

## Holland & Knight Defense Situation Report: August 2022

### A monthly roundup of defense policy news

Welcome to Holland & Knight's first monthly defense news update. We are excited to bring you the latest in defense policy, regulatory updates and other significant developments. If you see anything in this report that you would like additional information on, please reach out to authors or members of Holland & Knight's [National Security, Defense and Intelligence Team](#).

### LEGISLATIVE UPDATES

#### National Defense Authorization Act (NDAA) Moves Forward in Congress

For the 62nd consecutive year, Congress is working to pass the NDAA, which is of course the annual defense authorization bill. In that time, despite its partisan differences, Congress has proven that its collective commitment to U.S. national security can help it rise above partisanship.

On July 14, 2022, the House [passed](#) the Fiscal Year (FY) 2023 NDAA by a vote of 329-101, with authorizing funds at a level of \$839 billion, which is \$37 billion more than President Joe Biden's budget request. Republicans and a large number of Democrats saw the president's request, which was already a \$30 billion increase from FY 2022 funding, as not enough to keep up with inflationary pressures and match the challenges posed by China and Russia.

The Senate on July 18 [unveiled](#) its version of the NDAA for FY 2023. The Senate's NDAA would authorize \$847 billion, which is \$45 billion above the president's budget request, and \$8 billion more than the House-passed NDAA. Senate Armed Services Committee (SASC) Chairman Jack Reed (D-R.I.) recently predicted the bill will see action when the Senate returns from its month-long recess in September. The final topline funding number will have to be hammered out by House and Senate conferees once both chambers pass their versions of the NDAA, which may not be until later in the year.

#### Senate Defense Appropriators Release FY 2023 Spending Bills

While the House and Senate are moving to pass their defense authorization bills, Senate Democratic appropriators released all 12 FY 2023 funding bills. The nearly \$1.7 trillion appropriations package includes \$850 billion in defense discretionary spending, an 8.7 percent increase over FY 2022 levels. The funding proposed by Senate Defense Appropriators, whose subcommittee is chaired by Sen. Jon Tester (D-Mont.), outpaces the House Appropriations Committee and both chambers' Armed Services Committee bills on spending. However, Sen. Richard Shelby (R-Ala.), ranking member on the Senate Appropriations Committee, believes that the proposals "fail to appropriately allocate resources to our national defense" and falls nearly \$10 billion short on the spending level agreed to in the Senate NDAA.

White House officials have not raised objections over increasing the budget over the president's requested amount but have emphasized that any additional money should be used to help modernize the force and not just maintain legacy programs. The divergent budget targets from different congressional committees set up a showdown this fall over what the actual defense spending total for FY 2023 will be. In the meantime, it is likely that Congress will again have to pass stopgap funding to avert a government shutdown.



## Other Armed Services Legislation

Aside from the annual NDAA, there has been a flurry of legislation introduced that has been referred to the House Armed Services Committee (HASC) and SASC. While many bills have been attached in the underlying NDAA or as amendments, here are a few others worth flagging that have been introduced in the past month:

- On July 1, 2022, Rep. Nikema Williams (D-Ga.) [introduced](#) the Military Housing Affordability Act of 2022, which is the House [companion bill](#) introduced by Sens. Jon Ossoff (D-Ga.) and Marco Rubio (R-Fla). The bill would grant a two-year extension of the Secretary of Defense's authority to temporarily adjust the basic allowance for housing (BAH) rates where the cost of adequate housing differs more than 20 percent from the current BAH rate.
- On July 22, 2022, Sens. Jacky Rosen (D-Nev.) and Marsha Blackburn (R-Tenn.) and Reps. Chrissy Houlahan (D-Pa.) and Pat Fallon (R-Texas) [introduced](#) the Investing in American Defense Technologies Act. This bipartisan, bicameral legislation would create a new U.S. Department of Defense (DOD) public-private partnership program to fuel investment in innovative small businesses developing advanced defense technologies critical to our national security.
- On Aug. 3, 2022, Sens. Elizabeth Warren (D-Mass.) and Thom Tillis (R-N.C.) and Reps. Sara Jacobs (D-Calif.) and Stephanie Bice (R-Okla.) [introduced](#) the Military Housing Readiness Council Act. The legislation would create a Military Housing Readiness Council comprised of DOD officials, service members, military families and military housing experts to ensure ongoing oversight of deficiencies in privatized military housing. The Council's mandate includes responsibility for full implementation of a tenants bill of rights, completion of the public complaint database and public reporting on all its activities. The bill was included in the Senate's NDAA for FY 2023.

## Nominations Pending and Voted Out of SASC

The SASC recently held a couple of nominations hearings for DOD nominees. On July 21, 2022, the SASC [considered](#) the nominations of Lt. Gen. Bryan Fenton to be general and commander of U.S. Special Operations Command (USSOCOM) and Lt. Gen. Michael Langley to be general and commander of U.S. Africa Command (AFRICOM). Both Fenton and Langley were confirmed by the Senate on Aug. 1, 2022, by voice vote. Langley will be the first Black four-star general in Marine Corps history, and Fenton will be the first Green Beret to lead USSOCOM in nearly 20 years.

The SASC on July 28, 2022, [considered](#) the nominations of Milancy Harris to be Deputy Under Secretary of Defense for Intelligence and Security, Dr. Radha Plumb to be Deputy Under Secretary of Defense for Acquisition and Sustainment, Brendan Owens to be Assistant Secretary of Defense for Energy, Installations and Environment, and Dr. Laura Taylor-Kale to be Assistant Secretary of Defense for Industrial Base Policy. They will likely get votes by the full Senate once Congress reconvenes in September.



## EXECUTIVE AND DEPARTMENTAL UPDATES

### Continuing Security Support for Ukraine

The Biden Administration on Aug. 8, 2022, announced an additional \$1 billion in security assistance for Ukraine. This authorization is the administration's 18th drawdown of equipment from DOD inventories for Ukraine since August 2021 and is the largest single drawdown of U.S. arms and equipment utilizing a significant amount of additional ammunition, weapons and equipment, such as munitions for long-range weapons and armored medical transport vehicles. The administration said it would also send an additional \$225 million in humanitarian aid to Ukraine to provide drinking water, medical supplies, food and shelter. On Aug. 19, the administration [announced](#) its 19th drawdown of security assistance, valued at up to \$775 million, to meet Ukraine's critical security and defense needs. These packages would add about \$9.9 billion in aid the U.S. has given Ukraine since Russia's invasion on Feb. 24, 2022.

The Pentagon on July 25, 2022, announced a separate security assistance package for Ukraine valued at up to \$550 million, including additional ammunition for High Mobility Artillery Rocket Systems (HIMARS). A few days earlier, the DOD also announced \$270 million in additional security assistance for Ukraine. In addition to the presidential drawdown that pulled out \$175 million worth of equipment from DOD stockpiles, Acting Pentagon Press Secretary Todd Breasseale announced \$95 million in Ukraine Security Assistance Initiative (USAI) funds.

### Initial Contracts for Hybrid Space Architecture Program

The Pentagon's Defense Innovation Unit's (DIU) Hybrid Space Architecture (HSA) program [announced](#) on July 7, 2022, that it is seeking to provide global, ubiquitous and secure internet connectivity throughout the space domain for commercial, civil and military users, including international allies and partners. DIU is collaborating with the U.S. Space Force (USSF) Space Warfighting Analysis Center (SWAC) and the Air Force Research Laboratory (AFRL) Space Vehicles Directorate on this prototype effort. The HSA aims to demonstrate a network architecture that leverages both commercial and government space assets across diverse orbits to provide secure, assured and low-latency data communications anywhere on and off Earth. While DIU awarded other transaction (OT) contracts to companies already, it is anticipating additional awards from the same solicitations soon.

### DIU Seeking Small Expeditionary Boats

The [DIU](#) on Aug. 8, 2022, announced it is searching for commercial small boats to conduct littoral and distributed maritime operations. DIU, which aims to leverage new technologies for the U.S. military, stated that the platform should be able to perform reconnaissance, sensing, tactical maneuver and logistics support. The proposed solution should align with small boat use cases in the Expeditionary Advanced Base Operations concept, integrate external autonomous platforms and demonstrate endurance ranges at or beyond 300 miles, according to the solicitation.

## Pentagon Issues Guidance for Inflationary Pressures

In response to industry-wide questions about price adjustments for inflation, the DOD [released](#) guidance about when and how contracting officers may provide financial relief to defense contractors working on fixed-price contracts. The guidance recognizes that "inflation is impacting several segments of our economy" and has caused increased performance costs for many contractors. These increases have lowered the profit margin of contractors working under fixed-price contracts, which are generally not subject to any price adjustment based on increased performance costs. The DOD explains that it has also been "fielding questions about the possibility of using requests for equitable adjustment" under the standard Changes clause to help contractors "address unanticipated inflation." Finally, for fixed-price contractors, the DOD has adopted a narrow view of when to grant an inflation-related adjustment. The guidance states that "since cost impacts due to unanticipated inflation are not a result of a contracting officer-directed change, [contracting officers] should not agree to contractor [requests for equitable adjustment] submitted in response to changed economic conditions."

## DOD Continuing Work on New Cybersecurity Program

The Pentagon's contractor cybersecurity certification program, the Cybersecurity Maturity Model Certification (CMMC), [released](#) a draft assessment plan indicating that voluntary third-party assessments kicked off in August 2022. This document and assessment plan is causing consternation to some industry groups, as the details are still not certain as to how contractors can ensure that they are fully on course ahead of a formal rule expected next year. The DOD plans to implement its CMMC to address the "increasingly frequent and complex cyberattacks" against the defense industrial base. The draft [assessment](#) process proposes a process for third-party assessors to review certain contractors' CMMC compliance. The voluntary assessments will be conducted under the DOD's Joint Surveillance Program. CMMC Third-Party Assessment Organizations (C3PAOs) will conduct the evaluations, overseen by DOD's Defense Industrial Base Cybersecurity Assessment Center.

## CONTACTS



**Daniel Sennott**  
Partner  
Washington, D.C.  
202.469.5199  
[daniel.sennott@hklaw.com](mailto:daniel.sennott@hklaw.com)



**Misha Lehrer**  
Public Affairs Advisor  
Washington, D.C.  
202.469.5539  
[misha.lehrer@hklaw.com](mailto:misha.lehrer@hklaw.com)