

Congress of the United States

Washington, DC 20515

July 1, 2024

The Honorable Gina M. Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, D.C. 20230

Dear Secretary Raimondo,

We are writing to you today regarding our continued interest in securing strong taxpayer protections for the use of funds provided under the *Creating Helpful Incentives to Produce Semiconductors* (CHIPS) Act of 2022.¹ We previously wrote to you cautioning the tendency of America's largest semiconductor companies to spend billions annually on stock buybacks and to underscore that "[w]ithout strict controls, . . . CHIPS funding may result in a subsidy for additional buybacks, enriching executives and stockholders at taxpayers' expense while undermining the goals of the legislation."² Thanks to the leadership of the Biden-Harris administration, the CHIPS Act provides a unique opportunity to advance the United States' technological and scientific capacity, create thousands of high-skilled jobs, and safeguard our national security interests.³

We agree with you that CHIPS funds "should not create windfalls for the companies that receive them."⁴ To date, the Commerce Department has awarded nearly \$30 billion in CHIPS grants with awards ranging from \$23 million to as large as \$8.5 billion.⁵ All of the announced grants have gone to just eleven semiconductor producers, most of whom have been large companies with a history of billions of dollars in stock buybacks and shareholder disbursements, with some actively participating in buyback programs now or worse still, have announced plans for future

¹ CHIPS Act of 2022, Amendment to H. R. 4346, <https://www.congress.gov/117/bills/hr4346/BILLS117hr4346enr.pdf>.

² Letter from Senators Warren and Baldwin and Representatives Casten, Bowman, Jayapal, and Foster to Secretary of Commerce Gina Raimondo, October 4, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.10.04%20Letter%20to%20Commerce%20re%20CHIPS%20Stock%20Buybacks.pdf>.

³ The Whitehouse, "FACT SHEET: CHIPS and Science Act Will Lower Costs, Create Jobs, Strengthen Supply Chains, and Counter China," August 9, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/09/fact-sheet-chips-and-science-act-will-lower-costs-create-jobs-strengthen-supply-chains-and-counter-china/>.

⁴ National Institute of Standards and Technology, "Taxpayer Protections," Updated August 25, 2022, <https://www.nist.gov/chips/taxpayer-protections>.

⁵ National Institute of Standards and Technology, "Funding Updates," Updated May 14, 2024, <https://www.nist.gov/chips/funding-updates>.

programs.⁶ One of these companies—BAE Systems—recently failed to fully respond to a Congressional inquiry to determine whether the company had committed to pausing all stock buybacks following its taxpayer-subsidized \$35 million CHIPS award.

Given our concerns about buybacks, we again urge you to use your full statutory⁷ authority to meticulously oversee the taxpayer dollars you are awarding and to take any necessary steps to prevent CHIPS recipients from misappropriating taxpayer dollars by directly or indirectly funding buybacks and other shareholder distributions. To satisfy this, we ask that you provide further details on how the awards disbursed reflect your commitment to safeguarding taxpayer dollars. The remainder of this letter provides new details regarding our concerns.

As of this letter, Commerce has awarded nearly \$30 billion in federal grants to eleven semiconductor producers:

- Intel (\$8.5 billion)
- TSMC (\$6.6 billion)
- Samsung Electronics (\$6.4 billion)
- Micron (\$6.14 billion)
- GlobalFoundries (\$1.5 billion)
- Microchip Technology (\$162 million)
- Polar Semiconductor (\$120 million)
- Absolics (\$75 million)
- Entegris (\$75 million)
- BAE Systems Inc. (\$35 million)
- Rocket Lab (\$23.9 million)⁸

While it is important that Commerce not delay in distributing CHIPS funds, it is equally important that these grants are awarded judiciously and are used in accordance with the law. Congress' intention when it passed the *CHIPS and Science Act* was to shore up the U.S. semiconductor manufacturing base, not enhance shareholder profits and pad bottom lines. Importantly, this is not a hypothetical risk; together these companies spent nearly \$2 billion on stock buybacks in FY 2023 alone.⁹

Commerce chose to award its very first CHIPS grant in the amount of \$35 million to BAE Systems in June 2023.¹⁰ Subsequently, Senator Warren and Congressman Casten wrote to BAE Systems inquiring about their stock buyback plans. In that letter, Senator Warren and

⁶ *Id.*

⁷ U.S. Department of Commerce, "A Strategy for the CHIPS for America Fund," September 6, 2022, <https://www.nist.gov/system/files/documents/2022/09/13/CHIPS-for-America-Strategy%20%28Sept%20%2C%202022%29.pdf>.

⁸ *Id.*

⁹ Information provided by the Congressional Research Service, Bloomberg Terminal, "Stock buybacks FY2023", May 9th, 2024.

¹⁰ Letter from Senator Elizabeth Warren and Representative Sean Casten to President and CEO of BAE Systems Tom Arseneault, February 6, 2024 <https://www.warren.senate.gov/imo/media/doc/2024.02.06%20Letter%20to%20BAE%20Systems%20re.%20CHIPS%20award1.pdf>.

Congressman Casten noted that in June 2023, BAE Systems had commenced the third round of a nearly \$2 billion stock buyback program while also authorizing another nearly \$2 billion in shareholder distributions over the next three years.¹¹ This stock buyback campaign falls squarely within the payment period for BAE Systems' multi-million-dollar CHIPS Act award.¹² The letter also specifically asked BAE Systems President and CEO Thomas Arsenault, about the companies' specific plan to use CHIPS funds and to underscore the existing prohibition on using taxpayer dollars to subsidize stock buybacks altogether.¹³ But in response, BAE Systems refused to provide a straight answer or offer any assurances that it had committed to pausing stock buybacks and would not engage in future ones.

Mr. Arsenault stated that in BAE Systems CHIPS application and nonbinding preliminary agreement, it "committed to adhere to the prohibition against using CHIPS Act funds for dividends or stock repurchase" and claimed that "the approximately \$35 million CHIPS Act grant will be used, in its entirety, to purchase capital for our MEC modernization project." Pointedly, Arsenault did not answer whether BAE Systems had committed itself against using other fungible capital for its stock buyback program. Indeed, BAE Systems answered none of the questions regarding its stock buyback and shareholder distribution programs, raising serious questions about its intentions.

BAE Systems is not alone in its dubious position on stock buybacks. Pat Gelsinger, the CEO of Intel who is the recipient of the largest CHIPS award to date (\$8.5 billion), assured investors last year that the company "remain[s] committed to rewarding our shareholders" with "a very healthy and competitive dividend,"¹⁴ even amid layoffs.¹⁵ Intel, which has spent \$152 billion on stock buybacks since 1990, currently has authorization from its Board of Directors to repurchase another \$7.24 billion.¹⁵

Secretary Raimondo, we appreciate your personal assurances that "CHIPS money is not a subsidy for big companies to make them more profitable or so they have more cash for stock buybacks or to pad their bottom line,"¹⁶ and that "CHIPS funds cannot be used for stock buybacks" and "are not intended to replace private capital."¹⁷ Indeed, section 102(g) of the *CHIPS and Science Act of 2022* expressly prohibits awardees from using CHIPS funds to repurchase their stock or pay dividends to shareholders.¹⁸ Ultimately, however, Commerce's

¹¹ *Id.*

¹² BAE Systems, "Half-yearly Report 2023," May 2024, https://investors.baesystems.com/~/_media/Files/B/BAESystems-Investor/documents/2023-half-year-results-announcement.pdf.

¹³ *Id.*

¹⁴ Yahoo News, "Intel CEO: 'We are committed to the dividend,'" Brian Sozzi, January 27, 2023, <https://au.news.yahoo.com/finance/news/intel-ceo-we-are-committed-to-the-dividend-200351998.html>.¹⁵ Marketwatch, "Intel begins layoffs and offers unpaid leave to manufacturing workers," December 6, 2022, <https://www.marketwatch.com/amp/story/intel-begins-layoffs-and-offers-unpaid-leave-to-manufacturing-workers11670357128>.

¹⁵ Intel, "Dividends & Buybacks," Accessed June 11, 2024, <https://www.intc.com/stock-info/dividends-andbuybacks>.

¹⁶ The White House, "Remarks by President Biden in Meeting with CEOs and Labor Leaders on the Importance of Passing the CHIPS Act," July 26, 2022, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/07/26/remarks-by-president-biden-in-meeting-with-ceos-and-labor-leaders-on-the-importance-of-passing-the-chips-act/>.

¹⁷ *Id.*

¹⁸ *Id.*

implementation of taxpayer protections and supervision of CHIPS grants will define the overall success of its efforts. As the agency has said, Commerce must be “vigilant and aggressive in protecting taxpayers” and “look after every nickel of taxpayer money.”¹⁹

Unfortunately, the Department's notice of funding opportunity and the taxpayer protections outlined by the National Institute of Standards and Technology (NIST) continue to leave the door open for semiconductor companies to take millions or even billions in CHIPS grants, move some money around, and then engage in more stock buybacks.²⁰ Despite our urging, Commerce has not taken advantage of its statutory authority to fully ban CHIPS grant recipients from engaging in stock buybacks as a condition of award. Such a ban would stop, for example, an awardee from accepting a \$100 million CHIPS grant to construct a semiconductor facility it already would have built, while immediately turning around and using \$100 million of its now freed-up cash to buy back stock and engage in other shareholder distributions.

Instead, the Department has only stated that when awarding grants, preference will be given to “companies who commit to... not engage in stock buybacks”²² and instructed companies on their applications to “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.”²¹

These applications and the subsequent preliminary agreements are not public, and this raises significant questions about how Commerce has implemented its self-stated preference against buybacks, and if grant recipients’ commitments to Commerce are consistent with their buyback history and future intent. Put simply, it is difficult to square the buyback history and stated intentions of the CHIPS awardees with Commerce’s indication that it will favor manufacturers that make real commitments not to engage in buybacks. Furthermore, we would have serious concerns if companies had made no such commitments and nonetheless been awarded huge grants by Commerce. Given these questions, we seek information on the commitments that CHIPS awardees have made, and how you plan to enforce the terms of the agreements.

The *CHIPS and Science Act of 2022* is a key achievement of the Biden-Harris administration and is a crucial part of the President's “Build Back Better” plan. However, its promise will only be fulfilled if these billions in taxpayer dollars are spent as Congress intended; to rebuild American manufacturing, create good jobs, and bolster our national security, not to enrich shareholders and CEOs. We look forward to continued engagement with your office to strengthen and enforce these critical protections. We request that you provide the following information by August 01, 2024:

1. How is the Commerce Department implementing and enforcing the law’s provision that bars the use of CHIPS funds for buybacks?

¹⁹ *Id.*

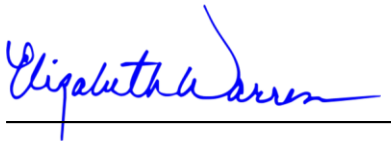
²⁰ *Id.*

²² *Id.*

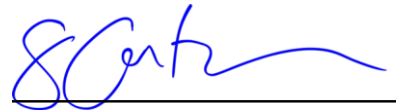
²¹ National Institute of Standards and Technology, “Notice of Funding Opportunity, CHIPS Incentives Program – Commercial Fabrication Facilities”, Pg. 55, <https://www.nist.gov/system/files/documents/2024/04/19/Amended%20CHIPS-Commercial%20Fabrication%20Facilities%20NOFO%20Amendment.pdf>.

- a. What financial or other data is the Department collecting from grant recipients?
 - b. What are the penalties for companies that misuse CHIPS funds?
2. How has the Commerce Department implemented its grant award preference for companies that promise not to engage in stock buybacks?
 - a. What information or commitments is Commerce obtaining from grant applicants to evaluate their stock buyback plans?
 - b. How is Commerce scoring this preference?
 - c. To the extent a grant applicant commits not to engage in stock buybacks, and then breaks this commitment, what penalties can the Department impose?
3. For each CHIPS grantee to date, please include information on:
 - a. Whether the company awarded the grant agreed not to engage in stock buybacks.
 - b. Whether the company has awarded any stock buybacks since receiving the grant or made public its plans to do so. If so, how much have the companies spent on stock buybacks?

Sincerely,



Elizabeth Warren
United States Senator



Sean Casten
Member of Congress



Bill Foster
Member of Congress



Pramila Jayapal
Member of Congress

CC: Michael Schmidt, Director of CHIPS Program Office, U.S. Department of Commerce
Todd Fisher, Chief Investment Officer of CHIPS Program Office, U.S. Department of Commerce