



# Pakistan: U.S. Foreign Aid Conditions, Restrictions, and Reporting Requirements

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## Summary

The 112<sup>th</sup> Congress continues to debate levels of U.S. assistance to Pakistan in light of signs that Pakistan may not be a fully willing and effective U.S. partner, and that official Pakistani elements continue to support Afghan insurgent forces. During a period of economic and budget crises in the United States, Obama Administration officials and some senior Members of Congress have voiced concerns about the efficacy of continuing the flow of billions of U.S. aid dollars into Pakistan, with some in Congress urging more stringent conditions on, or even curtailment of, such aid. At issue is whether Pakistan's civilian government and security services are using the aid as intended domestically while actively supporting U.S. efforts to stabilize Afghanistan and combat regional insurgent and terrorist elements. Existing aid restrictions and the certification process required for greater accountability on the part of Pakistan are thus under scrutiny.

A number of current laws restrict or place conditions on certain aid to Pakistan, such as Economic Support Funds and the Pakistan Counterinsurgency Fund (PCF). Others require the President, the Secretary of Defense, or the Secretary of State to certify that Pakistan meets specific criteria to receive U.S. aid. Examples include that the implementing agency is qualified to manage the funds; that the Pakistani government has agreed to clear, achievable goals; that it is meeting human rights criteria; and that the country is making progress in achieving U.S. aid objectives, and is cooperating with the United States in combating terrorist networks and securing its nuclear weapons. In addition, reporting requirements include a quarterly report on the specific uses of PCF; an annual report on Pakistan's cooperation regarding efforts to dismantle nuclear weapons-related supplier networks and combat terrorist groups; a report to explain certification of U.S. aid to Pakistan; and an annual report from the President confirming that providing aid to Pakistan is in the U.S. national interest and that Pakistan has made substantial efforts to adhere to international counternarcotics agreements. Waivers in current law exist: one allows aid restrictions to be waived for human health and welfare risks; three authorize waiving aid restrictions if the President determines that it is in U.S. national security interests to do so.

The National Defense Authorization Act for FY2012 (H.R. 1540), signed into law (P.L. 112-81) on December 31, 2011, includes provisions to withhold 60% of any FY2012 appropriations for PCF unless the Secretary of Defense reports to Congress a strategy for the use of such funds and the metrics for determining their effectiveness, and a strategy to enhance Pakistani efforts to counter improvised explosive devices. The State-Foreign Operations Appropriations law (Division I of P.L. 112-74), signed on December 23, 2011, requires other certifications.

Pending bills include measures that would totally eliminate aid to Pakistan "under any provision of law," and provide no waivers or certification requirements; one that would eliminate all aid unless new certification regarding the Pakistani government's knowledge of Osama bin Laden is provided; one that would eliminate all aid except for aid that would ensure the security of Pakistan's nuclear weapons; and one that would prohibit all non-security aid. Increased reporting and certification requirements also are included in many of the bills currently before Congress.

This report provides a comprehensive list of existing laws and pending legislation containing conditions, limitations, and reporting requirements for U.S. foreign assistance to Pakistan. It will track the debate on this topic and resulting changes. For broader discussion of U.S.-Pakistan relations, see CRS Report R41832, *Pakistan-U.S. Relations*, by K. Alan Kronstadt. See also CRS Report R41856, *Pakistan: U.S. Foreign Assistance*, by Susan B. Epstein and K. Alan Kronstadt. Both are updated regularly.

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## **Context: Recent Turmoil in U.S.-Pakistan Relations**

Pakistan has long been a leading recipient of U.S. foreign aid despite contentious issues in the bilateral relationship. Following the May 2011 U.S. commando raid in Pakistan to kill Osama bin Laden, already troubled U.S.-Pakistani relations further soured, prompting the 112<sup>th</sup> Congress to consider new restrictions on, or even elimination of, the billions of annual assistance dollars currently being provided. Since the raid, U.S.-Pakistani military cooperation has been disrupted and clouded by increased mutual distrust; Islamabad has significantly reduced the number of U.S. military trainers allowed in the country, and the Obama Administration indicated that deliveries of certain security-related financial transfers and other aid are under suspension. A November incident near the Pakistan-Afghanistan border left two dozen Pakistani soldiers dead after their posts came under fire from NATO forces; the event further disrupted relations. Meanwhile, many observers believe Pakistan's civilian government is increasingly weak and ineffectual.

A significant shift in the Obama Administration's public statements on U.S. relations with Pakistan was suggested when Admiral Mike Mullen, outgoing Chairman of the Joint Chiefs of Staff, and Secretary of Defense Leon Panetta testified before the Senate Armed Services Committee on September 22, 2011. In that hearing, both explicitly accused Pakistan's main intelligence agency, Inter-Services Intelligence (ISI), of supporting Haqqani Network insurgents who engage in attacks on U.S. targets in Afghanistan, including a September assault on the U.S. Embassy in Kabul. When asked by a committee member whether he supports a move in Congress to further condition U.S. aid to Pakistan, Secretary Panetta replied, "Anything that makes clear to them that we cannot tolerate their providing this kind of safe haven to the Haqqanis, and that they have to take action—any signal that we can send to them—I think would be important to do."<sup>1</sup>

Just two weeks later, however, President Obama stated in a press conference, "We could not have been as successful as we have been without the cooperation of the Pakistan government. And so on a whole range of issues, they have been an effective partner with us," adding, "[W]e will constantly evaluate our relationship with Pakistan" in the context of U.S. interests.<sup>2</sup>

At the same time that the Administration is displaying serious displeasure with Pakistan, the United States is also responding with humanitarian aid to a September 9, 2011, declaration of disaster due to flooding there. Over the past year, the United States has provided about \$600 million in disaster and refugee assistance for the widespread summer 2010 Pakistan floods. Flooding in 2011 is confined to the southern Sindh province, for which the United States has pledged more than \$110.0 million in FY2011 and FY2012.

While numerous concerns exist about whether Pakistan can be accountable in how it uses U.S. aid and whether it is capable of being a reliable U.S. partner in combating terrorism, many experts believe that U.S. strategic interests are inextricably linked with a stable Pakistan and region. They emphasize the importance of maintaining a close bilateral engagement with Pakistan, including providing assistance, to promote stability and U.S. national security concerns.

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<sup>1</sup> Senate Armed Services Committee hearing on U.S. Strategy in Iraq and Afghanistan, September 22, 2011, transcripts at <http://www.cq.com/doc/congressionaltranscripts-3943650>.

<sup>2</sup> President Obama's press conference, October 6, 2011, <http://www.whitehouse.gov/the-press-office/2011/10/06/news-conference-president>.

## Current Law

Over past decades, Congress has expressed concern with the U.S.-Pakistan relationship and has placed limitations and reporting requirements on U.S. aid to Pakistan in both authorization and appropriation laws. Following, in reverse chronological order, are laws passed by Congress that restrict aid or establish certain requirements for reporting of such aid.

### **National Defense Authorization Act for Fiscal Year 2012—H.R. 1540 (P.L. 112-81)**

H.R. 1540 was introduced in the House on April 14, 2011. The House passed it on May 26. The bill was referred to the Senate on June 6, when it was referred to the Committee on Armed Services. The Senate passed it with an amendment on December 1, 2011. The conference report (H.Rept. 112-329) was filed on December 12. The conference report was agreed to in the House on December 14 and in the Senate on December 15, 2011. The President signed it into law on December 31, 2011.

**Section 1220** of the bill stipulates that not more than 40% of FY2012 appropriated amounts for PCF may be obligated or expended until the Secretary of Defense, with the concurrence of the Secretary of State, submits an annual report to the relevant defense committees in the House and Senate, and to the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations that includes

- a strategy to use PCF and the metrics used to determine progress on use of PCF, and
- a strategy to enhance Pakistani efforts to counter improvised explosive devices (IEDs).

At a minimum, the report shall include

- (i) a discussion of U.S. strategic objectives in Pakistan;
- (ii) a list of terrorist organizations in Pakistan opposing U.S. goals in the region and against which the United States encourages Pakistan to take action;
- (iii) a discussion of the gaps in capabilities of Pakistan security units that hamper the ability of the government of Pakistan to take action against the organizations listed;
- (iv) a discussion of how assistance provided using PCF will address the gaps in capabilities;
- (v) a discussion of efforts undertaken by other U.S. government departments and agencies or other activities by the Department of Defense to address gaps in capabilities and how they all are coordinated with activities undertaken by PCF;
- (vi) a discussion of whether the government of Pakistan is demonstrating a commitment to countering IEDs; and
- (vii) metrics used to track progress of the government of Pakistan in listing terrorist organizations, address capability gaps, and counter IEDs.

The section further requires the Secretary of Defense, in concurrence with the Secretary of State, to include in the quarterly reports mandated under Section 1224(f) of the National Defense Authorization Act for FY2010

- a discussion of progress in achieving U.S. strategic objectives in Pakistan during such fiscal quarter, utilizing metrics used to track progress in achieving such strategic objectives; and
- a discussion of progress made by programs supported from amounts in the PCF during such fiscal quarter.

## **Department of State, Foreign Operations, and Related Programs, Division I, Consolidated Appropriations Act, 2012—P.L. 112-74**

H.R. 2055 was introduced on May 31, 2011 as the Military Construction and Veterans Affairs funding measure. It became the vehicle for the omnibus appropriation legislation in December. The conference report (H.Rept. 112-331) was passed by both House and Senate in December 2011. The President signed in into law (P.L. 112-74) on December 23, 2011.

**Section 7010** requires the Secretary of State to provide in writing to the congressional appropriations committees before April 1, 2012, and each fiscal quarter thereafter a report on the uses of Foreign Military Financing (FMF), International Military Education and Training (IMET), Peacekeeping Operations (PKO), and Pakistan Counterinsurgency Capability Fund (PCCF).

**Section 7046(c)(1)(A)** (Pakistan Certification) states that none of the funds appropriated by this act may be made available to the government of Pakistan unless the Secretary of State certifies to the House and Senate appropriations committees that the government of Pakistan is

- (i) cooperating with the United States in counterterrorist efforts against Haqqani Network, the Quetta Shura Taliban, Lashkar-e-Tayyiba, Jaish-e-Mohammed, Al Qaeda, and other domestic and foreign terrorist organizations, including taking steps to end support for them and preventing them from basing and operating in Pakistan and carrying out cross border attacks into neighboring countries;
- (ii) not supporting terrorist activities against U.S. or coalition forces in Afghanistan, and Pakistan military and intelligence agencies are not intervening extra-judicially into political and judicial processes in Pakistan;
- (iii) dismantling improvised explosive devices (IED) networks and interdicting precursor chemicals used in manufacture of IEDs;
- (iv) preventing the proliferation of nuclear-related material and expertise;
- (v) issuing visas in a timely manner for U.S. visitors engaged in counterterrorism efforts and assistance programs in Pakistan; and
- (vi) providing humanitarian organizations access to detainees, internally displaced persons, and other Pakistani civilians affected by the conflict.

**Section 7046(c)(B)** authorizes the Secretary of State to waive the above certification requirement if it is in U.S. national security interests.

**Section 7046(c)(2)** (Assistance to Pakistan) states that

- FMF funds can only be used to support counterterrorism and counterinsurgency capabilities in Pakistan and subject to Sec. 620M of the Foreign Assistance Act of 1961;<sup>3</sup>
- Economic Support Fund (ESF) should be made available to interdict precursor materials from Pakistan to Afghanistan used to make IEDs, including calcium ammonium nitrates; to support programs to train border and customs officials in Pakistan and Afghanistan; and for agricultural extension programs that encourage alternative fertilizer use among Pakistani farmers;
- Of ESF funds for Pakistan, \$10.0 million shall be made available through the Department of State's Bureau of Democracy, Human Rights, and Labor for human rights and democracy programs in Pakistan, including training of government officials and security forces, and assistance for human rights organizations and the development of democratic political parties;
- ESF may be made available to the Chief of Mission Fund in Pakistan as authorized by P.L. 111-73 Sec. 101(c)(5).
- ESF for infrastructure projects must be implemented consistent with implemented in a manner consistent with workers' rights and eliminating the worst forms of child labor laws.<sup>4</sup>
- Funds may be made available for Pakistan under Titles III – VI of this act if in accordance with the above conditions and Sec. 620M of the Foreign Assistance Act of 1961.

**Section 7046(c)(3)(A)** (Reports) (i) states that the Secretary of State must submit a report to the congressional appropriations committees on the spend plan required by **Section 7078** of this act within six months after submission of the spend plan and every six months thereafter until September 30, 2013. The plan shall include achievable and sustainable goals, benchmarks for measuring progress, and expected results regarding further development in Pakistan, countering extremism, and establishing conditions conducive to the rule of law and transparent and accountable governance. The report shall include the status of achieving the goals and benchmarks provided in the spend plan. (ii) urges the Secretary of State to suspend assistance for the government of Pakistan if any report required by (A)(i) indicates that Pakistan is failing to make measurable progress in meeting the stated goals or benchmarks. (B) requires the Secretary of State within 90 days after enactment of this act to submit a report to the congressional appropriations committees with an assessment on costs and objectives regarding U.S.-supported infrastructure projects in Pakistan.

**Section 7078 (b)** (Spend Plans) requires the Secretary of State, in consultation with the Administrator of the U.S. Agency for International Development (USAID), to submit to House and Senate Appropriations Committees a spend plan for assistance to Pakistan, among other countries.

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<sup>3</sup> Sec. 620M of the Foreign Assistance Act of 1961 states that grant assistance shall not be furnished to any "economically developed nation capable of sustaining its own defense burden and economic growth."

<sup>4</sup> This measure is to be carried out in a manner consistent with Section 507(6) of the Trade Act of 1974 (19 U.S.C. 2467(6)), which includes meeting workers' rights and child labor laws, taking action to combat terrorism, and meeting counternarcotics criteria to receive U.S. assistance, among other things.

**Title VIII** (Overseas Contingency Operations) requires the Secretary of State to report in writing within 30 days after enactment of this act and each fiscal quarter thereafter to the Committees on Appropriation regarding the uses of PCCF on a project-by-project basis.

## **Department of State, Foreign Operations, and Related Programs Title XI, Department of Defense and Full-year Continuing Appropriations Act, 2011 – P.L. 112-10**

**Section 2121(b)** states that ESF appropriated or otherwise made available by this division for assistance for Afghanistan and Pakistan may not be made available for direct government-to-government assistance unless the Secretary of State certifies to the Committees on Appropriations that the relevant implementing agency has been assessed and considered qualified to manage such funds; that the government of the recipient country has agreed, in writing, to clear and achievable goals and objectives for the use of such funds; and that there are mechanisms within each implementing agency to ensure that such funds are used for the purposes for which they were intended.

## **Ike Skelton National Defense Authorization Act for FY2011 – P.L. 111-383**

**Section 1220** amends P.L. 111-84 (see below) and requires that assistance provided to the security forces of Pakistan from the Pakistan Counterinsurgency Fund (PCF) after FY2010 shall be provided in a manner that promotes “observance of and respect for human rights and fundamental freedoms” and “respect for legitimate civilian authority within Pakistan.”

## **Supplemental Appropriations Act, 2010 – P.L. 111-212**

**Section 1005** stipulates that FMF and the PCCF appropriated in this and prior acts shall be made available

- in a manner that promotes unimpeded access by humanitarian organizations to detainees, internally displaced persons, and other Pakistani civilians adversely affected by the conflict; and
- in accordance with Section 620J of the Foreign Assistance Act of 1961 (popularly cited as the Leahy Amendment, relating to human rights standards as a requirement for aid to security forces), the Secretary of State shall inform relevant Pakistani authorities of the requirements of Section 620J, and regularly monitor units of Pakistani security forces that receive United States assistance and their treatment of human rights matters.<sup>5</sup>

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<sup>5</sup> Section 620J of the Foreign Assistance Act of 1961 (P.L. 87-195, as amended), also known as the Leahy Amendment, states, in part, that “No assistance shall be furnished under this Act or the Arms Export Control Act to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights.”

## **Department of State, Foreign Operations, and Related Programs, Division F, Consolidated Appropriations, 2010—P.L. 111-117**

**Title III** states that ESF funds appropriated under this heading that are made available for assistance for infrastructure projects in Pakistan shall be implemented in a manner consistent with workers' rights and eliminating the worst forms of child labor laws.<sup>6</sup> Of the funds appropriated under this heading for assistance for Afghanistan and Pakistan,

- assistance may be provided for cross border stabilization and development programs between Afghanistan and Pakistan;
- funds appropriated by this act for assistance for Afghanistan and Pakistan may be made available for government-to-government assistance only if the Secretary of State certifies to the Committees on Appropriations that the U.S. government and the government of the recipient country have agreed, in writing, to clear and achievable goals and objectives for the use of such funds, and have established mechanisms within each implementing agency to ensure that such funds are used for the purposes for which they were intended;
- any such cash transfer assistance shall be subject to prior consultation with the Committees on Appropriations;
- the Secretary of State should suspend any such cash transfer assistance to an implementing agency if the Secretary has credible evidence of misuse of such funds by any such agency;
- any decision to significantly modify the scope, objectives, or implementation mechanisms of United States assistance programs in Afghanistan or Pakistan shall be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations, except that the prior consultation requirement may be waived if it is determined that failure to do so would pose a substantial risk to human health or welfare;
- in case of any such waiver, notification to the Committees on Appropriations shall be provided as early as practicable, but in no event later than three days after taking the action to which such consultation requirement was applicable; and
- of the funds made available under this heading for assistance for Pakistan, \$2 million shall be transferred to, and merged with, funds available under the heading "Administration of Foreign Affairs, Office of Inspector General" for oversight of programs in Pakistan.

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<sup>6</sup> This measure is to be carried out in a manner consistent with Section 507(6) of the Trade Act of 1974 (19 U.S.C. 2467(6)), which includes meeting workers' rights and child labor laws, taking action to combat terrorism, and meeting counternarcotics criteria to receive U.S. assistance, among other things.

## **National Defense Authorization Act for FY2010—P.L. 111-84**

**Section 1015** prohibits the use of Department of Defense counternarcotics assistance funds to construct any proposed Border Coordination Center in Pakistan. The Secretary of Defense may waive this for vital U.S. national security interests.

**Section 1224** requires the Secretary of Defense to submit quarterly reports to Congress summarizing on a project-by-project basis any transfer of funds from the PCF during each fiscal quarter.

**Section 1225** (22 U.S.C. 2785 note) requires the Secretary of Defense to establish and carry out a program to provide for the registration and end-use monitoring of defense articles and defense services transferred to Pakistan, and prohibits transfer of defense articles or defense services to Pakistan until the Secretary certifies to Congress that such program has been established.

## **Enhanced Partnership with Pakistan Act of 2009 (EPPA)—P.L. 111-73**

**Section 102(b)(1)(B)(i)** limits economic assistance to \$750 million per year unless the President's Special Representative to Afghanistan and Pakistan certifies that assistance to Pakistan is making reasonable progress in achieving the principal U.S. aid objectives as stated in the Pakistan Assistance Strategy Report with reasons justifying the certification.<sup>7</sup> The Secretary of State may waive the limitations if it is in the national security interest of the United States to do so.

**Section 203 (U.S.C. 8423)** limits all security-related assistance and arms transfers to Pakistan during FY2011-FY2014 unless the Secretary of State annually certifies and reports to the Committees on Foreign Affairs, Foreign Relations, Armed Services, Oversight and Government Reform, and Select Committees on Intelligence that

- the Pakistani government is continuing to cooperate with the United States in efforts to dismantle supplier networks relating to the acquisition of nuclear weapons-related materials, such as providing relevant information from or direct access to Pakistani nationals associated with such networks;
- the Pakistani government has during the preceding fiscal year demonstrated a sustained commitment to and is making significant efforts towards combating terrorist groups including taking into account the extent to which the government of Pakistan has made progress on matters such as (1) ceasing support, including by any elements within the Pakistan military or its intelligence agency, to extremist and terrorist groups, particularly to any group that has conducted attacks against U.S. or coalition forces in Afghanistan, or against the territory or

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<sup>7</sup> U.S. aid objectives stated in the Department of State's Pakistan Assistance Strategy Report include (1) helping Pakistan address immediate energy, water, and related economic crises, thereby deepening our partnership with the Pakistani people and decreasing the appeal of extremists; (2) supporting broader economic and democratic reforms that are necessary to put Pakistan on a path towards sustainable job creation and economic growth, which is necessary for long-term Pakistani stability and progress; and (3) helping Pakistan build on its success against militants to eliminate extremist sanctuaries that threaten Pakistan, Afghanistan, the wider region, the United States, and people around the world. June 30, 2010, pp. iii-iv.

people of neighboring countries; (2) preventing al Qaeda, the Taliban and associated terrorist groups, such as Lashkar-e-Taiba and Jaish-e-Mohammed, from operating in the territory of Pakistan, including carrying out cross-border attacks into neighboring countries, closing terrorist camps in the Federally Administered Tribal Areas, dismantling terrorist bases of operations in other parts of the country, including Quetta and Muridke, and taking action when provided with intelligence about high-level terrorist targets; and (3) strengthening counterterrorism and anti-money laundering laws;

- the security forces of Pakistan are not materially and substantially subverting the political or judicial processes of Pakistan.

Furthermore, none of the security-related aid for FY2010 through FY2014 or any funds appropriated to the PCCF may be used toward the purchase of F-16 combat aircraft and related munitions and logistics, with the exception of basing construction at Pakistan's Shabaz air base.

The Secretary may waive this certification requirement if s/he determines that "it is important to the national security interests of the United States to do so."

## **The Department of State, Foreign Operations, and Related Programs Appropriation Act, 2009, Division H of the Omnibus Appropriations Act, 2009—P.L. 111-8**

**Title IV** stipulates that funds appropriated for FMF to Pakistan "may be made available only for border security, counterterrorism, and law enforcement activities directed against Al Qaeda, the Taliban, and associated terrorist groups."

## **Foreign Relations Authorization Act of 2003—P.L. 107-228**

**Section 706** (22 U.S.C. 2291j-1) authorizes withholding aid to countries identified by the President as "major drug transit or major illicit drug producing countries" if the country is not adhering to international agreements and is not making substantial efforts to meet certain counternarcotics measures.<sup>8</sup> This restriction can be waived if the President reports annually to Congress that

- providing such assistance is vital to the national interests of the United States; or
- that Pakistan has made substantial efforts to adhere to its obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in Section 489(a)(1) of the Foreign Assistance Act of 1961.

## **Foreign Assistance Act of 1961—P.L. 87-195**

**Section 490** (Annual Certification Procedures, U.S.C. 2291j) requires the President to certify annually that in the previous year a country earlier identified as an illicit drug-producing or drug

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<sup>8</sup> Subsequently, on September 15, 2008, in Presidential Determination No. 2008-28, the President included several countries to this list, including Pakistan. According to the Department of State, Pakistan is not currently on this list.

transit country has fully cooperated with the United States or taken steps on its own to achieve full compliance with the United Nations Convention Against Illicit Traffic in Narcotics and Psychotropic Substances, or that it is of vital U.S. national interests for a country to receive U.S. bilateral economic assistance or for the United States to vote for multilateral development bank assistance for that country.

**Section 620E** (Assistance to Pakistan, U.S.C. 2375) authorizes security assistance to Pakistan to help Pakistan deal with the threat of the Soviet Union presence in Afghanistan. Military assistance is prohibited, however, unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Foreign Relations Committee in the Senate that Pakistan does not possess a nuclear explosive device and that the military assistance will reduce significantly the risk that Pakistan will possess a nuclear device.<sup>9</sup>

## Pending Legislation

Some Members of the 112<sup>th</sup> Congress have concerns about providing billions of dollars of annual aid to a country that appears unwilling or unable to act as a reliable U.S. partner. Numerous legislative proposals before the 112<sup>th</sup> Congress go beyond current law. In order of most recent congressional action, following are pending measures proposed to restrict future aid to Pakistan:

### Department of State, Foreign Operations, and Related Programs Appropriations Act, 2013—H.R. 5857

H.R. 5857 was introduced on May 25, 2012, and approved by the House Appropriations Committee on the same day. This bill to fund the State Department and foreign operations for FY2013, contains provisions that would

- provide no funding for PCCF;
- withhold all funds appropriated for Pakistan under ESF, INCLE, FMF, and PCCF unless the Secretary of State certifies that Pakistan is (1) cooperating with the United States in counterterrorism efforts against the Haqqani Network, the Quetta Shura Taliban, Lashkar-e-Taiba, Jaish-e-Mohammed, Al Qaeda, and other domestic and foreign terrorist organizations; (2) not supporting terrorist activities against United States or coalition forces in Afghanistan, and Pakistan's military and intelligence agencies are not intervening extra-judicially into political and judicial processes in Pakistan; (3) dismantling IED networks; (4) preventing nuclear-related proliferation; (5) issuing visa in a timely manner for official U.S. visitors; and (6) providing humanitarian organizations access to detainees, internally displaced persons, and other Pakistani civilians affected by the conflict (Sec. 7046(c)(1)) (unlike S. 3241, this provision does not include a national security waiver);

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<sup>9</sup> Section 9001 of the Department of Defense Appropriations Act, 2000 (P.L. 106-79; U.S.C. 2799aa-1 note), authorizes the President with waiver authority of certain sanctions against Pakistan, including Section 620E. The waiver authority is terminated if Pakistan subsequently detonates a nuclear explosive device or takes other similar actions.

- require the Secretary of State to submit to Congress a spend plan for assistance to Pakistan to include achievable and sustainable goals, benchmarks for measuring progress, and expected results regarding furthering development in Pakistan, countering extremism, and establishing conditions conducive to the rule of law and transparent and accountable governance; report biannually on the status of achieving that plan's goals and benchmarks; and recommend that the Secretary suspend all assistance to Pakistan if this report finds Pakistan is failing to make measureable progress toward stated goals and benchmarks (Sec. 7046(b)(3));
- allow ESF funds, notwithstanding any other provision of law, for cross border stabilization and development programs between Afghanistan and Pakistan or between either country and the central Asian republics (Sec. 7046(c)).
- allow INCLE and FMF funds to be transferred to PCCF and remain available until September 30, 2014, as long as the Secretary of State notifies Congress 15 days before such action and specifies source of funds and implementation plan. Obligation of such funds are subject to Sec. 7046(b) of this act.

## **Department of State, Foreign Operations, and Related Programs Appropriations Act, 2013—S. 3241**

S. 3241 was introduced May 24, 2012. The full Senate appropriations committee approved it the same day. As approved by the Senate Appropriations Committee, the bill contains provisions that would

- provide \$50 million for the PCCF (about 6% of both the amount requested by the Administration and the amount appropriated for FY2012), but only if the Secretary of State certifies that Pakistan has reopened the GLOCs to Afghanistan and that the funds can be used efficiently and effectively; if certification is not possible, then all PCCF funds shall be transferred to the Economic Support Fund (ESF), Development Assistance (DA), the Middle East and North Africa Incentive Fund (MENA IF), and Nonproliferation, Antiterrorism, Demining, and Related Programs (NADR).
- withhold all funds appropriated for Pakistan under ESF, International Narcotics Control and Law Enforcement (INCLE), Foreign Military Financing (FMF), and the Pakistan Counterinsurgency Capability Fund (PCCF) unless the Secretary of State certifies that Pakistan is (1) cooperating with the United States in counterterrorism efforts against the Haqqani Network, the Quetta Shura Taliban, Lashkar-e-Taiba, Jaish-e-Mohammed, Al Qaeda, and other domestic and foreign terrorist organizations; (2) not supporting terrorist activities against United States or coalition forces in Afghanistan, and Pakistan's military and intelligence agencies are not intervening extra-judicially into political and judicial processes in Pakistan; (3) dismantling IED networks; (4) preventing nuclear-related proliferation; (5) implementing policies to protect judicial independence and rule of law; (6) issuing visas in a timely manner for official U.S. visitors; and (7) providing humanitarian organizations access to detainees, internally displaced persons, and other Pakistani civilians affected by the conflict (Sec. 7046(c)(1)) (the Secretary may waive these requirements if doing so is important to U.S. national security interests);

- limit total State Department aid to Pakistan to about \$800 million (roughly 36% of the Administration's request), including no more than \$375 million for ESF, \$100 million for INCLE, and \$250 million for FMF (Sec. 7046(c)(2));
- further withhold \$33 million of appropriated FMF funds unless the Secretary of State certifies that Dr. Shakil Afridi has been released from prison and cleared of all charges relating to the assistance provided to the United States in locating Osama bin Laden (Sec. 7046(c)(2)(G)); and
- require the Secretary of State, in consultation with the U.S. Agency for International Development (USAID) Administrator, to submit to Congress a spend plan for assistance to Pakistan to include achievable and sustainable goals, benchmarks for measuring progress, and expected results regarding furthering development in Pakistan, countering extremism, and establishing conditions conducive to the rule of law and transparent and accountable governance; report biannually on the status of achieving that plan's goals and benchmarks; and recommend that the Secretary suspend all assistance to Pakistan if this report finds Pakistan is failing to make measurable progress toward stated goals and benchmarks (Sec. 7046(c)(3)).

The bill also provides that \$100 million of the ESF funds may be used by the President for Overseas Contingency Operations if so designated by Congress.

## **National Defense Authorization Act for Fiscal Year 2013, H.R. 4310**

As passed by the full House on May 18, 2012, the National Defense Authorization Act for FY2013 would

- prohibit the Secretary of Defense from preferential procurement of goods or services from Pakistan until such time as that country's government reopens the ground lines of communication (GLOCs) to Afghanistan (Sec. 821(d));
- limit FY2013 CSF payments to Pakistan to no more than \$650 million (Sec. 1211(b));
- withhold CSF payments to Pakistan unless the Secretary of Defense reports to Congress on the claims process, any new conditions Pakistan has placed on use of its GLOCs, and estimates any differences in transit costs from FY2011 to FY2013 (Sec. 1211(c));
- withhold FY2012 CSF payments to Pakistan unless the Secretary certifies that the Islamabad government is (1) supporting counterterrorism operations against Al Qaeda, its associated movements, the Haqqani Network, and other domestic and foreign terrorist organizations; (2) dismantling IED networks; (3) preventing nuclear-related proliferation; and (4) issuing visas in a timely manner for official U.S. visitors (Sec. 1211(c)); and
- limit the obligation or disbursement of FY2013 PCF funds to 10% of those appropriated or transferred unless the Secretary of Defense, with the concurrence of the Secretary of State, reports to Congress an updated strategy on utilization of the Fund, metrics for determining relevant progress, and a strategy for enhancing Pakistan's efforts to counter IEDs (Sec. 1217).

## **Ensuring the Effective Use of United States Aid to Pakistan Act— H.R. 3115**

H.R. 3115 was introduced October 6, 2011, and was referred to the House Agriculture and House Foreign Affairs Committees on the same day. It was referred to the House Subcommittee on October 14, 2011. No further action has occurred.

**Section 2** of the bill would prohibit non-security assistance to Pakistan including development assistance, Economic Support Funds, Global Health and Child Survival assistance, aid from the Democracy Fund, International Disaster Assistance, and any provision of law that authorizes the Secretary of State to provide a contribution to the International Committee of the Red Cross, assistance to refugees, including contributions to the International Organization for Migration and the United Nations High Commissioner for Refugees and other activities to meet refugee and migration needs, certain food aid, the \$1.5 billion in annual economic assistance to Pakistan authorized by the EPPA (P.L. 111-73) and any law authorizing contributions to international organizations.

**Section 3** states that security assistance may be provided to Pakistan under any provision of law other than those in Section 2 above and only during a period for which a certification or recertification is in effect.

The certification must be transmitted by the President to Congress. Issues addressed in the certification include a determination by the President that the government of Pakistan is cooperating with the United States in efforts against Al Qaeda, the Taliban, and associated terrorist groups, including prevention of such groups from carrying out cross-border attacks on neighboring countries; does not impede United States counterterrorism efforts; and will use the assistance solely for the purpose of border security, counter-terrorism, and law enforcement activities directed against Al Qaeda, the Taliban, and associated terrorist groups.

Recertification must be no later than 90 days after the date on which the President transmits to Congress an initial certification and every six months thereafter. The President shall transmit to Congress a recertification that the original certification conditions are continuing to be met; or if the President is unable to make such a recertification, the President shall transmit to Congress a report that contains the reasons.

These measures would take effect on the date of the enactment.

## **Foreign Relations Authorization Act, 2012 — H.R. 2583**

The Foreign Relations Authorization Act, 2012, was introduced on July 19, 2011, and amended and reported out of the Committee on Foreign Affairs on September 23, 2011. No further action has occurred.

As reported in the House, **Section 1025A** of the bill would amend the EPPA (P.L. 111-73) by

- withholding amounts appropriated for assistance to Pakistan unless the Secretary of State annually certifies for Congress that assistance has to date made or is making measurable progress toward achieving the principal objectives of U.S.

assistance to Pakistan contained in the Pakistan Assistance Strategy Report and a memorandum explaining the reasons justifying the certification;

- removing the EPPA's national security waiver; and
- altering some of the EPPA's Section 203 limitations on security assistance and arms transfers, including adding to required certification criteria that Pakistan (1) is fully assisting the United States with investigating the existence of an official or unofficial support network in Pakistan for Osama bin Laden, including by providing the United States with direct access to Osama bin Laden's relatives in Pakistan and to Osama bin Laden's former compound in Abbottabad and any materials therein; and (2) is facilitating the issuance of entry and exit visas for official U.S. visitors engaged in counterterrorism efforts and training or other cooperative programs and projects in Pakistan.

**Section 1025B** would require that the EPPA's Section 301 Pakistan Assistance Strategy Report be submitted to Congress annually through 2014 rather than one time, and that it further include descriptions of (1) progress toward creating a searchable Internet database and other public communications strategies that will provide American and Pakistan people with updated and accurate information on proposed spending plans, disbursements of assistance, and results achieved using funds authorized; (2) progress toward meeting the recommendations of audits, reviews, and investigations completed by the General Accountability Office and by the Office of Inspector General of the United States Agency for International Development, the Department of State, and the Department of Defense; and (3) a description of how the Administration is incorporating support for private sector development and enhanced trade opportunities as part of the foreign assistance approach to Pakistan.

## **Pakistan Accountability Act—H.R. 3013**

H.R. 3013 was introduced on September 22, 2011, and referred to the House Committee on Foreign Affairs. No further action was taken.

**Section 2** of the bill would prohibit all U.S. aid to Pakistan except aid that would ensure the security of nuclear weapons.

The prohibition would take effect on the date of the enactment of the measure and would prohibit already allocated assistance to Pakistan that is unexpended on or after the date of enactment.

## **Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012—S. 1601**

S. 1601 was introduced on September 22, 2011, marked up in the Senate Committee on Appropriations, and sent to the Senate the same day. No further action has been taken.

**Section 7010** would require that the Secretary of State provide to the Appropriations Committee by April 1, 2012, and for every fiscal quarter thereafter, a report on the uses of FMF, IMET, and PCF. The report "shall include a description of the obligation and expenditure of funds ... and the use or purpose of the assistance provided by such funds."

**Section 7065(c)** would require that

- to release any economic or security assistance funds for Pakistan (including the PCCF) the Secretary of State must certify to Congress that the U.S. and Pakistani governments “have agreed, in writing, to achievable and sustainable goals, benchmarks for measuring progress, and expected results for the use of such funds, and have established mechanisms within each implementing agency to ensure that such funds are used for the purposes for which they were intended;”
- the Secretary “should suspend any direct government-to-government assistance to an implementing agency if s/he has credible information of misuse of such funds by any such agency;” and
- that funds made available “shall be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations.”

To meet these requirements, the Secretary of State must certify that the Pakistani government is

- “cooperating with the United States in efforts against the Haqqani Network, the Quetta Shura Taliban, Lashkar-e-Tayyiba, Al Qaeda and other domestic and foreign terrorist organizations, including taking steps to end support for such groups and prevent them from operating in Pakistan and carrying out cross border attacks into neighboring countries;
- not impeding the issuance of visas for U.S. visitors engaged in counterterrorism efforts and assistance programs in Pakistan; and
- providing humanitarian organizations access to detainees, internally displaced persons, and other Pakistani civilians affected by the conflict.”

The Secretary may waive this certification requirement “if to do so is in the national security interests of the United States.”

**Section 7065(c)** further stipulates that ESF for Pakistan “should be made available to stop the flow of precursor materials used to manufacture Improvised Explosive Devices, including calcium ammonium nitrate, from Pakistan to Afghanistan, including programs to train border and customs officials in Pakistan and Afghanistan as well as agricultural extension programs that encourage alternative fertilizers among Pakistani farmers.”

**Section 7082(a)** would require that no later than 45 days after the date of enactment any agency providing economic assistance to Pakistan shall submit to the Committees on Appropriations an operating plan that “provides details of the use of such funds at the program, project, and activity level.”

**Section 7082(b)** would require that, prior to the initial obligation of funds, the Secretary of State, in consultation with the USAID Administrator, shall submit to Congress a detailed spend plan, which shall include achievable and sustainable goals, benchmarks for measuring progress, and expected results, for funds appropriated under the heading “Democracy Fund;” economic and security assistance funds for Pakistan; and economic assistance funds appropriated for food security and agriculture development programs and for climate change and environment programs.

As per **Section 7065(c)(4)(B)**, the spend plan report for Pakistan shall include “achievable and sustainable goals, benchmarks for measuring progress, and expected results regarding furthering the development of Pakistan, countering extremism, and establishing conditions conducive to the

rule of law and accountable governance,” and it provides that, not later than six months after submission of such spend plan, and each six months thereafter until September 30, 2013, the Secretary of State “shall submit a report on the status of achieving the goals and benchmarks in the spend plan” and “should suspend assistance for the Government of Pakistan if any such report indicates that Pakistan is failing to make measurable progress in meeting any such goal or benchmark.”

## **Department of Defense Appropriations Act for Fiscal Year 2012— H.R. 2219, As Passed by the House**

The Department of Defense Appropriations Act for FY2012 was introduced in the House on June 16, 2011, and referred to the House Appropriations Committee on the same day. The House passed the measure on July 8, 2011. The Senate Committee on Appropriations reported it with an amendment in the nature of a substitute on September 15, 2011, and it was placed on the Senate legislative calendar. No further action has occurred.

The House version contains restrictions and reporting requirements regarding aid to Pakistan. The Senate Appropriations Committee strikes out those measures, among others, and does not include restrictions on aid to Pakistan. The House measure includes the following:

**Section 9009** would require that the Secretary of Defense submit to Congress not later than 45 days after the end of each fiscal quarter a report on the proposed use of all appropriated PCF on a project-by-project basis, for which the obligation of funds is anticipated during the three-month period from such date, including estimates of the costs required to complete each such project. The report shall include

- the use of all funds on a project-by-project basis, including estimates of the costs to complete each project; and
- an estimated total cost to train and equip Pakistani security forces, disaggregated by major program and sub-elements by force, arrayed by fiscal year.

**Section 9015** stipulates that not more than 25% of PCF appropriated after FY2011 may be obligated or expended until such time as the Secretary of Defense, with the concurrence of the Secretary of State, reports to Congress on the strategy to utilize such funds and the metrics used to determine progress with respect to those funds. The report shall include, at a minimum,

- (i) a discussion of U.S. strategic objectives in Pakistan;
- (ii) a listing of the terrorist or extremist organizations in Pakistan opposing U.S. goals in the region and against which the United States encourages Pakistan to take action;
- (iii) a discussion of the gaps in capabilities of Pakistani security units that hampers the ability of the Pakistani government to take action against the organizations listed in clause (ii);
- (iv) a discussion of how assistance provided utilizing the funds will address the gaps in capabilities listed in clause (iii);
- (v) a discussion of other efforts undertaken by other U.S. government departments and agencies to address the gaps in capabilities listed in clause (iii)

or complementary activities of the Department of Defense and how those efforts are coordinated with the activities undertaken to utilize the funds; and

- (vi) metrics that will be used to track progress in achieving U.S. strategic objectives in Pakistan, to track progress of the Pakistan government in combating the organizations listed in clause (ii), and to address the gaps in capabilities listed in clause (iii).

## **State, Foreign Operations, and Related Programs Appropriations Bill for FY2012 (Unnumbered House Version)**

This unnumbered bill was marked up by the House Appropriations Subcommittee on State, Foreign Operations, and Related Programs during the summer of 2011. No further action has occurred.

**Section 7047** states that none of the funds made available may be obligated for aid to Pakistan until the Secretary of State, in consultation with the Secretary of Defense and the Director of National Intelligence, certifies and reports to Congress that the government of Pakistan is

- cooperating on nuclear nonproliferation efforts;
- investigating how Osama bin Laden found refuge in Pakistan for years; and
- is making demonstrable progress in combating terrorist groups.

Funds will be provided only for programs that are in America's national security interest and must foster economic development and decrease the appeal of extremism. The Secretary of State must report to Congress within 45 days of enactment of this act on projects to be funded.

**Section 7031.** The House Appropriations Subcommittee on State Department, Foreign Operations, and Related Programs is concerned about direct government-to-government assistance to Pakistan. This bill would require the Secretary of State to certify that any government-to-government aid will be used as intended; that Pakistan agrees to clear, achievable goals; that the implementing agency and staff are fully qualified; and that there are sufficient monitoring and evaluation systems in place.

**Section 7006.** The bill includes a requirement that the Secretary of State, in consultation with the USAID, provide a spending plan to the congressional appropriations committees prior to obligation of funds.

## **Pakistan Foreign Aid Accountability Act—H.R. 1699**

H.R. 1699 was introduced on May 3, 2011, and referred to the House Foreign Affairs Committee. No further actions were taken.

**Section 2** (Prohibition on Assistance to Pakistan) states the following:

(a) Prohibition—Assistance may not be provided to Pakistan under any provision of law unless the Secretary of State certifies to Congress that

- the Government of Pakistan did not have any information regarding Osama bin Laden’s possible whereabouts on or after September 11, 2001; or
- if the Government of Pakistan did have information regarding Osama bin Laden’s possible whereabouts on or after September 11, 2001, it communicated such information to the United States Government in an expedited manner.

(b) A certification described shall be submitted

- in writing and include specific findings and conclusions; and
- in unclassified form, but may contain a classified annex if necessary.

(c) This act shall take effect on the date of the enactment of it and shall apply with respect to amounts allocated for assistance to Pakistan that are unexpended on or after such date.

## **Defund United States Assistance to Pakistan Act of 2011—H.R. 1790**

H.R. 1790 was introduced on May 5, 2011, and referred to the House Committee on Foreign Affairs. No further action was taken.

**Section 3** (Prohibition on Assistance to Pakistan) states, “Assistance may not be provided to Pakistan under any provision of law.” The prohibition of aid to Pakistan would be effective upon enactment of the act and would apply to unobligated or unexpended aid to Pakistan as of that date.

## **Full-Year Continuing Appropriations Act 2011—H.R. 1**

H.R. 1 was introduced February 11, 2011, agreed to in the House on February 19, and sent to the Senate floor, where it was returned to the calendar on March 9. No further actions were taken.

**Section 2123(b)** states that ESF funds appropriated or otherwise made available by this division for assistance for Afghanistan and Pakistan may not be made available for direct government-to-government assistance unless the Secretary of State certifies to the Committees on Appropriations that the relevant implementing agency has been assessed and considered qualified to manage such funds and the government of the United States and the government of the recipient country have agreed, in writing, to clear and achievable goals and objectives for the use of such funds, and have established mechanisms within each implementing agency to ensure that such funds are used for the purposes for which they were intended.

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