



The Imperative of Defense Production Act (DPA) Reauthorization

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Testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs
May 22, 2025

Dear Chairman Scott, Ranking Member Warren, and Members of the Committee:

Thank you very much for the opportunity to speak with you today. I am honored to discuss DPA reauthorization with all of you and very much look forward to your perspectives on this critical issue facing our nation.

The United States has the most lethal and capable fighting force in the world. Our defense industrial base, however, has substantial weaknesses that have been starkly demonstrated in recent years. From dependencies on Chinese sources for rare earth magnets, critical minerals, advanced batteries, and specialty chemicals, to significant production challenges supplying munitions and precision guided missiles to allies and partners, we have major domestic industrial capacity issues.

The Defense Production Act is a critical Presidential authority that is designed specifically to address these kinds of industrial base issues. The DPA was passed by Congress and signed into law by President Truman in 1950 and has been reauthorized 53 times in the intervening years. In the two most recent cases (2014 and 2019), Congress reauthorized the DPA for five and six years, respectively. It is vital that Congress act this year to reauthorize the DPA and it is incredibly heartening to hear the bipartisan calls for DPA reauthorization by members of this Committee. I recognize that members of this Committee have recently introduced a clean bill to renew the DPA for one year. Although a one-year reauthorization will address the immediate issue of the expiring authority, I respectfully recommend that you work to complete a reauthorization this year in line with the two most recent occurrences if possible.

To underscore why the DPA is critical for our national security, I will examine the origins of this authority, how it has been used and is used today, and propose some recommendations for DPA's future use.

Origins and Uses of the DPA before COVID-19

The DPA was modeled on the authorities used during World Wars I and II. The fall of the Iron Curtain in Eastern Europe and the North Korean invasion led Congress to pass the DPA in 1950. The law gave the President broad authority to ensure the timely availability of essential domestic industrial resources. In summarizing DPA's legislative aim to grant the government more control over defense-related production, it was initially described as "something about halfway between full war mobilization and peacetime business as usual."¹

Three of the DPA Titles, briefly described below, were regularly reauthorized throughout the Cold War.²

DPA Title I. Title I is focused on the distribution and allocation of goods and services. The distribution authority of Title I permits the government to prioritize contracts to meet priority government needs. The Defense Prioritization and Allocation System (DPAS), overseen by the Department of Commerce, uses this authority regularly to prioritize orders and rate contracts to meet government-mandated critical infrastructure requirements.³ Using this authority, DoD has prioritized contracts that assist with the development and sustainment of many key defense systems including the Integrated Ballistic Missile Defense System, B-2 Bomber, VC-25 Presidential Aircraft, and the Mine-Resistant Ambush Protected Vehicle (MRAP).

The allocation authority of Title I permits the government to prioritize industrial efforts to meet national defense priorities. This authority was rarely used during the Cold War, but it was central to the establishment of the Civil Reserve Air Fleet (CRAF). CRAF, managed by the Department of Transportation, gives the President the ability to mobilize specific aircraft for government use in the event of national emergency. CRAF planning efforts focused for example, on surge requirements to deploy U.S. troops and equipment to Europe to help the North Atlantic Treaty Organization (NATO) defend Europe in the case of Soviet military aggression. In return for providing on call capacity for government use during exigent circumstances CRAF carriers also received contracts for the peacetime movement of troops or materials activities.

¹ Paul McQuade, Mike Reis, and Emily Sullivan, "The History and Use of the Defense Production Act," HAI Legal, n.d., <https://www.hailegal.com/defense-production-act-war-history/> (accessed May 20, 2025).

² For a summary of the DPA's history and usage, see Alexandra G. Neenan and Luke A. Nicastro, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*. CRS Reports, R43767, updated October 6, 2023. Available at <https://crsreports.congress.gov/product/pdf/R/R43767> (accessed April 11, 2024). See also, John G. McGinn, "Building Resilience: Mobilizing the Defense Industrial Base in an Era of Great-Power Competition." Baroni Center White Paper Series No. 6, September 28, 2020, pp. 5-7. Available at <https://business.gmu.edu/news/2021-10/no-6-building-resilience-mobilizing-defense-industrial-base-era-great-power> (Accessed May 20, 2025).

³ U.S. Department of Commerce, Bureau of Industry and Security. "Defense Priorities and Allocations System Program." Available at <https://www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/defense-priorities-a-allocations-system-program-dpas> (accessed May 20, 2025).

DPA Title III. Title III focuses on the ability to “create, maintain, protect, expand, or restore industrial base capabilities essential for national defense” through grants, loans, purchases, and purchase commitments.⁴ The President delegated authority to the Department of Defense to manage this authority. Over time, Title III became focused almost exclusively on grants—principally congressional earmarks—to increase industrial capacity in areas of industrial base weakness such as complex forgings for naval propulsion shafts and the creation of a domestic production facility for beryllium.⁵ Title III projects averaged approximately \$50-\$70 million per year by the mid-2010s.

The 2014 reauthorization of the DPA, however, had a negative impact on Title III projects. Political disagreements over the use of Title III funds for clean energy biofuel projects led to restrictions in the size of the DPA Fund and the elimination of delegation authority below the President. The result was that it became more difficult to use the authority and a corresponding decrease in effectiveness.⁶

DPA Title VII. Title VII has long been considered a “potpourri,” with some of its earlier sections dealing with “small business, definition of terms, authorization to establish new agencies, authorization to have access to such records and reports required to administer the act, compliance, and liabilities.”⁷ It also enables the government to conduct industrial base assessments that can include industry surveys. The Department of Commerce executes this Title VII authority through its Bureau of Industry and Security. Title VII also includes Sections 708 and 710, which contain the authorities for establishing voluntary agreements and National Defense Executive Reserve (NDER) units, respectively. These sections are lesser used and lesser known than other provisions of the DPA, although they were originally intended to have critical impact in tandem with the rest of Title VII to sharpen overall use of the DPA.⁸

Foreign direct investment is also covered under Title VII and is governed by the Committee on Foreign Investment in the United States (CFIUS). CFIUS is an interagency committee that, led by the Department of the Treasury, reviews foreign investment transactions for national security

⁴ 50 USC §4531(a)(1).

⁵ See “Earmark Declaration,” remarks by Representative Charles Dent of Pennsylvania, Congressional Record, Vol. 155, No. 116 (July 29, 2009), pp. E2057–E2058, <https://www.govinfo.gov/content/pkg/CREC-2009-07-29/html/CREC-2009-07-29-pt1-PgE2057-3.htm> (accessed May 20, 2025), and Air Force Research Laboratory, ManTech, “Defense Production Act Title III Project Establishes Domestic Source for Beryllium,” Wright-Patterson Air Force Base, September 17, 2013, <https://www.wpafb.af.mil/News/Article-Display/Article/819343/defense-production-act-title-iii-project-establishes-domestic-source-for-beryllium/> (accessed May 20, 2025).

⁶ Bill Greenwalt, Jerry McGinn, and Christopher Zember, “The Defense Production Act is helping rebuild the US industrial base. Let’s keep it that way,” *Defense News*, June 15, 2022. Available at <https://www.defensenews.com/opinion/commentary/2022/06/15/the-defense-production-act-is-helping-rebuild-the-us-industrial-base-lets-keep-it-that-way/> (accessed May 20, 2025).

⁷ Hardy Merritt and Luther Carter, eds., *Mobilization and the National Defense* (Washington, D.C.: National Defense University Press, 1985), p. 41.

⁸ For a detailed analysis of these two sections of DPA Title VII, see McGinn and Olivia Letts, “Options for Strengthening the Use of Defense Production Act Title VII,” Acquisition Innovation Research Center Innovation Project Report, February 2025. Available at <https://acqirc.org/wp-content/uploads/2025/05/WRT-1097.13.4-v1.4.pdf> (accessed May 20, 2025).

concerns. CFIUS was added to Title VII in 1988 through the Exon–Florio amendment to the DPA but received little public attention until the Dubai Ports transaction in 2007. This transaction, which proposed the foreign purchase of six U.S. ports, led Congress to pass the Foreign Investment and National Security Act to create CFIUS in statute.

Recent Uses of the DPA⁹

The DPA burst onto the national scene during COVID, but it actually started receiving increased attention during the 2017-2018 whole of government review of manufacturing and defense industrial base initiated by Executive Order 13806 during the first term of President Trump. This review identified how the United States had lost its once leading role in many manufacturing areas to China. The final report of this review recommended immediate investment to rebuild U.S. industrial capacity in numerous areas and DoD, through the Defense Production Act, began a series of projects to invest government resources in reshoring industrial capabilities in the United States.¹⁰

DPA Title I. The COVID-19 pandemic brought the entire world to a halt in the spring of 2020. It explicitly exposed the vulnerabilities of commercial and defense supply chains, particularly critical items such as PPE and antibiotics which were produced overwhelmingly by Chinese sources. While DPAS was in regular use prior to the pandemic, the DPA’s distribution authority was used to great effect during 2020.¹¹ **Table 1** illustrates how, using Title I of the DPA, the Department of Health and Human Services (HHS) rated contracts worth over \$3.15 Billion to prioritize the production principally of ventilators:¹²

⁹ This section draws heavily from *John G. (Jerry) McGinn, Before the Balloon Goes Up: Mobilizing the Defense Industrial Base Now to Prepare for Future Conflict*. The Greg and Camille Baroni Center for Government Contracting Report No. 10, October 3, 2024. Available at <https://business.gmu.edu/news/2024-10/balloon-goes-mobilizing-defense-industrial-base-now-prepare-future-conflict> (accessed March 4, 2025). Also McGinn and Letts, “Options for Strengthening DPA Title VII.”

¹⁰ *Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States: Report to President Donald J. Trump by the Interagency Task Force in Fulfillment of Executive Order 13806, September 2018*. Available at <https://media.defense.gov/2018/oct/05/2002048904/-1/-1/1/assessing-and-strengthening-the-manufacturing-and%20defense-industrial-base-and-supply-chain-resiliency.pdf> (accessed April 9, 2025).

¹¹ Jerry McGinn, “Sending in the cavalry: How the Defense Production Act can assist during the COVID-19 crisis,” *The Hill*, March 19, 2020. Available at <https://thehill.com/opinion/national-security/488435-sending-in-the-cavalry-how-the-defense-production-act-can-assist/> (accessed September 8, 2024).

¹² Jerry McGinn, Eric Lofgren, and Thomas Jennings, *COVID-19: Federal Contracting Response and Impact*, Baroni Center Report, November 6, 2020, p. 16. Available at <https://business.gmu.edu/news/2022-03/covid-19-federal-contracting-response-and-industry-impact> (accessed September 8, 2024).

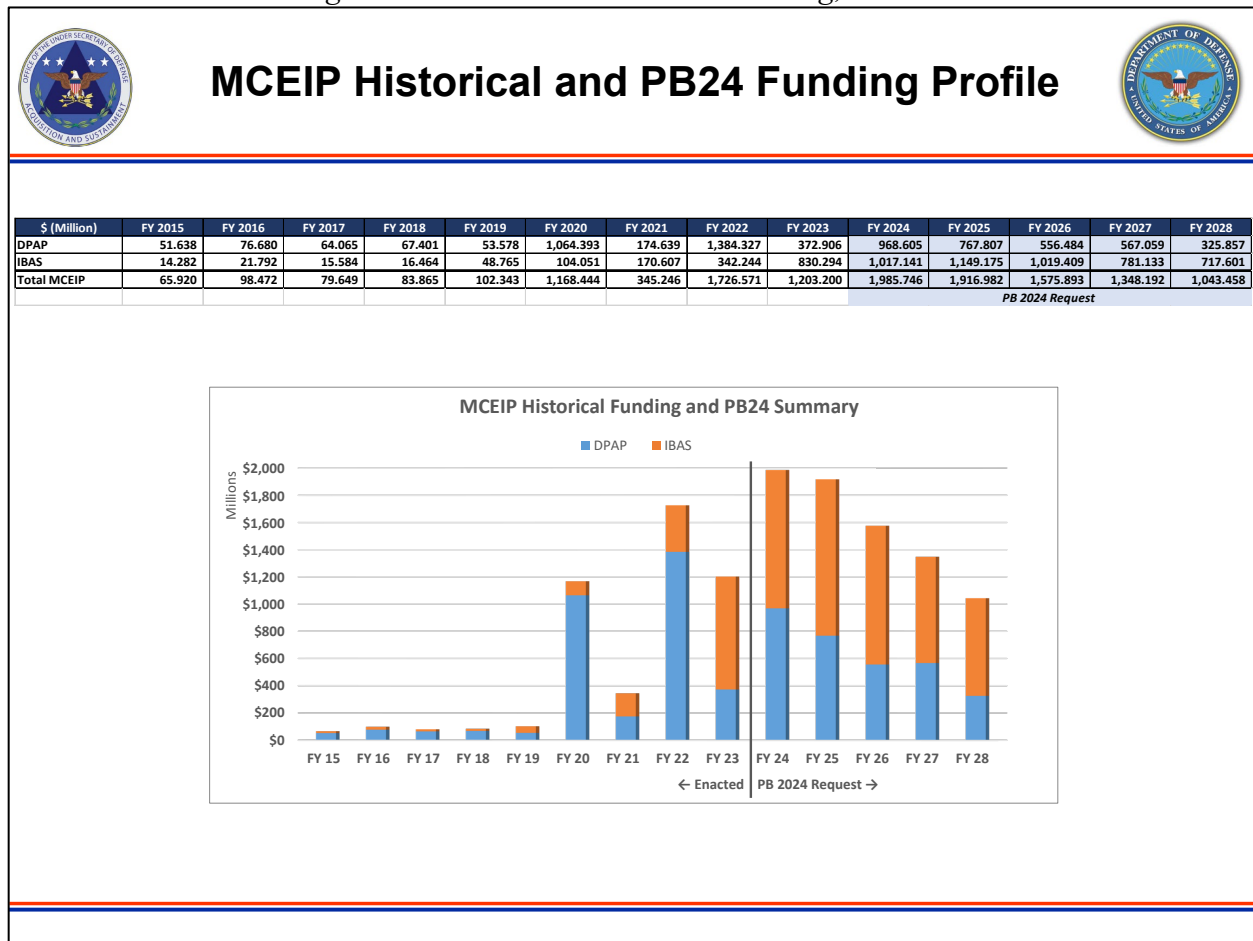
Table 1: Selected DPA Title I Rated Contracts, 2020

Agency	Company	\$M	Requirement
HHS	Philips	\$646.70	43K ventilators
HHS	Hamilton	\$552.00	14.1K ventilators
HHS	General Motors	\$489.40	30K ventilators
HHS	Vyaire	\$407.90	22K ventilators
HHS	Zoll	\$350.10	18.9K ventilators
HHS	GE & Ford	\$336.00	50K ventilators
HHS	General Electric	\$64.10	2.4K ventilators
HHS	ResMed	\$32.00	2.5K ventilators
HHS	Hill-Rom	\$20.10	3.4K ventilators
HHS	Medtronic	\$9.10	1K ventilators
HHS	Retractable Tech.	\$83.90	Needles
HHS	Quidel	\$64.00	Testing
HHS	Marathon Medical	\$53.90	Medical Supplies
HHS	Becton, Dickinson	\$43.3	Needles/Syringes

DPA Title III. In the wake of EO 13806, COVID-19, and the Biden Administration’s 2021 EO 14017 on Securing America’s Supply Chains, DPA Title III investment increased dramatically from levels prior to 2020. **Figure 1** illustrates the dramatic changes in both DPA Title III and a related industrial base investment program, the Industrial Base Analysis and Sustainment (IBAS) program, in 2023:¹³

¹³ U.S. Department of Defense, Office of the Assistant Secretary of Defense for Industrial Base Policy, “MCEIP [Manufacturing and Capability Expansion Investment Prioritization] Historical and PB24 Funding Profile.” Available at <https://www.businessdefense.gov/ibr/mceip/docs/ir/MCEIP-Funding-Snapshot.pdf> (accessed April 10, 2025).

Figure 1: DPA Title III and IBAS Funding, FY15-28



Source: Office of the Assistant Secretary of Defense for Industrial Base Policy website (<https://www.businessdefense.gov/ibr/mceip/docs/ir/MCEIP-Funding-Snapshot.pdf>)

The CARES Act during COVID added \$1 billion to the DPA Fund, which was used for pandemic-related and other industrial base projects. In parallel, a significant number of projects have been launched in industrial capability areas such as rare earth and other critical minerals, castings and forgings, microelectronics, and numerous other areas. In FY2023, for example, almost \$520 million was appropriated for Title III projects in critical chemicals; hypersonics; strategic radiation hardened microelectronics; microelectronics packaging; strategic and critical minerals; castings and forgings; energy storage and batteries; and solid rocket motors.¹⁴

DPA Title VII. The major recent change in Title VII impacted CFIUS authority. The nature of foreign direct investment began to shift substantially after 2010. From 2007–2009, for example, acquisitions originating from companies in the United Kingdom, Canada, France, Australia, and Israel—traditional U.S. allies—accounted for 57 percent of 358 covered transactions.

¹⁴ U.S. Department of Defense, Defense Production Act Purchases, DoD FY2025 Budget Estimates, March 2024, p. 3. Available at https://comptroller.defense.gov/Portals/45/Documents/defbudget/FY2025/budget_justification/pdfs/02_Procurement/PROC_DPAP_PB_2025.pdf (accessed April 12, 2025).

Transactions originating from Chinese firms were less than 4 percent of the total. In less than a decade, however, those ratios shifted dramatically. From 2016–2018, transactions originating from China were the largest proportion of cases filed: 26.5 percent. Moreover, the nature of the Chinese transactions drew increased scrutiny because most of these proposed acquisitions (84 percent) were focused on the manufacturing, finance, information, and services sectors.¹⁵

This shift drew significant bipartisan Congressional and Executive Branch concern about the impact of increased levels of Chinese ownership or control in such critical sectors of the industrial base as microelectronics. Congress passed and the President signed into law the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) on August 13, 2018.¹⁶ FIRRMA was the most significant reform of CFIUS since the Foreign Investment and National Security Act (FISMA) of 2007 and helped to modernize national security reviews of financial transactions by expanding the scope and jurisdiction of CFIUS, refining CFIUS procedures, and requiring actions to address national security risks related to mitigation agreements.

Recommendations for DPA Future Uses

The DPA is currently being used to great effect in prioritizing contracts, reshoring and building industrial base capacity in areas such as rare earth processing, castings and forgings, and advanced batteries as well as countering foreign investment that impacts national security. Overall, the DPA is strong, but there are several opportunities for strengthening and revitalizing DPA authorities, which will improve the nation's ability to respond to crises.¹⁷

Keep the Defense Production Act strictly focused on national security needs. The increased use of DPA is welcome but its invocation in 2022 to support domestic production of solar panels and heat pumps caused political controversy.¹⁸ This was a focus during two House Financial Services Committee hearings on DPA reauthorization last year.¹⁹ The hearings struck exactly the

¹⁵ U.S. Department of the Treasury, “CFIUS Reports and Tables.” Available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-reports-and-tables> (accessed May 20, 2025).

¹⁶ Title XVII, Review of Foreign Investment and Export Controls, in H.R. 5515, John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public 115-232, 115th Cong., August 13, 2018, <https://www.congress.gov/115/plaws/publ232/PLAW-115publ232.pdf> (accessed May 20, 2025).

¹⁷ This section draws heavily from McGinn, *Before the Balloon Goes Up*, and idem, “How to further strengthen the Defense Production Act,” *Defense News*, May 7, 2024. Available at <https://www.defensenews.com/opinion/2024/05/07/how-to-further-strengthen-the-defense-production-act/> (accessed August 6, 2024).

¹⁸ White House fact sheet, June 6, 2022. Available at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/fact-sheet-president-biden-takes-bold-executive-action-to-spur-domestic-clean-energy-manufacturing/> (accessed April 11, 2024); Press Release, House Energy and Commerce Committee Chair Cathy McMorris Rodgers, December 20, 2023. Available at <https://energycommerce.house.gov/posts/chairs-rodgers-and-duncan-decry-administration-s-use-of-war-time-authority-to-subsidize-radical-rush-to-green-agenda> (accessed April 11, 2024).

¹⁹ Hearings of the House National Security, Illicit Finance, and International Financial Institutions Subcommittee Entitled “Mission Critical: Restoring National Security as the Focus of Defense Production Act Reauthorization.” The March 12, 2024 Hearing (Part I) and background memorandum are available at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=409167> (accessed April 11, 2024). The May

right tone. It is essential to keep DPA focused exclusively on essential defense and national security issues, in particular threats from our principal competitor, China. Using DPA outside of direct national security or national emergency purposes threatens “the viability of this unique tool for rebuilding a robust, resilient, and globally competitive American industrial base.”²⁰

DPA Title I – Update executive orders and regulations. At the national level, the DPA is governed by a number of old and overlapping executive orders spanning numerous administrations that need to be refreshed and simplified. The Trump Administration should conduct a thorough review of relevant executive orders and regulations to better orient DPA policies and practices to address future national security challenges.²¹

DPA Title III – Delegate determination authority, use purchase commitment authority, and raise the DPA Fund ceiling. Title III is a tremendous tool for building industrial capacity. The non-delegable requirement for the president’s signature on each DPA determination, however, has significantly slowed the process by which DPA projects are developed and executed. Allowing the delegation of that determination in the upcoming reauthorization, perhaps to the Secretary level of those agencies with Title III authority,²² would significantly streamline the development of Title III projects.

Another significant improvement would be the use of purchase commitments under Title III. All existing Title III projects are purchases under Section 303 of the DPA, but the authority also permits multiyear purchase commitments. Purchase commitments would allow DoD to create a guaranteed demand signal for an industrial capability over a mutually agreed upon period, thereby reducing risks for industry to make their own investments.²³ Adding several purchase commitment projects could significantly help maintain capacity levels in areas such as critical materials and specialty chemicals to support future national security challenges. Purchase commitments, however, have not been an option recently because Congress has appropriated DPA funds over the past several years using standard Procurement funds which expire in two years, contrary to traditional DPA appropriations, which do not expire.

Finally, raising the DPA Fund would further enable the use of purchase commitments and additional uses of DPA Title III investments. The DPA Fund is currently limited in that the unobligated balance of the Fund cannot exceed \$750 million at the end of any fiscal year. This makes it virtually impossible to establish a purchase commitment. For example, creating a ten-year purchase commitment of \$50 million per year for a specific critical mineral would create an important demand signal for domestic providers of critical minerals. That \$500 million purchase

8, 2024 Hearing (Part II) and background memorandum are available at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=409241> (accessed August 6, 2024).

²⁰ Greenwalt, McGinn, and Zember, “The Defense Production Act.”

²¹ Jerry McGinn and Daniel Kaniewski, “Where does the Defense Production Act Go from Here? Key aspects need strengthening,” *Defense One*, November 24, 2020. Available at <https://www.defenseone.com/ideas/2020/11/where-does-defense-production-act-go-here/170301/> (accessed April 11, 2024).

²² Currently DoD, the Department of Homeland Security, the Department of Energy, and the Department of Health and Human Services have been delegated DPA Title III authority.

²³ Office of the Assistant Secretary of Defense (Industrial Base Policy) briefing, Defense Production Act Title III. Available at <https://www.businessdefense.gov/ibr/mceip/dpai/dpat3/docs/DPA-TitleIII-Overview.pdf> (accessed April 11, 2024).

commitment, however, would take up the majority of the DPA Fund. Raising the fund limit would provide relief for this challenge. Another way to address this issue and facilitate purchase commitments would be to exclude future purchase commitments from the Fund for purposes of the Fund limit. This Committee could include either of these adjustments in this year's reauthorization.

DPA Title VII – Reevaluate the use of voluntary agreements and the National Defense Executive Reserve, keep CFIUS strong.

These two sections of DPA Title VII have been scarcely used since the end of the Cold War but present a tremendous opportunity for future national security challenges. Section 708 permits the government to establish voluntary agreements or plans of action with industry “to help provide for the national defense.”²⁴

Voluntary agreements provide peacetime benefits as well as wartime industrial capacity for national emergencies. While there were originally dozens of voluntary agreements in the 1950s, only three voluntary agreements remain today. Two of these voluntary agreements, the Voluntary Tanker Agreement (VTA) and the Voluntary Intermodal Sealift Agreement (VISA), provide multiple benefits to DoD and U.S. warfighter, although they are primarily administered by the Department of Transportation's Maritime Administration (MARAD). The remaining voluntary agreement, set to expire this year, was created by FEMA to address healthcare needs during the COVID-19 pandemic.

Our recent report makes five findings and four recommendations on the use of voluntary agreements.²⁵ Increasing the use of voluntary agreements is a critical way to increase industrial capacity and our findings and recommendations focus on ways that the Executive Branch can better use these existing authorities. While legislative changes in Section 708 may be needed in the future, I believe that it is too early to recommend specific changes during this reauthorization other than ensuring that the authority for voluntary agreements remains in Title VII.

Section 710 enables the convening of an NDER of industry executives to be trained for government service in the event of a national emergency. NDER units were in existence from the 1960s through the 1980s. Today, there are no NDER units, as national mobilization efforts ended after the end of the Cold War. However, the authority still exists for a modern-day NDER function. The NDER is a powerful authority to form on-call groups of individuals in case of national emergencies, but its model did not work in practice during the Cold War and would need to be modified for a modern-day NDER. Our report makes three findings and two recommendations on the NDER. While legislative changes in the Section 810 authority may be needed in the future, I believe that it is too early to recommend specific changes during this reauthorization other than ensuring that the authority for the NDER remains in Title VII.

Finally, FIRRMA helped modernize DPA Title VII's CFIUS authority to address national security threats from adversary countries such as China. There is always room, however, to update this authority because the nature of the threat is always changing. To that end, the PASS Act and the PROTECT Act have been introduced this year to address agricultural land purchases

²⁴ 50 U.S.C. §4558(c)(1); Section 708(c)(1) of the DPA. See also, Neenan and Nicastro, *The Defense Production Act*, pp. 15-16.

²⁵ McGinn and Letts, “Options for Strengthening DPA Title VII,” pp. 19-23.

near military bases and greenfield investments, respectively.²⁶ I applaud these bipartisan efforts to strengthen our national security and look forward to Congressional consideration of these bills.

Conclusion

Thank you very much for the opportunity to appear before you on the critical issue of DPA reauthorization. It is essential for our national security to renew this authority. It is incredibly heartening to hear the bipartisan calls for DPA reauthorization by members of this Committee and I recognize that members of this Committee have recently introduced a clean bill to renew the DPA for one year. Although a one-year reauthorization may address the immediate issue of the expiring authority, I respectfully recommend that you consider the challenges of considering reauthorization during an election year in 2026 and work to complete a 5-year reauthorization of the DPA this year. Working together, we can effectively and appropriately use the DPA as a strategic asset for shared American values and national interests.

Thank you very much for calling this hearing and for inviting me to be one of your witnesses during this important deliberation. I look forward to your questions.

²⁶ Press release, “Rounds leads legislation to ban foreign adversaries from buying American farmland and agricultural businesses,” March 6, 2025. Available at <https://www.rounds.senate.gov/newsroom/press-releases/rounds-leads-legislation-to-ban-foreign-adversaries-from-buying-american-farmland-and-agricultural-businesses> (accessed May 21, 2025). Press release, “Slotkin, Moreno, Sheehy lead bipartisan bill to crack down on Chinese investment in U.S.,” n.d. available at <https://www.slotkin.senate.gov/press-releases/slotkin-moreno-sheehy-lead-bipartisan-bill-to-crack-down-on-chinese-investment-in-u-s/> (accessed May 21, 2025).