

## Holland & Knight Defense Situation Report: September 2022

### A monthly roundup of defense policy news

Welcome to Holland & Knight's 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

#### Senate NDAA and Defense Spending Updates

As [reported](#) last month, there is still much work to do amid congressional uncertainty to get a final product on the annual National Defense Authorization Act (NDAA). The House [passed](#) its version of the Fiscal Year (FY) 2023 NDAA on July 14, 2022, by a vote of 329-101, authorizing funding at a level of \$839 billion, which is \$37 billion more than President Joe Biden's budget request.

Then on July 18, after the Senate Armed Services Committee (SASC) favorably [reported](#) the Senate version of the FY 2023 NDAA passed out of committee by a vote of 23-3 – a process that is done behind closed doors – the Senate publicly [unveiled](#) its version of the FY 2023 NDAA. The Senate's NDAA would authorize \$847 billion in funding, which is \$45 billion above the president's budget request and \$8 billion more than the House-passed NDAA.

There have been bipartisan voices urging the Senate to vote as soon as possible on the FY 2023 NDAA. Throughout the month-long August recess, and upon returning to session after the Labor Day holiday, SASC Chairman Jack Reed (D-R.I.) has consistently called for the Senate to take action, though admitting that there are other priorities on the Senate floor, such as passing a continuing resolution to keep the government operating. He is also trying to avoid a repeat of last year's NDAA, when schedule delays and partisan gridlock prevented the Senate from passing its own NDAA. On the other side of the aisle, Sen. Tommy Tuberville (R-Ala.) led 23 of his colleagues in [sending](#) a letter to Senate Majority Leader Chuck Schumer (D-N.Y.) urging that the Senate vote on the FY 2023 NDAA before the end of September.

While Reed and ranking member Sen. James Inhofe (R-Okla.) plan to open the amendment process for the NDAA soon to let senators file their proposed changes to the measure, Schumer announced on Sept. 20, 2022, that the Senate will meet in October and consider the NDAA.

Typically, the NDAA spends about two weeks on the Senate floor while members debate and vote on amendments. Despite Schumer's announcement, it is still possible that the Senate will not pass its own version of the NDAA and that similar to last year, the House and Senate will conference based on the House-passed bill and the SASC mark.

## Other Armed Services Legislation

Here is a few noteworthy pieces of legislation that have been introduced in the past month:

- On Sept. 9, 2022, Sens. John Cornyn (R-Texas) and Gary Peters (D-Mich.) [introduced](#) the Army Facilitating Untapped Technology, Utilities, Resources, and Equipment for Servicemembers Act (Army FUTURES Act), which would clarify roles and responsibilities for Army modernization efforts and help support the Austin, Texas-based Army Futures Command's new and innovative strategies to keep U.S. Armed Forces competitive in the evolving global security landscape.
- Sens. Cornyn and Jeanne Shaheen (D-N.H.) on Sept. 12, 2022, [introduced](#) the Securing American Acquisitions, Readiness, and Military Stockpiles Act, which would give the U.S. Department of Defense (DOD) enhanced procurement authorities to quickly refill American defense stockpiles after the president provides aid to an ally or partner attacked by a foreign adversary, including replenishing America's stockpiles after lethal aid was sent to Ukraine for defense against Russia.
- Sens. Angus King (I-Maine) and Cornyn [introduced](#) the American Defense Programs, Logistics, and Acquisitions for our Nation's Security (American Defense PLANS) Act on Sept. 15, 2022. This bill would help America's national defenses keep up with rapidly changing technologies by studying the DOD's acquisition and modernization efforts and creating recommendations for how DOD programs can continue to modernize with evolving defense challenges.

Lastly, the Senate Foreign Relations Committee on Sept. 14, 2022, [advanced](#) the Taiwan Policy Act of 2022 by a vote of 17-5, sending it to the full Senate floor for a vote. While this legislation is not within the direct jurisdiction of the House Armed Services Committee (HASC) or SASC, the bill reinforces the U.S. policy toward Taiwan in order to maintain deterrence to China and provides \$6.5 billion in military aid and expeditious arms sales, while prioritizing the transfer of excess U.S. defense articles to Taiwan.

## Armed Services Hearings and Nominations

In September, the SASC held two nominations hearings. The first was for Lt. Gen. [Bradley Saltzman](#) to be General and Chief of Space Operations. If confirmed, he would be the principal military advisor to the Secretary of the Air Force for Space Force operations and, in a separate capacity, a member of the Joint Chiefs of Staff. The second nomination hearing was for U.S. Air Force Gen. [Anthony Cotton](#), nominated to be Commander of the U.S. Strategic Command (STRATCOM), which is responsible for strategic nuclear deterrence, global strike and DOD Global Information Grid operations.

On Sept. 20, 2022, the SASC also held a [hearing](#) to receive testimony on U.S. Nuclear Strategy and Policy. Witnesses included university researchers, the Director of the U.S. Institute of Peace and representatives from private industry. The following day, the SASC held a [hearing](#) to receive testimony on the status of military recruiting and retention efforts across the DOD. Witnesses in this hearing included members of the U.S. Army, Navy, Air Force and Marine Corps, as well as the Deputy Assistant Secretary of Defense of Military Personnel Policy. In the HASC, the Subcommittee on Military Personnel held a [hearing](#) to receive testimony on how the recommendations of the Independent Review Commission on Sexual Assault in the Military have been implemented and on the establishment of the Office of Special Trial Counsel. Witnesses included the Under Secretary of Defense for Personnel and Readiness and the Under Secretaries of the Army, Navy and Air Force.

## EXECUTIVE AND DEPARTMENTAL UPDATES

### Continued American Assistance to Ukraine

President Joe Biden sent a [request](#) to Congress on Sept. 2, 2022, to deliver an additional \$11.7 billion for security and economic assistance to Ukraine for the first quarter of FY 2023, as well as \$2 billion to help address the impact of the war on Ukraine's energy supply. The request specifically asks for DOD funding of \$4.5 billion for equipment for Ukraine and replenishment of DOD stocks, along with \$2.7 billion for continued military, intelligence and other defense support. Along with the request, Shalanda Young, Director of the Office of Management and Budget (OMB), [said](#) that roughly three-quarters of the direct military and budgetary support that Congress previously provided for Ukraine has been disbursed or committed, with even more expected by the end of the fiscal year.

Additionally, on [Sept. 8](#) and [Sept. 15](#), President Biden announced the administration's 20th and 21st Presidential Drawdowns of security assistance valued at up to \$675 million and \$600 million, respectively, to meet Ukraine's critical security and defense needs. Capabilities in these packages included ammunition for High Mobility Artillery Rocket Systems (HIMARS), counter-unmanned aerial systems, night vision devices and other capabilities outfitted for Ukrainian soldiers.

Lastly, in late August, [President Biden](#) and the DOD [announced](#) approximately \$3 billion in additional security assistance for Ukraine, with funds passed by Congress earlier in the year under the Ukraine Security Assistance Initiative (USAI). The USAI package, which also happened to be on Ukraine Independence Day, was a long-term commitment representing multiyear investments to the enduring strength of Ukraine's armed forces. Unlike Presidential Drawdowns (PDA), which the DOD has continued to leverage to deliver equipment to Ukraine from DOD stocks at a historic pace, USAI is an authority under which the U.S. procures capabilities from industry. This announcement represented the beginning of a contracting process to provide additional priority capabilities to Ukraine in the mid- and long-term. Capabilities that the administration will award contracts for include drones, precision munitions, radars, artillery and more.

In total, the U.S. has committed approximately \$15.8 billion in security assistance to Ukraine since the beginning of the Biden Administration. Since 2014, the U.S. has committed approximately \$17.9 billion in security assistance to Ukraine and more than \$15.1 billion since the beginning of Russia's invasion on Feb. 24, 2022.

### Reauthorization of SBIR, STTR Programs

Congress is set to reauthorize the Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) programs this month after concerns over the abuse of the reward process have been addressed and accepted by Sen. Rand Paul (R-Ky.), who had expressed concerns about abuse of the SBIR process by select companies. The SBIR and STTR programs, which were set to expire on Sept. 30, 2022, seek to increase the participation of small innovative companies in federally funded research and development (R&D) and will be reauthorized for three years under the legislation. To assuage concerns, the reauthorization bill will include minimum performance standards to ensure that the largest SBIR and STTR award winners are adequately transitioning their technologies and bringing them to market. In addition, the bill will require federal agencies to establish a due diligence program to assess the potential risk, material misstatement or change in ownership that threatens national security.

Under the SBIR program, federal agencies that budget at least \$100 million annually for outside research must allocate a portion – 3.2 percent since FY 2017 – to support R&D in small businesses. The STTR program, meanwhile, requires federal agencies and department that spend at least \$1 billion on outside research to allocate at least 0.45 percent of the funds to small businesses and academic research institutions.

In 2019, the DOD released an [economic impact report](#), which found that from 1995 to 2018, the DOD's SBIR and STTR programs returned \$22 for every \$1 awarded through the programs. The study also found that the DOD's SBIR and STTR awards resulted in \$121 billion in new sales and products and created 1.5 million jobs from 1995 to 2018.

## State of the Space Industrial Base 2022 Report Released

On Aug. 24, 2022, the Defense Innovation Unit (DIU), U.S. Space Force (USSF) and Air Force Research Laboratory (AFRL) jointly released the [2022 State of the Space Industrial Base Report](#), the fourth annual installment that assesses progress in retaining U.S. leadership in commercial, civil and national security space in an increasingly competitive strategic era. The report represents the collective voice of approximately 350 industry experts to provide input and recommendations on how best to nurture and grow a healthy space industrial base and national security innovation base. It evaluates multiple sectors, including launch services, communications, in-space transportation and logistics, power and propulsion, and imaging satellites. The recommendations aim to provide insight and feedback to the administration, National Space Council, senior policymakers across the executive departments, Congress and the venture capital and private investor communities, as well as the broader commercial space ecosystem.

## Space Policy Gets a Revamp

For the first time since 2016 after the creation of the Space Force, SPACECOM and other new military space organizations, the DOD [updated its directive](#) on space policy and formally recognized space "as a priority domain of national military power" and it will "protect and defend the use of space for U.S. national security purposes, the U.S. economy, and allies and partners of the United States." The document, approved by Deputy Defense Secretary Kathleen Hicks, also adopted rules for safe operations in space and outlined the roles for military branches, acquisition offices, and other agencies and combatant commands.

## DOD Issues New Rule on China Disclosures

Last month, the DOD [issued an interim rule](#) that will require potential defense contractors to disclose any work as part of the contract that will be conducted by workers or facilities in China. Specifically, the interim rule, posted in the *Federal Register*, amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 855 of the FY 2022 NDAA that requires pre-award disclosure from contracting entities that employ one or more individuals who will perform work in China. Despite the ruling saying that federal procurement data for FY 2019 through 2021 shows no contracts above \$5 million "for which the place of manufacture, place of performance, or country of the product's origin is China," the DOD describes the need for this ruling as "urgent and compelling" as "Performance of a contract, whether classified or unclassified, in a nation that is not our ally may provide opportunities for that nation to gather sensitive information."



## Final Ruling Reauthorizes DOD's Mentor-Protégé Program

Late last month, the DOD [issued a final rule](#) reauthorizing the DOD's Mentor-Protégé Program (MPP). Under the MPP, small businesses are partnered with larger companies in a mutually beneficial relationship. The MPP provides incentives to mentors to assist various types of small businesses in performing as subcontractors or suppliers on DOD contracts, and protégés benefit by gaining access to DOD contracts and the business development guidance provided by their mentor. While the rule provides a reauthorization to the program, the House-passed FY 2023 NDAA may consider whether to make the program permanent.

## President Biden Nominates Navy Acquisition Chief

On Sept. 2, 2022, President Joe Biden [nominated](#) Nickolas Guertin, current Director of Operational Test and Evaluation in the Office of the Secretary of Defense, to be Assistant Secretary of the Navy (Research, Development, and Acquisition). If confirmed, he will have authority over the Navy's \$140 billion portfolio.

Guertin currently serves as senior advisor to the Secretary of Defense on operational and live fire testing, and evaluation of DOD weapon systems. He has a four-decade combined military and civilian career in submarine operations, ship construction and maintenance, and development and testing of weapons, sensors, and combat management products – including the improvement of systems engineering and defense acquisition. Most recently, he performed applied research for government and academia in software-reliant and cyber-physical systems at Carnegie Mellon University's Software Engineering Institute.

## DIU Solicitations

The [Defense Innovation Unit \(DIU\)](#), which aims to leverage new technologies for the U.S. military, solicited three projects in September. The first is for Project Panacea, where the DOD is seeking solutions that provide a pan-viral countermeasure to eliminate the threat posed by novel and highly transmissible viral pathogens. The second is for Argo Navis, where DOD is looking for commercially proven software solutions to 1) build end-to-end alternate or parallel paths of critical supply chains; 2) identify and manage risk within those supply chains; and 3) do so in a way that can be scaled across different supply chains of interest by a DOD user.

The final DIU solicitation is for Hypersonic and High-Cadence Airborne Testing Capabilities (HyCAT). Hypersonic vehicle technology has evolved by leveraging the same infrastructure used for missile development and testing. The availability of this infrastructure has accelerated hypersonic development and decreased initial testing costs. However, current land- and sea-based test ranges are optimized for low-cadence and operationally representative tests that replicate the trajectory and velocity of the hypersonic weapon system. The slow pace of hypersonic R&D has resulted in more expensive and less effective products. Thus, the DOD is searching for a specialized hypersonic vehicle with unique attributes to find a solution to this problem.

## New Biotechnology Executive Order

President Joe Biden [signed](#) an executive order (EO) on Sept. 14, 2022, announcing new investments and resources to advance national biotechnology and biomanufacturing initiatives. This EO seeks to bolster efforts by the DOD and other federal agencies to ensure U.S. economic and national security by leveraging biotechnology to secure, strengthen and diversify the domestic manufacturing supply chains of critical goods, products and services.

After the signing, the DOD announced \$1.2 billion in new investments in biomanufacturing. Emerging biomanufacturing capabilities will help the DOD address logistical challenges across multiple DOD mission areas. Furthermore, biotechnology will enable the DOD to source mission-critical materials domestically without relying on fragile supply chains, develop materials with novel properties to enhance systems ranging from hypersonics to submarines and greatly reduce logistical and resupply timelines by providing point-of-need manufacturing for building materials and energy production.

Over the next five years, the DOD will invest \$1 billion in bioindustrial domestic manufacturing infrastructure to catalyze the establishment of a domestic bioindustrial manufacturing base accessible to U.S. innovators. This support will incentivize private- and public-sector partners to expand manufacturing capacity for products important to commercial and defense supply chains, such as critical chemicals. An additional \$200 million will support enhancements to biosecurity and cybersecurity postures at these facilities.

## DOD Hosts First Joint Safety Council

On Aug. 26, 2022, the DOD [held](#) its inaugural quarterly Joint Safety Council (JSC), which included representatives from the Army, Navy, Marine Corps, Air Force, National Guard Bureau and Office of the Secretary of Defense. The JSC originates from a National Commission on Military Aviation Safety (NCMAS) recommendation to provide a dedicated focus on operational safety challenges and augment existing safety programs by helping "bridge the gap between commercial aviation practices and military aviation realities." Congress endorsed the NCMAS recommendation, authorizing the JSC in the FY 2022 NDAA. The JSC will integrate with the DOD's existing safety governance process, which will provide a conduit to elevate operational safety recommendations to senior DOD leaders.

At this first meeting, leaders reviewed the JSC Charter and FY 2022 NDAA-assigned tasks and discussed specific JSC focus areas and objectives through calendar year 2023. The JSC is scheduled to meet again regarding safety of military operations (including aviation, afloat, ground and tactical vehicles) and related regulations and policy reforms, such as safety data standards and safety-related maintenance, supply chain, personnel management and training challenges.

## 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)