

115TH CONGRESS
1ST SESSION

S. 832

To enhance the transparency and accelerate the impact of programs under the African Growth and Opportunity Act and the Millennium Challenge Corporation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 5 (legislative day, APRIL 4), 2017

Mr. CARDIN (for himself, Mr. ISAKSON, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To enhance the transparency and accelerate the impact of programs under the African Growth and Opportunity Act and the Millennium Challenge Corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “African Growth and
5 Opportunity Act and Millennium Challenge Act Mod-
6 ernization Act” or the “AGOA and MCA Modernization
7 Act”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—ENHANCEMENT OF THE AFRICAN GROWTH AND
OPPORTUNITY ACT

- Sec. 101. Statement of policy.
Sec. 102. Definitions.
Sec. 103. Activities in support of transparency.
Sec. 104. Activities in support of trade capacity building.

TITLE II—MODERNIZATION OF THE MILLENNIUM CHALLENGE
CORPORATION

- Sec. 201. Candidacy status.
Sec. 202. Carryover authority for private sector members of board of directors.
Sec. 203. Additional reporting to the board on the treatment of civil society in
an eligible country.
Sec. 204. Concurrent compacts under the Millennium Challenge Act of 2003.
Sec. 205. Public notification of entering into a compact.
Sec. 206. Disclosure.
Sec. 207. Restriction on the use of assistance under section 616.
Sec. 208. Study on subnational compacts.

3 **TITLE I—ENHANCEMENT OF THE**
4 **AFRICAN GROWTH AND OP-**
5 **PORTUNITY ACT**

6 **SEC. 101. STATEMENT OF POLICY.**

7 It is the policy of the United States to support ef-
8 forts—

- 9 (1) to improve the rule of law, promote free and
10 fair elections, strengthen and expand the private sec-
11 tor, and fight corruption in sub-Saharan Africa; and
12 (2) to promote the role of women in social, po-
13 litical, and economic development in sub-Saharan
14 Africa.

1 **SEC. 102. DEFINITIONS.**

2 In this title:

3 (1) AGOA WEBSITE.—The term “AGOA
4 website” means the website created by the President
5 under section 103 to collect and disseminate infor-
6 mation regarding the African Growth and Oppor-
7 tunity Act (19 U.S.C. 3701 et seq.).

8 (2) ELIGIBLE SUB-SAHARAN AFRICAN COUN-
9 TRY.—The term “eligible sub-Saharan African coun-
10 try” means a country that the President has deter-
11 mined meets the eligibility requirements set forth in
12 section 104 of the African Growth and Opportunity
13 Act (19 U.S.C. 3703).

14 **SEC. 103. ACTIVITIES IN SUPPORT OF TRANSPARENCY.**

15 (a) AGOA WEBSITE.—

16 (1) IN GENERAL.—The President shall establish
17 a publicly available Internet website for the collec-
18 tion and dissemination of information regarding the
19 African Growth and Opportunity Act (title I of Pub-
20 lic Law 106–200).

21 (2) CONTENTS.—The President shall publish,
22 on the AGOA website, the information described in
23 paragraph (1), including—

24 (A) information and technical assistance
25 provided at United States Agency for Inter-
26 national Development regional trade hubs; and

1 (B) a link to the websites of United States
 2 embassies located in eligible sub-Saharan Afri-
 3 can countries.

4 (3) ACTIONS BY UNITED STATES EMBASSIES.—
 5 The Secretary of State should direct United States
 6 embassies located in eligible sub-Saharan African
 7 countries—

8 (A) to encourage such countries to use the
 9 benefits available under the African Growth and
 10 Opportunity Act (19 U.S.C. 3701 et seq.); and

11 (B) to include a link to the AGOA website
 12 on the websites of such diplomatic missions.

13 (b) AGOA FORUM.—After each meeting of the
 14 United States—Sub-Saharan Africa Trade and Economic
 15 Cooperation Forum, the President should publish on the
 16 AGOA website—

17 (1) the outcomes of the meeting of the Forum,
 18 including any commitments made by member coun-
 19 tries and the private sector; and

20 (2) an assessment of progress made with re-
 21 spect to any commitments made by member coun-
 22 tries and the private sector from the previous meet-
 23 ing of the Forum.

24 (c) OTHER INFORMATION.—The President should—

1 (1) disseminate the information required under
2 this section to the public in a digital format; and

3 (2) publish such information on the AGOA
4 website.

5 **SEC. 104. ACTIVITIES IN SUPPORT OF TRADE CAPACITY**
6 **BUILDING.**

7 The President should—

8 (1) develop and implement policies that—

9 (A) encourage and facilitate cross-bound-
10 ary cooperation among eligible sub-Saharan Af-
11 rican countries in order to facilitate trade; and

12 (B) encourage the provision of technical
13 assistance to eligible sub-Saharan African coun-
14 tries to establish and sustain adequate trade ca-
15 pacity development;

16 (2) provide specific training for businesses in el-
17 igible sub-Saharan African countries and govern-
18 ment trade officials of such countries on accessing
19 the benefits under the African Growth and Oppor-
20 tunity Act and other trade preference programs;

21 (3) provide capacity building for African entre-
22 preneurs and trade associations on production strat-
23 egies, quality standards, formation of cooperatives,
24 market research, and market development;

1 (4) provide capacity building training to pro-
 2 mote diversification of African products and value-
 3 added processing; and

4 (5) provide capacity building and technical as-
 5 sistance funding for African businesses and institu-
 6 tions to help such businesses and institutions comply
 7 with United States counter-terrorism initiatives and
 8 policies.

9 **TITLE II—MODERNIZATION OF**
 10 **THE MILLENNIUM CHAL-**
 11 **LENGE CORPORATION**

12 **SEC. 201. CANDIDACY STATUS.**

13 (a) LOW INCOME COUNTRIES.—Section 606(a) of the
 14 Millennium Challenge Act of 2003 (22 U.S.C. 7705(a))
 15 is amended—

16 (1) in paragraph (1)(B), by striking “(3)” and
 17 inserting “(4)”;

18 (2) in paragraph (2)—

19 (A) by amending the paragraph heading to
 20 read as follows: “FISCAL YEARS 2005 THROUGH
 21 2012”; and

22 (B) by striking “fiscal year 2005 or a sub-
 23 sequent fiscal year” and inserting “each of the
 24 fiscal years 2005 through 2012”;

1 (3) by redesignating paragraph (3) as para-
2 graph (4); and

3 (4) by inserting after paragraph (2) the fol-
4 lowing:

5 “(3) FISCAL YEAR 2013 AND SUBSEQUENT FIS-
6 CAL YEARS.—A country shall be a candidate country
7 for purposes of eligibility for assistance for fiscal
8 year 2013 or a subsequent fiscal year if the coun-
9 try—

10 “(A) has a per capita income not greater
11 than the lower middle income country threshold
12 established by the International Bank for Re-
13 construction and Development for such fiscal
14 year;

15 “(B) is among the 75 countries identified
16 by the International Bank for Reconstruction
17 and Development as having the lowest per cap-
18 ita income; and

19 “(C) meets the requirements under para-
20 graph (1)(B).”.

21 (b) LOWER MIDDLE INCOME COUNTRIES.—Section
22 606(b) of the Millennium Challenge Act of 2003 (22
23 U.S.C. 7705(b)) is amended—

24 (1) in paragraph (1)—

1 (A) by amending the paragraph heading to
2 read as follows: “FISCAL YEARS 2006 THROUGH
3 2012”; and

4 (B) in the matter preceding subparagraph
5 (A), by striking “fiscal year 2006 or a subse-
6 quent fiscal year” and inserting “each of the
7 fiscal years 2006 through 2012”;

8 (2) by redesignating paragraph (2) as para-
9 graph (3); and

10 (3) by inserting after paragraph (1) the fol-
11 lowing:

12 “(2) FISCAL YEAR 2013 AND SUBSEQUENT FIS-
13 CAL YEARS.—In addition to the countries described
14 in subsection (a), a country shall be a candidate
15 country for purposes of eligibility for assistance for
16 fiscal year 2013 or a subsequent fiscal year if the
17 country—

18 “(A) has a per capita income not greater
19 than the lower middle income country threshold
20 established by the International Bank for Re-
21 construction and Development for the fiscal
22 year;

23 “(B) is not among the 75 countries identi-
24 fied by the International Bank for Reconstruct-

3 “(C) meets the requirements under sub-
4 section (a)(1)(B).”.

(c) RECLASSIFICATION.—Section 606 of the Millen-
nium Challenge Act of 2003 (22 U.S.C. 7705) is amend-
ed—

8 (1) by redesignating subsection (c) as sub-
9 section (d); and

(2) by inserting after subsection (b) the following:

“(c) TREATMENT OF COUNTRIES WITH PER CAPITA INCOME CHANGES.—A country qualifying for candidate status under this section with a per capita income that changes during the fiscal year such that the country would be reclassified from a low income country to a lower middle income country or from a lower middle income country to a low income country shall retain its candidacy status in its former income classification for such fiscal year and the two subsequent fiscal years.”.

21 SEC. 202. CARRYOVER AUTHORITY FOR PRIVATE SECTOR
22 MEMBERS OF BOARD OF DIRECTORS.

Section 604(c)(4)(B) of the Millennium Challenge
Act of 2003 (22 U.S.C. 7703(c)(4)(B)) is amended to read
as follows:

“(B) OTHER MEMBERS.—Each member of
the Board described in paragraph (3)(B)—

“(i) shall be appointed for a term of
3 years;

“(ii) may be reappointed for a term of
an additional 2 years; and

“(iii) may continue to serve in each
such appointment until the earlier of—

“(I) the date on which his or her
successor is appointed; or

“(II) the date that is one year
after the expiration of his or her ap-
pointment or reappointment, as the
case may be.”.

**SEC. 203. ADDITIONAL REPORTING TO THE BOARD ON THE
TREATMENT OF CIVIL SOCIETY IN AN ELIGI-
BLE COUNTRY.**

Section 607 of the Millennium Challenge Act of 2003
(22 U.S.C. 7706) is amended—

(1) in subsection (b)(1)—

(A) in subparagraph (D), by striking
“and” at the end;

(B) in subparagraph (E), by adding “and”
at the end; and

(C) by adding at the end the following:

1 “(F) the quality of the civil society ena-
2 bling environment;”;

3 (2) by redesignating subsections (d) and (e) as
4 subsections (e) and (f), respectively; and

5 (3) by inserting after subsection (c) the fol-
6 lowing:

7 “(d) REPORTING ON TREATMENT OF CIVIL SOCI-
8 ETY.—Before the Board selects an eligible country for a
9 Compact under subsection (c), the Corporation shall pro-
10 vide information to the Board regarding the country’s
11 treatment of civil society, including classified information,
12 as appropriate. The information shall include an assess-
13 ment and analysis of factors, including—

14 “(1) any relevant laws governing the formation
15 or establishment of a civil society organization, par-
16 ticularly laws intended to curb the activities of for-
17 eign civil society organizations;

18 “(2) any relevant laws governing the operations
19 of a civil society organization, particularly those laws
20 seeking to define or otherwise regulate the actions of
21 foreign civil society organizations;

22 “(3) laws relating to the legal status of civil so-
23 ciety organizations, including laws which effectively
24 discriminate against foreign civil society organiza-

1 tions as compared to similarly situated domestic or-
 2 ganizations;

3 “(4) laws regulating the freedom of expression
 4 and peaceful assembly; and

5 “(5) laws regulating the usage of the Internet,
 6 particularly by foreign civil society organizations.”.

7 **SEC. 204. CONCURRENT COMPACTS UNDER THE MILLEN-**
 8 **NIUM CHALLENGE ACT OF 2003.**

9 (a) IN GENERAL.—Section 609 of the Millennium
 10 Challenge Act of 2003 (22 U.S.C. 7708) is amended—

11 (1) in subsection (k), by striking the first sen-
 12 tence;

13 (2) by redesignating subsection (k) as sub-
 14 section (l); and

15 (3) by inserting after subsection (j) the fol-
 16 lowing:

17 “(k) CONCURRENT COMPACTS.—An eligible country
 18 that has entered into and has in effect a Compact under
 19 this section may enter into and have in effect at the same
 20 time not more than one additional Compact in accordance
 21 with the requirements under this title if—

22 “(1) one or both of the Compacts are or will be
 23 for purposes of regional economic integration, in-
 24 creased regional trade, or cross-border collabora-
 25 tions; and

1 “(2) the Board determines that the country is
 2 making considerable and demonstrable progress in
 3 implementing the terms of the existing Compact and
 4 supplementary agreements thereto.”.

5 (b) CONFORMING AMENDMENT.—Section
 6 613(b)(2)(A) of such Act (22 U.S.C. 7712(b)(2)(A)) is
 7 amended by striking “the” before “Compact” and insert-
 8 ing “any”.

9 (c) APPLICABILITY.—The amendments made by this
 10 section shall apply with respect to Compacts entered into
 11 between the United States and an eligible country under
 12 the Millennium Challenge Act of 2003 before, on, or after
 13 the date of the enactment of this Act.

14 **SEC. 205. PUBLIC NOTIFICATION OF ENTERING INTO A**
 15 **COMPACT.**

16 Section 610 of the Millennium Challenge Act of 2003
 17 (22 U.S.C. 7709) is amended to read as follows:

18 **“SEC. 610. CONGRESSIONAL AND PUBLIC NOTIFICATION.**

19 “(a) CONGRESSIONAL CONSULTATIONS AND NOTIFI-
 20 CATIONS.—

21 “(1) IN GENERAL.—The Board, acting through
 22 the Chief Executive Officer, shall consult with and
 23 notify the appropriate congressional committees not
 24 later than 15 days before taking any of the actions
 25 described in paragraph (2).

1 “(2) ACTIONS DESCRIBED.—The actions de-
2 scribed in this paragraph are—

3 “(A) providing assistance for an eligible
4 country under section 609(g);

5 “(B) commencing negotiations with an eli-
6 gible country to provide assistance for—

7 “(i) a Compact under section 605; or

8 “(ii) an agreement under section 616;

9 “(C) signing such a Compact or agree-
10 ment; and

11 “(D) terminating assistance under such a
12 Compact or agreement.

13 “(3) ECONOMIC JUSTIFICATION.—Any notifica-
14 tion relating to the intent to negotiate or sign a
15 Compact shall include a report describing the pro-
16 jected economic justification for the Compact, in-
17 cluding, as applicable—

18 “(A) the expected economic rate of return
19 of the Compact;

20 “(B) a cost-benefit analysis of the Com-
21 pact;

22 “(C) a description of the impact on bene-
23 ficiary populations;

24 “(D) the likelihood that the investment will
25 catalyze private sector investments; and

1 “(E) any other applicable economic factors
2 that justify each project to be funded under
3 such a Compact to the extent practicable and
4 appropriate.

5 “(4) RISK MANAGEMENT PLAN.—Not later than
6 60 days before signing each concurrent Compact, as
7 authorized under section 609, the Board, acting
8 through the Chief Executive Officer, shall consult
9 with and provide to the appropriate congressional
10 committees—

11 “(A) an assessment and, as appropriate,
12 the identification of potential measures to miti-
13 gate risks, of—

14 “(i) the countries’ commitment to re-
15 gional integration and cross-border co-
16 operation and capacity to carry out com-
17 mitments;

18 “(ii) political and policy risks, includ-
19 ing risks that could affect country eligi-
20 bility;

21 “(iii) risks associated with realizing
22 economic returns;

23 “(iv) time and completion risks; and

24 “(v) cost and financial risks; and

1 “(B) an assessment of measures to be
2 taken to mitigate any identified risks, includ-
3 ing—

4 “(i) securing other potential donors to
5 finance projects or parts of projects as
6 needed; and

7 “(ii) partnering with regional organi-
8 zations to support and oversee effective
9 cross-border cooperation.

10 “(b) CONGRESSIONAL AND PUBLIC NOTIFICATION
11 AFTER ENTERING INTO A COMPACT.—Not later than 10
12 days after entering into a Compact with an eligible coun-
13 try, the Board, acting through the Chief Executive Officer,
14 shall—

15 “(1) publish the text of the Compact on the
16 Web Site of the Corporation;

17 “(2) provide the appropriate congressional com-
18 mittees with a detailed summary of the Compact
19 and, upon request, the text of the Compact; and

20 “(3) publish in the Federal Register a detailed
21 summary of the Compact and a notice of availability
22 of the text of the Compact on the Web Site of the
23 Corporation.”.

1 **SEC. 206. DISCLOSURE.**

2 (a) REQUIREMENT FOR TIMELY DISCLOSURE.—Sec-
3 tion 612(a) of the Millennium Challenge Act of 2003 (22
4 U.S.C. 7711(a)) is amended—

5 (1) in the subsection heading, by inserting
6 “TIMELY” before “DISCLOSURE”; and

7 (2) in the matter preceding paragraph (1)—

8 (A) by striking “The Corporation” and in-
9 serting “Not later than 90 days after the last
10 day of each fiscal quarter, the Corporation”;
11 and

12 (B) by striking “on at least a quarterly
13 basis,”.

14 (b) DISSEMINATION.—Section 612(b) of the Millen-
15 nium Challenge Act of 2003 (22 U.S.C. 7711(b)) is
16 amended to read as follows:

17 “(b) DISSEMINATION.—The Board, acting through
18 the Chief Executive Officer, shall make the information
19 required to be disclosed under subsection (a) available to
20 the public—

21 “(1) by publishing it on the website of the Cor-
22 poration;

23 “(2) by providing notice of the availability of
24 such information in the Federal Register; and

25 “(3) by any other methods that the Board de-
26 termines to be appropriate.”.

1 **SEC. 207. RESTRICTION ON THE USE OF ASSISTANCE**
2 **UNDER SECTION 616.**

3 Section 616(d) of the Millennium Challenge Act of
4 2003 (22 U.S.C. 7715(d)) is amended to read as follows:

5 “(d) FUNDING.—

6 “(1) LIMITATION.—Not more than 10 percent
7 of the amounts made available to carry out this Act
8 for a fiscal year may be made available to carry out
9 this section.

10 “(2) RESTRICTION RELATING TO ASSIST-
11 ANCE.—None of the funds authorized to carry out
12 the purposes of this Act shall be available for assist-
13 ance under this section to a country that does not
14 qualify as a candidate country under section 606 for
15 the fiscal year during which such assistance is pro-
16 vided.”.

17 **SEC. 208. STUDY ON SUBNATIONAL COMPACTS.**

18 (a) IN GENERAL.—Not later than 180 days after the
19 date of the enactment of this Act, the Board of the Millen-
20 nium Challenge Corporation, acting through the Chief Ex-
21 ecutive Officer, shall submit a study to the appropriate
22 congressional committees that assesses the feasibility and
23 desirability of developing partnerships at the subnational
24 level within candidate countries that would be complemen-
25 tary to, and, as applicable, concurrent with, any Millen-

1 nium Challenge Corporation national-level or regional in-
2 vestments.

3 (b) CONTENT.—The study required under subsection
4 (a) shall examine—

5 (1) the extent to which targeting investments at
6 the subnational level might provide new opportuni-
7 ties for reducing poverty through economic growth;

8 (2) the extent to which traditional approaches
9 to defining poverty may not adequately capture the
10 nature of poverty within a country;

11 (3) the types of subnational entities that might
12 be appropriate partners for subnational Millennium
13 Challenge Corporation compacts;

14 (4) how candidates for subnational partners
15 might best be identified; and

16 (5) what role each national government should
17 play in creating or implementing a subnational part-
18 nership.

19 (c) APPROPRIATE CONGRESSIONAL COMMITTEES.—
20 In this section, the term “appropriate congressional com-
21 mittees” means—

22 (1) the Committee on Foreign Relations of the
23 Senate;

24 (2) the Committee on Appropriations of the
25 Senate;

1 (3) the Committee on Foreign Affairs of the
2 House of Representatives; and

3 (4) the Committee on Appropriations of the
4 House of Representatives.

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