



August 1, 2023

The Honorable Mike Rogers  
Chairman  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Adam Smith  
Ranking Member  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Kay Granger  
Chairwoman  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Rosa DeLauro  
Ranking Member  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Rogers, Chairwoman Granger and Ranking Members Smith and DeLauro:

The Software in Defense Coalition, The Alliance for Commercial Technology in Government, and the National Venture Capital Association represent thousands of leading software technology startups and small businesses dedicated to our country’s national security mission. In an era of strategic competition among technologically advanced powers, software will shape the nature of deterrence and military readiness. More must be done to harness American innovation to ensure our competitive advantage. The urgency to empower our defense and national security apparatus across all domains with cutting edge and emerging technology is a strategic imperative to protect lives and secure America and our allies. We stand ready to serve the Department of Defense (DoD) and warfighters by providing the best technology to sustain the United States’ intelligence and security advantage.

We thank you for key bipartisan measures in H.R. 2670, the FY 2024 National Defense Authorization Act, and H.R. 4365, the FY 2024 Defense Appropriations bills. DoD highlighted in its 2023 Software Modernization Implementation Plan<sup>1</sup> that America’s national security capabilities “will depend on DoD’s proficiency to deliver resilient software capabilities rapidly and securely.” We believe that the provisions we highlight below will strengthen the funding and acquisition pathways to help commanders and leaders at the Department field the best technology faster and more effectively. These provisions will also increase participation from American innovators who are acutely focused on building unique emerging technologies that can be used to the United States Government’s advantage.

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<sup>1</sup> <https://dodcio.defense.gov/Portals/0/Documents/Library/SW-Mod-I-PlanExecutiveSummary.pdf>

H.R. 2670 and H.R. 4365 will facilitate small and medium sized business engagement within the defense industrial base in three critical areas:

1. Fostering a culture of buying readily available commercial offerings;
2. Easing small business burdens by lowering the time and cost associated with issuance of authorizations; and
3. Allowing the DoD flexible use of already existing appropriations authority for buying readily available commercial software offerings that best support defense modernization and encourage broader understanding of software products.

We also strongly support the recommendations by the Atlantic Council Commission on Defense Innovation Adoption.<sup>2</sup> These recommendations modernize DoD to align with the 21st century industrial base, create bridge funds for successfully demonstrated technologies, and increase incentives and reduce barriers for technology companies to do business with the Department. The long timelines to deliver new capabilities that are currently endemic in the system not only hurt the warfighters who may operate with outdated systems, but also start-ups and small businesses with limited resources to spend on lengthy bureaucratic processes. We also see huge opportunities missed to leverage successful commercial solutions and prototypes by integrating them into new or existing acquisition programs to produce at scale.

In accordance with the above themes, and the proposals identified in the May 31, 2023 letter to the Senate Armed Services Committee (attached hereto for ease of reference), ***we urge that the following provisions be retained in the final legislation:***

**1. Foster a culture of buying readily available commercial offerings.**

- Sec. 805—Pilot Program for Prototype Projects for Anything-As-A-Service. House FY24 NDAA. This provision creates a 3-year pilot program focused on promoting continuous competition and allows the Secretary of Defense to enter into transactions to carry out prototype projects for Anything-as-a-Service using competitive multisourcing.
- Sec. 881—Entrepreneurial Innovation Project Designations. House FY24 NDAA. This provision requires the Secretary of each military department to identify at least five eligible projects from either the SBIR or STTR programs for inclusion in future budgets and plans.
- Sec. 882—Extension and Modification of Domestic Investment Pilot Program. House FY24 NDAA. This provision extends the domestic investment pilot program under the SBIR program until September 30, 2027.
- Report to Improve Contracting Officer Knowledge of SBIR Phase III Direct Award, House FY24 NDAA, Directive Report Language. This language directs the Secretary of Defense to assess the feasibility of establishing training for acquisition professionals on the goals of the SBIR program, including how and when Phase III direct awards may be used.

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<sup>2</sup><https://www.atlanticcouncil.org/in-depth-research-reports/report/atlantic-council-commission-on-defense-innovation-adoption-interim-report/>

- The Non-Traditional Innovation Fielding Enterprise, HAC-D Bill Report. We join the Atlantic Council in applauding the Secretary of Defense’s decision to elevate DIU as a direct report and the support from the Committee to better resource and empower DIU with a hedge portfolio. This recommendation is critical to cross the valley of death and deliver at the speed and scale required to meet the critical national security threats. Our members invest millions to research, prototype, and demonstrate capabilities in operational exercises – only to wait years following successful demonstrations to compete for follow-on work. This fund will accelerate the speed of defense technology solution delivery at scale to warfighters.

We ask that Congress consider additional reforms related to:

- *Clarify a common definition of Software-as-a-Service (“SaaS”).* Open standards SaaS business models enable DoD to acquire best-in-class solutions from the most capable and advanced software providers. And yet, barriers still exist that block wide adoption and use of SaaS products within the DoD. One of the challenges associated with software is the lack of consistency in how the United States Government and industry define SaaS. Small businesses often must alter the way they refer to their products because of lack of understanding within DoD of what SaaS means. SaaS solutions should be viewed as products and not as services. A common definition of SaaS would be instructive and help ease barriers for small businesses that build emerging technology for Government use.
- *Increase knowledge and use of other transaction authority (“OTA”).* OTA gives federal civilian agencies and the DoD a flexible procurement pathway to engage with industry and academia on researching and prototyping activities. However, the United States Government (including the DoD) does not utilize OTAs to their fullest extent. As such, we recommend Congress consider: (1) requiring a report from a third-party such as the Comptroller General, Defense Innovation Board or Defense Science Board to the congressional defense committees to examine the utilization, success rates, and use cases on the benefits of OTA; and (2) increasing training across the enterprise - from contracting officers to budget and legal officers - on how to best utilize OTA as an acquisition tool. Existing authorities already are in place, but lack of awareness and training contribute to under-leveraging this valuable tool, undermining the original intent to pilot capabilities developed by non-traditional defense contractors. We also recommend harmonizing OTA policies and procedures in the Intelligence Community with that in the Department of Defense.
- *Increase SBIR eligibility and program participation for companies with greater than 50% venture capital investment.* We applaud the Military Services for accepting SBIR proposal submissions from majority-owned venture backed companies by using the authority under 15 U.S.C. § 638(dd), including most recently the Army. Allowing eligibility for venture-backed companies across all agencies and departments, while preventing violation of affiliation rules, will remove another barrier to entry for innovative technology companies financed by equity capital (as opposed to debt or personal wealth) seeking to work with the government. Recent history shows that young companies financed with equity capital, from the birth of semiconductors, to biotechnology and mRNA, are more likely to lead frontier innovation than

any other business model.<sup>3</sup> Venture capital funding provides small, innovative companies with the ability to conduct research and development to reach commercialization; providing SBIR opportunities for these companies is a smart investment for the government.

- *Applying Section 6716 of the 2023 NDAA, Public Law 117-263 to the Department of Defense.* We support expanding the application of Section 6716 to apply to the DoD as well as the Intelligence Community, to begin enforcement of on-the-books regulations to perform market research on commercially available items and when discovered, purchase them in preference to custom development. We respectfully request review and oversight to ensure agencies adhere to commercial purchasing guidance.

## 2. **Ease small business burden by lowering the time and cost associated with issuance of authorizations.**

- Report on the Impact of Small Businesses through Authorization to Operate Processes, House FY24 NDAA, Directive Report Language. This language directs the Secretary of Defense to submit a report detailing the unique costs and potential burdens incurred by emerging technology companies as companies are required to obtain authorizations to operate as they move through the different Department of Defense impact levels.
- Report on Secure Spaces for Small Businesses, House FY24 NDAA, Directive Report Language. This language requires the Secretary of Defense to look at the options for granting access to government-owned SCIF space to small companies that have been issued a facility clearance and selected for work requiring performance in secured facilities, among other elements.

We ask that Congress consider additional reforms related to:

- *Harmonize ATO standards across the Department.* Some military departments have policies that require ATO reciprocity among their systems. Most recently, the Department released updated July 2022 guidance for the “DoD Information Enterprise to use cybersecurity reciprocity” and for Authorizing Officers to “promote reciprocity as much as possible.” We strongly support continued efforts and execution of these policies across Services and components to help improve the process and cycle time of lengthy sequential certification processes. However, there are repeated past indications that such policies are unevenly instituted and executed across DoD and broader government. With the evolution from static ATO to continuous ATO, the need for consistency and portability will increase as systems and software move into continuous evaluation and approval.
- *Accelerate technological advancement in the National Technology Industrial Base by removing obstacles for research and development within AUKUS/FVEY countries.* The Export Administration Regulations have a license exception that facilitates defense technology collaboration between the United States and our closest Allies by eliminating the need for pre-approval across a defined and enforced set of technologies and countries. We recommend

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<sup>3</sup> Mallaby, Sebastian, *The Power Law: Venture Capital and the Making of the New Future*, Council on Foreign Relations Book, Penguin Press, 2022

Congress consider applying a version of the same exception to the International Traffic in Arms Regulations to surgically eliminate obstacles for research and development specifically within Australia, the United Kingdom, and the United States framework in support of a National Technology and Industrial Base that can respond to emerging threats to our collective security.

3. **Support targeted budget flexibility using existing authorities to field commercial software offerings that best support defense modernization.**

- Capability Portfolio Model Budget Pilots, House FY24 NDAA, Items of Special Interest. We support HASC’s position that a modernized portfolio acquisition model “would more effectively identify leading technologies, solutions, and companies that can address priority portfolio needs and improve mission impact measures.” We hope this position is strengthened during conference negotiations.

We ask that Congress consider additional reforms related to:

- *Incentivize the DoD to identify and convert underspend to available funds within the Defense Modernization Account for software spend.* 10 U.S.C. § 3136, also known as the Defense Modernization Account, was developed in 1996 to provide the DoD with acquisition flexibility so that unexpired funds could be reallocated for modernization initiatives. However, the Account has been underutilized since its inception. We recommend that Congress incentivize the DoD to identify unallocated dollars so that funds can be transferred to the Defense Modernization Account used specifically for initiatives and projects that operationalize concepts and required capabilities outlined by the operative Software Modernization Strategy. This will allow the DoD to further its efforts to transition from legacy systems to modern, innovative, and secure commercial platforms, thereby strengthening our defense ecosystem and helping small businesses and non-traditional defense contractors to bridge the valley of death.
- *Reform metrics used to assess success of pilot projects under budget activity 8.* We appreciate the foundational thinking behind the development of the Research, Development, Test and Evaluation Software and Digital Technology Pilot Program budget activity 8 (“BA 08”). BA 08 was premised on the idea that defense software innovation would be further enhanced by funding qualified programs as a single budget item consistent with an iterative and continuous software development process. After a promising start, the pilot has been held at status quo in part due to insufficient reporting on program performance. It is too early to close the door on this critical program. Congress requires sufficient visibility and oversight of BA 08, while DoD requires innovative and flexible procurement pathways. As BA 08 builds a track record towards providing cost, schedule and performance, we recommend interim metrics that focus on its ability to support innovative projects and a plan to capture and report the required information, pursuant to the original law.

We believe adopting the above provisions in conference, as well as further considering additional opportunity areas for reform, would significantly ease barriers to entry for start-up companies and small businesses dedicated to building mission-focused software and allow them the opportunity to break



through the valley of death faster and more frequently. Doing so will significantly increase innovation and technological superiority for the DoD. Thank you so much for your service and your continued accomplishments in the 118th Congress.

Sincerely,

Software in Defense Coalition

Alliance for Commercial  
Technology in Government

National Venture Capital  
Association

cc: House Committee on Small Business  
Select Committee on the Chinese Communist Party  
House Oversight and Accountability Committee