

Holland & Knight Defense Situation Report: March 2023

A monthly roundup of defense policy news

Welcome back to Holland & Knight's monthly defense news update, where we 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

General Congressional Update

On March 9, 2023, President Joe Biden and his administration released their Fiscal Year (FY) 2024 budget request to Congress. The [budget request](#) for the U.S. Department of Defense (DOD), which is typically seen as a reflection of the administration's policy goals for the upcoming fiscal year, seeks to provide resources necessary to sustain and strengthen U.S. deterrence, advance vital national security interests, bolster America's technological edge, preserve economic competitiveness and combat 21st-century security threats. The request seeks \$842 billion in discretionary budget authority for FY 2024, which is a \$26 billion, or 3.2 percent, increase over FY 2023 enacted levels. When including overall national defense funding, which includes the DOD, U.S. Department of Energy and other national security programs throughout the government, the request totals \$866 billion. If enacted, this DOD budget would be the largest in history.

In FY 2023, Congress appropriated \$858 billion in national defense funding, which was \$45 billion more than President Biden requested for FY 2022. Of the total funding, \$817 billion went to the DOD, and billions more went to other national security programming.

Priorities within the president's defense budget include promoting integrated deterrence in the Indo-Pacific and globally and viewing China as the U.S.'s only competitor with both "the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to do it." Another priority in the budget is to continue support for Ukraine, the North Atlantic Treaty Organization (NATO) and other European partners, which would enhance the capabilities and readiness of the U.S. and allied partners in the face of Russian aggression.

Other priorities in the Budget seek to:

- advance U.S. cybersecurity by strengthening investments for cyber protection standards for the defense industrial base and cybersecurity of DOD networks
- promote energy efficiency and installation resilience for warfighting operations by making U.S. forces more agile, efficient and survivable
- enhance biodefense by supporting the administration's 2022 National Biodefense Strategy and Implementation Plan for Countering Biological Threats, Enhancing Pandemic Preparedness, and Achieving Global Health Security and the National Biotechnology and Biomanufacturing Initiative, as well as implementing recommendations from DOD's Biodefense Posture Review
- build and procure a mix of highly capable crewed aircraft while continuing to modernize fielded fighter, bomber, mobility and training aircraft

- optimize naval shipbuilding and modernization and recapitalizing on the country's strategic ballistic missile submarine fleet
- strengthen the U.S. supply chain and industrial base by investing in key technologies and sectors of the U.S. industrial base such as microelectronics, submarine construction, munitions production and biomanufacturing

However, there remains a significant amount of uncertainty related to government funding, as Congress must first address the nation's debt limit. In addition, House Republicans have proposed reigning back the federal budget to FY 2022 levels, a decrease estimated at about 22 percent.

Defense Leadership Makes Case for FY 2024 Budget in Hearing

On March 23, 2023, top DOD leadership testified before the House Appropriations Subcommittee on Defense and made the case for the Biden Administration's defense budget for FY 2024. Witnesses included Secretary of Defense Lloyd Austin, Defense Comptroller/Chief Financial Officer Michael McCord and Chairman of the Joint Chiefs of Staff Mark Milley.

At the hearing, senior Republicans, including the Defense Appropriations Subcommittee Chair Ken Calvert (R-Calif.), made the case that even the biggest defense budget request should be increased. Calvert said that because of continued inflationary pressures and the need to increase readiness, especially in the face of Chinese competitiveness and Russian aggression, there is a need to increase the overall defense budget.

Prior to the hearing, full House Appropriations Committee Ranking Member Rosa DeLauro (D-Conn.) released letters from Biden Administration officials outlining the impacts of proposed budget cuts. In his [letter](#) and testimony, McCord made the case that decreasing the defense budget would "have harmful and potentially devastating effects on our people, our mission, and our national interests." Similarly, Austin [cautioned](#) Congress to pass a series of continuing resolutions and said that passing a full-year spending bill would fully support the military.

National Security and SASC Nominations

Once the 117th Congress ended, all executive branch nominations not confirmed by the Senate were sent back to the White House and the nomination process started over. As such, on Jan. 3, 2023, President Biden [nominated and renominated](#) roughly 60 people for Senate-confirmed jobs and judicial nominations.

Various nominations to serve in key DOD and national security positions include:

- Radha Iyengar Plumb to be deputy Under Secretary of Defense for Acquisition and Sustainment
- Ronald T. Keohane to be Assistant Secretary of Defense for Manpower and Reserve Affairs
- Anjali Chaturvedi to be General Counsel at the U.S. Department of Veterans Affairs
- Nickolas Guertin to be Assistant Secretary of the Navy for Research, Development and Acquisition
- Laura Taylor-Kale to be Assistant Secretary of Defense for Industrial Base Policy

On March 15, 2023, the Senate Armed Services Committee (SASC) held a nominations [hearing](#) for Guertin and Keohane. Later that day, the Senate confirmed Ravi Chaudhary to be an Assistant Secretary of the Air Force by a vote of 65-29. The Senate also invoked cloture on the nomination of

Taylor-Kale to be Assistant Secretary of Defense for Industrial Base Policy and will likely vote on her confirmation in the coming weeks.

China Hearings

After publication of the February *Holland & Knight Defense Situation Report*, the House Select Committee on the Strategic Competition Between the U.S. and the Chinese Communist Party (CCP) held its inaugural hearing. The hearing included former Deputy National Security Advisor Matt Pottinger and former National Security Advisor H.R. McMaster. There was a good amount of bipartisanship as members raised issues that cross party lines. These include bilateral relations and tensions between Taiwan and the Chinese government, trade relations, hardening U.S. supply chain security, human rights and protecting American's privacy and data, particularly with regard to TikTok.

However, the approach to countering the Chinese government's activities is what draws partisan lines. Committee Chair Mike Gallagher (R-Wis.) called the competitiveness between the U.S. and CCP "an existential struggle" as the Committee seeks to "investigate and expose the ideological, technological, economic, and military threat posed by the Chinese Communist Party." The top Democrat on the panel, Ranking Member Raja Krishnamoorthi (D-Ill.), said that the U.S. can hinder the CCP's challenge "through investments in technologies of the future, workforce improvement and by fixing weaknesses in our economy." While the members disagreed with how to approach the challenges faced by China, they agreed that they must provide positive, real recommendations to committees with jurisdiction to thwart any challenge by China, be it military, industrial or economic.

On the other side of the Capitol, the Senate Banking Committee held a [hearing](#) on national security through economic tools. There was bipartisan recognition that China poses a real threat to American economic security as the Chinese government has aimed to dominate advanced technology and global strategic supply chains and taken job opportunities from Americans.

Other HASC and SASC Hearings

In the past month, the House Armed Services Committee (HASC) and SASC held many hearings on the military's posture and readiness, oversight on Ukrainian aid, cybersecurity, intelligence, military construction, and science and technology programs and policy. If there are hearings you are interested in, please do not hesitate to reach out to the authors.

Pair of Bipartisan Bills Aimed to Strengthen Cybersecurity Workforce

Sens. Jacky Rosen (D-Nev.) and Marsha Blackburn (R-Tenn.) introduced two bills that they say will strengthen the country's cybersecurity workforce and support the federal response to cyber threats. The bills would establish the Civilian Cybersecurity Reserve pilot programs within the DOD and U.S. Department of Homeland Security (DHS) to recruit qualified civilian cybersecurity personnel to serve in reserve capacities to ensure the U.S. government has the talent needed to defeat, deter or respond to malicious cyber activity, especially at times of greatest need.

This legislative package is modeled after recommendations from the National Commission on Military, National, and Public Service report and the Cyberspace Solarium Commission [report](#) to establish a civilian cyber reserve corps. Under these bills, participation in the Civilian Cybersecurity Reserve would be voluntary and by invitation only and would not include members of the military Selected Reserve.

Legislation Proposed to Ban Purchase of Drones Manufactured in Countries Identified as National Security Threats

Sens. Mark Warner (D-Va.) and Rick Scott (R-Fla.) introduced the American Security Drone Act of 2023, legislation that would prohibit the purchase of drones from countries identified as national security threats, such as China. According to the bill's sponsors, this legislation not only seeks to protect the U.S. from drones manufactured in countries that pose a national security risk, but would also protect Americans' data from foreign adversaries and seeks to bolster U.S. manufacturing and the U.S. supply chain of unmanned aircraft systems.

Specifically, the bill would prohibit federal departments and agencies from procuring certain foreign commercial off-the-shelf drones or covered unmanned aircraft systems manufactured or assembled in countries identified as national security threats and provides a timeline to end current use of these drones. The bill would also prohibit the use of federal funds awarded through certain contracts, grants or cooperative agreements to state or local governments from being used to purchase drones or their parts from countries identified as national security threats.

EXECUTIVE AND DEPARTMENTAL UPDATES

Biden Administration Announces National Cybersecurity Strategy

On March 2, 2023, the Biden Administration [released](#) its much-anticipated National Cybersecurity Strategy. The strategy aims to protect America's digital infrastructure and data by developing a comprehensive approach to cybersecurity. The strategy focuses on four key areas: protecting the country's critical infrastructure, enhancing public-private partnerships, improving incident response and strengthening cybersecurity workforce and training.

To achieve its goals, the strategy sets out several initiatives, including the establishment of a Cyber Safety Review Board to investigate major cyber incidents, enhancing collaboration between government agencies and private industry, and investing in cybersecurity research and development. Additionally, the strategy seeks to promote international norms and cooperation to prevent cybercrime and malicious activities.

The strategy also emphasizes the importance of securing the supply chain, especially for critical infrastructure sectors, and of improving the cybersecurity of small and medium-sized businesses. Additionally, the strategy recognizes the need to address the growing threat of ransomware and other malicious software.

Overall, the Biden Administration's National Cybersecurity Strategy represents a comprehensive effort to address the increasing cyber threats faced by the U.S. By strengthening public-private partnerships, improving incident response and investing in cybersecurity research and development, the strategy seeks to protect American digital infrastructure and data from cyberattacks.

DOD Releases Cyber Workforce Strategy

After the Biden Administration released its National Cybersecurity Strategy, the DOD [released](#) its Cyber Workforce Strategy for 2023-2027. The strategy seeks to implement portions of the administration's National Cybersecurity Strategy and establishes a unified direction for DOD cyber workforce management and, as the cyber domain continues to expand, the inclusion of emerging technology

workforces. The strategy also provides a roadmap for how the cyber workforce will grow and adapt to guarantee the nation's security.

More specifically, this strategy enables the DOD to stay ahead of workforce trends by applying standardized workforce analysis tools and processes; continuing to develop cyber personnel to meet current and future requirements; championing the utilization of workforce-related authorities in nontraditional ways; and building strategic relationships in support of growing, diversifying and strengthening the cyber workforce. This strategy will be followed by a cyber-workforce implementation plan to ensure that the strategy's talent identification, recruitment, development, retention and management objectives are achieved.

Biden Signs AUKUS Agreement, Promoting Virginia-Class Submarines

On March 13, 2023, President Biden, Australian Prime Minister Anthony Albanese and United Kingdom Prime Minister Rishi Sunak [announced](#) the AUKUS Optimal Pathway, a commitment-based, phased plan for Australia to acquire conventionally armed, nuclear-powered submarines. This announcement comes months after the three countries laid out a vision to strengthen their combined military capabilities, boost the defense industrial capacities, enhance the ability to deter aggression and promote a shared goal of a free and open Indo-Pacific.

Among the phased goals for this announcement is the Australian purchase of three Virginia-class conventionally armed, nuclear-powered submarines with an option to buy two more, if needed. Through the strength of the American defense industrial base, the U.S. will deliver these by the 2030s. In the meantime, Australian sailors will increasingly embed aboard American and British attack submarines, attend nuclear power schools and place Australian workers in U.S. shipyards.

Establishment of Joint Production Accelerator Cell

According to a [March 10, 2023, memorandum](#) from William LaPlante, DOD Under Secretary of Defense (USD) for Acquisition and Sustainment (A&S), the Pentagon established a new office called the Joint Production Accelerator Cell (JPAC). JPAC will be charged with building enduring industrial production capacity, resiliency and surge capability for key defense weapons systems and supplies. After the DOD heard from industry leaders in the past year – both because of supply chain issues after the coronavirus pandemic and because of the war in Ukraine – this office will seek to lessen anxiety by creating a more robust response to the defense industrial base in how to produce weapons and armaments and building the capacity to respond to crises more effectively.

LaPlante announced that Dr. Erin Simpson will be the Executive Director of the JPAC and serve as the principal advisor to USD (A&S) on optimal production strategies for selected systems and subcomponents to meet current demand from the DOD, allies and partners, while building hedges for future contingencies and being sustainable over the long term.

Biden Signs Presidential Waiver of Statutory Requirements for Supply Chain Resilience

President Biden [signed](#) a presidential waiver of some statutory requirements (Waiver) authorizing use of the Defense Production Act (DPA) to allow the DOD to more aggressively build the resiliency of America's defense industrial base and secure its supply chains. Specifically included in the Waiver are defense organic industrial base supply chains critical to the DOD, as well as critical supply chains for electronics, kinetic capabilities, castings and forgings, minerals and materials, and power and energy

storage. This authority also affords the ability to invest in strategic areas that enable the industrial base, such as workforce development.

Since many of the investments needed in areas such as mining and processing of critical minerals can be very costly and take several years, the Waiver permits the DOD to leverage DPA Title III incentives against critical vulnerabilities and removes the statutory spending limitation for aggregate action against a single shortfall exceeding \$50 million. This in turn allows the DOD to make more substantial, longer-term investments.

Office of Strategic Capital, Small Business Administration to Sign Memorandum of Agreement

On March 7, 2023, the DOD's new Office of Strategic Capital (OSC) and the Small Business Administration (SBA) Office of Investment and Innovation (OII) announced intent to sign a memorandum of agreement (MOA). This agreement will outline future OSC and SBA cooperation and builds off previous announcements for collaboration on the SBIC Critical Technologies (SBICCT) Initiative.

The SBICCT represents OSC's first program initiative, a joint initiative with the SBA's highly successful Small Business Investment Company (SBIC) program. It will increase early-stage investment in critical technology areas that require longer-duration, lower-return "patient capital" to develop, such as semiconductors, advanced materials and biotechnology. The SBICCT Initiative is underpinned by new proposed SBA regulations for expansion of the SBIC program and introduction of a new financial instrument: the Accrual Debenture. This proposed instrument will better align with the cash flow requirements of startups in the hardware technology space and provide the "patient capital" required for these companies to become thriving, instrumental partners for the USG and DOD.

DOD Releases Biomanufacturing Strategy

On March 22, 2023, the DOD [released](#) its Biomanufacturing Strategy, a document that will guide research efforts, industry partnerships and relationships with allies in a rapidly developing technology field with significant implications for national security and economic competitiveness. Biomanufacturing is the use of biological mechanisms in the manufacturing process. Work is rapidly advancing that would introduce biomanufacturing processes for production of fuels, chemicals and even construction materials. The field also has the potential to enable creation of biologically based environmental sensors, wearable technology and materials with wholly novel properties.

The new strategy is based on three principles that will guide future efforts: 1) establishing transition partners for early-stage innovations; 2) developing biomanufacturing through innovations in practice and application; and 3) mapping the biomanufacturing ecosystem and tracking metrics that support future DOD biomanufacturing efforts.

Ukraine Updates

In the past month, the Biden Administration and DOD announced two authorizations of a presidential drawdown of security assistance for Ukraine. The packages, announced March 3 and March 20, 2023, feature more ammunition and support equipment for Ukraine's precision fires, artillery, armored vehicle operations, ammunition for HIMARS, heavy fuel tankers, patrol boats and other parts and field equipment. The two drawdowns are valued at \$400 million and \$350 million and are the 33rd and 34th drawdowns of equipment from DOD inventories for Ukraine since August 2021.

In total, the U.S. has committed more than \$30 billion in security assistance to Ukraine since the beginning of the Biden Administration and more than \$30 billion since the beginning of Russia's invasion of Ukraine on Feb. 24, 2022.

DIU Solicitations

In the past month, the [Defense Innovation Unit](#) (DIU), which aims to leverage new technologies for the U.S. military, published one new solicitation.

The solicitation is for a "finance first" prototype, which is a plan that includes a business model with resilient energy solutions concepts, a pro forma and the proposed rate, terms and conditions for a long-term solution.

Across the DOD, military installations and facilities face a challenging landscape to more quickly and cost-effectively deploy resilient and renewable energy systems to enhance their efficiency. Historically, financial and technological processes employed to provide whole-installation solutions for energy availability and uptime requirements have resulted in project timelines that are unacceptably long, with costs that are unacceptably high. One key to remedying these impediments is to shift the development, design and execution of solutions to third parties with highly competitive costs of capital and expertise in this area.

Initially, the Department of the Air Force (DAF) seeks a large lead investor or investing syndicate to propose innovative business processes and energy solutions to meet the demand for on-base utility systems that are resilient, carbon free, efficient and economical to enhance DAF installation energy resilience and national security. The DAF requires an approach that can address these demands at an enterprise scale and moves at the speed of business, not government.

By attracting parties interested in conceiving and funding infrastructure projects capable of providing resilient energy solutions to DAF installations, solution providers should 1) reduce (or potentially eliminate) DAF's upfront installation capital investment; 2) minimize DAF's cost over the life of the asset due to predictable financing, operation and maintenance expenses that are equal to or lower than their existing costs; and/or 3) enable partnerships with vetted developers to provide turnkey design, construction, operations, maintenance and system ownership.

CONTACTS



Daniel Sennott
Partner
Washington, D.C.
202.469.5199
daniel.sennott@hklaw.com



Misha Lehrer
Senior Public Affairs Advisor
Washington, D.C.
202.469.5539
misha.lehrer@hklaw.com