

Holland & Knight Defense Situation Report: September 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

NDAAs Readying Conference Committee

After a month dominated by contentious negotiations over federal spending, border security and sending additional aid to Ukraine, and despite vows from House Republicans to take a resolute stance against the Pentagon's social policies that could delay progress on the \$886 billion bill once considered a must-pass, House lawmakers voted overwhelmingly to begin formal negotiations with their Senate counterparts on a compromise defense policy bill, the National Defense Authorization Act (NDAA) for fiscal year (FY) 2024. The 393-27 vote authorized a conference committee with the Senate to resolve differences between the House and Senate versions of the NDAA before it is presented to President Biden for signing.

The Republican-led House and Democrat-led Senate passed different versions of the NDAA in July. In the House, a version of the NDAA containing hotly debated social policy provisions, such as blocking the Pentagon's abortion travel policy, barring funds for gender-affirming care for transgender troops and limiting diversity and inclusion efforts in the ranks, passed narrowly along party lines. The Senate passed its own version with broad bipartisan support. Debate over these issues presents an obstacle as the conference committee begins its work.

Negotiators will also have to reconcile differences over whether to shutter the U.S. Department of Defense's (DOD) Cost Assessment and Program Evaluation Office, reestablish the chief management officer and appoint a Ukraine aid watchdog.

House and Senate Armed Services Committees (HASC and SASC, respectively) leaders have downplayed concerns over the NDAA's path forward. The "four corners" of HASC and SASC leadership all expressed confidence that the conference committee will reach an agreeable joint bill. For example, HASC Chairman Mike Rogers (R-Ala.) has said "we're not going to let this toxic environment poison our efforts."

Because the NDAA typically runs parallel to the appropriations bills, it's likely that the FY 2024 NDAA would pass later in the year, which has happened the past few years. However, the congressional environment may throw a wrinkle into those plans.

Appropriations and Running Up Against a Shutdown

Debates among certain House Republican groups have led to uncertainty with regard to passing the \$826 billion Department of Defense Appropriations Act (H.R. 4365), which failed to pass after a few roll

call votes. Speaker Kevin McCarthy (R-Calif.) has thus far been unable to gain concessions from his entire Republican Caucus who want assurances that FY 2024 appropriations will not exceed a ceiling of \$1.47 trillion. This number is \$120 billion less than what McCarthy and President Biden agreed to in May as part of their negotiations to raise the debt limit.

Even if Republicans come to a consensus and are able to pass the defense appropriations bill, opposition from congressional Democrats and President Biden presents additional challenges. The White House issued a [statement of administration policy](#) on Sept. 11, 2023, expressing disappointment about the defense appropriations bill, saying that it would cut domestic spending to levels far below the amount previously agreed upon. The statement warned that if President Biden was presented H.R. 4365 in its current state, he would veto it.

As of this writing, there is no clear path to a continuing resolution (CR). Moving forward, House Republicans' strategy appears to be to get any form of legislation to the floor so that they can move to negotiation with the Senate. With a government shutdown looming when the new fiscal year begins on Oct. 1, 2023, Congress will have to pass a CR to keep the government open. But even the prospects of that are uncertain as the on-again/off-again vote schedule of appropriations bills on the House floor has been in flux.

Up to this point, senators have largely deferred to the House with regard to moving a legislative vehicle for a short-term CR. Senate Majority Leader Chuck Schumer (D-N.Y.) has floated the idea of advancing a CR but has not done so yet.

Biden Sends FY 2024 Anomaly Requests

The Biden Administration on Aug. 10, 2023, asked Congress to pass a short-term government funding CR in anticipation of the fiscal year's end on Sept. 30. The [request](#), which was officially sent from White House Office of Management and Budget (OMB) Director Shalanda Young, said the extension would give lawmakers additional time to strike a deal on a broader measure to keep the government open beyond the deadline. The administration's requested CR would also include funding to address what it considers to be critical emergency supplemental needs, including \$44 million in immediate funding, additional money for aid to Ukraine and \$16 billion for disaster relief amid flooding in Vermont, wildfires in Hawaii and hurricanes that battered the southeast U.S.

In addition, on Sept. 22, 2023, Young directed agencies to begin updating their [shutdown contingency plans](#) should Congress not strike a deal to pass a CR. Relatedly, Holland & Knight's [Government Contracts Group](#) published a blog, "[A Contractor's Guide to the Impending Government Shutdown](#)," and the Public Policy & Regulation Group published an alert, "[Government Shutdown Advisory: Summary of Contingency Plans for Lapse in Appropriations](#)."

AUKUS

Debates over AUKUS – the trilateral security pact between the U.S., United Kingdom and Australia that was covered in the [March 2023 Holland & Knight Defense Situation Report](#) – have proven to be another sticking point in Congress as the House and Senate race to pass critical defense authorizing and spending legislation. President Biden sought to send conventionally armed, nuclear-powered submarines and share classified technology with Australia, as promised under an agreement brokered between AUKUS member states, but he requires congressional approval to do so. British and

Australian officials also want U.S. lawmakers to approve an exemption for the U.K. and Australia to the United States' International Traffic in Arms Regulations (ITAR) exports regime. This policy sets strict restrictions on sensitive defense exports.

A growing cohort of congressional Republicans is calling for the U.S. to step up its production of nuclear-powered submarines before selling them as part of AUKUS, arguing that the U.S. is not prepared to transfer at least three Virginia-class submarines to Australia by the early 2030s as is planned under the current agreement. Sen. Roger Wicker (R-Miss.), the top Republican on the SASC, led a group of 25 congressional Republicans in [arguing](#) that selling submarines to Australia without a clear plan to replace them would "unacceptably weaken" the U.S. fleet while China expands its military power.

Australian and British authorities have expressed concern about the deadlock in Congress and have urged that the exemptions to ITAR be granted expeditiously.

National Security and SASC Nominations

After a long hold on military nominations, the Senate confirmed the appointment of three military leaders to positions within the DOD. The Senate voted with overwhelming bipartisanship to confirm Air Force Gen. CQ Brown to be Chairman of the Joint Chiefs of Staff, Gen. Randy George as Army Chief of Staff and General Eric Smith as Marine Corps Commandant.

The Joint Chiefs of Staff Chairman role is the highest-ranking military officer in the country and serves as the principal military advisor to the president. As was covered in the [July 2023 Holland & Knight Defense Situation Report](#), Brown is now the first Black person to lead any military branch and has become the second Black Joint Chiefs Chair in U.S. history following Colin Powell. It is also the first time in U.S. military history that the top two DOD positions are held by African Americans, the other being U.S. Defense Secretary Lloyd Austin.

Despite these nominations, the current Senate hold on military promotions has affected more than 300 general and flag-officer nominations and continues to affect the transition of leadership, the DOD has argued.

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 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
- 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 sighting 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

EXECUTIVE AND DEPARTMENTAL UPDATES

Zelensky Visit and Ukraine Aid

Ukrainian President Volodymyr Zelenskyy made a visit to the U.S. on Sept. 19, 2023, to press Congress for more aid for his country's war with Russia. This visit, Zelenskyy's second since the beginning of the war, comes under more politically delicate circumstances, with growing skepticism among Republican lawmakers about sending another massive sum of aid to Ukraine and a largely inconsequential counteroffensive against Russia aimed at showcasing Ukraine's resolve and momentum to its Western allies. While Senate Minority Leader Mitch McConnell (R-Ky.) continues to advocate in favor of ongoing defense and financial assistance to Ukraine, House Speaker McCarthy indicated that he seeks to use Zelenskyy's visit to gain a better understanding of Ukraine's plan for victory and to hold Zelenskyy accountable for money already spent before committing to more aid. Aid to Ukraine is a major point of intraparty strife among House Republicans as Congress approaches a government shutdown.

In the past month, the Biden Administration announced four drawdowns of equipment from DOD inventories to meet Ukraine's national security needs. These represent the [44th](#), [45th](#) and [46th](#) drawdowns of equipment since August 2021 and are valued at up to \$200 million, \$250 million and \$175 million, respectively. The drawdowns include key capabilities to support Ukraine's additional air defense munitions, artillery and tank ammunition, anti-armor weapons and other equipment 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.

Additionally, the Biden Administration announced another package totaling up to \$600 million, 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 \$43 billion in security assistance since the beginning of the war in Ukraine in February 2022.

Deputy Defense Secretary Announces "Replicator Initiative"

Amid ongoing ingenuity and innovation, which remains at the heart of the U.S. military's strategic advance as it confronts the pressing challenges in the Indo-Pacific, Deputy Secretary of Defense Kathleen Hicks unveiled a new DOD initiative aimed at directly countering the People's Republic of China's (PRC) rapid buildup of its armed forces. The new department-wide initiative, which she coined the "Replicator Initiative," will prompt DOD to field thousands of autonomous systems across multiple

domains within the next 18 to 24 months. She said that through the initiative, the U.S. will augment its manufacturing and mobilization capabilities "with our real comparative advantage, which is the innovation and spirit of our people." As the 2022 National Defense Strategy, which we highlighted in the [November 2022 Holland & Knight Defense Situation Report](#), underscores the PRC's efforts to expand and modernize nearly every aspect of its military as it aims to offset U.S. military advantages in the Indo-Pacific and around the globe. As such, Hicks said that the Replicator Initiative is focused not only on production, but the whole-of-department approach to innovation and the ability to quickly field technology.

The initiative will begin with all-domain, "attritable" autonomy to help overcome China's advantage in mass: more ships, more missiles, more forces. These capabilities "can help a determined defender stop a larger aggressor from achieving its objectives, put fewer people in the line of fire, and be made, fielded, and upgraded at the speed warfighters need without long maintenance tails," Hicks said. Examples of these capabilities are self-piloting ships and uncrewed aircraft.

The DOD has recently observed the need to eliminate roadblocks and smooth processes in order to create a speedier innovation ecosystem that can be adopted by the department. As such, the DOD is hoping to "incentivize more joint experimentation and concept development" and to bridge the "valley of death" between developing an idea and deploying a capability. The DOD is also accelerating software acquisition and procurement of innovative technologies.

Hicks confirmed that the Replicator Initiative will not be a new program of record and the DOD will not ask for funding in FY 2024 as the new initiative will use "existing funding, existing programming lines, and existing authorities to accelerate production and delivery at scale – by exerting leadership focus and attention on a singular operational challenge and maturing solutions." Finally, Hicks said that "this is about driving cultural change just as much as technology change – and about replicating best practice just as much as products so that we can gain military advantage faster."

DOD Announces Establishment of Generative AI Task Force

The DOD announced the establishment of a generative artificial intelligence (AI) task force, an initiative that reflects the DOD's commitment to harnessing the power of artificial intelligence in a responsible and strategic manner. Deputy Secretary of Defense Kathleen Hicks directed the organization of Task Force Lima, which will play a pivotal role in analyzing and integrating generative AI tools, such as large language models (LLMs), across the DOD.

Led by the Chief Digital and Artificial Intelligence Office (CDAO), Task Force Lima will assess, synchronize and employ generative AI capabilities across the DOD, ensuring the department remains at the forefront of cutting-edge technologies while safeguarding national security. AI has emerged as a transformative technology with the potential to revolutionize various sectors, including defense. By leveraging generative AI models, which can use vast datasets to train algorithms and generate products efficiently, the DOD aims to enhance its operations in areas such as warfighting, business affairs, health, readiness and policy.

DOD Releases New Cybersecurity Strategy

On Sept. 12, 2023, the DOD released an unclassified summary of its classified [2023 Cyber Strategy](#). The strategy, which DOD transmitted in May, is the baseline document for how the DOD is operationalizing the priorities of the 2022 National Security Strategy, 2022 National Defense Strategy,

and 2023 National Cybersecurity Strategy. It also builds on goals set forth in the [2018 DOD Cybersecurity Strategy](#), which was the previous time the DOD set forth its cybersecurity goals.

As was covered in the [March 2023 Holland & Knight Defense Situation Report](#), this is a follow-on from the Biden Administration's 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. The strategy also highlights DOD's actions to invest in and ensure the defense, availability, reliability and resilience of its cyber networks and infrastructure to support non-DOD agencies in their related roles and to protect the defense industrial base.

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, it recognizes the need to address the growing threat of ransomware and other malicious software.

DOD Releases Space Policy Review and Strategy on Protection of Satellites

The DOD recently released to Congress a [combined response](#) to the FY 2022 NDAA requirement for a Space Policy Review and the FY 2023 NDAA requirement to make publicly available an unclassified strategy for the protection and defense of on-orbit assets.

According to the DOD, space plays a critical role in American security, prosperity and way of life and is critical to overall military effectiveness across the entire Joint Force. The DOD is investing in space at the highest level ever to deter aggression and, if deterrence fails, to be prepared to prevail in conflict. Informed by the 2022 National Defense Strategy and other Department- and national-level guidance, the response to Congress communicates the strategy of the DOD to defend its national security interests in space from the growing scope and scale of counterspace threats by assuring critical space-based missions. It carries these missions by accelerating the transition to more resilient architectures and by protecting and defending critical systems against counterspace threats; strengthening the ability to detect and attribute hostile acts in, from and to space; and protecting the Joint Force from adversary hostile uses of space.

DIU Solicitations

In the past month, the Defense Innovation Unit (DIU), which focuses on leveraging new commercial technology adaptation for the U.S. military, published one new solicitation, for a tactical range extender enhancer. The DOD has historically engaged in operations far from U.S. territories, necessitating expansive logistics tails in order to operate effectively. In the near future, the DOD will likely operate in distant and dispersed locations and may face increased threats and obstacles to logistical supply lines unencountered in the previous half-century. As such, the DOD is focusing on reducing demand on the supply system in order to maintain complete operational ability to meet any mission. Currently, one of



the major components and consumers of the logistic footprint is liquid fuel necessary to power equipment such as tactical vehicles. Future fleets of tactical vehicles may largely incorporate battery electric drivetrains to capitalize on the advanced mobility and tactical advantages incumbent to electric vehicles. However, vehicles with only a single all-electric, battery-driven powertrain create range and recharging obstacles to full mission accomplishment. This is attributed to not being able to package the required amount of energy storage onboard an existing tactical vehicle. The DOD seeks a commercial solution that would extend the range of its future fleet of ground vehicles that use a single all-electric powertrain.

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