

Holland & Knight Defense Situation Report: October 2023

A monthly roundup of defense policy news

Welcome back to Holland & Knight's monthly defense news update. We are pleased 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 the authors or members of Holland & Knight's [National Security, Defense and Intelligence Team](#).

LEGISLATIVE UPDATES

NDAAs Update

The uncertainty that surrounded the National Defense Authorization Act (NDAA) for fiscal year (FY) 2024 throughout September continued into October, raising concerns about the fate of this "must pass" bill. 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. 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. Other items, such as the amount of funding for the Defense Innovation Unit (DIU), which focuses on leveraging new commercial technology adaptation for the U.S. military, will have to be hashed out as the House bill included \$1 billion for a "Non-Traditional Innovation Fielding Enterprise" portfolio of investments, whereas the Senate included only \$100 million. Debate over these issues presents an obstacle as the conference committee begins its work.

The process of reconciling the House and Senate versions of the bill began in September, with the House formally voting to create a conference committee comprising House Armed Services Committee (HASC) members, along with representatives from many other committees in the House. The Senate has yet to formally vote on its conference committee members.

However, HASC and Senate Armed Services Committee (SASC) 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 and leaders will want to pass the NDAA before Thanksgiving, though timing may likely slip to December. This sentiment was echoed by the newly elected House Speaker and former member of the HASC, Rep. Mike Johnson (R-La.), who proposed in a letter to his colleagues that the House and Senate would conference between October and November and pass the conference report for the FY 2024 NDAA in December.

Defense Appropriations

The Republican-controlled House approved its version of the FY 2024 Department of Defense Appropriations Act ([H.R. 4365](#)) on Sept. 28, 2023, by a narrow vote of 218-210. The bill was agreed to after weeks of infighting among House Republicans that saw the defense appropriations legislation get derailed twice. The draft that passed also included some hotly debated social policy provisions. A measure to provide \$300 million in aid for arming and training the Ukrainian military was also removed

from the bill to make way for its passage. The House approved the aid to Ukraine separately by a vote of 311-117. Nonetheless, because the 2023 fiscal year was set to end on Sept. 30, 2023, Congress passed a continuing resolution minutes before a shutdown that extended the funding for federal agencies until Nov. 17, 2023.

The defense appropriations bill often runs parallel to the NDAA. If the House and Senate draft a consensus bill of the NDAA and pass it before the end of this year, it is highly likely that the defense appropriations bill will pass as well. However, this also means that the defense appropriations bill faces many of the same obstacles in the Senate that the NDAA is facing. In the Democrat-controlled Senate, the House's version of the defense appropriations bill is facing steep opposition for the inclusion of contentious social issues and the pared-down efforts to send aid to Ukraine. Further, President Joe Biden has vowed to veto legislation that cuts down on or defunds the Pentagon's diversity programs or rescinds Pentagon policies that provide support for servicemembers seeking gender-affirming care, abortions or other reproductive health care. Even if Congress produces agreed-upon versions of the NDAA and the defense appropriations bill by the end of the calendar year, opposition from President Biden could undermine lawmakers' progress.

Congressional Hearings

On Oct. 18, 2023, the SASC and Senate Committee on Veterans' Affairs (SVAC) held a joint hearing titled "Military to Civilian Transition: Ensuring Success After Service." The first panel featured senior executives from various agencies including Acting Under Secretary of Defense for Personnel and Readiness Ashish Vazirani, U.S. Department of Veterans Affairs Under Secretary for Benefits Joshua Jacobs, Chief Veterans Experience Officer Josh Boerstler, Assistant Secretary of Labor for Veterans Employment and Training (DOL VETS) James Rodriguez, and Director of Education, Workforce, and Income Security at the U.S. Government Accountability Office (GAO) John Sawyer. The second panel included witnesses from various Veterans Service Organizations (VSOs), including the Veterans of Foreign Wars, Blue Star Families, the American Legion and Kansas State University's Office of Military and Veterans Affairs.

The purpose of the joint hearing was to closely examine the workforce pipeline for service members returning to civilian life and increasing workforce opportunities for veterans. Witnesses and senators discussed the Transition Assistance Program since the last NDAA and recent publications from the GAO on the successes and limitations of transition programs, as well as the DOD Skillbridge program. The hearing came as the SASC, SVAC and their counterpart committees in the House, the HASC and House Veterans' Affairs Committee (HVAC), are looking to pass a Veterans and returning service member legislative package before Veterans Day in November.

On Oct. 19, 2023, the HASC Subcommittee on Cyber, Information Technologies, and Innovation (CITI) held a hearing titled, "Can It work? Outside Perspectives on DOD's Replicator Program." The subcommittee received testimony from nongovernmental experts on the DOD's recently announced Replicator initiative, which, as covered in the [September 2023 Holland & Knight Defense Situation Report](#), is a program that the DOD says will attempt to bolster America's military capacity through the development of new technologies – primarily attritable, autonomous systems. The DOD has expressed the goal of purchasing multiple thousands of these systems over the next 18 to 24 months to stimulate the U.S. defense industrial base, citing its use as a cheap, energy-effective and -efficient method for countering enemy aggression.

Members of the committee and witnesses expressed a great deal of concern with Chinese military capacity and pointed to the Replicator program as an attempt to counter this expanding capacity. However, witnesses discussed whether the explicit goals of the Replicator program were sufficient for meeting American military demands. Witnesses expressed that Replicator's focus on mass alone ignored other crucial elements of warfighting, such as innovation. Witnesses argued that simply matching the amount of weaponry China has is less efficient than developing a system that enables rapid experimenting, testing and deployment of systems. Instead, they discussed the importance of a modernized innovation model that would put the U.S. ahead of China and suggested that new funding lines should be created to leverage the initiative.

DOD Nominations

Hamas' attack on Israel and heightened violence in the Gaza Strip have drawn additional attention to Sen. Tommy Tuberville's (R-Ala.) ongoing hold on hundreds of Pentagon promotions and appointments. Among the nearly 300 DOD officials whose nominations have been put on hold are several high-ranking postings in the Middle East that are relevant to the emerging crisis in Israel. Although Democrats have long refused to go through the time-consuming process of bringing up individual nominations for a vote, which Senate Majority Leader Chuck Schumer (D-N.Y.) has the option to do for any nomination, it is unclear so far whether the growing urgency of the conflict in Israel will prompt Schumer to do so. While Senate Minority Leader Mitch McConnell (R-Ky.) has said he opposes Tuberville's hold, the Republican conference has not successfully convinced Tuberville to reverse course.

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

- Vice Adm. Charles B. Cooper to be deputy commander of U.S. Central Command
- Rear Adm. George M. Wikoff to be commander of the U.S. Navy's Fifth Fleet
- Adm. Lisa Franchetti to be chief of naval operations, though she has been carrying out this role in an acting capacity in the interim
- 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

ISRAEL, UKRAINE AND FOREIGN MILITARY ASSISTANCE

On Oct. 20, 2023, the Biden Administration [announced a supplemental funding request](#) from Congress worth nearly \$106 billion for emergency funds for Israel, Ukraine, the Indo-Pacific and America's borders. More than half of the request, approximately \$61 billion, is assistance for Ukraine. The package also includes approximately \$14 billion that would boost Israel's defenses, as well as \$10 billion for humanitarian assistance to civilians in Gaza. Though it does not specifically ask for funding for Taiwan, the request includes funding to strengthen security in the Indo-Pacific region, particularly to address ongoing and emerging threats from China. Across these initiatives, the administration says that the supplemental funding will ensure American military readiness by investing more than \$50 billion within the American defense industrial base through replenishment funding and other forms of security assistance, such as foreign military financing and the Ukraine Security Assistance Initiative. Without additional replenishment funding, the request states, the DOD will be unable to continue to backfill the military services for equipment provided via drawdown to Ukraine and Israel, thereby degrading U.S. readiness. Finally, in what is largely seen as a bid to win over Republicans, the request includes funding for national security at the U.S.-Mexico border to combat fentanyl trafficking.

Israel

After an unprecedented cross-border attack in Israel on Oct. 7, 2023, from Hamas, which is based in the Gaza Strip, Israel formed an emergency unity government as it declared war on Hamas. As such, there have been calls for U.S. assistance both for Israeli defense and humanitarian assistance to civilians in Gaza. Since the attacks, members of Congress have voiced bipartisan support for providing aid to Israel, with both President Biden and Congress pledging swift support. Senate Majority Leader Chuck Schumer, who sets the Senate vote schedule, said that the Senate "stands ready to deliver on additional needs."

In an unclassified briefing to congressional leadership in both chambers of Congress and the heads of national security-focused committees, Biden Administration officials told lawmakers that precision-guided munitions and more interceptors for Israel's Iron Dome air defense system are most urgently needed. Israel has also specifically asked for more U.S.-made small-diameter bombs.

Although there is widespread support in Congress for aid to Israel, there is disagreement among appropriators over whether aid to Israel should be linked with aid to Ukraine. Skepticism over whether to send additional aid to Ukraine is growing among congressional Republicans as progress against Russia stalls. Sen. Chris Murphy (D-Conn.) has said that the crises in Israel and Ukraine "are both exigent fights that are directly tied to U.S. national security. I want to get Israel done, but we cannot leave Ukraine behind."

The administration has the ability to send up to \$100 million in aid to any ally it pleases using presidential drawdown authority, but it is unclear how soon supplemental aid can be approved, at least in the House, since Mike Johnson was elected speaker. Lawmakers have said they are eager to pass both a bipartisan resolution demonstrating U.S. support for Israel and send supplemental aid, but the House could not take any meaningful legislative action until a permanent speaker was voted in place. Johnson has said that one of the first orders of business is to vote on a resolution condemning Hamas' attack. Others in Congress argued that the violence in Israel and Gaza motivated House Republicans to overcome their impasse more quickly and elect a speaker.

In the meantime, a bipartisan group of senators who sit on the SASC sent a [letter](#) to U.S. Secretary of Defense Lloyd Austin requesting that the DOD immediately send Israel two Iron Dome batteries. In the letter, they write that "the United States Army is currently in possession of two Iron dome batteries that have not been deployed and have no operational use inside the United States." Another bipartisan group of senators led by Sens. Murphy and Katie Britt (R-Ala.), the top two legislators on the Senate Appropriations Subcommittee on Homeland Security, [called](#) for an increase in funding for the Federal Emergency Management Agency's (FEMA) Nonprofit Security Grant Program (NSGP) to be included in any supplemental funding package considered by Congress. This program is funded through the Department of Homeland Security and provides funding support for target hardening and other physical security enhancements to nonprofit organizations, including synagogues and other places of worship, that are at high risk of terrorist attack.

Further contributing to the uncertainty is Sen. Tuberville's ongoing blockade of military nominations. Democrats aim to fast-track the nomination for the U.S. ambassador to Israel, but whether they will take the same approach and hold standalone votes for military nominees is unclear. As of now, the nominees for deputy commander of U.S. Central Command and several top positions in the Middle East have been delayed by Tuberville's hold on military confirmations.

Ukraine

Ukrainian President Volodymyr Zelenskyy visited the U.S. in late September amid growing skepticism among congressional Republicans about sending additional military aid to Ukraine as its long-planned counteroffensive against Russia seems to stall. The White House had asked Congress for an additional \$24 billion in aid for Ukraine in the annual defense spending bill, but this request has sat idle throughout October.

Funding for Ukraine in the Department of Defense Appropriations Act was also a source of controversy as the House negotiated the bill in late September. Initially, \$300 million in new aid to Ukraine was included in the Pentagon spending bill but was removed by House GOP leaders to allow the appropriations bill to pass before the deadline at the end of the month. The \$300 million in aid was voted on separately and passed with broad bipartisan support.

In the past month, the Biden Administration announced only one drawdown of equipment from DOD inventories to meet Ukraine's national security needs. This represents the [48th](#) drawdown of equipment since August 2021 and was valued at up to \$200 million. The drawdown includes key capabilities to support Ukraine's additional air defense munitions, artillery and tank ammunition, anti-armor weapons, counter-unmanned aerial systems 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 that 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. Nonetheless, budget experts have said that aid to Ukraine remains

more urgent than aid to Israel as of now because of a 2016 agreement that provides \$3.8 billion per year to Israel for 10 years. Ukraine has run out of long-term funding as its war against Russia wears on.

Industry Concerns Amid Ongoing Wars

As the U.S. has pledged military assistance on three fronts – Ukraine, Israel and Taiwan – DOD leaders are working to revamp how American assistance is provided after news reports indicated that industry in the U.S. cannot keep up with the demand. Sasha Baker, Acting Under Secretary of Defense for Policy, and Bill LaPlante, Under Secretary of Defense for Acquisition and Sustainment, are taking the lead on reforming DOD processes, platforms and regional perspectives to improve the DOD's ability to send systems to allies abroad.

Though many of these processes are being conducted in private, Pentagon spokesman Lt. Col. Dave Herndon said that the team "may look at how to conduct better predictive analysis and strategic forecasting of partner demands to provide a more robust signal to industry; or examine ways to evaluate and expand the use of existing data and metrics to measure performance of the [foreign military sales] case life cycles; or review case development, contracting and acquisition timelines to determine areas for process and policy improvements."

EXECUTIVE AND DEPARTMENTAL UPDATES

Secretary of the Navy Stands Up Disruptive Capabilities Office

At a speech commemorating the 100th anniversary of the Naval Research Laboratory, U.S. Secretary of the Navy Carlos Del Toro announced a new initiative with the creation of the Navy's Disruptive Capabilities Office (DCO). This new office within the Navy will play a supporting role to the DOD's new Replicator initiative. The DCO will work closely with the Marine Corps Warfighting Laboratory's Rapid Capabilities Office (RCO), both of which will work collaboratively with stakeholders from across the Navy at addressing immediate and long-term needs that require rapid transition and integration of innovation solutions and meet the naval fleet's most critical capability gaps. The DCO and RCO will also partner alongside other DOD efforts, such as the DIU, to accelerate production and delivery of the capabilities the entire Joint Forces require at scale.

GAO Releases Report on Defense Industrial Base M&A

According to a [report](#) from the GAO, the DOD's discernment of defense mergers and acquisitions (M&A) is inadequate. M&A transactions directly affect the companies, their supply chains and their customers within the defense industrial base. When the customer is the DOD, mergers can affect competition for defense contracts, increase prices or reduce innovation, according to the report. Because the DOD assesses only a portion of defense M&A each year, generally when the antitrust agencies – such as the U.S. Department of Justice and Federal Trade Commission – ask for DOD input for antitrust reviews of these transactions, the report finds that the DOD may overlook competition and other critical defense industry risks.

According to the report, the DOD's Industrial Base Policy office and DOD stakeholders work together to conduct assessments of M&A risks and benefits. However, from FY 2018 through FY 2022, the DOD and stakeholders assessed an average of only 40 M&As per year, a small percentage of the estimated 400 defense company M&A transactions each year. Moreover, DOD policy does not provide clear

direction about which M&A DOD should prioritize for assessment, beyond those conducted in response to antitrust reviews.

In publishing the report, the GAO recommended various actions for the DOD, all of which the DOD concurred with. Notably, GAO recommended that DOD update its policy to clarify that M&A need to be prioritized for assessment, require the monitoring of identified risks and update the Industrial Base Policy's M&A office so that it is adequately resourced.

DOD, SBA Roll Out Small Business Investment Company Critical Technologies Initiative

Secretary of Defense Lloyd Austin and Small Business Administration (SBA) Administrator Isabella Casillas Guzman announced the rollout of the Small Business Investment Company Critical Technology (SBICCT) Initiative, a joint effort between the SBA and DOD to increase private capital investment in critical technologies that strengthen U.S. economic and national security. SBICCT is the first initiative under the SBA-DOD partnership, launched by Austin and Guzman in December 2022, to grow private sector investment in component-level technologies and production processes vital to U.S. national security interests.

Specifically, the SBICCT Initiative will pair private capital with federally guaranteed loans to increase investment in DOD's critical technology areas. The DOD's Office of Strategic Capital (OSC) and the SBA's Office of Investment and Innovation (OII) will execute this partnership, coupling the SBA's experience executing its Business Investment Company (SBIC) program with the DOD's scientific and technical expertise. For more information on the SBICCT Initiative and application criteria, please visit the [SBA website](#).

DIU Solicitations

In the past month, the DIU, which focuses on leveraging new commercial technology adaptation for the U.S. military, published two new solicitations.

The first solicitation is for an enterprise test vehicle. The DOD has recognized that replenishment rates for unmanned aerial delivery vehicles are neither capable of meeting surge demand nor achieving affordable mass. The current design and manufacture of airborne medium range precision delivery vehicles is complex, costly and limited by historically slower production rates due to exquisite components and labor-intensive manufacturing processes. Narrow supply chains, proprietary data and locked designs result in a lengthy timeline to transition new technology into usable capability and limit production and replenishment rates. As such, the DOD seeks solutions to develop, demonstrate and fly a modular open architecture vehicle that will accelerate capability development and fielding across all weapons programs by enabling the integration, testing and qualification of different subsystems, capabilities and materials. The objective is to demonstrate an aerial platform that prioritizes affordability and distributed mass production.

The second solicitation is for base resiliency and climate projection. Technology that allows for the DOD to contextualize and project the impacts of changes in weather patterns and intensity will be extremely important for current and future installation readiness and effectiveness. Commercial tools show utility in ingesting disparate types of data to assess the impacts of changes to climate at both micro and macro scales, yet these tools are currently underutilized to support future installation planning and logistics decision-making. The DOD seeks commercial products that contextualize the above problem through the application of unique data sources, production grade models for climate

projection modeling and the necessary tooling to ingest, fuse and leverage preexisting National Oceanic and Atmospheric Administration (NOAA) data sources and models. The solution will also enable other U.S. government stakeholders to conduct risk analysis and long-term planning by considering future environmental factors. Additionally, it is important for solutions to provide sufficient resolution of data to support analyses and planning, integration of environmental and non-environmental data to support decision-making, and ensuring continuous delivery of quality, authoritative data that meet the needs and expectations of the user communities.

CONTACTS



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



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



Simon E. Coon
Senior Policy Advisor
Washington, D.C.
202.469.5630
simon.coon@hklaw.com