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HOUSE DEFENSE PRODUCTION ACT REAUTHORIZATION BILL INCLUDES LIMITS ON EQUITY INVESTMENTS

By Mark Gillman, Senior Vice President

KEY POINTS

- Over the last year, the Trump Administration has secured for the government shares in several companies, including those critical to maintaining America's technological and industrial edge.
- Pending legislation (H.R. 7688) to reauthorize the *Defense Production Act* (DPA), which historically has been used to provide loans and loan guarantees and offer other forms of support to the nation's industrial base, would apply limits to its use in securing equity investments:
    - ♦ Prohibition on DPA funds being used to acquire share leading to U.S. government ownership of a 15% or greater stake of an entity;
    - ♦ Requirement on Defense Production Act Committee (DPAC) to notify Congress prior to use of DPA resources for an equity investment; and
    - ♦ Mandate that DPAC liquidate equity support when feasible and consistent with U.S. national security needs.
- The *Defense Production Act* is scheduled to expire on September 30th.

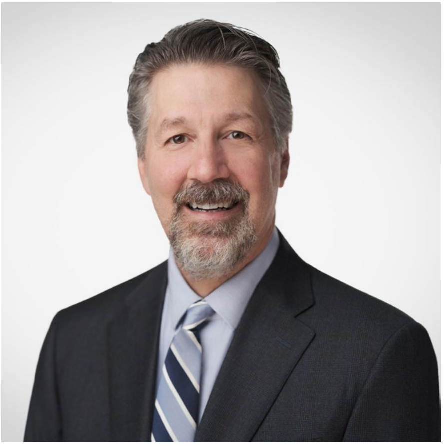
In his second term, President Donald J. Trump has sought to re-invigorate America's technological and industrial base to enhance the nation's competitive edge and maintain military superiority. Part of the White House's strategy has involved injecting capital into companies through the purchase of equity stakes – rather than relying exclusively on grants, loans, loan guarantees, or other typical forms of government support. Congress has taken notice and is considering legislation to define the practice.

While far from being the first White House to make the U.S. government a direct shareholder in domestic industries, the Trump Administration has been particularly aggressive and expansive it its approach. Over the last year, it has announced a series of such equity investments.

Recent equity investments

In July 2025, the Department of War (DoW) acquired stock in MP Materials, operator of the Mountain Pass rare-earth mine, to strengthen domestic supply chains for magnets – becoming the company's largest shareholder. Also, last summer, Commerce Secretary Howard Lutnick announced that the U.S. government would take a 10 percent stake in Intel. The Department of Energy has taken a stake in a lithium mining company. And last month, DoW made a $1 billion equity investment in L3Harris Technologies "to expand the production capacity of U.S. solid rocket motors."

At a hearing earlier this year, Senate Armed Services Committee Chairman Roger Wicker (R-MS) commended DoW for its engagement in the Administration's innovative approach to reinforcing America's domestic industrial base. "I believe these equity-based investments make good strategic sense in many cases, particularly where no free market exists and where we've seen aggressive Chinese economic warfare," Wicker said. However, he also noted that "little law currently exists" when it comes to DoW's use of equity-based investments. That may change before the end of the year if pending legislation advances through Congress.



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Defense Production Act reauthorization

The burst of activity across the Administration to take stakes in priority sectors of the economy is occurring just as Congress is moving to reauthorize the Defense Production Act (DPA), a law which has strengthened America's defense industrial base for 75 years. The DPA is set to expire later this year.

The DPA grants the President broad authority to mandate that the private sector fulfill contracts deemed to be "necessary or appropriate to promote the national defense." It also grants the President powers to make loans and loan guarantees alongside other tools to support businesses which are considered essential to national defense.

The law has been reauthorized several times since it was first enacted in 1950, and there is good reason to believe that Congress will not allow it to lapse at the end of this year – particularly at a time when Great Power competition is on the rise and domestic production of critical minerals and other materials are not yet sufficient to meet the needs of our defense industrial base. The White House seems prepared to use any tools available to it to end U.S. dependence on foreign sources for these materials.

At the same time, legislation moving in the U.S. House of Representatives would establish limits on the use of DPA resources to acquire equity stakes.

The *DPA Modernization Act* (H.R. 7688), which would renew the law for five years, proposes new rules governing the use of DPA authority to make equity investments. It prohibits the government from using DPA resources to acquire equity shares if such purchases would result in the government holding 15 percent or more of the shares in an entity; it mandates an annual report to Congress detailing DPA equity investments held by the government as well as a justification for holding the shares and their valuation; and it requires prior notification to the House Financial Services Committee and Senate Banking Committee before DPA funds are used to acquire equity.

Additionally, the Administration would be required to certify, prior to making an equity investment using DPA resources, that the affected entity is "unable to obtain additional equity investment from private sources on commercially reasonable terms."

Finally, it includes a provision calling for the liquidation of equity support "as soon as commercially feasible… taking into consideration the national security interests of the United States."

What's next

The *DPA Modernization Act* has not yet been taken up by the full House. Nor has the Senate Banking Committee released its own version of a DPA reauthorization bill. Nevertheless, the flurry of equity investments being made by the Executive Branch, broad recognition of the need to strengthen the nation's defense industrial base, and the lack of clarity in current law governing equity investments suggests that this Congress may be ripe to find a bicameral and bipartisan solution before the current DPA law expires.