KEY PROVISIONS ON ARTIFICIAL INTELLIGENCE IN FISCAL YEAR 2025 NDAA

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On 7 December 2024, the House and Senate Armed Services committees released the long-awaited text of the National Defense Authorization Act (NDAA), legislation that will guide how defense funding can be spent and what defense policy priorities will be for the next year. The recently released text is the final compromise between the House and Senate versions of the bill, and it caps defense spending at US$895 billion. This bipartisan piece of legislation passed both the House and the Senate and was signed into law prior to the end of the year. See here for the full text of the bill, which is an amendment to H.R. 5009, the *WILD* Act.

The NDAA was expected to be the last potential vehicle for artificial intelligence (AI) bills this Congress. Many bills on AI were left out of the compromise bill, including the CREATE AI Act, which would have codified the National AI Research Resource. The final text, which is over 1,800 pages, does, however, include several other key provisions on AI.

KEY TAKEAWAYS

- The FY2025 NDAA prioritizes research on emerging AI and quantum computing technologies to enhance defense operations.
- AI will be used to support cybersecurity, biotechnology, operations, and workflow.
- Under the act, the Department of Defense (DOD) will seek to cooperate with industry, international, and interagency partners to optimize its employment of AI in a variety of functions.
- The act establishes provisions to mitigate the risk of adversaries employing AI to threaten the United States, including new guidelines for the Chief Digital and AI Officer Governing Council.

Broadly, the bill prioritizes funding AI research and development and aims to use AI to strengthen defense and cybersecurity operations. The key sections on AI are discussed in more detail below.

PILOT PROGRAMS

FY2025 NDAA provides for the establishment of two pilot programs (Sec. 236 and Sec. 237) for evaluating the feasibility of developing AI for security-related biotechnology applications and the optimization of workflow at DOD facilities. Both programs will be overseen by the Secretary of Defense, who will consult with applicable agency leaders and make yearly evaluations to track progress. The act also empowers DOD to use AI for certain business operations, including the audits of financial statements for FY2025 (Sec 1007).

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INTERNATIONAL AND INDUSTRY PARTNERSHIPS

Under Section 1087, the Secretary of Defense would be directed to establish a working group to develop AI initiatives for defense with allies of the United States. The group would operate as a mutually beneficial partnership between member states by comparing tools and practices, identifying solutions to accelerate interoperability, developing shared strategies and regulations, testing the capabilities of members, and sharing best practices to advance innovation efforts. The Secretary of Defense is directed to work to ensure that the technical data produced by a country under a cooperative project is controlled by export control laws and general regulations of that country.

HUMAN FACTORS, INFRASTRUCTURE, AND COST-BUDGETING

FY2025 NDAA establishes initiatives to integrate human factors (Sec. 1531), enable advanced AI capabilities through advanced computing infrastructure (Sec. 1532), and develop a plan to streamline the budgeting process for necessary data acquisition (Sec. 1533). These initiatives are aimed at expanding the operability of AI systems to meet the security needs of DOD and would be evaluated on a yearly basis. Additionally, the Secretary of Defense would be required to submit reports to the House and Senate Committees on the Armed Services for reviews of the initiatives' progress.

CENTER(S) OF EXCELLENCE

Section 1534 creates an initiative for the Secretary of Defense to evaluate the feasibility of establishing a center, or centers, of excellence to support the development and maturation of AI-enabled weapons systems. If established, functions of the center would include capturing, analyzing, assessing, and sharing lessons learned across and facilitating collaboration between DOD and foreign partners, industry leaders, academic institutions, and nonprofit organizations, and providing tools and solutions based on these practices and benchmarks. This section of FY2025 NDAA specifically mentions Ukraine as an international partner that would benefit from this initiative. The Secretary of Defense would report to the congressional defense committees if establishing a center is deemed feasible.

CHIEF DIGITAL AND AI OFFICER GOVERNING COUNCIL

Section 225 of the compromise bill expands the duties of the Chief Digital and AI Officer Governing Council (the Council). Specifically, with respect to AI models and advanced AI technologies, the bill directs the Council to:

- identify and assess AI models and advanced AI technologies that could pose a national security risk if accessed by an adversary of the United States;
- develop strategies to prevent unauthorized access and usage of potent AI models by countries that are adversaries of the United States; and
- make recommendations to Congress and relevant federal agencies for legislative or administrative action in the field of AI.

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The House bill originally did not contain these extended guidelines; it originated in the Senate committee-reported bill and was included in the final text.

CONGRESSIONAL PERSPECTIVES ON AI

The drafters of the bill recognize the opportunities that AI presents to strengthen critical strategic communications, reduce the risk of collateral damage, and enhance US capabilities for modeling weapons functionality (Sec. 1638). However, they also recognize the risk of compromising US strategic assets, including nuclear safeguards. As such, the bill advises that particular care be taken to mitigate the risks associated with developing AI.

THE NDAA COMPROMISE BILL BECOMES LAW

The House passed the NDAA compromise bill on 11 December 2024, and sent it to the Senate for consideration. On 18 December 2024, the Senate passed the NDAA by an overwhelming margin in an 85 to 14 vote. President Joe Biden signed the bill into law the following week.

DEPARTMENT OF DEFENSE AI INITIATIVES

DOD is not waiting for the passage of the NDAA to launch its AI programs. The agency recently announced that it is kickstarting its US$100 million AI initiatives with the formation of the AI Rapid Capabilities Cell (AI RCC). The AI RCC is a partnership between DOD's Chief Digital and AI Office (CDAO) and the Defense Innovation Unit. The funding will go to a variety of pilot projects, including:

- Generative AI pilots focused on warfighting;
- Computation and digital “sandboxes” for AI experimentation, development, and testing;
- Rapid user-centric experimentation; and
- Opportunities for emerging companies to work with the Pentagon on generative AI

CDAO is looking to partner with the private industry, saying “the US commercial sector is at the cutting edge when it comes to AI, and digital solutions.” DOD has invited companies looking to work with DOD on these initiatives to pitch their innovative AI solutions as part of an “all-hands-on-deck approach to accelerate development and deployment of these tools.” More information can be found in the press release and a fact sheet about AI RCC.

Although the CDAO's efforts will continue past the Biden administration, we expect to see staff turnover, and for many of the senior officials involved in these AI initiatives to be selected by the incoming Trump administration. President-elect Donald Trump has also pledged to repeal President Biden's Executive Order on AI (EO 14110) and replace it with “AI Development rooted in Free Speech and Human Flourishing.” See here for President-elect Trump's 2024 policy platform. We are continuously monitoring developments and appointments in this space.

LOOKING TO 2025

Although the NDAA contains limited provisions on AI, this bipartisan package, along with administrative actions like DOD's initiatives, will move the ball forward some and generate momentum on emerging technologies.

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Congress is just beginning to address AI writ large but essentially in defense applications, and we are expecting much more movement and robust policy efforts in 2025. This is a critical time for stakeholders to engage in this area, and our team is ready and available to assist.

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