Coup-Related Restrictions in U.S. Foreign Aid Appropriations

Events over the past year in Burma and Mali have brought attention to a provision that has appeared in annual State, Foreign Operations and Related Programs (SFOPS) appropriations legislation since 1986 that restricts U.S. foreign assistance following a coup d’etat.

What Is Section 7008?
In its current form (P.L. 116-260, Division K), Section 7008 states that:

None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by military coup d’état or decree or, after the date of enactment of this Act, a coup d’état or decree in which the military plays a decisive role: Provided, That assistance may be resumed to such government if the Secretary of State certifies and reports to the appropriate congressional committees that subsequent to the termination of assistance a democratically elected government has taken office: Provided further, That the provisions of this section shall not apply to assistance to promote democratic elections or public participation in democratic processes: Provided further, That funds made available pursuant to the previous provisos shall be subject to the regular notification procedures of the Committees on Appropriations.

Key elements in determining whether Section 7008 restrictions apply to a situation are

- whether a country’s military has overthrown, or played a decisive role in overthrowing, the government, and
- whether the deposed leader was “duly elected,” a term not defined in statute.

The titles that Section 7008 references encompass Bilateral Economic Assistance (III), International Security Assistance (IV), Multilateral Assistance (V), and Export and Investment Assistance (VI). The restriction is not a general one; it applies to selected types of aid, including

- Foreign assistance provided to the government, i.e., implemented through or in cooperation with host governments.
- Funds administered by the State Department and U.S. Agency for International Development (USAID).
- Generally, military training and equipment authorized to be provided by the Department of Defense under 10 U.S.C. 333, as that authority prohibits assistance “that is otherwise prohibited by any provision of law.”

Section 7008 explicitly exempts aid to promote democracy. The restriction also has generally not applied to

- aid fully implemented by nongovernmental organizations rather than the government,
- aid authorized or appropriated “notwithstanding” any other provision of law, which in FY2021 includes most humanitarian assistance; funds provided through the Assistance for Europe, Eurasia, and Central Asia (AEECA) account; aid to some specific countries (e.g., Egypt and Pakistan); and aid for some specific purposes (e.g., counter-narcotics, counter-crime, and anti-terrorism), or
- aid that the President has authority to provide in certain conditions notwithstanding restrictions in law, subject to congressional notification.

Section 7008 does not include waiver authority, and does not set a time parameter for certifying that a coup has taken place, or subsequently that a “democratically elected government has taken office.”

Legislative History
Legislation restricting foreign assistance after coups was first considered in the context of congressional concern about a possible coup in El Salvador. The Foreign Assistance and Related Programs Appropriations Act, FY1985 (P.L. 98-473), prohibited any appropriation from being obligated to El Salvador if the elected President of that country was deposed by military coup (§537). The following year, the enacted foreign aid appropriation, P.L. 99-190, expanded the provision to prohibit funds “to any country whose duly elected Head of Government is deposed by military coup or decree” (§513). Some version of the “coup provision” has been included in every foreign aid appropriations measure since FY1986. Congress has made several changes to the section over time, the most significant of which are depicted in Figure 1.
In other situations, a coup has been characterized as a "military insurrection," a "violent overthrow of the government," or a "violent, illegal overthrow of an elected government." In some cases, a "coup" may have been described as a move to reinstall a deposed leader. In other cases, it may have been described as a "popular uprising." Whether these events constituted a coup d'état was determined by whether the military had deposed an elected president, regardless of the president’s role in military affairs. The determination was generally derived from the actions of the military. Therefore, even if the military only pressed the president to resign, the event was considered a coup if the president was ousted. In Nigeria, the U.S. government stated that military action to oust an elected president was a coup d’état. In contrast, the U.S. government stated that the ouster of a democratically elected president was a "popular uprising." Thus, the executive branch established a distinction between coups and popular uprisings. However, the executive branch did not consistently make this distinction. When the State Department referred to the ouster of a democratically elected president in the U.S. as a "popular uprising," it may have been describing the actions of a government's military or the government's military actions, or both. The determination of whether an event was a coup d'état was not always clear.

Military aid and other assistance to the governments of Egypt, Burkina Faso, and Algeria was not restricted in connection with the events described. For Egypt, Congress enacted new language in SFOPS appropriations measures from FY2014 onwards, making funds available, subject to certain other conditions, “notwithstanding” any other provision of law restricting foreign assistance (currently, Section 7041(a) of P.L. 116-260, Division K).

Policy Questions
As Congress considers SFOPS appropriations for FY2022 and beyond, and contemplates U.S. policy toward foreign governments that assume power by coup, it may revisit Section 7008 and consider whether the existing provisions support congressional intent. Congress may consider:

Waiver. Should waiver authority be added to the provision, or do existing workarounds—such as the notwithstanding provisions for certain countries and certain types of assistance, which may be created after the fact—provide sufficient policy flexibility?

Determination. Should a determination of the coup provision’s applicability be required within a specified time period? If so, should the determination remain fully delegated to the Administration, including the interpretation of events and the role of the military? Is there a role for Congress in such determinations?

Intention. Is the current proviso on a resumption of aid sufficient to adequately support a U.S. policy of objecting to a coup d’état? Should the overthrow of non-"duly elected" leaders be punished as well? Should policymakers be granted the ability to lift the provision if the military transfers control to a civilian-led transitional government, even if that government is not elected?

Policy and Program Implications. Should the resumption of aid following an election in a country where the provision has been applied trigger other U.S. policy responses, such as an evaluation of the status of democracy in the country and whether governance or security sector reform programs are merited? Should any additional actions to deter future ousters of elected leaders be pursued?
Further Reading on Selected Countries

Algeria: CRS In Focus IF11116, Algeria
Burma: CRS Insight IN11594, Coup in Burma (Myanmar): Issues for U.S. Policy
Egypt: CRS Report RL33003, Egypt: Background and U.S. Relations
Honduras Political Crisis: CRS Report R41064, Honduran Political Crisis, June 2009-January 2010
Mali: CRS In Focus IF10116, Crisis in Mali
Sudan: CRS In Focus IF10182, Sudan
Thailand: CRS In Focus IF10253, Thailand: Background and U.S. Relations
Zimbabwe 2017 Events: CRS Insight IN10819, Zimbabwe: A Military-Compelled Transition?

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