

Holland & Knight Defense Situation Report: September 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

NDAAs Update

As covered in the [December 2023 Holland & Knight Defense Situation Report](#), Congress passed the National Defense Authorization Act (NDAA) for fiscal year (FY) 2024 with topline funding of \$886 billion, which matched the Biden Administration's budget request to Congress. Almost immediately after passing the FY 2024 NDAA, members of the House Armed Services Committee (HASC) turned their attention to the FY 2025 NDAA.

House FY 2025 NDAA Gets Floor Action

In FY 2025, the HASC made quality-of-life policies for servicemembers and their families the centerpiece for this year's authorizing legislation. The legislation, H.R. 8070, the [Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025](#), included a topline funding level of \$895 billion. This is a 1 percent increase over FY 2024 funding levels and aligns with levels negotiated to increase the debt limit under the Fiscal Responsibility Act (FRA, P.L. 118-5). HASC Chairman Mike Rogers (R-Ala.) acknowledged that sticking to the budget caps puts Congress and the U.S. Department of Defense (DOD) in a challenging position as Congress wants to robustly fund defense and national security programs while also providing a much-needed down payment on servicemembers and their families.

After the HASC adopted hundreds of amendments, the committee reported the bill favorably by a vote of 57-1. Members of the House who do not sit on HASC then had a chance to amend the legislation. Of the more than 1,300 amendments filed with the House Rules Committee, the panel made 350 amendments for full consideration on the House floor. Most amendments were noncontroversial and assembled into "en bloc" packages consisting of dozens of amendments that passed the House by voice vote. However, there was some debate of more controversial amendments, such as those related to social policy and foreign assistance, which the House voted on individually. After debate, the final FY 2025 NDAA was voted on by the full House and passed on June 14, 2024, by a bipartisan vote of 217-199. View the [FY 2025 NDAA](#) as passed by the House.

SASC NDAA Update

Unlike the HASC's markup process, which is televised, the Senate Armed Services Committee (SASC) held a mostly closed-door markup of its version of the FY 2025 NDAA. On July 8, 2024, SASC Chairman Jack Reed (D-R.I.) and Ranking Member Roger Wicker (R-Miss.) announced that the SASC voted 22-3 to advance its version of the NDAA for consideration on the Senate floor. A few days later,

Sens. Reed and Wicker formally filed [S. 4638](#), the Senate's version of the FY 2025 NDAA. View the [committee report](#) and [funding tables](#) that accompanied the legislation.

The biggest difference in the SASC's version of the NDAA is the authorization of funding to a topline of \$923.3 billion. This exceeds the spending caps included in the aforementioned FRA by \$28 billion. Some significant differences related to funding discrepancies include the Senate's bill fully authorizing the F-35 program for the U.S. Air Force, Navy and Marine Corps, while the House voted to rein in F-35 spending in FY 2025. Both chambers authorized \$4.3 billion to procure two Virginia-class submarines, but the Senate's version authorized an incrementally funded contract of \$4.2 billion for future years of the program.

Because the SASC marks up the NDAA behind closed doors, once the bill is filed on the Senate floor, it typically means the Senate is ready for floor debate. As such, senators filed more than 1,100 amendments. However, due to other priorities on the Senate floor in July, members left for the August recess without floor debate and consideration.

On Sept. 19, 2024, Chairman Reed and Ranking Member Wicker filed a "[manager's package](#)" of amendments to the SASC-reported FY 2025. The manager's package is one amendment that incorporates 93 other amendments submitted by various members of the Senate, which have all been agreed to on a bipartisan basis by SASC leadership, all relevant committees of jurisdiction and Senate leadership. This manager's amendment signals that the Senate will not pass its own NDAA this year, forcing the House and Senate to conduct negotiations on a compromise bill and resolve differences between the two, which will occur behind the scenes. A similar dynamic occurred last year.

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.

Biden Issues Statement of Administration Policy for NDAA

As is typical for important pieces of pending legislation, President Joe Biden issued a [Statement of Administration Policy \(SAP\)](#), which the U.S. Office of Management and Budget formally communicated to Congress. SAPs are designed to signal the Biden Administration's position on legislation and are often the first public document outlining the administration's formal views on legislation and allow the administration to assert various levels of support for or opposition to a bill.

In his SAP about the House's FY 2025 NDAA – sent before the House's initial passage – President Biden signaled broad support for the bill despite its inclusion of some social policies. Specifically, the SAP applauded the strong, bipartisan work of the HASC on behalf of America's national defense, the consistency of responsible defense spending set forth in the debt ceiling law (the FRA), the NDAA's reflection of the 2022 National Defense Strategy, the support of a pay raise for military servicemembers and the investments to programming that will help America's network of allies and partners "as a force multiplier in support of U.S. national defense."

In areas where the administration disagrees with the House's FY 2025 NDAA, it has promised to work with Congress to address areas of concern. Some of these categories of disagreement are related to shipbuilding, where rifts exist between specific funding levels of submarine industrial base funding authorized in the bill, the establishment of a Drone Corps as a basic branch of the Army, New START Treaty restrictions, a lack of funding for specific capabilities and other areas that altar with the Biden Administration's National Defense Strategy.

Defense Appropriations

While Congress is making progress on its annual defense authorization bill, the House and Senate Defense Appropriations Subcommittees are working through their legislation that funds the DOD and other national security programs. On June 28, 2024, the House passed the FY 2025 Defense Appropriations bill by a vote of 217-198. The bill is 1 percent above FY 2024 funding levels and again consistent with the limits set in law by the FRA and by the House-passed FY 2025 NDAA. Though the bill did garner votes from five Democrats, it will largely be a nonstarter in the Democrat-majority Senate because of some conservative policy provisions meant to roll back personnel initiatives put forth by the Biden Administration. As such, the Biden Administration issued an [SAP](#) "strongly" opposing the House's FY 2025 defense spending measure, stating that if President Biden were presented the bill on his desk, "he would veto it." View the House-passed FY 2025 [defense spending bill](#) and [legislation's report](#).

On Aug. 1, 2024, the Senate Appropriations Committee unanimously approved the [FY 2025 Department of Defense Appropriations bill](#). View the Senate's [defense report](#) that accompanied the legislation. The bill totals \$852 billion, \$27.2 billion more than FY 2024 levels. As such, the Senate's defense authorizers and appropriators have approved bills at levels that exceed the limits of the FRA and much more than the House-passed FY 2025 NDAA and Defense appropriations bill. However, unlike the House, the Senate has yet to approve any of its 12 appropriations bills – including the DOD funding bill – on the Senate floor. Timing of the defense appropriations measure is to be determined, but it is expected to be considered after the November elections or even into 2025.

Continuing Resolution

With President Biden opposing the House-passed FY 2025 defense spending measure, the Senate not passing any appropriations bills and the federal government's funding expiring on Sept. 30, 2024, both chambers had to come to a consensus to pass a continuing resolution (CR) of FY 2024 funds to avert a government shutdown.

As Congress returned from its August recess on Sept. 9, 2024, House Speaker Mike Johnson (R-La.) proposed a six-month CR through March 28, 2025, paired with a bill that would require proof of U.S. citizenship to register to vote in elections ([SAVE Act](#)). The proposal failed by a vote of 220-202. Nearly all Democrats disagreed with this proposal because of the pairing of the SAVE Act, but some Republicans voted against the proposal because of the negative effects that a long-term CR may bring to national security.

On Sept. 22, 2024, Speaker Johnson introduced a new CR extending FY 2024 funding through Dec. 20, 2024. This short-term stopgap legislation contained notable increases, including increased funding for the U.S. Secret Service. The proposed CR also excluded the SAVE Act in an attempt to gain Democratic support. Speaker Johnson referred to the bill as "a very narrow, bare-bones CR including only the extensions that are absolutely necessary."

The bill had to successfully pass both chambers in order for Congress to avoid a government shutdown beginning Oct. 1, 2024. As such, on Sept. 25, 2024, the House passed the CR by a vote of 341-82 before the Senate passed the bill later that day by a vote of 78-18, sending the CR to President Biden's desk for him to sign into law.

DOD Secretary Warns of Negative Effects of Long-Term CR

On Sept. 7, 2024, U.S. Department of Defense Secretary Lloyd Austin sent a letter to congressional leaders warning of the significant adverse effects a six-month CR would have on the DOD. Secretary Austin detailed the challenges of operating under CRs, emphasizing that this would be the second consecutive year and the seventh instance in the past 15 years that the DOD has been hindered in advancing its critical priorities. He argued the letter 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, the letter 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. Secretary Austin concluded with an urgent call to action for Congress to act immediately after the national elections to limit damage to national security during the vulnerable transition period and uphold the bipartisan tradition of funding the nation's defense prior to the inauguration of a new president. The letter serves as a comprehensive appeal to promptly address the appropriations legislation for FY 2025 to avoid severe consequences for U.S. national security and military readiness.

In addition to [Secretary Austin's letter](#), leaders of the military services also warned of the negative effects that a long-term CR could bring to each service's operations. Letters were sent by [Joint Chiefs of Staff Chairman Gen. Charles Q. Brown](#), [Army Secretary Christine Wormuth](#), [Air Force Secretary Frank Kendall](#), [Navy Secretary Carlos Del Toro](#), [Chief of Naval Operations Adm. Lisa Franchetti](#) and [Marine Corps Commandant Gen. Eric Smith](#).

HASC Holds Hearing on DOD Acquisition and Innovation

On Sept. 16, 2024, the HASC held a rare field hearing in Silicon Valley, California, to receive testimony from five technology industry executives on DOD acquisition pathways and innovation efforts. The committee, frustrated by the DOD's slow acquisition processes amid ever-changing technologies, sought insight from companies at the forefront of artificial intelligence (AI), software and drone development.

Witnesses repeatedly critiqued the DOD's reliance on rigid, requirements-based acquisition processes, arguing that this stifles innovation and results in outdated technology getting into the hands of the warfighter. The industry witnesses also urged a shift toward a problem-based approach, where companies could offer tailored solutions based on battlefield needs rather than attempting to meet predefined specifications. Regarding funding, witnesses also stressed the need for significant investment in AI and autonomous systems, pointing to the "paltry sums" currently allocated compared to the strategic importance of these technologies, particularly when taking lessons learned from the battlefield in Ukraine. Finally, the witnesses lamented the DOD's slow pace, risk aversion and lack of urgency in adopting new technologies, especially compared to the rapid innovation witnessed in the commercial sector and in adversarial nations such as the PRC.

Some industry witnesses proposed dedicating and reallocating a percentage of the acquisition budget to combatant commands so that they can experiment and adopt new technologies more quickly as they have a more intimate understanding of what their soldiers need. The industry experts emphasized software as the key to future innovation, recommending a separate, more agile acquisition pathway for software procurement.

HASC Chairman Rogers acknowledged the need for statutory changes and encouraged the panel to provide legislative language for forcing function reforms at the DOD. While acknowledging the low percentage of U.S. gross domestic product spent on defense, the panel and committee stressed the need to spend smarter and prioritize emerging technologies. HASC Ranking Member Adam Smith (D-Wash.) pointed out that some in Congress hinder progress by prioritizing projects based on what is in their districts rather than strategic needs and punishing the DOD for innovation failures.

As such, the hearing served as a crucial wake-up call, highlighting the urgent need for the DOD to adopt a more agile, problem-solving approach to acquisition and prioritize investment in cutting-edge technologies. The committee was willing to work with industry leaders to enact meaningful reforms to ensure the U.S. military maintains its technological edge.

Congressional Leaders Launch Defense Modernization Caucus

On Sept. 11, 2024, Sens. Mark Kelly (D-Ariz.) and Kevin Cramer (R-N.D.), both members of the SASC, launched the Senate Defense Modernization Caucus. According to a press release, the senators' new caucus will be a way for Congress to focus on strengthening national security by integrating and adopting emergent technologies and ensuring the U.S. military is equipped with the most advanced tools and strategies to counter rising threats. Reps. Rob Wittman (R-Va.), HASC vice chair, and Pat Ryan (D-N.Y.), HASC vice ranking member, are leading the House counterpart.

At an industry conference announcing the new initiative, Sens. Kelly and Cramer highlighted the critical role of adopting advanced technologies and innovative strategies to ensure the American military remains ahead of adversaries and stressed that bipartisan collaboration through this caucus is essential to drive the necessary defense reforms through congressional action. Initiatives of the Defense Modernization Caucus will be to:

- conduct research on emerging technologies, defense trends and modernization priorities and stay updated on relevant legislation, policies and budgetary developments
- review existing defense modernization policies, statutes and regulations to identify gaps and opportunities for improvement
- engage with military leaders, government officials and industry experts to provide insights on defense modernization challenges and opportunities
- engage with industry leaders to gather input on innovative technologies and strategies that can enhance defense capabilities

EXECUTIVE AND DEPARTMENTAL UPDATES

Open Data and Applications Government-owned Interoperable Repositories Challenge

On Aug. 29, 2024, the DOD's Chief Digital and Artificial Intelligence Office, in partnership with the Office of Under Secretary of Defense Research and Engineering Joint Fires Network and Defense Innovation Unit (DIU), launched the [Open Data and Applications Government-owned Interoperable Repositories \(Open DAGIR\) Challenge](#). The Open DAGIR Challenge is a call for vendors interested in submitting solutions in the contested logistics and sustainment space to support the DOD's Combined Joint All Domain Command & Control (CJADC2) effort. The Challenge will transform the Global Information Dominance Experiment (GIDE) by leveraging the entire industrial base to apply industry solutions to warfighter needs rapidly.

The initiative has the potential to impact every combatant command. Warfighters will witness industry solutions applied immediately to their problem sets in a common CJADC2 global integration decision platform. They will also rapidly share feedback in an iterative fashion while executing the mission.

Through Sept. 6, 2024, interested vendors were able to submit their proposals by uploading a five-minute pitch video directly to the Tradewinds Solutions Marketplace announcement. Vendors selected for the Open DAGIR effort will have an opportunity to join the enterprise-level CJADC2 mission. Submit a proposal or learn more about the [Open DAGIR Challenge](#).

DIU and NSIN Running Blue UAS Refresh Challenge

On Aug. 5, 2024, the DIU and the National Security Innovation Network (NSIN) announced a new prize challenge to identify platforms, components and capabilities for [Blue UAS](#) – a "holistic and continuous approach to rapidly prototyping and scaling capable and secure commercial UAS technology for the Department of Defense." The challenge will consider First Person View (FPV), Group 1, Group 2 and Group 3 platforms, as well as components, capabilities and software for unmanned aerial systems (UAS). Individual components, capabilities and software submissions are welcome. Submissions in the categories mentioned above that are governed by the 2020 and 2023 NDAA's and 2024 American Security Drone Act are eligible for evaluation. Visit the [Blue UAS website](#) for more information on the Blue UAS List, Blue UAS Framework and relevant policies.

Companies may submit multiple products in separate entries and are welcome to team with other companies as needed for specific proposals. View more information on [how to participate](#).

Office of Strategic Capital Seeks Public Input on New Loan Program

On July 24, 2024, the Office of Strategic Capital (OSC) announced a request for information (RFI) open for public comment. OSC seeks public input as it prepares to issue loans and loan guarantees for critical technology and supply chain components to support the office's mission to attract and scale private capital for national security. The 2024 NDAA formally established OSC into law. It granted the DOD new authorities to issue loans and loan guarantees to increase private investment in the critical technologies and supply chains that support national security. With these authorities and appropriations, OSC is actively building the DOD's first loan program office. As such, OSC invites public comment on the RFI from companies and financial institutions, including their representatives and industry associations, regarding contemporary market activity, capital requirements and where

OSC-provided loans and loan guarantees can support investment in critical technologies. OSC is particularly interested in responses from companies and lenders working in the 31 component areas identified as promising critical technologies and assets in [Section 903 of the FY24 NDAA](#).

Additional RFI information and the option to submit comments for consideration are available on the *Federal Register* for [lenders and financial institutions](#), and [companies, relevant industry associations and other stakeholders](#). This RFI is for informational and planning purposes only and not a solicitation for applications or an obligation on the part of the government to provide support for any ideas identified in response to it.

New Principal Director in the Cyber Academic Engagement Office

On Aug. 30, 2024, the Office of the Chief Information Officer announced Dr. Diba Hadi as the new principal director for the Cyber Academic Engagement Office. Dr. Hadi has over 30 years of experience in higher education and program development. In her previous role, she served as senior academic and project management advisor at the FBI, providing strategic academic guidance, leading professional development initiatives and managing accreditation standards. In her new role, Dr. Hadi will be responsible for overseeing a number of programs, including the DOD Cyber Service Academy, National Centers of Academic Excellence in Cybersecurity, University Consortium for Cybersecurity and Senior Military Colleges.

DIU Solicitations

The DIU's most recent open solicitation closed on Sept. 17, 2024. Under the [LightCycle Data Mesh Commercial Solutions Opening](#), the DOD is looking for a commercial solution that can reliably and efficiently distribute data across multiple geographically dispersed network enclaves that can communicate with each other using routing protocols and devices. The solution should also allow for data sharing between different classification levels and prevent unauthorized access to data. Specifically, the DOD is looking to prototype a data distribution solution that will manage the transport and caching of data across a globally distributed infrastructure using an asynchronous publisher-subscriber (Pub/Sub) messaging system.

CONTACTS



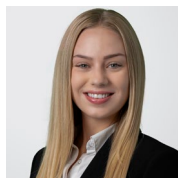
Misha Lehrer
Senior Public Affairs Advisor
Washington, D.C.
+1.202.469.5539
misha.lehrer@hklaw.com



Daniel Sennott
Partner
Washington, D.C.
+1.202.469.5199
daniel.sennott@hklaw.com



Simon E. Coon
Senior Policy Advisor
Washington, D.C.
+1.202.469.5630
simon.coon@hklaw.com



Bella Linden
Public Affairs Advisor
Washington, D.C.
+1.202.469.5662
isabella.linden@hklaw.com