



June 27, 2018

The Honorable Mitch McConnell
Senate Majority Leader
S-230 The Capitol
Washington, DC 20515

The Honorable Chuck Schumer
Senate Minority Leader
S-221 The Capitol
Washington, DC 20510

The Honorable Paul Ryan
Speaker of the House of Representatives
H-232 The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader of the House of
Representatives
H-204 The Capitol
Washington, DC 20515

The Honorable James Inhofe
Chairman, Senate Armed Services
Committee
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Jack Reed
Ranking Member, Senate Armed
Services Committee
228 Russell Senate Office Building
Washington, DC 2051

The Honorable Mac Thornberry
Chairman, House Armed Services
Committee
2216 Rayburn House Office Building
Washington, DC 20515

The Honorable Adam Smith
Ranking Member, House Armed
Services Committee
2216 Rayburn House Office Building
Washington, DC 20515

Dear Speaker Ryan, Leader McConnell, Leader Schumer, Leader Pelosi, Chairmen
and Ranking Members,

On behalf of BSA | The Software Alliance, I would like to draw your attention to
several important topics that will arise during conference for the FY2019 National
Defense Authorization Act (NDAA) and ask that you review the following
recommendations pertaining to specific provisions included in either the Senate-
passed or House-passed version of the NDAA. We appreciate your leadership on this
legislation as these topics impact many of our members and have significant impact
on the software industry.

BSA is the leading trade association representing the global software industry before
governments and in the international marketplace. Our members are among the
world's most innovative companies. Their software-enabled data solutions are
transforming the world around us, empowering us as individuals, and growing our
economy. The economic impact of software is profound, adding more than \$1 trillion

to the US economy per year and supporting over 10 million jobs nationwide with significant numbers in all 50 states.

Source Code Disclosures. BSA appreciates the Senate’s effort to address concerns about the access of foreign government actors to sensitive or proprietary source code used in critical Defense Department systems. Sections 1637-1640 of the Senate bill represent a thoughtful approach to a difficult issue. BSA is eager to work with conferees to further refine the language to better meet the intended objectives, including by clarifying that the notification requirements will apply prospectively, will apply solely to National Security Systems, which represent the most critical defense systems, and that it should not be applied to open source software which by design is available to the entire community for review.

Lowest Price Technically Acceptable Contracting: The House bill includes an amendment from Reps. Don Beyer and Mark Meadows which would limit the use of Lowest Price Technically Acceptable (LPTA) source selection in government-wide acquisitions. This amendment would greatly strengthen the cybersecurity of US government information systems while diminishing downstream risk and cost. In the face of growing cyber threats, the government should have the ability to acquire cybersecurity products that allow the government to get the most value for its money. We encourage you to include this House amendment in the final version of the bill.

Government Procurement of Huawei and ZTE Products and Services: The House (Sec. 880) and Senate (Sec. 891 and 6702) versions of the defense bill each include language prohibiting government procurement of products and service provided by Huawei, ZTE, and certain other Chinese companies. BSA urges conferees to refine these provisions to ensure that the final law does not produce unintended consequences, such as penalizing companies that rely upon global supply chains for product components. Moreover, care should be taken to ensure the provisions target only those companies that represent concrete, transparent risks to U.S. national security in order to avoid setting precedent for reciprocal Chinese action against U.S. and other foreign corporations.

National Security Commission for Artificial Intelligence: The House version of the NDAA includes a proposed “National Security Commission for Artificial Intelligence” (Sec. 1050A). Ensuring that the US remains on the leading edge of the development of AI technologies is crucial to the nation’s long-term economic and geopolitical interests. BSA is supportive of efforts to study how the US can best maintain its technological advantage while also ensuring that the full potential of AI is realized. However, such efforts must be thoughtfully designed to ensure a constructive focus and the participation of relevant experts from industry, academia, civil society and government. BSA is eager to work with the relevant congressional committees and offices to refine the bill’s approach to this issue.

Foreign Investment. The Senate bill includes language from S.2098 the *Foreign Investment Risk Review Modernization Act (FIRRMA)*, as amended in the Senate Banking Committee. BSA supported this legislation to address national security risks after it was amended in the Committee. Joint ventures and licensing arrangements are important for the US software services industry’s ability to remain at the cutting edge

of innovation and expand our business globally. We encourage you to take a calibrated approach that carefully considers these business activities that support American jobs as this issue is addressed in conference.

Email Communication Privacy Act Reform: The House bill includes the Email Privacy Act which would update the Electronic Communications and Privacy Act of 1986 (ECPA). ECPA is an outdated law, conceived before cloud computing and the commercial internet became essential to the economy and the lives of millions. The modernization this legislation provides is overdue and has strong bipartisan and bicameral support. We encourage you to include the House language in the final version of the bill.

Department of Defense Cloud Contracting: We commend the House and Senate committees for including language that ensures proper scrutiny and diligence regarding DOD's migration to cloud computing. The United States is the world's leader in cloud computing technologies and the DOD stands to benefit greatly from the full breadth of innovation the industry provides. We encourage you to include language in the final version of the bill that maintains appropriate oversight in this area.

Workforce Development: BSA strongly supports training and education initiatives to prepare current and future generations of workers to thrive in the workforce of the digital economy, and we applaud members of Congress for several thoughtful workforce development efforts. In particular, BSA supports provisions in the House and Senate bill that would help military personnel and their spouses prepare for technology-related careers, including:

- Section 552 of the House bill, to improve the Transition Assistance Program;
- Section 554 of the House bill and Section 556 of the Senate bill, to enable military services to help personnel obtain professional credentials outside their military occupational specialties;
- Section 559 of the House bill, to expand awareness among military personnel of apprenticeship programs;
- Section 569 of the Senate bill, to expand awareness among military spouses of the My Career Advancement Account (MyCAA) program; and
- Section 575 of the Senate bill, to establish a pilot program to enable military spouses to participate in Transition Assistance Programs.
- Section 587 of the House bill, encouraging cybersecurity educational programs in Junior Reserve Officer Training Corps (JROTC) curricula.

Further, BSA supports Section 1635 of the Senate bill, authorizing the establishment of Cyber Institutes at institutions of higher learning, and Section 1637 of the House bill, authorizing the establishment of Cyber Institutes at senior military colleges. Each of these provisions would strengthen the nation's cybersecurity education infrastructure. BSA encourages conferees to include all these provisions in the conference agreement.

Access to Digital Technical Data in Acquisitions. Section 240 of the Senate version of the bill would require a report on the feasibility and advisability of requiring access to digital technical data in future DoD acquisitions of combat,

combat service, and combat support systems. BSA strongly supports this provision and urges conferees to retain it in the final version of the bill.

Thank you for your time and consideration of the above-mentioned recommendations and we look forward to providing feedback and answering any additional questions you may have.

Sincerely,



Craig Albright
Vice President, Legislative Strategy
BSA | The Software Alliance