U.S. Chamber of Commerce

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May 18, 2023

The Honorable Gina Raimondo
Secretary
Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Secretary Raimondo:

The U.S. Chamber of Commerce ("the Chamber") writes regarding the implementation of the Department of Commerce's ("the Department") semiconductor incentives program funded by the CHIPS and Science Act of 2022 ("CHIPS Act").

The Chamber strongly supports the of CHIPS Act and appreciates your prompt efforts to implement it. We share the Administration's goal of strengthening America's semiconductor ecosystem to bolster economic and strategic competitiveness, workforce, national security, and supply chain. However, the Chamber is concerned that several aspects of the Department's implementation of the semiconductor incentives program risk the long-term success of the program. The effectiveness of this program would benefit from their removal.

The semiconductor incentives program was primarily designed to reduce the cost differential between manufacturing in the United States and across other jurisdictions to encourage the semiconductor industry to invest domestically. However, the Department's February 2023 Notice of Funding Opportunity ("NOFO") includes a mix of extraneous and burdensome preferences and requirements for program applicants – not required under the CHIPS Act – that will inhibit the effective implementation of the program. Given that funding is limited and the Department's opaque grant decision-making process, any preferences or encouragements will be viewed as de facto mandates for applicants. Some of these preferences and requirements include:

- **Project Labor Agreements**: De facto requirement to use project labor agreements ("PLAs) for the construction workforce (C)(5)(b).
- **Encouragement of Unionization**: Requirement that applicants utilize the Department of Labor's "Good Jobs Principles" to inform workforce plans for facility workers (C)(10)a).
- **Childcare Mandate**: Requirement for certain applicants requesting more than $150 million to develop a plan for access to childcare for both facility

and construction workers. Applicants who request less than $150 million are strongly encouraged to provide childcare access (C)(5)(c).

- Excess Profit Sharing: Applicants requesting more than $150 million are required to share a portion of cash flows or returns with the Department if the funded project's cash flows or returns significantly exceeds the applicant's projections (C)(6).
- Renewable Energy Mandate: Strongly encourages applicants to use 100% renewable energy for operating new facilities (C)(6).
- Community Investment Requirement: Requires that applicants make commitments to community investments, including financing and building affordable housing, providing housing vouchers, and invest in K-12 schools and community colleges (C)(6).
- Domestic Content Preferences: Implicitly encourages applicants to use domestically produced iron, steel, and construction materials (C)(6).
- Additional Stock Buyback Restrictions: Requirement that applicants detail their buyback plans for the next five years coupled with a strong preference that applicants commit to refrain from stock buybacks for that period (C)(6).

The Department's inclusion of these provisions will significantly undermine the goals and diminish the effective implementation of the semiconductor incentives program. For the following reasons, the Department should immediately amend the NOFO to remove these policies.

First, as noted earlier, the primary purpose of the CHIPS Act is to reduce the cost differential between investing in the United States compared to other jurisdictions. Collectively, these polices will likely *increase* this cost differential through additional compliance costs for applicants, direct costs of the requirements and preferences, and adverse impacts on private sector investment and marketplace operations. For example, only 6% of the private sector workforce is unionized, thus dramatically reducing the labor pool for grant recipients if they are forced to abide by PLAs that require the use of union labor (under PLAs non-union employers must agree to the terms of a union collective bargaining agreement which can make such projects unattractive to those employers). Limiting the labor pool to unionized workers will increase costs and impose delays on projects. Moreover, the impact of these provisions is compounded by other external economic and legal factors that also increase the cost of construction for semiconductor facilities. These unavoidable factors include permitting requirements, semiconductor workforce shortages, inflation, and supply chain constraints.

Second, some have noted that certain of these requirements, such as the childcare mandate, are intended to address economy-wide challenges in reviving domestic manufacturing. However, leveraging the NOFO to address these important, systemic challenges risks unintended consequences. For example, the Chamber recognizes that childcare is a pillar of workforce development and is critical for supporting the workforce of today and crucial for developing the workforce of tomorrow. The availability of quality, affordable childcare is a complicated issue that working parents, childcare providers, employers and administrators in communities across the country have been trying to solve for decades. Despite this complexity, the NOFO's childcare mandate places the onus squarely on the shoulders of the business community. This mandate runs the risk of either inhibiting the semiconductor industry from accessing funding or forcing applicants to rush through a childcare plan that could exacerbate limited childcare resources within the communities in which an applicant plans to operate.

Third, none of these policies were intended by Congress to be a part of the semiconductor incentives program and nowhere in the NOFO does the Department point to a specific statutory requirement for these policies. In fact, some of these provisions clearly conflict with Congressional intent. For example, the CHIPS Act already prohibits grant recipients from using grant funds for stock buybacks or dividends payments. Yet the NOFO places additional requirements and preferences on stock buybacks. This result is not intended by Congress. During the debate on the Act, the Senate overwhelmingly rejected (87-6) a proposed legislative amendment that would have restricted all company use of stock buybacks, clearly indicating that the Congressional intent was for the limitation to apply strictly to CHIPS funds, not private funds. Ensuring that implementation reflects legislative intent is critical to align the strong bipartisan support for restoring America's semiconductor leadership with the long-term durability of the semiconductor incentives program.

The effective implementation of the CHIPS Act is too important to be entangled with tangential and counter-productive requirements. We appreciate your attention to this matter, and we look forward to further discussions to advance the effective implementation of this legislation. If you have any questions, please do not hesitate to contact Matt Furlow, Policy Director at mfurlow@uschamber.com.

Sincerely,

Tom Quaadman
Executive Vice President
Chamber Technology Engagement Center
U.S. Chamber of Commerce