



May 16, 2024

VIA EMAIL

The Honorable
Chairman Michael McCaul
Foreign Affairs Committee
House of Representatives
Washington, DC 20515

The Honorable
Ranking Member Gregory Welden Meeks
Foreign Affairs Committee
House of Representatives
Washington, DC 20515

Re: Markup of H.R. 8315, the ENFORCE Act

Dear Chairman McCaul and Ranking Member Meeks:

On behalf of the Software & Information Industry Association (SIIA), we write to convey views regarding H.R. 8315, the ‘Enhancing National Frameworks for Overseas Restriction of Critical Exports Act (“ENFORCE Act”), that the Committee will markup on May 16. We ask that this letter be included in the record of the May 16 hearing.

SIIA is the principal trade association for the software and digital information industries worldwide. Our members include nearly 400 companies and associations reflecting the broad and diverse landscape of digital content providers and users in academic publishing, education technology, and financial information, along with creators of software and platforms used by millions worldwide and companies specializing in data analytics and information services.

We appreciate the intent of the sponsors to provide the President with authority to prevent covered AI systems from falling into the hands of adversaries and bad actors residing outside the United States. We also recognize that H.R. 8315, if enacted, would provide permissive authority to require Export Administration Regulations (EAR) licenses for covered AI systems.

Yet we have grave concerns about authorizing a licensing regime for AI models at this time.

An EAR licensing regime for AI models will have unintended national security implications for the United States. Requiring export licenses will hinder the ability of U.S. firms to maintain leadership in AI and bolster foreign firms. Specifically, by delaying the process of releasing AI models, or restricting their release, a licensing regime would create an opening for foreign firms not subject to the same level of industry-driven and government-mandated responsible AI



practices around safety, security, and transparency. It will lead competitor nations to develop policies that privilege their firms to get a leg up on a rapidly evolving and growing sector. Critically, this state of affairs will hinder the ability of the United States to exert leadership on AI governance internationally.

Moreover, implementation of EAR licenses for AI models is extremely difficult because of the nature of AI systems. AI systems, contrary to traditional software, are not static. The covered AI systems addressed in H.R. 8315 are constantly learning and adapting and subject to fine-tuning by engineers to improve performance. This makes a licensing approach ill-suited to AI models. It is also one of the main reasons why the National Security Commission on Artificial Intelligence, in reports published in 2020 and 2021, recommended export controls on hardware (chips and chip manufacturing equipment) and not on AI models.

The challenges are compounded because, despite the great attention given to AI, the technology is still developing, technical standards are still being created, and there are no agreed-upon baselines for comprehending and evaluating the types of safety, security, and performance risks contemplated by H.R. 8315. For these reasons, we have encouraged government oversight to focus on the highest risk uses of AI.

Because of these (and more) complexities, we believe the most appropriate way to deal with these AI models is to allow time for the process authorized by Section 4.2 of Executive Order 14110 to mature and, then, assess whether there is a need to go further. As the Committee knows, Section 4.2 established an iterative reporting process for dual-use foundation models (the definition of which forms the basis for “covered artificial intelligence systems” in H.R. 8315). This is an intensive process that will become more robust as the U.S. AI Safety Institute (AISI) is built out. The AISI is the appropriate forum to conduct rigorous review and assessment of dual-use foundation models and we would encourage the Committee to support requests to adequately resource the AISI, as the United Kingdom has done. This has implications for U.S. leadership in AI globally.

Lastly, while we recognize that H.R. 8315 may have as a model the export control regime for other types of software, notably dual-use encryption software, dual-use AI models should not be treated in a like manner. The AI systems covered by H.R. 8315 do not have completed versions of code in the same way as these encryption tools, as noted above. At a minimum, because AI models, like encryption software, are protected by copyright, we encourage sequential referral to the Judiciary Committee to evaluate the impact of the proposed licensing regime.

We support Congress’ attention to the ways in which AI systems can pose risks to national security and foreign policy interests of the United States. This is a bipartisan issue. We appreciate the thoughtful proposal set out in H.R. 8315, but believe this is not the right approach to deal with the concern as outlined. We encourage the Committee not to advance H.R. 8315 and instead to work on bolstering the processes already begun in the Executive



Branch to address the same concerns. We look forward to working with the Committee on this matter going forward.

Respectfully submitted,

Paul Nicholas Lekas
Senior Vice President, Head of Global Public Policy & Government Affairs
Software & Information Industry Association