

Congress of the United States

Washington, DC 20515

February 6, 2024

Tom Arseneault
President & CEO
BAE Systems, Inc.
65 Spit Brook Road
Nashua, NH 03060

Dear Mr. Arseneault,

We are writing regarding the preliminary agreement between BAE Systems Electronic Systems (BAE Systems) and the Department of Commerce (Commerce) to award roughly \$35 million in *CHIPS and Science Act* federal grant funds to BAE Systems.¹ This award will be the first CHIPS grant handed out by Commerce, and we were pleased to see Commerce – after unnecessary delays – make this award to spur investments in national security- and defense-critical technologies. But we are concerned by BAE Systems’ history of engaging in massive stock buyback schemes that divert capital away from important investments. This history of buybacks raises serious concerns about BAE Systems’ intent to comply with the requirements of the CHIPS incentive programs. We urge BAE Systems to hew to the spirit of the law as passed by Congress, as well as guidance issued by Commerce, and refrain from engaging in stock buybacks for the duration of its *CHIPS Act* grant.

The *CHIPS and Science Act* contains several provisions delineating exactly how award recipients can use program funds. First, Section 9902(a)(3) of the *National Defense Authorization Act* of 2021 (NDAA), as amended by the *CHIPS Act*, directs the Commerce Secretary to “determine that the [CHIPS] project to which the application relates is in the economic and national security interests of the United States.”² As we noted in our letter last year,³ given the need for investment in domestic chip production, and the small number of companies currently producing chips domestically, any CHIPS funding that enables a company to then turn around and use that money for buybacks rather than research, manufacturing, or other production costs is not in the “economic and national security interests of the United States.”⁴ The Department of Commerce reiterated this requirement by announcing it would make certain that awards were not used as “a subsidy for companies to

¹ U.S. Department of Commerce, “Biden-Harris Administration and BAE Systems, Inc., Announce CHIPS Preliminary Terms to Support Critical U.S. National Security Project in Nashua, New Hampshire,” press release, December 11, 2023, <https://www.commerce.gov/news/press-releases/2023/12/biden-harris-administration-and-bae-systems-inc-announce-chips>.

² CHIPS and Science Act of 2022, Amendment to H. R. 4346, <https://www.commerce.senate.gov/services/files/CFC99CC6-CE84-4B1A-8BBF-8D2E84BD7965>.

³ Letter from Senator Warren and colleagues to Secretary Raimondo, February 10, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.02.10%20Follow%20Up%20Letter%20re%20CHIPS%20Stock%20Buybacks.pdf>.

⁴ *Id.*

make them more profitable or enable them to have more cash for stock buybacks or to pad their bottom line[s].”⁵

Second, Section 9902(a)(4) of the 2021 NDAA lists four permissible uses of CHIPS funding: financing the construction of a semiconductor facility, supporting workforce development, supporting site development, and paying for facility operating expenses. None of those uses encompass stock buybacks.⁶ Finally, and most importantly, Section 102(g) of the *CHIPS Act* explicitly forbids companies from using CHIPS funding to engage in stock buybacks.⁷

In February 2023, we wrote to Secretary Raimondo regarding the need for strong guardrails to protect CHIPS funding and ensure that it is used wisely and in consistence with the law. The letter also called on Commerce to “use its full authority to prevent CHIPS funding recipients from misusing taxpayer dollars by directly or indirectly funding buybacks and other shareholder distributions.”⁸ Specifically, the letter urged Commerce to ban CHIPS funding recipients from engaging in stock buybacks for at least 10 years; to require rigorous disclosures and audits of companies’ buybacks and dividend payouts; and to require applicants to proactively certify to the Department that they would not conduct stock buybacks for a specified time period.⁹

Commerce’s subsequent Notice of Funding Opportunity (NOFO) for the first round of CHIPS funding offered applicants the opportunity to disclose their plans with respect to stock buybacks for the five years following receipt of a CHIPS grant. The Department indicated that CHIPS incentive program applicants could “complement their commitment to reinvestment with a commitment to refrain from stock buybacks for five years from the date of award,” and “should detail their intentions with respect to stock buybacks over five years, including whether they intend to refrain from or limit them, as well as details around the existence of any current or future intentions for share buybacks, dividend payments, dividend payment increases, or special dividends.”¹⁰ In evaluating applications, Commerce indicated that it would assess the broader public impacts of the proposed project, including “the extent of the applicant’s commitments to refrain from stock buybacks.”¹¹

We were disappointed to see the Commerce Department did not take full advantage of its statutory authority to ban buybacks as we recommended; however, the Department’s

⁵ National Institute of Standards and Technology, “Taxpayer Protections,” August 25, 2022, <https://www.nist.gov/semiconductors/taxpayer-protections>.

⁶ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, <https://www.congress.gov/116/plaws/publ283/PLAW-116publ283.pdf>.

⁷ CHIPS and Science Act of 2022, Amendment to H. R. 4346, <https://www.commerce.senate.gov/services/files/CFC99CC6-CE84-4B1A-8BBF-8D2E84BD7965>.

⁸ Letter from Senator Warren and colleagues to Secretary Raimondo, February 10, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.02.10%20Follow%20Up%20Letter%20re%20CHIPS%20Stock%20Buybacks.pdf/>.

⁹ *Id.*

¹⁰ National Institute of Standards and Technology, “NOTICE OF FUNDING OPPORTUNITY (NOFO): CHIPS Incentives Program – Commercial Fabrication Facilities,” <https://www.nist.gov/system/files/documents/2023/06/23/CHIPS-Commercial%20Fabrication%20Facilities%20NOFO%20Amendment%201.pdf>.

¹¹ *Id.*

approach to at least consider the impacts of buybacks represents a step forward in ensuring federal funds are used for their intended purpose and not simply to line the pockets of company executives and shareholders. Moreover, the Department included strict enforcement language in the NOFO, in line with prior statements.¹² BAE Systems and other CHIPS funding recipients “will be subject to administrative requirements” such as “terms to ensure the appropriate use of Federal funds [and] compliance with programmatic requirements and commitments made by the applicant in the application.”¹³ Should award recipients fail to comply with those commitments—including any commitments made with respect to stock buybacks as part of the terms of the award—Commerce may withhold future payments, claw back previously disbursed funds, suspend or terminate the award, or even initiate debarment proceedings that would preclude the awardee from receiving future federal grants or other awards.¹⁴

BAE Systems’ track record of extensive stock buyback programs raises serious concerns about its willingness to forgo buybacks at the expense of the capital needed for the investments expected of CHIPS funding recipients. Over the ten years leading up to the passage of the *CHIPS and Science Act*, BAE Systems paid out nearly \$9.4 billion to shareholders in dividends and stock buybacks.¹⁵ In June 2023, the company commenced the third round of a nearly \$2 billion stock buyback program while simultaneously authorizing another roughly \$2 billion in stock buybacks over the next three years – squarely within the period of its *CHIPS Act* award.¹⁶ In comparison, BAE Systems funded only 14 percent of its research and development budget in 2022.¹⁷ BAE Systems has made no public indication that it plans to suspend its most recent round of stock buybacks after receiving *CHIPS Act* funding, which would seem to run counter to the intent of the law.

Expanding domestic capacity for chip manufacturing is critical to U.S. national security. Congress placed explicit guardrails on the use of *CHIPS and Science Act* incentives to ensure recipients use those funds for their intended purpose. In light of BAE Systems’ near-constant, decade-long stream of stock buyback programs raises, it is imperative the public know what commitments the company has made to protect taxpayer funds from diversion and misuse. Therefore, we request that you provide responses to the following questions by no later than March 6, 2024:

¹² National Institute of Standards and Technology, “Taxpayer Protections,” August 25, 2022, <https://www.nist.gov/semiconductors/taxpayer-protections>.

¹³ National Institute of Standards and Technology, “NOTICE OF FUNDING OPPORTUNITY (NOFO): CHIPS Incentives Program – Commercial Fabrication Facilities,” <https://www.nist.gov/system/files/documents/2023/06/23/CHIPS-Commercial%20Fabrication%20Facilities%20NOFO%20Amendment%201.pdf>.

¹⁴ *Id.*; General Services Administration, “Frequently Asked Questions: Suspension & Debarment,” <https://www.gsa.gov/policy-regulations/policy/acquisition-policy/office-of-acquisition-policy/gsa-acq-policy-integrity-workforce/suspension-debarment-and-agency-protests/suspension-debarment-faq>.

¹⁵ Common Wealth, “Welfare to Arms: Shareholder Payouts in the Arms Industry Since 2010,” Khem Rogaly, September 15, 2023, <https://www.common-wealth.org/publications/welfare-to-arms>.

¹⁶ *Id.*; BAE Systems, “Half-yearly Report 2023,” <https://investors.baesystems.com/~media/Files/B/BAE-Systems-Investor/documents/2023-half-year-results-announcement.pdf>.

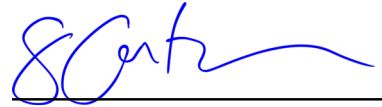
¹⁷ Common Wealth, “Welfare to Arms: Shareholder Payouts in the Arms Industry Since 2010,” Khem Rogaly, September 15, 2023, <https://www.common-wealth.org/publications/welfare-to-arms>.

1. What commitments and disclosures, if any, did BAE Systems make with respect to stock buybacks as part of the nonbinding preliminary agreement it signed with Commerce in December?
2. What commitments and disclosures, if any, did BAE Systems make with respect to stock buybacks as part of its application for *CHIPS and Science Act* incentive programs?
3. Will BAE Systems commit to pausing any ongoing stock buybacks and refraining from any further stock buyback programs for the five years following its initial receipt of *CHIPS Act* funds?
4. If not,
 - a. Are the planned buybacks any larger than they would have been absent receipt of the CHIPS grant?
 - b. How will the company obtain the capital for these buybacks?
 - c. How will the company segregate CHIPS funds to ensure that they are not used for or to enable buybacks?

Sincerely,



Elizabeth Warren
United States Senator



Sean Casten
Member of Congress