

July 30, 2024

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

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

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

The undersigned associations, representing thousands of federal contractors across a wide range of industries, write to express our concerns regarding Section 828 of S. 4638, the National Defense Authorization Act for Fiscal Year 2025.

The Section would require Department of Defense procurement contracts to be contingent on a contractor's agreement to continually provide access to all repair materials and information, with no carve-outs or limitations to protect sensitive trade secret information. Moreover, the Section would enforce strict controls on the price at which such materials and information could be provided. This provision would impose significant burdens on contractors throughout the country, including the many small and medium-sized businesses and commercial suppliers that contractors rely on to support the Department's operational readiness and effectiveness.

Defense contractors, original equipment manufacturers, and their authorized dealers are critical to the Department's ability to repair and maintain its assets. Manufacturers already provide a wide range of resources, including parts, manuals, product guides, product service training, and diagnostic tools, to the Department. Further, most agreements between contractors and the Department already have repair and maintenance provisions that ensure materials and services are available and tailored to the products being procured. To enable access to sensitive proprietary and trade secret information beyond that necessary for standard repair and maintenance, customized license agreements can be tailored on a case-by-case basis to achieve specified repair and maintenance objectives.

Given these ongoing efforts to support the government's ability to repair products, Section 828's one-size-fits-all compulsory licensing mandate is unnecessary and would discourage companies from selling their products to the Department. Indeed, the Department has not reported barriers to maintenance and repair that would necessitate such an over-reaching policy, which would undermine the principle underpinning existing technical data rights statutes, which are designed to balance the government's technical data needs against contractors' need to protect sensitive proprietary and trade secret information.

The Department's recently announced Regional Sustainment Framework makes clear that more robust industry partnerships are necessary to support the Department's maintenance, repair, and overhaul ecosystem—as opposed to a compulsory licensing mandate that assumes Department personnel will be conducting all repairs and maintenance activities. At a time when

the number of small businesses participating in the defense industrial base has declined by more than 40% in the past decade, Congress should not implement policies that would encourage even more companies to exit the defense industrial base.

Further, Section 828 would require contractors to provide repair materials at prices equivalent to the most favorable prices offered by manufacturers or authorized dealers, including all discounts and rebates. Many large OEMs do not sell parts directly, but rather rely on authorized dealers to serve customers in their local communities. Section 828's price mandates on OEMs would ultimately fall on these dealers, significantly altering the economics of a dealer distribution model by effectively eliminating dealer margins. This would harm the network of manufacturers and authorized dealers, many of which are small and medium-sized businesses, that the Department ultimately relies on—compromising the very readiness the provision is ostensibly intended to enhance.

Section 828 would have a significant negative impact on companies of all sizes throughout the manufacturing supply chain and the defense industrial base, without a corresponding benefit to U.S. national security. As such, we respectfully encourage Congress to strike Section 828 from S. 4638 and not to enact any such mandate as it continues consideration of the FY2025 NDAA.

Sincerely,

AdvaMed
Aerospace Industries Association
Alaska Chamber
Arkansas State Chamber of Commerce/Associated Industries of Arkansas
Arizona Manufacturers Council
Associated Equipment Distributors
Associated Industries of Missouri
Association of Equipment Manufacturers
Association of Home Appliance Manufacturers
California Manufacturers & Technology Association
CBI
Commercial Food Equipment Service Association - CFESA
Deep Southern Equipment Dealers Association
Electronic Industry Components Association
Equipment Leasing and Finance Association (ELFA)
Georgia Association of Manufacturers
Graphic Media Alliance
Illinois Manufacturers' Association
Indiana Manufacturers Association
Industrial Truck Association
Institute of Makers of Explosives
Iowa Association of Business and Industry
Iowa Nebraska Equipment Dealers Association
Irrigation Association
ISEA - International Safety Equipment Association
Medical Device Manufacturers Association (MDMA)
Metals Service Center Institute
Michigan Manufacturers Association
Mississippi Manufacturers Association

Montana Chamber of Commerce
Motorcycle Industry Council
National Association of Manufacturers
National Defense Industrial Association (NDIA)
National Marine Manufacturers Association
National Mining Association
National Shooting Sports Foundation
NC Chamber
Nebraska Chamber of Commerce & Industry
New Mexico Business Coalition
North American Association of Food Equipment Manufacturers (NAFEM)
North American Equipment Dealers Association
Northeast Equipment Dealers Association, Inc.
Northeast PA Manufacturers & Employers Association
Ohio Manufacturers' Association
Oregon Business & Industry
Outdoor Power Equipment Institute
Pennsylvania Manufacturers' Association
Pioneer Equipment Dealers Association
Plumbing Manufacturers International
Portable Generator Manufacturers' Association
Power Tool Institute
Professional Services Council
Recreational Off-Highway Vehicle Association
Rhode Island Manufacturers Association
Security Industry Association (SIA)
Specialty Vehicle Institute of America
TechNet
Tennessee Chamber of Commerce and Industry
Texas Association of Manufacturers
Textile Care Allied Trades Association
Truck and Engine Manufacturers Association
Utah Manufacturers Association
Wisconsin Manufacturers & Commerce