

COUNCIL FOR



October 23, 2017

Dear Conferee,

On behalf of the undersigned organizations, we urge you to strike sections 881, 883, 884, 885, and 886 from H.R. 2810, the 2018 National Defense Authorization Act (NDAA), as amended by the Senate on September 18, 2017.

We believe these provisions would harm taxpayers by promoting costly sole-source, government-based technology concepts over proven private sector solutions; threaten national security by recommending the Department of Defense (DOD) to use open source code for unclassified software as the preferred programming source code; adversely impact intellectual property rights; and violate long-standing technology neutral procurement policies.



*Impacts the Innovation Economy*

Title VIII, Subtitle I, “Development and Acquisition of Software Intensive and Digital Products and Services” is intended to improve information technology procurement at the DOD. However, the language in Section 881 violates U.S. copyright laws, as well as the Trade Secrets Act, by requiring companies providing software to the DOD to turn over source code in its native electronic format to the agency. We should not take such a step with virtually no debate.



*Promotes Risky Fiscal Behavior*

Section 883 specifies how IT projects within the DOD should be analyzed, designed, and procured. This section directs software projects currently being developed, but considered as “at risk,” to be procured through the General Services Administration’s (GSA) Technology Transition Service, Office of 18F, even if a similar tool or resource might be available through the private sector. This type of short-sighted approach will not improve the government’s management of IT acquisitions and operations, which is on the Government Accountability Office’s High Risk List.



*Decreases Private Sector Expertise and Competition*

Regardless of the level of expertise of any federal operation, there should always be competition in the procurement process, particularly for the DOD. The Office of 18F was started in March 2014 by a group of Presidential Innovation Fellows to supposedly help improve and modernize government technology. This fledgling operation with approximately 200 employees scattered throughout the U.S. is highly unlikely to provide better software for the DOD than long-established private sector companies with tens of thousands of employees.



*Endangers National Security*

While we appreciate the Senate taking action to modify Section 886 to clarify that the provisions of the bill exempt commercial off-the-shelf software from the open source

code recommendations, the use of open source as the preferred licensing mechanism for future unclassified custom-developed software and related technical data that is not a defense article regulated pursuant to section 38 of the Arms Export Control Act remains a concern. The preferred use of open source code as emphasized within the language of the Senate passed NDAA could still create a “back-door” opportunity for our nation’s enemies to attempt to infiltrate some of our most strategic systems.

*Violates Procurement Standards*

In 2004, the Office of Management and Budget issued guidance that required all federal software purchases to be technology neutral. By establishing open source software licensing as the preferred method for software licensing at the DOD, Section 886 sets a precedent that could lead to other agencies using this as a model for all future software licensing. Congress should not effectively close DOD to any software option that might better serve taxpayers.

*Harms Intellectual Property Rights*

The problematic provisions in H.R. 2810, as amended regarding IT procurement and intellectual property rights threaten great harm. We strongly urge the conferees to strike sections 881, 883, 884, 885, and 886 from the 2018 NDAA.

Sincerely,

Thomas A. Schatz  
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Waste

Pete Sepp  
President  
National Taxpayers Union

Grover Norquist  
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