



The Honorable Charles E. Schumer
Majority Leader
United States Senate
S-221, The Capitol
Washington, D.C. 20510

The Honorable Mike Johnson
Speaker of the House
United States House of Representatives
418 Cannon House Office Building
Washington D.C. 20515

The Honorable Mitch McConnell
Minority Leader
United States Senate
S-230, The Capitol
Washington, D.C. 20510

The Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives
2433 Rayburn House Office Building
Washington, D.C. 20515

November 13, 2024

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Johnson, and Minority Leader Jeffries:

CC: Chairmen Reed and Rogers and Ranking Members Wicker and Smith,

As Congress works to resolve differences between the House-passed National Defense Authorization Act (NDAA) for Fiscal Year 2025 (H.R. 8070) and the Senate Armed Services Committee version of the NDAA (S. 4638), as well as the Manager's Package (S. Amdt. 3290), we urge you to strike provisions that undermine taxpayer interests and national security, and to adhere to the budget caps established under the Fiscal Responsibility Act of 2023 (FRA).

National Security Topline Concerns

The Senate Armed Services Committee-passed version of the NDAA disregards budget caps set by the FRA by authorizing an additional \$25 billion above the President's budget request for national security. While Senate appropriators propose emergency appropriations that technically comply with the FRA, specific emergency spending proposals in the Senate's Defense Appropriations Act stretch the definition of an "emergency" beyond recognition. For instance, funding for Research, Development, Test & Evaluation projects that do not have an immediate impact on military capabilities, and funding for the defense industrial base that responds to long-standing and foreseeable issues, should be funded through the normal budget process.¹

Misrepresenting regular investments as emergency spending is a dangerous practice that could render budget caps meaningless and threaten our ability to responsibly budget for genuine national security emergencies. Furthermore, this spending surge would compound the nation's fiscal crisis: for the first time, U.S. taxpayers are now spending more on interest payments on the national debt than on the military.²

While emergency spending is exempt from FRA's budget caps, we urge you to adhere to the spirit of the law. Emergency funding should address truly unforeseen circumstances and be

proposed in a separate supplemental spending package, allowing lawmakers to evaluate emergency spending separately from the base bills.

Problematic Provisions in NDAA Proposals

Several provisions in both the House-passed NDAA and the Senate Armed Services Committee's Manager's Package undermine taxpayer interests and national security.

We urge the removal of the following provisions included in the House-passed NDAA from the conference agreement:

- **Sec. 811: Modification to Exception for Submission of Certified Cost or Pricing Data for Certain Components and Parts of Commercial Products** – This House provision would effectively expand the number of products and services that DOD contract officers can designate as commercial products and services. The current definition of commercial products is already overly expansive; in some cases, commercial products and services can include products and services that are not available to the public.³ As products and services designated as commercial generally do not require certified cost and pricing data, designating components of products and services as commercial based on previous commercial designations of the overarching product or service would serve to increase the number of products and services for which the Pentagon does not have certified cost and pricing data. In short, this provision would make it more difficult for the Pentagon to ensure fair pricing on components of products and services.
- **Sec. 812: Application of Recent Price History and Purchase Orders to Truthful Cost or Pricing Data Requirements** – This House provision would limit the Pentagon's ability to require prime contractors to acquire certified cost and pricing data from subcontractors for products or services below \$5 million (up from \$2 million under current law).⁴ As some subcontractors have a history of dividing up their contracts in order to avoid reaching these reporting thresholds, increasing the threshold would make it even harder for the Pentagon to ensure fair pricing for products and services.⁵ For those products and services with a value equal to or less than \$5 million, this provision would also instruct contracting officers to consider cost and pricing data that is up to 12 months old, despite the Pentagon Inspector General writing that the Pentagon cannot effectively assess the reasonableness of prices "based solely on historical price comparison."⁶ The Pentagon needs reliable pricing data to ensure the military's buying power remains strong and taxpayer interests are protected, and this provision makes it harder for the Pentagon to get it.

We urge you to reject the following provision included in the Senate Armed Services Committee's Manager's Package during conference negotiations:

- **S. Amdt. 2627 to S. 4638: Sense of Congress on Ground-Based Leg of Nuclear Triad** – This Senate provision expresses Congressional support for the Sentinel ICBM program, the projected costs of which have risen by 81 percent since 2020.⁷ It claims that extending the life of the Minuteman III is both too costly and unsustainable as a long-term solution for maintaining the ground-based leg of the nuclear triad. Taxpayers for Common Sense opposes this program because of its excessive cost and strategic irrelevance given the other, more survivable legs of the nuclear triad.⁸ Evidence suggests that the Air Force's 2014

Analysis of Alternatives was biased in favor of the Sentinel program over life-extending the Minuteman III.⁹ Given that the Air Force has yet to complete the process of restructuring the Sentinel program pursuant to the Nunn-McCurdy Act, it is premature for Congress to blindly support a program that is already significantly over budget and that could face further cost increases.

Thank you for considering our recommendations in support of taxpayer interests and national security. If you have any questions regarding these recommendations, please reach out to Gabe Murphy at gabe@taxpayer.net.

Sincerely,

Steve Ellis
President
Taxpayers for Common Sense

¹ Murphy, Gabe. "Congress is crying wolf again on the Pentagon budget." Responsible Statecraft. Sep. 24, 2024. <https://responsiblestatecraft.org/pentagon-budget-2669256461/>

² "Monthly Budget Review: September 2024." Congressional Budget Office. Oct. 8, 2024. <https://www.cbo.gov/system/files/2024-10/60730-MBR.pdf>

³ Gledhill, Julia. "How the Defense Industry Price Gouges the Pentagon." The National Interest. Aug. 1, 2024. <https://nationalinterest.org/feature/how-defense-industry-price-gouges-pentagon-212135>

⁴ "Statement of Administration Policy: H.R. 8070 – Servicemember Quality of Life Improvement and National Defense Authorization Act for FY 2025." Executive Office of the President, Office of Management and Budget. June 11, 2024. <https://www.whitehouse.gov/wp-content/uploads/2024/06/SAP-HR8070.pdf>

⁵ Gledhill, Julia, and Scott Amey. "Close Accountability Loopholes for Military Contractors." Project on Government Oversight. April 28, 2022. <https://www.pogo.org/fact-sheets/close-accountability-loopholes-for-military-contractors>

⁶ "Special Report: Summary of Prior DoD Office of Inspector General Contract Pricing Audits and Other Reviews (Report No. DODIG-2024-092)." Office of Inspector General, Department of Defense. June 4, 2024. <https://media.defense.gov/2024/Jun/06/2003479737/-1/-1/1/DODIG-2024-092%20SECURE.PDF>

⁷ "DOD Press Briefing Announcing Sentinel ICBM Nunn-McCurdy Decision." U.S. Department of Defense. July 8, 2024. <https://www.defense.gov/News/Transcripts/Transcript/Article/3830251/dod-press-briefing-announcing-sentinel-icbm-nunn-mccurdy-decision/>

⁸ "Ripe for Rescission: A Cost-Benefit Analysis of U.S. ICBMs." Taxpayers for Common Sense. May 30, 2024. https://www.taxpayer.net/wp-content/uploads/2024/05/5-30-24_Ripe-for-Rescission-A-Cost-Benefit-Analysis-of-U.S.-ICBMs.pdf

⁹ Korda, Matt. "Alternatives to the Ground-Based Strategic Deterrent." Federation of American Scientists. February 2021. <https://fas.org/wp-content/uploads/2021/02/Alternatives-to-the-GBSD-Feb.-2021.pdf>