November 14, 2022

CHIPS Program Office (CPO)
National Institute of Standards and Technology (NIST)
Department of Commerce
100 Bureau Drive
Gaithersburg, MD 20899

Re: Implementation of the CHIPS Incentives Program (Docket Number: DOC-2022-0001)

Dear Ms. Chambers,

The undersigned organizations appreciate the opportunity to comment on the request for information by the National Institute of Standards and Technology (NIST) to inform the design and implementation of the CHIPS incentive programs. We applaud your announcement that you will give priority to firms that do not engage in stock buybacks and instead "commit to make future investments" such as "research and development, workforce training, or manufacturing investments." In this letter, we describe how stock buybacks and outsized executive compensation packages undermine innovation and inclusive economic growth, and detail the semiconductor industry's track record of massive spending on stock buybacks and CEO compensation. We then recommend bright-line rules to restrict stock buybacks and executive compensation, as well as pro-worker policies that would promote innovation and inclusive economic growth.

<u>Stock Buybacks and Outsized Executive Compensation Packages Undermine Innovation and Inclusive Economic Growth.</u>

Stock buybacks and outsized executive compensation packages are anathema to the CHIPS and Science Act's goal of "invest[ing] in research and development, science and technology, and the workforce of the future to keep the United States the leader in the industries of tomorrow."[1] Indeed, some members of Congress expressed concerns that recipients of CHIPS incentives would use the funds for stock buybacks or dividends. According to a Congressional Progressive Caucus spokesperson, the group backed the CHIPS and Science Act after they felt "confident that the department would be ensuring the funding could not be used for corporate self-enrichment."[2]

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[1] The White House, "FACT SHEET: CHIPS and Science Act Will Lower Costs, Create Jobs, Strengthen Supply Chains, and Counter China," Aug. 9, 2022, *available at* https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/09/fact-sheet-chips-and-science-act-will-lower-costs-create-jobs-strengthen-supply-chains-and-counter-china/.
[2] David Shepardson, "U.S. says it will limit size of semiconductor chips grants," Reuters, Jul. 29, 2022, *available at* https://www.reuters.com/article/usa-china-chips-idCAKBN2P5002.

Studies have shown that stock buybacks are associated with investment slowdowns, reduced innovation, layoffs,[3] and wage stagnation.[4] Indeed, every dollar spent on stock buybacks is a dollar not spent on research and development, worker wages, and other productivity and innovation-boosting investments. S&P 500 companies' 2018 spending patterns provide a vivid illustration of overinvestment in stock buybacks and underinvestment in research and development: stock buybacks were 68% of net income and dividends were 41%, while only 43% of companies spent any money on research and development.[5]

Overinvestment in stock buybacks and corresponding underinvestment in research and development and workers is closely related to excessive CEO pay. This is the case for two main reasons: first, most CEO pay is equity-based and stock buybacks artificially inflate share price; and second, incentive-based CEO compensation is often tied to hitting financial metrics that can be influenced by stock buybacks. The public is outraged about excessive executive compensation – even when it is not directly subsidizing it. An April 2022 poll by JUST Capital shows that 87 percent of Americans see the growing gap between CEO and worker pay as a problem not just for workers but for the entire nation.[6]

The rampant use of stock buybacks and skyrocketing CEO to worker pay ratios are a relatively recent development. Before 1982, companies avoided open-market stock buybacks to prevent potential liability for market manipulation. However, that year, the Securities and Exchange Commission created a safe harbor against claims of market manipulation. That deregulatory step opened the floodgates to stock buybacks, culminating in what is expected to surpass $1 trillion in spending on open-market stock buybacks this year.[7] The CEO to worker pay ratio began ballooning around the early 1980s as well. In 1980, the gap between average CEO and worker pay was 42-to-1.[8] Today, it is 324-to-1, according to the AFL-CIO's most

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[3] William Lazonick, "Stock Buybacks: From Retain-and-Reinvest to Downsize-and-Distribute," Brookings, Apr. 17, 2015, *available at* https://www.brookings.edu/research/stock-buybacks-from-retain-and-reinvest-to-downsize-and-distribute/.

[4] Lenore Palladino, "Financialization at work: Shareholder primacy and stagnant wages in the United States," Competition and Change, Jun. 22, 2020, *available at* https://journals.sagepub.com/doi/abs/10.1177/1024529420934641.

[5] William Lazonick, Mustafa Erdem Sakinç, & Matt Hopkins, "Why Stock Buybacks Are Dangerous for the Economy," Harvard Business Review, Jan. 7, 2020, *available at* https://hbr.org/2020/01/why-stock-buybacks-are-dangerous-for-the-economy.

[6] Jennifer Tonti, "Survey Report: Companies Should Reduce Income Inequality by Raising Minimum Wage to Living Wage and Capping CEO Compensation," JUST Capital, Apr. 2022, *available at* https://justcapital.com/wp-content/uploads/2022/05/JUST-Capital_Worker-CEO-Pay-Survey-Analysis_May-2022-min.pdf.

[7] Natasha Dailey, "Companies are on pace to buy back a record $1 trillion in stock this year as Russia's war in Ukraine and the Fed's planned rate hikes rattle markets," Markets Insider, Mar. 15, 2022, *available at* https://markets.businessinsider.com/news/stocks/stock-buybacks-1-trillion-2022-ukraine-war-fed-rate-hikes-2022-3.

[8] Sam Pizzigati and Sarah Anderson, "From the Wall Street Journal: A Deeply Flawed CEO Pay Analysis," Inequality.org, Aug. 2, 2022, *available at* https://inequality.org/great-divide/flawed-ceo-pay-analysis/.

recent analysis of S&P 500 companies.[9]

Both stock buybacks and excessive CEO pay undermine workers' well-being, which is inextricably linked to companies' ability to be productive and innovative. As mentioned above, spending on stock buybacks is correlated with layoffs and wage stagnation, and money spent on stock buybacks is not spent on investments in human capital. Additionally, significant research finds that excessive CEO pay reduces productivity by undermining employee morale and boosting turnover rates.[10] Experts say a company's "knowledge base," which includes "the knowledge and skills of its employees" as well as employees' rewards "for their contributions to the company's productivity," is what "fuel[s] innovations in products and processes that enable [a firm] to gain and sustain an advantage over other firms in its industry."[11]

The Semiconductor Industry Has a Track Record of Massive Spending on Stock Buybacks and CEO Compensation.

The semiconductor industry has a track record of runaway spending on stock buybacks. Over the past five years, ten top U.S. semiconductor firms spent approximately $103 billion buying their own stock – nearly twice as much as the $52.7 billion in total CHIPS funding to be distributed over the next five years to support semiconductor research, development, manufacturing, and workforce development.

CEO pay in the semiconductor industry is also massive. The ten semiconductor firms that spent nearly $168 billion in stock buybacks over the past decade spent an average of nearly $44 million in CEO compensation in 2021. That is more than twice as much as the already sky-high $18.3 million average for S&P 500 CEOs.[12] The below chart outlines how much ten top U.S. semiconductor companies spent on CEO compensation in 2021 and on stock buybacks between 2017 and 2021.[13]

Company	**CEO total compensation, 2021**	**Stock buybacks, 2017-2021 ($billions)**

[9] "Company Pay Ratios," Executive Paywatch, AFL-CIO, 2022, *available at* https://aflcio.org/paywatch/company-pay-ratios.
[10] Academic Resources and Research About CEO-Worker Pay Gaps, CEO-Worker Pay Resource Guide, Inequality. Org, *available at* https://inequality.org/action/corporate-pay-equity/#academic-research.
[11] William Lazonick, Mustafa Erdem Sakinç, & Matt Hopkins, "Why Stock Buybacks Are Dangerous for the Economy," Harvard Business Review, Jan. 7, 2020, *available at* https://hbr.org/2020/01/why-stock-buybacks-are-dangerous-for-the-economy.
[12] Executive Paywatch, AFL-CIO, 2022, *available at* https://aflcio.org/paywatch.
[13] Sources: CEO pay: corporate proxy statements. Buybacks: SEC filings analyzed by Doug Henwood, journalist and host of *Behind the News*.

ADVANCED MICRO DEVICES (AMD)	$29,498,107	$2.1
ANALOG DEVICES, INC	$30,824,323	$4.2
APPLIED MATERIALS	$35,265,559	$12.5
BROADCOM INC.	$60,703,627	$14.6
INTEL	$178,590,400	$44.6
KLA	$20,568,625	$3.6
MARVELL	$15,510,223	$1.1
MICRON TECHNOLOGY	$25,316,709	$4.4
NVIDIA CORPORATION	$23,737,661	$2.7
TEXAS INSTRUMENTS	$19,195,411	$11.5
Average	**$43,921,065**	

Bright-Line Rules Restricting Stock Buybacks and Executive Compensation Are Necessary for Promoting Innovation and Inclusive Economic Growth.

In order for the CHIPS incentives program to be effective in promoting innovation and inclusive economic growth, NIST must implement rules that prevent the siphoning of resources away from investments needed for innovation. These rules must establish bright lines to be effective and enforceable. Because long-term investments that lead to innovation take time, we recommend a seven to ten year ban on stock buybacks for companies that receive CHIPS incentives. Additionally, to promote inclusive economic growth instead of outsized executive compensation packages, we recommend NIST give preference to companies with a CEO-median worker pay ratio of no more than 100 to 1, with the numerator based on the highest-paid employee if not the CEO. This is the proposal included in the Patriotic Corporations of America Act of 2021.

Pro-Worker Policies Are Important Tools to Promote Good Quality Jobs and Inclusive Economic Growth.

In addition to the above recommendations, we support a broad array of proposals for ensuring that public dollars create high-quality jobs, including: 1) a requirement that applicants commit to follow labor, employment, and environmental laws, coupled with standard remedies, such as withholding of subsequent rounds of funding or clawing back funds already distributed if recipients are found to have failed to live up to those commitments; 2) a requirement that applicants submit a contractually binding manufacturing workforce plan with details about jobs, wages, benefits, and advancement opportunities for workers, coupled with a prioritization of applicants who commit to the creation of good, family-supporting manufacturing jobs; and 3) an encouragement of applicants to work with unions to establish apprenticeship and other job training and advancement programs.

We appreciate your commitment to allocating public funds in ways that protect taxpayers and expand opportunities, and your consideration of our recommendations to make the implementation of the CHIPS incentives program as effective and equitable as possible. For further discussion, please contact Natalia Renta at natalia@ourfinancialsecurity.org.

Sincerely,

Americans for Financial Reform Education Fund
Campaign for America's Future
Communications Workers of America (CWA)
Community Change Action
Economic Opportunity Institute
Groundwork Collaborative
Indivisible
Institute for Policy Studies, Global Economy Project
Interfaith Center on Corporate Responsibility (ICCR)
Jobs to Move America
Media Voices for Children
National Employment Law Project
Take on Wall Street
United for Respect