

October 5, 2022

David Norquist
President and Chief Executive Officer
National Defense Industries Association
2101 Wilson Blvd, Suite 700
Arlington, VA 22201

Dear Mr. Norquist:

I am writing regarding my concerns that you and other senior leaders at the National Defense Industrial Association (NDIA), by engaging in efforts in recent months to push for increasing the Department of Defense (DoD or the Department) budget and spending on military contractors, appear to have violated post-government ethics restrictions that prohibit you from lobbying or attempting to influence the Department of Defense.

According to your website NDIA includes 1,800 corporate and 66,200 individual members and is a 501(c)(3) nonprofit corporation, explicitly describing itself as “not a lobby firm.”¹ NDIA previously spent as much as \$400,000 annually on lobbying in 2007 but has not had a registered lobbyist or reported any lobbying spending since 2014.² Your organization’s website also pledges that “NDIA shall serve in a leadership role by setting high ethical standards and practices for the industry” and that this includes “at a minimum...adher[ing] to applicable laws and regulations governing the conduct of their business.”³

You served as Deputy Secretary of Defense from July 31, 2019 until February 9, 2021.⁴ As a presidentially-appointed, Senate-confirmed official you are subject to a number of representational, cooling-off, and lobbying bans, including a two-year ban on influencing employees of the executive branch “on behalf of another on matters that were pending under your official responsibility during your last year of Federal service,” and a two-year ban on providing behind-the-scenes lobbying assistance.⁵ As Deputy Secretary of Defense, your primary responsibilities included managing the defense budget.⁶ Since this was under your official responsibility during you last year of service, this would appear to bar you from appearing or

¹ National Defense Industrial Association, *About*, <https://www.ndia.org/about>.

² Open Secrets, *National Defense Industrial Association*, <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2021&id=D000054225>.

³ National Defense Industrial Association, *Ethics*, <https://www.ndia.org/about/ethics>.

⁴ Department of Defense Office of the General Counsel Post-Government Employment Opinion for David Norquist, June 21, 2021, p. 2. [On file with the Office of Senator Elizabeth Warren]

⁵ Congress.gov, “David L. Norquist, of Virginia, to be Deputy Secretary of Defense,” July 30, 2019, <https://www.congress.gov/nomination/116th-congress/998> ; Department of Defense Office of the General Counsel Post-Government Employment Opinion for David Norquist, June 21, 2021, p. 4, p. 7

⁶ Department of Defense Office of the General Counsel Post-Government Employment Opinion for David Norquist, June 21, 2021, p. 2. [On file with the Office of Senator Elizabeth Warren]

communicating with executive branch officials on budgetary matters until February 9, 2023.⁷ You have received at least six ethics opinions from the Department of Defense advising you about the applicable ethics laws and restrictions on your post-government activities.⁸ NDIA senior fellow Dr. John Whitley, who served as the former assistant secretary of the Army (financial management comptroller) from approximately September 2018 to March 2020 and acting deputy chief management officer from May 2020 to November 2020, is under similar restrictions.⁹ Mr. Whitley left government service as “a Tier 3 Presidentially-appointed, Senate-Approved (PAS) Senior Executive Service (SES) non-career employee.”¹⁰ He received at least two ethics opinions informing him that he was also subject to representational, lobbying, and behind-the-scenes assistance bans, with his two-year restrictions remaining in place until July 18, 2023.¹¹

Both you and Mr. Whitley were explicitly told that restricted lobbying contacts “include engaging in oral, written, or electronic communications on behalf of your [prospective] employer with regard to the formulation, modification, or adoption of Federal legislation, rules, regulations, Executive Orders, or any other program, policy or position of the United States Government. Lobbying contacts also include communications with regard to the administration or execution of a Federal program or policy, including the negotiation, award, or administration of a Federal contract.”¹² You both were also told that “Restricted lobbying activities means efforts in support of lobbying contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in lobbying contacts, and coordination with the lobbying activities of others.”¹³

On September 13, 2022, NDIA released a white paper authored by you, Dr. Whitley, and Lisa Disbrow calling for increasing the Pentagon’s budget by \$42 billion, increasing contract prices in response to inflation, and amending future contracts to include automatic inflation adjustments.¹⁴ It is difficult to believe that you did not know this white paper would be used to support lobbying contacts. And in fact *Defense News* reported that defense industry trade associations used a version of that white paper to lobby the Department, which appears to violate behind-the-scenes

⁷ Department of Defense Office of the General Counsel Post-Government Employment Opinion for David Norquist, June 21, 2021, p. 3.

⁸ Mr. Norquist received three ethics opinions May 14, 2021; on opinion June 21, 2021; and two on August 12, 2021. [On file with the Office of Senator Elizabeth Warren]

⁹ Department of the Army Office of General Counsel Post-Government Employment Guidance for John Whitley, January 11, 2021, p. 1; Defense News, “Whitley to be nominated for CAPE director,” Aaron Mehta, March 23, 2020. <https://www.defensenews.com/pentagon/2020/03/24/whitley-to-be-nominated-for-cape-director/>.

¹⁰ Department of the Army Office of General Counsel Post-Government Employment Guidance for John Whitley, January 11, 2021, p. 1. [On file with the Office of Senator Elizabeth Warren]

¹¹ Mr. Whitley received two ethics opinions on January 11, 2021.

¹² Department of Defense Office of the General Counsel Post-Government Employment Opinion for David Norquist, June 21, 2021, p.7; Department of the Army Office of General Counsel Post-Government Employment Guidance for John Whitley, January 11, 2021, p. 4. [On file with the Office of Senator Elizabeth Warren]

¹³ Department of Defense Office of the General Counsel Post-Government Employment Opinion for David Norquist, June 21, 2021, p.7; Department of the Army Office of General Counsel Post-Government Employment Guidance for John Whitley, January 11, 2021, p. 4. [On file with the Office of Senator Elizabeth Warren]

¹⁴ National Defense Industrial Association, *How Inflation Hurts America’s National Defense and What We Can Do About It*, Hon. Dr. John E. Whitley, Hon. David L. Norquist, and Hon. Lisa S. Disbrow, September 13, 2022, p. 4. <https://www.ndia.org/-/media/sites/ndia/policy/documents/unfunded-inflation/how-inflation-hurts-americas-national-defensev13.pdf?download=1?download=1>.

lobbying restrictions.¹⁵ *Defense News* also revealed that “leaders from the [NDIA]” met with Department of Defense Comptroller Mike McCord and Under Secretary of Defense for Acquisition on August 26 “to preview the proposal.”¹⁶ If you or Mr. Whitley were among those leaders, you may have violated directly lobbying restrictions. NDIA’s own press release also notes the report’s “clear solutions” that have “called for the government to help buttress the [Defense Industrial Base],” which would appear to violate criminal prohibitions – that you were warned about in writing - against taking action with the “intent to influence” “for the purpose of seeking a discretionary Federal ruling, benefit, approval, or other action.”¹⁷

NDIA is clearly trading on the white paper authors’ previous DoD service, noting that “all served as comptrollers in the Department of Defense, underlining the significance of the study.”¹⁸ This statement alone makes a mockery of the purpose of post-government employment restrictions, which is to “prevent former Federal employees or officers exerting undue influence gained from Federal employment and using information gained while working for the Federal Government to unfairly benefit a new employer.”¹⁹

The continued disregard of lobbying and ethics laws requires stronger enforcement of existing laws and the need for more stringent rules. My *Anti-Corruption and Public Integrity Act* would expand the definition of lobbyist to include all individuals paid to influence government and create a new corporate lobbyist definition to identify individuals paid to influence the government on behalf of for-profit entities.²⁰ It would also ban former federal employees from becoming corporate lobbyists for six years. My *Department of Defense Ethics and Anti-Corruption Act* would extend current prohibitions on former senior Pentagon officials lobbying DOD to four years.²¹

Given my concerns about behavior by you and other NDIA officials that either violates ethics rules, or appears to exploit loopholes in these laws, I ask that you provide answers to the following questions no later than October 21:

¹⁵ *Defense News*, “Defense industry to launch inflation relief push in Congress,” Joe Gould, September 1, 2022, <https://www.defensenews.com/pentagon/2022/09/01/defense-industry-to-launch-inflation-relief-push-in-congress/>; Department of Defense Office of the General Counsel Post-Government Employment Opinion for David Norquist, June 21, 2021, p. 2-3, 7; Department of the Army Office of General Counsel Post-Government Employment Guidance for John Whitley, January 11, 2021b, pp. 4-5.

¹⁶ *Defense News*, “Defense industry to launch inflation relief push in Congress,” Joe Gould, September 1, 2022, <https://www.defensenews.com/pentagon/2022/09/01/defense-industry-to-launch-inflation-relief-push-in-congress/>

¹⁷ National Defense Industrial Association, “NDIA Study Warns of \$110 bn Inflation Hit to National Defense,” September 13, 2022. <https://www.ndia.org/about/press/press-releases/2022/9/13/ndia-inflation-paper>; Department of Defense Office of the General Counsel Post-Government Employment Opinion for David Norquist, June 21, 2021, p. 3.

¹⁸ National Defense Industrial Association, “NDIA Study Warns of \$110 bn Inflation Hit to National Defense,” September 13, 2022. <https://www.ndia.org/about/press/press-releases/2022/9/13/ndia-inflation-paper>

¹⁹ Department of Defense Office of the General Counsel Post-Government Employment Opinion for David Norquist, June 21, 2021, p.3

²⁰ Office of U.S. Senator Elizabeth Warren, “ANTI-CORRUPTION AND PUBLIC INTEGRITY ACT – SENATOR ELIZABETH WARREN,” <https://www.warren.senate.gov/imo/media/doc/Master%20Summary%20of%20Anti%20Corruption%20Act%20-%20FINAL.pdf>

²¹ Congress.gov, “S. 2396,” <https://www.congress.gov/117/bills/s2396/BILLS-117s2396is.pdf>

1. Why did NDIA produce the September 13, 2022 White Paper? Was one of the goals of the white paper to influence Congress or DoD?
2. Did you or Dr. Whitley seek specific advice from ethics advisors either at NDIA or in the federal government regarding your role in preparing the White Paper, and providing information on the White Paper to Congress, DoD, or the media? If so, what advice did you receive?
3. Were you or Dr. Whitley involved in the August 26 meeting between NDIA officials and DoD officials?
4. Were you or Dr. Whitley involved in any other meetings about the White Paper, or its findings or recommendation, with any White House, DoD, or executive branch officials? If so, please provide information on the time, content, and participants in these meetings.
5. What is NDIA's policy regarding its employees lobbying or attempting to influence the Department of Defense and Congress?
6. What is NDIA's policy regarding recently retired government officials lobbying or attempting to influence the Department of Defense and Congress?
7. Does NDIA require its employees to disclose post-government employment restriction opinions to NDIA?
8. What penalties does NDIA have for its employees or members who violate government ethics laws?
9. What processes does NDIA have in place to ensure its employees do not violate government ethics laws?
10. Does NDIA track the amount of time and money its employees spend engaging in lobbying activities?
 - a. If yes, how much does NDIA estimate it has spent on lobbying each year since 2015?
11. Are NDIA employees allowed to engage in lobbying activities on behalf of individual NDIA member companies or individuals?
 - a. If yes, how do those companies disclose that lobbying activity?

Sincerely,



Elizabeth Warren
United States Senator