

**DOUG LAMBORN**  
5TH DISTRICT, COLORADO

COMMITTEE ON ARMED SERVICES

COMMITTEE ON NATURAL  
RESOURCES  
CHAIRMAN,  
WATER, POWER AND OCEANS



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0605**

2402 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
202-225-4422  
FAX 202-226-2638

DISTRICT OFFICE:  
1125 KELLY JOHNSON BLVD. SUITE 330  
COLORADO SPRINGS, CO 80920  
719-520-0055  
FAX: 719-520-0840

WEBSITE:  
[Lamborn.house.gov](http://Lamborn.house.gov)

October 23, 2017

Chairman John McCain  
Senate Armed Services Committee  
Russell Senate Building, Room 228  
Washington, DC 20510

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

Ranking Member Jack Reed  
Senate Armed Services Committee  
Russell Senate Building, Room 228  
Washington, DC 20510

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

Re: NDAA Conference Priorities — Tech Data and Software

Dear Chairman McCain, Chairman Thornberry, Ranking Member Reed, and Ranking Member Smith,

As appointed conferees, we write to share our opposition to Subtitle I of Title VIII of the National Defense Authorization Act (NDAA) for Fiscal Year 2018 (H.R. 2810) as passed by the Senate. We are concerned that this proposal could force commercial enterprises partnering with the Department of Defense (DoD) to publicly share their intellectual property — specifically their proprietary source code — as a condition of doing business with the government in procurement contracting. We are also concerned about the implications that these proposals will have to past and future government acquisitions of software and firmware. For these reasons, we ask that the Subtitle be excluded from any final conference report.

The United States Chamber of Commerce, the Aerospace Industries Alliance (AIA), the Business Software Alliance (BSA), the IT Alliance for Public Sector (ITAPS), the Northern Virginia Technology Council (NVTC), the Citizens Against Government Waste (CAGW), the National Taxpayers Union (NTU), Americans for Tax Reform (ATR), the Institute for Liberty, the Business Coalition for Fair Competition (BCFC), Digital Liberty, the Taxpayers Protection Alliance, and the American Conservative Union have all written letters listing many concerns with this subtitle. These concerns bear further consideration that cannot be addressed in the limited time available in the conference.

In the 2016 NDAA, we established a framework to address technical data rights in a careful and studied manner by establishing a Government-Industry panel to review sections 2320 and 2321 of Title 10 of the United States Code. We did so as well to streamline acquisition regulations. Both of these panels' work have begun but have not yet to be completed. Before passing more legislation on the issue, good judgment dictates that we wait to see what these panels recommend.

We are most concerned about, sections 881, “Rights in Technical Data,” and 886, “Use of Open Source Software” which apparently aim to save taxpayer resources by legislatively resolving the long running and complicated debate over the ownership of technical data arising from defense contracts. While this is a noble goal, and one that we surely all support, we are afraid tackling such a precise issue with broad legislation will have unforeseen consequences on American companies, which will in turn, hamper the DoD’s ability to acquire technological solutions.

Specifically, if these provisions are allowed to become law, industrial stakeholders will likely experience undue hardship by losing control over their intellectual property. This will have a chilling effect on our economy as companies will have to reconsider their business models to adapt to these changes. Moreover, the final language of section 886, which was modified by an adopted amendment to exclude Commercial Off the Shelf Software, would not protect the intellectual property of companies whose products are commercially available, but not sold on the shelf to the general public. This would logically deter these companies, both large and small, from working with defense contractors to develop solutions vital to our national security.

Protecting taxpayer resources and promoting our national security is in everyone’s interest and resolving issues related to the ownership of technical data is a worthy goal that requires careful study and surgical solutions. The security of the DoD’s networks and Information Technology Systems is critical to the defense of our nation. This subtitle, if enacted, could compromise cybersecurity, impact intellectual property rights of vendors and contractors, and limit the DoD’s ability to acquire commercial technology items, leaving the DoD further behind in the race to remain technologically ahead of our enemies. We request that the Senate recede to Sections 881 through 886 in order to let the Section 813 and Section 809 advisory panels do their jobs.

Sincerely,

Doug Lamborn  
Member of Congress