

Holland & Knight Defense Situation Report: April 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

Debt Ceiling Update

House Speaker Kevin McCarthy (R-Calif.) on April 17, 2023, delivered a speech before the New York Stock Exchange on his party's plan to reduce federal spending through negotiations over the debt ceiling. McCarthy's speech comes as the June deadline for the debt ceiling deal nears and the White House and Congress prepare to negotiate a debt ceiling measure. The remarks provided the first official view into the House Republican majority's plan to raise the debt ceiling and lower government spending.

In his speech, McCarthy asserted that the House would vote on legislation to raise the debt ceiling for a year in the coming weeks. The speaker added that this measure would include various proposals, such as permitting reform and decreasing discretionary spending to Fiscal Year (FY) 2022 levels. The legislation to address the debt ceiling, the [Limit, Save, Grow Act of 2023](#), includes a series of cuts over a 10-year period. While negotiations will continue, reports have indicated that defense advocates in the House have been adamant that defense and national security funding should not be decreased or capped. This will be a point of contention as the amount of savings proposed ultimately will indicate where allocations to appropriations subcommittees go.

Congress Continues Posture Hearings

This past month has been busy with House and Senate Armed Services Committees (HASC, SASC) holding posture hearings on the Biden Administration's FY 2024 budget request to Congress. Leaders of the services and defense agencies have testified on behalf of their respective budget requests, and members of Congress had the chance to dive deeper into various funding lines. As House Republicans seek to cut civil spending, U.S. Department of Defense (DOD) officials allow them an opportunity to defend the administration's budget request and members of Congress to question the appropriate usage of tax dollars.

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

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

After these posture hearings, the HASC and SASC will write their annual National Defense Authorization Act (NDAA) legislation. The House and Senate Appropriations Subcommittees on Defense will also author their bills. The HASC and SASC are expected to write and markup the NDAA in May and June. Appropriators have expressed a desire for a similar timeline, but this could be delayed by the debt limit debate.

National Security and SASC Nominations

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

Various 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

On March 28, 2023, the SASC advanced by voice vote the nominations of Guertin and Keohane. Both nominations will head to the Senate floor for a vote by the full Senate chamber.

The Senate on March 30, 2023, voted 63-27 to confirm the nomination of Laura Taylor-Kale to be Assistant Secretary of Defense for Industrial Base Policy. Additionally, after a two-week recess for the spring holidays, the Senate on April 18, 2023, confirmed the nomination of Radha Iyengar Plumb to be Deputy Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) by a vote of 68-30. This is the first time during the Biden Administration that the USD(A&S) position has been filled on a permanent basis and comes long after defense industry groups began urging senators to confirm both Taylor-Kale and Plumb, given their jurisdiction in acquisition and the need to replenish military inventories after the U.S. had sent weapons to Ukraine and to prepare for posturing in a potential conflict between China and Taiwan.

On April 20, 2023, the White House [nominated](#) Cara Abercrombie to be Assistant Secretary of Defense for Acquisition. She currently serves as Coordinator for Defense Policy and Arms Control at the National Security Council. Prior to that position, she served as the acting deputy director of the Defense Security Cooperation Agency overseeing foreign military sales. Her experience in the former position is expected to be particularly beneficial to the role for which she was nominated, as that role works very closely with Under Secretary of Defense for Acquisition and Sustainment William LaPlante on the DOD's efforts arming Ukraine and replenishing U.S. defense stockpiles for the conflict.

Pentagon Responds to Congressional Letter on Unfunded Priorities Lists

A March 28, 2023, [letter](#) publicly confirming DOD support of a proposal to repeal the requirement for the armed services to submit a yearly Unfunded Priorities List (UPL) was sent by DOD Comptroller Michael McCord to Sen. Elizabeth Warren (D-Mass.). The practice of senior military leaders providing a UPL was initiated by Congress first as a request in the 1990s. In the FY 2017 NDAA, Congress required a UPL via statute in 10 U.S.C. 222a. McCord's letter confirms that the DOD supports a repeal of this provision.

In the justification, McCord says that every DOD budget supervised and submitted by U.S. Secretary of Defense Lloyd Austin is built to implement the National Defense Strategy and represents the department's highest priorities. However, the practice of having senior leaders individually submit priorities and wish lists for additional funding "absent the benefit of weighing costs and benefits across the Department is not an effective way to illuminate our top joint priorities," the letter reads.

Congress has typically responded well to UPLs and generally includes additional items that have not been given the amount of attention deserved in an official president's budget request. These are typically items that are seen as equivalent to a service's mission and readiness to ensure the nation's security. In January 2023, Sens. Warren, Angus King (I-Maine), Mike Lee (R-Utah) and Mike Braun (R-Ind.), along with Reps. Pramila Jayapal (D-Wash.) and Tom McClintock (R-Calif.) sent a [bipartisan letter](#) to Austin calling on the DOD to "rein in DOD's use of wasteful unfunded priorities lists that help DOD increase spending beyond its core priorities." Holland & Knight's *Defense Situation Report* newsletter will continue to track updates on the NDAA process.

The following U.S. military UPLs for FY 2024 have been made public:

- [Army](#), which put forth 28 projects totaling \$1.9 billion and includes a \$633 million request to update the Abrams tank program and \$121 million for the Apache helicopter replacement
- [Navy](#), which put forth \$2.5 billion worth of projects, including many one-off parts, but no ships
- [Air Force](#), which put forth six projects totaling nearly \$2.5 billion, including \$596 million for the procurement of two E-7 Wedgetail aircraft and \$1.2 billion for a wide variety of 21 military construction projects
- [Space Force](#), which put forth seven projects totaling \$477 million, including six classified programs
- [Marine Corps](#), which put forth 32 projects totaling \$3.6 billion and includes an amphibious combat ship, which the Navy left off of its UPL
- [Coast Guard](#), which put forth 26 projects totaling \$1.6 billion; as a note, the U.S. Coast Guard receives funding not from the Appropriations Subcommittee on Defense, but from the House and Senate Subcommittees on Homeland Security

In addition to the services, geographic combatant commands submit UPLs to Congress. These are:

- [U.S. Northern Command](#) (NORTHCOM), which put forth 10 projects totaling \$376 million
- [U.S. Southern Command](#) (SOUTHCOM), which put forth 20 projects totaling \$278 million
- [U.S. European Command](#) (EUCOM), which put forth two projects worth \$159 million
- [U.S. Central Command](#) (CENTCOM), which requested \$280 million over five priorities
- [U.S. Indo-Pacific Command](#) (INDOPACOM), which requested 30 projects worth \$3.4 billion

- [U.S. Space Command](#) (SPACECOM), which requested \$20 million for operations and management and six other requests for which amounts were undisclosed
- [U.S. Special Operations Command](#) (SOCOM), which requested 24 projects totaling \$847 million
- [U.S. Africa Command](#) (AFRICOM), which requested \$397 million in four priority areas

EXECUTIVE AND DEPARTMENTAL UPDATES

Ukraine Updates

The Biden Administration and DOD on April 4, 2023, announced a new package of security assistance for Ukraine. This package included an authorization of a presidential drawdown of security assistance valued at up to \$500 million for additional HIMARS ammunition, air defense interceptors and artillery rounds, among other systems for maintenance of anti-armor systems, small arms and transport vehicles. The drawdown is the 35th such disbursement of equipment from DOD inventories authorized for Ukraine since August 2021.

In addition, the package included air defense capabilities, as well as artillery and tank ammunition, mortar systems, rockets and anti-armor systems using \$2.1 billion in Ukraine Security Assistant Initiative (USAI) funds. Unlike a presidential drawdown, USAI is an authority under which the U.S. procures capabilities from industry rather than delivering equipment that is drawn down from DOD stocks. The announcement of this USAI package represents the beginning of a contracting process to provide additional capabilities to Ukraine's armed forces.

On April 19, 2023, the Biden Administration [announced](#) its 36th presidential drawdown of security assistance, with more ammunition for U.S.-provided HIMARS, artillery rounds and anti-armor capabilities. The package is valued at up to \$325 million.

Continued Interest with Taiwan

During the congressional recess of the first two weeks of April, there was a lot of interest with regard to Taiwan. During a visit to the U.S., Taiwan President Tsai Ing-wen met with House leaders from both parties, including Speaker Kevin McCarthy and Minority Leader Hakeem Jeffries (D-N.Y.), among others. Warning that "democracy is under threat" on the island, a bipartisan group of lawmakers is wondering whether the U.S. should begin to think about how and when it should arm Taiwan, similar to assistance it has provided to Ukraine.

Military leaders, including Joint Chiefs of Staff Vice Chairman Adm. Christopher Grady, have also [suggested](#) that arming both Ukraine and Taiwan is possible, but that the defense industrial base will both incur risks and create business possibilities. The U.S. has already committed billions of dollars in artillery, missiles, air defense systems and other weapons and equipment to Ukraine, from both DOD stocks via presidential drawdowns and the Ukraine Security Assistance Initiative, which seeks to procure capabilities from industry rather than delivering equipment from DOD stocks. Though a potential fight in Taiwan will look different compared to Ukraine, Grady suggested that a new theater and environment will present an opportunity for the defense industrial base.

Presidential Determination for Printed Circuit Boards, Advanced Packaging

President Biden [signed](#) a presidential determination (PD) authorizing the use of Defense Production Act (DPA) to support the nation's domestic Printed Circuit Boards (PrCB) and Advanced Packaging industrial base. The PD allows the DOD to utilize its DPA Title III authorities to invest in advanced microelectronics capacity and ensure the production of state-of-the-art integrated circuits in the U.S.

PrCBs are critical components in all electronics used in the national defense, economic, environmental, energy and healthcare management sectors. Advanced packaging allows multiple devices to be packaged and mounted on a single electronic device. Improvements in materials, manufacturing tooling, and process development are imperative in advanced packaging to support rapidly evolving technology and the continuously shrinking feature sizes.

DIA Publishes RFI for AI Technical Assistance, IT Support

The Defense Intelligence Agency (DIA) [published](#) a request for information (RFI) seeking companies that can realize a DOD [directive](#) to stand up an artificial intelligence (AI) capability by 2025. The DIA, whose mission is to produce, analyze and disseminate military intelligence for the DOD on foreign militaries and their operating environments, is seeking to identify sources, obtain new ideas and information pertaining to the state of the industry for providing technical assistance and information technology support to stand up an AI capability in: 1) AI career development (training and recruitment), and 2) AI infrastructure and tools.

DOD Launches Hack the Pentagon Website

The Chief Digital and Artificial Intelligence Office (CDAO) Directorate for Digital Services (DDS) launched a new website, hackthepentagon.mil, to accompany its long-running program Hack the Pentagon (HtP). DDS launched HtP in 2016, using "bug bounties" as a way to secure critical DOD systems and assets. HtP invites vetted, independent security researchers, known as "ethical hackers," to discover, investigate and report vulnerabilities, which DOD can then remediate. DDS built the HtP website as a resource for DOD organizations, vendors and security researchers to learn how to conduct a bug bounty, partner with the CDAO DDS team to support bug bounties and participate in DOD-wide bug bounties. Though the website is primarily an educational tool for DOD organizations to use as a foundational step before launching a bug bounty, it also is a platform to engage and recruit technical talent.

DOD Releases First Contract Finance Study in Years

On April 10, 2023, the DOD [released](#) the findings of its Defense Contract Finance Study, an effort to assess the effect that DOD contract financing and profit policies have on the defense industry. Initiated in late 2019 at the recommendation of the Government Accountability Office (GAO), the study examined financial health, financing regulations, insight into the commercial marketplace and impacts to subcontractors, including small businesses, over a 20-year time frame and was the first report in 35 years on contractor financing.

Three universities and a federally funded research and development center conducted the study's major analyses. The DOD also gathered public feedback from industry associations and small and large businesses and conducted two studies of its own. DOD integrated key findings from these studies, conducted further analysis based on those findings and produced the final report.

The report concluded that, in aggregate, the defense industry is financially healthy and has continued to improve and outperform its commercial counterparts over time. However, according to the report, defense subcontractors and suppliers generally do not receive the favorable cash flow benefits to the same extent enjoyed by defense prime contractors. Improvements by the DOD and Congress would help attract new entrants into the defense industrial base (DIB) at the supply chain level. Another finding is that small businesses are vulnerable when it comes to having cash on hand to cover operating expenses. As such, the DOD seeks to improve small businesses' financial health and assist in attracting new entrants at the prime and subcontractor level.

Defense Innovation Unit Gets New Director

On April 4, 2023, Defense Secretary Lloyd Austin announced Doug Beck as the next director of the [Defense Innovation Unit](#) (DIU), which focuses on leveraging new technologies for the U.S. military. As DIU Director, Beck will oversee efforts to accelerate the department's adoption of commercial technology throughout the military and also serve as a senior advisor to the Secretary and Deputy Secretary of Defense on technology innovation, competition and strategic impact. Austin also announced in a memo to department leadership updates to DIU's reporting and management structure. Under the realignment, the DIU director will report directly to the Secretary of Defense, and DIU will be under the authority, direction and control of the Secretary of Defense.

Beck joins DIU from Apple Inc., where he was a vice president leading the company's business across Northeast Asia and the Americas and reported directly to the CEO after joining in 2009. He is also a captain in the U.S. Navy Reserve and served with a joint special operation task force in Iraq and Afghanistan from 2006 to 2007 and extensively throughout the Asia Pacific region during his 26 years of service. Beck previously served as a nonpartisan appointed member of the Secretary of State's Foreign Affairs Policy Board, an executive advisor to three chiefs of Naval Operations and Special Operations Community leadership and as an adjunct lecturer on strategy and innovation for flag and general officers at the Naval Postgraduate School. For more than 15 years, he has served as a formal and informal advisor to senior uniformed and civilian leadership across the department.

DIU Solicitation

In the past month, the DIU published one new solicitation, for hydrogen at the tactical edge for contested logistics (HyTEC). The U.S. military's ability to operate effectively in austere environments is directly tied to its logistical capabilities. These platforms currently rely upon carbon-based fuels and diesel, which are sourced far from the point of use and contribute to greenhouse gas (GHG) emissions. While fossil fuels are energy-dense, DOD reliance represents a vulnerability, especially for operations in remote or contested environments. The use of hydrogen (H₂) as an alternate fuel source could partly mitigate these challenges. H₂ is not a 1:1 replacement for carbon-based fuels; however, it can be generated at the point of need with greatly reduced thermal and acoustic signatures. As such, the DOD seeks to prototype an integrated electrolysis-based H₂ production and storage system.

FCC Launches Space Bureau

On April 11, 2023, Federal Communications Commission (FCC) Chair Jessica Rosenworcel [launched](#) a new Space Bureau and Office of International Affairs. In the reorganization, which is splitting the agency's International Bureau into two separate units within the FCC, the Space Bureau will promote a competitive and innovative global communications marketplace by leading policy and licensing matters

related to satellite and space-based communications and activities. Among its responsibilities, the Space Bureau will lead complex policy analysis and rulemaking, authorize satellite and earth station systems used by space-based activities, provide maximum flexibility for operators to meet customer needs and foster an efficient use of scarce spectrum and orbital resources. The Space Bureau will also serve as the FCC's focal point for coordination with other U.S. government agencies on matters of space policy and government and collaborate with the new Office of International Affairs for consultations with other countries, international and multilateral organizations and foreign government officials who involve satellite and space policy matters.

FCC Adopts New Rules for NGSO FSS

The FCC and its newly established Space Bureau on April 20, 2023, [adopted](#) new rules to support cooperation in spectrum usage by satellite systems. The new rules seek to reform how non-geostationary satellite orbit, fixed-satellite service (NGSO FSS) systems will function in a shared-spectrum environment. The rules seek to provide clarity regarding spectrum sharing between systems licensed in different processing rounds, granting primary spectrum access to systems approved earlier, while enabling new entrants to participate in an established, cooperative spectrum-sharing structure. These updates seek to provide certainty for operators and facilitate innovation in system design.

AFWERX Solicits Direct to Phase II SBIR

The Department of the Air Force (DAF) is seeking technologies for transition into the U.S. Air Force (USAF) and/or U.S. Space Force (USSF) in partnership with AFWERX and SpaceWERX. The Small Business Innovation Research (SBIR) solicitations explore innovative technology solutions applicable to both defense and non-defense markets from companies with capability to prototype validated concepts under an accelerated Phase II schedule aimed at applied research and development efforts. The USAF has identified the following strategic capabilities: air superiority; intelligence, surveillance and reconnaissance; rapid global mobility; global strike; command and control responsibilities to organize, train and equip airmen; and Space Force Blue Sky. The USSF has also identified six strategic capabilities: space security; combat power projection; space mobility and logistics; information mobility; space domain awareness responsibilities to organize, train and equip guardians; and Air Force Blue Sky. The solicitation closes on May 4, 2023.

DOD Releases 2023 REPI Resilience Project Funding Guide

On April 10, 2023, the DOD's Readiness and Environmental Protection Integration (REPI) Program [released](#) the 2023 REPI Resilience Project Funding Guide. The REPI Program works to preserve military missions by supporting cost-sharing agreements between the military services, other federal agencies, state and local governments, and private conservation organizations to avoid land use conflicts near military installations, address environmental restrictions that limit military activities and increase resilience to climate change.

The REPI Resilience Project Funding Guide provides a program calendar featuring key application opening dates and deadlines across all programs. Every program has a summary of funding opportunities, eligibility requirements and application deadlines. Six of the programs include detailed instructions for steps applicants need to take before applying, such as determining if the local community has an updated hazard mitigation plan. Installations and partners can leverage the guide to review funding opportunities for developing nature-based solutions near installations and ranges that preserve military missions, enhance habitats, increase climate resilience and ensure military readiness.

The guide also allows readers to quickly sort through programs based on multiple climate change threats, including wildfire, drought, coastal hazard, riverine flooding and land degradation.

DOD to Modernize Sensors After Chinese High-Altitude Balloon Incident

After the Biden Administration, military and other intelligence officials confirmed that a high-altitude balloon (HAB) hovered over much of the northern U.S. before being shot down off the coast of North Carolina, the DOD's Under Secretary of Defense for Policy – the principal advisor to the Secretary of Defense on Policy – confirmed that the DOD is modernizing its surveillance capabilities paced to the current and future geopolitical environment. In a letter responding to Sen. Steve Daines (R-Mont.), whose state includes Malmstrom Air Force Base – home to the state's ballistic missile site and where the HAB may have obtained intelligence – the DOD will augment the existing North Warning System, which is made up of unmanned, long- and short-range radars across the North American Arctic and Greenland for air defense and border control. In implementing a new system, the Pentagon will work closely with combat commanders, the All-domain Anomaly Resolution Office (AARO), the intelligence community and other departments and agencies to protect the homeland.

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