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# Security Assistance Reform: “Section 1206” Background and Issues for Congress

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## Summary

Section 1206 of the National Defense Authorization Act (NDAA) for Fiscal Year 2006, as amended and regularly extended, provides the Secretary of Defense with authority to train and equip foreign military forces for two specified purposes—counterterrorism and stability operations—and foreign security forces for counterterrorism operations. Section 1206 authority now extends through FY2017.

The conference version of the FY2015 NDAA somewhat modifies a Senate Armed Services Committee (SASC) proposal in its version of the FY2015 NDAA to codify this authority as permanent law under Title 10. In doing so, both the SASC proposal and the conference version would make several changes to the current temporary law.

The Department of Defense (DOD) values this authority as an important tool to train and equip military partners. Funds may be obligated only with the concurrence of the Secretary of State. Through 2009, DOD used Section 1206 authority primarily to provide counterterrorism support. Since FY2010, Section 1206 authority has also been used to provide significant assistance to train and equip foreign military forces for military and stability operations in which U.S. forces participate. Currently, there is a cap of \$350 million on Section 1206 obligations per fiscal year.

Total funding thus far for Section 1206 programs since its inception in FY2006 is some \$2.2 billion. During this period, Section 1206 funding supported bilateral programs in over 40 countries, several multilateral programs, and an associated global human rights program.

FY2014 programs notified to Congress totaled \$314 million. These provided assistance to enable 10 European countries to participate in the International Security Assistance Force (ISAF) in Afghanistan, as well as assistance to five African countries.

For FY2015, DOD submitted in November 2014 a request for a first tranche of \$136.4 million for programs in 12 countries. As of the date of this report, congressional committees have not completed their review of those programs.

For several years, some Members have been concerned with several issues related to Section 1206 authority, both narrow and broad. Specific current concerns have included whether Section 1206 funds are being used appropriately and effectively. Some of these concerns have been partially addressed. One key Section 1206 issue for the lame duck session of the 113<sup>th</sup> Congress is whether Section 1206 should be made permanent law by codifying it under Title 10, as the Senate Armed Services Committee proposes in its version of the FY2015 NDAA (S. 2410). The conference committee version of that bill (S. 1847) contains a modified version of the SASC proposal. The codification proposal raises questions of effectiveness and utility, as well whether the codification to Title 10 is consistent with past practice and whether it has implications for DOD budgets, roles, and missions.

## Contents

Background.....	2
Section 1206 in Action.....	4
Purpose, Scope, and Funding .....	4
Section 1206 FY2015 Funding Conditions .....	5
Section 1206 Programs and Funding, FY2015 .....	5
Trends FY2006-FY2014 .....	5
Conditions on Section 1206 Programs .....	9
Required Report .....	9
Joint DOD-State Department Selection and Approval Process .....	10
Section 1206 Human Rights Component .....	12
Congressional Action: FY2015.....	12
Senate Armed Services Committee Proposal and Conference Action.....	12
Issues for Congress.....	13
Are Section 1206 Funds Being Used Effectively? .....	14
Timeliness .....	14
Sustainability.....	16
RAND Comparison of Section 1206 and Other BPC Security Cooperation Mechanisms.....	17
DOD's Section 1206 Assessment Tool and Assessment Results.....	19
Section 1206 in Broader Perspective.....	20
Should Section 1206 Be Codified?.....	21
State Department Foreign Policy Coordination and Oversight .....	21
Implications for DOD Security Cooperation and DOD Roles and Missions.....	24
What Has Been the Effect of the New Section 1206 T&E Authority for Security Forces? .....	25
Should Congress Consider Broader Security Assistance Reform?.....	26

## Tables

Table 1. Section 1206 Funding: FY2012-FY2014, by Country and Program .....	7
Table 2. RAND Ratings of the Effectiveness and Efficiency of Other Train and Equip Mechanisms Used by Combatant Commands .....	18

## Contacts

Author Contact Information.....	27
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**A**mong the issues related to U.S. assistance to foreign military and security forces that have been of interest to the 113<sup>th</sup> Congress is the status of Section 1206 of the FY2006 National Defense Authorization Act (NDAA), P.L. 109-163, as amended. This statute provides the Secretary of Defense with authority to train and equip foreign military forces and foreign maritime security forces for two specified purposes:

- To enable foreign national military and maritime security forces, as well as foreign security forces to perform counterterrorism (CT) operations. (Nearly all Section 1206 assistance from FY2006 to FY2009 was for CT training and equipment.)
- To enable foreign military forces to participate in or to support military and stability operations in which U.S. Armed Forces are participating. (A significant portion of FY2010–FY2014 funds are provided for such assistance.)

Enacted in 2005 as a temporary authority, “Section 1206” authority, as it is known, has been regularly extended. The FY2014 NDAA (P.L. 113-66, Section 1201) expanded the authority and extended it through FY2017. Over the years, it has been used to fund a wide range of activities, including purchasing equipment and related training to build maritime security capacity and to reinforce land borders; acquiring vehicles, aircraft, and associated equipment and training to enable military forces in Yemen and the Philippines to conduct counterterrorism operations in their respective countries; and training and equipping military units from Burundi and Uganda to fight in Somalia, and military units from Central and Eastern European forces to participate in the International Security Assistance Force (ISAF) coalition operation in Afghanistan.

Nevertheless, Congress’s decision to grant DOD Section 1206 authority remains controversial. Section 1206 is the first major Department of Defense (DOD) authority to be used expressly for the purpose of training and equipping the national military forces of foreign countries worldwide. This statute breaks with the framework set up half a century ago, which, with certain exceptions, provides for DOD to train and equip foreign military forces under State Department Title 22 authority and through State Department programs. Some Members have stressed the need for a DOD authority that combatant commanders can use to respond to emerging threats that put the well-being of U.S. military personnel at risk or might eventually require robust, and costly, U.S. military action. Others have questioned whether Section 1206 funds are being used appropriately and effectively, and, above all, whether providing DOD with its own train-and-equip (T&E) authorities undermines the Secretary of State’s statutory responsibility to ensure coherence of U.S. foreign policy.

#### **Of Interest for the 113<sup>th</sup> Congress’ “Lame Duck” Session**

In potential action on the FY2015 NDAA, the 113<sup>th</sup> Congress will likely consider whether to make Section 1206 permanent law. The conference version of that bill (S. 1947) contains a modified version of the Senate Armed Services Committee (SASC) proposal in its version of the FY2015 NDAA (S. 2410) to, with certain changes, codify Section 1206 authority under Title 10 of the United States Code. (See below for a discussion of this proposal.)

This report provides background on the pre-Section 1206 status of security assistance authorities and the factors contributing to the enactment of Section 1206. It then sets out the purposes of the legislation and scope of its activities, restrictions on its use, the DOD-State Department planning process, and funding. It concludes with a discussion of four currently salient issues for Congress: (1) Are Section 1206 funds being used effectively? (2) Should Section 1206 be codified as permanent law? (3) What has been the effect of the new train and equip authority for security forces? and (4) Should Congress consider broader security assistance reform?

## Background

For nearly 50 years, since the enactment of the Foreign Assistance Act of 1961, as amended (FAA), the Secretary of State has exercised the leadership role for foreign assistance, including military assistance, specifically military education and training.<sup>1</sup> Since then, with the exception of a period from the mid-1960s to the mid-1970s inclusive of the Vietnam War, major foreign military assistance programs have been carried out under State Department authority, oversight, and guidance,<sup>2</sup> with a DOD agency responsible for implementation.<sup>3</sup> "Traditionally the State Department plans, budgets and oversees security assistance programs and is the lead agency in charge of all U.S. foreign policy and global engagement," according to a 2008 report co-sponsored by The American Academy of Diplomacy and the Henry L. Stimson Center. "The DOD has supported overall foreign and national security policy by implementing these programs. This relationship was designed to ensure that security assistance was aligned with general U.S. foreign policy goals."<sup>4</sup>

For many years, DOD had little interest in security assistance activities, as they were regarded neither as a military mission nor as an activity of more than marginal value to ensuring national security. In particular, training foreign military forces was not considered a task for general purpose military forces, and for many years limited training was most often conducted by U.S. SOF, often under State Department authority.<sup>5</sup>

DOD perspectives on training foreign military forces slowly began to change after the terrorist attacks on the United States of September 11, 2001 (9/11). Defense officials began to regard the defeat of terrorist groups in the countries where they train and prepare as essential to U.S. national security. But some realized that these groups could not be disrupted and defeated solely

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<sup>1</sup> As now stated in the FAA of 1961, as amended, Section 622(c) (22 U.S.C. 2382) states that the Secretary of State, under the direction of the President, "shall be responsible for the continuous supervision and general direction of economic assistance, military assistance, and military education and training programs, including but not limited to determining whether there shall be a military assistance (including civic action) or a military education and training program for a country and the value thereof, to the end that such programs are effectively integrated both at home and abroad and the foreign policy of the United States is best served thereby."

<sup>2</sup> Before the FAA, the Mutual Security Act of 1951 (P.L. 82-165, 65 Stat. 373) created a Mutual Security Agency in the Executive Office of the President, whose Director was responsible for the "continuous supervision, general direction, and coordination of all foreign aid—military, economic, and technical assistance." U.S. Congress, House. *U.S. Foreign Aid: Its Purposes, Scope, Administration and Related Information*, prepared by the Legislative Reference Service, Library of Congress. 86<sup>th</sup> Congress, 1<sup>st</sup> Session, House Document No. 116, Washington: USGPO, June 11, 1959, p. 69. During part of the 1950s, DOD administered the military assistance programs under the White House's policy direction and guidance. Congress subsequently moved responsibility for non-military aid to the State Department (P.L. 81-329, 63 Stat. 714). Two lower-ranking State Department officials were charged (consecutively) with coordinating with DOD regarding military aid before the responsibility was finally bestowed on the Secretary of State. For more detail on the further evolution of Military Assistance Authority, see CRS Report RL34639, *The Department of Defense Role in Foreign Assistance: Background, Major Issues, and Options for Congress*, coordinated by Nina M. Serafino.

<sup>3</sup> The Defense Security Cooperation Agency (DSCA), under the DOD Under Secretary for Policy, and its predecessor agency. While the original language in 1961 applied specifically to assistance authorized under the FAA, a 1976 amendment deleted this restriction.

<sup>4</sup> The American Academy of Diplomacy and the Henry L. Stimson Center, *A Foreign Affairs Budget for the Future: Fixing the Crisis in Diplomatic Readiness*, Ambassador Thomas Boyatt, Project Chairman, October 2008, p. 22. Hereinafter referred to as *A Foreign Affairs Budget for the Future*.

<sup>5</sup> Special Operations Forces also train together with foreign troops under a DOD authority, Title 10 U.S.C. Section 2011, Special Operations Forces: training with friendly foreign forces. The primary purpose of the Joint Combined Exchange Training program, conducted under this authority, is to provide training for the U.S. forces.

with U.S. forces employed under existing U.S. arrangements. U.S. military forces lacked the language, country knowledge, and cultural sensitivity to conduct effective counterterrorist (CT) activities in many countries where threats could be expected to emerge. Some DOD officials realized that foreign military and security forces would have to take the lead in conducting such activities, and would need training to assume that role. At the same time, DOD officials considered the State Department as lacking the necessary expertise and capabilities to carry out an effective counterterrorism program. DOD officials also viewed the State Department's planning and implementation processes under authorities for traditional T&E programs<sup>6</sup> as too slow and cumbersome to meet emerging threats.

In the mid-2000s, DOD officials developed a proposal for a "Global Train and Equip" authority to increase U.S. support for foreign military and security forces in order to disrupt terrorist networks, to build the capacity of legitimate states to provide security within their sovereign territory to prevent terrorists from establishing footholds, and to build the capacity of legitimate states to participate in U.N., regional, and U.S. coalition military missions. This proposal called for a DOD lead, but also required State Department concurrence. Although this proposal was initially resisted by certain sectors at both DOD and the State Department, it won the support of then-Secretary of Defense Donald Rumsfeld and then-Secretary of State Condoleezza Rice, and the enthusiastic endorsement of geographic Combatant Commanders, according to one DOD official who promoted the legislation.<sup>7</sup>

At the same time, perspectives on the use of U.S. military forces to train foreign military forces began to evolve. Former Secretary of Defense Robert Gates asserted that training foreign forces is a military mission for U.S. general purpose forces.<sup>8</sup> In early 2005, DOD requested, and Congress granted, Section 1206 as a special contingency authority. Nevertheless, the armed services committees repeatedly expressed hesitation about conceding this authority to DOD and cautioned that it was to be regarded as a pilot program.

In April 2008 testimony before the House Armed Services Committee (HASC) that still stands as the DOD position on Section 1206, former Secretary of Defense Robert Gates described this authority as "a means to fill long-standing gaps in an effort to help other nations build and sustain capable military forces." Explaining DOD's need to carry out such activities, Secretary Gates stated that after the terrorist attacks on the United States of September 11, 2001 (9/11), "building partner capacity is a vital and enduring military requirement" for DOD to fulfill its national security mission. The "security of America's partners is essential to America's own security," according to Gates, and Section 1206 is a preventive tool through which the United States helps

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<sup>6</sup> State Department programs under which foreign military forces are trained are the International Military Education and Training (IMET) and the Expanded IMET (E-IMET) programs. Equipment is provided to foreign governments through the State Department Foreign Military Sales/Foreign Military Financing (FMS/FMF) programs. According to DOD, this "traditional security assistance takes three to four years from concept to execution," while "Global Train and Equip authority allows a response to emergent threats or opportunities in six months or less." U.S. Department of Defense, *Fiscal Year 2009 Budget Request Summary Justification*, February 4, 2008, p. 103. Hereinafter referred to as *FY2009 DOD Summary Justification*. In practice, however, the time frame for a Section 1206 response is sometimes considerably longer than six months; see the section below on Timeliness.

<sup>7</sup> Author's discussion with Jeffrey (Jeb) Nadaner, former Deputy Assistant Secretary of Defense for Stability Operations.

<sup>8</sup> See, for instance: Robert M. Gates. *A Balanced Strategy: Reprogramming the Pentagon for a New Age*. Foreign Affairs, January/February 2009. In this article, Gates worries that the military personnel and promotions system is not able "to reflect the importance of advising, training, and equipping foreign troops—something still not considered a career-enhancing path for the best and brightest officers."

allies and partners to “confront extremists and other potential sources of global instability within their borders ... before festering problems and threats become crises requiring U.S. military intervention.”

At the same time, Secretary Gates dismissed the idea that Section 1206 duplicates or could be viewed as a substitute for State Department Foreign Military Financing (FMF) programs. However, other government personnel state that Section 1206 has been used as a substitute for FMF, especially in the early years, given what many analysts believe is a shortage of FMF funds to meet legitimate foreign defense equipment needs.

In a statement that defense officials have reiterated over the years, an FY2010 budget document asserted that U.S. Combatant Commanders consider the Section 1206 program “the single most important tool for the Department to shape the environment and counter terrorism.”<sup>9</sup> The budget document described Section 1206 as important because it allows the United States to train and equip foreign military forces to respond to “urgent and emergent threats,” and because it “provides opportunities to solve problems before they become crises.”<sup>10</sup>

## **Section 1206 in Action**

### **Purpose, Scope, and Funding**

As noted above, Congress provided Section 1206 authority for two purposes. One is to enable foreign military and security forces to perform counterterrorism (CT) operations. The other is to enable foreign military forces to participate in or to support military and stability operations in which U.S. Armed Forces are participating. In proposing the expansion of Section 1206 authority to include all security forces, HASC explained in its committee report (H.Rept. 113-102, to accompany H.R. 1690, its version of the FY2014 NDAA) that it expected “this authority to be used sparingly when it is clear that these forces are the most suitable for the task.”

Despite Section 1206’s dual purpose, through FY2009, almost all Section 1206 funding was used to provide counterterrorism equipment and related training. The types of equipment provided include radios and communications systems; surveillance and reconnaissance systems; trucks, ambulances, boats, and other vehicles; aircraft; small arms and rifles; night vision goggles and sights; and clothing. From FY2010 on, Section 1206 has also provided considerable funding to train and equip foreign military forces for stability operations, in particular to support the International Security Assistance Force (ISAF) in Afghanistan. Currently, there is a cap of \$350 million on Section 1206 funding per fiscal year.

Section 1206 programs are funded from the DOD operations and maintenance (O&M) account. During the first two years of the program, DOD transferred funds from lower-priority missions to fund activities under Section 1206, according to the Office of the Secretary of Defense/Policy (OSD/P). Since then, Congress has largely appropriated funds under the defense-wide O&M account. The current authorized limit for Section 1206 spending is \$350 million. Of this, no more

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<sup>9</sup> U.S. Department of Defense, *Fiscal Year 2010 Budget Request Summary Justification*, May 2009, pp. 1-13. Hereinafter referred to as *Fiscal Year 2010 Budget Request Summary Justification*.

<sup>10</sup> *Fiscal Year 2010 Budget Request Summary Justification*, pp. 1-13.

than \$100 million may be spent to build stabilization and peacekeeping capacity of foreign military forces.

## Section 1206 FY2015 Funding Conditions

The FY2014 NDAA states that no more than \$262.5 million of FY2015 funds may be obligated or expended on Section 1206 programs until the Secretary of Defense, with the concurrence of the Secretary of State, reports on proposed planning and execution of programs to build the counterterrorism capacity of a foreign country's security forces during FY2015.

## Section 1206 Programs and Funding, FY2015

For FY2015, DOD submitted in November 2014 a request for a first tranche of \$136.4 million for programs in 12 countries. As of the date of this report, congressional committees have not completed their review of those programs.

## Trends FY2006-FY2014

Total funding FY2006-FY2014 is some \$2.2 billion. (For a breakdown by country of FY2012-FY2014 funding, see below.) During this period, Section 1206 funding supported bilateral programs in over 40 countries, several multilateral programs, and an associated global human rights program. Initially, virtually all 1206 funding was provided for counterterrorism purposes. Since FY2010, Section 1206 has provided substantial assistance to train and equip Eastern and Central European forces to participate in NATO's ISAF coalition operations.

The largest recipient has been Yemen,<sup>11</sup> with some \$400 million. Among the other largest recipients over time have been Lebanon, Pakistan, and the Philippines, but of these only Lebanon received funding in FY2013–FY2014. Pakistan ceased to receive Section 1206 funding after special counterinsurgency funds dedicated to that country were created. The Philippines received Section 1206 assistance every fiscal year from FY2007 through FY2012.

In the past few years, programs in Africa have increased substantially. Kenya, Mauritania, Niger, Uganda, and Burundi have become large recipients, part of a trend that has seen Section 1206 assistance to Africa increase significantly to support counterterrorism operations against the Lord's Resistance Army, al-Shabaab, al-Qa'ida, and Al Qa'ida affiliates, as well as to prepare African troops to support the African Union peacekeeping missions in Somalia (AMISOM).<sup>12</sup> Countries in the Asia-Pacific region, which received substantial assistance through FY2010, have received no funding in FY2013 and FY2014.

For FY2014, DOD notified \$314.0 million for 20 programs in 18 countries. The single largest recipient was Yemen, with a little over \$69 million; the next largest was Niger, with almost \$37 million; then Kenya, with about \$29 million; and Lebanon, with \$20 million—all for

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<sup>11</sup> See CRS Report RL34170, *Yemen: Background and U.S. Relations*, by Jeremy M. Sharp.

<sup>12</sup> See CRS Report R41070, *Al Qaeda and Affiliates: Historical Perspective, Global Presence, and Implications for U.S. Policy*, coordinated by John W. Rollins; CRS Report R42094, *The Lord's Resistance Army: The U.S. Response*, by Alexis Arieff and Lauren Ploch Blanchard; and CRS Report R41473, *Countering Terrorism in East Africa: The U.S. Response*, by Lauren Ploch Blanchard.



counterterrorism purposes. Some \$100 million was provided to train and equip Central and Eastern European countries to support NATO International Security Assistance Force (ISAF) operations in Afghanistan.

**Table I. Section 1206 Funding: FY2012-FY2014, by Country and Program**  
 (\$U.S. Millions, FY2012 and FY2013 Obligation, FY2014 as Notified to Congress)

Recipient(s)	Program	FY2012	FY2013	FY2014
<b>Total HR/RCA Training</b>		<b>1.1</b>	<b>0.9</b>	<b>1.2</b>
Burkina Faso	Counterterrorism (CT) Capability Enhancement		5.9	
	Logistics Company (CT Support)			9.6
Burundi	Mobility Support Company		7.1	
	National Defense Force Advanced Infantry Development			12.1
Chad	Logistic Company (CT Support)		7.3	
Djibouti	Construction of a Warehouse			0.8
Kenya	Special Operations Regiment CT Capability Enhancement		7.0	
	Aircraft and ISR Capability		15.7	15.7
	Light Armor Reconnaissance Company			11.5
	Maritime Mobility Training & Equipment			0.3
	Construction of an Aircraft Hanger and Boat Ramp			1.5
Libya	Special Operations Forces (SOF) Support Company		8.4	
Mauritania	Logistics Support Package for CT	7.0		
	Aircraft and Intelligence, Surveillance and Reconnaissance (ISR) Capability		21.7	
	Contract Logistics Support		0.5	
	Aviation & Medical Capabilities Enhancement			16.2
Niger	Air Logistics and Communications Enhancement	11.7		
	Logistics Company (CT Support)		8.5	
	Counterterrorism Battalion			12.1
	Aircraft & ISR Capability			24.8
Tunisia	Maritime Security Capability	6.9		
	CT Vehicles Weapons, and Equipment			4.6
Uganda	Tactical Unmanned Aerial Systems Capability		4.2	
	Engineer Support Company		7.4	
	Mobility Support Company		7.1	
Uganda and Burundi	CT Support for Deployment to Somalia	18.8		
<b>Total Africa</b>		<b>44.4</b>	<b>100.7</b>	<b>1093</b>
Bulgaria	ISAF Deployment Enhancement	3.2		
	Command and Control Capability		7.2	
	Tactical Vehicle Transport and Unmanned Aerial System			24.3

Recipient(s)	Program	FY2012	FY2013	FY2014
Croatia	Operations Mentor and Liaison for Afghanistan	5.2		
	ISAF Deployment Enhancement		5.5	9.6
Czech Republic	Counter-IED enhancement for ISAF participation	4.0		
	ISAF Deployment Enhancement		16.9	
	Unmanned Aerial System			9.6
Estonia	ISAF Deployment Enhancement	7.0	4.6	
	Special Operations Training for ISAF	1.8		
	Special Operations Forces Enhancement			2.2
	NATO Mission Support System			2.7
Georgia	Infantry Battalion Deployment to ISAF	3.8		
	Equipment Repair		0.1	
Hungary	Joint Tactical Air Comptroller for ISAF	13.3		
	Special Operations Task Group Deployment		7.9	
	ISAF Deployment/Resolute Support Packages			2.3
Latvia	Build military force capacity to support ISAF	3.2		
	ISAF Deployment Enhancement		5.2	
	ISAF/Resolution Support Packages			11.7
Lithuania	SOF Deployment Enhancement Program	12.8	8.6	
	Special Operations Forces Capabilities Enhancement			11.1
	Explosive Ordnance Disposal and Counter-IED equipment (Redirected FY2011 Mali funds)			No extra costs*
Malta	Maritime and Intelligence Capability Enhancement	4.6		
Poland	ISAF Deployment Enhancement	14.0		
	ISAF Deployment Enhancement		11.1	
	Special Operations Forces Counter-IED Survivability Enhancement			3.8
Romania	ISAF Deployment Enhancement	14.3	10.1	
	Special Operations Forces Enhancement & Training			19.9
	ISAF Deployment Enhancement		10.0	
	Explosive Ordnance Disposal and Counter-IED equipment (Redirected FY2011 Mali funds)			No extra costs*
Multiple Recipients	Training for ISAF Deployments—Albania, Bulgaria, Croatia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia	13.0		
<b>Total Greater Europe</b>		<b>100.3</b>	<b>87.1</b>	<b>99.5</b>
Malaysia	Deployment Enhancement for ISAF	0.2		
Philippines	Insertion and Extraction Capability	7.5		
<b>Total Asia and the Pacific</b>		<b>7.7</b>	<b>0</b>	<b>0</b>

Recipient(s)	Program	FY2012	FY2013	FY2014
Bahrain	Biometric Collection Program		0.4	
Bangladesh	Ministry of Defense-Ministry of Home Affairs Interoperability	14.4		
Lebanon	Border Security Program		8.7	23.9
Yemen	SOF CT Enhancement	14.0		
	Fixed-Wing and Rotary-Wing Aircraft and Related Items and Support to Enable Yemeni National Military to Support CT Units	23.4		
	Integrated Border and Maritime Security Program		46.0	
	Unmanned Aerial System			17.5
	ISR Aircraft			46.5
	Aircraft and Related Equipment and Training			5.4
<b>Total Middle East and South Asia</b>		<b>51.8</b>	<b>55.2</b>	<b>93.3</b>
<b>Total Western Hemisphere</b>		<b>0</b>	<b>0</b>	<b>0</b>
Transportation and Pre-Shipment Consolidation Costs		12.0	12.0	12.0
<b>Totals</b>		<b>218.6</b>	<b>255.8</b>	<b>314.0</b>

**Source:** Section 1206 Fiscal Year 2012 and Fiscal Year 2013 reports submitted pursuant to Section 1206(f) of the National Defense Authorization Act for Fiscal Year 2006 (P.L. 109-163), as amended by Section 1204(b) of the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81); congressional notifications on Section 1206 programs for Fiscal Year 2014 submitted December 17, 2013, March 5, 2014, and July 22, 2014.

**Note:** Totals may not add due to rounding.

## Conditions on Section 1206 Programs

Section 1206 of the FY2006 NDAA requires that programs conducted under its authority observe and respect human rights, fundamental freedoms, and the “legitimate civilian authority within that country.” The authority may not be used to provide any *type* of assistance that is otherwise prohibited by any provision of law. It also may not be used to provide assistance to any *country* that is otherwise prohibited from receiving such assistance under any other provision of law. The legislation also requires a 15-day advance notification to the congressional defense, foreign affairs, and appropriations committees before initiating each program. This notification must specify, among other things, the program country, budget, and completion date, as well as the source and planned expenditure of funds.

## Required Report

The FY2014 NDAA requires the Secretary of Defense, in consultation with the Secretary of State, to submit a report within 120 days of enactment addressing four topics: (1) a statement of the purposes for which assistance maybe provided consistent with the Presidential Policy Directive on U.S. Security Sector Assistance (PPD-23) issued April 5, 2013; (2) a description of the types of activities appropriately within the scope of capacity building assistance under Section 1206 authority; (3) a description and assessment of the monitoring and evaluation procedures for such assistance, including appropriate measures of effectiveness applicable to counterterrorism capacity building activities; and (4) a prioritized list and discussion of the primary security threats

as of the day of the report against which counterterrorism capacity building efforts may be directed.

## Joint DOD-State Department Selection and Approval Process<sup>13</sup>

Section 1206 programs are developed and selected under a “dual-key” process that culminates with the signature of both the Secretary of Defense and the Secretary of State. Section 1206 authority permits the Secretary of Defense to provide Section 1206 support with the “concurrence” (i.e., the approval) of the Secretary of State. Section 1206 also requires both Secretaries to jointly formulate any program and coordinate in its implementation. Coordination for the first year programs in FY2006 was reported to be spotty, but DOD and the State Department subsequently developed an extensive joint review process. A DOD document described this joint review process in 2008 as the “gold standard” for interagency planning and cooperation.<sup>14</sup> On the other hand, a 2013 RAND report on authorities and other mechanisms to “Build Partner Capacity” (BPC) described Section 1206 as “encumbered by a complex approval process ... [that] requires the involvement of both DoD and DoS [the State Department] including high-level approvals before funds are spent.”<sup>15</sup>

Early in the fiscal year, the DOD Joint Staff and the State Department’s Bureau of Political-Military Affairs (PM) kick off the process with a call for proposals issued with identical guidance. Most recommendations originate at the field level, where geographic Combatant Commands (COCOMs) and U.S. embassy country teams jointly formulate proposals, although the degree of collaboration may vary. For proposals originated by the military, the COCOM forwards the proposal to Joint Staff and the Office of the Secretary of Defense. For proposals originated in State Department channels, the embassy forwards it to the State Department. The relevant Ambassador and Combatant Commander each must personally sign off on a proposal. DOD and State Department personnel state that many more projects are submitted by the Combatant Commands than by embassy staff.<sup>16</sup>

At the Pentagon and the State Department, staff conduct an extensive review process to prioritize the many proposals (they have numbered in the hundreds in recent years). The OSD Office of the Deputy Assistant Secretary of Defense for Special Operations Capabilities and Counterterrorism<sup>17</sup> takes the DOD lead. It coordinates reviews for feasibility, political-military considerations, and legal status with OSD and Joint Staff regional and functional offices. At the State Department, the Bureau for Political-Military affairs consults with the Office of the Coordinator for Counterterrorism (S/CT), the regional bureaus, and the Office of the Director of U.S. Foreign

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<sup>13</sup> A joint report by the DOD and State Department Inspectors General dedicates Chapter 2 to the approval process and recommends several changes intended to strengthen and formalize the process. Inspectors General U.S. Department of Defense and U.S. Department of State, *Interagency Evaluation of the Section 1206 Global Train and Equip Program*, Department of Defense and Department of State, Department of Defense Report No. IE-2009-007 and Department of State Report No. ISP-I-09-69, August 31, 2009, pp. 9-15, <http://oig.state.gov/documents/organization/129491.pdf>. Hereinafter referred to as *Inspectors General Report*.

<sup>14</sup> *FY2009 DOD Summary Justification*, p. 103.

<sup>15</sup> Jennifer D.P. Moroney, David Thaler, and Joe Hogleer, *Review of Security Cooperation Mechanisms Combatant Command Utilize to Build Partner Capacity*, RAND, Santa Monica, CA, 2013, p. 27, [http://www.rand.org/pubs/research\\_reports/RR413.html](http://www.rand.org/pubs/research_reports/RR413.html). Hereinafter referred to as *RAND Review of BPC Security Cooperation Mechanisms*.

<sup>16</sup> Author’s discussions with DOD and State Department personnel.

<sup>17</sup> This office is located under the Under Secretary of Defense for Policy, Office of the Assistant Secretary of Defense for Special Operations/Low Intensity Conflict and International Cooperation (SO/LIC&IC).

Assistance (F), and then forwards proposals to the State Department legal and congressional liaison offices for vetting. The offices of the Deputy Secretaries of Defense and of State may also indicate their priorities. Selection criteria include the urgency of the threat, the ability of the host nation to address that threat from its own resources, the ability of the host nation to sustain the capability, either from its own resources or through FMF funding, and the risks of inaction.<sup>18</sup>

Once prioritized within each agency, the DOD and State lead offices convene a joint DOD-State review board to select those proposals that will be recommended to the Secretaries. Either Secretary can veto a project. When program memoranda are signed by both Secretaries, DOD sends congressional notifications to the armed services, foreign affairs/relations, and appropriations committees to approve. Funds cannot be obligated until 15 days after notification.

The Defense Security Cooperation Agency (DSCA), which implements many security cooperation programs, including Section 1206, has taken steps to improve the timeliness of Section 1206 deliveries. The DSCA is a defense agency (under the Under Secretary of Defense for Policy) established to administer State Department security assistance programs such as

Foreign Military Financing (FMF), Foreign Military Sales (FMS), International Military Education and Training (IMET), Excess Defense Articles (EDA), and drawdowns. It now also administers a number of DOD security cooperation programs, including Section 1206.<sup>20</sup>

#### Security Assistance and Cooperation Terminology

"Security assistance" and "security cooperation" are terms that have no government-wide definition, and are even used differently within DOD. In general, security assistance refers to the State Department programs to train and equip foreign military and other security forces, and related civilian personnel, but sometimes to similar DOD assistance as well. Security cooperation includes security assistance, but also refers to the wide range of programs DOD conducts under Title 10 and NDAA authorities to interact with foreign militaries and related civilian personnel. A DOD generic term for both security assistance and security cooperation is "security force assistance."<sup>19</sup>

<sup>18</sup> Author's interviews with Department of State officials, September 2009, and e-mail exchanges with DOD and State Department officials, October and November 2009.

<sup>19</sup> DOD's official dictionary defines security assistance as the group of programs authorized by the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act of 1976, as amended, and related statutes that are funded and authorized by the Department of State and administered by the Defense Security Cooperation Agency (DSCA). Joint Pub 1-02 defines security cooperation as all DOD "interactions with foreign defense establishments to build defense relationships that promote specific US security interests, develop allied and friendly military capabilities for self-defense and multinational operations, and provide US forces with peacetime and contingency access to a host nation." Department of Defense, *Department of Defense Dictionary of Military and Associated Terms (As Amended Through 15 August 2014)*, Joint Publication 1-02, November 8, 2010, pp. 226, 227, [http://dtic.mil/doctrine/new\\_pubs/jp1\\_02.pdf](http://dtic.mil/doctrine/new_pubs/jp1_02.pdf). However, the U.S. Army Operational Law Handbook uses the terms differently. It states that "general rule" is that the State Department funds foreign assistance, including "Security Assistance to a foreign military or government," but notes that Congress has provided DOD with special authority to provide foreign assistance in certain cases and lists many DOD "statutory authorizations and appropriations to conduct Foreign Assistance" (including security assistance in general and Section 1206 in particular). Lt. Col. William Johnson and Lt. Commander David Lee, editors. *The Judge Advocate General's Legal Center and School, U.S. Army, Operational Law Handbook*, Charlottesville, VA, 2014, see pp. 228-248, [http://www.loc.gov/rr/frd/Military-Law/pdf/operational-law-handbook\\_2014.pdf](http://www.loc.gov/rr/frd/Military-Law/pdf/operational-law-handbook_2014.pdf). Hereinafter cited as *Operational Law Handbook 2014*.

<sup>20</sup> More information on the DSCA is available at <http://www.dsca.mil>.

## Section 1206 Human Rights Component

Section 1206 programs include a two-day training course on human rights and international humanitarian law. The course is conducted by the Defense Institute for International Legal Studies (DIILS), located in Newport, RI. According to material provided by DIILS, course components include a seminar on observing and respecting human rights and respect for civilian authority, material on regional human rights agreements if relevant, and a session on the right against torture and other cruel, inhuman, or degrading treatment. Also included are sessions on gender violence, rules for the use of force, rules of engagement, and law pertaining to international armed conflict and internal armed conflict.

## Congressional Action: FY2015

### Senate Armed Services Committee Proposal and Conference Action

The Senate Armed Services Committee (SASC) version of the FY2015 NDAA (S. 2410, as reported June 2, 2014) would codify (i.e., make permanent law) current Section 1206 global train and equip authority as part of Title X (Armed Services) of the U.S. Code, with a number of modifications. (The House-passed version of the bill [H.R. 4435] has no corresponding provisions.) The conference version of the FY2015 NDAA (S. 1847) retains the SASC proposal with a few changes. As proposed by the conference committee, Section 1205 of S. 1847 would make the following changes to current Section 1206 authority:

- expand the uses of support to foreign national military forces for participating in or supporting military and stability operations from operations in which the U.S. Armed Forces are participating to include allied or coalition operations that benefit U.S. national security interests;
- expand the types of support that DOD may provide under Section 1206 from equipment, supplies, training, and small-scale military construction to include defense services;<sup>21</sup>
- redefine forces eligible for assistance, with counterterrorism training limited to foreign national military forces, maritime and border security forces, and other national-level security forces that have a counterterrorism mission, rather than available to all security forces as currently in law;
- retain for FY2015 the authorized limit of \$350 million on funding specifically authorized and appropriated for use under Section 1206 authority, but, in effect, virtually eliminate a cap on funding for Section 1206 activities by allowing programs to be conducted with funds "otherwise made available" through annual appropriations;<sup>22</sup>

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<sup>21</sup> The Arms Export Control Act defines defense services as "any service, test, inspection, repair, training, publication, technical or other assistance, or defense information," excluding design and construction services as specified elsewhere in law (P.L. 90-629, Section 47(4); 22 U.S.C. 2794(4)).

<sup>22</sup> This provision would permit the transfer of funds from flexible accounts such as the proposed Counterterrorism Partnerships Fund or European Reassurance Initiative to conduct Section 1206 programs.

- raise the cap on funding for Section 1206's second purpose (i.e., to train and equip foreign military forces to participate in or support allied or coalition military or stability operations) from \$100 million to \$150 million;
- change the limit on small-scale military construction from \$25 million per fiscal year to 5% of all funds made available for Section 1206 programs in a fiscal year;
- permit the use of funds for supplies, training, defense services, and small-scale military construction associated with equipment that is delivered the fiscal year after a program commences for the year that a foreign country takes receipt of such equipment and the following fiscal year;<sup>23</sup> and
- permit the use of Section 1206 funds to conduct assessments of the effectiveness of the program, requiring annual reports through 2020 summarizing the findings of such assessments, and require the Comptroller General (head of the Government Accountability Office) to submit audits of Section 1206 programs in 2016, 2018, and 2020.

S. 1847 also includes two Section 1206-related provisions that would not be codified: annual reports from the Secretary of Defense summarizing the findings of assessments of Section 1206 programs, and an annual audit by the Comptroller General of the United States (i.e., the Government Accountability Office).

## Issues for Congress

The Senate Armed Services Committee's decision to include in its version of the FY2015 NDAA language that would make Section 1206 permanent law brings to a head the debates of its effectiveness and its status as a DOD authority. Congress established Section 1206 in FY2006 as a pilot project to test the utility of a flexible funding mechanism in order to provide the U.S. government with a means to respond rapidly to emerging (and some would say urgent) threats to U.S. security, including threats to the security of U.S. military forces, that would pose too great a risk if left unattended.

In the decade since Section 1206 was established, DOD and the State Department have worked out procedures and processes to improve decision making and implementation of Section 1206 programs. Nevertheless, questions remain as to whether Section 1206 is as effective as it could be. Members have had a number of concerns about effectiveness, centering on the need to improve the timeliness of deliveries, ensure that the capabilities put in place by Section 1206 programs are sustained, and assess program accomplishments. Some may consider the largest question to be one of status; that is, whether an authority like Section 1206 to improve the operational capacity of foreign forces, in essence a foreign assistance program even though DOD originally argued that its purpose was to meet U.S. needs, is appropriately codified under Title 10.

The following sections discuss the effectiveness of Section 1206 programs, as well as the question of whether this authority should be codified and the related question of whether DOD

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<sup>23</sup> Under existing law, Section 1206 funds may be used for two years in cases where a program begins in the fiscal year in which funds are made available, but ends in the next fiscal year. This new provision would extend the use of funds for an additional year in the certain cases.



should retain its own T&E authority. It concludes with a short discussion of whether Section 1206 should be reconsidered in the context of broader security assistance reform.

## Are Section 1206 Funds Being Used Effectively?

With Section 1206 in its ninth year of funding, a major question is whether Section 1206 programs are effective. There are a number of components of effectiveness: whether timelines are shortened compared with other foreign assistance programs, whether programs are sustainable and sustained, and whether the purposes of the assistance are most often met.

### Timeliness

Although the primary rationale for Section 1206 funding was that it would enable the U.S. government to respond more quickly to emerging needs than possible under the FMF process, the delivery of Section 1206 equipment has not always proved as expeditious as originally expected. DOD stated in a FY2009 budget request document that Section 1206 authority “allows a response to urgent and emergent threats or opportunities in six months or less.”<sup>24</sup> Especially in Section 1206’s first several years, the actual delivery time for much equipment was considerably longer.<sup>25</sup> By continuously improving the delivery process, DOD has reduced the timelines for delivery. A revised timeline calls for delivery within 18 months, and preferably 12 months, for routine deliveries, and 6 months when needed to meet surge requirements. DOD is now striving to deliver many articles in less than six months from the end of the 15-day congressional notification period.

Nevertheless, in comparison to other equipping programs, an April 2010 GAO report cast Section 1206 response timeframes, overall, as an improvement. That report stated that Section 1206 funds enabled DOD and State “to respond to urgent and emergent needs more quickly than they have been able to do with FMF and other security assistance programs.” GAO found that these agencies “have often formulated and begun implementing projects within 1 fiscal year, while FMF projects have usually required up to 3 years of planning.”<sup>26</sup> More recently, some analysts find that the winding down of the U.S. military presence in Afghanistan has also had a positive effect on the timeliness and cost of deliveries. With demand down for their services, commercial shippers are now competing for business, facilitating rapid delivery and reducing costs.

Delays have multiple causes, not all of which can be remedied. Delivering defense articles and services to U.S. representatives in multiple partner nations, with national customs and import processes, presents unique challenges. According to DSCA, in FY2014 there were some 156

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<sup>24</sup> FY 2009 Budget Request Summary Justification, p. 103.

<sup>25</sup> A January 2009 DOD letter to certain Members of Congress states that “Section 1206 authority can provide training and equipment in one to two years, or less.” A copy of the letter was provided by DOD, with the permission of a congressional recipient. It is signed by the former Under Secretary of Defense for Policy Eric S Edelman, who occupied that post as of the date of the letter, January 16, 2009. Hereinafter referred to as *OSD letter of January 16, 2009 responding to Members of Congress*. An August 2009 joint report of the DOD and State Department Inspectors General indicated a 6- to 18-month timeline for delivery of Section 1206 equipment and supplies provided through FY2006 funds and stated that DSCA agency actions were needed to reduce procurement and shipping delays to respond more quickly to actual or emerging terrorist threats, and to ensure all approved case funds are obligated before funding authorization expires. *Inspectors General Report*, pp. ii and iv (Recommendation 3).

<sup>26</sup> GAO-10-431, p. 4.

deliveries (with an estimated value of more than \$300 million) to 29 Section 1206 programs in more than 25 countries. These deliveries included aircraft, armored vehicles, communications equipment, weapons, ammunition, and individual equipment. Over the years, programs have been held up because of events in a recipient country. In other cases, however, the causes have been systemic processing problems at DSCA and at the military services contracting offices that affect Section 1206 timelines.

DOD and the State Department have worked arduously to overcome numerous obstacles to timely delivery. Together, they developed processes to expedite proposal development and selection. The Defense Security Cooperation Agency (DSCA), which administers the program, increased the amount of staff time and created new procedures and mechanisms to expedite deliveries. In particular, DSCA has provided a dedicated staff to oversee the delivery process,<sup>27</sup> developed a computer-based delivery tracking tool, established a working partnership with the U.S. Transportation Command, and instituted a centralized delivery system to expedite Section 1206 orders.<sup>28</sup> These steps have provided greater accountability and predictability, according to those interviewed on this topic. DSCA also created an online Security Cooperation Management Suite (SCMS) to track funds, including Section 1206 funds, as well as a web portal to share Section 1206 data. Nevertheless, quick delivery of items in high demand with a limited number of suppliers, such as night-vision goggles, remains difficult.

Still, a 2013 RAND report indicates that some geographic Combatant Commands may regard timeliness as a continuing problem, but perhaps as much because the approval process is sometimes perceived as too long as because the delivery process is perceived as too slow. RAND found from information gathered from the U.S. European Command (EUCOM) that while “processes had improved ... it still takes a long time to get [Section 1206] projects approved and resources allocated” and from the U.S. Pacific Command (PACOM) that “sometimes funding comes too late....”<sup>29</sup>

Some analysts point to the continuing temporary status of Section 1206 as one impediment to developing a more efficient and timely delivery system. If Section 1206 were codified, as proposed by SASC, making it a permanent program, these analysts argue that it would become a higher priority for DOD, leading to the allocation of more resources for planning and implementing Section 1206 programs.

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<sup>27</sup> During Section 1206’s early years, DSCA had no staff dedicated to that program. Over time, the number of dedicated Section 1206 staff increased to four, but as of this writing it stands at three.

<sup>28</sup> The centralized delivery system was created especially for Section 1206 deliveries to Pakistan in 2008 and then extended to the entire Section 1206 program in 2010. As of 2006, when the Section 1206 program commenced, the existing delivery system had been designed for large items purchased by or provided to foreign countries under the Foreign Military Sales/Foreign Military Financing Program, which largely depended on the recipient country or a commercial firm to handle delivery. This system was problematic for Section 1206 deliveries because they consist largely of smaller and more numerous items than FMS/FMF deliveries and they rely on U.S. personnel in recipient countries to receive and account for the articles. Now, instead of shipping items individually as they become available, most types of Section 1206 items are delivered to a central shipping depot or “consolidation point,” where they are bundled into larger shipments, which are easier to track, for surface or air transport. (Among the types of items not shipped from the consolidation point are arms, ammunition, and patrol boats.) U.S. carriers are preferred. Generally, surface transport is less expensive but slower, while air transport is more expensive but faster. Large items like Humvees are put on surface transport, while air transport is preferred for sensitive items such as communications equipment, night vision equipment, and lasers.

<sup>29</sup> *RAND Review of BPC Security Cooperation Mechanisms*, pp. 175 and 178.

## Sustainability

For Section 1206 CT programs to be effective, most believe that they must be sustained over the long run. Sustainment includes the ability to maintain equipment in working condition as well as to provide appropriate personnel to operate it. The 2009 joint State Department and DOD Inspectors General report recommends that, during the planning process, host nation governments commit to a program and demonstrate the capability to sustain it.<sup>30</sup> The GAO flagged sustainment as a major issue in its April 2010 report: "The long-term impact of Section 1206 projects is at risk because U.S. agencies have not fully addressed how to sustain these projects," according to the GAO.<sup>31</sup> This Section 1206-specific judgment is supported by a RAND comparative study of U.S. building partner capacity efforts in 29 countries since the end of the Cold War, which identifies sustainment as a key element for an effective program.<sup>32</sup>

Because Section 1206 authority was established to meet immediate needs, Section 1206 assistance must cease when a threat is no longer "emerging," however that may be defined. Some policy makers have expressed concern that recipient countries do not continue to provide support to sustain capabilities put in place by Section 1206 programs when Section 1206 funding ends. Whether recipient countries should be asked to sustain capabilities that DOD identifies as responding to U.S. needs is another question.

According to a DOD January 2009 letter to Members of Congress, DOD and the State Department determine that the ability of recipient governments to sustain programs is taken into account in program planning, and at times programs have been cut back to ensure a recipient government could sustain the program. (Some question whether recipient countries should be expected to sustain Section 1206 projects, which are established in response to U.S.-perceived needs.) In addition, Section 1206 programs all provide "two-year spare parts packages and training to operate and sustain equipment, including train-the-trainer support." In 2012, Congress enacted one change in Section 1206 authority to enhance sustainability (Section 1201(a) of the FY2013 NDAA, P.L. 112-239) by adding small-scale military construction to the list of allowable expenditures (formerly equipment, supplies, and training). Section 1201(a)(2) permits small-scale military construction of up to \$750,000 per program and up to \$25 million for all programs for each fiscal year. Such funds can be used, for instance, for the construction of small boat houses to shelter (and thus help maintain) patrol boats and other watercraft supplied by Section 1206 funding.

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<sup>30</sup> *Inspectors General Report*, p. iii (Recommendation 1) and p. iv (Recommendation 8). Recommendation 1 suggests that DOD and the State Department revise the Section 1206 proposal submission template to require a statement describing the actual or potential terrorist threat in detail, as well as the "bilateral consultation and coordination process for formulating the proposal" and the "partner nation's commitment and capability to sustain project implementation." Recommendation 8 states that the Under Secretary of Defense for Policy, "in coordination with the Director of the Joint Staff and Department of State's Bureau of Political Military Affairs, should direct Security Cooperation Officers to work with partner nations to develop a full Concept of Operations by the final approval of the project."

<sup>31</sup> GAO-10-431, p. 4. Pointing out that 76% of Section 1206 projects are in low- to lower-middle-income countries, the GAO judged these projects to be "potentially threatened: by the unwillingness or limited means" of recipient countries to sustain them. "Only 35 (26 percent) of the 135 approved project proposals we reviewed explicitly address the recipient countries' ability to sustain the projects, and 9 (7 percent) of those 135 proposals provided specific estimates of the costs involved," the GAO reported. GAO-10-431, p. 4.

<sup>32</sup> Christopher Paul, Colin P. Clarke, Beth Grill, et al., *What Works Best When Building Partner Capacity and Under What Circumstances?*, RAND, Santa Monica, CA, 2013, pp. 87-88, 91, [http://www.rand.org/content/deam/rand/pubs/monographs/MG1200/MG1253z1/RAND\\_MG1253z1.pdf](http://www.rand.org/content/deam/rand/pubs/monographs/MG1200/MG1253z1/RAND_MG1253z1.pdf). Hereinafter referred to as *RAND What Works Best When Building Partner Capacity?*

Nevertheless, some analysts have urged that more could be done to help recipient countries sustain and maintain Section 1206 capabilities. One 2013 RAND report that sought to understand what produces BPC success found that sustainment is "highly correlated" with long-term effectiveness.<sup>33</sup> Currently, additional sustainment funding is sometimes provided through the State Department's FMF account, and some argue this should be a regular source of sustainment funding.<sup>34</sup> GAO has cautioned, however, that "U.S. law potentially limits the availability of FMF funds for sustainment,"<sup>35</sup> and language in the annual foreign operations appropriations act states that FMF funds are not to be used to maintain Section 1206 projects without the approval of the congressional appropriations committees.<sup>36</sup> Some analysts propose another option: designating a certain percentage of each fiscal year's Section 1206 funding to sustain prior year programs. Another 2013 RAND report that compared combatant command use of BPC authorities, funding posts, and programs (which RAND collectively refers to as BPC "mechanisms") recommended that DOD and the State Department explore ways to "formally link" FMF to security cooperation programs conducted under NDAA Title XII authorities, including Section 1206, in order to address deficiencies in sustaining capabilities (among others).<sup>37</sup>

## RAND Comparison of Section 1206 and Other BPC Security Cooperation Mechanisms

In a 2013 study of the effectiveness and efficiency of 25 BPC mechanisms used by four geographic combatant commands, RAND found that Section 1206 in general was rated about the same as other train and equip mechanisms but that its utility varied greatly among the three commands where it is employed (i.e., U.S. Africa Command [AFRICOM], U.S. European Command [EUCOM], and U.S. Pacific Command [PACOM]).<sup>38</sup> **Table 2** below compares the ratings that RAND assigned to other train and equip authorities used by each command—primarily State's FMF and for PACOM IMET but also theater-specific DOD mechanisms—after discussions with command personnel. The paragraphs below discuss these rankings as well as those assigned to other DOD security cooperation authorities. (Note that selected detail from this study is included in the sections on timeliness and sustainability, above.)

For AFRICOM, Section 1206 is ranked moderately high in efficiency, but is ranked moderately low in effectiveness. The other security cooperation mechanisms AFRICOM primarily uses are generally ranked higher in effectiveness. This includes both DOD and State Department mechanisms; that is, funding for train and equip through State's FMF, DOD's "Section 1203"

<sup>33</sup> *RAND What Works Best When Building Partner Capacity?* p. 91.

<sup>34</sup> A January 2009 DOD letter to certain Members of Congress states that "Section 1206 authority can provide training and equipment in one to two years, or less." A copy of the letter was provided by DOD, with the permission of a congressional recipient. It is signed by the former Under Secretary of Defense for Policy Eric S Edelman, who occupied that post as of the date of the letter, January 16, 2009. Hereinafter referred to as *OSD letter of January 16, 2009 responding to Members of Congress*.

<sup>35</sup> GAO-10-431, p. 4.

<sup>36</sup> The most recent iteration of this language is in the Consolidated Appropriation Act, 2014, P.L. 113-76, under the heading Foreign Military Financing Program (128 Stat. 485). It states that "none of the funds made available under this heading shall be made available to support or continue any program initially funded under the authority of section 1206 ... unless the Secretary of State, in coordination with the Secretary of Defense, has justified such program to the Committees on Appropriations...."

<sup>37</sup> *RAND Review of BPC Security Cooperation Mechanisms*, p. 66.

<sup>38</sup> *RAND Review of BPC Security Cooperation Mechanisms*, see pp. 34-57.

authority to assist Yemen and East Africa, DOD’s Operation Enduring Freedom-Trans Sahel (OEF-TS) account, and the State Department’s Partnership for Regional East-Africa Counter-Terrorism (PREACT) program. (PREACT supports a wide variety of activities, of which military train and equip projects are but a small part.) It also includes other DOD security cooperation activities through Traditional Commander’s Activities (TCAs) and SOF Joint Combined Exchange Training exercises (JCETs) authorities, all of which were ranked as high or higher in efficiency.

For EUCOM and PACOM, Section 1206 was ranked moderately high in effectiveness but low in efficiency. When compared to FMF, its ranking was mixed. While EUCOM ranked FMF the same as Section 1206 in effectiveness, it ranked FMF higher in efficiency. PACOM ranked FMF lower in effectiveness than Section 1206, but higher in efficiency. For EUCOM, two theater-specific DOD train and equip authorities were rated the same in effectiveness and higher in efficiency (“Section 1202” equipment assistance to coalition partners in Afghanistan and Iraq, and the Coalition Support Readiness Program) as Section 1206, and most other DOD security cooperation mechanisms scored the same in effectiveness and the same or higher in efficiency.

For PACOM, State’s IMET ranked the same as Section 1206 in effectiveness and higher in efficiency. (A PACOM ranking for FMF was not included.) Three small-scale educational security cooperation programs ranked the same in effectiveness as Section 1206 and IMET, but higher than either in efficiency. SOF’s Joint Combined Exchange Training exercise authority (10 U.S.C. 2011) ranked lower in effectiveness (because by law the main benefit must accrue to U.S. SOF), but lower in efficiency.

**Table 2. RAND Ratings of the Effectiveness and Efficiency of Other Train and Equip Mechanisms Used by Combatant Commands**

	Moderately Low Effectiveness	Moderately High Effectiveness
<b>Low Efficiency</b>	GSCF – PACOM	
<b>Moderately Low Efficiency</b>	<i>FMF</i> – PACOM	<b>Section 1206</b> – EUCOM <b>Section 1206</b> – PACOM
<b>Moderately High Efficiency</b>	<b>Section 1206</b> – AFRICOM Section 1203 – AFRICOM	<i>FMF</i> – AFRICOM <i>FMF</i> – EUCOM <i>IMET</i> – PACOM OEF-TS – AFRICOM <i>PREACT</i> – AFRICOM Section 1202 – EUCOM CRSP – EUCOM
<b>High Efficiency</b>		

**Source:** RAND Review of BPC Security Cooperation Mechanisms (2013), pp. 36, 39, 50.

**Notes:** Section 1206 is not used by the U.S. Southern Command (SOUTHCOM) because the Western Hemisphere is not perceived as an area of emerging CT threats. RAND did not study the U.S. Central Command (CENTCOM), citing the “unique nature” of its BPC programs, although a number of countries in the CENTCOM Area of Responsibility have been Section 1206 recipients. DOD programs are in roman typeface. State Department authorities and programs are in italics. CRSP = Coalition Readiness Support Program (P.L. 110-Section 1234 as amended and extended, most recently by P.L. 113-66, Section 1217); FMF = Foreign Military Financing; IMET = International Military Education and Training; OEF-TS = Operation Enduring Freedom-Trans-Sahel; PREACT = Partnership for Regional East-African Counter-Terrorism; Section 1203 = Counterterrorism assistance for Yemen and East Africa (P.L. 112-239, Section 1203); and “Section 1202,” authority to provide certain military equipment for use by military forces participating in combined operations with the United States in Iraq or Afghanistan (P.L. 109-364, as amended and extended).

Because of continuing improvements, the Section 1206 ratings reflected in the RAND BPC review might be different if assessed today, as some of the deficiencies noted have been addressed or alleviated. For instance, AFRICOM rated Section 1206 moderately low in effectiveness because of difficulties in multiyear planning as “the funding is limited to two years, [and] it also does not provide for long-term sustainment, [and] institutional reform ... and FMF is not usually available to sustain initiatives funded by Section 1206”<sup>39</sup> To the extent that sustainment funding may have become more available since the RAND study was completed, this assessment may have changed. In another example, RAND found two opinions on why PACOM’s use of Section 1206 had declined. According to security cooperation personnel, Section 1206 goals were reached and no longer needed, but PACOM’s Special Operations Forces (SOF) component offered an alternative perspective, citing Section 1206 deficiencies. However, PACOM SOF cited not only time limitations on funding and the amount of staff effort needed to develop and process proposals, which endure, but also the inability use Section 1206 to work with personnel under Ministries of the Interior, which as of FY2014 is now allowed.

### **DOD’s Section 1206 Assessment Tool and Assessment Results**

For Section 1206 programs, DOD developed a qualitative assessment mechanism; the first results were reported in 2013. The assessment of Section 1206 programs has been an ongoing concern. In the late 2000s, several reports were generally positive, but two of them also urged the development of metrics or other evaluation tools.<sup>40</sup> There was some skepticism that a useful measure of accomplishments could be developed, as some analysts noted that establishing the outcomes of programs that are essentially preventive in nature is impossible, not unlike trying to prove a negative.

In mid-February 2013, DOD presented its congressional oversight committees with its new assessment framework for evaluating Section 1206 programs. According to DOD, the purpose of the assessments is to measure implementation of 1206 programs, assess the quality and timeliness of program implementation, measure the effects of programs, and estimate the return on investment. Assessments are qualitative, built on in-depth interviews with personnel from the units receiving assistance as well as with U.S. government personnel.

From this first round of assessment, DOD identified three programs as “successes” and concluded that, on a whole, the programs selected for assessment “have generally enhanced the capability of

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<sup>39</sup> *RAND Review of BPC Security Cooperation Mechanisms*, pp. 35-36.

<sup>40</sup> A July 2008 assessment of Section 1206 assistance to four countries—Lebanon, Pakistan, Yemen, and San Tome and Principe—was generally positive, citing improvements in operational capacity, greater information-sharing and cooperation, and troop morale, but also noting problems in two of those recipients. *CNA Corporation Assessments*. Likewise, an August 2009 joint report by the DOD and State Department inspectors general found Section 1206, in a qualitative review of projects in eight countries (all conducted with FY2006 funds, as noted above) to be “effective in building partner nation capacity for counterterrorist and military or stability operations and helped those nations increase control over their borders and ungoverned spaces and counter terrorism.”<sup>40</sup> Nevertheless, this same report recommended that DOD “should develop metrics of effectiveness ... and establish clearly defined *outputs* and *outcomes*.” *Inspectors General Report*, p. iv. In an April 2010 report, the Government Accountability Office (GAO) found that Section 1206 authority offers a unique and more timely mechanism than the State Department’s FMF for responding to U.S. military priorities that require training and equipping foreign military forces, but expressed concerns about the extent of monitoring and evaluation, as well as program sustainability. United States Government Accountability Office, *DOD and State Need to Improve Sustainment Planning and Monitoring and Evaluation for Section 1206 and 1207 Assistance Programs*, GAO-10-431, Washington, D.C., April 15, 2010, pp. 5, 32. Accessed through <http://www.gao.gov>. Hereinafter referred to as GAO-10-431.

the recipients to conduct CT or stability operations” and that equipment provided for Section 1206 programs “for the most part” has been “used for appropriate purposes.”<sup>41</sup> Among the lessons learned were that “program design often lacks appreciation for operational conditions or understanding of complete system,” that partner nation absorptive capacity varies, and that sustainment “is always a challenge....” Sustainment problems include establishing maintenance processes and securing funds for maintenance and spare parts.

A second round of assessments was undertaken. As of the date of this report, results have not been reported.

## Section 1206 in Broader Perspective

Building partner capacity has been highlighted in recent defense strategy and guidance as a key component of defense planning and a significant means of decreasing DOD budgets in the long run,<sup>42</sup> but others judge that “efforts are too often wasted.”<sup>43</sup> The results of a 2013 RAND study suggest that Section 1206 programs may exhibit varying degrees of success, depending on the country assisted. Studying data for U.S. security assistance efforts in 29 partner nations over a period of 20 years after the end of the Cold War, RAND found that assistance to foreign security forces, which has become known as “Building Partner Capacity” (BPC) assistance, has been more effective when the partner nation (1) invests its own funds to support or sustain capacity; (2) has sufficient absorptive capacity; (3) has high governance indicators; (4) has a strong economy; and (5) shares security interests with the United States.<sup>44</sup> However, it also found that “BPC done well, done consistently, and matched to partner absorptive capacities and interests can be effective even when the partner is not particularly robust in any dimension at the outset.”<sup>45</sup>

A study published in 2012 of U.S. security assistance to Greece, Vietnam, and Lebanon during crucial historical periods found that training and equipping foreign forces is not enough. Programs “were more likely to succeed,” it stated, “when the United States became deeply involved in the partner state military’s sensitive affairs—influencing personnel and organization, but refraining from becoming a co-combatant—and when unhelpful external actors played a diminishing role.”<sup>46</sup>

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<sup>41</sup> Department of Defense, *1206 Assessment Process*, December 2012. Quotes in this paragraph taken from DOD briefing slides.

<sup>42</sup> See CRS Report R42146, *Assessing the January 2012 Defense Strategic Guidance (DSG): In Brief*, by Catherine Dale and Pat Towell.

<sup>43</sup> Peter J. Munson, “The Limits of Security Cooperation,” *War on the Rocks*, September 10, 2013, Hereinafter referred to as “The Limits of Security Cooperation,” <http://www.warontherocks.com/2013/09/the-limits-of-security-cooperation>. Munson continues: “In a limited number of cases—predominantly with more elite units trained by special operations forces and in a few partner countries serious about developing their military—capacity building works well. In the remainder of cases, capacity building efforts are an exercise in futility as evinced by the numerous cases in which decades of SC [security cooperation] have yielded no perceptible change in the capabilities of partner militaries.” Hereinafter cited as “The Limits of Security Cooperation.” Munson’s biography describes him as a former Marine Corps officer.

<sup>44</sup> *RAND What Works Best When Building Partner Capacity?* pp. xvii.

<sup>45</sup> *RAND What Works Best When Building Partner Capacity?* p. 89.

<sup>46</sup> Mara E. Karlin, “Training and Equipping is Not Transforming: An Assessment of U.S. Programs to Build Partner Militaries” (Ph.D. dissertation, John Hopkins University, 2012), p. 319.

Because DOD Section 1206 assessment data has not been publically released, no judgment is possible here about whether DOD results are consistent with RAND and the 2012 study's findings. However, an additional consideration is that some analysts suggest that Section 1206 is sometimes used to build relationships irrespective of the effect on capacity. RAND finds it neither "surprising nor problematic" that the primary objective of some BPC programs is to build a relationship or secure access, and points to a possible two-way synergy between relationship building and BPC assistance "with better relations making capacity building more effective and demonstrations of effectiveness in capacity building improving relations."<sup>47</sup>

## Should Section 1206 Be Codified?

Policy makers' decisions on codifying Section 1206 to Title 10 may be based on a range of factors. In proposing the codification, SASC stated that Section 1206 "has developed into a critical tool for DOD leaders and military commanders to build the capacity of partner nations' forces to address emerging and urgent threats, including to counter the threat of terrorism as this threat has proliferated and diversified."<sup>48</sup> SASC found that Section 1206's "maturity and proven track record" is a "primary motivation" for codification, recommending that the priority for Section 1206 programs remain "emerging and urgent threats...."<sup>49</sup> Factors that policy makers may consider include not only Section 1206's utility (including timeliness, sustainability, efficiency and effectiveness, as discussed above), but also possible effects on the State Department's exercise of its foreign policy coordination and oversight responsibilities, and on DOD's security cooperation priorities and its ability to focus on its core warfighting mission.

## State Department Foreign Policy Coordination and Oversight

When Congress established Section 1206 in FY2006 as a two-year "pilot project," conferees on the FY2006 NDAA stated their belief that "any changes in statutory authorities for foreign military assistance do not have unintended consequences for the effective coordination of U.S. foreign policy writ large...."<sup>50</sup> In the years since Congress established Section 1206, several

<sup>47</sup> RAND *What Works Best When Building Partner Capacity?* p. 4.

<sup>48</sup> This perception has been reflected for a number of years in a variety of other documents, including DOD's *FY2009 Budget Request Summary* Justification, which stated that the "geographic Combatant Commanders consider global train and equip authority the Department's single most important tool for building partner operational capacity, shaping the environment, and countering terrorism outside Iraq and Afghanistan," (p. 102), and the January 2009 letter from the Under Secretary of Defense to Members of Congress (cited above), which states that Section 1206 funds meet the military needs determined by the geographic Combatant Commanders "for tools to build capable, reliable, and interoperable partners as they prepare for—and seek to minimize the necessity for—military missions in the AORs [Areas of Responsibility]." Section 1206, according to the letter, is a flexible, *strategic* tool "to meet urgent and emergent threats and opportunities to build partner capacity... [and] ... to address critical counterterrorism needs as defined by the U.S. Government."

<sup>49</sup> SASC report language pointed to the threats "posed by terrorist groups in North Africa, the Arabian peninsula, and the Levant," as the priority. It also encouraged DOD to provide continuing support to build the capacity of North Atlantic Treaty Organization (NATO) members and other coalition partners, noting their participation in operations and special operations in Afghanistan and the continued need to build interoperability with allied and coalition military forces, including special operations forces "in light of the security concerns in Eastern Europe and Ukraine." U.S. Congress, Senate Committee on Armed Services, *Carl Levin National Defense Authorization Act for Fiscal Year 2015, Report (to Accompany S. 2410)*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 2, 2014, S.Rept. 113-176, pp. 184-185.

<sup>50</sup> U.S. Congress, House, Conference Committee Report, *National Defense Authorization Act for Fiscal Year 2006: Conference Report to Accompany H.R. 1815*, committee print, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., December 18, 2005, H.Rept. 109-360 (Washington: GPO, 2005), p. 801. Hereinafter cited as H.Rept. 109-360.



foreign policy research institutions have advocated transferring Section 1206 authority and programs to the State Department,<sup>51</sup> which historically has been responsible for coordinating and overseeing foreign assistance and foreign policy. To some analysts, a decision to codify Section 1206 to Title 10 would represent a significant break in the current practice of codifying foreign assistance (including military assistance that primarily benefits foreign governments, security forces, and populations) to Title 22 on Foreign Relations, with possible foreign policy implications. Critics view Section 1206 as one of a number of programs that signal the “militarization” of U.S. foreign assistance, giving DOD what they view as an undue and detrimental degree of influence over U.S. foreign relations and damaging to the U.S. image with foreign populations. Some also have stated that Section 1206 authority “weakens congressional oversight, including human rights protections.”<sup>52</sup>

The practice of codifying military assistance in Title 22 rests on the Secretary of State’s statutory responsibility to ensure the coherence of foreign policy and to provide “continuous supervision and general direction” of all foreign assistance, including military assistance, and military education and training. Also at play is the State Department’s traditional role as the primary provider, through the State Department budget, of security assistance<sup>53</sup> (i.e., “assistance to the

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<sup>51</sup> The American Academy of Diplomacy and the Henry L. Stimson Center have argued that “the Secretary of State has and should have responsibility for assuring that all foreign and security assistance is carried out in accord with U.S. foreign policy, including setting overall policy, approving countries to receive assistance, and setting the budget for such assistance.” (*A Foreign Affairs Budget for the Future*, p. 23.) The authors of this report, drawing on a panel comprised of former Ambassadors and other State Department personnel, stated that to do otherwise would undermine the Secretary of State’s responsibility for the “fundamental direction of U.S. foreign policy.” (*A Foreign Affairs Budget for the Future*, p. 12.)

The Center for Strategic and International Studies (CSIS) Task Force on Nontraditional Security Assistance, while recognizing Section 1206’s importance to DOD, nevertheless voiced concern that Section 1206 “has the potential to impinge on State Department leadership in U.S. foreign policy and the authorities given the secretary of state under the Foreign Assistance Act (FAA).” Representative Robert Andrews and Representative Mark Kirk, co-chairs, *Integrating 21<sup>st</sup> Century Development and Security Assistance: Final Report of the Task Force on Nontraditional Security Assistance*, Center for Strategic and International Studies, January 2008, p. 7. (On the same page, the report further notes: “A number of legislators on Capitol Hill have expressed fear that Section 1206 could undermine the coherence of U.S. foreign policy, by allowing combatant commanders to assist foreign security forces without taking account of broader U.S. considerations at stake in bilateral and regional relationships.”) Hereinafter referred to as *Integrating 21<sup>st</sup> Century Development and Security Assistance*.)

A Massachusetts Institute of Technology (MIT) report expresses concrete concerns regarding coherence, transparency, and fiscal discipline. Authors Cindy Williams and Gordon Adams argue that authority for Section 1206 (as well as for other security assistance programs) should be vested in the State Department “in order to ensure that security assistance does not drive or conflict with overall U.S. international engagement.” (Cindy Williams and Gordon Adams, *Strengthening Statecraft and Security: Reforming U.S. Planning and Resource Allocation*, MIT Security Studies Program Occasional Paper, Massachusetts Institute of Technology, June 2008, p. 21. Hereinafter referred to as *Strengthening Statecraft and Security*.) They view Section 1206 and other recent security assistance authorities as generally parallel to or duplicating State Department’s traditional security assistance programs. (Other DOD security assistance authorities specifically discussed in this report are Coalition Support Funds, CERP, and CTFP.) “The risks in this parallel system of authorities and programs are that security assistance becomes more complex and confusing, that it is disconnected from overall, long-term U.S. diplomacy and national security strategy, and that money is wasted through overlapping, uncoordinated, or conflicting efforts,” they wrote. *Strengthening Statecraft and Security*, p. 70.

<sup>52</sup> Adam Isacson, *The Pentagon’s military aid role grows*, on the Just the Facts website, <http://justf.org/blog>, January 26, 2010.

<sup>53</sup> The Foreign Assistance Act of 1961, as amended (FAA), Section 622(c)(22 U.S.C. 2382), states that the Secretary of State, under the direction of the President, “shall be responsible for the continuous supervision and general direction of economic assistance, military assistance, and military education and training programs, including but not limited to determining whether there shall be a military assistance (including civic action) or a military education and training program for a country and the value thereof, to the end that such programs are effectively integrated both at home and abroad and the foreign policy of the United States is best served thereby.”

internal police forces and military forces of ... [a] foreign nation").<sup>54</sup> The State Department not only provides military assistance, with DOD support, through FMF and IMET, but also assists foreign military and other security forces (also at times with DOD support), through the State Department accounts for peacekeeping operations (PKO), international narcotics control and law enforcement (INCLE), and nonproliferation, antiterrorism, demining and related programs (NADR).

The distinction between the U.S. Code titles to which security assistance law is codified is one reflected in U.S. fiscal law. According to the U.S. Army Operational Law Handbook, security assistance is funded out of Department of State budgets, except under certain conditions when DOD may fund training and other assistance. DOD may use its funds (from the Operations and Maintenance account) to train foreign military forces "only when the purpose is to promote interoperability, safety, and familiarization with U.S. Forces."<sup>55</sup> DOD may fund other training and security assistance only if Congress specifically authorizes and appropriates funds for it.<sup>56</sup> Especially in recent years, Congress has explicitly authorized and funded substantial assistance to foreign militaries to participate in and support coalition or U.S. operations, but with a few exceptions these have remained temporary law.

On the other hand, DOD has over time differentiated the general purposes of Section 1206 from those of the State Department-funded military training and equipping through FMF and IMET, with the implication that Section 1206 is not strictly foreign assistance. Proponents of Section 1206 authority have over the years emphasized its importance as a military tool to further U.S. security objectives by responding to needs identified by the U.S. military. In contrast, they note that FMF provides funds for needs identified by the recipients and they present FMF as a *political* tool "critical ... for executing our foreign policy" and "key to improving bilateral relationships, encouraging behavior in the U.S. interest, increasing access and influence, and building capacity where host-nation and U.S. interests align," but not necessarily responding to needs identified by the U.S. military.<sup>57</sup> Some critics claim that the distinction has blurred over the years, especially as some programs appear to be responding to long-standing rather than emerging threats and as FMF has been used for sustainment, and that Section 1206 has become a tool for combatant commands to cultivate goodwill and influence as much as to meet U.S. military needs.

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<sup>54</sup> *Army Operational Law Handbook*, p. 228.

<sup>55</sup> *Operational Law Handbook 2014*, p. 228.

<sup>56</sup> *Operational Law Handbook 2014*, p. 228. While some may view these exceptions may provide a precedent for codifying security assistance to Title 10, these exceptions are not analogous to Section 1206 in purpose or scope, and are for lesser amounts. (One exception is the Global Lift and Sustain authority codified at 10 U.S.C. 127d, under which the Secretary of Defense may provide logistics support, supplies, and services to allied forces participating in a combined operation with U.S. armed forces, with a limit of \$100 million per fiscal year and such services to increase interoperability with U.S. forces up to \$5 million per fiscal year. Other exceptions provide for the payment of expenses of foreign military and related civilian personnel to attend U.S. military educational institutions and regional centers, to participate in conferences, seminars, and workshops (and in one case, the Regional Defense Counterterrorism Fellowship Program, 10 USC 2249c, also training programs). These events are generally of short duration and may be characterized as military-to-military contacts.

<sup>57</sup> *OSD letter of January 16, 2009 responding to Members of Congress*. The letter further reads: "Because many countries rely on FMF as a major resource for their military procurement budgets," FMF allocations are "affected by host-nation preferences and political engagement," the letter states.<sup>57</sup> In the letter, DOD denied that Section 1206 programs are "as some have claimed, programs historically conducted by the State Department." The United States "has not conducted programs like this before."

However, even if the distinction has blurred, some Section 1206 advocates argue that in an era of constant and evolving threats, DOD will have a continuing need for high levels of flexible train and equip funding to meet U.S. military priorities as determined by the combatant commands.<sup>58</sup> Some might further argue that the post-World War II State Department-led security assistance framework is outdated and that a new security assistance architecture—one that would provide combatant commanders with increased resources and more coherent and targeted authorities—is needed.

For some who view a continuing need for a Section 1206 authority but question codifying it to Title 10, two possible options might be to codify it to Title 22 or to subsume it under State Department programs (e.g., incorporating Section 1206's counterterrorism function under FMF and its operational training function under IMET, both as expedited programs). Each would involve additional considerations. One consideration would be whether and how to appropriate or otherwise provide funds to the State Department for Section 1206 assistance, which some regard as highly unlikely in the current budget environment.

Some suggest that another option would be to subsume Section 1206 assistance programs under the Global Security Contingency Fund (GSCF), which includes authority identical to Section 1206, with modifications as proposed in SASC's Section 1206 codification proposal. Although a provision of the FY2012 NDAA (P.L. 112-81, Section 1207), GSCF authority bestows lead responsibility on the Secretary of State, which to some analysts maintains the traditional division of labor on security assistance between the State Department and DOD. Some analysts, however, regard the State Department's management of GSCF as problematic; further, some favor letting it expire.<sup>59</sup>

## Implications for DOD Security Cooperation and DOD Roles and Missions

In addition to expressing concern about implications for foreign policy, conferees on the original Section 1206 legislation stated that the new authority should not "detract from the Department of Defense's focus on its core responsibilities, particularly the warfighting tasks for which it is uniquely suited."<sup>60</sup> Unlike the extensive discussion on Section 1206 and other DOD authorities on potential foreign policy implications, the potential consequences for DOD of continued Section 1206 activity and funding have not been widely explored.

One possible area of concern is whether Section 1206 is cost-effective. While the \$350 million authorized for Section 1206 assistance is not a large sum in the context of the overall DOD budget or even the O&M account from which it is taken, some analysts judge the amount significant enough to warrant scrutiny in a time of tight budgets, especially in the context of other DOD priorities and programs, including DOD security cooperation programs. DOD, through its newly created Office of Security Cooperation, is conducting a review of its security cooperation portfolio to ascertain the most effective use of security cooperation funds.

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<sup>58</sup> For instance, one RAND report states that PACOM described the State Department process for determining FMF country priorities "a black box" unresponsive to "carefully considered theater prioritization and attendant justifications." *RAND Review of Security Cooperation Mechanisms*, p. 41.

<sup>59</sup> See CRS Report R42641, *Global Security Contingency Fund: Summary and Issue Overview*, by Nina M. Serafino

<sup>60</sup>H.Rept. 109-360, p. 801.

For some observers, another area of concern might be the possibility that codification would signal increasing acceptance of the provision of arms and training to foreign countries as a key, if not a core, DOD function. Such observers may seek greater clarity about the effects of an increased institutionalization of the training and equipping foreign military forces as a Title 10 role on DOD's capacity to conduct its core combat mission at a time when the size of the U.S. military force is being cut.<sup>61</sup>

As noted above, DOD has argued that security cooperation programs will save money in the long run. Nevertheless, elevating and expanding the DOD security assistance role may necessitate a wider range of resources. With increasing emphasis on an area of DOD activity comes the pressure for more personnel devoted to the mission across a whole range of activities—developing and administering the programs, developing doctrine, sharing lessons learned, and educating and training personnel to carry out those missions. (For Section 1206 codification, the SASC proposal would include administration costs, but there may be associated costs that would not be covered.) In particular, there is a long-standing concern that conventional forces do not necessarily possess the special teaching and cultural skills to effectively train foreign forces, necessitating increased training and education for the security assistance mission. Alternatively, some may contemplate the use of dedicated forces, an option with possible repercussions on the availability of properly prepared forces for the military's core combat mission.<sup>62</sup> While training foreign forces is a SOF statutory role, some claim that SOF forces are already overstretched by that mission.

## What Has Been the Effect of the New Section 1206 T&E Authority for Security Forces?

In the FY2014 NDAA, Congress broadened Section 1206 authority from training and equipping foreign national military and maritime security forces for CT missions to include the training and equipping of all security forces for such missions. DOD did not exercise the broadened authority in FY2014.

The SASC version of the FY2015 NDAA would amend the FY2014 provision to include only national military forces, national maritime and border security forces, and other security forces that have a counterterrorism mission. Although the SASC provision narrows the scope of current law, some sources state that the FY2014 provision is broader than needed. The SASC provision would permit DOD to use Section 1206 to train and equip counterterrorism forces that are assigned to a Ministry of the Interior, an authority that DOD has long sought. (Because foreign counterterrorism units sometimes are configured as civilian forces under foreign Ministries of the Interior rather than as military forces under Ministries of Defense, some analysts argue that the lack of authority to train and equip foreign security forces has impeded the United States' ability

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<sup>61</sup> See CRS Report R42493, *Army Drawdown and Restructuring: Background and Issues for Congress*, by Andrew Feickert.

<sup>62</sup> For instance, one Army Lt. Colonel wrote that every security force assistance (SFA) mission degrades in some respect the "capability to deter those who would engage us directly...." "Just this year [2013], the Army has stated that we WILL meet fiscal year 2013 mission requirements, which heavily rely on SFA. Yet, we have also stated that in doing so, we will maintain the military's equipment at a lower level, not train our forces as much as we have in the past, and if not deploying, minimally train our formations." Michael J. Simmering, "The Limitations of Security Force Assistance and the Capability of the U.S. Army," *Small Wars Journal*, August 13, 2013, accessible online at <http://smallwarsjournal.com/jrnl/art/the-limitations-of-security-force-assistance-and-the-capabilities-of-the-us-army>.

to build foreign CT capabilities.)<sup>63</sup> However, because the proposed language states that the assistance could be provided to “build the capacity of a foreign country’s other security forces that have a counterterrorism mission,” rather than a foreign country’s *national* security forces, it is possible that the scope of this provision would be broader than Ministry of Interior forces.

Some analysts argue that Congress should reserve funding for civilian security force training to the State Department. Some argue that there are fundamental differences in training civilian and military personnel and U.S. military forces are suited solely for training the latter. Some stress that the use of U.S. military forces to train civilian police and other security forces conveys an undesirable blurring of police and military roles and functions. In addition, DOD training of police personnel can put a military face on U.S. assistance in a sensitive area, undermining the concept that civilians should be in the lead on internal security affairs. In some countries, where there may be tensions between military and police forces, such a blurring may cause resentments and complicate bilateral relations in other areas.

## Should Congress Consider Broader Security Assistance Reform?

Discussion about Section 1206 often takes place in the context of a perceived need for broad security assistance reform. Section 1206 represents a significant part of the security assistance package, but many analysts are concerned with the problems involving the whole gamut of security assistance programs under both State Department and DOD authorities.<sup>64</sup> Indeed, some relate the establishment of Section 1206, as well as perceived problems with it, to problems experienced with traditional State Department authorities: “The current [State Department] mechanisms, some of which reflect statutory requirements, are antiquated and slow to respond to changing security threats, one of the explanations for DOD’s expanded assistance portfolio in recent years,” according to one report.<sup>65</sup> Some analysts question whether Section 1206 authority would be needed at all if the systems carrying out traditional security assistance authorities were provided sufficient funds and personnel, and were reorganized to operate more efficiently.

Several reports reviewing security assistance programs, authorities, and resources have recommended substantial reforms that, although several years old, proponents still consider desirable. The MIT report mentioned in a section above advocates the creation of “a new architecture that is agile, flexible and adequately funded to deal with the new security challenges” and that “can and should make ample use of DOD’s capabilities.”<sup>66</sup> Specific recommendations call for changes that would improve strategic planning, policy coherence, interagency

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<sup>63</sup>In January 2008, the final report of the Task Force on Nontraditional Security Assistance at the Center for Strategic and International Studies (CSIS) recommended the expansion of 1206 authority to include non-military security forces because of “the operational necessity of working with foreign security forces to advance key counterterrorism objects.” *Integrating 21<sup>st</sup> Century Development and Security Assistance*, p. 10.

<sup>64</sup> According to the report by the American Academy of Diplomacy and the Henry L. Stimson Center, one of “the most striking trends during the past two decades has been the growing role of the Defense Department in providing foreign assistance under its own statutory authorities ... by the end of the 1990s ... DOD was directly managing 15 security assistance programs accounting for well over \$1 billion annually.” *A Foreign Affairs Budget for the Future*, p. 22.

<sup>65</sup> *A Foreign Affairs Budget for the Future*, p. 23.

<sup>66</sup> *Strengthening Statecraft and Security*, p. 71. This recommendation would place the new architecture under State Department authority, however.

coordination, budgeting procedures, transparency, and discipline, and congressional oversight. Among their suggestions where Congress has a direct role are the following:<sup>67</sup>

- Restructure security assistance authorities by grouping State Department and DOD authorities to create new programs.
- Expand contingency authority for all security assistance, and provide multiyear funding in order to provide the State Department and DOD with broader discretion to reallocate and target funds as requirements change.
- Consolidate security assistance budgets, with the executive branch agencies presenting a single, multiagency, security assistance budget. (Some would emphasize the need for a single counterterrorism budget.)<sup>68</sup>
- Consider joint congressional hearings on security assistance programs, involving both defense and foreign policy authorization and appropriations committees.<sup>69</sup>

The Obama Administration has been reviewing means to improve security assistance delivery and programs. In April 2013, the President released Presidential Policy Directive 23 (PPD-23) on U.S. Security Sector Assistance Policy, establishing a new interagency framework for planning, implementing, assessing, and overseeing security sector assistance (SSA) to foreign governments and international organizations. A PDD-23 fact sheet<sup>70</sup> cites nine goals for the SSA framework, including consistency with broader national security goals, policy coherence, interagency collaboration, comprehensive strategies, better use of resources, and the need to respond to urgent crises, emergent opportunities, and changes in partner security environments, among others.

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<sup>67</sup> This section draws principally on specific recommendations made in three reports: *Strengthening Statecraft and Security, A Foreign Affairs Budget for the Future*, and *Integrating 21<sup>st</sup> Century Development and Security Assistance*, although other reports may have similar proposals. Related proposals are contained in *Beyond Assistance: The HELP Commission Report on Foreign Assistance Reform*, December, 2007, and Project on National Security Reform, *Forging a New Shield*, November 2008, as well as other publications.

<sup>68</sup> See *Integrating 21<sup>st</sup> Century Development and Security Assistance*, p. 38, which recommends that “DOD, State and USAID present relevant congressional committees with a joint CT security assistance budget as part of a broader effort to require executive branch transparency on how State, USAID, and DOD budgets fit together.” (p. 38)

<sup>69</sup> *Strengthening Statecraft and Security*, p. 75.

<sup>70</sup> White House fact sheet, “Fact Sheet: U.S. Security Assistance Policy,” April 5, 2013, <http://www.whitehouse.gov/the-press-office/2013/04/05/fact-sheet-us-security-sector-assistance-policy>.