September 16, 2025

The Honorable Roger Wicker
Chairman
Committee on Armed Services
U.S. Senate
Washington, DC 20510

The Honorable Mike Rogers
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
U.S. Senate
Washington, DC 20510

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Wicker, Ranking Member Reed, Chairman Rogers, and Ranking Member Smith:

The undersigned associations, representing manufacturers and innovators in the defense industrial base (DIB), write to express our strong concern with two provisions in the Fiscal Year 2026 National Defense Authorization Act (NDAA): Section 863 in H.R. 3838 and Section 836 in S. 2296. These well-intentioned provisions aim to improve military readiness—a goal shared by our industries. However, if passed, they would in fact exacerbate readiness challenges by harming the Department of Defense's (DoD) access to cutting-edge commercial technologies, discouraging innovation, and eroding the DIB. We respectfully urge you to strike these provisions from the NDAA and continue to partner with industry to develop policies that instead reinvigorate the DIB and encourage stronger commercial partnerships with the DoD.

Over the past decade, Congress has worked diligently and purposefully to craft a comprehensive legal and regulatory framework for intellectual property (IP) rights that balances the legitimate needs of both DoD and industry. This framework allows and encourages DoD to negotiate tailored licenses that facilitate the maintenance and repair of the equipment it acquires while also respecting the IP rights of the manufacturer to protect access to the trade secrets that differentiate their technologies.

DoD has consistently supported this approach, understanding that IP management is a deciding factor for companies interested in selling to the Department, especially those that service both military and commercial customers. A foundational principle of DoD IP acquisition and licensing policy is to "respect and protect IP resulting from technology development investments by both the private sector and the U.S. Government."[1] The DoD's Intellectual Property Guidebook for Acquisition explicitly supports industry partnerships, emphasizing that "IP is critical to fostering innovation, competition, and collaboration with industry partners."[2]

Sections 863 and 836 threaten to upend the long-standing, carefully balanced IP management framework that DoD and Congress have been steadily improving to reflect the reality of how today's most innovative commercial technologies are developed and sold. Both provisions impose broad, one-size-fits-all mandates requiring manufacturers and other DIB innovators to disclose trade secrets developed at private expense regardless of the actual needs of the defense program. This approach is unnecessary, as Congress has already required DoD to negotiate access to IP

[1] U.S. Department of Defense. DoD Instruction 5010.44: Intellectual Property (IP) Acquisition and Licensing. October 16, 2019. https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/501044p.pdf.

[2] Office of the Under Secretary of Defense for Acquisition and Sustainment. Intellectual Property Guidebook for DoD Acquisition. April 30, 2025. https://www.acq.osd.mil/asda/dpc/api/docs/intellectual%20property%20guidebook%20for%20dod%20acquisition%20signed.pdf.

necessary for sustainment[3] and to do so in a tailored, cost-effective manner to the maximum extent practicable.[4] Requiring DoD to purchase access to IP beyond its actual needs would drive up the costs of contracts without improving readiness.

These provisions could compel the disclosure of the most valuable trade secrets of manufacturers and their suppliers, rather than allowing for voluntary licensing under mutually agreed terms that ensure appropriate use and protection of the information. Such mandates risk discouraging innovators and manufacturers from participating in the DIB, especially those that are small or medium-sized, that heavily invest in research and development, or that specialize in dual-use technologies. Reducing the DIB will negatively impact competition, innovation, industrial output, and supply chain resilience.

In addition to introducing overly broad and unnecessary IP disclosure requirements, Section 863 also prohibits manufacturers from negotiating the prices of their IP and any related tools and parts. All DoD contracts would instead be governed by impracticable price ceilings divorced from market realities. In some cases, Section 863 would allow DoD to unilaterally change these price ceilings even after an acquisition contract has been signed, if it believes them to no longer be "fair and reasonable." Implementing such an unbalanced and uncertain pricing mechanism across all defense contracts will further discourage manufacturers from selling to the DoD and exacerbate military readiness challenges.

Manufacturers care deeply about the safety of our servicemembers and security of our nation. A large, diverse, innovative, and resilient DIB is the key to both. Military readiness is predicated on having the industrial capacity to surge production in wartime and an IP framework that protects and encourages private-sector R&D investments. To maintain global U.S. military and technological leadership, Congress should be looking for ways to make it easier, not harder, for DoD to bolster and leverage industry partners to improve readiness.

Our industries applaud the work Congress has already done to address these issues over the past few years, such as supplying DoD with the resources and tools it needs to improve its IP policy and planning expertise. Sections 863's and 836's approach to industrial base policy are in sharp contrast with Congress' ongoing focus on bolstering American manufacturing, incentivizing innovation, and streamlining DoD's acquisition system.

For these reasons, manufacturers and innovators respectfully urge you to strike Section 863 of H.R. 3838 and Section 836 of S. 2296 from the final text of the FY26 NDAA. As always, we are committed to working with Congress and DoD on policies that advance our shared goals of keeping our servicemembers safe and our nation secure.

Sincerely,

Aerospace Industries Association
Air-Conditioning, Heating, and Refrigeration Institute
Alaska Chamber
AR State Chamber of Commerce/Associated Industries of Arkansas
Arizona Chamber of Commerce & Industry
Associated Equipment Distributors
Associated Industries of Missouri
Association of Equipment Manufacturers

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[3] See 10 U.S.C. §4236, Negotiation of price for technical data before development, production, or sustainment of major weapon systems.

[4] S*ee* 10 U.S.C. §3774, Major weapon systems and subsystems: long-term technical data needs.

Association of Home Appliance Manufacturers
Austin Regional Manufacturers Association
California Manufacturers & Technology Association
CBIA
ECIA - Electronic Components Industry Association
Equipment Leasing & Finance Association
Greater North Dakota Chamber
Idaho Association of Commerce and Industry
Illinois Manufacturers' Association
Industrial Truck Association
Institute of Makers of Explosives
Intellectual Property Owners Association
Irrigation Association
ISEA - International Safety Equipment Association
Kentucky Association of Manufacturers
Michigan Manufacturers Association
Mississippi Manufacturers Association
Motorcycle Industry Council
National Association of Manufacturers
National Defense Industrial Association (NDIA)
National Marine Manufacturers Association
NC Chamber
New Mexico Business Coalition
North American Association of Food Equipment Manufacturers (NAFEM)
Northeast PA Manufacturers & Employers Association
Ohio Manufacturers' Association
Oregon Business & Industry
Outdoor Power Equipment Institute
Pennsylvania Manufacturers' Association
Plumbing Manufacturers International
Professional Services Council
Recreational Off-Highway Vehicle Association
Rhode Island Manufacturers Association
South Carolina Chamber of Commerce
Specialty Vehicle Institute of America
Tennessee Chamber of Commerce & Industry
Texas Association of Manufacturers
Textile Care Allied Trades Association
The Coalition for Common Sense in Government Procurement
U.S. Chamber of Commerce
Virginia Manufacturers Association
Wisconsin Manufacturers & Commerce