

# Congress of the United States

Washington, DC 20515

October 4, 2022

The Honorable Gina M. Raimondo  
Secretary  
U.S. Department of Commerce  
1401 Constitution Ave. NW  
Washington, D.C. 20230

Dear Secretary Raimondo,

Thank you for working with us to assure strong taxpayer protections on the use of funds provided under the *Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022*.<sup>1</sup> We write to reiterate the importance of these assurances and to get information about actions you have taken to ensure their implementation.

We were encouraged by the Department of Commerce's (Department) recent commitments to "ensuring the effective, efficient and accountable use"<sup>2</sup> of the \$52 billion Congress appropriated for bolstering our domestic semiconductor manufacturing, research, and design capacity,<sup>3</sup> including making certain that awards are not used as "a subsidy for companies to make them more profitable or enable them to have more cash for stock buybacks or to pad their bottom line[s]."<sup>4</sup>

Equally important, in our negotiations, we appreciated your statement of September 6, 2022, which outlined your commitments when selecting grantees<sup>5</sup>, including ensuring the Department will:

- "[G]ive preference in awards to companies who commit to make future investments that grow the domestic semiconductor industry (such as through research and development, workforce training, or manufacturing investments) and not engage in stock buybacks."<sup>6</sup>

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<sup>1</sup> CHIPS Act of 2022, Amendment to H. R. 4346, <https://www.commerce.senate.gov/services/files/CFC99CC6-CE84-4B1A-8BBF-8D2E84BD7965>.

<sup>2</sup> National Institute of Standards and Technology, "Taxpayer Protections," August 25, 2022, <https://www.nist.gov/semiconductors/taxpayer-protections>.

<sup>3</sup> Washington Post, "House passes bill to subsidize U.S.-made semiconductor chips in win for Biden," Amy B. Wang and Marianna Sotomayor, July 28, 2022, <https://www.washingtonpost.com/politics/2022/07/28/house-vote-semiconductor-chips-bill/>.

<sup>4</sup> National Institute of Standards and Technology, "Taxpayer Protections," August 25, 2022, <https://www.nist.gov/semiconductors/taxpayer-protections>.

<sup>5</sup> U.S. Department of Commerce, "A Strategy for the CHIPS for America Fund," September 6, 2022, <https://www.nist.gov/system/files/documents/2022/09/13/CHIPS-for-America-Strategy%20%28Sept%20%2C%202022%29.pdf>.

<sup>6</sup> *Id.*

- “[R]equire companies to provide capital investment plans as part of the application process. The Department will go over these with a fine-tooth comb and make sure that companies are not padding their models to ask for outsized incentives.”<sup>7</sup>
- Make clear that it “will not hesitate to claw back funds or pursue other remedies if recipients misuse taxpayer dollars.”<sup>8</sup>
- “[G]ive preference to projects that include state and local incentive packages that maximize local competitiveness, invest in the surrounding community, and prioritize broad economic gains, rather than just making outside financial contributions to a single company.”<sup>9</sup>
- “Prioritiz[e] companies that make significant worker and community investments. Eligible applicants will have to provide evidence of significant worker and community investments, including commitments from educational institutions for worker training, with specific commitments to disadvantaged groups.”<sup>10</sup>

As you know, America’s largest semiconductor companies have spent hundreds of billions on stock buybacks in recent years. Since 2005, Intel has spent over \$100 billion on buybacks.<sup>11</sup> Texas Instruments has spent \$48 billion on buybacks in the same period, including nearly \$14 billion in the last five years alone.<sup>12</sup> Qualcomm,<sup>13</sup> Broadcom,<sup>14</sup> and Micron<sup>15</sup> have all announced \$10 billion stock buyback authorizations in recent years. IBM routinely engages in multi-billion-dollar buybacks.<sup>16</sup> In total, five of these companies – Intel, IBM, Qualcomm, Texas Instruments, and Broadcom – alone engaged in nearly \$250 billion in stock buybacks from 2011 to 2020.<sup>17</sup> Without strict controls, we are concerned that CHIPS funding may result in a subsidy for additional buybacks, enriching executives and stockholders at taxpayers’ expense while undermining the goals of the legislation.

<sup>7</sup> National Institute of Standards and Technology, “Taxpayer Protections,” August 25, 2022, <https://www.nist.gov/semiconductors/taxpayer-protections>.

<sup>8</sup> U.S. Department of Commerce, “A Strategy for the CHIPS for America Fund,” September 6, 2022, <https://www.nist.gov/system/files/documents/2022/09/13/CHIPS-for-America-Strategy%20%28Sept%20%2C%202022%29.pdf>.

<sup>9</sup> U.S. Department of Commerce, “A Strategy for the CHIPS for America Fund: Executive Summary,” September 6, 2022, <https://www.nist.gov/system/files/documents/2022/09/06/CHIPS%20Strategic%20Plan%20Executive%20Summary%20%28Sept.%20%2C%202022%29.pdf>.

<sup>10</sup> National Institute of Standards and Technology, “Taxpayer Protections,” August 25, 2022, <https://www.nist.gov/semiconductors/taxpayer-protections>.

<sup>11</sup> Intel, “Dividends & Buybacks,” <https://www.intc.com/stock-info/dividends-and-buybacks>.

<sup>12</sup> Texas Instruments, “Stock repurchases,” <https://investor.ti.com/stock-information/stock-repurchases>.

<sup>13</sup> Qualcomm, “Qualcomm Announces New \$10.0 Billion Stock Repurchase Authorization,” October 11, 2021, <https://www.qualcomm.com/news/releases/2021/10/qualcomm-announces-new-100-billion-stock-repurchase-authorization>.

<sup>14</sup> Broadcom, “Broadcom Inc. Announces \$10 Billion Share Repurchase Authorization,” December 9, 2021, <https://investors.broadcom.com/news-releases/news-release-details/broadcom-inc-announces-10-billion-share-repurchase-authorization>.

<sup>15</sup> Micron, “Micron Announces \$10 Billion Share Repurchase Authorization,” May 21, 2018, <https://investors.micron.com/news-releases/news-release-details/micron-announces-10-billion-share-repurchase-authorization>.

<sup>16</sup> YCharts, “International Business Machines Stock Buybacks (Quarterly),” [https://ycharts.com/companies/IBM/stock\\_buyback](https://ycharts.com/companies/IBM/stock_buyback).

<sup>17</sup> Institute for New Economic Thinking, “Why the CHIPS Are Down: Stock Buybacks and Subsidies in the U.S. Semiconductor Industry,” William Lazonick and Matt Hopkins, November 3, 2021, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3952144](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3952144).

As the process for awards under CHIPS gets underway, we appreciate that the Commerce Department’s National Institute of Standards and Technology (NIST), which “is working closely with the Office of the Secretary to plan for the implementation of the Department of Commerce’s CHIPS Act programs...includ[ing] developing program requirements and areas of focus,”<sup>18</sup> released a set of specific commitments regarding the Department’s statutory authority to protect taxpayer funds under CHIPS, and were consistent with the implementation strategy you released on September 6, 2022.<sup>19</sup> Specifically:

- **Stock buyback prohibition.** CHIPS prohibits the use of CHIPS funds for stock buybacks, and NIST indicates that the Department will “give preference” to companies that commit not to “engage in stock buybacks.”<sup>20</sup> We applaud the commitment to ensuring that not only are CHIPS funds not used to directly fund stock buybacks, but that they also do not indirectly “enable” buybacks.<sup>21</sup>
- **Continuous oversight.** The NIST guidelines indicate that the Department will “[s]trictly monitor[] the use of funds to ensure companies are delivering on their promises and not abusing taxpayer resources.”<sup>22</sup> Without program transparency and ongoing Department oversight, we have significant concerns about the potential for abuse and misuse of funds by program recipients, which would undermine program intent and damage American economic and national security interests. The Department must ensure that its CHIPS program compliance efforts are a top agency priority.
- **Criminal enforcement.** NIST indicates that the Department will require companies “to certify the accuracy of information provided to the government”<sup>23</sup> and, if there are violations of these agreements, will take all available enforcement actions in response.<sup>24</sup> We are particularly encouraged by the NIST statement indicating the Department will commit to pursuing criminal enforcement measures for any violations of these certifications.<sup>25</sup>
- **Clawback authority and other remedies.** The NIST guidelines indicate that the Department “will not hesitate to clawback funds or pursue other remedies if companies misuse taxpayer dollars.”<sup>26</sup> As it further develops program requirements and enforcement strategies, the Department must provide additional details on the enforcement actions, consistent with its authority, that it seeks to pursue when companies violate taxpayer protections.
- **Forthcoming guardrails.** The NIST guidelines also rightly note the breadth of the Department’s authority to issue other protections. It reserves the right to “develop other

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<sup>18</sup> National Institute of Standards and Technology, “CHIPS Act,” April 5, 2022, <https://www.nist.gov/semiconductors/chips-act>.

<sup>19</sup> U.S. Department of Commerce, “A Strategy for the CHIPS for America Fund,” September 6, 2022, <https://www.nist.gov/system/files/documents/2022/09/13/CHIPS-for-America-Strategy%20%28Sept%20%2C%202022%29.pdf>.

<sup>20</sup> National Institute of Standards and Technology, “Taxpayer Protections,” August 25, 2022, <https://www.nist.gov/semiconductors/taxpayer-protections>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

guardrails...to maximize the public purposes of federal investments and prevent companies from seeking to evade statutory requirements.”<sup>27</sup>

While the existing guidelines are a productive start, we urge and expect the Department to announce additional protections and to refine its existing guidance over the coming weeks and months. We also ask that the Department ensure all of these commitments are incorporated into any future Notice(s) of Funding Opportunity arising from the program and are supported by the resources necessary to ensure robust oversight. Similar common-sense protections have received strong bipartisan support. A set of conditions, including a prohibition on stock buybacks, in the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* passed the Senate by a unanimous 96-0 vote.<sup>28</sup>

Chipmakers spent millions lobbying to remove these critical guardrails, but they failed.<sup>29</sup> Now, the Department must use the authority provided by Congress. The NIST guidelines indicate that the Department will use “every tool within [its] authority to ensure that this money serves [the Act’s] critical goals.”<sup>30</sup> The Department implementation priorities, moreover, reaffirm its commitment to include “robust compliance and accountability requirements to ensure taxpayer funds are protected and spent wisely, and are not used for dividends, stock buybacks, or windfall profits.”<sup>31</sup> As you have noted, CHIPS funding is “not a blank check to these companies,”<sup>32</sup> and the guidelines are an important commitment toward that vision. More details about how these critical taxpayer protections will be implemented, however, are needed.

Thank you for your attention to this matter and for the steps the Department has already taken to protect taxpayers. We look forward to continued engagement with your office to strengthen and enforce these critical protections. As the Department continues to develop and refine its rules and guidance, we request that you provide the following information by October 19, 2022:

1. What is the Department’s process and timeline for establishing CHIPS program eligibility requirements, selection criteria, and guidance? How will the Commerce Department coordinate with NIST, the Department’s Inspector General, the CHIPS Implementation Steering Council, and other outside agencies to develop and implement program rules and guidelines to limit waste, abuse, and misuse of funds?
2. What actions will the Department take to enforce CHIPS provisions preventing stock buybacks?
  - a. Will the Department require companies to attest on the application form for CHIPS funding that they will not engage in buybacks for a set period of time?

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<sup>27</sup> *Id.*

<sup>28</sup> Congress.gov, “H.R.748 - CARES Act,” <https://www.congress.gov/bill/116th-congress/house-bill/748>.

<sup>29</sup> New York Times, “Congress Is Giving Billions to the Chip Industry. Strings Are Attached,” Ana Swanson, August 3, 2022, <https://www.nytimes.com/2022/08/03/business/economy/chip-industry-congress.html>.

<sup>30</sup> National Institute of Standards and Technology, “Taxpayer Protections,” August 25, 2022, <https://www.nist.gov/semiconductors/taxpayer-protections>.

<sup>31</sup> National Institute of Standards and Technology, “About CHIPS.Gov,” August 25, 2022, <https://www.nist.gov/chips>.


<sup>32</sup> New York Times, “Congress Is Giving Billions to the Chip Industry. Strings Are Attached,” Ana Swanson, August 3, 2022, <https://www.nytimes.com/2022/08/03/business/economy/chip-industry-congress.html>.


- b. In addition to preferencing applicants that commit to not engaging in stock buybacks, will the Department give additional preference to companies that commit to longer buyback moratoriums?
  - c. Will the Department commit to preferencing applicants with a history of compliance with the terms of federal awards consistent with 2 C.F.R. § 200.200 et seq.<sup>33</sup>
  - d. Will the Department claw back any CHIPS funds inappropriately spent on buybacks? How will it calculate the amounts to be clawed back and enforce the claw back?
  - e. Will the Department refer award recipients that engage in stock buybacks in violation of a previous commitment (whether on the assistance application or any other CHIPS-related document) for criminal prosecution?
  - f. What other penalties will the Department impose on companies that inappropriately spend CHIPS funds on buybacks or spend their own funds on buybacks in violation of a prior commitment?
  - g. Will the Department take steps to both prohibit the supplanting of funds but also to expand the definition of operating expenses to include stock buybacks?
3. Please provide detail on the staff and resources the Department anticipates it will dedicate to monitoring compliance with CHIPS requirements.
    - a. Will the Department cooperate closely with the Department's Office of Inspector General on CHIPS-related compliance and enforcement matters?
    - b. Will the Department cooperate closely with any other federal agencies on CHIPS-related oversight matters?
    - c. Will the Department hire additional staff as necessary to fulfill its duty to protect taxpayers?
  4. To the extent practicable, and in a manner consistent with applicable laws and regulations, does the Department commit to regularly updating Congress on the progress of its CHIPS implementation and enforcement efforts?
    - a. Will the Department provide clear and transparent rules and guidelines for program applicants?
    - b. Will the Department create a public database, updated at regular intervals, of funds received by CHIPS program participants?
  5. What actions will the Department take to ensure that program staff are free of any conflicts of interest related to former employment with recipients of CHIPS funds?
  6. What safeguards will the Department implement to ensure conflicted employees do not influence the CHIPS award process?
  7. What actions will the Department take to close the revolving door and ensure that staff do not use the contacts, information, or influence they acquire while involved with CHIPS program administration to then seek employment or compensation with private sector recipients of CHIPS funding?

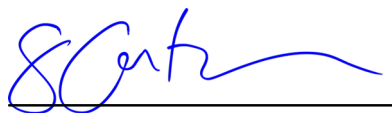
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<sup>33</sup> 2 C.F.R. 200.200 et seq.


Sincerely,


  
Elizabeth Warren  
United States Senator

  
Tammy Baldwin  
United States Senator

  
Sean Casten  
Member of Congress

  
Jamaal Bowman, Ed.D.  
Member of Congress

  
Pramila Jayapal  
Member of Congress

  
Bill Foster  
Member of Congress