



USAID
FROM THE AMERICAN PEOPLE

FY 2006 Statutory Checklists

An Additional Help for ADS Chapter 202

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FY 2006 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 201.3.3.4 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 FY06 ESF funds will be programmed to assist the government of X").

- **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 2006 Foreign Operations, Export Financing, and Related Programs Appropriations Act, (FY 2006 Act), Pub. L. 109-102, November 14, 2005. The Country Checklist does not list every statutory or regulatory provision applicable to a particular country.

- **Assistance Checklist**

The Assistance Checklist has the activity-specific provisions of the FAA and the FY 2006 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 2006 Act Sec. 522).
3. Assistance for Eastern Europe and the Baltic States (Title II of the FY 2005 Act).
4. Assistance to the Independent States (FAA Sec. 498B(j)).
5. Assistance to Iraq (PL 108-106, Emergency Supplemental Appropriations Act for the Defense and for the Reconstruction of Iraq and Afghanistan, 2004).
6. Afghanistan (only for loan defaults under section 512 of the FY 2006 Act (or any similar provision of law (i.e., Section 620q of the FAA) and Section 660 of the FAA); Iraq, Lebanon; Montenegro; Pakistan; victims of war; displaced children; displaced Burmese; victims of trafficking in persons and combating trafficking; and, except for Sections 116, 502B and 620A of the FAA, tropical forestry, biodiversity conservation and energy programs aimed at reducing greenhouse gas emissions (FY 2006 Act Sec. 534).
7. Non-governmental organizations and PL 480 (FY 2006 Act Sec. 536).
8. Title II Emergency Programs (PL 480 Sec. 202(a)).
9. Democracy Fund assistance for the promotion of democracy, governance, human rights, independent media and the rule of law globally (FY 2006 Act, Democracy Fund).
10. Assistance from all accounts for democracy, governance, human rights, and rule of law programs for Syria and Iran (FY 2006 Act, Democracy Fund).
11. Cambodia - \$15,000,000 of Economic Support Fund (ESF) assistance for activities to support democracy, the rule of law, and human rights, including assistance for democratic political parties in Cambodia (FY 2006 Act Sec. 554(b)).
12. ESF assistance for programs and activities for the Central Highlands of Vietnam.

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 “Taking into Consideration” Memorandum as part of the Operational Year Budget (OYB) 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 (Public Law 107-228) (FRAA), September 30, 2002). As a result of Presidential Determination No. 2005-36 of September 14, 2005 ([see http://www.state.gov/p/inl/rls/prsr/ps/53327.htm](http://www.state.gov/p/inl/rls/prsr/ps/53327.htm)), the narcotics certification applies only to Burma and Venezuela. All other “major illicit drug-producing or drug-transit” countries (Afghanistan, The Bahamas, Bolivia, Brazil, Burma, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, and Venezuela) were determined either:
- (a) Not to have failed demonstrably, during the previous 12 months, to adhere to their obligations under international counter-narcotics agreements and to take the counter-narcotics measures set forth in 489(a)(1) of the FAA; or
 - (b) To be vital to the national interests of the United States.

Note: China and Vietnam are removed from the list.

<p>Is this restriction 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, 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]

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

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 12/8/2005 the only country identified is Nicaragua, which has received a waiver.

[Contact: State/EB/IFD/OIA, James Roseli, 202-736-4274]

Is this restriction applicable? Please comment.

4. **SPECIFIC COUNTRIES.** (FAA Secs. 620(a) and 620(f); FY 2006 Act Sec. 507). Assistance is specifically prohibited in the statute to Cuba, Iran, Libya, North Korea, and Syria. [Note: Prohibitions on assistance to China, Tibet, and Vietnam have been waived.]

Is this restriction applicable? Please comment.

5. **LOAN DEFAULT.** (FAA Sec. 620(q); FY 2006 Act Sec. 512 [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 512 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/FM>.

[Contact: M/FM/LM, Earl Floyd, 202-712-4796.]

Is this restriction applicable? Please comment.

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 restriction applicable? Please comment.

7. **INTERNATIONAL TERRORISM.** (FY 2006 Act Sec. 527; FAA Secs. 620A, 620G). Absent a Presidential waiver on national security grounds or for humanitarian reasons, assistance is prohibited to a recipient country that the Secretary of State has determined:

- (a) Grants sanctuary from prosecution to any terrorist; or
- (b) Otherwise supports or assists terrorist governments (as determined by FAA Sec. 620A) or international terrorism.

The following have been identified as countries whose governments have repeatedly provided support for acts of international terrorism: Cuba, Iran, Libya, North Korea, Sudan, and Syria.

[Contact: State/L/LEI, Linda Jacobson, 202-647-7324.]

Is this restriction applicable? Please comment.

8. **EXPORT OF LETHAL MILITARY EQUIPMENT TO TERRORIST STATES.** (FY 2006 Act Sec. 542; FAA Sec. 620H). Absent a waiver by the 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/NP, Maegan Conklin, 202-647-3220]

Is this restriction 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 restriction 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),
 - (4) Terminated, abrogated or materially violated a full-scope safeguards agreement with the IAEA or materially violated an agreement for nuclear cooperation with the U.S. (if the country is a non-nuclear weapon state), or
 - (5) 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/NP, Newell Highsmith, 202-647-4621]

Are these restrictions applicable? Please comment.

- 11. **MILITARY COUP OR DECREE.** (FY 2006 Act Sec. 508). 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 restriction 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 restriction applicable? Please comment.

13. **PARKING FINES AND REAL PROPERTY TAXES.** (FY 2006 Act Sec. 543). 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 PPC/RA as part of the OYB process. **No action required** by country desk.

[Contact: Check with Bureau budget office, or PPC/RA/PBI, Sheila Blackman, 202-712-5175.]

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 restriction applicable? Please comment.

15. **ASSISTANCE TO CUBA.** (FAA Sec. 620(y), as amended by section 2810 of FY 98/99 Foreign Relations Authorization Act, Pub. L. 105-277; LIBERTAD Act Sec. 111; Pub. 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.

Are these restrictions 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.

As of December 2005, no countries have been identified.

[Contact: State/L/HRR, Gilda Brancato, 202-647-4065]

Is this restriction applicable? Please comment.

17. **TRAFFICKING IN PERSONS (TIP).** (22 USC 7107). Is the country (Burma, Cambodia, Cuba, North Korea, Venezuela) listed on Tier III of the annual TIP report released each June by the State Department, still subject to sanctions under the Presidential Determination? The Presidential Determination issued in and around September of each year describes: (a) which countries were reevaluated as being Tier II and therefore not subject to sanctions; (b) which countries that remained on Tier III were subject to sanctions; and (c) which countries remaining on Tier III were the subject of full or partial waivers. The Presidential Determination in effect for FY 2006 is No. 2005-37 and is available at <http://www.state.gov/g/tip/rls/prsrl/2005/53777.htm>.

Note: Armenia, Azerbaijan, Bahrain, Bangladesh, Belize, Benin, Bolivia, China, Dominican Republic, Equatorial Guinea, Greece, Haiti, India, Mauritius, Mexico, Nicaragua, Niger, Philippines, Qatar, Russia, Rwanda, Sierra Leone, South Africa, Sudan, Togo, Ukraine, Uzbekistan, Zimbabwe are on the Special Watch List issued by the State Department as of February 1, 2006. While the following countries appear on the Special Watch List, they are noted as having made "clear and noticeable progress": Cameroon, Gambia, Guinea, Guyana, Jamaica, Nepal, Slovak Republic, United Arab Emirates. Please refer to <http://www.state.gov/g/tip> for a copy of the Special Watch List and Interim Assessment.

The Special Watch List is created based on an Interim Assessment of the progress made by the listed countries in combating trafficking in persons and is submitted by the State Department to Congress in February of every year. The Assessment 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.]

Please comment.

18. **ACTIVITY INFORMATION SHEET DATA.** (See ADS 203.3.9). Has the USAID Country Officer informed PPC/SPP of any ongoing activity, that he/she is already aware of, which is not included in the “Activities Not Managed In-Country” (ANMIC) database? The Country Officer does NOT have an obligation to inquire about activities that he/she does not already know about or to complete activity information sheets. The ANMIC is available at <http://cdie.usaid.gov/npc/>.

[ANMIC Database Contact: PPC/SPP, Parrie Henderson, 202-712-5672]

Please comment.

19. **ESF ASSISTANCE FOR PARTIES TO THE INTERNATIONAL CRIMINAL COURT.** (FY 2006 Act Sec. 574 [Nethercutt Amendment]). Economic Support Fund (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 in the following cases if he determines and reports to the appropriate congressional committees that it is important to the national security interest of the U.S.: (a) NATO members; (b) Major non-NATO allies (including Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, New Zealand)¹; (c) Taiwan; or (d) any other country as he may determine. This prohibition only applies to ESF funds and does not apply to Millennium Challenge Act (MCA) assistance to MCA-eligible countries. Therefore, a country that is ineligible to receive ESF assistance under this provision can still be eligible for MCA assistance.

FY 2005 ESF may be made available for democracy and rule of law programs and activities, notwithstanding the provisions of the FY 2005 Nethercutt amendment (section 547 of division D of PL 108-477).

¹Note: These countries were listed in the statute; the Philippines and Thailand are also major non-NATO allies.

[Contact: your RLA or AGC; PPC/RA/PBI]

Please comment.

20. **EXTRADITION OF INDIVIDUALS ACCUSED OF KILLING A LAW ENFORCEMENT OFFICER.** (FY 2006 Act, Sec. 581) Assistance is prohibited to the central government of a country which has refused to extradite to the United States any individual indicted in the United States for killing a law enforcement officer. The Secretary of State may waive the prohibition if she certifies to the Committees on Appropriations that such a restriction is contrary to the national interest of the United States.

As of February 3, 2006, L/LEI is not aware of refusals by the central government of any country that would trigger the application of this restriction.

[Contact: [State/L/LEI, Andrew Keller, 202-647-6194](#)]

Please comment.

21. **EXTRADITION OF INDIVIDUALS FACING LIFE IMPRISONMENT.** (FY 2006 Act, Sec. 583) Assistance is prohibited to the central government of a country with which the United States has an extradition treaty and which government 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. The Secretary of State may waive the prohibition if she certifies to the Committees on Appropriations that such a restriction is contrary to the national interest of the United States.

On February 2, 2006, the Secretary of State waived the application of this restriction for all countries.

[Contact: [State/L/LEI, Andrew Keller, 202-647-6194](#)]

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. ASSISTANCE 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) Obligating 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 which 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 Assistance 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 (IN ALPHABETICAL ORDER)

1. **ACTIVITY INFORMATION SHEET.** (See ADS 203.3.9) Does this activity require an Activity Information Sheet (AIS)? If so, has it been prepared or, if there is already an AIS for the activity, has it been reviewed and updated?

See Additional Help document, database for accessing Blank AIS Template (<http://www.usaid.gov/policy/ads/200/200sbj.doc>), available at <http://cdie.usaid.gov/npc/> (accessible only within the USAID firewall); or send an e-mail request to npctemplate@dec.cdie.org.

Please comment.

2. **AGRICULTURAL ACTIVITIES (BUMPERS AMENDMENT).** (FY 2006 Act Sec. 513(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 restriction applicable? Please comment.

3. **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).

Please comment.

4. **ADVERSE ECONOMIC IMPACT UPON THE UNITED STATES.**

(a) **IMPACT ON U.S. JOBS: RELOCATION; EXPORT ZONES; VIOLATION OF WORKERS' RIGHTS.** (FY 2006 Act Sec. 533; 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 of workers 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.

Please comment.

- (b) **PRODUCTION OF SURPLUS COMMODITIES.** (FY 2006 Act Sec. 513(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.

Is this restriction applicable? Please comment.

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.

Please comment.

- (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.

(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.
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7. **FAMILY PLANNING.**

(a) **ABORTIONS AND INVOLUNTARY STERILIZATIONS PROHIBITED.** (FAA Sec. 104(f); FY 2006 Act, Sec. 518 and "Child Survival and Health Programs Fund" heading under Title II). 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 above.
- (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 2006 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.

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

(b) **VOLUNTARY FAMILY PLANNING SUPPORT.** (FY 2006 Act, Title II, under heading "Child Survival and Health Programs Fund"). 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.

Is this applicable? Please comment.

8. HIV/AIDS.

- (a) **MEDICALLY ACCURATE INFORMATION ON CONDOMS.** (FY 2006 Act, "Child Survival and Health Programs Fund" heading under Title II). Information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated under the FY 2006 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/condom_factsheet.html.

** An identical requirement was included in the FY 2004 Act and FY 2005 Act.

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 (Public Law 108-25) (Leadership Act)). An organization that is otherwise eligible to receive FY 04-FY 08 funds to prevent, treat, or monitor HIV/AIDS shall not be required, as a condition of receiving the assistance, to endorse or utilize a multisectoral (i.e., ABC) approach to

combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

Is this applicable? Please comment.

- (c) **PROSTITUTION AND SEX TRAFFICKING – LIMITATION ON USE OF FUNDS.** (Leadership Act Section 301(e)). FY 04-FY 08 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 04-FY 08 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".

Is this applicable? Please comment.

9. **INTERNATIONAL CONFERENCES.** (FY 2006 Act Sec. 540, 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.

10. **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 restriction applicable? Please comment.

11. **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.

(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 interest.

Is this restriction applicable? Please comment.

12. **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 restriction applicable? Please comment.

13. **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 in sections 660, 119 and 534 of the FAA; Section 536 of the FY 2004 Act (permanent provision of law); Sections 534(a) (only with regard to Afghanistan), 534(g) (extends 660(b)(6) to regional activities), and 564 (community-based police assistance) of the FY 2006 Act).

Is this restriction applicable? Please comment.

14. **PUBLICITY, PROPAGANDA, AND LOBBYING.** (FY 2006 Act Sec. 539; 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.² There are some exceptions to this general rule; please consult your AGC or RLA.

Is this applicable? Please comment.

15. **SECURITY FORCES.**³ (FY 2006 Act Sec. 551 [Leahy amendment]). Assistance may not be made available 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).

Is this applicable? Please comment.

² See also GC Memorandum dated 5/9/97 by Jan Miller discussing OMB Circular A-122 restrictions regarding lobbying and other advocacy activities.

³ This is not a new provision, but it is the first year that it has been included in the checklist.

PART B. CONGRESSIONAL NOTIFICATIONS

1. **GENERAL NOTIFICATION.** (FY 2006 Act Sec. 515; FAA Sec. 634A). Obligations must be notified to Congress. This is usually accomplished through the annual Congressional Presentation. It may be the subject of a Special Notification, as below. 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 2006 Foreign Operations 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.

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.

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.

Please comment.

(d) **CONSTRUCTION OR ENGINEERING SERVICES.** (FAA Sec. 604(g)). No engineering or construction services may be procured from advanced developing countries⁴ 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.

Please comment.

2. **CASH TRANSFERS – REQUIREMENT FOR SEPARATE ACCOUNT.** (FY 2006 Act Sec. 529(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).

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.

Please comment.

⁴ 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)), Pub. 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.

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.

Please comment.

4. **ASSISTANCE GENERATING LOCAL CURRENCY.** (FY 2006 Act Sec. 529(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.

Please comment.

- 5. **PRINTING COSTS.** The Bureau for Legislative and Public Affairs (LPA) must approve printing costs of a report of study (except feasibility, design, or evaluation reports or studies) more than \$25,000. [Note: While the requirement for this review is not in the FY 2006 Act, the USAID guidance still applies.]

Please comment.

- 6. **ALCOHOLIC BEVERAGES AND CERTAIN ENTERTAINMENT EXPENSES.** (FY 2006 Act Sec. 548). Child Survival and Health Programs Funds, Development Assistance, or Economic Support Funds may not be used for alcoholic beverages or entertainment expenses that are substantially of a recreational nature.

Please comment.

- 7. **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.

Please comment.

- 8. **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.).

Please comment.

ANNEX

Changes Made by the FY 2006 Foreign Operations Appropriations Act to Current Law,
Memorandum from GC to AA/PPC and AA/LPA, November 17, 2005

MEMORANDUM

To: AA/LPA, J. Edward Fox
AA/PPC, Douglas Menarchik

From: AGC/LP, Don Gressett

Subject: Changes Made by the FY 2006 Foreign Operations
Appropriations Act to Current Law

On November 14, 2005 the President signed into law H.R. 3057, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (“the Act”; P.L. 109-102, H. Rept. No. 109-265). The purpose of this memorandum is to identify and briefly describe the changes made by the FY 2006 Act to legal requirements and authorities previously applicable to USAID. 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 2006 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 2006 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 2006 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 2005);
 - b. prior to obligating funds to open a new USAID overseas office or mission of USAID (unchanged from FY 2005);
 - c. prior to obligating any funds appropriated to the Capital Investment Fund (unchanged from FY 2005);

- d. prior to obligating Economic Support Funds (“ESF”) for a Middle East Financing Facility, Middle East Enterprise Fund, or any other similar entity in the Middle East (unchanged from FY 2005);
- e. prior to obligating funds available by Title II of the Act and for the purposes under the heading “Democracy Fund,” for any contract, grant, or cooperative agreement (or any amendment) in excess of \$10,000,000 (this is a new requirement; see paragraph 15 regarding the new Democracy Fund provision);
- f. prior to obligating funds for democracy programs in Taiwan, Syria, Iran, and “countries located outside the Middle East region with a significant Muslim population” (this is a new requirement; see paragraph 15 regarding the new Democracy Fund provision);
- g. prior to obligating any funds appropriated to the Andean Counterdrug Initiative (“ACI”) for demobilization/reintegration of members of foreign terrorist organizations in Colombia (unchanged from FY 2005; see paragraph 32 regarding changes in the ACI provision);
- h. prior to obligating funds pursuant to authority in Section 508 of the Act to resume assistance to a country whose duly elected head of government has been deposed by military coup if a democratically elected government subsequently has taken office, or if the assistance is being provided to promote democratic elections or promote public participation in democratic processes (unchanged from FY 2005);
- i. prior to obligating funds under the heading “Assistance for the Independent States of the Former Soviet Union” for the Russian Federation, Armenia, Kazakhstan, and Uzbekistan (Section 517; Georgia and Ukraine were listed in FY 2005 and have been removed; see paragraph 30 regarding the provision);
- j. prior to obligating funds for Liberia, Serbia, Sudan, Zimbabwe, Pakistan, or Cambodia (Section 520; unchanged from FY 2005);
- k. prior to obligating funds for Burma under Section 526 of the Act (unchanged from FY 2005; see paragraph 22 regarding changes in the Burma provision);
- l. prior to using interest earned on local currency accrued to a nongovernmental organization as a result of economic assistance provided under Title II of the Act and placed in an interest bearing account (Section 528; unchanged from FY 2005);

- m. prior to obligating funds for any cash transfer or nonproject sector assistance using Development Assistance (“DA”) or ESF, as well as prior to waiving the separate account requirement for nonproject sector assistance (Section 529; unchanged from FY 2005);
- n. prior to the distribution of any assets resulting from the liquidation, dissolution, or winding up of an Enterprise Fund under Section 530 of the Act (unchanged from FY 2005);
- o. prior to obligating funds to combat trafficking in persons (Section 534(a); unchanged from FY 2005);
- p. prior to obligating DA funds to American educational institutions for programs and activities in the People’s Republic of China relating to the environment, democracy, and the rule of law (Section 534(i); unchanged from FY 2005);
- q. prior to obligating funds under Section 536(a) for NGOs for assistance to countries that would otherwise be prohibited from receiving assistance (unchanged from FY 2005);
- r. prior to obligating reprogrammed funds withheld as a result of unpaid parking fines and penalties and unpaid property taxes owed by foreign countries (Section 543; unchanged from FY 2005);
- s. prior to obligating funds transferred to Child Survival and Health Programs Funds (“CSH”) from International Organizations and Programs (“IOP”) by operation of Section 560 (unchanged from FY 2005);
- t. prior to obligating funds for certain community-based police assistance under Section 564 (unchanged from FY 2005);
- u. prior to transferring funds under title II of the Act to the Overseas Private Investment Corporation (“OPIC”) Program Account (Section 579; this is a new requirement; see paragraph 39 regarding the new OPIC transfer authority provision);
- v. prior to obligating CSH funds for control of neglected diseases (Section 593; this is a new requirement; see paragraph 12 regarding the new Neglected Diseases provision); and
- w. prior to any proposed increase or decrease to the amounts available for the programs and accounts contained in the tables in the SOM (Section 596; see paragraph 42 for list of accounts).

MANAGEMENT ISSUES

2. USAID Management (*). The Act retains the Foreign Service Limited (“FSL”) hiring authority. Section 577(g), however, is a new subsection providing for a management reform pilot. Of the funds made available for the FSL hiring authority, USAID may use up to \$10,000,000 to fund overseas support costs of members of the Foreign Service with a Foreign Service rank of four or below (i.e. New Entry Professionals (“NEPs”)). The authority must only be used to reduce USAID's reliance on overseas personal services contractors (“PSCs”) or other nondirect-hire employees compensated with funds appropriated to carry out part I of the Foreign Assistance Act of 1961 (“FAA”), including funds appropriated under the heading “Assistance for Eastern Europe and the Baltic States.”

The SOM notes that to ensure that relatively junior Foreign Service Officers have an early opportunity to gain valuable overseas experience, \$10,000,000 is provided to pay for indirect costs as housing and transportation. These costs are routinely covered for PSCs and paid out of program accounts. In using these authorities, the SOM expects that USAID should achieve annualized savings in administrative costs, including an estimated \$4,000,000 in FY 2007. USAID is directed to provide baseline data on administrative costs so these annual savings can be verified and tracked.

3. Limitation of Funds Relating to Attendance of Federal Employees at Conferences Occurring Outside the United States (*). Section 580 is a new general provision which prohibits funds made available under the Act from being used to send or otherwise pay for the attendance of more than 50 United States Government (“USG”) employees at any single international conference occurring outside the United States, unless the Secretary of State determines that such attendance is in the national interest. The SOM clarifies that the prohibition applies to USG employees stationed in the United States attending international conferences. The term “international conference” is defined as a conference attended by representatives of the USG and representatives of foreign governments, international organizations, or nongovernmental organizations (“NGOs”).
4. Advisor for Indigenous Peoples Issues (*). Section 595 is a new general provision which requires USAID to appoint an “Advisor for Indigenous Peoples Issues” no later than 120 days after enactment of the Act. The Advisor’s responsibilities will include: (1) consulting with representatives of indigenous peoples organizations; (2) ensuring that the rights and needs of indigenous peoples are being respected and addressed in USAID’s policies, programs and activities; (3) monitoring the design and implementation of USAID’s policies, programs and activities which affect indigenous peoples; and (4) coordinating with other Federal agencies on relevant issues relating to indigenous peoples.

ENVIRONMENT PROGRAMS

5. Environment Programs. Section 585(a) states that not less than \$165,500,000 shall be made available for programs and activities which directly protect biodiversity in developing countries, of which not less than \$10,000,000 should be made available to implement USAID's biodiversity conservation strategy for the Amazon basin. The amount will be in addition to the amounts requested for biodiversity activities in these countries in FY 2006.

Subsection (b) requires that not later than 60 days after the date on which the President's FY 2007 budget request is submitted to Congress, the President shall submit a Climate Change Report to the Committees on Appropriations. The SOM expects that, pursuant to the August 2005 Government Accountability Office report (GAO-05-461), OMB and the Climate Change Science Program ("CCSP") will explain in detail any changes in the Administration's annual climate change report content and format since FY 2002. OMB and the CCSP is expected to develop crosswalk tables to compare new and old report structures, definitions, categories, content, and format to ensure better assessment of changes in spending over time, specifically by agency and category. In addition, the SOM directs OMB in its FY 2007 report to transmit information in the form of budget authority, expenditures, and obligations.

ECONOMIC SUPPORT FUND – "NETHERCUTT"

6. Limitation on ESF Assistance for Certain Foreign Governments that are Parties to the International Criminal Court (also known as the "Nethercutt Amendment") (*). The FY 2005 Nethercutt Amendment is left largely intact with two important revisions. Section 574(b) adds a general national interest waiver, instead of limited waiver authority for a specific list of eligible countries. Subsection (e) provides that FY 2005 ESF may be made available for democracy and rule of law programs and activities, notwithstanding the provisions of section 574 of division D of Public Law 108-447. This carves out democracy and rule of law programs for FY 2005 funds caught by the FY 2005 Nethercutt restriction.

DISABILITY PROGRAMS

7. Disability Programs. Section 588(a) makes available \$4,000,000 in ESF for programs and activities administered by USAID to address the needs and protect the rights of people with disabilities in developing countries. Of this amount, the SOM directs that \$1,500,000 be made available to organizations that specialize in advocacy for people with disabilities, to support training, technical, and related assistance for foreign NGOs that work primarily on behalf of people with disabilities in developing countries, and that \$2,500,000 be made available for equipment and other assistance for the foreign NGOs.

Subsection (b) makes available USAID Operating Expense (“OE”) funds to develop and implement training for staff in overseas USAID missions to promote the full inclusion and equal participation of people with disabilities in developing countries.

Subsection (c) requires the Secretary of State, the Secretary of the Treasury, and the Administrator of USAID to ensure that, where appropriate, construction projects funded by the Act are accessible to people with disabilities and in compliance with the USAID Policy on Standards for Accessibility for the Disabled, or other similar accessibility standards.

Subsection (d) provides that of the ESF made available pursuant to subsection (a), not more than 7 percent may be for management, oversight and technical support.

Subsection (e) requires a report from the Administrator of USAID describing the programs, activities, and organizations funded pursuant to this section. The report is due not later than 180 days after the date of enactment of the Act, and 180 days thereafter.

GLOBAL HEALTH

8. **Global HIV/AIDS Initiative.** The Act provides \$1,995,000,000 for the prevention, treatment, and control of, and research on, HIV/AIDS, to remain available until expended. Of the amount, \$200,000,000 shall be made available, notwithstanding any other provision of law, except for the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (Public Law 108-25) for a United States contribution to the Global Fund to Fight AIDS, Tuberculosis and Malaria, and shall be expended at the minimum rate necessary to make timely payment for projects and activities.
 - **Account Structure.** The SOM notes that all funding for the 15 Global HIV/AIDS Initiative “focus” countries is appropriated in this account. The SOM strongly encourages the Office of the Global AIDS Coordinator to continue its policy of providing additional funding to “non-focus” countries and have included \$50,000,000 for “non-focus” countries in this account.

- HIV and Nutrition. The SOM urges the Office of the Global AIDS Coordinator to develop and implement a strategy, in coordination with groups responsible for issues of nutrition, such as USAID, the Department of Agriculture, the World Food Program, and the Food and Agriculture Organization, to address the nutritional requirements of those on antiretroviral therapy. The SOM requests the Office of the Global AIDS Coordinator, in collaboration with USAID, to consult with and report to the Committees on Appropriations not later than 180 days after the enactment of the Act on the following for the Global HIV/AIDS Initiative “focus” countries:

- (a) The number of Global HIV/AIDS Initiative beneficiaries on antiretroviral therapy;
- (b) The impact of food and nutrition on care and treatment; and
- (c) A strategy to address the nutritional requirements of persons receiving care and treatment.

- Technical and Programmatic Support. The SOM urges USAID and the Office of the Global AIDS Coordinator to improve coordination for programs to fight HIV and Tuberculosis, including through increased funding to organizations such as the World Health Organization which can provide technical support to countries. The SOM supports the country planning process and recommends that the Office of the Global AIDS Coordinator consider support for organizations, such as Dream for Africa, which develop civil society and local health outreach.

9. Child Survival and Health Activities. Section 522 requires the Comptroller General to conduct an audit on the use of FY 2004 and 2005 CSH funds and to include specific recommendations on improving the effectiveness of such funds.
10. HIV/AIDS. Section 525 conditions a portion of the United States contribution to the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “Global Fund”) on the progress of reforms to improve monitoring and evaluation of the effectiveness of Global Fund financing. For FY 2006, subsection (a) changes from 25 percent to 20 percent the amount of funds that are appropriated by the Act for a contribution to support the Global Fund that must be withheld from obligation to the Global Fund until the Secretary of State provides a certification to the Committees on Appropriations.

The certification requirements have also changed. The Secretary of State must certify that the Global Fund: (1) has established clear progress indicators upon which to determine the release of incremental disbursements; (2) is releasing such incremental disbursements only if progress is being made based on those indicators; and (3) is providing support and oversight to country-level entities, such as country coordinating mechanisms, principal recipients, and local Fund agents, to enable them to fulfill their mandates.

11. Gender-Based Violence (*). Section 573 is a new general provision which states that programs funded under titles II and III of the Act that provide training for

foreign police, judicial, and military officials, shall include, where appropriate, programs and activities that address gender-based violence.

12. Neglected Diseases (*). Section 593 is a new general provision which provides that not less than \$15,000,000 of CSH funds will be made available to fight neglected diseases including intestinal parasites, schistosomiasis, lymphatic filariasis, onchocerciasis, trachoma and leprosy. The SOM recognizes that a multilateral initiative may be the most effective mechanism for leveraging and coordinating with additional contributions from other donors. The Administrator of USAID is required to consult with the Committees on Appropriations, representatives from the relevant international technical and NGOs addressing the specific diseases, recipient countries, donor countries, the private sector, UNICEF and the World Health Organization (1) on the most effective uses of such funds to demonstrate the health and economic benefits of such an approach, and (2) to develop a multilateral, integrated initiative to control these diseases that will enhance coordination and effectiveness and maximize the leverage of United States contributions with those of other donors. The SOM requests that the Administrator of USAID consult with the Committees on Appropriations before a mechanism is chosen. Until such a mechanism is available, the Administrator should develop and implement the program through existing bilateral and multilateral mechanisms. As noted above, the Act requires a special notification prior to the availability of funds.
13. Orphans, Displaced and Abandoned Children (*). Section 594 is a new general provision which provides that of the funds appropriated under title II of the Act, not less than \$3,000,000 should be made available for activities to improve the capacity of foreign government agencies and NGOs to prevent child abandonment, address the needs of orphans, displaced and abandoned children and provide permanent homes through family reunification, guardianship and domestic adoptions. The funds should be consistent with: (1) the goal of enabling children to remain in the care of their family of origin, but when not possible, placing children in permanent homes through adoption; (2) the principle that such placements should be based on informed consent which has not been induced by payment or compensation; (3) the view that long-term foster care or institutionalization are not permanent options and should be used when no other suitable permanent options are available; and (4) the recognition that programs that protect and support families can reduce the abandonment and exploitation of children.
14. Malaria (*). Section 598 is a new general provision which states that not less than \$100,000,000 of CSH funds should be made available for programs and activities to combat malaria. The funds should be made available in accordance with country strategic plans incorporating best public health practices, which should include considerable support for the purchase of commodities and equipment including: (1) insecticides for indoor residual spraying that are proven to reduce the transmission of malaria; (2) pharmaceuticals that are proven effective

treatments to combat malaria; (3) long-lasting insecticide-treated nets used to combat malaria; and (4) other activities to strengthen the public health capacity of malaria-affected countries. No later than 90 days after the date of enactment of the Act, and every 90 days thereafter until September 30, 2006, the Administrator of USAID is required to submit to the Committees on Appropriations a report describing in detail expenditures to combat malaria during FY 2006.

DEMOCRACY, CONFLICT, AND HUMANITARIAN ASSISTANCE

15. Democracy Fund (*). The Act includes a new appropriations account which authorizes \$95,000,000 for the promotion of democracy, governance, human rights, independent media, and the rule of law globally, to remain available until September 30, 2008. The funds are made available notwithstanding any other provision of law, and of such funds \$63,200,000 shall be made available for the Human Rights and Democracy Fund of the Bureau of Democracy, Human Rights and Labor, Department of State, and not less than \$15,250,000 shall be made available for the National Endowment for Democracy.

The SOM notes that the Democracy Fund seeks to increase the effectiveness and oversight of programs that promote democracy, governance, human rights, independent media, and the rule of law globally. The SOM supports additional assistance for democracy programs in the Democratic Republic of the Congo from funds made available under this heading and elsewhere in the Act.

In subsection (b), funds are available for assistance to Taiwan for furthering political and legal reform only if the funds are matched from sources other than the United States Government.

In subsection (c), funds are available for programs and activities to foster democracy, governance, human rights, civic education, women's development, press freedom, and the rule of law in "countries located outside the Middle East region with a significant Muslim population," and where such programs and activities would be important to United States efforts to respond to, deter, or prevent acts of international terrorism.

In subsection (d), notwithstanding any other provision of law, funds are available for democracy, governance, human rights, and rule of law programs for Syria and Iran. The SOM expects that not less than a total of \$10,000,000 from funds in this account as well as funds provided for the Middle East Partnership Initiative, will be made available for programs to support democracy in Iran, including through educational, humanitarian and NGOs and individuals inside Iran. The SOM encourages the State Department to consider a range of proposals for democracy promotion in Iran, including activities utilizing the media.

In subsection (e), funds that are made available to the National Endowment for Democracy may be made available notwithstanding any other provision of law or regulation.

As noted above, the Act requires special notifications: (1) prior to obligating funds available by Title II of the Act and for the purposes under the heading “Democracy Fund,” for any contract, grant, or cooperative agreement (or any amendment) in excess of \$10,000,000; and (2) prior to obligating funds for democracy programs in Taiwan, Syria, Iran, and “countries located outside the Middle East region with a significant Muslim population.”

16. International Disaster and Famine Assistance (“IDFA”). The IDFA account in the FY 2005 Appropriations Act provided for a separate “famine fund” in the amount of \$34,500,000. For FY 2006, \$20,000,000 of IDFA for famine prevention and relief is now included in the base IDFA account.

ECONOMIC GROWTH, AGRICULTURE AND TRADE

17. Development Credit Authority (DCA) (*). The Act provides new authority to make DCA funds available to subsidize total loan principal, any portion of which is allowed to be guaranteed up to \$700,000,000. This allows DCA to make “zero subsidy” guarantees.
18. Financial Market Assistance in Transition Countries (*). Section 531 is a new general provision which provides that of the funds appropriated under the headings:
 - Trade and Development Agency,
 - Development Assistance,
 - Transition Initiatives,
 - Economic Support Fund,
 - International Affairs Technical Assistance,
 - Assistance for the Independent States of the Former Soviet Union
 - Nonproliferation, Anti-terrorism, Demining and Related Programs, and
 - Assistance for Eastern Europe and Baltic States,not less than \$40,000,000 should be made available for building capital markets and financial systems in countries in transition. The SOM states that the Secretary of State should direct that at least \$30,000,000 come from accounts under the State Department's control.

AFRICA

19. Sudan. Section 569 (a) provides that up to \$70,000,000 of DA funds may be made available for assistance for Sudan, of which not to exceed \$6,000,000 may be made available for administrative expenses of USAID associated with assistance programs for Sudan.

Subsection (d) states that assistance to support implementation of the Comprehensive Peace Agreement is an additional exception to the limitation on assistance to Sudan.

Subsection (e) provides that the Southern Kordofan/Nuba Mountains State, Blue Nile State and Abyei shall be deemed as “areas outside of control of the Government of Sudan.”

20. War Crimes in Africa. Prior to the availability of funds to the central government of any country in which a person indicted by the Special Court for Sierra Leone (“SCSL”) or International Criminal Tribunal for Rwanda is living, section 590(c) requires the President to submit a report to the Committees on Appropriations prior to exercising a national security interest waiver. The reporting requirements have been modified for FY 2006 and now require a discussion of: (1) the steps being taken to obtain the cooperation of the government in surrendering the indictee in question to the court of jurisdiction; (2) a strategy, including a timeline, for bringing the indictee before such court; and (3) the justification for exercising the waiver authority.

Subsection (d) is a new provision which states that notwithstanding the previous subsections, assistance may be made available for the central Government of Nigeria after 120 days following enactment of the Act, only if the President submits a report to the Committees on Appropriations, on: (1) the steps taken in FY 2003, 2004 and 2005 to obtain the cooperation of the Government of Nigeria in surrendering Charles Taylor to the SCSL; and (2) a strategy, including a timeline, for bringing Charles Taylor before the SCSL. The SOM states that it believes that Charles Taylor should stand trial for the crimes for which he has been indicted. The SOM requires the President’s report to outline the Administration’s strategy for working with the Government of Nigeria to turn over Charles Taylor to the SCSL. If the report has not been received by 120 days following enactment of the Act, no funding may be made available for the central Government of Nigeria. This restriction is not intended to include support provided for peacekeeping operations in other countries.

ASIA AND NEAR EAST

21. Afghanistan. The Act provides that not more than \$225,000,000 of ESF for assistance for Afghanistan may be obligated until the Secretary of State certifies to the Committees on Appropriations that the Government of Afghanistan at both the national and local level is cooperating fully with United States funded poppy eradication and interdiction efforts in Afghanistan. The President may waive the certification requirement if he determines and reports to the Committees on Appropriations that it is vital to the national security interests of the United States. The President’s report must include an analysis of the steps being taken by the Government of Afghanistan, at the national and local level, to cooperate fully

with United States funded poppy eradication and interdiction efforts in Afghanistan.

22. Burma. Section 526(b) provides that in addition to assistance for Burmese refugees provided under the heading “Migration and Refugee Assistance,” not less than \$3,000,000 shall be made available for assistance for community-based organizations operating in Thailand to provide food, medical and other humanitarian assistance to internally displaced persons in eastern Burma. This is a change from the FY 2005 Appropriations Act, which directed that not less than \$4,000,000 be allocated to USAID for humanitarian assistance for displaced Burmese and host communities in Thailand. The SOM recommends \$4,000,000 for the Burma Border Consortium and affirms that the responsibility for programs and activities regarding Burmese refugees and internally displaced persons resides with the United States Ambassador to Thailand.
23. Iraq. Section 534(a) adds Iraq to the list of countries with notwithstanding authority.

Under the ESF heading, the Act requires that not less than \$5,000,000 of ESF for assistance for Iraq, must be transferred to and merged with funds appropriated with the “Iraq Relief and Reconstruction Fund” in chapter 2 of title II of Public Law 108-106 and shall be made available for the Marla Ruzicka Iraqi War Victims Fund. The SOM directs USAID to: (1) support joint training for implementing NGOs to share lessons learned and improve coordination and communication; (2) explore approaches to help alleviate emotional trauma; and (3) facilitate dialogue between victims, their communities, and United States and coalition armed forces to promote reconciliation and reduce civilian casualties.

In addition, not less than \$56,000,000 of ESF for assistance for Iraq, must be made available for democracy, governance and rule of law programs in Iraq.

24. Oversight of Iraq Reconstruction. Section 599 is a new general provision which addresses authorities and funding for the Special Inspector General for Iraq Reconstruction (“SIGIR”). The provision provides that the mandate for SIGIR will run through the expenditure of funds instead of obligation.

The SOM endorses oversight of United States reconstruction efforts in Iraq and therefore support the work of the SIGIR. The programs and operations of the Coalition Provisional Authority (“CPA”) that had been within the oversight jurisdiction of the Coalition Provisional Authority Inspector General (“CPA-IG”) are intended to remain within the jurisdiction of its successor, SIGIR.

With respect to Iraq's reconstruction, the SOM notes the importance of an open and transparent process in developing projects, issuing contracts and fulfilling those contracts currently underway. The SOM encourages the Department of State and the Department of Defense to consider current proposals to use

advanced software programs that provide solutions for soliciting contracts and ensuring that the bidding process is transparent and accountable.

25. Middle East Foundation. Section 534(k) of the Act is a new general provision that provides that of ESF that is available for the Middle East Partnership Initiative, “up to \$35,000,000 may be made available, including as an endowment, notwithstanding any other provision of law and following consultations with the Committees on Appropriations,” to establish and operate the Middle East Foundation or similar entity (“Foundation”) whose purpose is to support democracy, governance, human rights, and the rule of law in the Middle East region. Funds may be made available to the Foundation only to the extent that United States contributions to the Foundation are matched by grants from other donors.

The provisions contained in section 201 of the Support for East European Democracy (“SEED”) Act of 1989 (excluding the authorizations of appropriations provided in subsection (b) of that section) shall be deemed to apply to the Foundation, and to funds made available to such entity. Prior to the initial obligation of funds for the Foundation, other than for administrative support, the Secretary of State is required to take steps to ensure, on an ongoing basis, that the funds are not provided to or through any individual or group that the management of the Foundation knows or has reason to believe, advocates, plans, sponsors, or otherwise engages in terrorist activities. The Enterprise Fund restrictions in section 530 of the Act will apply to the Foundation. The authority of the Foundation to provide assistance shall cease to be effective on September 30, 2010.

26. Cambodia. Section 554(a)(2) adds anti-corruption programs to the list of exceptions to the prohibition of assistance for the Central Government of Cambodia.

Subsection (b) expands the notwithstanding authority from FY 2005, stating that notwithstanding any provision of this or any other Act, \$15,000,000 of ESF shall be made available for activities to support democracy, the rule of law, and human rights, including assistance for democratic political parties in Cambodia.

27. West Bank and Gaza Program. Section 559(e) is a new subsection that requires the Comptroller General of the United States to conduct an audit and an investigation of the treatment, handling, and uses of FY 2006 ESF for the bilateral West Bank and Gaza Program. Subsection (f) requires the Secretary of State to submit a report, not later than 180 days upon enactment of the Act, required in section 2106 of chapter 2 of title II of Public Law 109-13.

Under the ESF heading, the Act provides that not to exceed \$2,000,000 in ESF may be used for administrative expenses of USAID, in addition to funds

otherwise available for such purposes, to carry out West Bank and Gaza programs.

28. Egypt. The Act requires that of ESF appropriated for assistance for Egypt, not less than \$135,000,000 shall be made available for project assistance, of which not less than \$50,000,000 be made available for democracy, human rights and governance programs and not less than \$50,000,000 shall be used for education programs, of which not less than \$5,000,000 shall be made available for scholarships for disadvantaged Egyptian students to attend American accredited institutions of higher education in Egypt. In addition, of the ESF for assistance for Egypt for economic reform activities, \$227,600,000 must be withheld from obligation until the Secretary of State determines and reports to the Committees on Appropriations that Egypt has met the calendar year 2005 benchmarks accompanying the “Financial Sector Reform Memorandum of Understanding” dated March 20, 2005.
29. Vietnam. The Act provides that, notwithstanding any other provision of law, ESF must be made available for programs and activities for the Central Highlands of Vietnam.

EUROPE AND EURASIA

30. Independent States of the Former Soviet Union. As noted above, section 517 requires special notification prior to obligating funds under this heading for the Russian Federation, Armenia, Kazakhstan, and Uzbekistan. Kazakhstan and Uzbekistan are new to the list of countries. Georgia and Ukraine were listed in the FY 2005 Appropriations Act and have been removed.
31. Uzbekistan. Section 586 restrictions on assistance to Uzbekistan changed slightly for FY 2006 and provides that assistance may only be provided to the central Government of Uzbekistan upon a determination by the Secretary of State that the Government of Uzbekistan is making substantial and continuing progress in meeting its commitments under the “Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of America,” including respect for human rights, establishing a genuine multi-party system, and ensuring free and fair elections, freedom of expression, and the independence of the media. The determination must also include a finding that a credible international investigation of the May 31, 2005, shootings in Andijan is underway with the support of the Government of Uzbekistan. The definition of “assistance” for this section includes excess defense articles.

LATIN AMERICA AND THE CARIBBEAN

32. Andean Counterdrug Initiative. The Act states that of the ACI funds available for alternative development/ institution building, not less than \$228,772,000 shall be apportioned directly to USAID including \$131,232,000 for assistance for

Colombia. The Act removes the earmark in the FY 2005 Appropriations Act which stated that not less than \$264,600,000 must be available for alternative development/institution building of which an amount was apportioned to USAID.

The Act requires that ACI funds to assist the Bolivian military may be made available only if the Secretary of State certifies that the Bolivian military is respecting human rights, and civilian judicial authorities are investigating and prosecuting, with the military's cooperation, military personnel who have been implicated in gross violations of human rights.

33. Haiti. Section 549(a) of the Act establishes a total funding level of \$116,215,000 for assistance for Haiti from the following accounts: CSH, DA, ESF, International Narcotics Control and Law Enforcement (“INCLE”), FMFP, and IMET. The INCLE, FMFP, and IMET accounts were not included last year.
34. Colombia. Section 556(a) removes notwithstanding language with regard to restrictions on funds available to assist the Colombian Armed Forces. This resolves the conflict with other potential notwithstanding authorities which could be relied upon to overcome this restriction.

Subsection 556(a)(2)(F) provides an additional determination that the Secretary of State is required to certify and report to the Committees on Appropriations prior to obligating 12.5 percent of funds. The Secretary must determine that the Colombian Government is taking effective steps to ensure that the Colombian Armed Forces are not violating the land and property rights of Colombia's indigenous communities.

35. Assistance for Demobilization and Disarmament of Former Irregular Combatants in Colombia. Section 599E is a new general provision that provides up to \$20,000,000 to demobilize and disarm former members of Colombian terrorist organizations. This funding may be made available only if the Secretary of State certifies that certain conditions specified in the section are met.

OTHER PROVISIONS

36. Unobligated Balances Report (*). Section 504 is a new general provision which requires that any Department or Agency to which funds are appropriated or are made available by the Act must provide to the Committees on Appropriations a quarterly report on unobligated and unexpended funds. The report must provide an accounting by program, project, and activity of the unobligated and unexpended funds received in this FY or any previous FY.

The SOM states the quarterly report should be formatted to provide information on unobligated balances for the relevant quarter as well as cumulative balances for unobligated and unexpended funds. The terms “unobligated” and

“unexpended” have the same meaning as defined by the Government Accountability Office “Red Book” and as used by OMB.

The first quarterly report, covering the first quarter of FY 2006 and prior year balances, shall be due to the Committees on Appropriations no later than February 1, 2006.

37. Limitation on Representational Allowances (*). Section 505 merges sections 504 and 505 of the FY 2005 Appropriations Act and addresses both the limitation on representational allowances as well as the limitation on entertainment expenses. Section 505 states that of the funds available pursuant to the Act, a ceiling of \$250,000 shall be available for representation and entertainment allowances, of which a ceiling of \$2,500 is available for USAID entertainment allowances during the current FY. This is a decrease from the \$5,000 ceiling in the FY 2005 Appropriations Act.

None of the entertainment funds may be used for alcoholic beverages, or activities that are substantially of a recreational character, including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks. The SOM further states that the limitation on entertainment expenses also includes recorded music, live artistic performances, personal gifts and furnishings.

38. Basic Education. Section 567 provides not less than \$250,000 to the Comptroller General to prepare an analysis of United States funded international basic education programs, which should be submitted to the Committees on Appropriations by May 1, 2006. The SOM refers the Comptroller General to section 567 of the House bill detailing what should be included in the analysis. The SOM also directs the Comptroller General to include an analysis of the staffing needs of USG agencies to carry out international basic education assistance programs and a description and analysis of USG contracts, grants, and cooperative agreements that are designed to achieve the goals of the basic education assistance program.

The SOM states that it is aware of the need for programs in the developing world that increase access to quality education, including by removing financial impediments to attending school, training teachers, developing curricula, improving physical plant, and making school supplies more available. The SOM notes that a number of developing nations have committed to achieving universal basic education by 2015, and that the World Bank Fast Track Initiative, to which the United States is a party, has identified certain countries for which this goal may be within reach with adequate donor support and technical assistance. The SOM seeks to ensure that the \$65,000,000 increase in funding for FY 2006 is programmed to achieve the maximum and most dramatic results in a select number of countries, and directs USAID to program the increase only after consultation with the Committees on Appropriations.

39. OPIC Transfer Authority. Section 579 is a new general provision which provides that whenever the President determines that it is in furtherance of the purposes of the FAA, up to a total of \$20,000,000 of the funds appropriated under title II of the Act may be transferred to and merged with funds appropriated by the Act for the OPIC Program Account. The funds shall not be available for administrative purposes of OPIC and as noted above, special notification is required prior to the exercise of the transfer authority.
40. Limitation on Assistance to Foreign Countries that Refuse to Extradite to the United States any Individual Accused in the United States of Killing a Law Enforcement Officer (*). Section 581 is a new general provision which prohibits funds made available in the Act for the Department of State, for assistance under certain conditions associated with extradition of individuals indicted in the United States for killing a law enforcement officer. The provision provides a waiver of the prohibition when the Secretary of State certifies to the Committees on Appropriations that such a restriction is contrary to the national interest of the United States.
41. Governments that have Failed to Permit Certain Extraditions (*). Section 583 is a new general provision which prohibits funds made available in the Act for the Department of State other than INCLE, for assistance under certain conditions when governments fail to permit the extradition of individuals indicted for a criminal offense for which the maximum penalty is life imprisonment without the possibility of parole. The provision provides a waiver of the prohibition when the Secretary of State certifies to the Committees on Appropriations that such a restriction is contrary to the national interest of the United States.
42. Statement. Section 596 requires 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. The accounts marked by double asterisks (**) are new accounts in this provision.

Child Survival and Health Programs Fund **
 Economic Support Fund
 Assistance for Eastern Europe and the Baltic States
 Assistance for the Independent States of the Former Soviet Union
 Global HIV/AIDS Initiative **
 Democracy Fund **
 International Narcotics Control and Law Enforcement **
 Andean Counterdrug Initiative
 Nonproliferation, Anti-Terrorism, Demining and Related Programs
 Foreign Military Financing Program
 International Organizations and Programs

43. Promotion of Policy Goals at Multilateral Development Banks. Section 599B is a new general provision amending the International Financial Institutions Act by requiring the Secretary of the Treasury to inform the multilateral development banks (“MDB”) and the executive directors of such banks of certain reform goals and to actively promote these reforms. The SOM notes these reforms would improve transparency, deter corruption, promote justice and accountability, protect whistleblowers, and enhance the quality of MDB-financed projects, and should be vigorously implemented.
44. Anticorruption Provisions. Section 599D is a new general provision that withholds 20 percent of the funds for the World Bank's International Development Association (“IDA”) from disbursement until the Secretary of the Treasury makes a certification about a number of procurement issues that would increase transparency in the World Bank procurement process. The SOM states that the provision includes International Bank for Reconstruction and Development (“IBRD”) loans as well as IDA credit agreement or grants and project preparation advances, and “World Bank procurement guidelines” include the following World Bank Guidelines: Procurement Under IBRD Loans and IDA Credits; Guidelines: Selection and Employment of Consultants by World Bank Borrowers; and, all relevant Standard Bidding Documents applicable to World Bank-funded tenders.
45. Francophone Countries. The final bill does not include a Senate provision directing funding for English language training in Francophone countries. However, the SOM directs that ESF funds be made available for such purposes.

PERMANENT PROVISIONS OF LAW IN THE FY 2005 ACT

The Following USAID-related provisions were contained in the FY 2005 Foreign Operations Appropriations Act and continue to be applicable although not included in the FY 2006 Act:

1. HIV/AIDS Working Capital Fund. Section 525(b)(1):

“(b)(1) In furtherance of the purposes of section 104A of the Foreign Assistance Act of 1961, and to assist in providing a safe, secure, reliable, and sustainable supply chain of pharmaceuticals and other products needed to provide care and treatment of persons with HIV/AIDS and related infections, the Coordinator of the United States Government Activities to Combat HIV/AIDS Globally (the ‘Coordinator’) is authorized to establish an HIV/AIDS Working Capital Fund (in this section referred to as the ‘HIV/AIDS Fund’).

(2) Funds deposited during any fiscal year in the HIV/AIDS Fund shall be available without fiscal year limitation and used for pharmaceuticals and other

products needed to provide care and treatment of persons with HIV/AIDS and related infections, including, but not limited to--

- (A) anti-retroviral drugs;
- (B) other pharmaceuticals and medical items needed to provide care and treatment to persons with HIV/AIDS and related infections;
- (C) laboratory and other supplies for performing tests related to the provision of care and treatment to persons with HIV/AIDS and related infections;
- (D) other medical supplies needed for the operation of HIV/AIDS treatment and care centers, including products needed in programs for the prevention of mother-to-child transmission;
- (E) pharmaceuticals and health commodities needed for the provision of palliative care; and
- (F) laboratory and clinical equipment, as well as equipment needed for the transportation and care of HIV/AIDS supplies, and other equipment needed to provide prevention, care and treatment of HIV/AIDS described above.

(3) There may be deposited during any fiscal year in the HIV/AIDS Fund payments for HIV/AIDS pharmaceuticals and products provided from the HIV/AIDS Fund received from applicable appropriations and funds of the United States Agency for International Development, the Department of Health and Human Services, the Department of Defense, or other Federal agencies and other sources at actual cost of the HIV/AIDS pharmaceuticals and other products, actual cost plus the additional costs of providing such HIV/AIDS pharmaceuticals and other products, or at any other price agreed to by the Coordinator or his designee.

(4) There may be deposited in the HIV/AIDS Fund payments for the loss of, or damage to, HIV/AIDS pharmaceuticals and products held in the HIV/AIDS Fund, rebates, reimbursements, refunds and other credits applicable to the operation of the HIV/AIDS Fund.

(5) At the close of each fiscal year the Coordinator may transfer out of the HIV/AIDS Fund to other HIV/AIDS programmatic areas such amounts as the Coordinator determines to be in excess of the needs of the HIV/AIDS Fund.

(6) At the close of each fiscal year the Coordinator shall submit a report to the Committees on Appropriations detailing the financial activities of the HIV/AIDS Fund, including sources of income and information regarding disbursements.”

2. Special Authorities. Section 534 (j), (k), and (m):

“(j) TECHNICAL AMENDMENT- Section 201(a)(2) of the North Korean Human Rights Act of 2004 (Public Law 108-333) is amended by striking `paragraphs (1) through (4) of section 202(b)' and inserting `subparagraphs (A) through (D) of section 202(b)(1)'.”

“(k) REPORT MODIFICATION- Section 406(b)(4) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101-246; 22 U.S.C. 2414a(b)(4)) is amended by inserting after ‘United States’ the following: ‘, including a separate listing of all plenary votes cast by member countries of the United Nations in the General Assembly on resolutions specifically related to Israel that are opposed by the United States.’”

“(m) INDOCHINESE PAROLEES- Section 586 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (8 U.S.C. 1255 note), as enacted into law by section 101(a) of Public Law 106-429, is amended--

- (1) by striking ‘Attorney General’ each place that term appears and inserting ‘Secretary of Homeland Security’;
- (2) in subsection (a)--
 - (A) in the matter preceding paragraph (1), by striking ‘she’ and inserting ‘the Secretary of Homeland Security’; and
 - (B) in paragraph (1), by striking ‘within three years after the date of promulgation by the Attorney General of regulations in connection with this title’;
- (3) in subsection (c), by striking ‘212(8)(A)’ and inserting ‘212(a)(8)(A)’;
- (4) by striking subsection (d);
- (5) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively;
- (6) by adding at the end the following new subsection:
 - ‘(f) ADJUDICATION OF APPLICATIONS- The Secretary of Homeland Security shall--
 - ‘(1) adjudicate applications for adjustment under this section, notwithstanding any limitation on the number of adjustments under this section or any deadline for such applications that previously existed in law or regulation; and
 - ‘(2) not charge a fee in addition to any fee that previously was submitted with such application.’; and
- (7) The amendments made by this subsection shall take effect as if enacted as part of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001.”

3. Sudan Section 569(h):

“(h) TECHNICAL CHANGE- Section 12 of the International Organizations Immunities Act (22 U.S.C. 288f-2) is amended by striking ‘Organization of African Unity’ and inserting ‘African Union.’”

4. Code of Conduct. Section 2110 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109-

13) established as permanent law a code of conduct requirement similar to section 587 of the Act.

“SEC. 587. (a) None of the funds made available by title II under the heading ‘Migration and Refugee Assistance’ or ‘Transition Initiatives’ to provide assistance to refugees or internally displaced persons may be provided to an organization that has failed to adopt a code of conduct consistent with the Inter-Agency Standing Committee Task Force on Protection From Sexual Exploitation and Abuse in Humanitarian Crises six core principles for the protection of beneficiaries of humanitarian assistance.

(b) In administering the amounts made available for the accounts described in subsection (a), the Secretary of State and Administrator of the United States Agency for International Development shall incorporate specific policies and programs for the purpose of identifying specific needs of, and particular threats to, women and children at the various stages of humanitarian emergencies, especially at the onset of such emergency.”

- Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109-13):

“SEC. 2110. (a) None of the funds made available for foreign operations, export financing, and related programs under the headings ‘Migration and Refugee Assistance’, ‘United States Emergency Refugee and Migration Assistance Fund’, ‘International Disaster and Famine Assistance’, or ‘Transition Initiatives’ may be obligated to an organization that fails to adopt a code of conduct that provides for the protection of beneficiaries of assistance under any such heading from sexual exploitation and abuse in humanitarian relief operations.

(b) The code of conduct referred to in subsection (a) shall, to the maximum extent practicable, be consistent with the six core principles of the United Nations Inter-Agency Standing Committee Task Force on Protection From Sexual Exploitation and Abuse in Humanitarian Crises.

(c) Not later than 180 days after the date of the enactment of the Act, and not later than one year after the date of the enactment of the Act, the President shall transmit to the appropriate congressional committees a report on the implementation of this section.

(d) This section shall take effect 60 days after the date of the enactment of the Act and shall apply to funds obligated after such date for fiscal year 2005 and any subsequent fiscal year.”

5. Administrative Provisions Related to Multilateral Development Banks. Section 593:

“SEC. 593. (a) Section 1307 of the International Financial Institutions Act (22 U.S.C. 262m-7) is amended--

- (1) by striking subsection (a) and inserting the following:

`(a) ASSESSMENT REQUIRED BEFORE FAVORABLE VOTE ON PROPOSAL- The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank not to vote in favor of any proposal (including but not limited to any loan, credit, grant, guarantee) which would result or be likely to result in significant impact on the environment, unless the Secretary, after consultation with the Secretary of State and the Administrators of the United States Agency for International Development and the Environmental Protection Agency, determines that for at least 120 days before the date of the vote--

`(1) an assessment analyzing the environmental impacts of the proposed action, including associated and cumulative impacts, and of alternatives to the proposed action, has been completed by the borrower or the bank and has been made available to the board of directors of the bank; and

`(2) such assessment or a comprehensive summary of the assessment (with proprietary information redacted) has been made available to affected groups, and local NGOs and notice of its availability in the country and at the bank has been posted on the bank's website.'; and

(2) by striking subsection (g) and inserting the following:

`(g) MULTILATERAL DEVELOPMENT BANK DEFINED- In this title, the term 'multilateral development bank' means the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, the African Development Bank, the African Development Fund, the Asian Development Bank, the Inter-American Development Bank, the Inter-American Investment Corporation, any other institution (other than the International Monetary Fund) specified in section 1701(c)(2), and any subsidiary of any such institution.'

(b) Section 1303(b) of the International Financial Institutions Act (22 U.S.C. 262m-2(b)) is amended--

(1) by inserting '(1)' after '(b)' and replacing 'International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank' with the phrase 'multilateral development banks as defined in section 1307(g)'; and

(2) by inserting at the end of subsection (b) the following text:

`(2) The Secretary of the Treasury shall instruct such Executive Directors to work with other countries' Executive Directors and multilateral development bank management to--

`(A) improve the procedures of each multilateral development bank for providing its board of directors with a complete and accurate record regarding public consultation before they vote on proposed projects with significant environmental implications; and

`(B) revise bank procedures to consistently require public consultation on operational policy proposals or revisions that have significant environmental or social implications.

'(3) Progress under this subsection shall be incorporated into Treasury's required annual report to Congress on the environmental performance of the multilateral development banks.'”

PROVISIONS NOT RETAINED IN THE FY 2006 ACT

In addition to the provisions noted above, the FY 2006 Act does **not** include the following provisions that had been included in the FY 2005 Act:

1. Child Survival and Health Programs Fund. The CSH contribution to the Global Fund in the FY 2005 Appropriations Act included \$87,800,000 carried over from FY 2004 funds that were withheld because of failure of the Global Fund to meet certain statutory conditions.
2. Economic Support Fund. The ESF account in the FY 2005 Appropriations Act allowed the availability of funds, notwithstanding any other provision of law, to provide assistance to the National Democratic Alliance of Sudan to strengthen its ability to protect civilians from attacks, slave raids, and aerial bombardment by the Sudanese Government forces and its militia allies. Not to exceed \$200,000,000 of ESF could be used for the costs of modifying direct loans and guarantees for Pakistan. \$3,000,000 ESF assistance for Indonesia could be made available to promote freedom of the media in Indonesia, \$5,000,000 ESF was required to support the provision of wheelchairs for needy persons in developing countries, and \$200,000,000 ESF should be made available for Commodity Import Program assistance
3. Millennium Challenge Corporation. The FY 2005 Appropriations Act required that prior to the availability of MCC funds, MCC must provide a written budget justification to the Committees on Appropriations.
4. Afghanistan. Section 523 of the FY 2005 Appropriations Act required that to the maximum extent practicable, members of the Afghan National Army should be vetted for involvement in terrorism, human rights violations, and drug trafficking. The SOM states the requirement would have been duplicative of vetting requirements included elsewhere in the Act.
5. Democracy Programs. With some modifications in the language, most of the provisions in Section 526 of the FY 2005 Appropriations Act have been incorporated into the new Democracy Fund account (see paragraph 15). Section 526(a) provided notwithstanding authority for assistance for activities to support democracy, human rights, and the rule of law in the People's Republic of China and Hong Kong.

6. Special Authorities.
 - Contingencies. Section 534(f) of the FY 2005 Appropriations Act increased the funding ceiling of \$25,000,000 in Section 451(a) of the FAA to \$45,000,000 for FY 2005.
 - Endowments. Section 534(o) of the FY 2005 Appropriations Act authorized endowments for a Cambodian NGO to document genocide and crimes against humanity in Cambodia, and for an American NGO to sustain rehabilitation programs in Cambodia for persons suffering from physical disabilities.
7. Cambodia. Section 554(d) required that the Secretary could notwithstanding the restrictions in subsection (b) only if at least 15 days prior to the obligation of funds, the Secretary of State provides to the Committees on Appropriations a list of individuals who have been credibly alleged to have ordered or carried out extrajudicial and political killings that occurred during the March 1997 grenade attack against the Khmer Nation Party.

Subsection (e) provided that no funds may be used to provide assistance to any tribunal established by the Government of Cambodia unless the Secretary of State determines and reports to the Committees on Appropriation that: (1) Cambodia's judiciary is competent, independent, free from widespread corruption, and its decisions are free from interference by the executive branch; and (2) the proposed tribunal is capable of delivering justice, that meets internationally recognized standards, for crimes against humanity and genocide in an impartial and credible manner.
8. Contributions to United Nations Population Fund. Section 560(c) of the FY 2005 Appropriations Act provided that funds appropriated in Public Law 108-199 that were available for the UNFPA, shall be made available for anti-trafficking programs, and for the family planning, maternal, and reproductive health activities of USAID in Albania, Azerbaijan, the Democratic Republic of the Congo, Ethiopia, Georgia, Haiti, Kazakhstan, Kenya, Nigeria, Romania, Russia, Rwanda, Tanzania, Uganda, and the Ukraine:
9. Sudan. Section 569(g) of the FY 2005 Appropriations Act provided \$75,000,000 Peacekeeping Operations funds to support peace and humanitarian intervention operations and \$18,000,000 IDFA funds for humanitarian assistance and related activities in Sudan.
10. Compliance with the Algiers Agreements. Section 592 of the FY 2005 Appropriations Act provided that no funds may be made available for assistance for the central Governments of Ethiopia or Eritrea unless the Secretary of State certifies and reports to the Committees on Appropriations that such government is taking steps to comply with the terms of the Algiers Agreements. The prohibition did not apply to democracy, rule of law, peacekeeping programs and activities,

child survival and health, basic education, and agriculture programs. The Secretary has the authority to waive the prohibition upon a national security interest determination.

11. Special Notifications.

- prior to obligating ESF to support assistance to the National Democratic Alliance of Sudan to strengthen its ability to protect civilians from attacks, slave raids, and aerial bombardment by the Sudanese Government forces and its militia allies; and
- prior to obligating in excess of \$45,000,000 in IDFA and TI funds for assistance for Sudan outside of the Darfur region. This notification must be provided not less than five days prior to obligation.