

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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November 4, 2021

Honorable Lloyd J. Austin III
Secretary
U.S. Department of Defense
100 S. Washington Blvd.
Arlington, VA 22202

Honorable Bill Nelson
Administrator
National Aeronautics and Space
Administration
300 E. Street SW, Suite 5R30
Washington, DC 20546

Honorable Robin Carnahan
Administrator
U.S. General Services Administration
1800 F. St. NW
Washington, DC 20006

Ms. Lesley A. Field
Acting Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Washington, DC 20503

Dear Secretary Austin, Administrator Nelson, Administrator Carnahan and Acting Administrator Field:

We write today to urge the Office of Federal Procurement Policy, as the entity providing government-wide procurement policy, as well as the Department of Defense (DoD), National Aeronautics and Space Administration (NASA), and General Services Administration (GSA), as the agencies with responsibility for the federal acquisition regulation, to address the disparate impacts of the ongoing supply chain crisis on government contractor delivery requirements. The COVID-19 pandemic dampened our economy and critically disrupted our supply chains. Due to labor shortages and growing backlogs, the supply chain crisis is now expected to last at least through 2022—likely well into 2023.¹ It is reasonable to assume such backlogs will impact federal contractors' ability to fulfill contract obligations due to a situation beyond their control. Meanwhile, government contractors, whose supplies are stuck in the backlog may face penalties for delayed performance on their obligations.

The Biden Administration, despite our letter to them dated October 14, 2021, has continually failed to address this crisis.² Supply chain delays are continuing to worsen with industry experts now stating “[a]t this point, shortages are guaranteed...the supply chain is

¹ David J. Lynch, *Inside America's Broken Supply Chain*, THE WASH. POST (Oct. 2, 2021); Grace Kay, *Why the supply chain is in crisis, spurring an 'everything shortage'*, BUS. INSIDER (Oct. 21, 2021).

² Letter from James Comer, *et al.*, Ranking Member, H. Comm. on Oversight & Reform, to John Porcari, Port Envoy, White House Supply Chain Task Force (Oct. 14, 2021).

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stretched to its limit from end-to-end.”³ While enforcing contractual deadlines is normally necessary to protect the interests of the American taxpayer, appropriate forbearance should be exercised when the situation merits. According to the Federal Acquisition Regulation (FAR), excusable delays for contractors include delays which are unforeseeable and beyond the control of the contractor.⁴ A global pandemic and supply chain collapse should be considered unforeseeable. Penalizing contractors, many of whom bid on and were awarded contracts prior to the collapse of the supply chain, will further disrupt the economy. Small business contractors may be hit particularly hard by late fees and penalties—making it unlikely they will survive.

The delays at ports, railyards, and warehouses stem directly from extreme labor shortages caused in part by President Biden’s unprecedented vaccine mandates.⁵ Additionally, the Biden Administration and congressional Democrats’ misguided policy to pay people not to work heavily contributed to these labor shortages—not any actions or inactions of government contractors.⁶ Eventually, under President Biden’s unilateral vaccine mandate, employers will likely be forced to terminate the employment of workers unwilling or unable to be vaccinated by the deadline.⁷ We request that you review department and agency guidance on when and whether to hold these contractors to certain deadlines in light of the supply chain crisis and the ongoing pandemic.

To better understand how federal agencies will be handling contracting delays due to the supply chain crisis, please provide the following documents and information no later than November 18, 2021. In addition, we request a staff level briefing no later than November 12, 2021.

1. Documents sufficient to show whether any government contractors have been penalized for failing to meet their contractual obligations in the past year.
2. Documents sufficient to show how many government contractors have communicated adverse effects caused by the supply chain crisis.
3. A list of all extensions or related requests for extension that have been granted or denied to contractors in the last year and any related justification.

³ Grace Kay, *Why the supply chain is in crisis, spurring an 'everything shortage'*, BUS. INSIDER (Oct. 21, 2021).

⁴ Federal Acquisition Regulations 52.249-14.

⁵ Allison Schrager, *Biden’s Vaccine Mandate is More Bad News for the Labor Market*, BLOOMBERG NEWS (Sept. 10, 2021).

⁶ Amelia Thomson-DeVeaux, *Many Americans Are Getting More Money From Unemployment Than They Were From Their Jobs*, FIVETHIRTYEIGHT (May 15, 2021).

⁷ Karl Evers-Hillstrom, *Industry groups warn vaccine mandate could worsen holiday supply chain issues*, THE HILL (Oct. 10, 2021).

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The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive, flowing style with a large, prominent "J" and "C".

James Comer
Ranking Member
Committee on Oversight and Reform

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform