

Holland & Knight Defense Situation Report: May 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, Appropriations and NDAA Update

During the first week of May, Republicans in the U.S. House of Representatives passed legislation on a party-line vote 217-215 to raise the debt ceiling for a year – which included other legislative priorities such as spending cuts over a 10-year period – seeking to generate nearly \$4.5 trillion in savings. The legislation does not specify which accounts or programs would be cut.

Despite broad cuts across the board in federal spending passed in the debt ceiling bill, there was agreement that the House Republican majority would still like to increase defense spending, which will likely be above the president's Fiscal Year (FY) 2024 request. If enacted, it would be the largest defense budget in history.

As appropriators in both chambers are writing their subcommittee bills and the House Armed Services Committee (HASC) and Senate Armed Services Committee (SASC) are writing their FY 2024 National Defense Authorization Act (NDAA), Washington, D.C., has been consumed by negotiations to raise the debt ceiling. The debt limit is the dollar figure up to which the U.S. Department of the Treasury can borrow to pay for discretionary spending via annual appropriations bills. The Treasury Department has warned that the government will no longer be able to pay its obligations as soon as June 1, 2023, but that could slip to a couple of weeks later.

Should Congress and the White House not produce a long-term debt ceiling and default on government obligations, there is a risk of federal funding gaps or a shutdown. This would mean that the federal government could miss payments to defense contractors and many others doing business with the federal government. It would also mean that service members' pay and veterans' benefits may be disrupted. For more information on what hitting the default might mean for federal contractors, please see this [Holland & Knight alert](#) published on May 17, 2023.

House Appropriations Chair Kay Granger (R-Texas) was previously set to prepare markup of the 12 annual subcommittee spending bills beginning in mid-May, but those plans were scrapped given the debt ceiling negotiations. In addition, the seven HASC subcommittees canceled their markup of the FY 2024 NDAA. Senate business for appropriations and the annual NDAA has similarly been slowed because of negotiations to raise the debt ceiling.

However, during a press conference while debt negotiations were ongoing, House Speaker Kevin McCarthy (R-Calif.) noted that the U.S. Department of Defense (DOD) budget should not play a factor and be at risk of cuts over the debt ceiling negotiations. He said that given America's stance in the

world, especially when it comes to competition with China and the war in Ukraine, putting DOD funding at risk of cuts would "put America in jeopardy" and that to him, "[the budget] is off the table." This sentiment had been raised regularly from members of Congress on both sides of the aisle.

HASC Holds Member Day

Despite ongoing negotiations to raise the debt limit and the cancelation of the HASC's FY 2024 NDAA markups, the HASC on May 16, 2023, held a "Member Day," during which members of Congress who do not sit on the committee got the chance to tout their defense priorities, which typically reflect the priorities of their districts and stakeholders. Though a Member Day hearing is a good chance for members to make the case for defense funding, defense-related legislation or other ideas, members at this hearing acknowledged that they will have to continue working on a bipartisan basis moving forward to pass the NDAA after a debt limit deal comes together.

HAC-MilConVA Appropriations Unveiled

While Congress and the White House are negotiating the debt limit, some appropriators have begun releasing their annual funding bills. On May 16, 2023, Rep. John Carter (R-Texas), Chairman of the House Appropriations Subcommittee on Military Construction and Veterans Affairs (MilConVA), released the FY 2024 spending proposal for military construction and veterans programs. Under the proposal, \$337.9 billion would be under the purview of the DOD. According to a committee press release, the proposal would provide \$17.674 billion for DOD military construction and family housing, which is nearly \$1 billion above the president's FY 2024 budget request. As noted earlier, a committee hearing to mark up this legislation was canceled due to the debt ceiling debate.

Actions on Chinese Competitiveness

On May 3, 2023, Senate Majority Leader Chuck Schumer (D-N.Y.) [launched](#) an initiative to advance national security and to create new legislation aimed at increasing U.S. leadership in the face of Chinese competitiveness. At a press conference, Schumer directed Senate Committee chairs and ranking members to begin crafting a "China Competition 2.0" bill. Last Congress, a bipartisan group of senators introduced its version of a China competition bill, called the United States Innovation and Competition Act of 2021 (USICA). Parts of USICA were folded into the CHIPS and Science Act (P.L. 117-167).

In his directive to Senate committees, Schumer is calling for the advancement of work in five policy areas:

1. limiting the flow of advanced technology to the Chinese government
2. curtailing the flow of investment to the Chinese government
3. securing domestic economic investment
4. underscoring U.S. commitment to economic allies and maintaining partner alignment
5. safeguarding the security of U.S. allies and partners and maintaining strategic alliances

In addition, the Senate Committee on Appropriations held a [hearing](#) on May 16, 2023, to review the president's FY 2024 budget request to Congress titled, "Investing in US Security, Competitiveness, and the Path Ahead for the U.S.-China Relationship." The hearing featured testimony from DOD Secretary

Lloyd Austin, U.S. Department of State Secretary Antony Blinken and U.S. Department of Commerce Secretary Gina Raimondo. The three secretaries underscored the whole-of-government approach taken by the Biden Administration to present their views that the Chinese Communist Party (CCP) is the biggest threat to the U.S. Austin confirmed that the Administration will continue to work with Congress against Chinese competitiveness for the empowerment of Taiwan and underscored that these goals cannot be achieved if the U.S. defaults on its debt.

Finally, on May 17, 2023, the House Select Committee on China held a [hearing](#) titled, "Leveling the Playing Field: How to Counter the CCP's Economic Aggression," at which members and witnesses discussed how to counter China's economic aggression on the CCP's economic warfare, including its state-led market-distorting policies, forced technology transfers, intellectual property theft and exploitation of U.S. capital markets. Beyond strong policy proposals to deter the CCP's economic aggression, testimony also focused on the importance of American innovation.

New Legislation Introduced

In the past month, various legislative proposals have been introduced and subsequently referred to the HASC for further review. Typically, members of Congress on the HASC or SASC will push for their pieces of legislation to be included in the annual NDAA. Here are some proposals:

- On May 9, 2023, Reps. Rob Wittman (R-Va.) and Dutch Ruppersberger (D-Md.) [introduced](#) the Autonomous Systems Adoption & Policy Act (ASAP Act), which will establish a Joint Autonomy Office (JAO) at the Chief Digital and Artificial Intelligence Office (CDAO) at the DOD to accelerate development and delivery of autonomy technology and programs for U.S. military operations. The bill would also require the DOD to establish a framework for classification of autonomous capabilities and has a requirement to provide a plan for integration of autonomous capabilities into DOD systems.
- On May 15, 2023, Reps. Wittman, Chrissy Houlahan (D-Pa.) and Pat Fallon (R-Texas) [introduced](#) the Investing in American Defense Technologies Act. This bill would establish a federal public-private partnership to scale, support and invest in American defense-centric small businesses producing advanced capabilities, including hypersonics, space and autonomous systems. A companion bill was [introduced](#) in the Senate by Sens. Jacky Rosen (D-Nev.) and Marsha Blackburn (R-Tenn.).

EXECUTIVE AND DEPARTMENTAL UPDATES

President Biden Nominates Joint Chiefs of Staff Chair

In the White House Rose Garden, President Biden [nominated](#) U.S. Air Force Gen. Charles Q. Brown to be the next Chairman of the Joint Chiefs of Staff. Brown currently serves as the Air Force Chief of Staff, a position he has held since 2020. The Chairman role is the highest-ranking military officer in the country and serves as the principal military advisor to the president.

Brown's nomination has many positive implications for race and inclusion in the military. Upon ascension to his current role, he became the first Black person to lead any military branch. Should Brown be confirmed by the Senate, he will become the second Black Joint Chiefs Chair in U.S. history

following Colin Powell and would also be the first Air Force officer to become Joint Chiefs Chair since 2005 when Gen. Richard Myers held the position. If confirmed, it would also be the first time in U.S. history that the top two DOD positions would be held by African Americans, alongside U.S. Defense Secretary Lloyd Austin, who is the first Black person to hold the job.

As Chief of Staff of the Air Force, Brown serves as the senior uniformed Air Force officer responsible for the organization, training and equipping of 689,000 active-duty Guard, Reserve and civilian forces serving in the U.S. and overseas. As a member of the Joint Chiefs of Staff, the general and other service chiefs function as military advisers to the Secretary of Defense, National Security Council and the president.

Ukraine Updates

During a trip to Jerusalem, House Speaker Kevin McCarthy (R-Calif.) confirmed his support for Ukraine, which was the first time he spoke with such certainty. When asked by a reporter if the U.S. will curtail aid to Ukraine under his speakership, McCarthy said that he will support and vote for additional aid for Ukraine and at the same time disavow Russia's actions in the country and that it should withdraw. Whether this will translate to additional funding from the House is uncertain, but it is consistent with previous statements by HASC Chair Mike Rogers (R-Ala.) and House Foreign Affairs Committee (HFAC) Chair Mike McCaul (R-Texas) that the U.S. should continue providing aid to Ukraine.

In the past month, the Biden Administration announced two drawdowns of equipment from DOD inventories for Ukraine valued at up to \$300 million and \$375 million, respectively, to meet Ukraine's critical security and defense needs. Both packages included additional ammunition for U.S.-provided HIMARS, artillery rounds, anti-armor capabilities and critical enablers. These two packages were the 37th and 38th drawdowns of equipment. Notably, the latter announcement of assistance from DOD inventories came following the G-7 Summit in Japan, where President Biden personally met with Ukraine President Volodymyr Zelenskyy.

Additionally, on May 9, 2023, the Biden Administration [announced](#) a package to bolster Ukraine's air defenses and sustain its artillery needs. The package, which totals \$1.2 billion, is being provided under the Ukraine Security Assistance Initiative (USAI). The USAI package continues U.S. commitment to meeting Ukraine's most urgent requirements by committing critical near-term capabilities. This includes additional 155mm artillery rounds and sustainment support to enable Ukraine to better maintain its on-hand systems and equipment. Unlike presidential drawdown authority (PDA), which the DOD has continued to leverage to deliver equipment to Ukraine from DOD stocks at a historic pace, 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 \$37.3 billion in security assistance to Ukraine since Russia's invasion in February 2022.

Following these announcements for aid, the DOD admitted that it had previously overestimated the amount of military aid it sent to Ukraine by at least \$3 billion. Despite the positive news that this will allow the Administration to send additional funding to the Ukrainian frontlines, some members of Congress were not happy that it took the DOD nearly two months to admit its mistake publicly. In a joint statement, Reps. Mike Rogers (R-Ala.) and Michael McCaul (R-Texas), chairmen of the HASC and HFAC, respectively, called the "revelation of a \$3 billion accounting error ... extremely problematic" whereby "these funds could have been use for extra supplies and weapons for the upcoming counteroffensive, instead of rationing funds to last for the remainder of the fiscal year."



Continued Interest with Taiwan

Amidst the pace of China's military modernization efforts, the Biden Administration and Congress have increasingly become concerned about a possible invasion of Taiwan by China. In the FY 2023 NDAA, Congress authorized up to \$1 billion in U.S. inventory for Taiwan. Despite angering China and the increasing erosion of U.S.-Chinese relations, the Biden Administration announced a \$500 million weapons package for Taiwan using authority from Congress. This package will send existing U.S. weapons stockpiles, support and equipment to Taiwan under a PDA, which is one of the tools that the Biden Administration has been using to send security assistance to Ukraine.

DIU Solicitations

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

The first solicitation is for commercial solutions to advance autonomous vehicle operations for military ground vehicles in unmapped environments. In the solicitation, called "Ground Vehicle Autonomous Pathways 2," the DIU has recognized that troops who carry out reconnaissance or logistics missions are often deployed to remote locations, far away from supporting units. Historically, the DOD has reduced vulnerability to forward-deployed troops by augmenting ground formations, adding more armored vehicles and leveraging airborne sensors. However, these tactics are no longer an assured advantage against near peer adversaries. As such, the DOD is seeking a way to conduct reconnaissance and related missions in high-risk and remote environments without committing significant resources or endangering troops. The use of autonomous systems would enable maneuver units to use their combat troops more effectively while significantly reducing personal risk.

The second solicitation is for tactical augmented reality (TAR). U.S. service members require enhanced situational awareness and access to technical data during operations. The fog of war can obfuscate reality and introduce cognitive overload. This is especially problematic when operators need to perform complex tasks in combat. To make swift decisions, operators need a way to access only the essential information to minimize distractions and make decisions. The DOD seeks a TAR solution that will improve operational efficiency and increase user knowledge and skills without triggering cognitive overload.

The third is for autonomous transport vehicles. The DOD has an existing fleet of military vehicles for its logistics operations. Today, however, these vehicles require human operators. In deployed situations, this creates unnecessary risk to service members' lives and introduces limits to operational tactics. Human operators also have work-to-rest cycles, resulting in additional time constraints. In a fast-moving conflict, the ability to continuously move supplies from one hub to another will have significant impacts on the abilities to sustain operations while maintaining the safety of troops. As such, the DOD seeks commercial solutions to convert existing military vehicles into uncrewed vehicles. These systems should be designed to deploy onto the Army's Palletized Load System (PLS), with the ability to be adapted to other vehicles within the family of tactical wheeled vehicles and other vehicles within the DOD's fleet.

The final solicitation is to seek ways to improve the analysis, research, collection and engagement of publicly available information. The increasing volume, velocity and variety of publicly and commercially available information challenge the military's ability to track and make sense of the information environment. Foreign disinformation and influence campaigns are used to undermine American

security. In the past four years, there has been a significant proliferation of tactics and the development of new, artificial intelligence (AI)-enabled techniques (e.g., synthetic media and deepfakes created through generative AI). Given this new reality, improved tools are needed to provide situational awareness of prevailing narratives in the age of generative AI. As such, the DOD seeks solutions that will provide significant advantages to personnel conducting operations in the information environment. The prototype should leverage some combination of large language models (LLMs), foundation models and/or generative AI to advance some or all of the operational needs and technical gaps.

Navy and Marine Corps Search for Drones

In a [notice](#) posted by the U.S. Navy and U.S. Marine Corps, the services announced they are looking to broaden their industry partnership to procure unmanned aerial systems (UAS) that are contractor-owned and contractor-operated (COCO) and can provide various capabilities such as intelligence, surveillance and reconnaissance (ISR). As part of the services provided to the Navy and Marines in support of their missions, the contractor would be responsible for providing "around the clock imagery" for both land- and sea-based ISR.

DISA Looking for Support on Comply-to-Connect Program

The Defense Information Systems Agency (DISA) and its Digital Capabilities and Security Center Endpoint Division are [seeking](#) information for software or architectural solutions to meet a comply-to-connect (C2C) framework and business processes with the capability of orchestration. The C2C solution will allow continuously updated visibility of all IP endpoint, network infrastructure and internet of things (IOT) device connections.

The C2C framework is a comprehensive cybersecurity framework of tools and technologies designed to increase cybersecurity efficiency across DOD's current and emerging operational environments consisting of multiple capabilities orchestrated to meet the technical characteristics listed below. These imperatives create a significantly greater level of compliance, automation, situational awareness and result in a superior network understanding, thus dramatically improving the DOD's cybersecurity posture.

DOD Releases National Defense Science and Technology Strategy

On May 9, 2023, the Pentagon released the National Defense Science and Technology Strategy (NDSTS). Guided by the National Defense Strategy, the NDSTS articulates the science and technology priorities, goals and investments of the DOD and makes recommendations on the future of the defense research and engineering enterprise.

The three lines of efforts that the NDSTS will execute are: 1) *focus on the Joint Mission* by investing in information systems and establishing processes for threat informed analysis for science and technology investments; 2) *create and field capabilities at speed and scale* by fostering a more vibrant defense innovation ecosystem, accelerating the transition of new technology into the field and communicating effectively with stakeholders; and 3) *ensure the foundations for research and development* by continuing and expanding upon the DOD's efforts to recruit, retain and cultivate talent; revitalizing its physical infrastructure; upgrading the digital infrastructure; and nurturing stronger collaboration across all stakeholders.

The NDSTS will continue to emphasize the 14 [critical technology areas](#) detailed in the DOD CTO's Strategic Vision. Also, international allies and industry partners are integral to the DOD's research and development efforts, and the strategy seeks to expand opportunities to co-research and co-develop with them. The DOD will continue to leverage the broad innovation ecosystem across academia, federally funded research and development centers (FFRDCs), university-affiliated research centers (UARCs), DOD laboratories, national laboratories, nonprofit entities, commercial industry, and other government departments and agencies. The unclassified version of the strategy can be accessed [here](#).

Space Development Agency Seeks Proposals on Space Vehicles

As the Space Development Agency (SDA) is continuing to build out its Proliferated Warfighter Space Architecture, which is the SDA's resilient layered network of military satellites and supporting elements, the SDA [issued](#) a solicitation from industry to manage 100 space vehicles for an operational utility for universal data and communications. The DOD anticipates launching these constellations of space vehicles by Sept. 1, 2026. The deadline to submit a proposal is July 31, 2023.

CFIUS Looks to Expand Jurisdiction Over Deals Near Sensitive Military Facilities

The U.S. Department of the Treasury, which chairs the Committee on Foreign Investment in the United States (CFIUS), published a [proposed rule](#) on May 5, 2023, in the *Federal Register*. The rule would expand the list of sensitive military installations, subject to review under CFIUS authority, applicable to certain real estate transactions involving foreign investors or acquirers. Interested parties must submit written comments on the proposed rule to the Treasury Department by June 5, 2023. For more information, please see this [Holland & Knight alert](#) published on May 17, 2023.

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