Hogan Lovells

Aerospace and Defense Insights

Inside the MP Materials Deal: A Blueprint for U.S. Department of Defense Development and Support of Critical Capabilities

Through Aerospace and Defense Insights, we share with you the top legal and political issues affecting the aerospace and defense (A&D) industry. Our A&D sector team monitors the latest developments to help our clients stay in front of issues before they become problems, and seize opportunities in a timely manner.

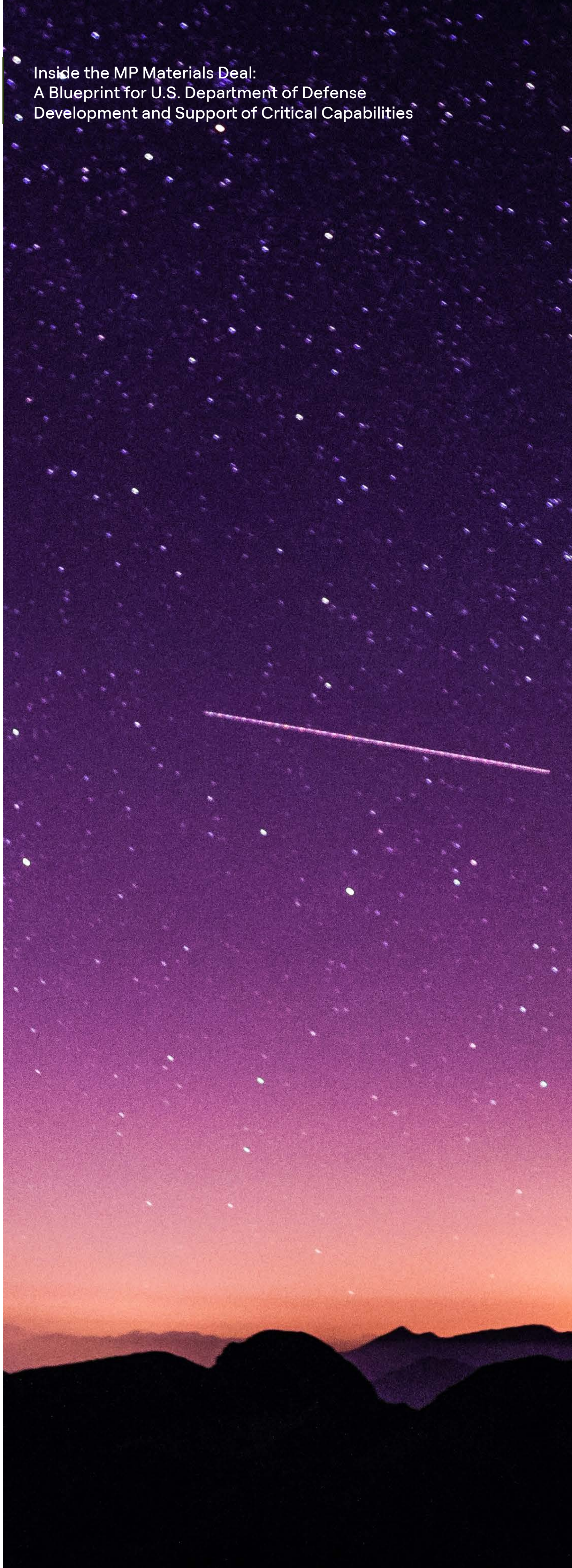
Introduction

Hogan Lovells Authors: Mike Mason, Alexis Sainz, Lauren Olmsted, and Ashley Ruhe.

In a first of its kind series of transactions, the U.S. Department of Defense (DoD) recently made a multibillion-dollar commitment to MP Materials, the leading U.S. rare earth producer, to accelerate the build-out of its domestic manufacturing capabilities. The DoD's commitments to MP Materials include: (i) the DoD's $400 million equity investment in newly authorized and issued Series A Preferred Stock, (ii) up to $350 million in additional funding in the form of additional Series A Preferred Stock, (iii) a $150 million loan issued by the DoD Office of Strategic Capital (OSC) at a favorable interest rate to support expansion of MP Materials' heavy rare earth separation capabilities, (iv) a 10-year price floor commitment by the DoD for neodymium-praseodymium (NdPr) products, (v) a 10-year offtake agreement for the purchase by the DoD of magnet production from a planned domestic magnet manufacturing facility (the 10X Facility), and (vi) a warrant for the DoD to purchase additional common shares of the company's stock. The company also reportedly obtained a $1 billion loan commitment from two leading financial institutions to fund the construction of the 10X Facility.

To effectuate the transactions, the DoD combined new statutory authority with an aggressive application of existing law. These include the authorities granted to the DoD by Title III of the Defense Production Act (DPA), as well as funding provided through the One Big Beautiful Bill Act (OBBBA) and the DPA.

For government contractors, suppliers of critical materials or technologies, and industry stakeholders, this public-private partnership offers a compelling new model for future funding opportunities on high-priority industrial base initiatives. Below, we unpack the details of this transformative deal and outline how companies can position themselves to take part in this new generation of strategic public-private partnerships.



The Defense Production Act

Enacted during the Korean War, the Defense Production Act enables the President to mobilize U.S. industry in support of national defense.[1] Title III of the DPA enables the Government to financially incentivize—through loan guarantees, loans, purchases, purchase commitments, grants, and other financial assistance—organizations to expand domestic production capacity and supply for national defense purposes.[2] With the exception of certain fiscal laws, purchases and commitments to purchase, and sales under Title III may be made without regard to the limitations in existing law for up to ten years.[3] This means, for example, such purchases, commitments, and sales may include advance payments and may be made without regard to the competition requirements of the Competition in Contracting Act or the compliance obligations of the Federal Acquisition Regulation. Though the law has a sunset clause requiring periodic Congressional reauthorization, the DPA has been reauthorized 53 times, most recently in 2018.[4] Its current expiration date is September 30, 2025, but historical precedent and current sentiment indicate reauthorization is likely.

DPA Title III authorities have been used increasingly to strengthen the industrial base in sectors vital to U.S. security and in response to national crises:

During the COVID-19 pandemic, the Government used Title III authorities to increase domestic production of N95 masks and other personal protective equipment, as well as vaccines, swabs, test kits, and respirators.[5] Overall, from 2018 through 2024, the Government authorized over $230 million in Title III investments to bolster public health preparedness.[6]

DPA Title III also has played a critical role in the Government's strategic response to the 2022 Russian invasion of Ukraine. Congress has appropriated at least $600 million in DPA Title III funds to bolster production of missile and munitions systems and to secure critical materials.[7]

More recently, on July 22, 2025 the Department of Defense invoked Title III to fund a pre-feasibility study for a tungsten mine. Tungsten hasn't been mined in the U.S. for nearly a decade; if feasible, the mine would reestablish domestic sourcing of a key material used in aerospace, munitions, and ground vehicles.[8]

The DPA Title III authorities have been used effectively to secure critical supplies and boost domestic manufacturing capacity. The recent MP Materials transactions, though, reflect a significantly more aggressive and innovative use of Title III authorities to bolster a capability that is critical to national defense.

---

1 Defense Production Act, Pub. L. No. 81-774, 50 U.S.C. §§ 4501, et seq.

2 2 Adam G. Levin & Luke A. Nicastro, Cong. Rsch. Serv., IN12484, *Reauthorizing the Defense Production Act* (January 14, 2025) at 2

3 50 U.S.C. § 4533(b).

4 U.S. Gov't Accountability Off., GAO-25-107688, *Defense Production Act: Information Sharing Needed to Improve Use of Authorities* (June 12, 2025) at 1.

5 U.S. Department of Defense, *First DOD Defense Production Act Title 3 COVID-19 Project,* (last visited July 28, 2025), https://www.defense.gov/News/Releases/Release/Article/2146692/first-dod-defense-production-act-title-3-covid-19-project/. See also Hearing on Mission Critical: Restoring National Security as the Focus of Defense Production Act Reauthorization, Testimony of Todd. N. Tucker, Roosevelt Institute (March 12, 2024).

6 William Russell, Use and Challenges from Fiscal Years 2018 to 2024, GAO-25-108497 at 10 (last visited July 28, 2025), https://www.gao.gov/assets/880/879076.pdf.

7 Luke A. Nicastro, et al., Cong. Rsch. Serv., R48182, *Defense Production for Ukraine: Background and Issues for Congress* (September 16, 2024) at 11.

8 U.S. Department of Defense, *Department of Defense Awards $6.2 Million to Sustain Critical Production of Tungsten* (last visited July 28, 2025), https://www.defense.gov/News/Releases/Release/Article/4252264/department-of-defense-awards-62-million-to-sustain-critical-production-of-tungs/.

The DoD Office of Strategic Capital

The DoD Office of Strategic Capital (OSC) is a relatively new DoD entity with lending authority to fund companies developing technologies deemed critical to national security. Under the One Big Beautiful Bill Act (OBBBA) signed into law on July 4, 2025, the OSC received an injection of funds to support obligations of up to $200 billion in loans or loan guarantees for 33 categories of covered technologies,[9] including strategic maritime infrastructure and critical minerals (the Credit Program). While OSC is currently developing additional financial instruments, the office's enacting legislation, its pilot program and initial Notice of Funding Availability (NOFA)[10] , and the MP Materials transactions, together provide some indicative data points as to the extent of the flexibility we may see OSC exercise going forward. OSC loans under that first NOFA could be used for acquisition and installation of equipment, along with soft costs for construction, rehabilitation, replacement, modernization, and expansion activities. In the case of MP Materials, the OSC committed to a $150 million loan with a 12-year duration at a favorable interest rate (i.e., 10-year treasury bond yield plus 1.0%).

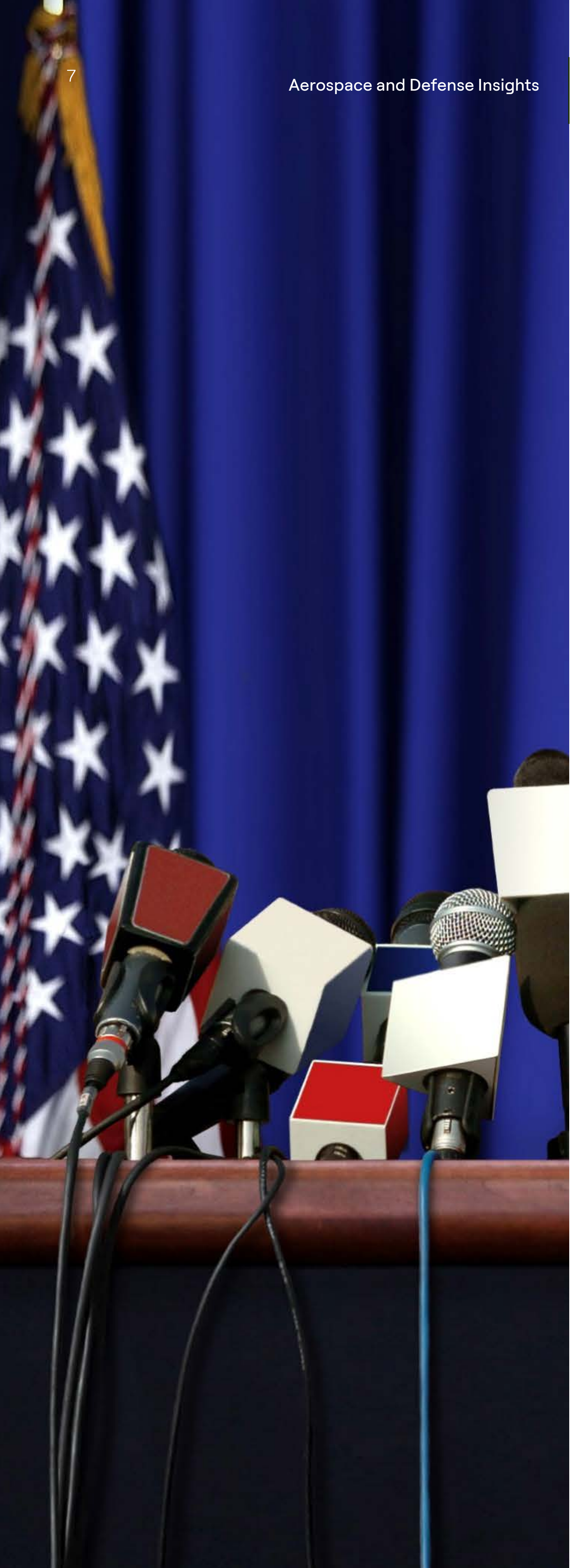
Under OSC's pilot Credit Program, eligibility criteria included (i) the extent to which an investment supports the national security or economic interests of the United States; (ii) the likelihood that capital assistance would enable the investment to proceed sooner; and (iii) creditworthiness.
Contractors eligible for OSC Credit Program financing stand to receive very favorable loan terms, including[11]:

---

9 Covered technology categories eligible for OSC financing include: Advanced bulk materials; Advanced manufacturing; Autonomous mobile robots; Battery storage; Biochemicals; Bioenergetics; Biomass; Cybersecurity; Data fabric; Decision science; Edge computing; External communication; Hydrogen generation and storage; Mesh networks; Microelectronics assembly, testing, or packaging; Microelectronics design and development; Microelectronics fabrication; Microelectronics manufacturing equipment; Microelectronics materials; Nanomaterials and metamaterials; Open RAN; Optical communications; Sensor hardware; Solar; Space launch; Spacecraft; Space-enabled services and equipment; Synthetic biology; Quantum computing; Quantum security; Quantum sensing; strategic maritime infrastructure; and critical minerals and materials. 10 U.S.C. § 149(e).

10 The window for submitting an Application Part 1 for consideration under the September 27, 2024, Notice of Funding Availability - Equipment Finance (NOFA) closed on February 3, 2025. OSC is no longer accepting Application Part 1 submissions or scheduling pre-application consultations related to this NOFA. See https://www.cto.mil/osc/credit-program/.

11 Based on enabling legislation (10 U.S.C. § 149) and, on an indicative basis, OSC's previous Notice of Funding Availability for their equipment financing program. Terms marked with a single asterisk are based on the pilot program in the enabling legislation; terms marked with a double asterisk are based on the first NOFA



- Interest rate potentially as low as U.S. Treasury rate of a similar maturity.*
- Long repayment period with flexible amortization profile. This allows for capitalization of equipment costs and associated expenses over the useful life of the financed assets** (for example, potentially 50 years for infrastructure*).
- Flexibility to refinance debt that is on less favorable terms as part of a larger financing.*
- Flexibility to refinance up to 100% of soft costs (project development, preliminary engineering, pre-construction, construction, expansion, capitalized interest, other carrying costs, advisory fees).*
- Sculpted repayment profile, with the ability to match borrowers' anticipated revenues.**
- Deferred payments for several years during a grace period.**
- No prepayment penalty.*
- Borrowers must be domiciled in the U.S.; however, there is no prohibition against foreign ownership, meaning U.S. subsidiaries are eligible to participate (foreign ownership, control or influence and adversarial capital reviewed; compliance with CFIUS and other compliance required, including with respect to excluding foreign entities of concern).**

Certain limitations apply to the OSC Credit Program. The Government cannot be the sole user and repayment cannot be majority dependent on federal sources. Support cannot be for a technology that is solely for defense purposes. Additionally, the Credit Program may not be a good fit for companies who are early-stage, pre-revenue or have insufficient operating history without a repayment guarantee from a creditworthy sponsor.

The DoD-MP Materials Transactions

On July 10, 2025, MP Materials announced a sweeping series of transactions with the DoD designed to fast-track the development of a secure, end-to-end domestic supply chain for rare earth magnets and reduce foreign dependency. The arrangement includes the construction of a domestic magnet manufacturing facility to target 10,000 MT of annual capacity (the 10X Facility) to serve both defense and commercial customers.[12] At the heart of the arrangement is a complex, multi-layered package authorized by DPA Title III and other authorities, and using OBBBA plus current and future Title III and potentially other appropriations.

Far from a traditional public-private partnership, the parties used several innovative deal mechanisms tailored to unique national security and long-term supply chain objectives for the transaction, including:

- **$400M equity investment:** Rather than issue funding in the form of a grant, the DoD has made a $400 million equity investment via newly authorized and issued Series A Preferred Stock that is convertible into shares of the company's common stock. The transaction also provides (i) up to an additional $350 million investment via convertible Series A Preferred Stock, and (ii) a warrant to the DoD that is exercisable over a 10-year period (at $30.031/share) for the purchase of additional common stock. Overall, the common stock into which the Series A Preferred Stock is initially convertible and for which the warrant is initially exercisable collectively represent fifteen percent of the company's issued and outstanding shares of common stock as of the transactions' closing date, without giving effect to the issuance of such shares.
- **10-Year price floor commitment:** To provide revenue stability and insulate the company from foreign market manipulation, the DoD guarantees a $110/kg minimum price for MP Materials' neodymium-praseodymium oxide (NdPr) products, with a 30% upside-sharing clause if market prices exceed that threshold. The price floor applies to all MP Materials products containing NdPr that are sold, stockpiled or used internally for magnet production. For contractors dealing in early-stage materials or technologies with unstable pricing, this type of mechanism can unlock capital that might otherwise be unavailable. In this case, the price floor also protects MP Materials from being undercut by non-aligned foreign suppliers—the price floor reportedly was set at twice the current Chinese market price.[13]
- **10-Year guaranteed offtake:** The DoD has committed to ensuring 100% of the magnets produced at the new 10X Facility are sold to defense and commercial customers (subject to a prohibition on sales to certain restricted buyers). Functionally, the offtake commitment

12 MP Materials, *MP Materials Announces Transformational Public-Private Partnership with the Department of Defense to Accelerate U.S. Rare Earth Magnet Independence* (July 10, 2025), https://mpmaterials.com/news/mp-materials-announces-transformational-public-private-partnership-with-the-department-of-defense-to-accelerate-u-s-rare-earth-magnet-independence/.

13 Katha Kalia, Eric Onstad and Ernest Scheyder, MP Materials seals mega rare-earths deal with US to break China's grip, Reuters (July 10, 2025).

is a contractual anchor to ensure stable revenue for MP Materials' future magnet output. Contractors operating in sectors critical to national defense or supply chain resilience, but where private market demand is still emerging or undercut by aggressive pricing by non-aligned foreign countries, may find success by crafting similar proposals to secure government funding.

- **$150M OSC loan:** OSC provided a $150 million loan to add heavy rare earth separation capabilities to MP Materials' existing processing facility in Mountain Pass, California. The funding for OSC's $150 million loan to MP Materials comes from the One Big Beautiful Bill Act. The loan has a twelve-year term and has a rate based on the 10-year treasury bond yield plus 1.0%.

- **$1B private financing commitment:** In connection with the transaction, MP Materials also secured a $1 billion private financing commitment from two major financial institutions to support the build-out of the 10X Facility, expected to begin commissioning in 2028.

In exchange for the DoD's investment, MP Materials is subject to certain national security restrictions on its governance and operations. Among other things, MP Materials cannot nominate foreign citizens to its Board of Directors without DoD consent; must oppose the election of any shareholder nominee who is not a U.S. citizen; cannot enter into certain equity or asset transactions without DoD consent; and must terminate its existing share repurchase program and cease making sales to certain foreign trading partners.[14]

The flexible deal terms rely on the use of DPA Title III and other investment mechanisms that are not subject to the Federal Acquisition Regulation (FAR), allowing the DoD to bypass traditional federal contracting constraints and customize deal terms to address market-specific conditions. For example, the DoD's 10-year offtake and price floor commitments are enabled by Section 303 of DPA Title III, which authorizes the use of purchase commitments to create guaranteed demand to reduce investment risk for industry and encourage private-sector participation.[15] The use of Section 303 authorities requires a Presidential determination that the domestic industrial base cannot reasonably meet demand for a specific material or critical technology in a timely manner such that purchases, purchase commitments, or other actions are the most cost-effective, expedient, and practical means of addressing the shortfall. This may somewhat constrain the broader application of purchase commitments in some industries.

A significant portion of the DoD's investment is funded by appropriations authorized by the OBBBA. The DPA Title III Fund (which has a current statutory $750 million cap on carryover funding) is likely to cover at least a portion of the DoD's substantial annual price floor commitment. In its Form 8-K filing, MP Materials cautioned that the "unconventional use of DPA Title III authority, the need for the [DoD] to secure additional funds in the future to meet its obligations . . . , there can be no assurances that the authorization and continued support for the [t]ransactions will not be modified, challenged or impaired in the future."[16]

The deal with the DoD appears to have facilitated additional support from the customer base. Specifically, a few days after MP Materials announced the DoD transactions, the company announced it entered into a $500 million definitive, long-term development and supply agreement with Apple Inc., including Apple's agreement to make a prepayment of $200 million for the purchase of magnets from the company.[17]

---

14 MP Materials, Form 8-K Filing (July 9, 2025) at 9, https://d18rn0p25nwr6d.cloudfront.net/CIK-0001801368/6191cf7a-1cb7-4c45-a50a-72c98a0fbe86.pdf.

15 50 U.S.C. § 4533

16 Form 8-K Filing at 7-8.

17 MP Materials, Form 8-K Filing (July 15, 2025) at 2, https://d18rn0p25nwr6d.cloudfront.net/CIK-0001801368/a4de907e-71bc-44ab-84d3-ddd3d59096b1.pdf.

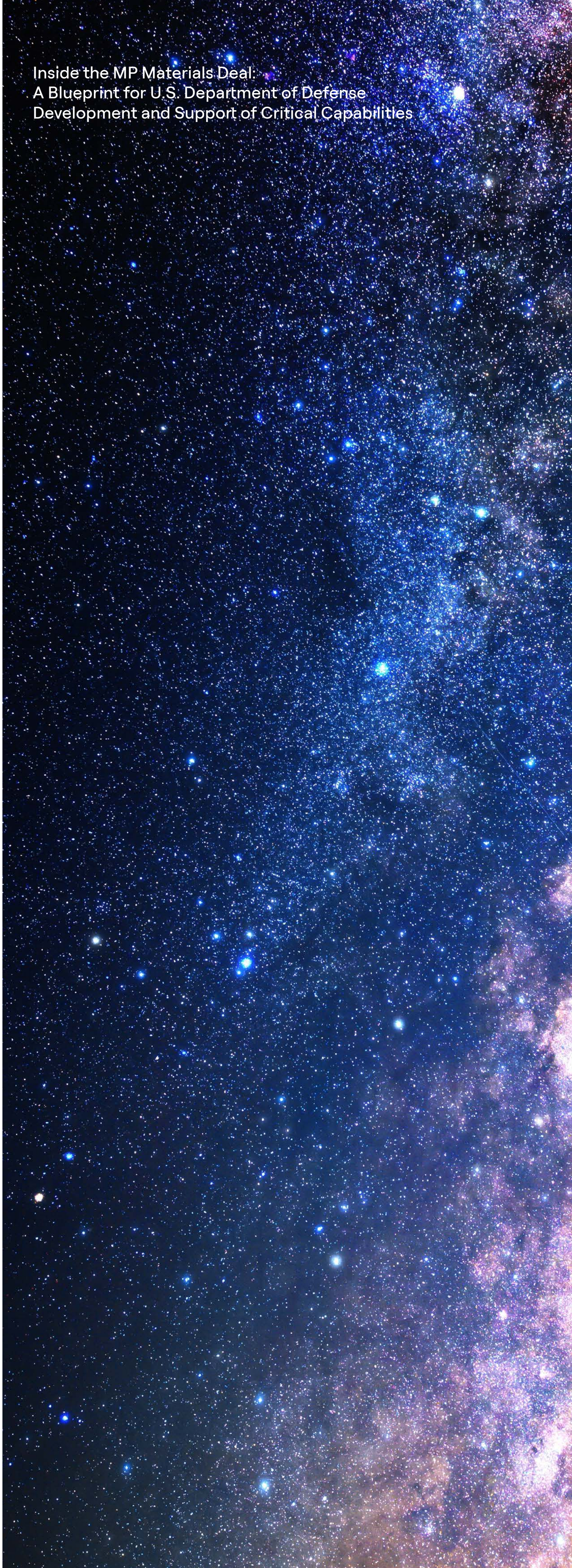
Looking Ahead

The MP Materials deal potentially redefines what is possible under available federal financing instruments and sets a precedent for a more proactive, equity-oriented, and strategic use of federal industrial policy. As DoD increasingly relies on Title III authorities, OSC Credit Program loans, and other funding to reinforce the industrial base, opportunities for federally-financed support and long-term government partnership may be more available and more transformative than ever before.

Defense contractors should consider taking the following steps to position themselves for success:

- Assess DPA Title III and OSC Credit Program eligibility: evaluate how your technology, products, or services support national defense or economic security.
- Align proposals with federal priorities: emphasize resilience, innovation, and end-to-end domestic supply chain development.
- Structure risk-mitigating commercial terms consistent with the available statutory authorities and implementing programs: consider incorporating price floors, offtake guarantees, or co-investment frameworks.
- Monitor upcoming DPA funding reauthorization: current funding expires September 30, 2025; reauthorization is expected but not guaranteed.
- Engage early with federal stakeholders: offer comprehensive supply chain solutions.

For further guidance on leveraging federal government opportunities and developing strategic partnerships with DoD and other federal agencies, please contact any one of the authors noted herein.



Authors

Michael F. Mason
Partner, Washington, D.C.
mike.mason@hoganlovells.com
Global Regulatory

Alexis Sáinz
Partner, Washington, D.C.
alexis.sainz@hoganlovells.com
Corporate & Finance

Lauren Olmsted
Senior Associate, Washington, D.C.
lauren.olmsted@hoganlovells.com
Global Regulatory

Ashley Ruhe
Associate, Washington, D.C.
ashley.ruhe@hoganlovells.com
Global Regulatory

Additional Contacts

Stacy Hadeka
Partner, Washington, D.C.
stacy.hadeka@hoganlovells.com
Global Regulatory

Michael J. Scheimer
Partner, Washington, D.C.
michael.scheimer@hoganlovells.com
Global Regulatory

Stuart Morrissy
Partner, New York
stuart.morrissy@hoganlovells.com
Corporate & Finance

David A. Winter
Partner, Washington, D.C.
david.winter@hoganlovells.com
Corporate & Finance

Steven M. Kaufman
Partner, Washington, D.C.
steven.kaufman@hoganlovells.com
Corporate & Finance

Americas

- **Boston**
- **Denver**
- **Greater Washington, D.C.**
  - Baltimore
  - Washington, D.C. and Northern Virginia
- **Houston**
- **Los Angeles**
- **Miami**
- **Minneapolis**
- **New York**
- **Philadelphia**
- **Northern California**
  - San Francisco
  - Silicon Valley
- **Latin America**
  - Brazil
  - Mexico

Europe, Middle East and Africa

- **Amsterdam**
- **Brussels**
- **Dublin**
- **Germany**
  - Berlin
  - Düsseldorf
  - Frankfurt
  - Hamburg
  - Munich
- **London**
- **Luxembourg**
- **Madrid**
- **Milan**
- **Rome**
- **Paris**
- **Middle East**
  - Dubai
  - Riyadh

Asia Pacific

- **Greater China**
  - Beijing
  - Hong Kong
  - Shanghai
- **South East Asia**
  - Ho Chi Minh City
  - Jakarta
  - Singapore
- **Tokyo**

www.hoganlovells.com