

Holland & Knight Defense Situation Report: October 2024

A monthly roundup of defense policy news

Welcome back to Holland & Knight's monthly defense news update. We are pleased to bring you the latest in defense policy, regulatory updates and other significant developments. If you would like additional information on anything in this report, please reach out to the authors or members of Holland & Knight's [National Security, Defense and Intelligence Team](#).

LEGISLATIVE UPDATES

Due to the upcoming elections on Nov. 5, 2024, Congress was out of session during the month of October while members were in their home states and districts vying for reelection. Congress is set to return to Washington, D.C., the week of Nov. 11.

House NDAA Update

As covered in the [September 2024 Holland & Knight Defense Situation Report](#), the House passed its version of the fiscal year (FY) 2025 National Defense Authorization Act (NDAA) on June 14, 2024. Representatives considered over 1,300 amendments proposed by their colleagues and eventually passed multiple "en bloc" amendment packages, often composed of dozens of bipartisan, noncontroversial amendments each. However, some controversial amendments, such as those relating to social policy, were debated and passed by party-line votes. After debate, the final version of the [FY 2025 House NDAA](#) passed by a vote of 217-199.

Senate NDAA Update

Also covered in the [September 2024 Holland & Knight Defense Situation Report](#), the Senate Armed Services Committee (SASC) favorably reported its version of the FY 2025 NDAA from the committee on July 8, 2024, by a vote of 22-3 for consideration on the Senate floor. A few days later, SASC Chairman Jack Reed (D-R.I.) and Ranking Member Roger Wicker (R-Miss.) formally filed [S. 4638](#), the Senate's version of the FY 2025 NDAA. The legislation is accompanied by its [committee report](#) and [funding tables](#).

Since the SASC-reported NDAA was not debated on the Senate floor, Chairman Reed and Ranking Member Wicker filed a "[manager's package](#)" on Sept. 19, 2024, consisting of 93 amendments. The manager's package is one amendment that incorporates the 93 other amendments submitted by various members of the Senate that have all been agreed to on a bipartisan basis by SASC leadership. The manager's amendment signals that the Senate will likely not pass its own NDAA this year, forcing the House and Senate to conduct negotiations on a compromise bill. The foremost debate in conferencing the two versions will be the topline funding levels where the House-passed NDAA included \$895 billion, which is in line with the limits set by the Fiscal Responsibility Act (FRA), and the SASC's version including \$923.2 billion, which exceeds the FRA caps by \$28 billion.

It is expected that the bill will pass in the lame-duck period after the November federal elections. If successful, this would mark the 64th consecutive year for the NDAA's passage.

Defense Secretary Letters to HASC, SASC Detail NDAA Concerns

U.S. Secretary of Defense Lloyd Austin sent nearly identical [letters](#) dated Sept. 26, 2024, to SASC Chairman Reed and Ranking Member Wicker, as well as HASC Chairman Mike Rogers (R-Ala.) and Ranking Member Adam Smith (D-Wash.), expressing concerns and disagreements over provisions in the SASC-reported NDAA and House NDAA-passed bill, respectively, which is colloquially referred to as a "heartburn" letter. The letters also make clear that Secretary Austin appreciates Congress' diligence in passing an FY 2025 NDAA and, as such, looks forward to working with Congress on a bipartisan basis for the benefit of U.S. defense and national security.

The letters noted a number of concerns regarding structure and leadership changes, such as the addition of a new Assistant Secretary of Defense for Nuclear Deterrence Policy and Programs position, which the letters suggest is ill-defined and poses implementation challenges. The letters also disagree with some social policy provisions – such as initiatives to modify diversity, equity and inclusion programs – included in the House-passed NDAA. In the letters, the U.S. Department of Defense (DOD) also opposed sections of both versions of the NDAA related to shipbuilding and force modernization. Specifically, the DOD opposes the additional funding for a second Virginia Class submarine, noting that the industry would be unable to produce the submarine on a reasonable schedule, which would require cutting funding for other important initiatives. The ongoing debate between authorizers and appropriators regarding funding of Virginia Class submarines is a major sticking point. Additionally, the letters stated that the DOD strongly opposes sections of the Senate bill that would restrict the U.S. Air Force from reducing E-3 aircraft inventory below 16 until sufficient E-7s are procured and set a requirement to recapitalize the 25 Air National Guard fighter squadrons at a similar rate as Active Component fighter squadrons. The letters emphasized these objectives would infringe on the DOD's ability to support operations effectively and manage forces.

Nonetheless, the letters express Secretary Austin's gratitude that both versions of the FY 2025 NDAA make significant investments in the DOD's priorities such as defending the nation, taking care of servicemembers and their families, and "succeeding through teamwork." As such, the DOD notes that both versions ultimately uphold the 2022 National Defense Strategy, which prioritizes protecting the American people, expands America's prosperity, and realizes and defends the country's democratic values.

Defense Appropriations

Though there has been movement on the defense appropriations bills – with the House members passing their version and the Senate Appropriations Committee members favorably reporting theirs – the two chambers have yet to reconcile differences between the two pieces of legislation. As with the annual defense authorization bill, the two appropriations bills vary in topline funding, with the House approving \$833 billion, in line with the FRA's 1 percent increase limit, and the Senate Appropriations Committee approving \$852 billion to the DOD. As opposed to the NDAA's topline funding numbers, which include funding for the DOD, the U.S. Department of Energy's National Nuclear Security Administration and other national security programming, the defense appropriations bills represent funding only toward the DOD.

Senate lawmakers believe the higher allocation of funds will give them negotiating power as they debate defense funding priorities with the House. Yet, influential members such as House

Appropriations Committee Ranking Member Rosa DeLauro (D-Conn.) have said her party will accept nothing other than the 1 percent increase specified in the contours of the FRA. Similarly, House Appropriations Committee Chairman Tom Cole (R-Okla.) commented when talking to the press that House Republican leaders remain concerned about budget caps and addressing the national debt, saying, "Look, we have a \$1.9 trillion deficit. At least House Republicans are trying to do something about it."

Additionally, an end-of-year omnibus spending bill was put on hold while lawmakers await the 2024 federal elections. Senate Republicans are reportedly hesitant to pass a spending package they believe Republican presidential nominee Donald Trump would oppose. Republican lawmakers believe successfully pushing off an omnibus package until next year would allow their party more control in the event the former president is reelected. Notably, however, some influential Senate Republicans, such as Senate Appropriations Committee Vice Chair Susan Collins (R-Maine), have advocated for passing the defense appropriations legislation before the new year. "It's a mistake to have a continuing resolution that goes beyond December 2024 because, regardless of who wins the presidential election, we should be presenting them with a clean slate," Vice Chair Collins said. "They should not have the burden of dealing with issues of a fiscal year that began in October."

Continuing Resolution

In light of Congress' delay in passing FY 2025 appropriations, the continuing resolution (CR) enacted by Congress and signed into law by President Joe Biden on Sept. 26, 2024, will keep the federal government funded through Dec. 20, 2024. At this point, Congress will need to pass either the FY 2025 appropriations bill or an additional CR of FY 2024 funding to avoid a government shutdown before Dec. 20. Chairman Cole opposes the consistent reliance of Congress on CRs, stating in a [press release](#), "Like most, my preference would be to pass full-year individual appropriations bills through regular work ... We cannot afford a shutdown, which would be greatly damaging to our national security, to critical government programs, and to the American people."

EXECUTIVE AND DEPARTMENTAL UPDATES

Replicator 2 Announced

On Sept. 30, 2024, Secretary Austin sent a [memorandum](#) to senior Pentagon leadership, Commanders of the Combatant Commands and DOD field activity directors detailing the direction and execution of a second iteration of the Replicator program (Replicator 2). According to the memorandum, Replicator 2 will prioritize countering the threat posed by small uncrewed aerial systems (C-sUAS). The focus on C-sUAS will seek to complement the work already underway via Replicator 1 programming and other C-sUAS programming within the DOD enterprise, including at the Defense Innovation Unit (DIU), Defense Innovation Working Group, Office of the Under Secretary of Defense for Acquisition and Sustainment, the U.S. military services and the Counter Uncrewed Systems Warfighter Senior Integration Group.

The expectation is that Replicator 2 will assist with overcoming challenges the DOD has in areas of production capacity, technology innovation, authorities, policies, open system architecture and system integration, and force structure. The Defense Secretary's memorandum says that a Replicator 2 plan will be proposed to Congress in the FY 2026 president's budget request, which means details should be expected at some point in March 2025 when the budget process for the upcoming fiscal year typically begins.

Finally, the memorandum said the DOD should finish its first Replicator programming next summer. Notably, however, funding both the first and second iterations of Replicator is at the discretion of Congress. Though some members of Congress have criticized the DOD for lacking in details about Replicator, appropriators have aimed to fully fund the program in the FY 2025 bills at \$500 million, in line with the FY 2025 president's budget request. The Replicator program was announced in fall 2023 to field thousands of attritable drones within the next 18 to 24 months, a window Secretary Austin says the DOD will meet.

White House Encourages Adoption of AI in Military Systems

The White House [published](#) a memorandum on Oct. 24, 2024, encouraging the U.S. military to deploy artificial intelligence (AI) in national security and defense operations. The memorandum advocated for the adoption of AI-enabled technology and for U.S. military officials to work more closely with AI developers. In [remarks](#) released by the White House, Assistant to the President for National Security Affairs (APNSA) Jake Sullivan commented that "We have to be faster in deploying AI in our national security enterprise than America's rivals," emphasizing the threat of countries who are moving quickly to integrate AI into weapons systems. APNSA Sullivan noted that implementing AI could impact a range of defense sectors, from nuclear physics to rocketry and aircraft detection. The memorandum adds to President Biden's [Executive Order](#) signed last year supporting the use and procurement of AI technology in national security endeavors, which was covered in the [November 2023 Holland & Knight Defense Situation Report](#). The use of AI in lethal systems may face opposition from some policy experts and global leaders. For example, United Nations Secretary-General António Guterres is leading a ban on lethal autonomous weapons. Additionally, former Joint Chiefs of Staff Chairman Mark Milley referred to the use of military AI as a "double-edged sword."

To learn more about the Executive Order on procurement of AI in 2023, see Holland & Knight's previous alert, "[What to Know About the New Artificial Intelligence Executive Order](#)," Oct 31, 2023.

OSC Announces First Notice of Funding Availability to Secure U.S. Industrial Base

On Sept. 30, 2024, the Office of Strategic Capital (OSC) announced the release of its first Notice of Funding Availability (NOFA), which lays out eligibility criteria and initiates the application process for OSC loans. This will be the first OSC application call to accelerate commercialization and scale production for critical technologies. The NOFA will finance companies' equipment needs to help them scale production in the 31 covered technology categories identified as promising critical technologies and assets in the FY 2024 NDAA. By setting forth eligibility requirements and the application process, the NOFA ensures that companies are fully prepared to apply for OSC financing. Secretary Austin established the OSC in December 2022 with the mission to attract and scale private capital for national security priorities. In December 2023, Congress formally enacted OSC into law through the FY 2024 NDAA, granting the office new authorities to issue loans and loan guarantees. Congress also appropriated funds for OSC in March 2024 to loan up to \$984 million to eligible companies in the NOFA. Read the full [NOFA](#).

Additional details on the loan program are provided in a previous Holland & Knight alert, "[Department of Defense Announces New Loan Program for Critical Technology Projects](#)," Oct. 4, 2024.



DOD Releases National Defense Industrial Strategy Implementation Plan

On Oct 29, 2024, the DOD [published](#) the unclassified National Defense Industrial Strategy Implementation Plan (NDIS-IP) detailing how the DOD will achieve the four strategic plan priorities as covered in the [January 2024 Holland & Knight Defense Situation Report](#). Released by the Office of the Assistant Secretary of Defense for Industrial Base Policy (OASD(IBP)), the document outlines ongoing and future actions the DOD is taking to modernize the defense industrial base. The NDIS-IP describes six cross-cutting initiatives and associated lines of effort, which will enable the DOD to achieve a more resilient defense industrial ecosystem and buydown risks. In addition to detailing the work being done across the service branches and DOD components, the NDIS-IP demonstrates activities and initiatives that the U.S. government, private industry, and international allies and partners are undertaking, emphasizing that this effort cannot be a DOD-only initiative.

To further demonstrate the NDIS-IP "in action," the OASD(IBP) in September 2024 announced another Defense Industrial Base Consortium (DIBC) Other Transaction Agreement (OTA) request for white papers (RWP) for "Critical Chemicals for Defense." The DIBC OTA enables rapid research and allows access to commercial solutions for defense requirements and innovations from industry, academia and nontraditional contractors. View more information about the DIBC OTA and newest RWP from [DIBC](#).

Association of U.S. Army Annual Convention

The Association of the U.S. Army (AUSA) held its annual conference during the week of Oct. 14, 2024. This year's convention hosted representatives from a record 92 countries, 63 foreign delegations, a NATO delegation of 25 foreign liaisons and, for the first time, a panel with four Nordic military chiefs. More than 44,000 people attended the event, with over 750 exhibits on display. The convention allowed members from the defense industry to interact with government officials and other private sector entities to strengthen bonds between the U.S. Army and industry and to promote the military profession. The annual convention also functions as a place where the public, lawmakers and their staffs, and industry leaders can educate and inform one another on emerging technologies for strengthening U.S. national security and defense.

During the convention, the Army announced that it awarded \$4 million in contracts to several international companies to competitively develop self-propelled howitzers. The effort, known as the Self-Propelled Howitzer Performance Demonstration, will wrap up by the end of the year. Other themes throughout the 2024 AUSA event included small drones and counter-drone technology, battery systems, radar sensors, imagining displays and various state-of-the-art armored vehicles. Also apparent was the increasing number of autonomous systems being developed for land, sea and air. The event featured dozens of booths showcasing autonomous capabilities through large combat vehicles, small unmanned aerial systems, and other reconnaissance devices and systems.

DOD Announces New Aid Package for Ukraine

On Oct. 21, 2024, the DOD announced additional support through presidential drawdown authority (PDA) to meet Ukraine's defense needs amid the ongoing war with Russia. The package represents the 68th tranche of equipment provided to Ukraine since August 2021 and includes an estimated value of \$400 million in rocket systems, artillery, mortar rounds, armored vehicles and anti-tank weapons.

Secretary Austin visited Kyiv, the Ukrainian capital, the week of Oct. 21, 2024, during which he announced the PDA package. He also gave a [speech](#) to Ukrainian officials addressing collaborative allied funding, the involvement of Iran and North Korea in supporting Russia and funding obstacles faced in the U.S. Congress saying, "Not since World War II has America systematically rallied so many countries to provide such a range of industrial and military assistance for a partner in need." The U.S. has provided a total of \$58 billion in aid to Ukraine since the beginning of the war.

DIU Solicitations

In the past month, the DIU released three new solicitations. The first request is for "modular space electro-spray for efficient and responsive thrust." Modern spacecraft typically rely on a combination of propulsion technologies, many of which use finite liquid or gaseous chemical propellants. These limited resources must be conserved, often reserved for critical tasks such as station-keeping or essential maneuvers such as collision avoidance. More efficient propulsion systems are needed to enhance mission capability across commercial, civil and national security applications. These technologies should offer high specific impulse, enabling spacecraft to maneuver freely without the constraints of fuel conservation, ultimately supporting more dynamic and regret-free operations in space. As such, the DOD is seeking proposals for advanced electrospray propulsion technology that demonstrates superior performance in both thrust and specific impulse. These solutions should deliver a high-performance, low-cost system capable of supporting a wide range of space missions. By leveraging this technology, the DOD aims to enhance mission capabilities while ensuring cost efficiency and flexibility in space operations.

The second solicitation is for long-range, one-way unmanned aerial systems and platforms. Recent conflicts have highlighted the asymmetric impact low-cost, one-way unmanned aerial systems have on the modern battlefield. The DOD must be able to employ low-cost precision effects at extended ranges. Reliable, affordable and adaptable long-range uncrewed aerial system (UAS) platforms that allow for employment at scale will maximize operational flexibility for the joint force. The DOD is seeking commercial solutions for ground-launched, one-way UAS platforms that can operate at ranges from 50 to 300 kilometers, launch quickly and expeditiously, navigate at low altitudes, carry a variety of payloads, and operate beyond line of sight in disrupted, disconnected, intermittent, and low-bandwidth (DDIL) and Global Navigation Satellite System-denied environments.

The third solicitation requests a solution to DOD budget planning efforts through AI and other software. The request comes after challenges within the DOD to organize funding goals and status progression through cross-system validation. Desired attributes of proposed solutions include an ability to ingest various structured and unstructured data formats such as JSON, HTML, CSV, XML, EXCEL and PDF/flat files through application programming interfaces, as well as uploads of the aforementioned file formats. The DIU is also looking for vendors with existing capabilities at the IL4 level and be FedRAMP Moderate-certified. However, it is expected that an offeror is capable of achieving IL 5 level and be FedRAMP High-certified. A functional prototype should be able to easily ingest and/or integrate with existing enterprise datasets and populate program updates in near real-time based upon milestones and actions from integrated software systems to confirm project auto-update recommendations. The solicitation closes on Nov. 8, 2024. View more information on the [solicitation](#).



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