

## Holland & Knight Defense Situation Report: July 2023

### A monthly roundup of defense policy news

Welcome back 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

#### FY 2024 NDAA Gets Floor Action

**House Action:** As reported in the [June 2023 Holland & Knight Defense Situation Report](#), the congressional defense committees have been busy holding posture hearings on the Biden Administration's Fiscal Year (FY) 2024 budget request to Congress. Based on these hearings, and the House and Senate Armed Services Committees' (HASC and SASC, respectively) own priorities, they wrote and introduced their FY 2024 National Defense Authorization Act (NDAA).

The HASC held subcommittee hearings before passing the NDAA from the full committee by a vote of 58-1 following a 14-hour markup, sending the bill to be considered by the full House chamber. Before the House chamber could consider the NDAA, the House Committee on Rules met to set the rules for debate on the House floor, which included sifting through a record 1,558 amendments and choosing which would be made in order to be debated and voted on the House floor. Ultimately, the House Rules Committee made [290 amendments](#) in order. These amendments were largely noncontroversial and included many bipartisan amendments. The Rules Committee also submitted a second, more hotly debated rule of 80 amendments, including many contentious social policies.

The House of Representatives held three days of debates on the NDAA. Many of the noncontroversial amendments were voted en bloc and agreed to by voice vote. Though there were bipartisan votes to not adopt some hot-button issue amendments, others were adopted on party-line votes. In the end, largely because of the social policies attached, only four Democrats voted "yea," and four Republicans voted "nay," with the bill finally passing the full House by a vote of 219-210. The bill includes \$886 billion for the Department of Defense (DOD) and other national security programs. View the [House-passed bill](#) and [report language](#).

**Senate Action:** On July 11, 2023, SASC Chairman Jack Reed (D-R.I.) and Ranking Member Roger Wicker (R-Miss.) filed [S. 2226, the National Defense Authorization Act for Fiscal Year 2024](#). This was the first time this year that the Senate's version of the FY 2024 NDAA was made public after the SASC favorably reported the bill from committee by a vote of 24-1 on June 22. View the SASC-passed FY 2024 NDAA [bill text](#), [bill report](#), and [funding tables](#). The SASC's NDAA includes the same topline funding levels as the House bill.

The Senate typically releases the text of the SASC's NDAA only about a week prior to voting on the Senate floor. This year was no different. Majority Leader Sen. Chuck Schumer (D-N.Y.) announced the first manager's package of amendments would include 51 amendments, comprising 21 each from Democrats and Republicans, along with nine partisan amendments. The package included amendments to the underlying bill adding oversight of artificial intelligence, provisions to address U.S.

competition with China and implementation of the AUKUS pact – a trilateral agreement between the U.S., United Kingdom and Australia. According to a joint press release from Reed and Wicker, the Senate considered more than 900 amendments during floor debate, and 121 were adopted – the most amendments adopted to the Senate NDAA in years.

After nearly two weeks of amendment votes on the Senate floor, the upper chamber passed its version of the FY 2024 NDAA on July 27, 2023, by a vote of 86-11, with \$886 billion in DOD and national defense funding.

**Next Steps:** The House and Senate will now conference their different versions of the NDAA, likely beginning the process after the August recess. To this end, the two chambers will have to reach agreement with each other about its provisions, which is typically done through a conference committee where members propose a final conferenced version for vote in the House and Senate. Based on past years, it is expected that the NDAA will likely be voted on in the House and Senate and forwarded to President Joe Biden for his signature in December. If successful, this would mark the 63rd consecutive year for the NDAA.

## **Biden Issues Statement of Administration Policy for NDAA**

As is typical for important pieces of pending legislation, President Biden issued a statement of administration policy (SAP), which the Office of Management and Budget formally communicated to Congress. SAPs are designed to signal the Biden Administration's position on legislation and are often the first public document outlining the Administration's formal views on legislation and allow for the it to assert various levels of support for or opposition to a bill.

In Biden's SAP about the House's FY 2024 NDAA – which was sent before final passage by the House – the Biden [signaled](#) broad support of the bill, despite its inclusion of some social policies. Specifically, the SAP applauded the strong, bipartisan work of the HASC on behalf of America's national defense; the consistency of responsible defense spending set forth in the debt ceiling law (the Fiscal Responsibility Act, which was covered in the [June 2023 Holland & Knight Defense Situation Report](#)); the NDAA's reflection of the 2022 National Defense Strategy (which was covered in the [November 2022 Holland & Knight Defense Situation Report](#)); the support of a pay raise for military service members; and the investments to programming that will help America's network of allies and partners "as a force multiplier in support of U.S. national defense."

In areas where the administration disagrees with the FY 2024 House NDAA, it will seek to work with Congress to address areas of concerns. Some of these categories of disagreement are related to shipbuilding, where rifts exist between specific funding levels and the types of submarines and amphibious ships authorized in the bill; the creation of the Space National Guard, which the House has included for three consecutive years; the bill's repeal of the Director of the Cost Assessment and Program Evaluation (CAPE), who provides independent cost analysis for the DOD's budget; and various capabilities related to enable future capability transition, which is required under the 2022 National Defense Strategy.

The SAP on the Senate's NDAA was much shorter. The administration once again [commended](#) the bipartisan work of the SASC but cited the short time frame between public release of the bill and Senate action and, thus, decided against presenting detailed views at the time. However, the SAP said

it may issue the Administration's views in the near future and nonetheless looks forward to working with Congress to address America's national defense.

## Defense Appropriations

While Congress is making progress on its annual defense authorization bill, the House and Senate Appropriations Committees on Defense are working through their legislation that funds the DOD and other national security programs. On June 22, 2023, the full House Appropriations Committee passed the FY 2024 defense funding bill on a party-line vote of 34-24. The bill included defense funding at the same level as both chambers' FY 2024 NDAA's, which is also the same level of the president's budget request, which is \$886 billion. All Democrat members of the committee objected due to policy riders on social policies they deemed unacceptable. Nonetheless, the bill will head to the full House for consideration. View the text of the FY 2024 [defense spending bill](#) and the [legislation's report](#).

The Senate Appropriations Committee on June 22, 2023, approved allocations for numerous spending bills, including the defense bill, on a party-line vote of 15-13. Allocations for the FY 2024 defense spending bill will maintain the president's budget request of \$886 billion. Republicans on the committee objected because they claim that the totals for each spending bill, called 302(b) allocations, were written solely by Democrats. View [full allocations](#) as approved by the committee.

However, before the Senate adjourned for the monthlong August recess, the Senate Appropriations Committee [approved](#) all 12 bills out of committee on a bipartisan basis for the first time in five years. This included the Senate's FY 2024 Defense Appropriations Subcommittee bill, which was approved in a 27-1 vote. The bill included \$5 billion in additional funding in its topline above the president's budget request, which will need to be conferenced with the House in the coming months.

While both chambers continue to make progress on all 12 appropriations bills, the process will slow due to the August recess and continued debate about policy riders included in each chamber's bill. Nonetheless, because of the aforementioned debt limit deal, Congress must pass all 12 appropriations bills, including the defense spending bill, by the end of December 2023. If that doesn't happen, spending would revert to FY 2022 levels minus 1 percent across the board by virtue of the debt limit deal.

## Task Force on Foreign Arms Sales

House Foreign Affairs Committee (HFAC) Chairman Michael McCaul (R-Texas) [announced](#) a new, bipartisan Technical, Industrial, and Governmental Engagement for Readiness (TIGER) Task Force to remodernize the U.S. government's foreign military sales (FMS). The move comes after months of members on both sides of the aisle in the HFAC, HASC, SASC and Senate Foreign Relations Committee having sought to streamline the process to strike a balance between unchecked military assistance and overly stringent oversight from Congress. Because of Chinese competition, potential arms sales to Taiwan, a backlog from industry and the Russian war in Ukraine, the [U.S. Department of State](#), [DOD](#) and the defense industry have called for a more streamlined and efficient process for FMS.

The TIGER Task Force will work to modernize FMS processes in several key areas responsive to U.S. national security needs and those of U.S. allies and partners. The bipartisan task force will be led by Reps. Mike Waltz (R-Fla.) and Seth Moulton (D-Mass.), along with French Hill (R-Ark.), Mike Garcia (R-Calif.) and Jason Crow (D-Colo.).

The task force will bring together State Department and DOD experts, as well as industry experts and regional subcommittee leadership on the HFAC, in its oversight of the U.S. government's FMS process. It will hold regular briefings and issue recommendations to committee leadership for legislative consideration.

## Attention on AI Increases

Amid ongoing attention from Congress on artificial intelligence (AI) and generative AI technology, the DOD and intelligence community provided the first-ever classified all-senators briefing on national security and AI. The briefing served as an opportunity for senators to learn how Americans are using and investing in AI to protect U.S. national security and what adversaries are doing in AI. Briefers include Director of National Intelligence Avril Haines, Deputy Secretary of Defense Kathleen Hicks, White House Office of Science and Technology Policy Director Arati Prabhakar, National Geospatial Intelligence Agency Director Trey Whitworth and DOD Chief Digital and AI Officer Craig Martell.

The briefing comes after Senate Majority Leader Chuck Schumer (D-N.Y.) on June 21, 2023, released his AI framework, the [SAFE Innovation Framework](#), which establishes five major policy objectives: 1) security, 2) accountability, 3) foundations, 4) explain and 5) innovation. The Framework outlines the Schumer's vision of how the U.S. should harness AI's potential and protect society from its potential harms in legislation. According to Schumer, AI poses an urgent threat, particularly as China races to lead the world in AI. To streamline the development of a policy response that aligns with the SAFE Innovation Framework, Schumer has tasked committees with developing bipartisan legislation and convened a bipartisan group of non-committee chairs to assist with the effort, including Sens. Mike Rounds (R-S.D.), Todd Young (R-Ind.) and Martin Heinrich (D-N.M.). Schumer also announced that in fall 2023, he plans to begin holding "AI Insight Forums" in which top AI experts will brief Congress on AI-related topics, including workforce, national security, privacy and liability, use cases and risk management, and guarding against doomsday scenarios. Work on a comprehensive AI bill is currently ongoing. It is unclear if there is enough collective momentum in the Senate to adopt a new AI policy, but Schumer's push gives the effort higher priority within the chamber.

Relatedly, on July 18, 2023, the HASC Subcommittee on Cyber, Information Technologies, and Innovation (CITI) held a [hearing](#) titled "Man and Machine: Artificial Intelligence on the Battlefield." The CITI subcommittee received testimony from industry and other subject matter experts on the barriers that prevent the DOD from adopting and deploying AI effectively and safely, the DOD's role in AI adoption and the risks to the DOD from adversarial AI.

## China Competition Updates

Congress has continued its work on strategic competition between the U.S. and China. During the July 4, 2023, district work period, HASC Chairman Mike Rogers (R-Ala.) and Ranking Member Adam Smith (D-Wash.) led a congressional delegation (CODEL) to the Indo-Pacific region. The CODEL was focused on what must be done to maintain a free and open Indo-Pacific and deter aggression by China and the Chinese Communist Party (CCP). The CODEL heard from military and civilian leaders for the U.S., the Philippines, Taiwan and Japan on what is being done to deter aggression by the CCP and boost defenses for the U.S., allies and partners in the face of that challenge. They also heard from U.S. Indo-Pacific Command (INDOPACOM) Commander Adm. John Aquilino and discussed what needs to be done on Guam to boost INDOPACOM capabilities in the region. The CODEL also met with Taiwan

President Tsai Ing-wen and relayed U.S. support and potential of defense assistance from the U.S. Finally, the CODEL reaffirmed the crucial and bipartisan role the NDAA and Congress play in deterring the CCP's aggression.

The House Select Committee on the CCP also held a [hearing](#) on July 13, 2023, titled, "Risky Business: Growing Peril for American Companies in China." The hearing focused largely on private industry's economic, national security and even personal dangers of companies doing business in China. A week later, the committee held another hearing on the Biden Administration's China strategy. Witnesses included administration officials from the DOD, State Department and the U.S. Department of Commerce.

## National Security and SASC Nominations

During the 118th Congress, President Biden has made numerous high-profile nominations, including that of [U.S. Air Force Gen. Charles Q. Brown](#) to be the next Chairman of the Joint Chiefs of Staff, which was profiled in the [May 2023 Holland & Knight Defense Situation Report](#). The chairman role is the highest-ranking military officer in the country and serves as the principal military advisor to the president. On July 11, 2023, the SASC held a [hearing](#) to consider the nomination of Brown. At his hearing, Brown told the SASC that one of his highest priorities is ensuring that the military accelerates development and maintain deterrence initiatives to provide opportunities to the branches.

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

- 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
- Cara Abercrombie to be Assistant Secretary of Defense for Acquisition
- Air Force Lt. Gen. Timothy Haugh to be Commander of the U.S. Cyber Command and the Director of the National Security Agency (NSA); if confirmed, Haugh will replace Gen. Paul Nakasone, who has held both positions since 2018 and was asked to stay on for another year after his four-year term lapsed last year
- U.S. Marine Corps Gen. Eric Smith to be the top officer of the Marine Corps; Smith currently services as the Marines' No. 2 officer
- Air Force Lt. Gen. Gregory Guillot to lead U.S. Northern Command, which oversees military forces in North America; this position also heads the North American Aerospace Defense Command, which is tasked with defending U.S. and Canadian airspace and made news during the siting of the Chinese high-altitude balloon, which was covered in the [April 2023 Holland & Knight Defense Situation Report](#)
- Air Force Lt. Gen. Jeffrey Kruse to be Director of the Defense Intelligence Agency; Kruse currently serves as the military affairs advisor for Director of National Intelligence Avril Haines
- Air Force Maj. Gen. Heath Collins to be Director of the Missile Defense Agency (MDA); Collins is currently MDA's program executive officer for ground-based weapons systems

## Biden Sends Other High-Profile Nominations to the Senate

On July 21, 2023, President Biden [announced](#) his intent to send numerous high-profile nominations to the Senate. The nominations list included:

- Adm. Lisa Franchetti to be Chief of Naval Operations; if confirmed, she would become the first woman to lead the U.S. Navy and the first woman to serve on the Joint Chiefs of Staff
- Vice Adm. James Kilby to be Vice Chief of Naval Operations
- Adm. Samuel Paparo to be Commander of Indo-Pacific Command
- Vice Adm. Stephen "Web" Koehler to be Commander of Pacific Fleet

## EXECUTIVE AND DEPARTMENTAL UPDATES

### Ukraine Updates

During President Biden's trip to Europe, North Atlantic Treaty Organization (NATO) leaders agreed to work to make Ukraine a member of the alliance. NATO Secretary Gen. Jens Stoltenberg said the allies have agreed to a three-element package that will bring Ukraine closer to NATO and agreed to a new multiyear assistance program for Ukraine to speed up the transition from Soviet-era doctrines and equipment to NATO standards. This new package will "help rebuild Ukraine's security and defense sector, and to cover critical needs like fuel, demining equipment and medical supplies," Stoltenberg said. At the summit, leaders also approved a new defense production action plan, which will accelerate joint procurement, boost interoperability and generate investment and production capacity.

In the past month, the Biden Administration announced three drawdowns of equipment from DOD inventories to meet Ukraine's national security needs. These drawdowns represent the [41st](#), [42nd](#), and [43rd](#) drawdowns of equipment since August 2021 and are valued at up to \$500 million, \$800 million and \$400 million, respectively. These drawdowns include key capabilities to support Ukraine's air defense, containing artillery, anti-armor capabilities and ammunition comprising tens of millions of rounds of small ammunition, including that for the Patriot air defense systems, High Mobility Artillery Rocket Systems (HIMARS) and Stinger anti-aircraft systems.

The latter package also contains additional artillery systems and ammunition, including dual-purpose improved conventional munitions (DPICM), which the DOD is providing for the first time to Ukraine. Though DPICMs – which are colloquially known as "cluster bombs" or "cluster munitions" – have been recognized by a disarmament treaty by the United Nations in 2008, the Biden Administration said that it "conducted extensive consultations with Congress and our Allies and partners" in determining their use in Ukraine.

Additionally, the Biden Administration [announced](#) another package totaling up to \$1.3 billion, which included critical air defense capabilities and munitions. The package is being provided under the Ukraine Security Assistance Initiative (USAI). Unlike presidential drawdown authority, 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 or partners. This announcement represents the beginning of a contracting process to provide additional priority capabilities to Ukraine.

In total, the U.S. has committed more than \$42 billion in security assistance since the beginning of the war in Ukraine in February 2022.



## **U.S. Sends First Package of Weapons to Taiwan**

For the first time, the U.S. decided to send weapons to Taiwan under the same authority that the Biden Administration has been sending to Ukraine. On July 28, 2023, the Biden Administration [announced](#) a drawdown of equipment from DOD stocks valued at up to \$345 million. The DOD has said that this drawdown "includes self-defense capabilities that Taiwan will be able to use to build to bolster deterrence now and in the future."

Because of the aforementioned and unprecedented attention that Congress is giving to competition to China, the U.S. government's decision to send arms to Taiwan is support that the island's defense is necessary to thwart any potential Chinese attack or invasion. This drawdown of equipment is only the first, as Congress authorized nearly \$1 billion for presidential drawdowns of equipment in the FY 2023 NDAA passed last year.

## **New Force Development and Emerging Capabilities Office**

In a reorganization, the DOD created a new office within the Office of the Secretary of Defense (OSD) combining the Emerging Capabilities Policy Office with the Force Development Office to become a new Force Development and Emerging Capabilities Office. The DOD has been reorganizing its policy team and, in a statement, said that the new office will "enhance OSD Policy's work on force development, emerging capabilities, and strategy development and implementation." This is consistent with the 2022 National Defense Strategy, which seeks to rapidly evolve complex domain interactions and new, emerging capabilities.

Michael Horowitz assumed the new role as Deputy Assistant Secretary of Defense for Force Development and Emerging Capabilities. Horowitz has more than 20 years of experience in leadership, research and academic roles focused on international security issues. He is currently on a leave of absence from the University of Pennsylvania, where he served as Director of Perry World House and Richard Perry Professor. His expertise includes defense innovation, the intersection of emerging technologies such as artificial intelligence and robotics with global politics, the role of leaders in international politics and geopolitical forecasting methodology. Horowitz previously served in the Pentagon, working on force development issues in the Office of the Under Secretary of Defense for Policy.

## **DOD Makes Changes to Office of the Under Secretary for Research and Engineering**

The DOD on July 12, 2023, announced the establishment of three new Assistant Secretaries of Defense (ASD) positions, along with eight Deputy Assistant Secretaries of Defense (DASD), in the Office of the Under Secretary of Defense (OUSD) for Research and Engineering (R&E). The ASDs will replace the role of the Deputy Chief Technology Officer. The three new ASDs were temporarily appointed to perform the new duties until an individual is appointed to the position by the president with the advice and consent of the U.S. Senate. The new ASDs are under the authority, direction, and control of the OUSD(R&E) and are the principal advisors to the USD(R&E) for their respective areas in helping improve U.S. capability and concepts to degrade an adversary's effects and related matters.

The first ASD established is the Assistant Secretary of Defense for Science and Technology (S&T), whose office will be temporarily led by Steven Wax. Below the ASD(S&T) are three new DASDs, including DASD S&T Foundations, DASD S&T Futures and DASD S&T Program Protection. The

second is the Assistant Secretary of Defense for Critical Technologies (CT), which will temporarily be led by Maynard Holliday. Below the new ASD(CT) will be DASD Applied Technology and DASD Enabling Technology. The third new ASD will be the Assistant Secretary of Defense for Mission Capabilities (MC), temporarily led by Thomas Browning, with the creation of a Principal DASD(MC). Below the new ASD(MC) will be DASD Multi-Domain Joint Operations, DASD Prototypes and Experiments and DASD Mission Integration.

## **GAO Report Says DOD Lacks AI Guidance**

In the FY 2021 NDAA, Congress included a provision for the Government Accountability Office (GAO), which functions as the watchdog for Congress, to review the DOD's AI acquisition efforts. The report examined key factors that select private companies reported considering when acquiring AI capabilities and the extent to which the DOD has department-wide AI acquisition guidance. The [GAO report](#) found that, although numerous entities across DOD are acquiring, developing or already using AI, DOD has not issued department-wide guidance for how its components should approach acquiring AI. Though the DOD is in the process of planning to develop such guidance, it has not defined concrete plans and has no timeline to do so. Furthermore, the military services also lack AI acquisition-specific guidance, though military officials noted that such guidance would be helpful to navigate the AI acquisition process.

According to the report, the GAO says that without department-wide and tailored service-level guidance, the DOD is missing an opportunity to ensure that it is consistently acquiring AI capabilities in a manner that accounts for the unique challenges associated with AI. As such, the GAO made four recommendations for the DOD and three military departments to develop guidance on acquiring AI capabilities, leveraging private company factors as appropriate.

## **MOA Signed to Strengthen U.S. Defense Industrial Base Through Semiconductor Chips**

The U.S. Department of Commerce and the DOD signed a Memorandum of Agreement (MOA) to expand collaboration to strengthen the U.S. semiconductor defense industrial base. The agreement will increase information sharing between the Departments to facilitate close coordination on the CHIPS for America's incentives program, ensuring that their respective investments position the U.S. to produce semiconductor chips essential to national security and defense programs.

The MOA is a crucial step forward in implementing the bipartisan CHIPS and Science Act. The MOA will seek to strengthen manufacturing and supply chains at home, solidify America's global leadership and protect long-term national security.

By aligning priorities and decision-making, the MOA will try to enable a more synchronized approach to promoting a robust and resilient semiconductor supply chain. Specific areas of consultation identified in the MOA include sharing information on the semiconductor needs of the Defense Industrial Base, investment priorities of DOD and each military service, existing and planned investments to sustain mature and legacy chip capabilities for current defense programs, and funding to support emerging technologies that are critical to future U.S. national security programs.

The MOA will also facilitate collaboration on potential investment applications to ensure Commerce and DOD are making complementary decisions that maximize federal investments under the CHIPS Incentive Program and DOD Defense Production Act and Industrial Base Analysis and Sustainment funds.



## DIU Solicitations

In the past month, the Defense Innovation Unit (DIU), which focuses on leveraging new technologies for the U.S. military from, published two new solicitations.

The first solicitation is for a novel responsive space delivery. The ability to rapidly reconstitute space-based capabilities or resupply payloads or cargo at precise locations for time-sensitive logistics (in-space or terrestrially) is a critical but presently nonexistent capability that contributes to sustained U.S. economic leadership in space and builds an enduring advantage that may be leveraged during times of crisis or conflict. The DOD seeks novel commercial solutions that enable responsive and precise point-to-point delivery of cargo to, from and through space. Doing so in a cost-effective manner at scale requires solutions that leverage reusable or serviceable technologies to move a wide variety of cargo where and when it is needed. Awarded companies will prototype autonomous delivery for one or more of three distinct modalities: from Earth to a mission-designed orbit or trajectory in space, orbital return from space to the Earth to a precise point of recovery and through space from one orbit to another.

The second solicitation is for a large-diameter unmanned underwater vehicle (LD UUV). The U.S. Navy lacks the ability to have dispersed, long-range, persistent underwater sensing and payload delivery in contested environments without utilizing sailors aboard strategic submarine assets. The Navy is looking to supplement its submarine force with large-diameter, scalable, (relatively) low-cost autonomous unmanned systems with persistent reach (range and depth) and payload capacity in the execution of Intelligence Preparation of the Environment (IPOE) and Subsea and Seabed Warfare (SSW) mission sets. In order to actualize these requirements, the Navy seeks to take advantage of industry advances in underwater autonomous technology to quickly evaluate, experiment with and iterate on commercially available large diameter platforms.

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