

CRS Insights

Palestinian Authority: U.S. Payments to Creditors as Alternative to Direct Budgetary Assistance?
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A September 24, 2014, congressional notification (CN) from the U.S. Agency for International Development (USAID) reflects a new executive branch approach in assisting the Palestinian Authority (PA) to pay off some of the debts it incurs in providing various benefits and services to West Bank and Gaza residents. The CN indicates that USAID plans to obligate a total of \$100 million in FY2014 bilateral economic assistance for the Palestinians toward direct U.S. payments to PA creditors, as follows:

While not provided directly to the PA, \$75 million in requested funds will be used to make payments directly to two Israeli fuel companies to pay a portion of the debt owed by the PA, and to make payments to the Bank of Jordan to reimburse the Bank for payments that the Bank has made on behalf of the PA for debt incurred for fuel purchased for the West Bank and Gaza.... An additional \$25 million will be applied to a line of credit at the Bank of Jordan to reimburse the bank for debt payments made by the Bank on behalf of the PA to six non-governmental hospitals in East Jerusalem.

The previous U.S. approach had provided budgetary assistance directly to a PA account, subject to a number of oversight requirements intended to ensure that the PA used the assistance to pay creditors. Since FY2008, the Bush and Obama Administrations have provided more than \$1 billion in budgetary assistance to the PA, alongside other types of economic and nonlethal security assistance for the West Bank and Gaza, as described in CRS Report RS22967, [U.S. Foreign Aid to the Palestinians](#), by Jim Zanotti. According to information provided in October 2014 by USAID to CRS, other examples of bilateral assistance programs in which USAID may directly pay host government creditors include past or existing arrangements with Pakistan, Kenya, and Haiti.

While scrutinizing the general desirability and timing of the assistance proposed in the CN and this apparently new approach to addressing PA debts, Congress may also consider what implications this approach might have for existing legal conditions on U.S. aid to the PA. It is unclear whether this approach might apply only to the specific payments that were notified, or might also be adopted for subsequent U.S. aid disbursements to the Palestinians.

Potential Implications for Existing Legal Conditions

In the event one or more of the following situations occur, among others, current U.S. law constrains or prohibits budgetary support to the PA, and in the event may require an executive branch certification or national security waiver for the provision of such support:

- **Hamas Agreement Regarding PA Governing Arrangement.** If a PA government is formed via agreement with Hamas over which Hamas exercises "undue influence" (§7040(f)(1) of Division K of [P.L. 113-76](#), Consolidated Appropriations Act, 2014, as extended by [P.L. 113-164](#), Continuing Appropriations Resolution, 2015).

In June 2014, PA President Mahmoud Abbas appointed a new PA government with nominal control over the West Bank and Gaza. Hamas agreed to the government's formation, but it does not include any Hamas ministers. After the creation of this new PA government, the Obama Administration stated its intent to [continue to assist the PA financially and to carefully monitor the new government's composition and actions](#). The House Appropriations Committee proposed legislation (§7040(f) of [H.R. 5013](#), Department of State, Foreign Operations and Related Programs Appropriations Act, 2015) that could change the conditions on aid to such a government. The Senate Appropriations Committee has proposed legislation (§7040(f) of [S. 2499](#)) that apparently would not change existing conditions.

- **Palestinian Membership in the United Nations or Related Organizations, or Subjection**

of Israelis to International Criminal Court (ICC) Investigations. If the Palestinians obtain membership in the United Nations or other U.N. specialized agencies outside of Israeli-Palestinian negotiations, and/or 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" (§7041(j)(2)(A) of Division K of [P.L. 113-76](#)).

Media reports indicate that Abbas plans to arrange for a proposed U.N. Security Council resolution to be submitted on the Palestinians' behalf in the fall of 2014 [regarding a potential deadline for Israeli withdrawal from the West Bank](#). If the proposed resolution is not adopted, many reports assert that the [Palestinians might seek membership in "international institutions and agencies" and take action aimed at establishing ICC jurisdiction over Israeli actions in the West Bank and Gaza](#).

These conditions explicitly apply to assistance "to" (§7040(f) of [P.L. 113-76](#)) or "for" (§7041(j)(2)(A)) the PA. In the event a situation involves "providing funds" to the PA, other conditions (found in §7040(a), *et seq.*) may require an executive branch certification and/or national security waiver for the provision of such support. In response to an October 2014 question from a congressional office regarding whether the §7040(f) and §7041(j) conditions, if triggered, might apply by payments to third-party creditors of the PA, such as the payments proposed in the September 24 CN, information provided by USAID stated:

While the direct payment of Palestinian Authority (PA) creditors does not trigger the legal requirements related to the provision of funds to the PA, such assistance would still constitute assistance to the PA. Thus, provisions governing assistance for the PA, such as section 7040(f) and 7041(j) of the Department of State, Foreign Operations, and Related Operations Appropriations Act (SFOAA), 2014 (Div. K, P.L. 113-76) apply to assistance for the PA. However, direct payments to creditors do not trigger section 7040(a) of the SFOAA, which prohibits the provision of funds to the PA absent a waiver by the President, a report to Congress and a certification by the Secretary of State that, among other things, the PA is taking steps to counter incitement to violence against Israel and promote tolerance and coexistence. In recognition of the importance of the incitement issue, however, the Secretary of State volunteered a statement to relevant committees on September 24, detailing the PA's efforts to counter incitement to violence against Israelis, as well as its support for activities aimed at promoting peace, coexistence, and security cooperation with Israel.

One might argue that the §7040(f) and §7041(j) conditions should apply because the PA would receive the same pecuniary benefit whether it receives the money or the United States pays the PA's creditors directly. However, another view might hold that the conditions should not apply because the PA would not acquire possession of or control over the funds at any point in the process.

Possible Options for Congress

Congressional options in response to the CN, including the proposal to make direct payments to PA creditors, may or may not include:

- holding private consultations with the Administration and/or public committee hearings;
- placing informal conditional or unconditional congressional holds on the notified assistance; and
- modifying statutory conditions on U.S. economic assistance to the Palestinian Authority.

Potential congressional action on this issue could hinge to some extent on how Members of Congress view U.S. regional and global priorities and the potential utility of aid to the Palestinians—including the manner in and level at which it is given and the conditions attached to it—in advancing these priorities.