with an appropriate lead agency selected. Moreover, any such measure would require extensive bipartisan, bicameral input to ensure it clears these important hurdles. Additionally, the Administration is working on a forthcoming executive order establishing such a screening mechanism. The Chamber believes it would be most prudent for Congress to evaluate the final executive order to determine if legislation is required. In this context, the Chamber urges that proposed amendments to this measure not be adopted at this time.

The Chamber supports H.R 2670, the "National Defense Authorization Act for Fiscal Year 2024." 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
Executive Vice President, Chief Policy Officer, and
Head of Strategic Advocacy
U.S. Chamber of Commerce