

Chapter 7:

# Policy on Suspension and Termination



REDUCING POVERTY THROUGH GROWTH



## **Policy on Suspension and Termination**

### **MCC Policy on Suspension or Termination of Assistance and/or Eligibility for Assistance**

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This Policy outlines the Millennium Challenge Corporation's (MCC) policy on suspension or termination of Millennium Challenge Account assistance (MCA assistance) to countries (MCA-Eligible countries) under Section 605 of the Millennium Challenge Act of 2003 (Act), or termination of eligibility for such assistance. This Policy also addresses suspension or termination of assistance for Compact development and implementation under Section 609(g) of the Act and "threshold" assistance to countries under Section 616 of the Act (Threshold assistance), or eligibility for such assistance.

Section 611(a) of the Act provides that, after consultation with MCC's Board of Directors (Board), the Chief Executive Officer (CEO) may suspend or terminate MCA assistance in whole or in part for an MCA-Eligible Country or other entity utilizing MCA assistance if the CEO determines that (1) the country or entity is engaged in activities which are contrary to the national security interests of the United States; (2) the country or entity has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of the country or entity; or (3) the country or entity has failed to adhere to its responsibilities under its Millennium Challenge Compact (Compact). Although the requirements of Section 611(a) do not explicitly apply to Compact development and implementation assistance or Threshold assistance, the requirements of Section 611(a) have been extended to such assistance by virtue of this Policy.

### **Definition of Suspension or Termination of Assistance and/or Eligibility for Assistance**

1. **Suspension or Termination of Assistance.** There are three types of assistance which are covered by this Policy: (i) MCA assistance (through a Compact); (ii) Compact development and implementation assistance (through a 609(g) grant agreement); and (iii) Threshold assistance (through a Threshold agreement). Suspension of assistance to a country or entity that is receiving

any of these types of assistance occurs when MCC determines that all or part of such assistance should cease for a period of time because one or more triggering actions or events has occurred that falls into one of the three categories set out in “Basis for Suspension or Termination of Assistance and/or Eligibility for Assistance” below. Termination of assistance to such country occurs when MCC determines that due to such action(s) or event(s), the Compact, 609(g) grant agreement or Threshold agreement should terminate entirely.

2. **Suspension or Termination of Eligibility for Assistance.** Suspension or termination of eligibility for assistance occurs when MCC determines that a country in the due diligence or negotiation phase (but not yet receiving assistance) will no longer be considered eligible for MCA, 609(g) or Threshold assistance and that due diligence and/or negotiations with respect to such country should cease because one or more triggering actions or events has occurred that falls into one of the three categories set out below.

### **Basis for Suspension or Termination of Assistance and/or Eligibility for Assistance**

The CEO, in full consultation with Board Members and agencies, may make a recommendation to the Board to suspend or terminate assistance or terminate eligibility for assistance under the following circumstances:

1. **The Country is Engaged in Activities Contrary to the National Security Interests of the United States.** For the purposes of this Policy, a country is deemed to have engaged in “activities contrary to the national security interests of the United States” when a formal determination to that effect has been made by the U.S. Government (i.e., by the President or the Secretary of State).
2. **The Country has Engaged in a Pattern of Actions Inconsistent with MCA Selection Criteria.** For the purposes of this Policy, a country can be deemed to have engaged in “a pattern of actions inconsistent with the criteria used to determine eligibility of the country” if the country has taken actions which result in, or could reasonably be expected to result in, a decline or deterioration of performance in one or more of the policy indicators used to determine eligibility as published by MCC. (A list of the policy indicators is

attached hereto as Annex A). Such actions or omissions may be evidenced by (i) an *actual* decline in performance on the indicators used to determine eligibility as reflected in the data; (ii) policy slippage not yet reflected in the indicators due to data lags and/or infrequency of indicator updates; or (iii) actions by the country or the entity which are determined to be contrary to sound performance in the areas assessed for eligibility.

3. **The Country has Failed to Adhere to Responsibilities under a Compact, 609(g) Grant Agreement or Threshold Agreement.** For the purposes of this Policy, “failure to adhere to its responsibilities” under the Compact, 609(g) grant agreement or Threshold agreement occurs when the country or an implementing entity (i) materially breaches any assurance or obligation in the agreement (or any related implementing agreement or document); (ii) fails to meet a condition precedent or series of conditions precedent to one or more disbursements; or (iii) takes (or fails to take) some action that results in grounds for termination or suspension as set out in the Compact or related agreement (e.g., a failure to comply with any reporting, certification, or audit requirement through which MCC will monitor adherence of a country and the implementing entities to their responsibilities under the relevant agreement). It should be noted that MCC distinguishes suspension and termination of a Compact, 609(g) or Threshold agreement from a decision by MCC with respect to a particular disbursement under such agreement. Disbursement actions under Compacts and other agreements are controlled by conditions precedent or other operating requirements in the disbursement agreement and other implementation-related documents and agreements. The decision by MCC not to disburse or to defer disbursement or take other action in response to a particular disbursement request because one or more conditions precedent have not been met is neither a suspension nor a termination of the Compact or other agreement without a separate affirmative decision to suspend or terminate as set out in the preceding paragraph.

## Timing & Procedures

### Annual Selection Process to Determine Eligible Countries:

In the event that an MCA-Eligible country is not selected by the Board during a subsequent selection process due to policy slippage (as described in paragraph 2 of the

previous section), the CEO, in full consultation with Board Members and agencies, may make a recommendation to the Board to suspend or terminate (or cease due diligence or negotiations related to) an existing Compact or 609(g) agreement with the country without warning.

**Other Termination Events:**

If MCC believes that there has been a national security issue, policy slippage or breach of agreement as described in the previous section with respect to a country at any time, the following procedures will be followed:

1. *Activities Contrary to the National Security Interests of the United States.*  
Following a formal determination by the U.S. Government (i.e., by the President or Secretary of State) that a country has taken action or engaged in activities contrary to the national security interests of the United States or if a recommendation is made to MCC by another element of the U.S. Government (including by the National Security Council or the U.S. Department of State) to take action vis-à-vis MCA eligibility or assistance, the CEO, in full consultation with Board Members and agencies, will make a recommendation to the Board within 5 days of learning of such determination or receiving such recommendation. Following a Board decision, the CEO shall take any necessary follow-on action, such as termination of eligibility status or full or partial suspension or termination of assistance under a Compact, 609(g) grant agreement or Threshold agreement, as applicable.
2. *Pattern of Actions Inconsistent with MCA Selection Criteria.* If MCC believes that there is evidence of policy slippage which presents potentially sufficient grounds for warning, suspension or termination, a detailed report will be submitted by appropriate MCC staff to the Investment Committee for a recommendation to the CEO within 5 working days on possible warning, suspension, or termination. Within 5 working days of receipt of such recommendation, the CEO will determine whether the evidence warrants action or, alternatively, remand the matter to appropriate MCC staff for further investigation and/or review. If the CEO determines that further action is warranted, the CEO, in full consultation with the Board Members and agencies, will make a recommendation to the Board and, following a Board decision, take necessary follow-on action, which may include a warning, full

or partial suspension of assistance, or full or partial termination of assistance and/or eligibility status.

3. *Failure to Adhere to Responsibilities under a Compact, 609(g) Grant Agreement or Threshold Agreement.* If MCC believes that a country has failed to adhere to its responsibilities under a Compact or 609(g) grant agreement, MCC's Vice President for Country Programs, Vice President for Markets and Sector Assessments, Vice President for Monitoring and Evaluation and/or Vice President and General Counsel may bring the matter to the Investment Committee with a recommendation for action. The Investment Committee will, within 5 days, make a recommendation to the CEO. Within 5 working days of receipt of such recommendation, the CEO will determine whether the evidence warrants action or, alternatively, remand the matter to appropriate MCC staff for further investigation and/or review. If the CEO determines that further action is warranted, the CEO, in full consultation with the Board Members and agencies, will make a recommendation to the Board to take necessary follow-on action, which may include a warning, full or partial suspension of assistance, or full or partial termination of assistance and/or eligibility status.

If MCC believes that a country has failed to adhere to its responsibilities under a Threshold agreement, the CEO, in full consultation with USAID (as implementing agency), Board Members and agencies, will determine whether to take necessary follow-on action, which may include a warning, full or partial suspension of assistance, or full or partial termination of assistance and/or eligibility status.

### **Potential Actions:**

#### **Warning:**

The CEO may make a formal warning in writing to the country of a potential termination or suspension of eligibility or assistance, citing actions or facts and indicating *corrective measures* that MCC will require the country to take in order to avoid suspension or termination of eligibility or assistance, along with a specified time period within which actions must be taken. The CEO shall consult with Board Members prior to issuing a warning and will inform the Board after any such warning

that is given. In the case of a country that has taken actions contrary to the national security interests of the United States, it is unlikely that a warning will be sufficient.

**Suspension:**

If the Board, upon the recommendation of the CEO in full consultation with the Board Members and agencies, makes a determination to fully or partially suspend assistance or eligibility for assistance, or to suspend the relevant Compact, the CEO, on behalf of the Board, will notify the country in writing of such suspension. This notification will (i) identify the specific reason(s) for the suspension and (ii) outline corrective measures or conditions required to resume eligibility or assistance, which may include a specified time period within which actions must take place. Assistance under a Compact, 609(g) grant agreement or Threshold agreement or ongoing negotiations for assistance thereunder will be suspended as of the date of such notification.

**Termination:**

If the Board, upon the recommendation of the CEO in full consultation with the Board Members and agencies, makes a determination to fully or partially terminate assistance or eligibility for assistance, or to terminate the relevant Compact, the CEO, on behalf of the Board, will notify the country in writing of such termination, which notification will identify the specific reason(s) for the termination. Once terminated, a Compact, 609(g) grant agreement or Threshold agreement may no longer be implemented with MCC funding.

**Reinstatement:**

The Board may reinstate assistance or eligibility for a country that was subject to a suspension or termination upon the recommendation of the CEO, in full consultation with Board Members and agencies, that the country or entity has taken corrective action or has demonstrated a sufficient commitment to correcting each condition for which assistance was suspended or terminated.

**Congressional Notification:**

MCC will notify Congress in writing by submitting a Report to include the cause for suspension or termination of assistance or eligibility for assistance under a Compact,



609(g) grant agreement, or Threshold agreement no later than 3 days following such action taking place.

## Annex A

### Summary of MCA Selection Criteria

#### Ruling Justly:

1. **Civil Liberties:** freedom of expression, association and organizational rights, rule of law and human rights, and personal autonomy and economic rights.
2. **Political Rights:** the prevalence of free and fair elections of officials with real power; the ability of citizens to form political parties that may compete fairly in elections; freedom from domination by the military, foreign powers, totalitarian parties, religious hierarchies and economic oligarchies; and the political rights of minority groups.
3. **Voice and Accountability:** institutions' ability to protect civil liberties, extent of citizen participation in government selection, and media independence.
4. **Government Effectiveness:** quality of public service provision, civil service competency and independence from political pressures, and the government's ability to plan and implement sound policies.
5. **Rule of Law:** the extent to which the public has confidence in and abides by rules of society; incidence of violent and non-violent crime; effectiveness and predictability of the judiciary; and the enforceability of contracts.
6. **Control of Corruption:** the frequency of "additional payments to get things done," the effects of corruption on the business environment, "grand corruption" in the political arena and the tendency of elites to engage in "state capture."

#### Encouraging Economic Freedom:

1. **Country Credit Rating:** perceptions of a country's risk of default.
2. **Inflation:** a government's commitment to sound monetary policy.
3. **Fiscal Policy:** a government's commitment to fiscal balance (as measured by overall budget deficit divided by GDP, averaged over a 3 year period).
4. **Days to Start a Business:** how many days it takes to open a new business and barriers to entry.

5. **Trade Policy:** a measure of a country's openness to international trade based on average tariff rates and non-tariff barriers to trade.
6. **Regulatory Quality Rating:** the burden of regulations on business, price controls, the government's role in the economy, foreign investment regulation and many other areas.

#### **Investing in People:**

1. **Public Expenditure on Primary Education:** Government investments into Primary Education as measured by total expenditures by government at all levels on primary education divided by GDP.
2. **Public Expenditure on Health:** Government investments into health by total expenditures by government at all levels on health divided by GDP.
3. **Girls' Primary Completion Rate:** investments into girls education as measured by the number of female students completing primary education divided by the population in the relevant age cohort.
4. **Immunization:** investments into immunizations measured by the average of DPT3 and measles immunization rates for the most recent year available.