

Holland & Knight Defense Situation Report: November 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

In the weeks following the Nov. 5, 2024, election of Donald Trump as the 47th president of the United States, House and Senate elections revealed the members of the 119th Congress. Though Republicans will control both chambers of Congress, the margins are slim, with a 219-213 majority in the House and a 53-47 majority in the Senate.

Defense Committee Membership Shifts Post-Election

Sen. Mitch McConnell (R-Ky.) stepped down as Senate Republican Leader after 18 years in that role and will become chair of the Senate Appropriations Subcommittee on Defense in the 119th Congress. In a press release, Sen. McConnell emphasized the need to combat threats from U.S. adversaries throughout his leadership and his ability to address these issues in his role on the committee. After the announcement, he told media, "America's national security interests face the gravest array of threats since the Second World War. At this critical moment, a new Senate Republican majority has a responsibility to secure the future of U.S. leadership and primacy." Sen. McConnell has also been an advocate for supplying aid to Ukraine during the Russian invasion.

On Nov. 13, 2024, the Senate elected Sen. John Thune (R-S.D.) to the position of Senate Majority Leader. Sen. Thune was elected by secret ballot among Republican Senators, defeating Sens. John Cornyn (R-Texas) and Rick Scott (R-Fla.). After Sen. McConnell announced his intent to helm the gavel of the Defense Appropriations Subcommittee, and given a Republican majority in the Senate next congress, it is expected that Sen. Susan Collins (R-Maine), currently serving as vice chair of the full Senate Appropriations Committee and ranking member of the Subcommittee on Defense, will become chair of the full Senate Appropriations Committee. Sen. Collins has served in the U.S. Senate for more than 25 years and would become the third woman in history to hold the Senate Appropriations Committee gavel.

As the House will continue to hold a Republican majority, it is likely that Rep. Tom Cole (R-Okla.) will remain chairman of the House Appropriations Committee alongside Ranking Member Rosa DeLauro (D-Conn.). Defense Subcommittee Chairman Ken Calvert (R-Calif.) won a close reelection and is expected to remain in leadership alongside Ranking Member Betty McCollum (D-Minn.). However, due to House Republican Caucus rules, Rep. Calvert will need to acquire a waiver to remain chair of the defense funding panel as he is currently term-limited.

On the House and Senate Armed Services committees (HASC and SASC, respectively), leadership of the panels will remain the same, with HASC Chairman Mike Rogers (R-Ala.) and Ranking Member Adam Smith (D-Wash.) to remain atop the defense authorization panel. On the SASC, Sens. Roger

Wicker (R-Miss.) and Jack Reed (D-R.I.) will change titles, with Sen. Wicker becoming chairman and Sen. Reed becoming ranking member in the 119th Congress.

NDAAs Updates

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 more than 1,300 amendments proposed by their colleagues and eventually passed multiple "en bloc" amendment packages 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 in a vote of 217-199. View the text of the [FY 2025 NDAA](#) as passed by the House.

Also covered in the [September 2024 Holland & Knight Defense Situation Report](#), the 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 Reed and Ranking Member Wicker formally filed [S. 4638](#), the Senate's version of the FY 2025 NDAA. View the [committee report](#) and [funding tables](#) that accompany the legislation.

Since the SASC-reported NDAA was not considered 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 signaled that the Senate would not pass its own NDAA this year, forcing the House and Senate to conduct negotiations on a compromise bill.

NDAAs Goes to Conference

After the SASC favorably reported its version of the NDAA, HASC and SASC members began informal negotiations to conference the two versions of the annual defense policy bill.

On Dec. 7, 2024, House Speaker Mike Johnson (R-La.) announced a bipartisan compromise for the FY 2025 NDAA negotiated by congressional leadership and all four corners of the HASC and SASC – HASC Chairman Rogers and Ranking Member Smith and SASC Chairman Reed and Ranking Member Wicker. The legislation was filed as a Senate amendment to the already-passed legislative vehicle of [H.R. 5009](#), the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025.

The foremost debate in conference of the two versions was the topline funding levels. Ultimately, negotiators stuck with the House-passed NDAA authorization levels of \$895 billion, which includes funding for the U.S. Department of Defense (DOD), defense equities at the U.S. Department of Energy, and other defense and national security programming at other agencies. This is in line with the limits set by the Fiscal Responsibility Act (FRA). Negotiators instead rejected the SASC's topline funding level of \$923.2 billion, which would have exceeded the FRA caps by \$28 billion.

Overall, the FY 2025 NDAA prioritizes innovation, technology and modernization, along with U.S. domestic industrial base and military readiness. The package authorizes \$143.8 billion in research, development, test and evaluation to meet immediate and projected force protection challenges, as well as \$17.5 billion for science and technology programs and \$33.5 billion in shipbuilding funding and for

the procurement of seven battle force ships. The bill also elevates the Joint Force Headquarters-Department of Defense Information Network under U.S. Cyber Command and requires the establishment of a working group to develop and coordinate an artificial intelligence (AI) initiative among allies and partners. It also supports collaboration and partnerships with government, academia and private companies and looks to adopt commercial capabilities to develop, improve and deploy defense capabilities.

The FY 2025 NDAA also addresses space as a critically important defense and commercial domain by continuing to push the DOD to adopt and integrate commercial capabilities into government systems. This includes establishing a hybrid architecture pilot, which would allow the linking of DOD, government, private sector and commercial satellite ground stations and a commercial augmentation space reserve.

In addition, the FY 2025 NDAA includes many provisions that prevent Chinese and other adversaries from acting against the U.S. military, supply chains and research institutions. It also increases funding for U.S. defense initiatives in the Indo-Pacific to bolster Taiwan's defense and support Indo-Pacific allies, which is a major initiative for Congress and the DOD. Further, the bill authorizes a Taiwan Security Cooperation Initiative, modeled after the Ukraine Security Assistance Initiative, to enable Taiwan to maintain sufficient self-defense capabilities consistent with the Taiwan Relations Act.

The negotiated conference bill also dropped most of the social policy provisions included in the House-passed NDAA, which Senate Democrats did not support and would not gain the votes for passage. However, because Republicans will control both chambers and the White House next year, it is expected that these provisions will be picked up for the FY 2026 NDAA because President-Elect Trump and his DOD would likely take action on them anyway.

The House Rules Committee favorably reported the FY 2025 NDAA on Dec. 9, 2024, and the House will consider the measure on the floor within a few days. The Senate will then vote on the FY 2025 NDAA the following week.

Appropriations Update

The House and Senate have yet to reconcile differences between their two proposed spending bills. The House Appropriations Committee approved a topline of \$833 billion for only DOD programs, in line with the FRA's 1 percent increase limit, while the Senate Appropriations Committee approved \$852 billion for the DOD.

In September 2024, Congress passed a continuing resolution (CR), which extended the current year's funding through Dec. 20, 2024. Because Congress returned to session following the October recess, it must now decide to pass either a negotiated appropriations bill in December or an additional CR, likely extending until March 2025.

Many Republican lawmakers are looking to President-Elect Trump for further guidance. At this time, it is unclear if he will encourage Congress to pass an additional CR or urge passage of the FY 2025 appropriations package before he takes office on Jan. 20, 2025. If the former occurs, President-Elect Trump will begin his new term with the appropriations process looming.

Also adding to the uncertainty is that the debt limit deal – the aforementioned FRA, negotiated by President Joe Biden and former House Speaker Kevin McCarthy (R-Calif.) – expires on Jan. 1, 2025.

At that time, the U.S. Department of the Treasury may take "extraordinary measures," but President-Elect Trump and congressional leaders must negotiate to lift the debt ceiling. As a reminder, in 2016, President-Elect Trump urged congressional leaders to wait until he took office to lift the debt ceiling, which did not occur until March 2017. Congress also passed its final FY 2017 bills in May 2017, less than four months before FY 2017 was set to expire.

As covered in the [September 2024 Holland & Knight Defense Situation Report](#), U.S. Defense Secretary Lloyd Austin warned of the significant adverse effects that a CR has on the DOD. He highlighted the strategic setbacks, particularly in competition with the People's Republic of China (PRC), the only global competitor with the intent and capability to change the international order. Secretary Austin pointed out that the inability to innovate and modernize under a CR severely limits the DOD's capacity to compete with the PRC and manage conflicts in other regions. The financial implications under the FRA were also outlined, with a potential \$42 billion reduction from the DOD's FY 2025 request if all 12 appropriations acts are not passed by Jan. 1, 2025, bringing the DOD dangerously close to a permanent sequestration order.

Furthermore, Secretary Austin described the detrimental impacts on DOD programs and projects, including military recruiting, investments in the defense industrial base, modernization of the nuclear triad and deterrence initiatives in the Indo-Pacific and Europe. It was noted that no funds would be available for legally required military and civilian pay raises during a CR, forcing the DOD to cut other programs and accounts.

EXECUTIVE AND DEPARTMENTAL UPDATES

President-Elect Trump Nominates and Recommends National Security Personnel

Under the Constitution, one of the tasks President-Elect Trump must undertake during his transition is nominating members of his cabinet, filled through appointment "by and with the Advice and Consent of the Senate." These posts include most of the approximately two dozen that form the president's cabinet. The appointment process for cabinet and other advice and consent positions is generally considered to have three stages. In the first stage, the president-elect selects a prospective appointee. In the second stage, the Senate initially relies on its committees to consider each nominee and conduct hearings before taking up and deciding whether to approve the nomination. The Senate has historically confirmed most cabinet nominations. In the final stage of the appointment process, the confirmed nominee is given a commission signed by the president.

President-Elect Trump has made various nominations encompassing his national security apparatus. They are:

- Sen. Marco Rubio (R-Fla.) to be Secretary of State
- Pete Hegseth to be Defense Secretary
- Rep. Elise Stefanik (R-N.Y.) to be ambassador to the United Nations
- South Dakota Gov. Kristi Noem to be Secretary of Homeland Security
- Former Rep. Tulsi Gabbard (R-Hawaii) to be Director of the Office of the Director of National Intelligence (ODNI)
- Former ODNI Director John Ratcliffe to be Director of the Central Intelligence Agency

President-Elect Trump also selected Rep. Michael Waltz (R-Fla.) as his National Security Advisor (NSA). The National Security Advisor serves as the top aide to the president in national security policy, and the position does not require Senate confirmation.

Biden Administration Announces Additional Security Assistance for Ukraine

On Nov. 20, Dec. 2 and Dec. 7, 2024, the White House announced three tranches of security funding for Ukraine, representing the 70th and 71st packages and valued at \$275 million and \$725 million, respectively. On Dec. 7, 2024, the White House announced \$988 million in support, a significant new security assistance package through the Ukraine Security Assistance Initiative (USAI). This is the 22nd USAI package. These packages included munitions for rocket systems, artillery, anti-tank weapons, protective equipment, counter-unmanned aerial system munitions and anti-armor systems.

There is an estimated \$6 billion in security assistance for Ukraine remaining from the \$62 billion in aid previously appropriated by Congress. President Biden is expected to spend the remaining funds before the end of his term.

Separately, it was [reported](#) that President Biden made a request to policymakers to replenish Ukrainian funding by \$24 billion in the next spending package. The request would raise the top line of the next CR, which will likely extend to February 2025. Two-thirds of the requested funding, or \$16 billion, would go toward replenishing U.S. weapons stockpiles, and the remaining \$8 billion would go to the Ukraine Security Assistance Initiative, which the Pentagon utilizes to support contracts between American and Ukrainian forces.

Because of the uncertainty of President-Elect Trump's support for further aiding Ukraine, it is unclear whether Republican lawmakers will support additional aid packages in forthcoming appropriations legislation. The U.S. has committed approximately \$60.7 billion to Ukraine since the beginning of Russia's invasion on Feb. 24, 2022.

U.S.-China Economic and Security Review Commission Sends Annual Report to Congress

On Nov. 19, 2024, the U.S.-China Economic and Security Review Commission (USCC) [released its 2024 Annual Report](#) to Congress as part of its mandate to investigate, assess and report to Congress annually on "the national security implications of the economic relationship between the United States and the People's Republic of China." This year's report addresses key findings and [recommendations for congressional action](#) based upon the commission's hearings, research and review of the areas designated by Congress in its mandate. Sections this year include:

- U.S.-China Competition in Emerging Technologies
- Unsafe and Unregulated Chinese Consumer Goods: Challenges in Enforcing Import Regulations and Laws
- China and the Middle East
- Key Economic Strategies for Leveling the U.S.-China Playing Field
- China's New Measures for Control, Mobilization and Resilience
- China's Evolving Counter-Intervention Capabilities and the Role of Indo-Pacific Allies
- Taiwan and Hong Kong
- General overviews of U.S.-China economic and trade relations, as well as issues related to security, politics and foreign affairs

Of particular significance, the USCC recommends that Congress establish and fund a "Manhattan Project-like program dedicated to racing to and acquiring an Artificial General Intelligence capability" before China does. Specifically, the report recommends that the U.S. Secretary of Defense provide a Defense Priorities and Allocations System "DX Rating" to items in the artificial intelligence ecosystem to ensure this project receives national priority.

ICAM Releases RFI For Development and Manufacturing of Metallic Alloys

The Secretary of Defense's Innovation Capability and Modernization (ICAM) Office, [released](#) a request for information (RFI) titled "Accelerated Capability Metals Enterprise (ACME)." The RFI seeks innovative solutions to advance material development and processing techniques in support of U.S. national security. The RFI notes that the DOD currently relies on outdated material systems that limit production capabilities.

White papers submitted in response to this RFI must outline approaches for developing and implementing materials and processing techniques that enhance the performance and operational readiness of DOD platforms, as outlined in the RFI. This request is open to applications in most operational domains, including sea, air, land and space. The white paper submission deadline is Jan. 31, 2025. View further details on the [RFI](#) and [timeline](#).

DOD Proposes Rule on Disclosure of Foreign Access to Source Code

On Nov. 15, 2024, the DOD [issued](#) a proposed rule to implement Sections 1655(a) and (c) of the NDAA for FY 2019 (Pub. L. 115-232). This proposed rule prohibits the DOD from acquiring products, services or systems related to information or operational technology, cybersecurity, industrial control systems or weapon systems if the offeror fails to provide certain disclosures. These disclosures pertain to whether the offeror has shared source code and computer code with foreign persons or governments. The proposed rule requires offerors to affirm whether they have allowed foreign persons or governments to review the code of noncommercial products, systems or services developed for or used by the DOD since Aug. 12, 2013. Additionally, offerors must disclose if they hold or have sought an export license for information technology products, components, software, or services containing custom-developed computer code. Post-award, contractors must maintain these disclosures throughout the contract's duration.

The proposed rule empowers the DOD to mitigate national security risks based on contractor disclosures of foreign access and may incorporate risk mitigation conditions into agreements for the use, procurement or acquisition of affected products, systems or services. The rule mandates that offerors submit disclosures, representing that the information is current, accurate and complete. If selected for an award, contractors must also maintain these disclosures throughout contract performance and flow down the requirements to subcontractors.

The rule's scope is broad, applying to all procurements and contracts for products, services or systems related to information or operational technology, cybersecurity, industrial control systems or weapon systems, including commercial products and services, commercially available off-the-shelf (COTS) items and procurements below the simplified acquisition threshold. Exceptions are limited, with the prohibition and disclosure requirements not applying to open-source software. The proposed rule reflects ongoing federal efforts to gain insight into software supply chains and protect them from foreign disruption or negative influence. Comments on the proposed rule are due by Jan. 14, 2025.

DOD Releases Private 5G Deployment Strategy

On Nov. 12, 2024, the DOD [released](#) its Private 5G Deployment Strategy, providing guidance for the implementation and operation of private 5G networks at military installations while maximizing Open Radio Access Network (Open RAN) ecosystems to the extent possible. Through this strategy, the DOD targets several objectives. First, it intends to align private 5G infrastructure with each installation's unique mission, requiring decision-makers to evaluate whether specific mission, security, coverage and performance requirements can be met only by private 5G. Second, the DOD aims to accelerate the acquisition, development and secure deployment of 5G, directing DOD components to additional implementation guidance to support the integration of new commercial 5G capabilities into DOD missions and systems. Finally, the strategy encourages the expansion of an Open RAN ecosystem.

The deployment of 5G infrastructure will allow installations to leverage commercial mobile broadband for quality of life and routine mission needs, benefitting military and civilian populations at DOD installations. This infrastructure will also allow the warfighter to ingest and transfer massive amounts of data – a capability that will be critical for the U.S. to retain information and decision advantage. The DOD anticipates that military installations will primarily employ commercial networks; however, it is recognized that under certain circumstances, commercial 5G may not fulfill the DOD's requirements. Private networks may augment or supplement commercial services because they are tailored to each installation's mission needs, security and military-unique capabilities.

DIU Solicitations

The DOD's Cyber Mission Force (CMF) is looking for a company that can deploy automated but realistic cyber adversaries on its training platform. The purpose of this solicitation is to implement a training system for executing defensive cyber operations and counter threats. The Defense Innovation Unit (DIU) seeks solutions to enable a realistic offensive campaign against advanced persistent threat groups. The solicitation closes on Dec. 12, 2024. View [more information](#).

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