



USAID
FROM THE AMERICAN PEOPLE

FY 2009 Statutory Checklists

An Additional Help
for ADS Chapters 200-203

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FY 2009 Statutory Checklists

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I. INTRODUCTION

The following checklists are intended to be convenient references when planning and implementing assistance programs. The checklists do not have every country prohibition or restriction. Consult the attorneys assigned to your Bureau or Mission to determine if there are additional country-specific or activity-specific prohibitions and "notwithstanding" authorities.

Please see ADS 201.3.3.3 to determine when a checklist should be prepared. In doing a checklist you make a reasonable inquiry, determine the applicability of each statutory reference, and set forth any additional comments or issues (for example, "We are not aware of any information that requires action under this section" or "To the best of our knowledge, we are not aware of any violations under this provision" or "Not applicable because no FY09 ESF funds will be programmed to assist the government of X").

Please contact the listed point of contact only with specific questions regarding the applicability of a particular checklist item.

• Country Checklist

The Country Checklist includes the important provisions of general application from the Foreign Assistance Act of 1961, as amended (FAA), and the FY 2009 Department of State, Foreign Operations, and Related Programs Appropriations Act, (FY 2009 Act), P.L. 111-8, March 11, 2009. Please note that the Country Checklist does not list every statutory or regulatory provision applicable to a particular country.

- **Activity Checklist**

The Activity Checklist has the activity-specific provisions of the FAA, and the FY 2009 Act.

- **Notwithstanding Authorities**

There are various "notwithstanding" authorities that USAID might use to provide assistance when it would otherwise be prohibited. Some examples follow:

1. Disaster Assistance (FAA Sec. 491).
2. Health and Disease Prevention (FAA 104(c)(4) and Child Survival and HIV/AIDS (FY 2009 Act, Sec. 7060(a)).
3. Assistance for Europe, Eurasia and Central America (AEECA) (Title III of the FY 2009 Act). Prior year funds under the heading "Assistance for Eastern Europe and the Baltic States" and "Assistance for the Independent States of the Former Soviet Union," and currencies generated by or converted from such funds, shall be available for use in any country for which funds are made available without regard to the geographic limitations of the account heading under which such funds were originally appropriated.
4. Assistance to the Independent States (FAA Sec. 498B(j)).
5. Afghanistan (only for loan defaults under section 7012 of the FY 2009 Act or any similar provision of law (i.e., Section 620(q) of the FAA) and Section 660 of the FAA); Iraq, Lebanon; Montenegro; Pakistan; victims of war; displaced children; displaced Burmese; and victims of trafficking in persons and combating trafficking (FY 2009 Act, Sec. 7034).
6. Tropical forestry, biodiversity conservation and energy programs aimed at reducing greenhouse gas emissions (FY 2009 Act, Sec. 7083).
7. Non-governmental organizations and P.L. 480 (FY 2009 Act, Sec. 7028).
8. Title II Emergency Programs (P.L. 480, Sec. 202(a)).
9. Assistance from all accounts for the promotion of democracy (programs that support good governance, human rights, independent media, and the rule of law, and otherwise strengthen the capacity of democratic political parties, governments, nongovernmental organizations and institutions, and citizens to support the development of democratic states, institutions, and practices that are responsive and accountable to citizens) (FY 2009 Act, Democracy Fund).
10. Development Assistance (DA) funds for programs and activities for the Central Highlands of Vietnam and made available for environmental remediation and related health activities (FY 2009 Act, Section 7071(h)).

11. DA and Economic Support Fund (ESF) funds in the FY 2009 Act and all prior Acts may be made available to address critical food shortages (FY 2009 Act, Section 7034(o)).

II. COUNTRY CHECKLIST

Part A of the Country Checklist has the general provisions to be completed for a country.

Part B has the “taking into consideration” provisions. They are considered by the Administrator in the annual Operational Year Budget (OYB) and Operational Plan process for all countries, not just those in the OYB. Because they have already been taken into account as part of the budget process, you do not have to include them in doing the checklist.

PART A. GENERAL PROVISIONS

1. **NARCOTICS CERTIFICATION.** (Section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228) (FRAA), September 30, 2002). As a result of Presidential Determination No. 2008-28 ([see http://www.state.gov/p/inl/rls/rpt/109777.htm](http://www.state.gov/p/inl/rls/rpt/109777.htm)), the narcotics certification applies only to Bolivia, Burma and Venezuela. Afghanistan, The Bahamas, Bolivia, Brazil, Burma, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, and Venezuela were identified as “major drug transit or major illicit drug producing” countries. Only Bolivia, Burma and Venezuela were determined to “have failed demonstrably during the previous 12 months to adhere to their obligations under international counternarcotics agreements and take the measures set forth in 489(a)(1) of the FAA.” The President also determined that support for programs to aid Venezuela's democratic institutions is vital to the national interests of the United States. Accordingly, assistance to Venezuela to support the described programs will not be withheld. Bilateral programs in Bolivia were also determined to be vital to the national interests of the United States. Accordingly, assistance to Bolivia is not withheld.

<p>Is this applicable? Please comment.</p>

2. **INDEBTEDNESS TO U.S. CITIZENS.** (FAA Sec. 620(c)). Absent a Presidential determination based on national security needs, assistance to a government is prohibited if the government is indebted to any U.S. citizen or person for goods or services furnished or ordered, and (a) such citizen or person has exhausted available legal remedies, (b) the debt is not denied or contested, or (c) the indebtedness arises under an unconditional guaranty of payment given by such government (or controlled entity).

[Contact: State counterpart desk officer]

Is this applicable? Please comment.

3. **SEIZURE OF U.S. PROPERTY.** (Section 527 of the Foreign Relations Authorization Act, 1994-95, which superseded FAA Sec. 620(e)). Absent a waiver by the Department of State, assistance to a government is prohibited if that government has expropriated or seized ownership or control of property at least 50 percent beneficially owned by U.S. citizens without:

- (a) Returning the property to the owner;
- (b) Compensating the owner for the property;
- (c) Offering a domestic procedure providing prompt, adequate, and effective compensation for the property; or
- (d) Submitting the dispute to international arbitration.

As of February 2009, the only country identified is Nicaragua, which has received a waiver until July 29, 2009.

[Contact: State/EB/IFD/OIA, Heather Goethert, 202-647-8988]

Is this applicable? Please comment.

4. **SPECIFIC COUNTRIES.** (FAA Secs. 620(a) and 620(f); FY 2009 Act, Sec. 7007). Assistance is specifically prohibited in the FY 2009 Act to Cuba, Iran, North Korea, and Syria. (Note: For FY 2009, the restriction in Sec. 7007 applies only to the governments of the four listed countries.)

Is this applicable? Please comment.

5. **LOAN DEFAULT.** (FAA Sec. 620(q); FY 2009 Act, Sec. 7012 [Brooke Amendment]; see ADS 623). Absent a Presidential waiver, assistance is prohibited to the country under section 620(q) and only to the government of the country under section 7012 where:

- (a) The government of the recipient country has been in default for more than six months on interest or principal of any loan by the U.S. to such country under the FAA; or

- (b) The country has been in default for more than one calendar year on interest or principal on any U.S. foreign assistance loan.

The 620q report can be found on the USAID intranet at <http://inside.usaid.gov/M/CFO>.

[Contact: M/CFO/WFS/Credit Team, William Fuller, 202-712-0566.]

Is this applicable? Please comment.
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- 6. **DIPLOMATIC RELATIONS WITH U.S.** (FAA Sec. 620(t)). Assistance is prohibited if diplomatic relations between the U.S. and the recipient country are currently severed.

Is this applicable? Please comment.
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- 7. **INTERNATIONAL TERRORISM.** (FY 2009 Act, Sec. 7022; FAA Secs. 620A, 620G).

Assistance is prohibited to a recipient country if the Secretary of State has determined that the government of that country has repeatedly provided support for international terrorism (section 620A). Cuba, Iran, Sudan, and Syria have been determined to be countries whose governments have repeatedly provided support for acts of international terrorism.

Assistance is prohibited to a recipient government of a country if that government has provided assistance to a country that has repeatedly provided support for international terrorism (section 620G).

Assistance is prohibited to a recipient country if the President has determined it has granted sanctuary from prosecution to any individual or group which has committed an act of international terrorism or otherwise supports international terrorism (section 626).

The President has authority to waive sections 620A and 626 for national security interests or (subject to certain exceptions) humanitarian reasons and to waive section 620G for assistance in the national interest.

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.
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8. **EXPORT OF LETHAL MILITARY EQUIPMENT TO TERRORIST STATES.** (FY 2009 Act, Sec. 7021; FAA Sec. 620H). Absent a waiver by the Secretary or Deputy Secretary of State on national interest grounds, assistance is prohibited to a government that provides lethal military equipment to a government designated by the Secretary of State as a State Sponsor of Terrorism (those described in 7 above).

[Contact: State/L/NPV, Paul Dean, 202-647-1102]

Is this applicable? Please comment.

9. **DISCRIMINATION.** (FAA Sec. 666(b)). Assistance is prohibited to a recipient country that objects, on the basis of race, religion, national origin, or sex, to the presence of any officer or employee of the U.S. who is present in such country to carry out economic development programs under the FAA.

Is this applicable? Please comment.

10. **NUCLEAR TECHNOLOGY.** (Arms Export Control Act Secs. 101, 102).
- (a) Absent special certification by the President, assistance is prohibited if the recipient country has either delivered or received from any other country nuclear enrichment or reprocessing equipment, materials, or technology, without specified arrangements or safeguards any time after August 3, 1977.
 - (b) Absent special certification by the President, assistance is prohibited if the recipient country has, on or after June 30, 1994:
 - (1) Transferred a nuclear explosive device or components or design information for such a device to a non-nuclear weapon state,
 - (2) Detonated a nuclear explosive device (if the country is a non-nuclear weapon state),
 - (3) Received a nuclear explosive device or components or design information for such a device (if the country is a non-nuclear weapon state), or
 - (4) Exported (or attempted to export) illegally from the U.S. any material, equipment, or technology that would contribute significantly to the ability of a country to manufacture a nuclear explosive device.

[Contact: State/L/NPV, Paul Dean, 202-647-1102]

Is this applicable? Please comment.

11. **MILITARY COUP OR DECREE.** (FY 2009 Act, Sec. 7008). Assistance is prohibited to the government of a country where the duly elected head of government of the recipient country has been deposed by military coup or decree unless the President has notified Congress that a democratically elected government has since taken office. Since FY 2002, the section does not apply to assistance to promote democratic elections or public participation in democratic processes.

Is this applicable? Please comment.

12. **EXPLOITATION OF CHILDREN.** (FAA Sec. 116(b)). Assistance is prohibited where the Department of State has determined that the recipient government has failed to take appropriate and adequate measures, within its means, to protect children from exploitation, abuse, or forced conscription into military or paramilitary services.

Is this applicable? Please comment.

13. **PARKING FINES AND REAL PROPERTY TAXES.** (FY 2009 Act, Sec. 7055). Assistance to a recipient country must be reduced by 110 percent of the amount of unpaid parking fines and property taxes owed to the District of Columbia and New York City.

OYB country levels are adjusted by amounts owed by F, as part of the OYB process. **No action required** by country desk.

[Contact: Check with Bureau budget office]

Is this applicable? Please comment.

14. **DELIVERY OF HUMANITARIAN ASSISTANCE.** (FAA Sec. 620I). Absent a Presidential determination, assistance is prohibited where the recipient government has prohibited or otherwise restricted, directly or indirectly, the transport or delivery of U.S humanitarian assistance.

Is this applicable? Please comment.

- 15. ASSISTANCE TO CUBA.** (FAA Sec. 620(y), as amended by section 2810 of FY 98/99 Foreign Relations Authorization Act, P. L. 105-277; LIBERTAD Act Sec. 111; P. L. 104-114).
- (a) If a country (or any entity in the country) provided (1) nuclear fuel and related assistance and credits or (2) assistance or credits in support of the Cuban nuclear facility at Juragua, Cuba at any time after March 12, 1996, then assistance to such country must be reduced by an amount equal to the sum of any such assistance or credits.
 - (b) Assistance to a recipient country must be reduced by an amount equal to the aggregate value of nuclear fuel related assistance and credits provided by that country to Cuba during the preceding fiscal year, unless Cuba:
 - (1) Has ratified the Treaty on the Non-Nuclear Proliferation of Nuclear Weapons or the Treaty of Tlatelolco and Cuba is in compliance therewith;
 - (2) Has negotiated and is in compliance with full-scope safeguards of the International Atomic Energy Agency not later than two years after ratification by Cuba of such treaty; and
 - (3) Incorporates and is in compliance with internationally accepted nuclear safety standards.

Is this applicable? Please comment.

- 16. HUMAN RIGHTS VIOLATIONS.** (FAA Secs. 116 and 502B). If the Department of State has determined that the recipient government has engaged in a consistent pattern of gross violations of internationally recognized human rights, then:
- (a) Economic Support Fund funds may be used only if the assistance will directly benefit the needy; and
 - (b) Development Assistance funds may be used only if the President has found that the country has made such significant improvement in its human rights record that furnishing such assistance is in the U.S. national interest.

[Contact: State/L/HRR, Kevin Baumert, 202-647-2773]

Is this applicable? Please comment.

17. **TRAFFICKING IN PERSONS (TIP)**. (22 USC 7107). Is the country listed on Tier 3 of the annual TIP report released each June by the State Department **and** subject to sanctions under the Presidential Determination for the succeeding fiscal year? For FY 2009, these countries are Burma, Cuba, the Democratic People's Republic of Korea (DPRK), Iran, and Syria.

Background: The June 2008 TIP Report <http://www.state.gov/g/tip/rls/tiprpt/2008/index.htm> placed 14 countries on Tier 3. The Presidential Determination issued at the beginning of each fiscal year describes: (a) which countries are determined to have come into subsequent compliance with the law and therefore not subject to sanctions; (b) which countries are subject to sanctions; and (c) which countries are subject to full or partial waivers. The Presidential Determination for FY 2009 (No. 2009-5) <http://2001-2009.state.gov/g/tip/rls/prsrl/08/111083.htm>, applied sanctions to the countries list above, recognized the Secretary of State's subsequent compliance determinations regarding Moldova and Oman, and waived sanctions on Algeria, Fiji, Kuwait, Papua New Guinea, Qatar, Saudi Arabia, and Sudan.

Note: Forty-five countries, many of them with active USAID programs, were placed on the Special Watch List for FY2009 by the State Department. Please refer to <http://www.state.gov/g/tip/rls/reports/2009/116114.htm>, which contains an Interim Assessment of each of the Special Watch List countries. This is intended to serve as a mid-term evaluation, giving foreign governments more time to review, respond and avert the prospect of a Tier III ranking and possible sanctions in the pending annual TIP report released each June.

[Contact: your RLA or AGC; EGAT/WID, Katherine Blakeslee, 202-712-0570.]

Is this applicable? Please comment.

18. **ESF Assistance for Parties to the International Criminal Court**. (Nethercutt Amendment)

**** This restriction does not apply to FY 2009 Economic Support Fund (ESF).**

FY 2005, FY 2006, FY 2007 and FY 2008 ESF assistance is prohibited to provide "assistance to the government of a country" that:

- (a) Is a party to the International Criminal Court (ICC); and
- (b) Has not entered into an agreement with the U.S. pursuant to Article 98 of the Rome Statute (Article 98 agreement). An Article 98 agreement

prevents the ICC from proceeding against U.S. personnel present in that country, and must be “in force” in order to avoid the prohibition.

The President may waive this restriction with regard to any country to which the restriction applies if he determines and reports to the appropriate congressional committees that it is important to the national security interest of the U.S. This prohibition only applies to ESF funds and its applicability to a country does not make that country ineligible for Millennium Challenge Act (MCA) assistance. Therefore, a country that is ineligible to receive ESF assistance under this provision can still be eligible for MCA assistance.

The list of countries that are restricted under this provision with regard to FY 2005 – FY 2008 ESF changes over time depending on whether a particular country has become a member of the ICC, and whether a country has signed an Art. 98 agreement with the U.S. As of January 23, 2008, the Nethercutt prohibited countries are: Andorra, Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Brazil, Bulgaria, Canada, Cook Islands, Costa Rica, Croatia, Cyprus, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Kenya, Republic of Korea, Latvia, Lichtenstein, Lithuania, Luxembourg, Mali, Malta, Mexico, Namibia, Netherlands, New Zealand, Niger, Norway, Paraguay, Peru, Poland, Portugal, Romania, St. Vincent & the Grenadines, Samoa, San Marino, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tanzania, Trinidad and Tobago, United Kingdom, Uruguay, Venezuela.

** The waivers for FY 2006 funds (PD 2007-5 (November 27, 2006)) and FY 2007 funds (PD 2008-21 (June 20, 2008)) cover Bolivia, Costa Rica, Cyprus, Ecuador, Kenya, Mali, Mexico, Namibia, Niger, Paraguay, Samoa, South Africa, and Tanzania.

** The waiver that applies to FY 2008 funds is PD 2009-14 (January 16, 2009) and covers Barbados, Bolivia, Costa Rica, Cyprus, Ecuador, Kenya, Mali, Mexico, Namibia, Niger, Paraguay, Peru, Samoa, South Africa, St. Vincent and the Grenadines, Tanzania, and Trinidad and Tobago.

[Contact: your RLA or AGC; State/L/LFA Margaret Taylor, 202-647-5394]

Is this applicable? Please comment.

19. **EXTRADITION OF INDIVIDUALS ACCUSED OF KILLING A LAW ENFORCEMENT OFFICER.** (FY 2009 Act, Sec. 7082). Assistance is prohibited to the central government of a country that has refused to extradite to the United States any individual indicted for a criminal offense for which the maximum penalty is life imprisonment without the possibility of parole or for killing a law enforcement officer. This restriction applies to central governments with which the United States maintains diplomatic relations and with which the United States has an extradition treaty and the government of that country is in violation of that treaty. The Secretary may waive

this restriction, on a case-by-case basis, if it is important to the national interests of the United States.

As of March 2009, the State Department's Office of the Legal Adviser, Legislation and Foreign Assistance section is not aware of refusals by the central government of any country that would trigger the application of this restriction.

[Contact: State/L/LFA, State/L/LFA Margaret Taylor, 202-647-5394]

Is this applicable? Please comment.

20. **TRANSPARENCY AND ACCOUNTABILITY.** (FY 2009 Act, Sec. 7088) Assistance is prohibited to the central government of a country that fails to make publicly available on an annual basis its national budget. The restriction applies to all funds appropriated under the FY 2009 Act. The restriction contains a national interest waiver that may be exercised by the Secretary of State on a country-by-country basis.

As of March 19, 2009, decisions have not yet been made about which countries are affected by this restriction or which countries will require a waiver.

[Contact: your RLA or AGC]

Is this applicable? Please comment.

21. **ENFORCEMENT OF NONPROLIFERATION TREATIES.** (Section 530 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236) (FRAA), April 30, 1994) Absent a waiver by the President, assistance under the FAA to a "non-nuclear weapon state" is prohibited if that country has been found to have terminated, abrogated, or materially violated an International Atomic Energy Agency full-scope safeguard agreement, or materially violated a bilateral U.S. nuclear cooperation agreement entered into after March 10, 1978. "Non-nuclear weapon state" means any country which is not a nuclear-weapon state, as defined by Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons (July 1, 1968).

[Contact: State/L /NPV, Paul Dean, 202-647-1102]

Is this applicable? Please comment.

PART B. "TAKING INTO CONSIDERATION" PROVISIONS

Because they have already been taken into account as part of the budget process, you do not have to include them in doing the checklist.

1. **MOB ACTION.** (FAA Sec. 620 (j)). Assistance may be terminated if the recipient country permitted (or failed to take adequate measures to prevent) damage or destruction of U.S. property by mob action.
2. **SEIZURE OF U.S. FISHING VESSELS.** (FAA Sec. 620(o); Fishermen's Protective Act of 1967, as amended, Sec. 5 (22 U.S.C. 1975(b)). Assistance may be denied or offset if the recipient country has seized, or imposed any penalty or sanction against, any U.S. fishing vessel fishing in international waters.
3. **OVERSEAS PRIVATE INVESTMENT CORPORATION (OPIC) INVESTMENT GUARANTY.** (FAA Sec. 620(l)). Assistance may be denied if the recipient country has failed to enter into an investment guaranty agreement with OPIC.
4. **UNITED NATIONS (U.N.) OBLIGATIONS.** (FAA Sec. 620(u)). The payment status of the recipient country's U.N. obligations is to be taken into account when considering assistance levels.
5. **ALGIERS MEETING.** (Section 720 of the International Security and Development Cooperation Act of 1981 (ISDCA of 1981)). The fact that a country attended and otherwise failed to disassociate itself from the communiqué issued at the Meeting of Ministers of Foreign Affairs and Heads of Delegations of the Non-Aligned Countries to the 36th General Assembly of the U.N. on September 25 and 28, 1981, is to be taken into account when considering assistance levels to such country.

III. ACTIVITY CHECKLIST

This checklist is to help managers and teams ensure that activities are consistent with applicable law. Since different provisions apply at different stages of the process, this Checklist is divided into the following parts: (A) Planning, (B) Congressional Notifications, and (C) Obligor Documents.

In addition to completing this Checklist, managers and teams should check with the Desk Officer to make sure that the Country Checklist has been completed and nothing has occurred since completion of the Country Checklist that would affect USAID's ability to provide assistance.

For the most part, no distinction between Development Assistance and Economic Support Fund funds is made in this Activity Checklist because the FAA provides that, to the maximum extent feasible, ESF assistance should be provided consistent with the policy directions, purposes, and programs of Development Assistance.

PART A. PLANNING

1. **ENFORCEMENT OF NONPROLIFERATION TREATIES.** (FY 2009 Act, Sec. 7071(f)(5)). None of the funds appropriated or otherwise made available pursuant to the FY 2009 Act may be used to finance any grant, contract, or cooperative agreement with the People's Liberation Army (PLA) of the People's Republic of China, or any entity that the Secretary of State has reason to believe is owned or controlled by, or an affiliate of, the PLA.

<p>Is this applicable? Please comment.</p>
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2. **ADVERSE ECONOMIC IMPACT UPON THE UNITED STATES.**
 - (a) **IMPACT ON U.S. JOBS; RELOCATION; EXPORT ZONES; VIOLATION OF WORKERS' RIGHTS.** (FY 2009 Act, Sec. 7029; see ADS 225). Assistance may not be provided:
 - (1) To a business located in the U.S. for the purpose of inducing that business to relocate outside the U.S. in a manner that would likely reduce the number of U.S. employees of that business;
 - (2) For an activity that contributes to the violation of internationally recognized workers' rights in the recipient country. This is applied commensurate with the level of development of the recipient country and is not to preclude assistance for the informal sector including micro and small-scale enterprise and smallholder agriculture.

<p>Is this applicable? Please comment.</p>
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- (b) **PRODUCTION OF SURPLUS COMMODITIES.** (FY 2009 Act, Sec. 7026(a)). Assistance may not be provided to establish or expand production of any commodity for export if the commodity is likely to be in surplus on world markets and substantial injury will be caused to U.S. producers of the same, similar, or competing commodities.

<p>Is this applicable? Please comment.</p>
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3. **AGRICULTURAL ACTIVITIES (BUMPERS AMENDMENT).** (FY 2009 Act, Sec. 7026(b)), as interpreted by the conference report for the original enactment). No funds may be used for agricultural development activities (specifically, any testing or

breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training) that would compete with a similar commodity grown or produced in the United States unless the activity:

- (a) Is designed to increase food security in developing countries and where such activities will not have a significant impact in the export of agricultural commodities of the United States; or
- (b) Is a research activity intended primarily to benefit American producers.

Is this applicable? Please comment.
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- 4. **COMMUNIST ASSISTANCE.** (FAA Sec. 620(h)). Arrangements should be made to ensure that United States foreign aid is not used in a manner which, contrary to the best interests of the United States, promotes or assists the foreign aid projects or activities of any country that is a Communist country for purposes of FAA section 620(f).

Is this applicable? Please comment.
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- 5. **ENVIRONMENT.**

- (a) **ENVIRONMENTAL REVIEW.** (FAA Sec. 117; 22 CFR 216 (USAID Regulation 16), see ADS 204). 22 CFR 216 requires an Initial Environmental Examination, unless the proposed assistance falls within certain exceptions and other actions. Cognizant Technical Officers remain responsible for ensuring compliance with all 22 CFR 216 requirements.

Is this applicable? Please comment.
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- (b) **DEBT-FOR-NATURE EXCHANGE.** (FAA Sec. 463). Assistance that will finance a debt-for-nature exchange must:
 - (1) Support protection of the world's oceans and atmosphere, animal and plant species, or parks and reserves; or
 - (2) Promote natural resource management, local conservation programs, conservation training programs, public commitment to conservation, land and ecosystem management, or regenerative

approaches in farming, forestry, fishing, and watershed management.

Is this applicable? Please comment.
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(c) **TROPICAL FOREST DEGRADATION.** (FAA Sec. 118). Funds may not be used for:

- (1) The procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner and that the proposed activity will produce positive economic benefits and sustainable forest management systems;
- (2) Actions that will significantly degrade national parks or similar protected areas that contain tropical forests, or introduce exotic plants or animals into such areas;
- (3) Activities that would result in the conversion of forest lands to the rearing of livestock;
- (4) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) that pass through relatively undegraded forest lands;
- (5) The colonization of forest lands; or
- (6) The construction of dams or other water control structures that flood relatively undergraded forest lands.

However, funds may be used for activities in (3) through (6) above if an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner that supports sustainable development.

Is this applicable? Please comment.
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6. **EXPROPRIATION AND LAND REFORM.** (FAA Sec. 620(g)). Assistance may not be used to finance compensation to owners for expropriated or nationalized property, except to compensate foreign nationals in accordance with a land reform program certified by the President.

Is this applicable? Please comment.

7. **FAMILY PLANNING.**

- (a) **ABORTIONS AND INVOLUNTARY STERILIZATIONS PROHIBITED.** (FAA Sec. 104(f); FY 2009 Act, Sec. 7018 and "Global Health and Child Survival" heading under Title III). Funds may not be used:
- (1) To pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.*
 - (2) To pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations.
 - (3) To pay for any biomedical research that relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.
 - (4) To furnish assistance to any country or organization if the President certifies that the use of these funds by such country or organization would violate the three provisions set forth above in (a)(1)-(3).
 - (5) To lobby for or against abortion.
 - (6) To furnish assistance to any organization or program that, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.

* For purposes of the FY 2009 Act or any other Act authorizing or appropriating funds for foreign operations, export financing, and related programs, the term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

Is this applicable? Please comment.

- (b) **VOLUNTARY FAMILY PLANNING SUPPORT.** (FY 2009 Act, Title III, under heading "Global Health and Child Survival"). Funds may be made available only to voluntary family planning projects that:

- (1) Offer, either directly or through referral to, or provide information about access to, a broad range of family planning methods and services.
- (2) Meet the following requirements:
 - (a) Service providers or referral agents in the project do not implement or are not subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning (quantitative estimates or indicators for planning and budgeting purposes are acceptable);
 - (b) The project must not provide payment of incentives, bribes, gratuities, or financial rewards to a person for becoming a family planning acceptor or to program personnel for achieving a numerical target or quota of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning;
 - (c) The project must not deny any right or benefit, including right of access to any program of general welfare or right of access to health care, as a consequence of any decision not to accept family planning services;
 - (d) The project must provide comprehensible information of the health benefits and risks of method chosen; and
 - (e) The project must ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of scientific study in which participants are advised of potential risks and benefits.
- (3) In awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant may be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and additionally, all such applicants must comply with the requirements set forth above under (b)(1).

Is this applicable? Please comment.

8. HIV/AIDS.

- (a) **MEDICALLY ACCURATE INFORMATION ON CONDOMS.** (FY 2009 Act, "Global Health and Child Survival" heading under Title III). Information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated under the FY 2009 Act shall be medically

accurate.* Such information must be consistent with USAID's fact sheet entitled, "USAID: HIV/STI Prevention and Condoms, which may be accessed at:

http://www.usaid.gov/our_work/global_health/aids/TechAreas/prevention/condomfactsheet.html.

* Note: An identical requirement has been included in all appropriations acts since FY 2004.

Is this applicable? Please comment.

(b) **CONSCIENCE CLAUSE.** (Section 301(d) of the U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (P.L. 108-25) (Leadership Act)). An organization, including a faith-based organization, that is otherwise eligible to receive FY 2009 - FY 2013 funds for HIV/AIDS prevention, treatment, or care

- (1) shall not be required, as a condition of receiving the assistance-
 - a. to endorse or utilize a multisectoral (i.e., ABC) or comprehensive approach to combating HIV/AIDS,
 - b. to endorse, utilize, make a referral to, become integrated with or otherwise participate in any program or activity to which the organization has a religious or moral objection; and,
- (2) shall not be discriminated against in the solicitation or issuance of grants, contracts, or cooperative agreements under such provisions of law for refusing to meet any requirement described in paragraph (1).

Is this applicable? Please comment.

(c) **PROSTITUTION AND SEX TRAFFICKING – LIMITATION ON USE OF FUNDS.** (Leadership Act Section 301(e)). FY 2009 - FY 2013 funds for HIV/AIDS activities may not be used to promote or advocate the legalization or practice of prostitution or sex trafficking. This prohibition does not restrict the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and when proven effective, microbicides.

Is this applicable? Please comment.

- (d) **PROSTITUTION AND SEX TRAFFICKING – ORGANIZATIONAL ELIGIBILITY.** (Leadership Act Section 301(f); FY 2004 Act, Sec. 595 and Statement of Managers). Any NGO or PIO receiving FY 2009 - FY 2013 funds for HIV/AIDS activities must have a policy explicitly opposing prostitution and sex trafficking.* The following organizations are statutorily exempt from this requirement: the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization (including WHO’s six regional offices: The Americas (PAHO), South-East Asia (SEARO), Africa (AFRO), East Mediterranean (EMRO), Europe (EURO), and Western Pacific (WPRO)); the International AIDS Vaccine Initiative; and any “United Nations agency”.

* Note: This requirement is the subject of ongoing litigation. USAID is enjoined from enforcing this requirement against certain organizations. Please contact your cognizant RLA or GC/EGAT&GH if you have any questions regarding application of this requirement.

<p>Is this applicable? Please comment.</p>
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9. **ANTI-TRAFFICKING IN PERSONS.**

- (a) **LIMITATION ON USE OF FUNDS.** (Trafficking Victims Protection Act of 2000, as amended (TVPA), Section 113(g)(1)). No funds made available to carry out the TVPA (i.e., to combat human trafficking), regardless of the year of funding, may be used to promote, support, or advocate the legalization or practice of prostitution. This prohibition does not restrict assistance designed to promote the purposes of the TVPA by ameliorating the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked. See AAPD 07-03,* “Anti-Trafficking Activities--Limitation on Use of Funds; Restriction on Organizations Promoting, Supporting, or Advocating Prostitution.”

* Note: AAPD 07-03 replaces AAPD 04-09 and supplements AAPD 04-16.

<p>Is this applicable (i.e, is the purpose of the activity to combat trafficking in persons)? Please comment.</p>

- (b) **ORGANIZATION RESTRICTION.** (Trafficking Victims Protection Act of 2000, as amended (TVPA), Section 113(g)(2)). No funds made available to carry out the TVPA (i.e., to combat human trafficking), regardless of the year of funding, may be used to implement any program that targets victims of severe forms of trafficking in persons as defined in Section 103(8)(A) of the TVPA through any organization that has not stated in either a grant application, a grant agreement, or both, that it does not

promote, support, or advocate the legalization or practice of prostitution. This prohibition does not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked. See AAPD 07-03,* “Anti-Trafficking Activities--Limitation on Use of Funds; Restriction on Organizations Promoting, Supporting, or Advocating Prostitution.”

*Note that AAPD 07-03 replaces AAPD 04-09 and supplements AAPD 04-16.

Is this applicable (i.e., does any part of the activity target victims of severe forms of trafficking)? Please comment.

10. **INTERNATIONAL CONFERENCES.** (FY 2009 Act, Sec. 7048), see Guidance on Funding Foreign Government Delegations to International Conferences, Mandatory Reference to ADS 302, 303, 306, 308, 350, and 522). Development Assistance funds may not be used to pay the costs for participation of another country’s delegation at international conferences held under the auspices of multilateral or international organizations.

Is this applicable? Please comment.

11. **LEGISLATIVE ACTION.** (FAA Sec. 611(a)(2)). If the obligation is more than \$500,000 and requires legislative action within the recipient country, there must be a basis for a reasonable expectation that such action will be completed in time to permit orderly accomplishment of the purpose of the assistance.

Is this applicable? Please comment.

12. **LOANS.**

(a) (FAA Section 122(b)). In making loans, USAID must consider the following:

- (1) Information and conclusion on the capacity of the country to repay the loan at a reasonable rate of interest.
- (2) Does the activity give reasonable promise of assisting long-range plans and programs designed to develop economic resources and increase productive capacities?

- (3) If repayable in dollars, the interest rate must be at least 2 percent per annum during a grace period which is not to exceed 10 years, and at least 3 percent per annum thereafter, but no higher than the applicable legal rate of interest of the country in which the loan is being made.

Is this applicable? Please comment.
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- (b) **PRODUCTIVE ENTERPRISES COMPETING WITH U.S. ENTERPRISES.** (FAA Sec. 620(d)). No FAA loan funds may be used for any productive enterprise that will compete with U.S. enterprises, unless:

- (1) There is an agreement by the recipient country to prevent export for use or consumption in the U.S. of more than 20 percent of the enterprise's annual production during the life of the loan; or
- (2) If in the absence of such an agreement, the President has established import controls to effectuate that agreement.

This may also be waived by the President due to national security interests.

Is this applicable? Please comment.
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- 13. **MILITARY PURPOSES.** (FAA Sec. 531(e)). Congress has explicitly provided that ESF funds may not be used for military or paramilitary purposes (e.g., combat training programs and exercises or support for the military).

Is this applicable? Please comment.
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- 14. **POLICE AND PRISONS.** (FAA Sec. 660). Assistance may not be used to provide training, advice, or any financial support for police, prisons, or other law enforcement forces (see exceptions, including those in sections 660, 119 and 534 of the FAA; Section 536 of the FY 2004 Act (permanent provision of law); subsection (d) under the "Democracy Fund" heading, Sections 7034(a) (only with regard to Afghanistan), 7034(e) (extends FAA 660(b)(6) to regional activities), 7047(a) (community-based police assistance), and 7034(f) (prison conditions) of the FY 2009 Act).

Is this applicable? Please comment.

15. **PUBLICITY, PROPAGANDA, AND LOBBYING.** (FY 2009 Act, Sec. 7080; Anti-Lobbying Act, 18 U.S.C. 1913). Assistance may not be used, intended, or designed to influence a Member of Congress, a jurisdiction or any official of any government in the United States, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation; to influence in any way the outcome of a political election in the United States; or for any publicity or propaganda purposes not authorized by Congress.¹ There are some exceptions to this general rule; please consult your AGC or RLA.

Is this applicable? Please comment.

16. **SECURITY FORCES.** (FAA Sec. 620J). Assistance may not be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights. See State Cable 34981 (January 2003) and the State Department Leahy Amendment compliance guide found at <http://esoccr.irm.state.gov/Leahy/LeahyGuide.htm>. "Security forces" are understood to be members of the law enforcement community or the military. Prison guards, customs police, border police, and tax police would be examples of persons included in the category of "security forces." State Department implementation guidance requires that the Post and Washington vet security force units or individuals prior to the provision of FOAA-funded training or assistance.

Is this applicable? Please comment.

17. **HUMANITARIAN ASSISTANCE CODE OF CONDUCT.** (Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109-13) Sec. 2110). International Disaster and Famine Assistance, and Transition Initiatives funds may not be obligated directly by USAID in an assistance agreement or an acquisition agreement with any organization that fails to adopt a code of conduct that provides for the protection of beneficiaries of assistance from sexual exploitation and abuse in humanitarian relief operations.

¹ See also GC Memorandum dated 5/9/97 by Jan Miller discussing OMB Circular A-122 restrictions regarding lobbying and other advocacy activities.

Is this applicable? Please comment.

18. **FOREIGN ASSETS CONTROL REGULATIONS.** Is assistance being provided or a payment being made to a national of a country subject to trade and economic sanctions administered by the Office of Foreign Assets Control (OFAC) of the Department of Treasury or to any individual or entity subject to targeted trade and economic sanctions administered by OFAC? See OFAC website: <http://www.ustreas.gov/ofac/>. If so, has a license been issued to USAID by OFAC?

[Contact: GC/DCHA, Gary Winter, 202-712-1548.]

Is this applicable? Please comment.

19. **TOBACCO.** (FY 2009 Act, Section 7084) Funds made available in the FY 2009 Act may not be used to “promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.”

Is this applicable? Please comment.

20. **PRIOR APPROVAL BY HOST GOVERNMENT.** (FY 2009 Act, Sec 7034(k)). Democracy, human rights, and governance activities of non-governmental organizations shall not be subject to prior approval by the host government.

Is this applicable? Please comment.

PART B. CONGRESSIONAL NOTIFICATIONS

1. **GENERAL NOTIFICATION.** (FY 2009 Act, Sec. 7015; FAA Sec. 634A). Obligations must be notified to Congress. This is traditionally accomplished through the annual Congressional Presentation. Post FAA 653(a) country reports will provide a second opportunity to notify activities after 653(a) levels have been negotiated with Congress, and may also be a vehicle to meet Special Notification requirements. Additionally, a new Congressional Notification must be made 15

days in advance of the obligation if the amount of the obligation has increased 10 percent from that previously notified.

Is this applicable? Please comment.

2. **SPECIAL NOTIFICATION.** For activities, countries, and other actions requiring special notification see the Annex, "Changes Made by the FY 2009 Department of State, Foreign Operations, and Related Programs Appropriations Act to Current Law."

Is this applicable? Please comment.

PART C. OBLIGATING DOCUMENTS

1. **SOURCE, ORIGIN, AND NATIONALITY.** (See ADS 310).

- (a) **GENERAL.** (FAA Sec. 604(a)). All procurement must be from the U.S., the recipient country or developing countries, except as otherwise determined in accordance with Agency rules, including the DFA Procurement Guidance. If planning procurement elsewhere, a waiver must be obtained.

Is this applicable? Please comment.

- (b) **AUTOMOBILES – BUY ONLY U.S. MADE MOTOR VEHICLES.** (FAA Sec. 636(i)). Assistance may not be used to finance the purchase, sale, long-term lease, exchange, or guaranty of the sale of motor vehicles manufactured outside the U.S., unless a waiver is obtained.

Is this applicable? Please comment.

- (c) **AGRICULTURAL PROCUREMENT.** (FAA Sec. 604(e)). Agricultural commodities and products thereof must be procured within the U.S. unless the commodity or product could not be reasonably produced in the U.S. in fulfillment of the particular assistance program. Waivers are available in some circumstances.

Is this applicable? Please comment.

(d) **CONSTRUCTION OR ENGINEERING SERVICES.** (FAA Sec. 604(g)). No engineering or construction services may be procured from advanced developing countries² eligible under Code 941 that have attained competitive capability in international markets, *unless*:

- (1) The advanced developing country is receiving direct economic assistance under the FAA, and
- (2) Its own assistance program would permit U.S. firms to compete for similar services.

Is this applicable? Please comment.

2. **CASH TRANSFERS – REQUIREMENT FOR SEPARATE ACCOUNT.** (FY 2009 Act, Sec. 7027(b)). If assistance is in the form of a cash transfer or nonproject sector assistance, all such cash payments must be maintained by the country in a separate account and not commingled with any other funds (unless such requirements are waived by Congressional notice for nonproject sector assistance).

Is this applicable? Please comment.

3. **CAPITAL ASSISTANCE.**

(a) **MISSION DIRECTOR CERTIFICATION/ASSISTANT ADMINISTRATOR DETERMINATION.** (FAA Sec. 611(e)). When capital assistance is proposed (for example, construction), and total U.S. assistance for it will exceed \$1 million, the Mission Director must certify and the Regional Assistant Administrator must take into consideration the country's capability to maintain and utilize the assistance effectively.

Is this applicable? Please comment.

² While GC has not formally defined the term “advanced developing countries,” GC has considered both World Bank and OECD/DAC definitions of that phrase. Any questions should be brought to the relevant regional AGC.

- (b) **DEVELOPMENTALLY SOUND PROJECTS.** (Jobs Through Export Act of 1992, Sections 303 and 306(b)), P. L. 102-549, 22 U.S.C. 2421b and 2421d(b). If assistance is being provided for a capital activity, the activity must be developmentally sound and measurably alleviate the worst manifestations of poverty or directly promote environmental safety and sustainability at the community level.

Is this applicable? Please comment.

- (c) **U.S. ENGINEERING SERVICES.** (FAA Sec. 601(d)). If using capital (for example, construction) assistance, U.S. engineering and professional services must be used to the maximum extent, consistent with U.S. interests.

Is this applicable? Please comment.

4. **ASSISTANCE GENERATING LOCAL CURRENCY.** (FY 2009 Act, Sec. 7027(a)). If assistance is furnished to a foreign government under arrangements that result in the generation of local currencies, then:

- (a) USAID must:
- (1) Require that local currencies be deposited in a separate account established by the recipient government;
 - (2) Enter into an agreement with that government providing the amount of local currencies to be generated and the terms and conditions under which the currencies so deposited may be utilized; and
 - (3) Establish by agreement the responsibilities of USAID and the host government to monitor and account for deposits into and disbursements from the separate account.
- (b) Local currencies, or an equivalent amount of local currencies, can be used only to carry out the purposes of the Development Assistance or Economic Support Fund chapters of the FAA (depending on which chapter is the source of the assistance) or for the administrative requirements of the United States Government.
- (c) USAID should take all necessary steps to ensure that the equivalent of local currencies disbursed from the separate account is used for the agreed purposes.

- (d) If assistance is terminated to a country, unencumbered balances of funds remaining in a separate account should be disposed of for purposes agreed to by the recipient government and the United States Government.

Is this applicable? Please comment.

- 5. **ALCOHOLIC BEVERAGES AND CERTAIN ENTERTAINMENT EXPENSES.** (FY 2009 Act, Sec. 7020). Global Health and Child Survival, Development Assistance, or Economic Support Funds may not be used for alcoholic beverages or entertainment expenses that are substantially of a recreational nature.

Is this applicable? Please comment.

- 6. **STATE DEPARTMENT NOTIFICATION OF BILATERAL AGREEMENTS WITH AN OBLIGATION OF \$25 MILLION OR MORE.** (see ADS 349 and Circular 175). The date of signing and the amount involved must be cabled to State's Office of Assistant Legal Adviser for Treaty Affairs (L/T) immediately upon signing and the full text of the agreement should be pouched to State/L/T within 20 days of signing.

Is this applicable? Please comment.

- 7. **ENGINEERING AND FINANCIAL PLANS.** (FAA Sec. 611). Before an obligation of more than \$500,000, there must be:
 - (a) Engineering, financial, or other plans necessary to carry out the assistance; and
 - (b) A reasonably firm estimate of the cost to the U.S. of the assistance.

And, if the plan relates to a water or water-related land resource construction, the plan should include a computation of benefits and costs. This figure must be computed to the extent practicable in accordance with the principles, standards, and procedures established pursuant to the Water Resources Planning Act (42 U.S.C. 1962, et seq.).

Is this applicable? Please comment.



March 19, 2009

MEMORANDUM

To: A-COO, Susan Fine
DAA/LPA, Stephen Driesler

From: AGC/LP, Don Gressett //s//

Subject: Changes Made by the FY 2009 Department of State, Foreign Operations, and Related Programs Appropriations Act to Current Law

On March 11, 2009 the President signed into law H.R. 1105, the Omnibus Appropriations Act, 2009 (P.L. 111-8). Division H is the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (“the Act” or “SFOAA”). The appropriations for the Department of State are provided in Title I, however the rest of the Act is reorganized. USAID’s operating expense accounts are under Title II and program accounts under Title III. The titles are arranged as follows (see also attached table of contents):

Title I	Department of State and Related Agency
Title II	U.S. Agency for International Development
Title III	Bilateral Economic Assistance
Title IV	International Security Assistance
Title V	Multilateral Assistance
Title VI	Export and Investment Assistance
Title VII	General Provisions

The purpose of this memorandum is to identify and briefly describe the changes made by the FY 2009 Act to legal requirements and authorities previously applicable to USAID. When relevant, an analysis of the accompanying report language relating to the change is also included. While the changes to law are generally arranged in groupings by relevant bureaus, some listings have much broader implications. Those changes marked with an asterisk (*) will likely require the modification or issuance of Agency-wide guidance. For the most part, the changes identified do not include earmarks and funding ceilings.

1. Congressional Notifications (*). As in prior Acts, the Appropriations Committees use the phrase “subject to the regular notification procedures of the Committees on Appropriations” to denote those programs which require special notification. This means that inclusion of a project or activity in the FY 2009 Congressional

Budget Justification document is not sufficient to satisfy prior notification requirements for those countries, programs, or activities, as the case may be, which the FY 2009 Act (and its accompanying Statement of Managers or SOM) specifically makes “subject to the regular notification procedures of the Committees on Appropriations.” Separate notifications will therefore need to be submitted to Congress to satisfy this additional notification requirement. Special notification requirements contained in the FY 2009 Act and the SOM include:

- a. prior to obligating Development Credit Authority funds for the cost of modifying any guaranteed loans under the Act or prior Acts (unchanged from FY 2008);
- b. prior to “any decision” to open a new overseas USAID mission or office, except where there is a substantial security risk to mission personnel, and to close or significantly reduce the number of personnel of any such mission or office (unchanged from FY 2008);
- c. prior to obligating any funds appropriated in the Capital Investment Fund (unchanged from FY 2008);
- d. prior to obligating funds available under the Democracy Fund in excess of \$1 million, and funds made available under other headings in the Act in excess of \$2.5 million, in any contract, grant, or cooperative agreement (or amendment to any contract, grant, or cooperative agreement) for the promotion of democracy (expanded requirement; see paragraph 22 regarding the changes to the Democracy Funds provision);
- e. prior to obligating Andean Counterdrug Programs (ACP) funds made available notwithstanding section 482(b) of the Foreign Assistance Act of 1961, as amended (FAA) (unchanged from FY 2008);
- f. prior to obligating or expending funds available pursuant to titles III through VI of the Act to finance directly any assistance to the government of any country whose duly elected head of government is deposed by military coup or decree (section 7008; modified from FY 2008);
- g. prior to obligating funds made available under Titles II through V of the Act under an appropriation account to which they were not appropriated, except for transfers specifically provided for in the Act (section 7009(d); unchanged from FY 2008);
- h. prior to obligating funds under the heading “Assistance for Europe, Eurasia and Central America” for the Russian Federation, Armenia, Kazakhstan, and Uzbekistan (Section 7073(b); modified from FY 2008);

- i. prior to deviating from the amounts available for the programs and countries contained in the tables in the SOM (Section 7019; see paragraph 44 regarding the provision).
- j. prior to obligating funds for Serbia, Sudan, Zimbabwe, Pakistan, Dominican Republic, Cuba, Iran, Haiti, Libya, Ethiopia, Mexico, Nepal, or Cambodia (Section 7015(f); see paragraph 43 regarding changes in the provision);
- k. prior to using interest earned on local currency accrued to a nongovernmental organization (NGO) as a result of economic assistance provided under Title III of the Act and placed in an interest bearing account (Section 7031; unchanged from FY 2008);
- l. prior to obligating funds for any cash transfer or nonproject sector assistance using Development Assistance (DA) or Economic Support Fund (ESF), as well as prior to waiving the separate account requirement for nonproject sector assistance (Section 7027(b)(3); unchanged from FY 2008);
- m. prior to the distribution of any assets resulting from the liquidation, dissolution, or winding up of an Enterprise Fund (Section 7078(a); unchanged from FY 2008);
- n. prior to obligating funds made available under titles III through VI of the Act for Enterprise Funds (Section 7078(b); new requirement);
- o. prior to obligating funds made available notwithstanding any other provision of law, to combat trafficking in persons (Section 7034(a); unchanged from FY 2008);
- p. prior to obligating DA funds to United States educational institutions and NGOs for programs and activities in the People's Republic of China relating to the environment, governance, and the rule of law (unchanged from FY 2008, Section 7071(f)(1); see paragraph 18 regarding other changes in the provision);
- q. prior to obligating funds under Section 7028(a) for NGOs for assistance to countries that would otherwise be prohibited from receiving assistance (unchanged from FY 2008);
- r. prior to obligating funds for Burma under Section 7071(b) of the Act (unchanged from FY 2008; see paragraph 16 regarding other changes in the provision);

- s. prior to obligating reprogrammed funds withheld as a result of unpaid parking fines and penalties and unpaid property taxes owed by foreign countries (Section 7055; unchanged from FY 2008);
- t. prior to obligating funds for certain community-based police assistance under Section 7047 (unchanged from FY 2008);
- u. prior to transferring funds under Title III of the Act to the Overseas Private Investment Corporation (“OPIC”) Program Account (Section 7081; unchanged from FY 2008);
- v. prior to obligating DA and ESF funds in this or prior Acts to address critical food shortages when relying on the notwithstanding authority (Section 7034(o); new requirement; see paragraph 21 regarding the provision);
- w. prior to obligating funds available in the Act for West Bank and Gaza (Section 7039(f); new requirement; see paragraph 11 regarding the provision);
- x. prior to obligating Operating Expenses (OE) to implement the recruitment strategy described in section 7059(l) (new requirement; see paragraph 4 regarding the provision);
- y. prior to obligating funds appropriated by the Act for UNFPA pursuant to requirements in section 7079(b) (new requirement; see paragraph 39 regarding the provision); and
- z. prior to obligating funds transferred to USAID by the Department of Defense or for programs authorized by section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (P.L. 109-163) in section 7015(d) (new requirement; see paragraph 42 regarding the provision).

MANAGEMENT ISSUES

1. **Operating Expenses.** The Act provides \$808,584,000 for operating expenses, of which up to \$85 million may remain available until September 30, 2010. This is a significant overall increase from the FY 2008 level and an increase of \$60 million of OE that may be available for two years.
 - **Contracting and Procurement.** The SOM directs USAID to make efforts to ensure that United States small, minority owned, and disadvantaged business enterprises are able to fully participate in USAID contracts for the provision of goods and services. USAID should consult with the Committees on Appropriations on specific actions taken and the success of these efforts on a bi-annual basis.

- Partner Vetting. The SOM states that “USAID should continue efforts to improve its vetting system to ensure that funds are not diverted to international terrorist organizations; however, vetting procedures must not dissuade legitimate implementing partners from participating in USAID programs. USAID shall provide the Committees on Appropriations with regular updates on progress made in developing such a system and is directed to provide a report on the efficacy of the partner vetting pilot program in the West Bank and Gaza not later than 180 days after enactment of this Act.”
 - Development Leadership Initiative (DLI). The Act provides funding for the implementation of DLI. The SOM directs USAID to prioritize the hiring of employees who have experience and technical expertise in the areas of greatest demand, including acquisitions and contracting, and up to 30 mid-level individuals may be hired to meet staffing needs under the DLI. Efforts should be undertaken to recruit from groups that are underrepresented in the Foreign and Civil Service. USAID should conduct a thorough human resources assessment, including a review of existing capabilities, a delineation of future needs as identified in country program plans, and an assessment of needs related to near-term and long-term facilities requirements. USAID is directed to consult with the Committees on Appropriations on the rebuilding of professional staff.
 - Representational Allowances. The limitation on representational allowances has been moved to the OE account from the general provisions (sec. 605 in the FY 2008 Act). The ceiling on USAID’s entertainment allowance has been increased by \$1000 to \$5000.
2. Capital Security Cost-Sharing Program. The Act provides \$135,225,000 to support USAID’s overseas facility construction and related costs under the “Embassy, Security, Construction and Maintenance” account in Title I, rather than under USAID’s “Capital Investment Fund” (CIF) in Title II. The SOM states that this is intended to improve the transparency of functions previously funded by the CIF. The Department of State and USAID are directed to work in concert to manage overseas facilities to more effectively and efficiently meet United States foreign affairs objectives. Coordination should include worldwide facilities assessments, planning, request for funding, and implementation of facilities construction and maintenance activities.

The Secretary of State is directed to submit an annual plan on the joint requirements of the Department of State and USAID, including planned facilities upgrades and new construction for each fiscal year. The Secretary of State also is directed to report to the Committees on Appropriations, not later than 90 days after enactment of this Act, on a plan to address maintenance costs.

3. Foreign Service Limited Extensions. Section 7059(g) provides notwithstanding authority for USAID to extend for a period of up to 4 years, individuals hired and employed by USAID by this Act or prior foreign operations Acts, pursuant to the limited appointment authority of section 309 of the Foreign Service Act of 1980.
4. Recruitment Strategy. Section 7059(l) provides that not later than December 31, 2009, the USAID Administrator, after consultations with the heads of relevant Federal departments and agencies, shall submit to the Committees on Appropriations a recruitment strategy for current and former employees from such departments and agencies who possess skills and/or overseas experience which would enhance USAID's capacity to carry out its mission. OE funds may be made available to implement the strategy, subject to a special notification requirement.
5. Hiring Authority. Section 7059(m) authorizes the USAID Administrator to notwithstanding section 307 of the Foreign Service Act of 1980, to hire up to 30 individuals under the Development Leadership Initiative in the FS-2 level or above. This notwithstanding authority will expire on September 30, 2010.

AFRICA

6. Horn of Africa and Pan Sahel Program. Section 7070(c) adds a new program and provides that ESF funds that are made available for programs and activities to counter extremism in the Horn of Africa and the Pan Sahel region of Africa, shall be administered by USAID, and are in addition to funds otherwise made for such purposes.
7. Zimbabwe. The Secretary of State determination and report in section 7070(e) is expanded to state that the rule of law has been restored in Zimbabwe, including respect for ownership and title to property, freedom of speech and association, "and a transition government has been established that reflects the will of the people as they voted in the March 2008 elections." There is also a new restriction that none of the funds appropriated by the Act shall be made available for assistance for the central government of Zimbabwe unless the Secretary of State makes the above determination.

ASIA / MIDDLE EAST

8. Egypt. The Act, under the ESF account heading, provides \$200 million to be provided for Egypt on a grant basis, and "of which sum cash transfer assistance shall be provided with the understanding that Egypt will undertake significant economic and democratic reforms which are additional to those which were undertaken in previous fiscal years." This is a decrease from \$415 million provided last year.

Within the amount provided for project assistance, up to \$20 million shall be made available for democracy, governance, and human rights programs and not less than \$35 million shall be for education programs, of which not less than \$10 million is for scholarships for Egyptian students with high financial need. The requirement to attend U.S. accredited institutions of higher education in Egypt is removed.

9. Afghanistan. The Act, under the ESF account heading, withholds from obligation \$200 million of assistance for Afghanistan, until the Secretary of State certifies to the Committees on Appropriations that the Government of Afghanistan at both the national and provincial levels is cooperating fully with the United States funded poppy eradication and interdiction efforts in Afghanistan. This is a change from last year where a ceiling of “not more than” \$300 million could be obligated until a certification was made. The President may waive the certification requirement if it is “in the national security interests of the United States.” This is a slightly lower threshold than last years requirement that the President determine a waiver is “vital to” national security interests.
10. North Korea. Section 7034(m) authorizes ESF funds appropriated or otherwise made available in the FY 2008 Act, that are available for a competitively awarded grant for nuclear security initiatives relating to North Korea, to be made available notwithstanding any other provision of law.

Section 7071(e)(3) provides that none of the ESF funds made available in fiscal year 2009 may be obligated for energy related assistance for North Korea unless the Secretary of State determines and reports to the Committees on Appropriations that North Korea is continuing to fulfill its commitments under the Six Party Talks agreements.

11. West Bank and Gaza. The requirement for the Comptroller General audit and investment of the treatment, handling, and uses of all funds for the bilateral West Bank and Gaza Program in section 7039(e), includes all ESF funds provided as cash transfer assistance in FY 2009.
12. Limitation on Assistance for the Palestinian Authority. Section 7040 includes sections 640 and selected provisions from section 644 from the FY 2008 Act. The certification requirement in section 7040(e) does not include the \$100 million cap on cash transfer assistance.

The prohibition in section 7040(f)(1) expands restrictions from FY 2008 and states that none of the funds appropriated in titles III through VI of the Act may be obligated for salaries of personnel of the Palestinian Authority located in Gaza or may be obligated or expended for assistance to Hamas or any entity effectively controlled by Hamas or any power-sharing government of which Hamas is a member unless the President certifies to the Committees on Appropriations that Hamas has accepted and is complying with the principles in section

620K(b)(1)(A) and (B) of the FAA. In FY 2008 the restriction applied only to ESF and was limited to cash transfer assistance.

The prohibition in section 7040(f)(2) is amended to state that none of the funds appropriated in titles III through VI of the Act may be obligated for assistance for the Palestine Liberation Organization. The President's certification and suspension authority in the FY 2008 Act has been removed.

13. Iraq. Section 7042(a) continues the prohibition on assistance to Iraq, except for funds provided under the "Nonproliferation, Anti-terrorism, Demining and Related Programs" account for the removal and disposal of landmines and other unexploded ordnance, small arm and light weapons in Iraq. Section 7042(b) slightly modifies the matching contribution requirements contained in section 1402 of the Supplemental Appropriations for FY 2008 (P.L. 110-252, 6/30/08), though the basic matching requirement is retained.

Section 7042(c) requires the Secretary of State, in consultation with relevant United States Government (USG) agencies, to submit to the Committees on Appropriations a transition plan for post-conflict reconstruction and stabilization assistance not later than 180 days after enactment of this Act.

14. Uzbekistan. References to human rights in section 7076(a) and (b) is changed to "internationally recognized" human rights. This is consistent with the prior year use of the term in subsection (c).
15. Tibet. Section 7071(a)(2) continues the notwithstanding authority for Tibet and increases the floor from \$5 million in the prior year to "not less than \$7,300,000" of ESF for assistance programs that preserve cultural traditions and promote economic development and environmental conservation in Tibetan communities, to be administered by USAID. The SOM advises that the Special Coordinator for Tibetan Issues should play an active role in the allocation of funds for programs and activities in Tibet. Further, organizations involved in China rule of law programs should seek opportunities to conduct programs that can improve the human rights situation and the administration of justice in Tibetan areas, including Tibetan areas outside the Tibetan Autonomous Region.
16. Burma. Section 7071(b)(2) continues the notwithstanding authority for Burma and increases the floor from \$13 million the prior year to "not less than" \$15 million of ESF to support democracy activities in Burma and to provide humanitarian assistance to displaced Burmese along Burma's borders.
17. Cambodia. Section 7071(d) authorizes ESF funds in the Act for assistance for Cambodia to be used for an endowment, and shall be made available to strengthen the capacity of the Government of Cambodia to combat human trafficking, notwithstanding any other provision of law.

18. People's Republic of China (PRC). Section 7071(f)(1) continues the notwithstanding authority and increased the floor from \$10 million the prior year to "not less than" \$11 million for environment, governance, and rule of law programs and activities in the PRC by U.S. educational institutions and NGOs. The term "governance" replaces the prior years reference to "democracy."

Section 7071(f)(3) provides a new requirement for the Secretary of State to submit a report detailing the amount of assistance provided by the PRC to governments and entities in Latin America and Africa during the previous year, and make it publicly available in a timely manner on the website of the Department of State and USAID in English and Mandarin.

(*) Section 7071(f)(5) is a new provision requiring the terms and requirements of section 620(h) of the FAA to apply to foreign assistance projects or activities of the People's Liberation Army (PLA) of the PRC, to include such project or activities by any entity that is owned or controlled by, or an affiliate of, the PLA. FAA section 620(h) requires the President to adopt regulations and establish procedures to insure that U.S. foreign aid is not used in a manner which, contrary to the best interests of the U.S., promotes or assists the foreign aid projects or activities of any Communist country. Section 7071(f)(5) further states that none of the funds appropriated or otherwise made available pursuant to the Act may be used to finance any grant, contract, or cooperative agreement with the PLA, or any entity that the Secretary of State has reason to believe is owned or controlled by, or an affiliate of, the PLA.

19. Vietnam. Section 7071(h) provides that notwithstanding any other provision of law, DA funds appropriated in the Act may be made available for programs and activities in the central highlands of Vietnam and shall be made available for environmental remediation and related health activities in Vietnam.

DEMOCRACY, CONFLICT, AND HUMANITARIAN ASSISTANCE

20. Civilian Stabilization Initiative (CSI) (*). This is a new account heading which provides \$30 million under Title II and \$45 million under Title I to continue to stand up, equip, and deploy a coordinated civilian response capacity at the Department of State, USAID, and other relevant civilian agencies to respond to post-conflict stabilization and reconstruction challenges. These funds are in addition to the \$30 million in Diplomatic & Consular Program funds and \$25 million in USAID operating expenses provided for such purposes in the Supplemental Appropriations for FY 2008 (P.L. 110-252, 6/30/08).

USAID CSI funds are provided "to establish, support, maintain, mobilize, and deploy a civilian response corps in coordination with the Department of State, and for related reconstruction and stabilization assistance to prevent or respond to conflict or civil strife in foreign countries or regions, or to enable transition from such strife." CSI funds are made available for the internal surge portion of the

initiative including hiring and training USAID personnel; prepositioning equipment for the active and standby response corps; and deployment. No funding is provided to implement the civilian reserve corps portion of the initiative.

The President may exercise existing transfer authority provided in the FAA and this Act only to support an actively deployed civilian response corps and not for the regular operations of this initiative, after consulting with and notifying the Committees on Appropriations.

The Secretary of State and the USAID Administrator are required to submit a coordinated joint spending plan and integrated implementation strategy for funds made available in fiscal years 2008 and 2009 for CSI not later than 60 days after enactment of this Act. The SOM directs the Department of State, in consultation with USAID, to submit to the Committees on Appropriations not later than 180 days after enactment of this Act, a clarification of the relationship between the CSI and: (1) existing international disaster response capabilities of the USG and funding sources including under the “International Disaster Assistance” and “Transition Initiatives” heading, and (2) the Department of Defense disaster response capabilities, assets, and authorities.

21. Global Food Security (*). The Act, under the DA account heading, provides that \$75 million “shall be made available to enhance global food security, including for local or regional purchase and distribution of food, in addition to funds otherwise made available for such purposes, and notwithstanding any other provision of law.” Prior to the obligation of funds and after consultation with other relevant Federal departments and agencies, the USAID Administrator is required to submit to the Committees on Appropriations a “strategy for achieving the goals of funding for global food security programs, specifying the intended country beneficiaries, amounts of funding, types of activities to be funded, and expected quantifiable results.”

The SOM states that USAID should support a multi-faceted program strategy that provides immediate relief to vulnerable populations and increases access to food in the short-term as well as developing strategies and programs that support long-term, sustainable agricultural practices in food insecure countries to reduce the dependence on food aid, particularly in Africa and Asia. USAID should prioritize the development of programs for small-holder farmers, cooperatives, and vulnerable populations, including female-headed households, as well as the expansion of agriculture extension, training, research, and education to prepare farmers and communities to adapt to global climate change.

The SOM encourages USAID to coordinate efforts to increase food security and agricultural production around the world with international efforts, including those of the World Bank and UN agencies. USAID is directed, in consultation

with the Committees on Appropriations, to develop a plan for increasing the number of agriculture specialists in the field commensurate with the need.

Section 7034(o) of the Act provides that notwithstanding any other provision of law, to include minimum funding requirements or funding directives (i.e., earmarks), DA and ESF funds in this Act and prior foreign operations Acts, may be made available to address critical food shortages, subject to prior consultations with and a special notification to the Committees on Appropriations.

22. Democracy Fund. The Act provides \$116 million for the promotion of democracy globally, of which not less than \$37 million shall be made available directly to USAID's Bureau for Democracy, Conflict, and Humanitarian Assistance, Office of Democracy and Governance. Under paragraph (f), in order to increase oversight of democracy programs, notification is required of any contract, grant, or cooperative agreement in excess of \$1 million from funds made available under the Democracy Fund heading, and in excess of \$2.5 million for other accounts.

ECONOMIC GROWTH, AGRICULTURE AND TRADE

23. Microfinance. The Act, under the DA account heading, provides that of the funds "appropriated by this Act and prior Acts for fiscal year 2009," not less than \$245 million shall be made available for microenterprise and microfinance development programs for the poor, especially women. The new language authorizes use of funds in prior Acts for fiscal year 2009 to meet the earmark.
24. Agricultural Development Programs. The Act, under the DA account heading, provides that not less than \$7 million shall be made available as an endowment for the Global Crop Diversity Trust. The SOM notes that the Trust was created to collect, document and store seeds securely in order to preserve genetic diversity.
25. Development Credit Authority (DCA). The Act provides that up to \$25 million may be derived by transfer of funds for DCA programs, an increase from \$21 million in FY 2008. The Act also provides authority for DCA to use funds accepted as a gift pursuant to section 635(d) of the FAA for subsidy cost. The SOM encourages DCA to expand its programming in the area of safe water and sanitation.
26. Women in Development (*). Section 7062 is a new provision that requires USAID to integrate, where appropriate, gender considerations in the planning, assessment, implementation, monitoring and evaluation of its programs. Funds made available under title III of the Act should be made available to support programs to enhance economic opportunities of poor women in developing countries, including increasing the number and capacity of women-owned enterprises, improving property rights for women, increasing access to financial services, and improving women's ability to participate in the global economy.

The SOM directs USAID to report 180 days after enactment of the Act on the steps taken to better integrate gender considerations into its economic development portfolio, and describe current and future planned programming that promote women's economic opportunities, including the outcomes associated with these programs disaggregated by gender.

27. Gender-Based Violence (*). Section 7063 provides that DA and ESF funds shall be made available for programs to address sexual and gender-based violence. Programs and activities funded under titles III and IV of the Act that provide training for foreign police, judicial, and military officials shall address, where appropriate, gender-based violence. The SOM directs USAID and the Department of State to report to the Committees on Appropriations not later than 120 days after enactment of the Act on programs addressing sexual and gender-based violence and how these issues are being integrated into foreign police, judicial and military training programs.
28. Education. Section 7064 continues the existence of a Coordinator of USG programs to provide basic education assistance in developing countries as established in section 664 of the FY 2008 Act. The FY 2009 Act requires funds appropriated for basic education be made available for a pilot program in three countries to develop and evaluate the effectiveness and implementation of a 5-year basic education strategic plan. The SOM advises USAID to consult with the Committees on Appropriations on potential countries for such programs. Each country should develop a five-year implementation plan that supports the national education plan. The pilot program should develop best practices that can be utilized by other missions and should be staffed by qualified education specialists.

The SOM states that USAID should continue funding for programs to increase access to basic education for children in sub-Saharan Africa, including Ethiopia, through the reduction or elimination of school fees. The SOM directs USAID to provide the Committees on Appropriations with a report not later than 180 days after enactment of this Act on implementation of the USG-wide strategy and all government basic education programs, and information about how such programs support national education plans.

In addition, the Act provides that not less than \$133 million of funds appropriated by title III of the Act or prior Acts for fiscal year 2009 shall be made available for higher education. The SOM states the funds should be for vocational, undergraduate, and graduate education focused on countries emerging from conflict that have an urgent need for professionals skilled in public administration, education, agriculture, engineering, public health and other fields necessary for recovery and development. In addition, the SOM advises that USAID should prioritize higher education in countries that have already made significant strides in providing quality basic and secondary education to their populations. Continued funding for scholarships at U.S. colleges and post-secondary

institutions for students with high financial need from Latin America and elsewhere is encouraged.

29. Senior Policy Operating Group on Trafficking in Persons. Section 7068(b) provides that none of the funds provided under title I of this Act “or any other Act” for foreign operations appropriations, shall be expended to perform functions that duplicate coordinating responsibilities of the Senior Policy Operating Group on Trafficking in Persons. The new language extends the prohibition to funds appropriated to USAID.
30. Energy and Environment
- Clean Energy. Section 7083(a) provides that of the funds appropriated by title III of the Act, not less than \$100 million shall be made available to USAID, in addition to funds otherwise made available for such purposes, for programs and activities that reduce global warming by promoting the sustainable use of renewable energy technologies and energy efficient end-use technologies, carbon sequestration, and carbon accounting.
 - Climate Change Adaptation. Section 7083(b) authorizes up to \$10 million to be made available for the U.S. contribution to the Least Developed Countries Fund to support grants for climate change adaptation programs and activities, if the Global Environment Facility makes publicly available on its website an annual report detailing the criteria used to determine which programs and activities receive funds, the manner in which such programs and activities meet such criteria, the extent of local involvement in such programs and activities, the amount of funds provided, and the results achieved.
 - Biodiversity. Section 7083(c) removes the limitation on the notwithstanding authority applicability to assistance for gross human rights violators (sections 116 and 502B of the FAA) and the prohibition on assistance to governments supporting terrorist organizations in section 620A of the FAA). The Act also includes a permissive contribution authority that provides that DA funds may be made available for a contribution to the Galapagos Invasive Species Fund.

EUROPE AND EURASIA

31. Assistance for Europe, Eurasia and Central America (AEECA). AEECA is a new account which merges the authorities and appropriations for the Assistance for Eastern Europe and the Baltic States (SEED) and Assistance for the Independent States of the Former Soviet Union (FSA). The Act provides that notwithstanding any provision of this or any other Act, prior year SEED and FSA funds and currencies generated by or converted from such funds, shall be available for use in any country for which funds are made available without regard to the geographic

limitations of the account heading under which such funds were originally appropriated. This authority allows, for example, prior year FSA funds to be used in Eastern Europe.

LATIN AMERICA AND THE CARIBBEAN

32. Colombia. The Act, under the ESF account heading, provides \$200 million for alternative development/institution building programs in Colombia apportioned directly to USAID. The reference to sustainable development programs was removed. The Act provides that of the ESF funds available for Colombia, not less than \$3.5 million shall be transferred and merged with funds under the “Migration and Refugee Assistance” account for emergency relief through NGOs for Colombian refugees in neighboring countries. This is a change from FY 2008 where funds “may” be transferred and merged to the DA account.

Section 7046 provides that not more than \$545,050,000 of the funds appropriated by titles II and IV shall be made available for assistance for Colombia. The provision is similar to section 649 of the FY 2008 Act except that it provides that any changes shall be subject to the regular notification procedures; withholds 30 percent of the assistance for the Colombian military due to human rights concerns; and applies the conditions not only to individuals who have aided or abetted paramilitaries or successor armed groups, but also to those who have benefited financially, politically, or otherwise, from such links. There is a new provision that assistance made available in prior Acts for the Government of Colombia to protect the Cano-Limon pipeline may also be used for purposes for which funds are made available under the "Andean Counterdrug Programs" account heading.

The Act also moves the language conditioning aerial spraying and regarding African oil palm from the "Andean Counterdrug Programs" account to this provision. The prohibition on all funds by the FY 2008 Act regarding African oil palm has been modified by making it applicable only to assistance for Colombia.

Section 7046(d) authorizes up to \$16,769,000 in FY 2009 for assistance for reintegration of former members of foreign terrorist organizations or other illegal armed groups in Colombia subject to a certification. Language from the prior year allowing assistance for disarmament and demobilization, in addition to reintegration, has been removed. The certification requirement has also changed:

(1) in section 7046(d)(2)(A)(iii), from individuals who “are not involved in acts of intimidation or violence” to “are not involved in criminal activity.”

(2) in section 7046(d)(2)(B), that the Government of Colombia is providing full cooperation to the United States “to prosecute” the extradited individuals who have been indicted in the U.S. for violations of

U.S. law. The Act includes a new reference to torture and a prior year reference to extradition of individuals who have breached the terms of the Colombian demobilization program is removed.

(3) in section 7046(d)(2)(D), that the Government of Colombia is dismantling the organizational structure of foreign terrorist organizations and successor armed groups. The prior year reference to the Government of Colombia “implementing a concrete and workable framework” for dismantling the organizations is removed.

33. Andean Counterdrug Programs. The Secretary of State certification is modified to assert that the Bolivian military and police are respecting “internationally recognized” human rights and cooperating fully with investigations and prosecutions by civilian judicial authorities of military and police personnel who have “credibly alleged” to have violated such rights. The standard has been changed from personnel who have been “implicated in gross violations” of human rights.

The Act also provides that not more than \$8 million of ESF funds may be used for USAID administrative expenses for alternative development/institution building programs.

34. Mexico. Section 7045(e) provides that of the International Narcotics Control and Law Enforcement (INCLE), Foreign Military Financing Program (FMFP) and ESF funds appropriated under the Act, not more than \$300 million may be available for assistance for Mexico, only to combat drug trafficking and related violence and organized crime, of which not less than \$75 million shall be used for judicial reform, institution building, anti-corruption, and rule of law activities. No funds made available under this section are available for budget support or as cash payments.

35. Countries of Central America. Section 7045(f) provides that \$105 million of INCLE, FMFP, and ESF funds may be made available for assistance for the countries of Central America only to combat drug trafficking and related violence and organized crime, of which not less than \$35 million shall be made available for judicial reform, institution building, anti-corruption, and rule of law activities. No funds made available under this section are available for budget support or as cash payments.

The Act provides \$12 million in ESF shall be made available through USAID for an Economic and Social Development Fund for Central America. The SOM directs USAID, in consultation with the Department of State, to administer the funds, and to consult with the Committees on Appropriations prior to the obligation of funds.

GLOBAL HEALTH36. Global Health and Child Survival (GHCS).

- Kemp Kasten. The Presidential determination that an organization or program supports or participates in the management of a program of coercive abortion or involuntary sterilization must be made no later than 6 months after the date of enactment of the Act and accompanied by “the evidence and criteria utilized to make the determination.” The requirement to include a comprehensive analysis has been deleted.
- Global Fund to Fight AIDS, Tuberculosis, and Malaria. The Act provides that “not less than” \$600 million shall be made available for the United States contribution to the Global Fund. The required floor of \$600 million is a change from the hard earmark of \$550 million in FY 2008.

37. Safe Water. The Act, under the DA account heading, provides that of the funds appropriated by this Act and “prior Acts for fiscal year 2009,” not less than \$300 million shall be made available for water and sanitation supply projects pursuant to the Senator Paul Simon Water for the Poor Act of 2005 (P.L. 109-121). The new language authorizes use of funds in prior Acts for fiscal year 2009 to meet the earmark. The proviso also deleted the requirement that funds be made available for “safe drinking” water and sanitation supply projects that included “water management related to safe drinking water and sanitation.”

The SOM notes that increasing access to safe drinking water should continue to be the highest priority and USAID should ensure sufficient staff resources are in place for implementing safe water and sanitation programs. USAID is directed to consult with the Committees on Appropriations on the use of the funds. The SOM also notes that up to \$20 million should be made available to USAID’s Global Development Alliance for public-private partnerships, particularly with NGOs.

38. Global Fund. Section 7060(b) requires 10 percent of the funds appropriated by the Act be withheld from the Global Fund until certain conditions are met. This is a change from 20 percent in section 625 of the FY 2008 Act. The prior year Act required a certification by the Secretary of State on seven factors. The Act now requires a report to the Committees on Appropriations that the Global Fund: (1) is releasing incremental disbursements only if grantees demonstrate progress against clearly defined performance indicators; and (2) is implementing a reporting system that breaks down grantee budget allocations by programmatic activity.39. United Nations Population Fund (UNFPA).

- Availability of Funds. Section 7079(b) provides that funds appropriated by the Act for UNFPA, “that are not made available because of the

operation of any provision of law, shall be made available to UNFPA notwithstanding any such provision of law,” subject to special notification requirements and only for the purposes listed in the section.

- Prohibition on Use of Funds in China. Section 7079(c) states that none of the funds made available by the Act may be used by UNFPA for a country program in the PRC.
- Report to Congress and Withholding of Funds. Section 7079(e) requires the Secretary of State to submit a report to the Committees on Appropriations indicating the amount of funds that the UNFPA is budgeting for the year in which the report is submitted for a country program in the PRC. The report is due not later than 60 days after the date of enactment of the Act, a change from 4 months in the prior year. A dollar for dollar reduction in funding for UNFPA is required for any funding identified in this report.

The Act does not direct where to use the funds that are withheld. In section 660(b) of the FY 2008 Act, funds withheld were transferred to the GHCS account and made available for family planning, maternal, and reproductive health activities. This language was removed.

The prior year provision in section 660(f) of the FY 2008 Act is removed and provided that nothing shall be construed to limit the authority of the President to deny funds to any organization by reason of the application of another provision of the FY 2008 Act or any other provision of law

OTHER PROVISIONS

40. Millennium Challenge Corporation (MCC). The Act, under the MCC account heading, states that USAID should be reimbursed with MCC funds for all expenses incurred by USAID in assisting the MCC in carrying out the Millennium Challenge Act, including administrative costs for compact development, negotiation, and implementation.

Section 7057 modifies MCC country report requirements to not later than 45 days after the enactment of the Act, in comparison to 30 days last year. The report is required to be updated on a semi-annual, rather than quarterly, basis and must include a new description of the major programmatic changes to existing compacts funded by the Act or prior foreign operations Acts.

41. Prohibition Against Direct Funding for Certain Countries. Section 7007 prohibits funds made available pursuant to Titles III through VI and the Act, from being obligated or expended to finance directly any assistance or reparations “for the government of” Cuba, North Korea, Iran, or Syria. The applicability of this

restriction to “governments” is the only change from section 607 in the FY 2008 Act and prior years.

42. Reprogramming Notification Requirements. Section 7015(d) states that notwithstanding any other provision of law, funds transferred by the Department of Defense to the Department of State and USAID, and funds made available for programs authorized by section 1206 of the National Defense Authorization Act for FY 2006, are subject to special notification requirements. USAID is required to perform periodic program financial audits of the use of the transferred or allocated funds and such funds may be available for the cost of the audits.
43. Special Notification Requirements. Section 7015(f) requires special notification prior to obligating funds for Serbia, Sudan, Zimbabwe, Pakistan, Dominican Republic, Cuba, Iran, Haiti, Libya, Ethiopia, Mexico, Nepal, or Cambodia. The Dominican Republic has been added to the list.
44. Allocations. The foreign operations appropriation acts for the last few years have required that funds in certain accounts be allocated as indicated in the respective tables in the SOM accompanying the Act. Any change to these allocations is subject to prior notification. Section 7019 in the Act continues this practice. Section 7019(b) also provides that USAID may “propose deviations to the amounts referenced.”

The accounts that have been removed are “American Sections, International Commissions,” “Democracy Fund,” “Assistance for Eastern Europe and the Baltic States,” “Assistance for the Independent States of the Former Soviet Union,” “International Narcotics Control and Law Enforcement,” and “Peacekeeping Operations.” The accounts marked by double asterisks (**) are new accounts in this provision.

Educational and Cultural Exchange Programs
 International Fisheries Commissions **
 International Broadcasting Operations
 Global Health and Child Survival
 Development Assistance **
 Economic Support Fund
 Assistance for Europe, Eurasia and Central Asia **
 Andean Counterdrug Programs
 Nonproliferation, Anti-Terrorism, Demining and Related Programs
 Foreign Military Financing Program
 International Organizations and Programs

45. International Prison Conditions. Section 7034(f) authorizes assistance to address inhumane conditions in prisons and other detention facilities administered by foreign governments that the Secretary of State determines are making efforts to provide adequate space, sanitary disposal of human waste, sufficient food, clean

- water, medical care and other requirements for safe and humane detention. The SOM requests the Secretary of State to encourage governments to vigorously monitor the conditions of prisons and other detention facilities under their authority, cooperate with international experts, and consider appointing ombudsmen for prisoners, reducing sentences for nonviolent offenders to alleviate overcrowding, moving juveniles out of inhumane facilities, and improving pretrial detention, bail and record keeping procedures to reduce pretrial detention periods and ensure that prisoners do not serve beyond the maximum sentence for the charged offense. The Secretary of State is required to designate a Deputy Assistant Secretary of State in the Bureau of Democracy, Human Rights and Labor to have primary responsibility for diplomatic efforts related to international prison conditions.
46. Community-Based Police Assistance. The notwithstanding authority adds funds made available in titles III and IV of the Act to carry out the provisions of chapter 6 of part II of the FAA (Peacekeeping Operations). The Act also adds assistance in “anti-corruption” to the list of activities that may be provided notwithstanding section 660 of the FAA.
 47. Attendance at International Conferences. Section 7053 requires the Secretary of State to report to the Committees on Appropriations that it is in the national interest for more than 50 USG employees stationed in the U.S., to attend a single international conference outside the U.S. This is a change from the prior year that required a determination by the Secretary of State.
 48. Development Grants Program. Section 7061 continues the Development Grants Program established in section 674 of the FY 2008 Act and earmarks not less than \$40 million of DA funds.
 49. Extradition. Section 7082 provides that none of the funds appropriated “in this Act” may be used to provide assistance for the central government of a country which has notified the Department of State of its refusal to extradite an individual to the U.S. The provision has expanded to include all funds, in contrast to the prior year when it was restricted to funds appropriated to the Department of State.
 50. Disability Programs. Section 7089 maintains the earmark to not less than \$4 million of ESF for disability programs. However, the FY 2009 Act does not retain the directive to disburse at least 25 percent of the funds through small grants.

SIGNIFICANT PROVISIONS NOT RETAINED IN THE FY 2009 ACT

In addition to the provisions noted above, the FY 2009 Act does **not** include the following provisions that had been included in the FY 2008 Act:

1. Global Health and Child Survival.
 - Avian Influenza. That of the funds made available to combat avian influenza, \$15 million may be made available notwithstanding any other provision of law to enhance the preparedness of militaries in Asia & Africa to respond to an avian influenza pandemic.
 - Condom Procurement. The condom procurement requirement in the GHCS account heading has been removed – it provided that “to the maximum extent feasible, taking into consideration cost, timely availability, and best health practices, funds appropriated in this Act or prior appropriations Acts that are made available for condom procurement shall be made available only for the procurement of condoms manufactured in the United States.”
2. Economic Support Fund
 - Colombia. The provision that with respect to ESF funds apportioned to USAID for programs in Colombia, the responsibility for policy decisions for the use of such funds shall be the responsibility of the USAID Administrator in consultation with the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs.
 - Timor-Leste. The administrative expense authority of up to \$1 million for assistance to the Democratic Republic of Timor-Leste.
3. Disability Programs. The provision in section 699(a) of the FY 2008 Act which directed USAID to seek to disburse at least 25 percent of the funds in the form of small grants.
4. Independent States of the Former Soviet Union. Section 617(b) and (d) of the FY 2008 Act was removed. Section 617(b) stated none of the “Assistance to the Independent States of the former Soviet Union” funds shall be available for any state to enhance its military capability. Section 617(d) required any funds made available in the FY 2008 Act for assistance to the Independent States of the former Soviet Union shall be subject to section 117 of the FAA, relating to environmental and natural resources.
5. Libya. Section 654 restricted funds from being obligated or expended to finance directly any assistance for Libya.

6. War Criminals. Section 658 prohibited funds to be made available for assistance, and required the Secretary of the Treasury to instruct the United States Executive Director at each international financial institution to vote against any new project involving the extension by such institutions of any financial or technical assistance, to any country, entity, or municipality whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations to apprehend and transfer to the International Criminal Tribunal for the former Yugoslavia all persons in their territory who have been indicted by the Tribunal and to otherwise cooperate with the Tribunal.
7. Limitation on Economic Support Fund Assistance for Certain Foreign Governments that are Parties to the International Criminal Court (Nethercutt amendment). Section 671 prohibited use of ESF funds to provide assistance to the government of a country that is a party to the International Criminal Court and has not entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in such country.
8. Egypt. Section 690 restricted the availability of FMFP and ESF funds for assistance for Egypt until the Secretary of State provided a certification or a national security waiver.
9. Saudi Arabia. Section 697 restricted funds from being obligated or expended to finance any assistance to Saudi Arabia.
10. Pakistan. Section 699F(c) prohibited funds from being made available for cash transfer assistance for Pakistan. It also provided that up to \$5 million of ESF made available for Pakistan may be used for the administrative expenses of USAID.

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