

September 25, 2024

Jay Timmons
President & CEO
National Association of Manufacturers
733 10th St NW, Suite 700
Washington, DC 20001

David L. Norquist
President & CEO
National Defense Industrial Association
2101 Wilson Blvd, Suite 700
Arlington, VA 22201

Eric Fanning
President & CEO
Aerospace Industries Association
1000 Wilson Boulevard, Suite 1700
Arlington, VA 22209-3928

David Berteau
President & CEO
Professional Services Council
4401 Wilson Boulevard, Suite 1110
Arlington, VA 22203

Dear Mr. Timmons, Mr. Norquist, Mr. Fanning, and Mr. Berteau,

I write regarding the defense industry's attempt to sabotage the effort to include "right-to-repair" language in the fiscal year 2025 National Defense Authorization Act (FY25 NDAA). This is a brazen and inappropriate effort to pad the defense industry's pockets at the expense of taxpayer dollars and national security, and it raises questions about your commitment to "support the Department of Defense's operational readiness and effectiveness."¹

The Department of Defense (DoD) pays hundreds of billions of dollars annually to defense contractors to produce weapons systems and other equipment for use by the U.S. military.² However, those companies often restrict service members from repairing the equipment they rely on, and which DoD owns. These restrictions undermine competition and allow contractors to hold on to lucrative maintenance and repair contracts, which can add up to as much as 70 percent of any program's total cost.³

In the FY25 NDAA, the Senate sought to address this problem and make it easier for the military to repair its own equipment by including common-sense language that would ensure contractors provide DoD with "fair and reasonable access" to repair materials. Section 828 of the Senate FY25 NDAA specifies that "parts, tools, and information" contractors provide to their repair partners

¹ Letter from Defense Industry Associations to the leaders of the Armed Services Committees, July 30, 2024, <https://documents.nam.org/LLRP/Signed.FY25.NDAA.Section.828.Letter.pdf>.

² U.S. Department of Defense, "DoD Releases Report on Defense Spending by State in Fiscal Year 2022," press release, September 26, 2023, <https://www.defense.gov/News/Releases/Release/Article/3538311/dod-releases-report-on-defense-spending-by-state-in-fiscal-year-2022/>.

³ Defense News, Opinion, "Changing how we buy weapons will benefit industry, government and taxpayers," Thomas Ayres, November 20, 2019, <https://www.defensenews.com/opinion/commentary/2019/11/20/changing-how-we-buy-weapons-will-benefit-industry-government-and-taxpayers/>.

should also be accessible to DoD on a fair and reasonable basis. This new provision would save taxpayers billions of dollars and enhance military readiness.⁴

But in July, big defense contractors — led by your associations — sharpened their attacks on this common-sense, bipartisan proposal, sending a letter to the Senate and House Armed Services Committee leaders asking that this provision be stripped from the final version of the law.

This letter was full of false or misleading claims. For example, it asserts DoD has not “reported barriers to maintenance and repair” that would require right-to-repair language.⁵ This is not correct.⁶ In 2019, the Air Force General Counsel explained that increased access to intellectual property (IP) rights would “greatly reduce sustainment costs” and, by allowing DoD to contract with multiple companies for repairs, would “unleash the creativity of small businesses, startups and others who have historically been locked out.”⁷ And earlier this year, the Defense Innovation Board recommended DoD “make clear, mission-critical, data sharing authorizations with IP owners as a component of any contract award” to prevent being “ beholden to single-solution sustainment providers that inhibit warfighting capacity or mission readiness.”⁸ Similarly, the letter claims that Section 828 “would enforce strict controls on the price” of materials and information. The claim is flatly false because Section 828 only requires that contractors provide “fair and reasonable access” to such materials and information — similar to the prices manufacturers already provide their best customers.

⁴ U.S. Government Accountability Office, “DOD Should Take Additional Actions to Improve How It Approaches Intellectual Property,” report, November 30, 2021, p. 13, <https://www.gao.gov/assets/gao-22-104752.pdf>.

⁵ Letter from defense industry associations to the leaders of the Armed Services Committees, July 30, 2024, <https://documents.nam.org/LLRP/Signed.FY25.NDAA.Section.828.Letter.pdf>.

⁶ See, the Navy’s implementation of the Taxpayer Advocacy Project to ensure contractors are providing technical material it already paid for (Secretary of the Navy Carlos Del Toro, U.S. Navy, “SECNAV Delivers Remarks at WEST 2023,” speech, February 27, 2023, <https://www.navy.mil/Press-Office/Speeches/display-speeches/Article/3301908/secnav-delivers-remarks-at-west-2023/> (the Navy’s implementation of the Taxpayer Advocacy Project to ensure contractors are providing technical material it already paid for); Federal News Network, “A cadre of experts to boost Army, contractors’ management of IP,” Jason Miller, January 17, 2023, <https://federalnewsnetwork.com/contracting/2023/01/a-cadre-of-experts-to-boost-army-contractors-management-of-ip/> (discussing the Army’s statement that obtaining IP rights for repairs is a problem due to costs and expertise); RAND, “Managing Intellectual Property Relevant to Operating and Sustaining Major U.S. Air Force Weapon Systems,” Frank Camm, Phillip Carter, Sheng Tao Li, and Melissak Shostak, September 14, 2021, https://www.rand.org/pubs/research_reports/RR4252.html (discussing RAND identifying the Air Force’s reliance on contractors for sustainment “did not work as well as expected” due to it being “more costly, less responsive, and lower quality” than possible “in-house or competitively provided sustainment”); PIRG, “Right to Repair hits the battlefield,” Isaac Bowers, July 15, 2024, <https://pirg.org/updates/right-to-repair-hits-the-battlefield/> (discussing a 2021 executive order ordering DoD to address “contract terms in procurement agreements that make it challenging or impossible for the Department of Defense or service members to repair their own equipment, particularly in the field”).

⁷ Defense News, “Changing how we buy weapons will benefit industry, government and taxpayers,” Thomas E. Ayres, November 20, 2019, <https://www.defensenews.com/opinion/commentary/2019/11/20/changing-how-we-buy-weapons-will-benefit-industry-government-and-taxpayers/>.

⁸ Defense Innovation Board, “Lowering barriers to Innovation,” report, 2024, pp. 9-10, https://innovation.defense.gov/Portals/63/2_%2020240118%20DIB%20LBI%20Study.pdf?ver=dkaQFfnZxzd2EoKaKfUDg%3d%3d.

The new provision would have enormous benefits for taxpayers and national defense. The language was included in the FY25 NDAA following a decisively bipartisan vote, and would help DoD purchase the parts, tools, and technical data necessary for maintenance and repairs.⁹ This could, for instance, allow service members stationed abroad to quickly repair an engine on the ground instead of having to ship it to a contractor because the contractor forced the U.S. government into a restrictive contract.

Multiple U.S. Government Accountability Office (GAO) studies have found that DoD could save billions of dollars by tackling repair restrictions such as insufficient IP rights,¹⁰ and that access to IP rights “gives DoD more options for keeping its aircraft, ships, submarines, and missiles running smoothly.”¹¹ Without these rights, services are unable to conduct necessary system repairs. Navy ship maintainers illustrated the importance of access to IP rights at the outset of contracts, telling GAO that “once a ship is delivered it is often too late to implement strategies or agreements with manufacturers to get the IP needed to fully sustain the ship systems at an affordable price.”¹²

These examples demonstrate that, contrary to your letter’s baffling assertions, service members and DoD leadership have been reporting problems with access to repair materials and IP rights for years, and have detailed how the lack of IP rights and other repair restrictions by contractors make it more difficult for DoD to function with the agility and affordability necessary to protect national security.

Right-to-repair restrictions waste taxpayer dollars and place service members at risk. When service members are stationed across the world, including in a combat situation, and need to repair a piece of equipment in a contested logistics environment, they should not have to rely on a company thousands of miles away to fix it on the contractor’s timeline.

Your associations’ efforts to block DoD’s right-to-repair has no national security rationale: instead, it appears to be based on simple corporate greed. Rather than introduce competition and ensure the military is at optimal readiness, the industry “lobbying shows that manufacturers are still doing everything they can to retain lucrative service contracts and to kill any legislation that would threaten the repair monopolies many companies have been building for years.”¹³ Section 828 protects taxpayers and improves military capability. That is why a bipartisan group of Committee members supported this language and included it in the Senate FY25 NDAA.¹⁴

⁹ Fiscal Year 2025 National Defense Authorization Act Report, p. 714, https://www.armed-services.senate.gov/imo/media/doc/fy25_ndaa_committee_report.pdf.

¹⁰ U.S. Government Accountability Office, “DOD Should Take Additional Actions to Improve How It Approaches Intellectual Property,” report, November 30, 2021, p. 13, <https://www.gao.gov/assets/gao-22-104752.pdf>.

¹¹ U.S. Government Accountability Office, “Protecting Intellectual Property,” issue summary, <https://www.gao.gov/protecting-intellectual-property>.

¹² U.S. Government Accountability Office, “DOD Should Take Additional Actions to Improve How It Approaches Intellectual Property,” report, November 30, 2021, p. 13, <https://www.gao.gov/assets/gao-22-104752.pdf>.

¹³ 404 Media, “Appliance and Tractor Companies Lobby Against Giving the Military the Right to Repair,” Jason Koebler, August 28, 2024, <https://www.404media.co/appliance-and-tractor-companies-lobby-against-giving-the-military-the-right-to-repair/>.

¹⁴ Right-to-repair language was also included in the House version of the FY2025 NDAA (PIRG, “Right to Repair hits the battlefield,” Isaac Bowers, July 15, 2024, <https://pirg.org/updates/right-to-repair-hits-the-battlefield/>).

Congress, DoD, and the public deserve transparency about why your associations oppose DoD's fair and reasonable access to repair materials. Therefore, I request you provide the following information by October 11, 2024:

1. How much in total revenue and profit did your members make on operations and maintenance service contracts with DoD in each of the last five years?
2. How much have your organizations spent on lobbying efforts to prevent Section 828 or similar right to repair language from inclusion in the final 2025 NDAA law?
3. Have you or any of your member companies conducted any internal analyses of the impact of Section 828 on revenue and profits? If so, what did these analyses show?
4. How did organizations that joined your letter decided to do so? Were their endorsements approved by vote of their members? By vote of their Board?
5. Why and how did your organizations approach and seek endorsements from organizations such as the Association of Home Appliance Manufacturers, or the Pioneer Equipment Dealers Association, or the Motorcycle Industry Council, that appear to have no discernible interest in DoD right-to-repair policies?
6. As a logistics officer recounted more than 4 years ago, U.S. Marines stationed in Japan were forced to “pack[] up and ship[] back [engines] to contractors in the [U.S.] for repairs,” not because they lacked the capabilities to repair the equipment on site, but because “that’s what the contract” required.¹⁵ Do you believe such contractual terms promote national security or efficient use of taxpayer dollars?
7. ProPublica’s extensive investigation into wasteful spending found U.S. Navy sailors aboard a littoral combat ship had to call in General Dynamics and Lockheed Martin to conduct repairs at sea because they were restricted from certain repairs involving data and equipment the companies considered “proprietary.”¹⁶ Do you believe such contractual terms promote national security or efficient use of taxpayer dollars?
8. As one of the most expensive and hard to repair fighters, the F-35 is available only about half the time for missions. Yet, service members in charge of the care and upkeep of F-35s cannot provide repairs because its sustainment has been “contracted out to third parties.”¹⁷ Do you believe such contractual terms promote national security or efficient use of taxpayer dollars?

¹⁵ New York Times, Opinion, “Here’s One Reason the U.S. Military Can’t Fix Its Own Equipment,” Elle Ekman, November 20, 2019, <https://www.nytimes.com/2019/11/20/opinion/military-right-to-repair.html>.

¹⁶ ProPublica, “The Inside Story of How the Navy Spent Billions on the ‘Little Crappy Ship,’” Joaquin Sapien, September 7, 2023, <https://www.propublica.org/article/how-navy-spent-billions-littoral-combat-ship>.

¹⁷ Vice, “America’s Military Can’t Repair Its Own \$1.7 Trillion Jet,” Matthew Gault, September 26, 2023, <https://www.vice.com/en/article/y3w5ay/america-cant-repair-its-own-dollar17-trillion-jet>.

9. Under a contract with manufacturer Oshkosh, mechanics are prohibited from repairing the Medium Tactical Vehicle Replacement medium truck and the Joint Light Tactical Vehicle which the company makes.¹⁸ Do you believe such contractual terms promote national security or efficient use of taxpayer dollars?

Sincerely,



Elizabeth Warren
United States Senator

¹⁸ Popular Mechanics, “The U.S. Military Has a ‘Right to Repair’ Problem,” Kyle Mizokami, February 11, 2020, <https://www.popularmechanics.com/military/weapons/a30859791/us-military-right-to-repair/>.