



## Congressional Update

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*January 8, 2016*

### I. FY 2016 Consolidated Appropriations Act

#### **Middle East Provisions of the State, Foreign Operations bill in the Consolidated Appropriations bill.**

In the days immediately before the congressional Christmas/New Year recess, Congress passed and the President signed into law **H.R. 2029, *the Consolidated Appropriations Act, 2016*** containing all 13 appropriations bills for Fiscal Year 2016, including Foreign Operations and Defense Appropriations bills. Division K of the Omnibus contains the FY 2016 State, Foreign Operations Bill and will fund the State Department and US foreign assistance programs through September 30, 2016. Division K contains the usual restrictions and limitations on assistance to the Palestinians, as well some new conditions. The bill conditions aid to Egypt and provides significant increases for Jordan and Tunisia.

**General Provisions - Palestine: Sections 7036 through 7040** of the General Provisions section continue the limitations, restrictions and prohibition on US assistance to Palestine. These are long-standing provisions in the annual State, Foreign Operations Appropriations bills and bar funds to a Palestinian state that does not meet a series of conditions, but does include a presidential waiver authority to allow funding upon a presidential determination.

**Section 7036** bars assistance to a Palestinian state that does not meet a series of conditions, but does include a presidential waiver authority.

**Section 7037** bars US funds for the purpose of establishing any diplomatic mission to the Palestinians in Jerusalem.

**Section 7038** bars any assistance to the Palestinian Broadcasting Corporation.

**Section 7039** sets out far reaching restrictions and conditions, as well as vetting oversight and requirement for US assistance programs carried out through non-governmental organizations (NGOs), in the West Bank and Gaza.

**Section 7040** bans US assistance to the Palestinian Authority (PA) along with Presidential waiver authority. The bill also bars any funding for salaries of PA personnel in Gaza or for Hamas or any entity effectively controlled by Hamas, any power-sharing government of which Hamas is a member, or that results from an agreement with Hamas and over which Hamas exercises undue influence. The prohibition may be waived if the President certifies and reports to Congress that no ministry, agency or instrumentality of the Palestinian Authority is effectively controlled by Hamas, unless the Hamas-controlled Palestinian Authority has publicly acknowledged the Jewish State of Israel's right to exist; and has committed itself and is adhering to all previous agreements and understandings with the US Government, with the Government of Israel, and with the international community, including agreements and understandings pursuant to the Roadmap to a solution to the Israeli-Palestinian conflict (<https://www.gpo.gov/fdsys/pkg/PLAW-109publ446/html/PLAW-109publ446.htm>)

This section also contains the perennial ban on any US assistance to the PLO.

The Special Provisions of the Foreign Operations bill and **Section 7041** dealing with North Africa and the Middle East follow:

**Section 7034 -- Special Provisions:**

**Part (b)(2)** contains non-binding language stating that funding should not be used for tear gas, small arms, light weapons, ammunition, or other items for crowd control purposes for

foreign security forces that use excessive force to repress peaceful expression, association or assembly in countries undergoing democratic transition.

**Part (k)(10)** extends existing loan guarantees for Israel until September 30, 2019. These loan guarantees should have expired September 30, 2015. The original loan guarantee, issued in the 108<sup>th</sup> Congress (2003-2004) stipulates that the guarantees are to be used only to support activities in the geographic areas subject to Israel government administration prior to June 5, 1967.

**Part (o)(1)** allows Economic Support Funds (ESF) for the costs of loan guarantees for Jordan, Ukraine and Tunisia. **Part (o)(2)** titled Enterprise Funds, allows ESF funds to establish and operate one or more enterprise funds for Tunisia and Egypt.

#### **Section 7041: Middle East and North Africa**

**(a) Conditions on US aid to Egypt:** US assistance funds for the Government of Egypt may only be available upon a certification and report by the Secretary of State to the Appropriations Committees that the Government of Egypt is (1) sustaining the strategic relationship with the United States; and (2) meeting its obligations under the 1979 Egypt-Israel Peace Treaty.

ESF - The bill provides up to \$150 million to Egypt of which not less than \$35 million shall be available for higher education programs including not less than \$10 million for scholarships at not-for-profit institutions for Egyptian students with high financial need. Funds also shall be available for democracy programs and for development programs in the Sinai. No funds are available for cash transfer or budget support unless the Secretary of State certifies and reports to the Congress that the Government of Egypt is taking consistent and effective steps to stabilize the economy and implement market-based economic reforms.

Furthermore, upon determination, the Secretary of State shall withhold ESF funds equivalent to that expended by the US Government for bail, and by nongovernmental organizations for

legal and court fees, associated with democracy-related trials in Egypt until the Secretary certifies and reports to the Committees on Appropriations that the Government of Egypt has dismissed the convictions issued by the Cairo Criminal Court on June 4, 2013.

**Foreign Military Financing (FMF)** – The bill provides \$1.3 billion in FMF funding for Egypt and that the funds be transferred to an interest bearing account in the Federal Reserve Bank of New York. However, the provision stipulates that 15 percent of this funding shall be withheld from obligation until the Secretary of State certifies and reports to the Committees on Appropriations that the Government of Egypt is taking steps toward a number of reforms including (1) advancing democracy and human rights, protection of religious minorities and the rights of women; (2) implementing reforms to protect freedoms of expression, association, and peaceful assembly, including the ability of civil society organizations to function without interference; (3) the release of political prisoners and providing detainees with due process of law; (4) holding Egyptian security forces accountable, including officers credibly alleged to have violated human rights; and (5) providing regular access for monitoring of US assistance. The certification requirement shall not apply to funds for counterterrorism, border security, and nonproliferation programs for Egypt.

This section also allows the Secretary of State to waive the certification requirement as well as any provision of law restricting assistance for Egypt if the Secretary determines and reports to the Committees on Appropriations that to do so is important to the national security interest of the US, and submits a report to such Committees containing a detailed justification for the use of such waiver and the reasons why any of the requirements...cannot be met. Finally, this section requires the Secretary of State to “take all practicable steps to ensure that mechanisms are in place for monitoring, oversight, and control of funds made available for assistance for Egypt” and to consult, not later than 90 days after the enactment of the Act, with the Committees on Appropriations on any plan to restructure military assistance for Egypt.

**(b) Iran:** Funding under “Diplomatic and Consular Programs,” “Economic Support Fund,” and “Nonproliferation, Anti-terrorism, Demining and Related Programs” shall be used by the Secretary of State (1) to support US policy to prevent Iran from achieving the capability to produce or otherwise obtain a nuclear weapon; (2) to support an expeditious response to any violation of the Joint Comprehensive Plan of Action or UN Security Council Resolution 2231; (3) to support the implementation and enforcement of sanctions against Iran for support of terrorism, human rights abuses, and ballistic missile and weapons proliferation; and (4) for democracy programs for Iran, to be administered by the Assistant Secretary of State for Near Eastern Affairs in consultation with the Assistant Secretary of State for Democracy, Human Rights, and Labor.

The section also prohibits Export Import Bank funds to any person subject to sanctions under the Iran Sanctions Act (ISA) of 1996. This section also requires the Secretary of State to report to Congress on semi-annual basis as required by the Iran Nuclear Agreement Review Act of 2015.

**(c) Iraq:** A total of \$355.3 million is provided to support programs in Iraq that address sectarianism, assist vulnerable populations, and strengthen governance, including by promoting civil society. Programs should advance peace and reconciliation goals and build a strong foundation for the long-term stability of Iraq.

**(d) Jordan:** A total of \$1.275 billion is provided for Jordan under Bilateral Economic Assistance and International Security Assistance. Not less than \$204 million shall be for budget support for the Government of Jordan and \$100 million shall be for water sector support, subject to prior consultation with the Committees on Appropriations. This section also stipulates that funds shall be made available for programs to implement the Jordan Response Plan 2015 for the Syria Crisis, including assistance for host communities in Jordan: Provided, that not later than 180 days after enactment of this Act, the Secretary of State shall

submit a report to the Committees on Appropriations describing US and other donor contributions to such Plan.

**(e) Lebanon:** Funding for the Lebanese Internal Security Forces (ISF) or the Lebanese Armed Forces (LAF) is barred if the ISF or the LAF is controlled by a foreign terrorist organization, as designated under US law. It also stipulates that International Narcotics Control and Law Enforcement (INCLE) and FMF funding may be made available for programs and equipment for the ISF and the LAF to address security and stability requirements in areas affected by the conflict in Syria, following consultation with the appropriate congressional committees. This section also stipulates that ESF for Lebanon may be made available if President certifies that (1) the armed forces of Lebanon have been deployed to the internationally recognized border between Lebanon and Israel; and (2) the Government of Lebanon is effectively asserting its authority in the area in which such armed forces have been deployed.

In addition, FMF funds for Lebanon may be used only to professionalize the LAF and to strengthen border security and combat terrorism, including training and equipping the LAF to secure Lebanon's borders, interdicting arms shipments, preventing the use of Lebanon as a safe haven for terrorist groups, and to implement UN Security Council Resolution 1701. It also prohibits the obligation of assistance to the LAF until the Secretary of State submits to the Committees on Appropriations a detailed spending plan, including actions to be taken to ensure equipment provided to the LAF is only used for the intended purpose. Note: This plan is additional to any other notification requirements. Finally, the bill stipulates that any notification of funding is to include any funds specifically intended for lethal military equipment.

**(f) Libya:** This section earmarks \$20 million for assistance for Libya for programs to strengthen governing institutions and civil society, improve border security, and promote democracy and stability in Libya, and for activities to address the humanitarian needs of the

people of Libya. It goes on to stipulate that none of the funds may be used for assistance to Libya unless the Secretary of State reports to Congress that the Government of Libya is cooperating with US Government efforts to investigate and bring to justice those responsible for the attack on US personnel and facilities in Benghazi, Libya in September 2012. The text notes that this limitation shall not apply to funds made available for the purpose of protecting US Government personnel or facilities. Finally, prior to any obligations funds, this section requires the Secretary of State to certify and report to Congress that all practicable steps have been taken to ensure that mechanisms are in place for monitoring, oversight, and control of funds made available for assistance for Libya, including a description of the vetting procedures to be used for recipients of assistance made available.

**(g) Morocco:** Funds shall be made available for assistance for the Western Sahara and that not later than 90 days after enactment of this Act and prior to the obligation of such funds the Secretary of State, in consultation with the Administrator of USAID shall consult with the Committees on Appropriations on the proposed uses of such funds. It further states that the \$10 million in FMF funds for Morocco may only be used for the purposes requested.

**(h) Syria:** Funds appropriated under ESF, INCLE and Peacekeeping Operations shall be available for non-lethal assistance for programs to address the needs of civilians affected by the conflict in Syria and for programs that (1) establish governance in Syria that is representative, inclusive, and accountable; (2) expand the role of women in negotiations to end the violence and in any political transition in Syria; (3) develop and implement political processes that are democratic, transparent, and adhere to the rule of law; (4) further the legitimacy of the Syrian opposition through cross-border programs; (5) develop civil society and an independent media in Syria; (6) promote economic development in Syria; (7) document, investigate, and prosecute human rights violations in Syria, including through transitional justice programs and support for nongovernmental organizations; (8) counter extremist ideologies; (9) assist Syrian refugees whose education has been interrupted by the

ongoing conflict to complete higher education requirements at regional academic institutions; and (10) assist vulnerable populations in Syria and in neighboring countries.

This section also requires that funding shall be available on an open and competitive basis, for a program to strengthen the capability of Syrian civil society organizations to address the immediate and long-term needs of the Syrian people inside Syria in a manner that supports the sustainability of such organizations in implementing Syrian-led humanitarian and development programs and the comprehensive strategy required by the State, Foreign Operations Act of 2014 (Public Law 113-76).

The section also requires the Secretary of State to provide a report to Congress, in classified form if necessary, containing a comprehensive strategy which shall include a clear mission statement, achievable objectives and timelines, and a description of inter-agency and donor coordination and implementation of such strategy: Provided, that such strategy shall also include a description of oversight and vetting procedures to prevent the misuse of funds. Finally, the section also stipulates that prior to obligating funds for Syria the Secretary of State is to ensure that mechanisms are in place for monitoring, oversight, and control of such assistance inside Syria and that the Secretary of State shall promptly inform the appropriate congressional committees of each significant instance in which assistance provided has been compromised, to include the type and amount of assistance affected, a description of the incident and parties.

**(i) Tunisia:** This provides that not less than \$141.9 million is to be available for Tunisia from the ESF and FMF account.

**(j) West Bank and Gaza:**

General: Part 1 of this section requires that prior to the obligation of any funds for the West Bank and Gaza, the Secretary of State shall report to Congress that the purpose of such assistance is to: (A) advance Middle East peace; (B) improve security in the region; (C)



continue support for transparent and accountable government institutions; (D) promote a private sector economy; or (E) address urgent humanitarian needs.

**Parts 2 through 4 of Section 7041** deal with Palestinians, which correctly should be part of Section 7036 through 7039 which deal with assistance to the Palestinians.

**Palestinians at the UN:** Part 2 bars any funding for the PA if the Palestinians obtain the same standing as member states or full membership as a state in the United Nations or any specialized agency thereof outside an agreement negotiated between Israel and the Palestinians or if the Palestinians initiate an International Criminal Court (ICC) judicially authorized investigation, or actively support such an investigation, that subjects Israeli nationals to an investigation for alleged crimes against Palestinians.” This section provides the Secretary of State the authority to waive the ban on assistance to the PA in the case where the Palestinians gain status at the UN if he “certifies to the Committees on Appropriations that to do so is in the national security interest of the United States, and submits a report to such Committees detailing how the waiver and the continuation of assistance would assist in furthering Middle East peace.” No waiver is provided if the Palestinians go to the ICC.

**Kicking the PLO Office Out of the U.S.:** Part 2(B) limits the President’s ability to waive the longstanding law barring the PLO from having any representation in the United States. For over three decades Congress granted the President a national security or national interests waiver of that prohibition but in recent years Congress has moved to make such waiver contingent on the President certifying that the Palestinians have not, after the date of enactment of this Act, obtained in the UN or any specialized agency thereof the same standing as member states or full membership as a state outside an agreement negotiated between Israel and the Palestinians.

In addition, new language was adopted requiring that in order for the PLO office to stay open in the US, the President must also certify that the Palestinians have not, after the date of

enactment of this Act taken any action with respect to the ICC that is intended to influence a determination by the ICC to initiate a judicially authorized investigation, or to actively support such an investigation, that subjects Israeli nationals to an investigation for alleged crimes against Palestinians. If the president cannot make this two-part certification, he must wait at least 90 days (during which, presumably, the PLO office has to be shut down), and then he may waive the law requiring him to kick the PLO out of the US – but only for a limited period of time, and only if he can certify that the Palestinians have entered into direct and meaningful negotiations with Israel.

**Penalize Palestinians for Funding Families of Prisoners:** Part 3 of this section requires the Secretary of State to reduce the amount of ESF assistance by an amount the Secretary determines is equivalent to the amount expended by the PA as payments for acts of terrorism by individuals who are imprisoned after being fairly tried and convicted for acts of terrorism and by individuals who died committing acts of terrorism during the previous calendar year. This provision also requires the Secretary to report to Congress “on the amount reduced for fiscal year 2016 prior to the obligation of funds for the PA.

**Security report:** Part 4 of this section stipulates that the reporting requirements contained in existing law also shall apply to the 2016 Act. In other words despite having the reports required by two other statutes, under this provision the Secretary of State is to submit to the Committees on Appropriations a report on assistance provided by the US for the training of Palestinian security forces, including detailed descriptions of the training, curriculum, and equipment provided; an assessment of the training and the performance of forces after training has been completed; and a description of the assistance that has been pledged and provided to Palestinian security forces by other donors. The Secretary of State shall report to the Committees on Appropriations, in classified form if necessary, on the security strategy of the PA.

## **II. FY 2016 Defense Appropriations Bill**

**Israel** -- The Consolidated Appropriations Act also contains the FY 2016 Defense Appropriations bill with its usual bag of goodies for Israel. In addition to the \$3.1 billion in FMF provided under Division K of the Act, the Defense Appropriations earmarks \$487.6 million for to Israel, bringing the total of military assistance for Israel to just over \$3.5 billion.

Funds provided under the Defense Appropriations bill are earmarked for specific programs:

-- \$55 million is provided for the procurement of the Iron Dome defense system to counter short—range rocket threats;

-- \$286,526 million is provided for the Short Range Ballistic Missile Defense Program, including cruise missile defense research and development under this program.

-- 89.5 million for an upper-tier component to the Israeli Missile Defense Architecture

-- 56.519 million for the Arrow System Improvement Program including development of a long-range ground and airborne detection site.

**Syria:** The Defense portion of the Act includes the following language with regard to Syria:

“None of the funds made available by this Act may be used with respect to Syria in contravention of the War Powers Act, including for the introduction of United States armed or military forces into hostilities in Syria, into situation in Syria where imminent involvement in hostilities is clearly indicated by the circumstances, or into Syrian territory, airspace, or waters while equipped for combat, in contravention of the congressional consultation and report requirements of that Act.”