September 1, 2026

The Honorable Roger Wicker
Chairman
Committee on Armed Services
U.S. Senate

The Honorable Mike Rogers
Chairman
Committee on Armed Services
U.S. House of Representatives

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
U.S. Senate

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

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

On behalf of our member companies and the 1.1 million American workers in the U.S. defense industrial base (DIB) who design, manufacture, apply, and maintain the cutting-edge technologies on which the U.S. military depends,[1] the undersigned associations thank you for your continued support and efforts to strengthen the U.S. DIB and our nation's military through the Fiscal Year (FY) 2027 National Defense Authorization Act (NDAA). However, we write to express strong opposition to House NDAA Section 861, Senate NDAA Section 804, and proposed Section 5811 in Senate NDAA Amendment #6691 (Manager's Amendment), which would enact harmful data rights and intellectual property (IP) provisions that will severely curtail the Department's access to innovation, including commercial innovation, reduce the government's flexibility, increase costs, undercut trade secret protections, and reverse longstanding congressional intent of balancing government and industry interests.

Existing law already provides the Department with the flexibility to negotiate for additional rights whenever warranted. Before Congress considers such significant changes to the existing Pentagon IP framework, a genuine need for additional reforms must be identified in light of recent authorities and directives enacted by Congress on IP. Specifically, Sec. 805 of the FY 2026 NDAA requires the Department to identify instances where it lacks sufficient technical data and negotiate with contractors to address the gap.[2] Additionally, the House FY 2027 NDAA includes further efforts to strengthen IP management, such as the creation of a third-party mediation body and an IP ombudsman that bring government and industry to the table to settle IP disputes quickly in good faith.[3]

House Sec. 861 and Senate Sec. 804 would make Government Purpose Rights (GPR) the default for deliverables under defense contracts, even when the technology was developed commercially or through private investment. This is well in excess of any rights needed to perform repairs and would automatically give the Department broad rights to use technical data and computer software within the government without restriction and to share this sensitive commercial and privately funded data with third parties to support any government activity, including competitive procurements and development of new products.

Requiring default GPR for all contracts will hamper innovation and the Pentagon's access to cutting-edge technologies by deterring companies from contracting with the Department. When a company invests its own funds and develops new technology, the associated IP has potential future value, not only for the Department, but also for the commercial market. If a business fears it may lose its IP, which could be the lifeblood underpinning the entire business, the company may choose not to contract with the Department to protect its future value in the commercial market or to offer a lesser or older version of the product to the government. This risk is heightened for startups, emerging commercial firms, and small businesses with limited prior experience contracting with the Department, which may depend on a single proprietary technology for a substantial portion of their value, competitive advantage, and ability to attract private investment.

House Sec. 861 and Senate Sec. 804 also create a new, cumbersome pre-award validation framework and rebuttal requirement that will place a significant administrative burden on an already constrained and reduced acquisition workforce, diverting limited resources away from mission-critical procurement activities and slowing acquisition timelines. The resulting compliance demands will also create substantial burdens for all contractors, especially small and medium-sized businesses, further impeding the efficient delivery of capabilities. House Sec. 861 would also apply this framework to contracts for commercial products or services, which directly conflicts with 10 U.S.C. § 3784 and its opposing statutory presumption that commercial offerings are developed at private expense. Additionally, existing acquisition laws and regulations do not require commercial companies to maintain the type of cost-accounting or development-funding records required by the draft legislation for asserting less-than-GPR. Overall, the pre-award validation framework and rebuttal requirement are in direct opposition to the current and past congressional and executive branch initiatives to streamline and reform acquisition pathways, leverage commercial solutions, and enable both speed and scale to more quickly field capabilities for our warfighters.

Defaulting to GPR is also inconsistent with the longstanding congressional intent of balancing government and industry interests that is reflected in the Pentagon's IP policy, which directs the Department to "negotiate specialized provisions when it better aligns Pentagon and industry interests" and to "respect and protect IP resulting from technology development investments."[4] Defaulting to GPR limits the government's ability to negotiate and pay only for the data rights needed, which will ultimately mean taxpayers pay more for data rights the Department does not need or will not use.

Finally, the Senate NDAA Report explains the purpose of Sec. 804 is to confer GPR for detailed manufacturing and process data (DPMD). Similar language is in House Sec. 861. This would enable the utilization of GPR for the creation of new production lines—the acquisition, replication, and scaling of manufacturing capabilities—not for the repair or maintenance of existing equipment in the field. Consequently, the language of the legislation and the rhetoric that it "ensures field personnel can repair their equipment" are misaligned. This distinction is critical. DPMD consists of the proprietary specifications, process parameters, tooling configurations, and other technical information required to design and build a new product or production system from the ground up. It does not include the service manuals, troubleshooting guides, or parts lists that operators use to keep currently deployed hardware operational, which are already transferred to the government with Unlimited Rights through Operation, Maintenance, Installation, and Training (OMIT) data.

Sec. 5811 of the Manager's Amendment to the Senate FY27 NDAA would enable the government to seek injunctive relief in the form of "specific performance" to compel a contractor to deliver data that is the subject of a data delivery dispute after a contracting officer's final decision and before the contractor has initiated an appeal. We note the government has publicly acknowledged it can already seek specific performance under current law.[5] While industry does not take issue with the government's ability to enforce its contracts, Senate Sec. 5811 creates several practical concerns. First, it subverts the Contract Disputes Act and existing data rights challenge procedures. The proposal treats the contracting officer's final decision as a quasi-judicial finding of fact sufficient for a court to require specific performance before the contractor has had their day in court. Second, it complicates the judicial process by introducing multi-district litigation for contract disputes. Under the proposal, the U.S. government would use the district courts to seek specific performance while contractors continue to appeal through the Armed Services Board of Contract Appeals (ASBCA) and the Court of Federal Claims (COFC). The district courts lack subject matter expertise in government contracting and IP that the ASBCA and COFC have developed through decades of experience. Third, the proposal potentially permits the U.S. government to compel a prime contractor to deliver subcontractor IP for which the prime contractor does not have permission to disclose, creating significant liability issues. Finally, the proposal creates a new standard for equitable relief on compelling delivery of contractor IP that lacks many of the safeguards traditionally applied to claims in equity.

We agree with the Administration and Congress that at this time in history, given the security threats we face, it is critical to seek the participation of commercial and emergent companies in the DIB while continuing to work closely with traditional industries. To avoid discouraging such participation, Congress should ensure the Department fully implements existing solutions to address potential insufficiencies in data rights before preemptively upending the existing contracting paradigm. As such, the undersigned associations respectfully ask that House Sec. 861, Senate Sec. 804, and Section 5811 of the Manager's Amendment be removed from the FY 2027 NDAA.

Thank you again for your efforts to strengthen the U.S. DIB and our nation's military.

Sincerely,

Aerospace Industries Association (AIA)
Association of Equipment Manufacturers (AEM)
Information Technology Industry Council (ITI)
Intellectual Property Owners Association (IPO)
National Association of Manufacturers (NAM)
National Defense Industrial Association (NDIA)
Professional Services Council (PSC)
Semiconductor Industry Association (SIA)
Software in Defense Coalition (SDC)
TechNet
Telecommunications Industry Association
The Center for Procurement Advocacy
The Coalition for Common Sense in Government Procurement (CGP)
The Security Industry Association
U.S. Chamber of Commerce

CC: The Honorable John Thune
The Honorable Chuck Schumer
The Honorable Mike Johnson
The Honorable Hakeem Jeffries
The Honorable John Barrasso
The Honorable Dick Durbin
The Honorable Tom Emmer
The Honorable Katherine Clark
The Honorable Chuck Grassley
The Honorable Jim Jordan
The Honorable Jamie Raskin
The Honorable Joni Ernst
The Honorable Ed Markey
The Honorable Roger Williams
The Honorable Nydia Velázquez

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[1] NDIA, *Vital Signs 2023*, February 2023
[2] P.L. 119-60, Section 805
[3] H.R. 8800 as Engrossed in the House. Section 862. July 22, 2026.
[4] U.S. Department of Defense, Office of the Under Secretary of Defense for Acquisition and Sustainment. 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.
[5] U.S. Department of Justice. Civil Resource Manual. *219. Specific Performance.* https://www.justice.gov/archives/jm/civil-resource-manual-219-specific-performance (Accessed August 28, 2026).