



China, supply chain risk, and the race to 5G

A deeper dive into the president's fiscal year (FY) 2021 budget request for the U.S. Department of Commerce reveals new initiatives aimed at safeguarding technology

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- The National Telecommunications and Information Administration (NTIA) seeks US\$31 million increase to standup new program on telecommunications supply chain risks and update spectrum management for 5G.
- The Bureau of Industry and Security (BIS) requests increased funding for new enforcement tools to target "China's destabilizing actions."
- The National Institute of Standards and Technology (NIST) requests US\$27 million for three new programs on industries of the future, artificial intelligence (AI), and 5G technologies.

The U.S. Department of Commerce may have the broadest array of agency types and mission sets across all of the federal government. The department is responsible for such disparate activities as managing our nation's fisheries, supporting minority-owned businesses, and counting every person in the country every 10 years.

However, the department also plays a significant role in trade, technology, and the race to 5G.

Since taking over the White House, the Trump administration has closely tied trade enforcement actions with matters of national security. The department has flexed its enforcement muscles by imposing tariffs on steel and aluminum imports and blacklisting certain Chinese-owned telecommunications companies from receiving certain U.S. export items.

The U.S. Department of Commerce's FY 2021 budget request shows no signs of letting up on any of these actions. And, although the governmentwide 5G strategy may be in [disarray](#), a closer inspection of individual department bureau requests shows policy priorities the administration would now like to tackle through the department – increasing pressure on China and boosting our nation's efforts in the race to 5G.

National Telecommunications and Information Administration

The NTIA manages the federal use of spectrum. The agency also advises the president on communication and information policy. NTIA's budget request for FY 2021 is US\$72.2 million,

US\$31.7 million above the FY 2020 enacted amount, which represents a 79 percent increase above its current funding level of US\$40.4 million.

Supply chain risks to telecommunications infrastructure

Consistent with the department's role in implementing the 15 May 2019 executive order entitled, "Securing the Information and Communications Technology and Services Supply Chain," NTIA requested an increase of US\$2.07 million in FY2021 to "defend and support the growing efforts to oversee, mitigate, and manage supply chain risks to our nation's telecommunications infrastructure."

The increased funding would allow NTIA to hire six telecommunications policy specialists. Matters of national security and supply chain risks have historically been handled by other agencies in the department – primarily the Bureau of Industry and Security (e.g., export controls) and the National Institute of Standards and Technology (e.g., assessing federal supply chain risks). NTIA's budget request shows the increasing role that agency hopes to play in national security as the United States looks to buildout 5G networks.

Modernization of spectrum management for 5G

NTIA's largest requested increase is for US\$25 million to modernize its spectrum management system that was built over 30 years ago. The budget request claims that NTIA's current system is inadequate to execute current spectrum functions, safeguard government missions, and accommodate new 5G technologies. One advantage the agency argues an updated system will bring is reducing "white space" between federal spectrum assignments. This could result in more efficient federal use – making more spectrum available for the private sector and 5G.

Highlighting Congress' interest in spectrum management, the House Science Committee expressed its concern for the important role NTIA plays in mediating spectrum use and disputes between federal agencies in a December 2019 [letter](#) to the Government Accountability Office.

Bureau of Industry and Security

BIS regulates commercial items that pose national security risks when exported to foreign countries of concern. The agency balances commercial trading interests with our national security interests by overseeing a complex export control system. The FY 2021 budget includes a requested increase of US\$10 million for BIS, which is 8 percent above the agency's enacted funding level of US\$127.6 million.

"Initiatives to Address China and Emerging Technologies"

Of the total increase requested by BIS, US\$2.64 million would specifically target what the administration has identified as "China's destabilizing actions." The purpose of the increase is made clear in the agency's request:

To support its destabilizing military modernization efforts via the "Made in China 2025" and civil-military integration strategies, the China regime has acquired satellite and other emerging technology with implications threatening to U.S. national security. To align the BIS enforcement mission with the Department of Justice "China Initiative," and address whole of government approach to China, BIS seeks new analytical and law enforcement tools, analysts, and agents to protect U.S. technology from misappropriation and to punish violators . . .¹

¹ U.S. Department of Commerce, Bureau of Industry and Security, Fiscal Year 2021 Congressional Budget Submission, BIS-37 https://www.commerce.gov/sites/default/files/2020-02/fy2021_bis_congressional_budget_justification.pdf.

The requested increase would allow BIS to hire five export compliance specialists and three additional special agents to focus squarely on Chinese efforts to acquire U.S. technology.

Enhancing export control compliance

BIS is also requesting an additional US\$1.05 million to exert jurisdiction over new subsets of technologies pursuant to the priorities outlined in the Export Control Reform Act of 2018. The increase would be used to hire five new positions (two engineers, two statisticians, and one program manager) to identify controls needed for emerging and foundational technologies critical to our national security.

The remaining activities that would be funded within BIS' requested US\$10 million increase includes US\$1.3 million to stand up an enhanced computer evidence program, and a US\$5 million "adjustment to base" to cover a federal pay increase and positions that were only partially funded in FY 2020 to augment the Section 232 review process.

National Institute of Standards and Technology

NIST is the federal agency responsible for setting national standards, advancing measurement science, and facilitating technology innovation. As has been the case since the beginning of the Trump administration, NIST's budget requests a significant decrease of US\$296.5 million (29 percent) below the FY 2020 enacted amount of US\$1.03 billion. Despite the significant cuts, the administration has requested US\$27.4 million for three new program starts at NIST in FY 2021.

Industries of the future, AI, and 5G

Consistent with the administration's push to increase funding for industries of the future, NIST requested US\$25 million to accelerate AI technologies to ensure they are dependable, secure, and interoperable. President Trump initiated the American AI Initiative in February 2019 – directing federal agencies to prioritize support for AI in their annual budget requests.² NIST's request proposes to build out testbeds for AI and wireless communications in real-world settings (e.g., automated factories), "to create a level playing ground in which the U.S. can compete more fairly."

NIST also requested US\$1.4 million specifically for the development of standards for 5G networks. The agency claims the requested funding would "ensure a prominent role of U.S. government in the development of standards that will underpin the success and wide deployment of 5G technologies."

In addition to the two new programs above, NIST requested US\$1 million to create Position, Navigation, and Timing (PNT) profiles. Funding would be used to create PNT profiles to help improve the public and private sectors' ability to identify networks and systems that are dependent on PNT services, and to manage cyber risks and malicious threats to those systems.

The role of Congress and appropriations

The president's annual budget request only marks the beginning of the federal funding process. Congressional members and their staff – especially the appropriations committees – are closely reviewing the FY 2021 request. Following a couple weeks of in-depth budget briefings from federal agencies, the appropriations committees will hold FY 2021 budget hearings and then begin to write their respective appropriations bills.

² See White House, Artificial Intelligence for the American People, <https://www.whitehouse.gov/ai/>; see also Office of Science and Technology Policy, President Trump's FY 2021 Budget Commits to Double Investments in Key Industries of the Future, <https://www.whitehouse.gov/briefings-statements/president-trumps-fy-2021-budget-commits-double-investments-key-industries-future/>.

Now is the time to weigh in on FY 2021 funding and policies. Hogan Lovells would appreciate the opportunity to develop an appropriations strategy to support your business goals for the coming year.

Contacts



Anthony V. Capobianco
Partner, Washington, D.C.
T +1 202 637 2568
anthony.capobianco@hoganlovells.com



Brian P. Curran
Partner, Washington, D.C.
T +1 202 637 4886
brian.curran@hoganlovells.com



Ajay Kuntamukkala
Partner, Washington, D.C.
T +1 202 637 5552
ajay.kuntamukkala@hoganlovells.com



Warren H. Maruyama
Partner, Washington, D.C.
T +1 202 637 5716
warren.maruyama@hoganlovells.com



Beth Peters
Partner, Washington, D.C.
T +1 202 637 5837
beth.peters@hoganlovells.com



Stephen F. Propst
Partner, Washington, D.C.
T +1 202 637 5894
stephen.propst@hoganlovells.com

Anne Salladin
Partner, Washington, D.C.
T +1 202 637 6461
anne.salladin@hoganlovells.com



Jonathan T. Stoel
Partner, Washington, D.C.
T +1 202 637 6634
jonathan.stoel@hoganlovells.com



C. Michael Gilliland
Senior Counsel, Washington, D.C.
T +1 202 637 5619
mike.gilliland@hoganlovells.com



Anne W. Fisher
Counsel, Washington, D.C.
T +1 202 637 6569
anne.fisher@hoganlovells.com



Benjamin Kostrzewa
Registered Foreign Lawyer, Hong Kong,
Washington, D.C.
T +852 2840 5080 (Hong Kong)
T +1 202 637 5600 (Washington, D.C.)
ben.kostrzewa@hoganlovells.com



Charles Kolo Rathburn
Associate, Washington, D.C.
T +1 202 804 7793
kolo.rathburn@hoganlovells.com



Stephanie Sun

Associate, Shanghai

T +86 21 6122 3817

stephanie.sun@hoganlovells.com

www.hoganlovells.com

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