

Holland & Knight Defense Situation Report: February 2024

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

As covered in the [December 2023 Holland & Knight Defense Situation Report](#), Congress passed the National Defense Authorization Act (NDAA) for fiscal year (FY) 2024, the 63rd consecutive NDAA passage. The Senate and House passed the compromise measure on a bipartisan basis, and President Joe Biden signed the bill into law on Dec. 22, 2023. The FY 2024 NDAA included a topline funding level of \$886 billion, which matched the Biden Administration's budget request to Congress that was sent 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 in the FY23 NDAA. View the full text of the [FY 2024 NDAA conference report](#).

Though it's always a feat to pass the annual NDAA, members of congress have turned their attention toward the FY 2025 NDAA. The House Armed Services Committee (HASC) accepted requests from HASC committee members from Feb. 1 to March 1, 2024. As such, HASC members solicited requests from stakeholders who want to influence the FY 2025 bill, having only a few weeks to submit requests to the committee before the internal deadline.

Should you or your organization have any questions on the FY 2025 NDAA process, please do not hesitate to reach out to the authors.

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 margin of 218-210. The bill was agreed to after weeks of negotiations 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 FY 2023 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. Similarly, the fate of security assistance to Ukraine and other countries has also stalled.

Despite Speaker Johnson indicating that he would not support additional stopgap spending measures, Congress has passed three additional CRs. The most recent CR kept the government funded in laddered steps, with six of the 12 appropriations bills – including the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act – expiring on March 8, 2024, and the other six, including the Defense bill, set to expire on March 22, 2024.

With a topline funding agreement in place by Speaker Johnson and Majority Leader Schumer, the next obstacle for appropriations is to find a topline spending level for each of the 12 appropriations bills, sometimes called "302(b) allocations," referring to the provision in the Budget Act governing subcommittee funding allocations. After much negotiating, reports indicated that House Appropriations Committee Chair Kay Granger (R-Texas) and Senate Appropriations Committee Chair Patty Murray (D-Wash.) finally made a breakthrough at the end of January.

Though the exact 302(b) levels have not been reported publicly, the agreement allows for the subcommittees in each chamber's appropriations committee to begin writing the 12 appropriations bills and lawmakers to negotiate the specific funding for agencies, programming and policy provisions of the entire federal government's \$1.7 trillion budget.

The defense appropriations bill faces many of the same obstacles in the Senate that the NDAA faced. In the Democrat-controlled Senate, the House's version of the defense appropriations bill is facing steep opposition for its 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.

As reported in the [December 2023 Holland & Knight Defense Situation Report](#), U.S. Secretary of Defense Lloyd Austin [warned](#) in a Dec. 12, 2023, letter that a long-term CR would "misalign billions of dollars" and that thousands of U.S. Department of Defense (DOD) programs would be negatively affected. This would include the ability to counter the People's Republic of China (PRC), which is a priority identified in the DOD's National Defense Strategy, and impediments to the country's ability to react to emergent events. Similar letters detailing the harm of a full-year CR for the DOD were sent to Congress by the [Chairman of the Joint Chiefs of Staff](#) and secretaries of the U.S. [Army](#), [Navy](#) and [Air Force](#).

Letter from Congress on Defense Industrial Base M&A

On Feb. 23, 2024, Sen. Elizabeth Warren (D-Mass.) and Rep. John Garamendi (D-Calif.) [sent a letter](#) to the DOD urging it to conduct a more thorough review on defense industrial base mergers and acquisitions (M&A). The letter states that "current major conflicts around the globe are exposing supply chain gaps and the Department must fulfill its obligation to ensure our defense industrial base remains resilient." The letter also comes after the Government Accountability Office found that the DOD's discernment of M&A are inadequate, which was first covered in the [October 2023 Holland & Knight Defense Situation Report](#). For more information, we recommend the Holland & Knight Government Contracts Blog, "[DOD Contemplating Increased Scrutiny of Defense M&A Transactions](#)," (Feb. 12, 2024).

Congressional Hearings Coverage

On Feb. 27, 2024, the Senate Committee on Homeland Security & Governmental Affairs held a [hearing](#) titled "The U.S. Technology Fueling Russia's War in Ukraine: How and Why." One of the main takeaways was that a large majority of components found in Russian weapons come from the U.S. or allied countries. Despite Russia's imports of battlefield goods halving since the start of the war in Ukraine, witnesses testified that more effective export controls require buy-in from corporations, which could bolster corporate responsibility by incentivizing them to enforce controls. Witnesses also emphasized the need for more effective enforcement, increased corporate responsibility and improved multilateral cooperation to resolve issues of U.S. or allied technologies being used in Russian weapon systems.

On Feb. 28, the Senate Armed Services Committee (SASC) held a [hearing](#) to receive testimony on evolving workforce dynamics and the challenges for defense acquisition and defense industrial base personnel. Senators heard testimony from witnesses representing association groups, think tanks and academia. Members of the committee and witnesses agreed that Congress must create a better regulatory atmosphere to foster a resilient defense industrial base workforce. Witnesses also emphasized the importance of investing in training and education, with a focus on science, technology, engineering and math (STEM) education, apprenticeships and reskilling programs to create future generations of skilled workers. Witnesses also highlighted the importance of improving the public image of working for the DOD and defense industry and to increase awareness of the opportunities available for varying demographics of workers.

The following day, the SASC held its first [posture hearing](#) of 2024, receiving testimony from Air Force Gen. Anthony Cotton, Commander of the U.S. Strategic Command, and Space Force Gen. Stephen Whiting, Commander of the U.S. Space Command. Despite Congress not yet passing FY 2024 appropriations bills and the budget process for FY 2025 uncertain, the hearing came at an opportune time. Senators asked questions about Russia's emerging anti-satellite weapon, which was brought to public awareness after House Permanent Select Committee on Intelligence Chairman Mike Turner (R-Ohio) [worked](#) with the Biden Administration to fully inform Congress of this new national security threat. The hearing also coincided with an incident in which the North American Aerospace Defense Command scrambled a fighter jet to intercept a hobbyist's balloon that traversed parts of U.S. airspace.

HASC Members Send Letter to President Biden on Prioritizing Quality of Life

U.S. Reps. Mike Rogers (R-Ala.) and Adam Smith (D-Wash.), chairman and ranking member of the HASC, along with Reps. Don Bacon (R-Neb.) and Chrissy Houlahan (D-Pa.), chairman and ranking member of the Quality of Life Panel, sent a letter calling on President Biden to support improving the quality of life for servicemembers and military families in his Fiscal Year 2025 DOD budget request. In the letter, the members wrote, "Our service members represent the best our nation has to offer and are central to our national security. The All-Volunteer Force has been the foundation of America's national defense for the last five decades. Yet the committee's quality of life inquiry thus far has revealed an alarming erosion of military quality of life that, if not addressed quickly, will soon place the All-Volunteer Force at risk. Reversing this decline will require a national commitment of resources to address quality of life concerns for service members and their families." One of the major areas committee members asked President Biden to focus on was the quality of housing and barracks for service members. Read the [full letter](#).

ISRAEL, UKRAINE AND FOREIGN MILITARY ASSISTANCE

On Feb. 4, 2024, senators [unveiled](#) a bipartisan national security supplemental totaling \$118.3 billion that includes policy changes for immigration and border security. The bill included \$60.6 billion for Ukraine, \$14.1 billion in security assistance for Israel, \$4.83 billion to counter China and support regional partners in the Indo-Pacific, and \$10 billion for the U.S. Department of State and U.S. Agency for International Development (USAID) to provide humanitarian assistance in Gaza and Ukraine. The bill also included the FEND Off Fentanyl Act, along with \$35 billion in funding for the U.S. defense industrial base through programming that would unlock military aid to Ukraine, Israel and allies in the Indo-Pacific. The deal, struck after months of negotiations by Sens. James Lankford (R-Okla.), Kyrsten Sinema (I-Ariz.) and Chris Murphy (D-Conn.), is in response to the growing national security needs around the globe and at U.S. borders.

Despite months of negotiating, the package failed to overcome a filibuster and receive 60 votes in the Senate. Shortly thereafter, senators removed the immigration and border security provisions and passed the national security supplemental by a vote of 70-29. The bill's passage in the House, however, remains uncertain as Speaker Johnson said in a statement that the package lacks "real border security provisions" and will not reach a vote on the House floor in its current form.

On Feb. 16, 2024, a bipartisan group of members in the House introduced its own national security supplemental package to fund military aid for Ukraine, Israel and Taiwan to try to find a breakthrough toward congressional passage. The House package totaled \$66.3 billion, which was less than the Senate's \$95 billion package. This package was seen as a compromise, with eight centrist members, four Republicans and four Democrats, signing on. With the FY 2024 government funding deadline looming, this package has not received a vote.

The bill differs from the Biden Administration's [supplemental funding request](#) from Congress worth nearly \$106 billion in emergency funds for Israel, Ukraine, the Indo-Pacific and America's borders, which it [announced](#) on Oct. 20, 2023. More than half of that 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 and the needs of Indo-Pacific allies to counter China.

Across these initiatives, the Biden Administration said that the supplemental funding will help to ensure American military readiness by investing in 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 (USAI). Without additional funding, 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.

Israel

After an unprecedented cross-border attack on Israel by Hamas in the Gaza Strip on Oct. 7, 2023, 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 it should be linked with aid to Ukraine. Despite various versions of supplemental funding packages stalling in Congress, the House passed a \$14.3 billion Israel aid bill 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 strong 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

Additional funding for Ukraine has been met with much skepticism among some congressional Republicans as that country's 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, has sat idle for months.

The White House [sent](#) a letter to congressional leadership regarding the need for urgent action to support Ukraine's defenses. As of Dec. 27, 2023 – after the Biden Administration and DOD announced new security and equipment assistance for Ukraine via the 54th presidential drawdown from DOD inventories – the U.S. exhausted all DOD funding available for Ukraine's military.

Feb. 20, 2024, marked two full years since Russia's invasion of Ukraine. Ukrainian President Volodymyr Zelenskyy said that his country has lost 31,000 soldiers since the war started and has continually called on the U.S. to send military aid. Amid a visit to Ukraine by Majority Leader Schumer marking the invasion's anniversary, he called for Congress to reach a deal and pass aid for Ukraine. Similarly, SASC Chairman Jack Reed (D-R.I.) said that Americans must step up and overcome congressional dysfunction to continue to provide Ukraine military, economic and humanitarian support to help the country endure.

China

Of the \$106 billion in emergency supplemental funds requested by President Biden in October 2023, approximately \$2 billion was requested for aid to Taiwan and the Indo-Pacific region. In November 2023, 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.

Hearing Focuses on Innovation and Chinese Competition

On Feb. 15, 2024, the HASC held a [hearing](#) titled "Outpacing China: Expediting the Fielding of Innovation." Discussion focused on how the DOD is leveraging existing programs and strategies to accelerate domestic production and innovation of critical military technologies. Witnesses included DOD senior officials including Under Secretary of Defense for Acquisition and Sustainment William LaPlante, Under Secretary of Defense for Research and Engineering Heidi Shyu, and Defense Innovation Unit Director Doug Beck. The witnesses called for expanded collaboration between government agencies and academic institutions, the development and funding of a pathway to improve domestic technology scaling capabilities, strengthened workforce recruiting and training procedures, and increased federal funding for essential DOD initiatives.

As China's People's Liberation Army continues to make rapid progress in military innovation, the U.S. faces heightened struggles to keep pace and maintain military deterrence power against China. Testimony primarily centered around how Congress can better support the DOD's efforts to stimulate innovation and global dominance in crucial fields, such as hypersonic systems, critical minerals and biomanufacturing. Committee members on a bipartisan basis expressed their support for ensuring the DOD has the necessary resources to compete with Chinese technological investments and protect U.S. national security through funding and programming. Witnesses underscored the importance of focusing attention on production, rather than solely development, and accelerating the existing processes for product implementation in the DOD and military broadly.

Houthi Rebels Conflict Heats Up

As was covered in the [January 2024 Holland & Knight Defense Situation Report](#), the U.S. and allies carried out strikes against Houthi rebels in Yemen, hitting positions of strategic significance held by the group. These strikes were originally in response to the rebels' escalated attacks on commercial ships in the Red Sea. The Biden Administration's decision to attack the Iran-backed rebels has split opinion in Washington, D.C. Many congressional Democrats and Republicans believe that President Biden should have consulted Congress before greenlighting the operation. However, on Jan. 11, 2024, President Biden formally notified Congress of the strikes, claiming that they were necessary to deter future attacks by the Houthis.

The conflict escalated further when three American military personnel were killed and more than two dozen were injured at a base in Jordan near the border with Syria. U.S. officials announced that another Iranian-backed militia was responsible for this attacks on U.S. forces.

In response, President Biden vowed that the U.S. will respond and "hold all those responsible to account" for the deadly attack. Despite this statement, he will now face pressure from Congress to confront Iran further, given Iranian proxies launching attacks around the region in Lebanon, Iraq and Hamas, which officials have confirmed received backing from the Iranian government.

EXECUTIVE AND DEPARTMENTAL UPDATES

State of the Union Address and the President's Budget Request to Congress

On March 7, 2024, President Biden is scheduled to give the annual State of the Union address in which he will provide an overview of the nation's current condition and outlining legislative priorities for the

coming year. During the address, the president often touches upon various policy areas, including economic initiatives, social issues and national security.

In conjunction with the State of the Union, the president typically releases his budget request to Congress, outlining the administration's proposed spending for the upcoming fiscal year. This document serves as a crucial guide for lawmakers as they deliberate and allocate funds for various government programs and agencies. Specifically, in terms of the defense budget, the president's budget request plays a pivotal role in shaping the country's military capabilities. It outlines proposed funding for the DOD, detailing investments in personnel, equipment, research and other defense-related expenditures. The president's priorities and strategic vision for national security are reflected in this budget, influencing decisions on military readiness, modernization and overall defense strategy. As Congress reviews and debates the upcoming FY 2025 budget, it engages in a crucial process that ultimately determines the financial resources available to maintain and enhance the nation's defense capabilities.

Defense Secretary's Hospitalization Causes Consternation

Defense Secretary Lloyd Austin drew further scrutiny regarding details surrounding his February hospitalization as DOD's Office of Inspector General opened an investigation into the event. Moreover, Austin's chief of staff directed the DOD's director of administration and management to conduct a 30-day review of the DOD's notification process for assumption of function and duties of the secretary of defense. The DOD [released](#) its 30-day review summary of the secretary's hospitalization a few days before Austin was set to testify in front of the HASC at a [hearing](#) on his hospitalization.

DOD Releases Resilient and Healthy Defense Communities Strategy

On Feb. 15, 2024, the DOD released its Resilient and Healthy Defense Communities (RHDC) Strategy, which will guide the department's actions in the coming years to improve the built and natural environment on defense installations. Directly supporting the Defense Secretary's priority "to take care of our people," the strategy focuses on improving the quality of life for servicemembers, their families and the DOD civilian workforce. Though the strategy acknowledges that improving the department's vast infrastructure footprint is a significant undertaking, it recognizes the opportunity to reduce the gap that persists between installation conditions today and the quality standards servicemembers and their families deserve. To do so, the strategy aims to focus efforts three ways:

1. adopting human-centered requirements to help create environments that do not just meet utilitarian needs and compliance standards, but promote purpose, productivity and camaraderie
2. optimizing the department's footprint to ensure the scale and scope of its infrastructure is aligned with the needs of DOD's people and their mission
3. transforming how the department manages its portfolio by adopting a sustainment management strategy to help target investments that have the greatest impact on the condition of DOD facilities

Read the [full strategy](#).

DIU Solicitations

In the past month, the Defense Innovation Unit (DIU), which focuses on leveraging new commercial technology adaptation for the U.S. military, published one new solicitation.

The solicitation is for "FrontierNode," also called Tactical Compute Kits. The DOD must disseminate and coordinate data across large, austere and geographically diverse areas. Established DOD capabilities can be improved through the rapid integration of commercial technologies that enable a data transport-agnostic, partner and joint-ready, next-generation coordinated battlespace visualization network. Specifically, the DOD seeks commercial solutions that can deliver operationally ready, ruggedized hardware nodes with appropriate compute, storage and network readiness to operate in distributed environments. Proposed system components should be composed of innovative and advanced solutions that possess interoperable, open-interface commercial technologies that furnish a hardware solution optimized for configurability to enable deployment of government-furnished software solutions.

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