

Holland & Knight Defense Situation Report: December 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 would like additional information on anything in this report, please reach out to the authors or members of Holland & Knight's [National Security, Defense and Intelligence Team](#).

LEGISLATIVE UPDATES

NDAAs Update

For the 63rd consecutive year, Congress passed the National Defense Authorization Act (NDAA) for fiscal year (FY) 2024, with the Senate and House passing the compromise measure on a bipartisan basis on Dec. 13 and 14, 2023, respectively. This year's bill included a topline funding level of \$886 billion, which matched President Joe Biden's budget request sent to Congress in March 2023. This also matches the topline funding level that appropriators set, though House Speaker Mike Johnson (R-La.) and Senate Majority Leader Chuck Schumer (D-N.Y.) have yet to announce if topline spending levels for defense appropriations will change. The topline funding level in the FY 2024 NDAA represents a \$28 billion increase over levels included in the FY 2023 NDAA. Before both chambers passed the compromise measure, President Biden issued a [statement of administration policy](#) that it "strongly supports" the FY 2024 NDAA, as it provides critical authorities the U.S. needs to build its military, strengthen national defense, and support troops and their families, as well as reinforces alliances and partnerships globally.

After the Republican-led House and Democrat-led Senate passed different versions of the NDAA in July, the two chambers had to come together to negotiate the hotly debated social policy provisions included in the House version of the bill – 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. These provisions were ultimately not included in the final bill.

Negotiators also resolved differences on major U.S. Department of Defense (DOD) programs – such as establishing a new Ukraine aid watchdog, implementing the AUKUS submarine production pact (in more detail below), authorizing procurement for ships and planes – and included provisions to rein in the DOD's Cost Assessment and Program Evaluation after the House's bill sought to eliminate the office.

The NDAA also codified the Defense Innovation Unit (DIU), which focuses on leveraging new commercial technology adaptation for the U.S. military, and authorized funding it at \$109.7 million. The DIU seeks to scale the ability to bring private sector innovation into the military and to coordinate enterprises focused on fielding and operationalizing technologies across the DOD. The DIU will play a significant role in implementing the DOD's Replicator initiative – which was first covered in the [September 2023 Holland & Knight Defense Situation Report](#) – that seeks to field thousands of autonomous, "attributable" systems across multiple domains within the next 18 to 24 months.

The bill also included a provision that requires more U.S. military hardware be manufactured by American companies and workers. The language codifies an executive order issued by President Biden

in January 2021 that seeks to strengthen U.S. national security supply chains and encourage more domestic manufacturing by requiring a certain percentage of defense related components to be made in America, bolstering the country's defense industrial base. The bill requires 60 percent of each product bought by the DOD to contain components from the U.S., with increasing percentages up to a final target of 75 percent by 2029. The provision includes an exemption of military equipment for countries with which the U.S. has trade agreements. View the full text of the [FY 2024 NDAA conference report](#).

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 fiscal year was set to end on Sept. 30, 2023, Congress passed a continuing resolution (CR) minutes before a shutdown that extended the funding for federal agencies until Nov. 17, 2023.

On Nov. 14, 2023, the House easily passed another stopgap spending bill to continue funding the government into the new year. The CR, proposed by Speaker Johnson, extends funding for agencies covered by the Agriculture, Energy-Water, Military Construction VA and Transportation-HUD bills until Jan. 19, 2024, while the eight other appropriations bills, including the Defense funding bill, were extended to Feb. 2, 2024. Speaker Johnson has said he would not support any additional stopgaps to further extend Congress' deadline for funding the government after this, even as conservative republicans in the House insist on vast funding cuts that are unlikely to pass in the Democrat-controlled Senate.

The defense appropriations bill faces many of the same obstacles in the Democrat-controlled Senate that the NDAA faced. In the 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 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 healthcare.

U.S. Defense Secretary Lloyd Austin [warned](#) in a Dec. 12, 2023, letter that a long-term CR would "misalign billions of dollars" and that thousands of DOD programs would be negatively affected. This would include the ability to counter the People's Republic of China, which is a priority identified in the DOD's National Defense Strategy, and would impede the country's ability to react to emergent events. Similar letters were sent to Congress by the [Chairman of the Joint Chiefs of Staff](#) and the U.S. [Army](#), [Navy](#) and [Air Force](#) service secretaries detailing the harm of a full-year CR for the DOD. Senate Appropriations Committee leadership Chair Patty Murray (D-Wash.) and Vice Chair Susan Collins (R-Maine) echoed the DOD's concerns detailing that under a full-year CR, defense programs would receive at least \$26.6 billion (or 3 percent) less than the \$886 billion topline agreed to under the Fiscal Responsibility Act (FRA) and authorized by the NDAA for FY 2024.

DOD Nominations

After almost a year of Sen. Tommy Tuberville's (R-Ala.) hold on hundreds of Pentagon promotions and appointments over the DOD's abortion travel policy, Senate Democrats put forth a resolution in November to allow for the quick confirmation of hundreds of military nominees. Though the resolution did not get to the Senate floor for a vote by the entire chamber, Sen. Tuberville lifted his hold and the Senate swiftly confirmed many of the nearly 400 DOD nominations for senior military officers in two tranches.

The first tranche confirmed those being promoted with ranks of three stars and below, which hold a strategic importance for the country's national security apparatus. After further negotiations and consternation from both Democrats and Republicans, Sen. Tuberville released his hold on the additional DOD nominations without policy change by the DOD, which allowed for quick passage of the remaining nominees consisting of 11 flag officers.

Three of these officers were confirmed to lead combatant commands and included Air Force Lt. Gen. Gregory Guillot to lead Northern Command, Air Force Lt. Gen. Timothy Haugh to lead Cyber Command and Space Force Lt. Gen. Stephen Whiting to lead U.S. Space Command.

Four will be their service's second ranking officer and included Army Lt. Gen. James Mingus, Space Force Lt. Gen. Michael Guetlein, Air Force Lt. Gen. James Slife and Navy Adm. James Kilby.

The other nominees were confirmed to major four-star posts. They included Vice Adm. Stephen Koehler, who will command the Navy's Pacific Fleet; Lt. Gen. Kevin Schneider, who will oversee Air Force assets in the Pacific; Air Force Gen. Kenneth Wilsbach, who will lead Air Combat Command; and Vice Adm. William Houston, who will be director of the Naval Nuclear Propulsion Program.

One nomination for flag officer remains but has not advanced out of the Senate Armed Services Committee (SASC): Adm. Samuel Paparo, who was nominated to lead Indo-Pacific Command.

Separately, on Dec. 12, 2023, the Senate confirmed Harry Coker as the White House's second-ever National Cyber Director by a vote of 59-40. Coker is a retired CIA senior executive and career naval officer. He is now tasked with leading the 100-person office amid a large task in tackling cybersecurity and challenges with the growing presence of artificial intelligence.

House Small Biz Committee Members Want Integration into Defense Landscape

On Dec. 12, 2023, House Committee on Small Business Chairman Roger Williams (R-Texas), Ranking Member Nydia Velazquez (D-N.Y.), and Reps. Nicholas LaLota (R-N.Y.) and Hillary Scholten (D-Mich.) sent a [letter](#) to Defense Secretary Austin to determine how the DOD can better integrate small businesses in the defense industrial base. The letter cites that over the last 10 years, the number of small businesses in the defense industrial base has decreased by 40 percent, representing a substantial decrease in the number of small businesses currently involved in the defense industry and an amount of consolidation that the DOD states poses "national security and economic risk" that could affect key domestic capabilities. Despite this, the DOD has identified and tried to address barriers to entry for small businesses, including through the implementation of its most recent Small Business Strategy and programs such as SBIR, Army Tech Marketplace, Project Spectrum, the xTech Prime Competition, among others, that are intended to assist small businesses participating in the defense industry.

As such, the committee leadership is seeking input from the DOD as to how both Congress and the DOD can better integrate small businesses in the Defense Industry Base. Specifically, the committee is seeking an update on the DOD's actions to address issues identified in the Small Business Strategy, including bundling and consolidation of contracts, subcontracting plan accountability and size standards revisions for NAICS codes. Additionally, the committee is seeking an update on the DOD's progress in creating additional market synergies and market intelligence tools, as well as any regulations or policies it identified that were unduly burdensome to small businesses.

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 Biden 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.

On Dec. 5, 2023, Senate Appropriations Chair Murray [released](#) a national security supplemental funding package to support Ukraine and Israel, deliver humanitarian assistance to civilians in Gaza, support regional partners in the Indo-Pacific, meet operational needs at the U.S. southern border, including stopping the flow of fentanyl and other priorities. However, the motion failed to receive the necessary 60 votes to pass because the package did not link Ukraine aid to U.S. border and immigration policies, as explained in more detail below.

As of Dec. 27, 2023 – after the Biden Administration and DOD announced a new security assistance for Ukraine via the Presidential Drawdown Authority, which was the 54th tranche of equipment to be provided from DOD inventories – the U.S. exhausted all DOD funding available for Ukraine's military. As such, the White House [sent](#) a letter addressed to Congressional leadership regarding the need for urgent action to support Ukraine's defenses and urged Congress to pass the emergency supplemental submitted in October.

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 Schumer, who sets the Senate vote schedule, said that the Senate "stands ready to deliver on additional needs."

Although there is widespread support in Congress for aid to Israel, appropriators remain divided 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."

Despite the Biden Administration's vast \$106 billion supplemental funding request stalling in Congress, the House passed a \$14.3 billion aid bill to Israel on Nov. 3, 2023. The measure was passed by a vote of 226-196, with 12 Democrats voting in favor and two Republicans voting against. The bill proposed to provide \$14.3 billion in aid to Israel and pay for it by cutting funding for the IRS by the same amount, which the Congressional Budget Office said would decrease tax revenue and increase the U.S. deficit in the long run. Further, the bill would have provided aid exclusively to Israel, as House Republicans maintain their vehement opposition to bundling aid to Ukraine and Israel in one combined measure.

Majority Leader Schumer was quick to label the bill as "stunningly unserious," and President Biden vowed to veto the bill if it landed on his desk. On Nov. 14, 2023, the Senate voted 51-48 to table the bill. Moving forward, the path to passing supplemental aid to Israel remains unclear despite bipartisan support for an aid package.

Ukraine

Moreso than emergency funding to Israel, additional funding for Ukraine has been met with much skepticism among congressional Republicans as its long-planned counteroffensive against Russia has seemed 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, along with the Biden Administration's larger supplemental funding request that would provide nearly \$61 billion in aid to Ukraine, sat idle throughout December.

The White House [sent](#) a letter to congressional leadership regarding the need for urgent action to support Ukraine's defenses. In a last-ditch effort to rally support on Capitol Hill for Ukraine aid, Ukrainian President Volodymyr Zelenskyy visited Washington, D.C., and held high-level meetings on Capitol Hill to plead his case.

Despite House Speaker Johnson's statement that he was "confident and optimistic" that Congress would provide another aid package to Ukraine before the holiday season, obstacles remained, including a promise from Republicans to oppose any additional aid to Ukraine unless it is paired with robust border security measures to stem the flow of migrants at the U.S.-Mexico border. At an event, Speaker Johnson said that, "I understand the necessity of ensuring that Vladimir Putin does not prevail in Ukraine and march through Europe And so I will explain to [Zelenskyy] that while we understand that, I've made my position very clear literally since the day I was handed the gavel that we have to take our care of our border first, and our country."

To achieve a compromise on these two contentious issues, a small bipartisan group in the Senate has begun negotiating a measure aimed at overcoming a filibuster and receiving the necessary 60 votes. This may face challenges in the House, where conservative Republicans have called for much broader changes to U.S. border security and immigration policies. The negotiators, Sens. Murphy, Kyrsten Sinema (I-Ariz.) and James Lankford (R-Okla.), made some progress behind closed doors. However, senators agreed that a deal could not be made before the end of the calendar year and thus adjourned for the holiday recess without a deal. Even so, Senate leadership and the negotiators said that they

would continue working throughout the holidays so that a much-needed border security package and aid to Ukraine could be met.

China

Of the \$106 billion in emergency supplemental funds requested by President Biden in October, approximately \$2 billion was asked for to provide aid to Taiwan and the Indo-Pacific region. In November, House China Select Committee Chair Mike Gallagher (R-Wis.) and six Republicans from the panel lambasted President Biden's request as "wholly inadequate," pushing congressional leadership to instead approve a \$12 billion aid package to "safeguard peace in Asia and deter conflict" and "treat the [Beijing] threat with the gravity it deserves." The lawmakers cited Chinese aggression in the South China Sea and a burgeoning alliance between China and Russia as justification for the larger request. They said the additional \$10 billion would be used to boost U.S. military presence in the Indo-Pacific region and expand production of munitions for the Indo-Pacific Command.

House China Select Committee Releases 2024 Legislative Blueprint

On Dec. 12, 2023, the House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party [released](#) an anticipated report adopting nearly 150 bipartisan policy recommendations from the House Select Committee on the CCP seeking to "fundamentally reset the U.S. economic and technological competition with the PRC." The committee's report, spearheaded by Chairman Gallagher and Ranking Member Raja Krishnamoorthi (D-Ill.), was the culmination of a year of hearings, investigations and other work that shows the United States' current economic relationship with China needs to be reset in order to serve the economic and national security interests of the U.S. Reps. Gallagher and Krishnamoorthi wrote that, "Collectively, these recommendations will reset the terms of our relationship with China, prevent the flow of American capital and technology from supporting its military advances and human rights abuses, and build collective economic resilience in concert with our allies and partners while ensuring American leadership for decades to come."

The proposals fall within three main categories: 1) resetting the economic relationship with the Chinese government, 2) stemming the flow of U.S. capital and technology fueling China's military modernization and human rights abuses, and 3) investing in technological leadership and building collective economic resilience in concert with allies. Because the Select Committee has no legislative power, the policy recommendations will be referred to committees of jurisdiction in the House of Representatives, where leadership in those committees will have to take up and pass the legislative proposals.

AUKUS

Debates over AUKUS – the trilateral security pact between Australia, the United Kingdom and U.S. – had proven to be another sticking point in Congress as the House and Senate conferenced over the annual NDAA. 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 this 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. Australian and British authorities have expressed concern about the deadlock in Congress and have urged that the exemptions to ITAR be granted expeditiously. When Australian Prime Minister Anthony Albanese visited the U.S. in late October, he sought progress on the AUKUS defense technology partnership to transfer U.S. nuclear submarine technology to Australia.

The FY 2024 NDAA enabled the AUKUS agreement by authorizing the sale of up to three Virginia-class submarines to Australia, providing for the acceptance of Australian funds to support the U.S. submarine industrial base, facilitating the training of Australian submarine workers and streamlining the sharing of advanced technologies under AUKUS. However, submarine transfer authorizations will not take effect until a year after the NDAA is signed into law, a provision pushed by Sen. Roger Wicker (R-Miss.), the top Republican on the SASC, who said he would refuse to back the transfer of attack submarines to Australia unless Congress first approves a \$3.4 billion emergency funding package to upgrade the American submarine industrial base. A supporter of the AUKUS agreement, Sen. Wicker said that the U.S. has yet to take the measures necessary ensure that the industrial base can support the needs of both the U.S. and Australia. Sen. Wicker has [argued](#) 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.

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