

**Follow-Up Questions for the Record Submitted to  
Legal Adviser Nominee Jennifer Newstead by  
Senator Todd Young  
Senate Foreign Relations Committee  
November 8, 2017**

**Question:**

Thank you for your responses to my follow-up questions for the record that I received on November 7, 2017. I am grateful for your answers. Overall, I believe your answers to my follow-up questions are substantive and responsive. However, there is one sentence in your response that is concerning and that I hope to clarify.

In response to my questions, you wrote the following (emphasis added):

*“Thank you for the opportunity to address your concern. As indicated in my response to a previous question, and as you note above, the statutory standard is whether the transport or delivery of U.S. humanitarian assistance has been directly or indirectly prohibited or restricted by any government. The statutory language does not include a requirement that “all” foreign assistance be directly or indirectly restricted. In the portion of my answer you identify above, **I was addressing one of many possible factual circumstances which, if true, could be relevant to analyzing whether the statutory standard has been met.** However, I did not intend to suggest that the statute could only be triggered if there was a determination that “all” humanitarian assistance has been prevented. In my view, the statute itself, in setting the standard for triggering the restriction, does not include a requirement that “all” humanitarian assistance be directly or indirectly restricted.”*

I am also grateful for this response to my subsequent question:

*“Yes, I re-affirm, consistent with my initial responses, that section 620I prohibits provision of assistance under the FAA or the Arms Export Control Act (AECA) to a country when it is made known to the President (or the Secretary, under delegated authority) that the government of such country prohibits or otherwise restricts, directly or indirectly, the transport or delivery of U.S. humanitarian assistance. It is my view that if Saudi Arabia has directly or indirectly restricted the transport or delivery of U.S. humanitarian assistance, then U.S. assistance under the Foreign Assistance Act or the Arms Export Control Act would be restricted under this provision.”*

With the exception of the one emphasized sentence above, I view those answers as responsive and reflective of an accurate understanding of what 22 U.S. Code § 2378–1(a) requires. However, your inclusion of that sentence underscores the concern I have raised and strikes me as inconsistent with the rest of your response. Based on your interpretation of the law, you say that

even an indirect restriction of the transport or delivery by Saudi Arabia of U.S. humanitarian assistance would restrict the provision of U.S. assistance to Saudi Arabia under the Foreign Assistance Act or the Arms Export Control Act. Yet, you say that if Saudi Arabia were not restricting “all” assistance that “could be relevant to analyzing whether the statutory standard has been met.” That is not consistent with a plain reading of the law, and I am not clear how that statement can be reconciled with the remainder of your responses—unless you are referring only to paragraph (b). Again, I recognize that such a consideration might inform a national security exception under paragraph (b), but it is not relevant to paragraph (a).

Pursuant to 22 U.S. Code § 2378–1(a), do you agree that a direct or indirect restriction of the transport or delivery of U.S. humanitarian assistance would trigger paragraph (a) regardless of a number of other considerations, including whether “all” humanitarian assistance were being restricted or not?

Do you agree that a variety of other considerations could inform a national security interest exception under paragraph (b) but are not relevant to paragraph (a)?

**Answer:**

I appreciate the opportunity to address your further questions on this issue. Let me first re-affirm, consistent with my prior responses, that by its terms, section 620I prohibits provision of assistance under the Foreign Assistance Act or the Arms Export Control Act to a country when it is made known to the President (or the Secretary, under delegated authority) that the government of such country prohibits or otherwise restricts, directly or indirectly, the transport or delivery of U.S. humanitarian assistance. As noted in my prior responses, it is my view that if Saudi Arabia or any other country directly or indirectly prohibits or otherwise restricts the transport or delivery of U.S. humanitarian assistance, then U.S. assistance under the Foreign Assistance Act and the Arms Export Control Act would be restricted under this provision.

With respect to your first question, I do agree that the direct or indirect prohibition or other restriction of the transport or delivery of U.S. humanitarian assistance is the relevant question under subsection (a) of the statute; and that the statute does not require that “all” humanitarian assistance has been restricted before the prohibition in subsection (a) can be triggered. Evidence that the transport or delivery of *any* amount of U.S. humanitarian assistance had been blocked by a foreign government would be highly relevant in determining whether a direct or indirect prohibition or other restriction has occurred under subsection (a) of the statute. If confirmed, I would wish to consider any such evidence, along with any other relevant facts, and prior interpretations of the Department, in providing advice on the application of the statute. With respect to your second question, I also agree that a variety of considerations could inform the national security interest exception under subsection (b) that would not be relevant to determining whether a direct or indirect prohibition or other restriction exists that would trigger subsection (a).

As noted in my response to your prior questions, an assessment of whether the assistance restriction under section 620I has been triggered is a highly fact-specific inquiry. If confirmed, it would be essential for me to have a full understanding of the relevant facts, including with respect to any classified or unclassified information available to the Department on this issue which I have not had the opportunity to consider as a nominee, before reaching a final view on these statutory questions. I commit to you that, if confirmed, I will review these issues in depth, to engage closely with my colleagues at the Department and USAID on these issues, and to meet with you and your staff to share my assessments and consider your views further, consistent with my professional obligations to the Department.