

White House Requests “Unprecedented” Loophole That Would Obscure Arms Sales to Israel

The measure effectively gives Israel a check to purchase \$3.5 billion in arms in complete secrecy.

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Buried within the \$106 billion supplemental national security funding [request](#) the White House sent to Congress on October 20 was a highly unusual exemption. As part of \$3.5 billion earmarked for Foreign Military Financing (FMF) funding for Israel, the executive branch sought permission to unilaterally blanket-approve the future sale of [military equipment and weapons](#)—like ballistic missiles and artillery ammunition—to Israel without notifying Congress.

This means the Israeli government would be able to purchase up to \$3.5 billion in military articles and services in complete secrecy. The House included the waiver language in a [bill that splits off Israeli military aid](#) from the rest of the package.

“I’ve never seen anything like it,” says Josh Paul, former director of congressional and public affairs for the State Department’s Bureau of Political-Military Affairs. Paul recently resigned in protest against the administration’s plans to rush weapons to Israel. “A proposal in a legislative request to Congress to waive Congressional notification entirely for FMF-funded Foreign Military Sales or Direct Commercial Contracts is unprecedented in my experience. ... Frankly, [it’s] an insult to Congressional oversight prerogatives.”

FMF requests like this one are essentially [grants](#) to purchase weapons and defense services from the United States and its defense contractors. Even after Congress approves an FMF request, it still has power over how the money is spent and can deny major arms sales.

The Congressional approval process also serves another purpose — it creates a public record to ensure transparency. Notifications to Congress appear in the Federal Register, which is accessible to the public. In addition, the Defense Security Cooperation Agency (DSCA) publishes press releases for major arms sales on its [website](#). These public postings are often the only way that journalists, watchdog groups, and arms control experts can learn of and track weapons sales.

“It’s also redundant with existing laws,” Paul says. The White House can [unilaterally approve](#) foreign military sales in “emergency” situations but must notify Congress and provide a “detailed justification.” The Israel waiver does not require any communication with Congress.

“So this doesn’t actually reduce the time, it just reduces the oversight,” Paul says. “It removes that mechanism for Congress to actually understand what is being transferred at the time it is being transferred.” Paul adds that the language came from the White House and received “pushback” within the executive branch.

Administrative shortcuts can erode the State Department vetting process and increase the likelihood of sales to military units that commit gross human rights violations. Such sales violate the Leahy Law under the Foreign Assistance Act.

The Trump administration [drew fire from Congress](#) in May 2019 when it invoked the existing emergency certification process to bypass congressional review of \$8.1 billion in arms destined for Saudi Arabia, the United Arab Emirates and Jordan. An Office of Inspector General [investigation](#) later determined that the State Department did “not fully assess risks and implement mitigation measures to reduce civilian casualties and legal concerns associated with the transfer of [precision-guided munitions].”

Notably, although the Biden administration proposal is framed as an “emergency response,” it allows the funding to be used at any time before September 2025. The Israeli government can also set aside these funds for future use, beyond 2025, effectively giving Israel a blank pass for arms purchases without recurring Congressional notification.

The Biden administration is pushing Congress to pass the funding package quickly. The House split off \$14.3 billion in Israel military aid — including the \$3.5 billion FMF request and the waiver language — into a separate bill tied to cuts in IRS funding, which Biden says he will veto. The chairs of the Senate Committee on Appropriations chairs [say they are](#) drafting a bill to reflect Biden’s full request.

Overall, Israel is the largest cumulative recipient of U.S. foreign assistance since World War II, [totaling](#) \$158 billion (in non-inflation-adjusted dollars) in economic and military aid. The supplemental funding request more than doubles Israel’s annual [\\$3.3billion](#) in FMF.

Since the most recent escalated violence began on October 7, the Defense Department has [expedited delivery](#) of weapons to Israel from previously approved sales, including Joint Direct Attack Munitions (JDAMs), 155mm [artillery shells](#) and nearly a million rounds of [ammunition](#). JDAMs are used as “smart” guidance attachments to MK-80 series bombs. During Israel’s 2014 bombing campaign in Gaza, its military mostly used U.S.-made MK-84 one-ton bombs. An independent UN commission investigating the war [concluded](#) that the use of those bombs “constitute a violation of the prohibition of indiscriminate attacks.” With \$3.5 billion, the Israeli military could acquire over 116,000 JDAMs without

Congressional notification or public disclosure.

“The waiver would further undermine meaningful scrutiny of weapons sales on Capitol Hill at a time when U.S. support is enabling bombings that have killed thousands of civilians,” says John Ramming Chappell, U.S. advocacy and legal fellow at the Center for Civilians in Conflict, a Washington, D.C.-based nonprofit.

“Legislators should reject the White House’s request for an open-ended notification waiver for arms sales to Israel in the emergency supplemental. Instead, members of Congress should push the State Department and the Pentagon for greater transparency on weapons transfers to Israel to understand how the U.S. is contributing to civilian harm and possible war crimes. With the Biden administration apparently reluctant to restrict weapons use or monitor international law compliance, it’s up to Congress to put effective restrictions in place.”

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