

## Holland & Knight Defense Situation Report: March 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

#### Defense Appropriations

After months of negotiations that began late last summer, Congress completed the fiscal year (FY) 2024 appropriations process, fully funding the federal government through the remainder of the fiscal year ending Sept. 30, 2024. Throughout the process, Congress passed four continuing resolutions (CR) of FY 2023 funding since Oct. 1, 2023. The final CR funded the government in two 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, expiring on March 22, 2024. The first "minibus" package of appropriations bills, [H.R. 4366](#) (P.L. 118-42), the Consolidated Appropriations Act, 2024, was signed into law by President Joe Biden on March 9, 2024, and the second minibus of appropriations, [H.R. 2882](#) (P.L. 118-47), the Further Consolidated Appropriations Act, 2024, was signed into law by President Biden on March 23, 2024. The FY 2024 Defense Appropriations bill included a total funding agreement of \$825 billion when accounting for mandatory funds, according to the measure's [joint explanatory statement](#). This funding is an increase of \$26.8 billion above FY 2023 funding levels.

The defense appropriations bill faced many of the same obstacles in the Senate that the National Defense Authorization Act (NDAA) faced. In the Democrat-controlled Senate, the House's version of the defense appropriations bill faced steep opposition for its inclusion of contentious social issues and the pared-down efforts to send aid to Ukraine. Further, President Biden 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. At the end of the day, most of these policy riders were left out of the defense appropriations bills. Though the measure did include \$300 million for Ukraine Security Assistance, this is a small portion of what the Biden Administration requested and what was included in the Senate's emergency supplemental package that has not received a vote in the House, which you can read more about in the [February 2024 Holland & Knight Defense Situation Report](#).

The federal government's FY 2025 begins on Oct. 1, 2024, and Congress has already begun the appropriations process for the next fiscal year. Because Congress is unlikely to pass the FY 2025 bills before the end of the calendar year and before the next Congress begins on Jan. 3, 2025, uncertainties are already present. Notably, the chair of the House Appropriations Committee, Rep. Kay Granger (R-Texas), who already announced her retirement from Congress at the end of her term, declared her descension as chair after Congress passed the FY 2024 bills and signaled that it is best that the committee is served by someone who will be in Congress next year. The *Holland & Knight Defense Situation Report* will continue to keep readers updated on the appropriations process.

## Innovation Wins in Defense Appropriations Bill

The Defense Appropriations bill provides nearly \$1 billion for the Defense Innovation Unit (DIU), which focuses on leveraging new commercial technology adaptation for the U.S. military, signaling the U.S. Department of Defense's (DOD) need to innovate and provide technologies quickly to U.S. armed services and combatant commands. This funding is nearly \$842 million over the president's budget request to Congress that was sent in March 2023 and includes \$589 million to accelerate DOD investments in innovative, commercial technologies with direct fielding of technologies to warfighters.

Similarly, the Office for Strategic Capital (OSC), a relatively new DOD organization that was first highlighted in the [December 2022 Holland & Knight Defense Situation Report](#), will receive the budget authority for more than \$900 million in loans to support the defense industrial base, which includes safeguards from Congress for the DOD to ensure that the loans and loan guarantees are provided only to companies with strong financial records. The OSC will seek to connect companies developing critical technologies vital to national security with capital. These technologies – which include advanced materials, next-generation biotechnology and quantum science – often require long-term financing to bridge the gap between the laboratory and full-scale production, often referred to as the "Valley of Death" in industry.

Finally, the bill provides \$200 million to the DOD's Replicator initiative, which seeks to field thousands of autonomous, "attributable" systems across multiple domains within 18 to 24 months. This is the first time that Congress has provided the DOD authority to use appropriated funds on the new initiative, of which the details have been few.

## NDAAs Update

As covered in the [December 2023 Holland & Knight Defense Situation Report](#), Congress passed the NDAA for FY 2024, the 63rd consecutive NDAA passage. The Senate and House passed the compromise measure on a bipartisan basis, and President 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 FY 2023 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 its 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 reach out to the authors.

## Congressional Hearings Coverage

The past month has been busy with House and Senate Armed Services Committees (SASC) beginning posture hearings on the Biden Administration's FY 2025 budget request to Congress. Leaders of armed services and defense agencies have begun to testify on behalf of their respective budget requests, and members of Congress have the chance to dive deeper into various funding lines. After these posture

hearings, the HASC and SASC will write their annual NDAA legislation, and the House and Senate Appropriations Subcommittees on Defense will also author their bills.

While posture hearings are a time for the DOD's top brass to defend the Biden Administration's budget, armed services and combatant commands will also release their Unfunded Priorities Lists (UPL). Though DOD Comptroller Michael McCord has not yet formally confirmed the DOD's UPLs to Congress, a process that is required by statute, some UPLs have been made public by armed services and combatant commands. 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. However, it is still up to Congress to authorize and appropriate funding to the DOD.

## **HASC Hearing on Army Aviation Modernization**

On March 6, 2024, the HASC Subcommittee on Tactical Air and Land Forces held a hearing on the U.S. Army's modernization plans, requirements and investments in aviation programs as part of the Army's recently announced [Aviation Investment Rebalance](#). The subcommittee heard from DOD witnesses on how the DOD identifies and explains how this rebalance addresses the modernization priorities of the Army and how its leadership assesses and manages risk throughout the aviation portfolio.

A big topic of discussion covered the Army's Future Vertical Lift (FVL) effort and the cancellation of the Army's Future Attack Reconnaissance Aircraft (FARA) program. The cancellation of these programs has split reactions in Congress, mainly from delegations where the defense industrial base has traditionally supported these programs and where those members have suggested the companies and supported jobs will have a negative effect. The Army presented its reasoning for the FVL and FARA cancellations, citing evolving battlefield threats, industrial base concerns and the emergence of unmanned and joint capabilities. Members of the subcommittee expressed concerns about the loss of investment and potential gaps in capabilities but acknowledged the Army's commitment to maintaining situational awareness and combat effectiveness.

The discussion on FARA also highlighted the Army's decision to invest heavily in uncrewed aerial systems (UAS) and launched effects technologies, recognizing their significance in modern warfare. The Army plans to increase funding for UAS and counter-UAS (cUAS) programs and integrate them into future formations. Some members, including Subcommittee Chairman Rep. Rob Wittman (R-Va.), [raised concerns](#) about potential gaps in UAS capabilities due to the retirement of the RQ-7 Shadow, emphasizing the need for a swift and effective solution. Despite budget constraints, the Army expressed confidence in its ability to develop and field UAS and cUAS capabilities quickly, leveraging off-the-shelf technologies and existing authorities. Given the lessons learned in Ukraine and the exponential growth of UAS on the battlefield, as well as the cUAS systems that must be developed in tandem, Rep. Wittman also put forth the idea of establishing a Drone Corps within the Army that specializes in UAS. Members of the subcommittee and DOD witnesses affirmed their commitment to supporting the Army's modernization efforts through flexible acquisition authorities and increased funding agility, highlighting the shared goal of ensuring the Army remains a preeminent global force.

## **First Hearing on DPA Reauthorization**

On March 12, 2024, the National Security, Illicit Finance, and International Financial Institutions Subcommittee of the House Financial Services Committee held a hearing to review and consider the 54th reauthorization of the Defense Production Act of 1950 (DPA) (P.L. 81-774, 50 U.S.C. §§4501 et

seq.), as amended. Discussion focused on the purpose of the DPA's enactment and looking at what members of Congress and witnesses believe should be included based on their experiences in an authorization. Notably, witnesses highlighted the gaps in the supply chain, urging Congress to make reforms. There was bipartisan agreement on the need to reauthorize the DPA; however, testimony varied on how narrowly "national security" should be defined. Testimony primarily centered on the need for the reauthorization to focus more effectively on national defense and an indispensable public system. Additionally, debate centered around the DPA drifted from focusing on national defense events to non-defense emergencies, such as the COVID-19 pandemic.

The DPA provides the president a broad set of authorities to influence domestic industry in the interest of national defense. Originally passed at the outset of the Korean War, the original DPA gave the president a broad set of powers, including the ability to set wages and prices and ration consumer goods, though not all of these powers have been renewed. The law has been continually reauthorized by Congress, most recently in the FY 2019 NDAA. It is set to expire in 2025. For a deeper read on DPA Title III and the Technology Investment Agreement, please see the Holland & Knight Government Contracts Blog post, "[Capturing Industrial Base from the DoD](#)," March 6, 2024.

## **House Foreign Affairs Committee Hearing on Chinese Military Technology Competitiveness**

On March 21, 2024, the House Foreign Affairs Committee held a hearing discussing China's export control policies and economic coercion against other nations, with a focus on addressing national security concerns. Witnesses included two officials from the U.S. Department of State to provide testimony on the Biden Administration's efforts to counter China's influence around the world. The witnesses emphasized the importance of investing in critical supply chains and the effectiveness of export controls in deterring China's access to advanced technologies, especially semiconductors and those with a defense application. The committee also emphasized the need for robust enforcement of U.S. export control policies and raised concerns about China's support for Russia and Iran's weapons programs.

## **Key China Hawk Announces Early Retirement from Congress**

On March 22, 2024, Rep. Mike Gallagher (R-Wis.) [announced](#) that he will retire from Congress earlier than expected and officially step down on April 19, 2024. While he already announced that he would not seek reelection, his resignation from Congress early will leave House Republicans with an even slimmer majority of 217-213 after his departure. Gallagher's early retirement also means opportunities for other members to ascend to the chairs of committees he led during this Congress. Rep. Gallagher is chairman of the HASC Subcommittee on Cyber, Information Technology, and Innovation (CITI). The CITI Subcommittee, which has jurisdiction over artificial intelligence (AI), all things cybersecurity and many DOD Research, Development, Test, and Evaluation (RDT&E) programs, will play an important role during the FY 25 NDAA process. A replacement for this chairmanship has not yet been announced.

Throughout his career, Rep. Gallagher has been instrumental in pursuing policies that advance American innovation and national and economic policy in the face of competition with China. As such, he was named chair of the House Select Committee on Strategic Competition between the United States and the Chinese Communist Party. After Rep. Gallagher's announcement, Speaker Johnson announced that Rep. John Moolenaar (R-Mich.) will replace Rep. Gallagher as chair of the select committee.

## EXECUTIVE AND DEPARTMENTAL UPDATES

### President Biden Releases FY 2025 Budget Request to Congress

On March 11, 2024, President Biden released his FY 2025 budget request to Congress. The request totals \$1.3 trillion for the entire government and requests \$849.8 billion for the DOD, which is consistent with the caps approved by Congress under the Fiscal Responsibility Act of 2023 (FRA; P.L. 118-5) and is only a 1 percent increase over the FY 2024 request. The [FY 2025 defense budget](#), according to a White House press release, provides the capabilities and investments to advance U.S. Secretary of Defense Lloyd Austin's three key priorities: "defending the United States, taking care of our people, and succeeding through teamwork." To achieve these priorities, the budget request links Secretary Austin's goals to its resources and continues executing the DOD's 2022 National Defense Strategy (NDS). The FY 2025 proposal serves as an election-year outline of potential future scenarios if President Biden secures reelection in November 2024. The president and his team previewed elements of the budget before the March 7, 2024, State of the Union address, which was covered in the [February 2024 Holland & Knight Defense Situation Report](#).

The FY 2025 budget request allows the DOD to invest in capabilities to maintain a ready, lethal and combat-credible joint force, with a laser focus on the pacing challenge from the People's Republic of China, as well as the acute threat posed by Russia. The FY 2025 budget request includes \$143.2 billion in research, development, test and evaluation and would also fund \$167.5 billion for procurement. Combined, these investments will establish "even stronger, nimbler, and more modern combat-credible forces across all domains," as the request states.

The president's budget also included requests for the armed services, which typically lay out the contours enough for Congress to begin the broad writing of the FY 2025 defense bills. As such, the request seeks \$185.9 billion for the Army, which is 0.2 percent higher than the FY 2024 request; \$257 billion for the U.S. Navy and Marine Corps, which is 0.7 percent over the FY 2024 request; \$188.1 billion for the U.S. Air Force, which is 1.6 percent over FY 2024 request; and \$29.4 billion in FY 2025 for the U.S. Space Force, which is 2 percent less than FY 2024. View the [justification books](#) for the president's budget request.

Because the Biden Administration had to keep its budget request in line within the contours of the FRA, seeking only a 1 percent increase, members of Congress expressed concerns that the topline numbers fell short of their expectations. For example, HASC Chairman Mike Rogers (R-Ala.) [noted](#) that the "defense topline number fails to keep pace with inflation and our adversaries." He added in an interview later that, "[t]he leadership can do what it wants to, but as authorizers, I intend to build an authorization based on the threats we face as a nation." Chair Rogers also cited servicemember quality of life improvements as his No. 1 priority, which includes recruitment, retention, pay, healthcare, education and housing, but that "it's going to be expensive."

Additionally, SASC Ranking Member Sen. Roger Wicker (R-Miss.) said in a statement that "this budget projects weakness to every corner of the globe. The Biden administration is not moving nearly quickly enough to prevent war with the Chinese Communist Party." Some Democrats expressed that the budget request falls short, pointing to specifics in the president's budget that do not meet expectations. For example, HASC Seapower Subcommittee Ranking Member Rep. Joe Courtney (D-Conn.), who has a large submarine manufacturing shipyard in his district, [expressed concern](#) that the budget requests only one Virginia-class submarine, which does not keep pace with the contours of the trilateral agreement among Australia, the United Kingdom and U.S. (AUKUS), which was codified in the FY

2024 NDAA. Rep. Courtney and his chair counterpart on the HASC Seapower Subcommittee, Rep. Trent Kelly (R-Miss.), warned about the pacing of submarine procurement in a January 2024 [letter](#) sent to President Biden. Relatedly, Rep. Wittman, whose district is near shipbuilding yards in Hampton Roads, Virginia, expressed general consternation regarding the budget request's shrinking Navy fleet across the board, saying the Biden Administration is "threatening to devastate our naval fleet" and local industry.

On the other hand, some members pledged to work with the administration and improve the FY 2025 defense budget. For example, Sen. Jack Reed (D-R.I.), chairman of the SASC, said that "The job of Congress is to determine the right balance of resources to meet requirements. In that sense, the president's defense budget request is an outline and a starting point." Additionally, Rep. Adam Smith (D-Wash.), ranking member of the HASC, said that the defense budget request projects strength and "focuses on the importance of balancing our national defense needs with the realities of a large federal debt and deficit as we continue to face a complex range of national security and national defense challenges."

One funding line that was not addressed in the president's budget request that many in the defense industrial base have been anticipating is any details on U.S. Deputy Secretary of Defense Kathleen Hicks' Replicator initiative. Replicator was announced in fall 2023 with the goal of fielding thousands of attributable drones within the next 18 to 24 months, a window that the DOD is seven months into since its announcement. In a [press conference](#) announcing the DOD's budget request, Deputy Secretary Hicks projected that the program will cost around \$500 million per year, but that the budget request and accompanying justification books include no money and address only "reducing the barriers inside our system." Further, DOD Comptroller Michael McCord said that "[w]e're sort of leaning on the side of not disclosing the details until we are confident that that's what the deputy secretary wants to do."

## **DOD Releases First Investment Strategy for OSC**

On March 8, 2024, the DOD released the first Investment Strategy for the OSC. The Investment Strategy identifies priority critical component technology industries for OSC focus and describes how OSC will catalyze private investment in these priority industries. The public release of the Investment Strategy supports open engagement with public and private sector stakeholders to advance OSC's mission. The Investment Strategy presents a guiding framework for OSC programs to complement existing DOD and U.S. government programs. It also addresses how OSC determined which technology areas to prioritize for its initial program activities, based on rigorous analysis of national security applications, U.S. market competitiveness and capital needs for critical technology industries. OSC's initial technology priorities for private sector investment are:

- nanomaterials and metamaterials (advanced materials)
- bioenergetics and synthetic biology (biotechnology)
- Open RAN (FutureG and 5G)
- sensor hardware (integrated sensing and cyber)
- assembly, testing and packaging (microelectronics)
- materials (microelectronics)
- quantum computing, security and sensing (quantum science)
- battery storage (renewable energy generation and storage)
- space-enabled services and equipment (space technology)

## New DOD Chief Digital and Artificial Intelligence Officer Announced

On March 14, 2024, Defense Secretary Austin announced that Dr. Radha Plumb will serve as the next Chief Digital and Artificial Intelligence Officer (CDAO), beginning April 8, 2024, after fully transitioning in her current position as Deputy Under Secretary of Defense for Acquisition and Sustainment. In a press release, Secretary Austin said that "Dr. Plumb's technical expertise and strategic acumen will enhance the CDAO's innovative efforts, and help accelerate the DoD's adoption of data, analytics, and artificial intelligence (AI) to generate decision advantage from the boardroom to the battlefield." The CDAO became operational in June 2022 and is dedicated to integrating and optimizing AI capabilities across DOD. The office is responsible for accelerating DOD's adoption of data, analytics and AI, enabling the department's digital infrastructure and policy adoption to deliver scalable AI-driven solutions for enterprise and joint use cases, helping safeguard the nation against current and emerging threats.

Dr. Plumb will have a monumental task ahead as the DOD has taken on various tasks related to AI that the *Holland & Knight Defense Situation Report* has previously covered. For example, the DOD announced in August 2023 the establishment of a generative AI task force, called Task Force Lima, that will analyze and integrate generate AI tools, such as large language models, across the DOD. Dr. Plumb will also be responsible for administering the DOD-related portions of the [White House's Executive Order on AI](#), further implementing the [2023 DOD Data, Analytics, and Artificial Intelligence Adoption Strategy](#) and operationalizing the DOD's [AI ethical principles](#), including developing technical tools and guidance to help DOD personnel design, develop, deploy and use AI systems responsibly.

## Commission Recommends Overhaul of DOD Budgeting and Planning Process

On March 6, 2024, the DOD [released](#) a report recommending policies regarding how it requests, spends and resources funding. The congressionally mandated Commission on Planning, Programming, Budgeting, and Execution (PPBE), which was created in the FY 2022 NDAA, is tasked with assessing the effectiveness of the DOD's PPBE process, examine more efficient alternatives to the process and develop policy recommendations that will enable the DOD to rapidly field operational capabilities and outpace America's near-peer competitors, particularly China. Panelists recommended replacing the current PPBE process with a new defense resourcing process, which the report says will better maintain American competitiveness by driving resource allocation in a more rigorous, joint and analytically informed way. The report says the new process should also embrace changes that enable the DOD to respond effectively to emerging threats while leveraging technological advances. The report adopted 13 recommendations, which include improving the alignment of budgets to strategy, fostering innovation and adaptability, strengthening relationships between the DOD and Congress, modernizing business systems and data analytics, and strengthening the capability of the resourcing workforce.

After the report's release, SASC Chair Reed and Ranking Member Wicker [released](#) a joint statement praising the PPBE's work and acknowledging that the recommendations will help the DOD develop new technologies in a streamlined, agile manner that protects American national security and hegemony against China.

## DOD Releases Defense Industrial Base Cybersecurity Strategy

On March 28, 2024, the DOD [released](#) its Defense Industrial Base (DIB) Cybersecurity (CS) Strategy, which seeks to create a more resilient defense cybersecurity ecosystem. The DOD released the strategy after seeking input and expertise from the DIB, academic institutions, and research and

development organizations. The DOD also took into consideration the mission and goals of the National Defense Strategy, 2023 National Cybersecurity Strategy and 2023 DOD Cyber Strategy. The strategy's four goals and objectives are:

- strengthening DOD governance structure for DIB cybersecurity
- enhancing the cybersecurity posture of DIB contractors
- preserving the resiliency of critical DIB capabilities in a cyber-contested environment
- improving DOD collaboration with DIB

The DIB CS Strategy is for the use of the DOD's internal and industry-facing cybersecurity activities and lays forward a path from FY 2024 through FY 2027.

## DIU Solicitations

In the past month, the DIU published one new solicitation. It is for communication in an electromagnetic interference (EMI) environment from the DIU's Blue UAS programming. Current global conflicts have highlighted the decisive impact small uncrewed aerial systems (sUAS) and uncrewed systems (UxS) have on the battlefield. Access to low-cost, secure components from the domestic and allied industrial base and development of systems with open standards are paramount to enabling rapid updates and seamless hardware and software integrations to provide needed capabilities for the DOD. As the DOD must expect an environment with challenges due to jamming, interference or other factors and be able to successfully operate sUAS and other UxS within it, the solicitation said that it cannot expect to have unhindered freedom of maneuver in the electromagnetic spectrum. As such, the DOD is seeking commercial solutions that allow Group 1 and 2 sUAS (as well as other UxS) to communicate in electromagnetic spectrum-contested environments, including, but not limited to, jamming, interference and spoofing.

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