

FY 2019 Statutory Checklists

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I. INTRODUCTION

The following checklists are intended to be convenient references when planning and implementing foreign 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. It is also important to note that, in addition to the statutory restrictions set forth in the checklists, there may also be certain requirements that must be met prior to the obligation of funds (e.g., spend plan or reporting requirements) or executive policies that must be considered during planning and implementation (e.g., Protecting Life in Global Health Assistance). **With regard to the applicability of a particular checklist item, please consider whether there is any factual information since completion of the FY 2018 Statutory Checklist that may trigger application of a restriction to the country or activity in FY 2019. Contact the listed point of contact, the USAID country desk officer, or the GC attorneys assigned to your Bureau or Mission, as applicable.**

Please see ADS 201mad, Legal Requirements Summary Checklist, to determine when a checklist should be prepared. In completing 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 FY19 Economic Support Fund (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 2019 Consolidated Appropriations Act, 2019, Division F of P.L. 116-6 (the Act or FY 2019 Act). Please note that the Country Checklist does not list every statutory or regulatory provision applicable to a particular country.

- **Activity Checklist**

The Activity Checklist has the activity specific provisions of the FAA and the FY 2019 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 activities and disease programs including activities relating to HIV/AIDS (FY 2019 Act, Sec. 7058). Please note that these health-related notwithstanding authorities do not cover family planning activities.
3. Non-governmental organizations and P.L. 480 (FY 2019 Act, Sec. 7027).
4. Funds appropriated under the heading Complex Crises Fund to support programs and activities to prevent or respond to emerging or unforeseen foreign challenges and complex crises overseas. These funds are made available notwithstanding any other provision of law, except sections 7007, 7008, and 7018 of the Act and section 620M of the FAA (FY 2019 Act, Title III).
5. Funds appropriated in Titles III and VI that are made available for victims of war; displaced children; displaced Burmese; and victims of trafficking in persons and combating trafficking (FY 2019 Act, Sec. 7034(a)).
6. ESF Funds made available by the Act to counter extremism are made available notwithstanding any other provision of law restricting assistance to foreign countries, except sections 520B and 620A of the FAA (FY 2019 Act, Sec. 7034(k)).
7. Assistance from all accounts for "democracy programs" (programs that support good governance; credible and competitive elections; freedom of expression, association, assembly, and religion; human rights; labor rights; independent media and the rule of law and that otherwise strengthen the capacity of democratic political parties, governments, nongovernmental organizations and institutions, and citizens to support the development of democratic states, and institutions that are responsive and accountable to citizens). (FY 2019 Act, Sec. 7032(b)-(c)). Note that the FY 2019 Statement of Managers directs that the democracy program notwithstanding authority should only be used for activities attributed to the democracy programs earmark.
8. Funds appropriated by the Act for assistance for Egypt are made available notwithstanding other provision of law restricting assistance for Egypt, except for section 7041(a) of the Act and section 620M of the FAA (FY 2019 Act, Sec. 7041(a)(1)).

9. ESF, International Narcotics Control and Law Enforcement (INCLE) and Peacekeeping Operations funds appropriated by the Act for non-lethal assistance for certain Syria programs (FY 2019 Act, Sec. 7041(i)(1)).
10. ESF funded assistance for Burma (FY 2019 Act, Sec. 7043(a)(1)(A)).
11. Funds appropriated under Titles III through VI for assistance for Afghanistan (limited notwithstanding authority only for loan defaults under section 7012 of the FY 2019 Act or any similar provision of law (i.e., section 620(q) of the FAA) and section 660 of the FAA) (FY 2019 Act, Sec. 7044(a)(2)(A)(i)).
12. Funds appropriated by the Act for assistance for Pakistan may be made available notwithstanding any other provision of law, except for section 620M of the FAA (FY 2019 Act, Sec. 7044(c)(3)(A)).
13. ESF funds for assistance for Afghanistan and Pakistan may be provided notwithstanding any other provision of law that restricts assistance to foreign countries for cross border stabilization and development programs between Afghanistan and Pakistan or between either country and the Central Asian countries (FY 2019 Act, Sec. 7044(e)(1)).
14. Funds appropriated by the Act to carry out the provisions of sections 103 through 106, and Chapter 4 of Part II, of the FAA may be used to support environment programs notwithstanding any other provision of law, except for subsection 7060(c) (FY 2019 Act, Sec. 7060(c)(1)(A)).
15. Funds appropriated under Title III of the Act for basic education and higher education activities may be made available notwithstanding any other provision of law that restricts assistance to foreign countries (FY 2019 Act, Sec. 7060(a)(1)(A) and (a)(2)).
16. Title II Emergency Programs (P.L. 480, Sec. 202(a)).
17. Activities carried out pursuant to Section 103, 103A and Title XII of Chapter 2 of part I, and chapter 4 of part II of the FAA to prevent or address food shortages (P.L. 114-195, Sec. 6(a)).
18. Funds appropriated under the ESF account heading may be made available notwithstanding any other provision of law for assistance for ethnic and religious minorities in Iraq and Syria (FY 2019 Act, Sec. 7033(d)).

II. COUNTRY CHECKLIST

This checklist is meant to capture general country-level restrictions and should be completed for a country (rather than activity).

1. **NARCOTICS CERTIFICATION.** (Sec. 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228) (FRAA), September 30, 2002). As a result of Presidential Determination No. 2018-12, Fed. Reg. 83 FR 50239 (Sept. 11, 2018) (See: <https://www.govinfo.gov/content/pkg/FR-2018-10-04/pdf/2018-21806.pdf>) the narcotics certification applies to Bolivia and Venezuela. Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela were identified as “major drug transit or major illicit drug producing” countries. Of these countries, the President determined that Bolivia and Venezuela had “failed demonstrably” during the last 12 months to adhere to international counternarcotic agreements and to take counternarcotic measures set forth in U.S. law. The President has issued a national interest waiver so that the U.S. may continue to support programs to aid Venezuela in the promotion of democracy.

For FY 2019, this restriction applies to Bolivia. It also applies to Venezuela with respect to any programs that are not for the promotion of democracy in Venezuela.

Is this applicable? Please comment.

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

Is this applicable? Please comment.

3. **SEIZURE OF U.S. PROPERTY.** (Sec. 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 03/15/2019, no country is subject to this restriction.

Is this applicable? Please comment.
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- 4. **SPECIFIC COUNTRIES.** (FAA Secs. 620(a) and 620(f); FY 2019 Act, Sec. 7007). Assistance is specifically prohibited in the FY 2019 Act to Cuba, Iran, North Korea, and Syria. (Note: The restriction in Sec. 7007 applies only to the governments of the four listed countries; Sec. 7043(d)(4)(c) further restricts ESF funds to the government of North Korea.)

Is this applicable? Please comment.
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- 5. **LOAN DEFAULT.** (FAA Sec. 620(q); FY 2019 Act, Sec. 7012 (Brooke Amendment); See ADS 623). Under section 620(q), absent a waiver, assistance is prohibited to any country after six months of default on the interest or principal of any FAA loan. Under the Brooke Amendment, absent a waiver, assistance is prohibited only to the government of any country under section 7012 after the default on the interest or principal of any U.S. foreign assistance loan for more than one calendar year.

The 620(q) and Brooke Amendment reports can be found on the USAID intranet at <https://pages.usaid.gov/M/CFO/washington-financial-services-m-cfo-wfs>

[Contact: USAID/M/CFO/WFS/Credit Team, Mai-Tran Tran: mtran@usaid.gov]

Is this applicable? Please comment.
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- 6. **DIPLOMATIC RELATIONS WITH U.S.** (FAA Sec. 620(t)). Assistance is prohibited to any country with which diplomatic relations have been severed unless (1) diplomatic relations have been resumed and (2) agreements for the furnishing of assistance have been negotiated and entered into after the resumption of diplomatic relations.

Is this applicable? Please comment.
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- 7. **INTERNATIONAL TERRORISM.** (FY 2019 Act, Sec. 7021(b); FAA Secs. 620A, 620G). Assistance is prohibited to a recipient country if the Secretary of State has determined that such country has repeatedly provided support for

international terrorism (Sec. 620A). As of 03/15/19, Iran, North Korea, Sudan, and Syria have been determined to be countries whose governments have repeatedly provided support for acts of international terrorism.

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

Assistance is prohibited to a recipient government if the President has determined it has: (1) granted sanctuary from prosecution to any individual or group which has committed an act of international terrorism; (2) otherwise supports international terrorism; or (3) is controlled by an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act (Sec. 7021(b)). Restriction applies to funds appropriated in this Act and prior fiscal years.

The President has authority to waive sections 620A and 7021(b) for national security interests or (subject to certain restrictions) humanitarian reasons and to waive section 620G for assistance in the national interest.

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.
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8. **EXPORT OF LETHAL MILITARY EQUIPMENT TO TERRORIST STATES.** (FY 2019 Act, Sec. 7021(a); FAA Sec. 620H). Absent a waiver by the Secretary or Deputy Secretary of State on national interest grounds, assistance is prohibited to a government that provides lethal military equipment to a government which the Secretary of State has determined supports international terrorism.

[Contact: State counterpart desk officer.]

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

Is this applicable? Please comment.
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10. **NUCLEAR TECHNOLOGY.** (Arms Export Control Act (P.L. 90-629) Secs. 101, 102)

- (a) Absent special certification by the President, assistance is prohibited if the recipient country has either delivered or received from any other

country nuclear enrichment or reprocessing equipment, materials, or technology, without specified arrangements or safeguards any time after August 3, 1977.

- (b) Absent special certification by the President, assistance is prohibited if the recipient country has, on or after June 30, 1994:
 - (1) transferred a nuclear explosive device or components or design information for such a device to a non-nuclear weapon state,
 - (2) detonated a nuclear explosive device (if the country is a non-nuclear weapon state),
 - (3) received a nuclear explosive device or components or design information for such a device (if the country is a non-nuclear weapon state), or
 - (4) exported (or attempted to export) illegally from the U.S. any material, equipment, or technology that would contribute significantly to the ability of a country to manufacture a nuclear explosive device.

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

11. **MILITARY COUP D'ÉTAT OR DECREE.** (FY 2019 Act, Sec. 7008). Assistance is prohibited to the government of a country where the duly elected head of government has been deposed by military coup d'état or decree, or by a coup d'état or decree in which the military plays a decisive role, unless the Secretary of State has certified and reported to Congress that a democratically elected government has taken office. The restriction does not apply to assistance to promote democratic elections or public participation in democratic processes.

As of 03/15/19, the coup restriction applies to the governments of Sudan and Thailand. No assistance can be provided for Sudan or Thailand that would be inconsistent with the applicability of this restriction. Note: Assistance is provided for the Government of Egypt only to the extent it is consistent with the military coup restriction.

Is this applicable? Please comment.

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

Is this applicable? Please comment.

13. **TAXATION OF UNITED STATES ASSISTANCE** (FY 2019 Act, Sec. 7013(a)-(b)). Absent a Secretary of State waiver, assistance is prohibited to a foreign country under a new bilateral agreement, unless such new agreement includes a provision that assistance provided by the United States shall be exempt from taxation, or reimbursed by the foreign government. If taxes are collected and have not been reimbursed, 200 percent of the total taxes assessed during FY 2019 shall be withheld from obligation from funds appropriated for assistance for FY 2020 and prior fiscal years and allocated for the central government of the applicable foreign country.

As part of the OYB process, F will adjust country levels by the amounts owed. **No action required** by country desk.

[Contact: Check with Bureau budget office.]

Is this applicable? Please comment.

14. **PARKING FINES AND REAL PROPERTY TAXES.** (FY 2019 Act, Sec. 7053). Assistance to a recipient country must be reduced by 110 percent of the amount of unpaid parking fines and property taxes owed by the central government of a country to the District of Columbia and New York City.

As part of the OYB process, F will adjust country levels by the amounts owed. **No action required** by country desk.

[Contact: Check with Bureau budget office.]

Is this applicable? Please comment.

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

Is this applicable? Please comment.

16. **ASSISTANCE TO CUBA.** (LIBERTAD Act Sec. 111(b), P.L. 104-114; FAA Sec. 620(y), as amended by section 2810 of FY 98/99 Foreign Relations Authorization Act, P. L. 105-277.)

- (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, unless an exception applies.
- (b) Assistance to a recipient country must be reduced by an amount equal to the aggregate value of nuclear fuel related assistance and credits provided by that country to Cuba during the preceding fiscal year, unless Cuba:
 - (1) has ratified the Treaty on the Non-Nuclear Proliferation of Nuclear Weapons or the Treaty of Tlatelolco and Cuba is in compliance therewith;
 - (2) has negotiated and is in compliance with full-scope safeguards of the International Atomic Energy Agency not later than two years after ratification by Cuba of such treaty; and
 - (3) incorporates and is in compliance with internationally accepted nuclear safety standards.

Is this applicable? Please comment.

17. **HUMAN RIGHTS VIOLATIONS.** (FAA Secs. 116 and 502B). If the government of a country is determined to have engaged in a consistent pattern of gross violations of internationally recognized human rights, then FAA sections 116 and 502B will be triggered. Section 116 restricts assistance under FAA Part I (Development Assistance (DA), Global Health Programs (GHP), Democracy Fund, etc.), including ESF assistance, to that government, unless the assistance will directly benefit the needy. Section 502B restricts ESF (and other security assistance) to the relevant country (there are some available mechanisms for continuing such assistance to the extent consistent with section 116).

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

18. **TRAFFICKING IN PERSONS (TIP).** (22 USC 7107). Is the country's government subject to restrictions on assistance because it does not fully comply with the minimum standards for combating trafficking in persons under the Trafficking Victims Protection Act? The State Department's 2018 Trafficking in Persons Report (applicable to obligations during FY 2019) placed 22 countries on Tier 3: Belarus, Belize, Bolivia, Burma, Burundi, China (PRC), Comoros, Democratic Republic of Congo, Republic of Congo, Equatorial Guinea, Eritrea, Gabon, Iran,

North Korea, Laos, Mauritania, Papua New Guinea, Russia, South Sudan, Syria, Turkmenistan, and Venezuela. The November 29, 2018 Presidential Determination (PD) pertaining to obligations during FY 2019 provided a partial waiver for Eritrea and Papua New Guinea, as well as a full waiver for Belarus and Turkmenistan.

If you are planning to obligate funds (or sub-obligate funds out of a DOAG) during FY 2019 (regardless of when the funds were appropriated) for assistance to the government of any Tier 3 country other than Belarus, Eritrea, Papua New Guinea, or Turkmenistan, please check with GC or your RLO for further guidance.

[Contact: your RLO or AGC.]

Is this applicable? Please comment.

- 19. EXTRADITION OF INDIVIDUALS ACCUSED OF KILLING A LAW ENFORCEMENT OFFICER.** (FY 2019 Act, Sec. 7068). Assistance is prohibited to the central government of a country that has refused to extradite to the United States any individual indicted for a criminal offense for which the maximum penalty is life imprisonment without the possibility of parole or for killing a law enforcement officer. This restriction does not apply to International Disaster Assistance (IDA), Complex Crises Fund (CCF), INCLE, Migration and Refugee Assistance, Emergency Refugee and Migration Assistance Fund and Nonproliferation, Anti-Terrorism, Demining and Related Programs (NADR) funds. This restriction applies to central governments with which the United States maintains diplomatic relations and with which the United States has an extradition treaty and the government of that country is in violation of that treaty. The Secretary may waive this restriction, on a case-by-case basis, if it is important to the national interests of the United States

Posts are advised to consult with State/L/LEI on any extradition cases of potential concern of which they may be aware.

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

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

defined by Article IX (3) of the Treaty on the Non-Proliferation of Nuclear Weapons (July 1, 1968).

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

21. **ANNEXATION OF CRIMEA OR OTHER TERRITORY IN UKRAINE.** (FY 2019 Act, Sec. 7047(b)). Section 7047(b)(1) of the Act provides that none of the funds appropriated by the Act may be made available for assistance for the central government of a country that the Secretary of State determines and reports to the Committees on Appropriations has taken affirmative steps intended to support or be supportive of the Russian Federation’s annexation of Crimea or other territory in Ukraine. The Secretary of State may waive this restriction upon a certification to the Committees on Appropriations that to do so is in the national interest of the United States and includes a justification for such interest. The restriction in Section 7047(b) on assistance for the central government of a country relating to support of the Russian Federation annexation of Crimea extends to the annexation of “other territory in Ukraine.” This also applies to the current restriction on the use of funds that would support Russian influence in Crimea.

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

22. **RESTRICTION ON ASSISTANCE FOR CENTRAL GOVERNMENTS SUPPORTING THE OCCUPATION OF GEORGIAN TERRITORY.** (FY 2019 Act, Sec. 7047(c)(1)). Section 7070(c)(1) of the Act provides that none of the funds appropriated by the Act may be made available for assistance for the central government of a country that the Secretary of State determines and reports to the Committees on Appropriations has recognized the independence of, or has established diplomatic relations with, the Russian occupied Georgian territories of Abkhazia and Tskhinvali Region/South Ossetia. The Secretary must publish a list of any such central governments in a “timely manner”. The Secretary of State may waive this restriction upon a certification to the Committees on Appropriations that to do so is in the national interest of the United States and includes a justification for such interest.

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

23. **Direct Government-to-Government (G2G) Assistance.** (FY 2019 Act, Sec. 7031(a)). If direct G2G assistance (See ADS 220 for definition) is contemplated,

the following country-level eligibility requirement must be met (as assessed under an inter-agency process): The government of the country is--

- (a) taking steps to publicly disclose on an annual basis its national budget, to include income and expenditures;
- (b) in compliance with the principles of section 7013 of the SFOAA regarding taxation of assistance [i.e., the government appropriately exempts assistance from taxation]; and
- (c) taking steps to protect the rights of civil society, including the freedom of association, expression and assembly.

This determination is made through joint coordination between USAID and State and recorded in an annual information memorandum issued by State/F.

See item 20 under the Activity Checklist for the full list of direct G2G pre-obligation requirements. This Country Checklist item is only applicable if direct G2G assistance is planned. Please indicate affirmatively or negatively whether Government-to-Government assistance is contemplated in the coming year.

<p>Is direct G2G contemplated for this country during this fiscal year? Please comment.</p>
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III. ACTIVITY CHECKLIST

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

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

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

PART A. PLANNING

1. **CHINA’S PEOPLE’S LIBERATION ARMY.** (FY 2019 Act, Sec. 7043(e)(2)). None of the funds appropriated or otherwise made available pursuant to the FY 2019 Act may be used to finance any grant, contract, or cooperative agreement with the People’s Liberation Army (PLA) of the People’s Republic of China, or any entity that the Secretary of State has reason to believe is owned or controlled by, or an affiliate of, the PLA.

Also, the terms and requirements of FAA Sec. 620(h) apply to foreign assistance projects or activities of the PLA, including entities that are owned or controlled by, or an affiliate of, the PLA. That is, foreign assistance should not be used in a manner which, contrary to the best interests of the U.S., promotes or assists PLA projects or activities.

Is this applicable? Please comment.

2. **ADVERSE ECONOMIC IMPACT UPON THE UNITED STATES.**
- (a) **IMPACT ON U.S. JOBS: RELOCATION; EXPORT ZONES; VIOLATION OF WORKERS' RIGHTS.** (FY 2019 Act, Sec. 7062; See ADS 225). Funds may not provide:

- (1) any financial incentive to a business currently located in the U.S. for the purpose of inducing such an enterprise to relocate outside the U.S. if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States;
- (2) assistance for any program, project, or activity that contributes to the violation of internationally recognized workers’ rights, as defined in section 507(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone or area in that country; or
- (3) any assistance to an entity outside the United States if such assistance is for the purpose of directly relocating or transferring jobs from the United States to other countries and adversely impacts the labor force in the United States.

Is this applicable? Please comment.

- (b) **PRODUCTION OF SURPLUS COMMODITIES.** (FY 2019 Act, Sec. 7025(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 at the time the resulting productive capacity is expected to become operative and substantial injury will be caused to U.S. producers

of the same, similar, or competing commodities except for activities in a country that:

- (1) is eligible for assistance from the International Development Association, is not eligible for assistance from the International Bank for Reconstruction and Development, and does not export on a consistent basis the agricultural commodity with respect to which assistance is furnished; or
- (2) the President determines is recovering from widespread conflict, a humanitarian crisis, or a complex emergency.

Operating units should consult with their RLO or AGC and the Bureau for Economic Growth, Education, and Environment before relying upon the exceptions noted above.

Is this applicable? Please comment.
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3. AGRICULTURAL ACTIVITIES (BUMPERS AMENDMENT). (FY 2019 Act, Sec. 7025(b)).

No development assistance funds may be used for any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which 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;
- (b) is a research activity intended primarily to benefit American producers;
- (c) is in a country eligible for assistance from the International Development Association, is not eligible for assistance from the International Bank for Reconstruction and Development, and does not export on a consistent basis the agricultural commodity with respect to which assistance is furnished; or
- (d) is in a country the President determines is recovering from widespread conflict, a humanitarian crisis, or a complex emergency.

Operating units should refer to USAID Policy Determination (PD) #15 (available at: https://pdf.usaid.gov/pdf_docs/pnaav460.pdf) and consult with their RLO or AGC and the Bureau for Food Security before relying upon the exceptions noted above.

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

Is this applicable? Please comment.

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. CORs/AORs remain responsible for ensuring compliance with all 22 CFR 216 requirements.

Is this applicable? 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 undegraded 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.

- (d) **INDUSTRIAL SCALE LOGGING.** (FY 2019 Act, Sec. 7060(c)(2)(D)). Funds appropriated for biodiversity programs shall not be used to support the expansion of industrial scale logging or any other extractive activity into areas that were primary/intact tropical forest as of December 30, 2013.

Is this applicable? Please comment.

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

Is this applicable? Please comment.

- 7. **RESTRICTIONS ON ABORTIONS AND INVOLUNTARY STERILIZATIONS.**¹ (FAA Sec. 104(f); FY 2019 Act, Sec. 7018 and "Global Health Programs" account heading). Funds may not be used:

¹ Note that Protecting Life in Global Health Assistance, which is executive policy rather than a statutory requirement, may also be applicable. The Protecting Life in Global Health Assistance policy requires foreign non-governmental organizations to agree, as a condition of receiving global health assistance (as defined in the Protecting Life in Global Health Assistance Policy), that they will not perform or actively promote abortion as a method of family planning. While the statutory abortion restrictions apply to all foreign assistance funds, the policy applies to foreign non-governmental organizations that receive global health assistance.

- (1) to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions;*
- (2) to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations;
- (3) to pay for any biomedical research that relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.;
- (4) to furnish assistance to any country or organization if the President certifies that the use of these funds by such country or organization would violate the three provisions set forth above in (1)-(3);
- (5) to lobby for or against abortion; or
- (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.

* Note: For purposes of the FY 2019 Act or any other Act authorizing or appropriating funds for the Department of State, foreign operations, and related programs, the term “motivate”, as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

Is this applicable? Please comment.

8. VOLUNTARY FAMILY PLANNING SUPPORT. (FY 2019 Act, "Global Health Programs" account heading). 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 include payment of incentives, bribes, gratuities, or financial rewards to an individual in exchange 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 participate in any program of general welfare or right of access to health care, as a consequence of any individual's decision not to accept family planning services;
 - (d) The project must provide family planning acceptors 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 FAA no applicant may be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and additionally, all such applicants must comply with the requirements set forth above under (1).

Is this applicable? Please comment.

9. **HIV/AIDS.**

- (a) **MEDICALLY ACCURATE INFORMATION ON CONDOMS.** (FY 2019 Act, "Global Health Programs" account heading). Information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated under the FY 2019 Act shall be medically accurate.* Such information must be consistent with USAID's fact sheet entitled, "Condom Fact Sheet", which may be accessed at: <https://www.usaid.gov/sites/default/files/documents/1864/condomfactsheet.pdf>.

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

Is this applicable? Please comment.

(b) **CONSCIENCE CLAUSE.** (Sec. 301(d) of the U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, as amended (P.L. 108-25) (Leadership Act), See AAPD 14-04). An organization, including a faith-based organization, that is otherwise eligible to receive FY 2004 or later funds for HIV/AIDS prevention, treatment, or care

(1) shall not be required, as a condition of receiving the assistance:

- a. to endorse or utilize a multisectoral (i.e., ABC) or comprehensive approach to combating HIV/AIDS; or
- b. to endorse, utilize, make a referral to, become integrated with or otherwise participate in any program or activity to which the organization has a religious or moral objection; and

(2) shall not be discriminated against in the solicitation or issuance of grants, contracts, or cooperative agreements under such provisions of law for refusing to meet any requirement described in paragraph (1).

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

(c) **PROSTITUTION AND SEX TRAFFICKING – LIMITATION ON USE OF FUNDS.** (Leadership Act, Sec. 301(e)). FY 2004 or later 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.

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

(d) **PROSTITUTION AND SEX TRAFFICKING – ORGANIZATIONAL ELIGIBILITY.** (Leadership Act, Sec. 301(f); FY 2004 Act, Sec. 595 and Statement of Managers, See AAPD 14-04). Any non-U.S. NGO or PIO receiving FY 2004 or later funds for HIV/AIDS activities must have a policy explicitly opposing prostitution and sex trafficking. This requirement is the subject of a litigation, including a Supreme Court Decision, and is thus only applicable to certain non-exempt non-U.S. organizations. Please contact your cognizant RLO or GC/GH if you have any questions regarding application of this requirement. 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.

10. **INTERNATIONAL CONFERENCES.** (FY 2019 Act, Sec. 7048(e)), See ADS 350maa: Guidance on Funding Foreign Government Delegations to International Conferences, Mandatory Reference to ADS 350). Funds made available to carry out Chapter 1 of Part I of the FAA (e.g. GHP, DA) 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. This restriction does not apply to ESF, Transition Initiatives, CCF or IDA funds.

Is this applicable? Please comment.

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

Is this applicable? Please comment.

12. **LOANS.**

- (a) (FAA Sec. 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 interests.

Is this applicable? Please comment.
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13. **POLICE AND PRISONS.** (FAA Sec. 660(a)). Assistance may not be used to provide training, advice, or any financial support for police, prisons, or other law enforcement forces (see exceptions, including those in sections 660(b), 119 and 534 of the FAA; section 536 of the FY 2004 Act (permanent provision of law); sections 7044(a)(2)(A)(i) (only with regard to Afghanistan), 7049(b)(1) (extends FAA 660(b)(6) to regional activities), 7049 (community-based police assistance), 7049(b)(3) (prison conditions), and 7067(b)) (assistance to eliminate torture) of the FY 2019 Act).

Is this applicable? Please comment.
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14. **PUBLICITY, PROPAGANDA, AND LOBBYING.** (FY 2019 Act, Sec. 7055; 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. There are some exceptions to this general rule; please consult your RLO or AGC.

Is this applicable? Please comment.
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15. **SECURITY FORCES.** (FAA Sec. 620M). Assistance may not be provided to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights. "Security forces" are understood to be members of the law enforcement community or the military. Prison guards, customs police, border police, and tax police would be examples of persons included in the category. State Department implementation guidance requires that the Post and Washington vet security force units or individuals prior to the provision of SFOAA-funded training or assistance.

See State Department Leahy Vetting Guide (2017).

Is this applicable? Please comment.

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

Is this applicable? Please comment.

17. **FOREIGN ASSETS CONTROL REGULATIONS.** Proposed activities cannot result in a payment or benefit to, or transaction with, any group or individual subject to economic or trade sanctions administered by the Department of Treasury Office of Foreign Assets Control (OFAC), or any entity controlled by the same. Sanctions regimes include those against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. See OFAC website: <http://www.ustreas.gov/ofac/>. If sanctions would otherwise preclude proposed activities, has OFAC issued a license authorizing the activities?

[Contact: USAID/GC: Harold Cohen, AGC/DCHA-BFS at hcohen@usaid.gov]

Is this applicable? Please comment.

18. **TOBACCO.** (FY 2019 Act, Sec. 7010(c)). Funds made available in the FY 2019 Act may not be used to “promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.” The longstanding limitation in section 7010(c) restricting use of funds to support the sale or export of tobacco or tobacco products is modified from being a mandatory restriction (“shall”) to hortatory (“should”).

Is this applicable? Please comment.

19. **PRIOR APPROVAL BY HOST GOVERNMENT.** (FY 2019 Act, Sec. 7032(e)). With respect to assistance for democracy, human rights, and governance activities

under the Act, the organizations implementing such assistance, the specific nature of that assistance, and the participants in such programs shall not be subject to the prior approval by the government of any foreign country.

Is this applicable? Please comment.

20. GOVERNMENT-TO-GOVERNMENT ASSISTANCE. (FY 2019 Act, Sec. 7031(a)). Funds appropriated by the Act may be made available for direct Government-to-Government (G2G) assistance only if the requirements below are met:

- (a)
 - (1) each implementing agency or ministry to receive assistance has been assessed and is considered to have the systems required to manage such assistance and identified vulnerabilities or weaknesses of such agency or ministry have been addressed; and
 - (2) the recipient agency or ministry employs and utilizes staff with the necessary technical, financial, and management capabilities;
 - (3) the recipient agency or ministry has adopted competitive procurement policies and systems;
 - (4) effective monitoring and evaluation systems are in place to ensure that such assistance is used for its intended purposes;
 - (5) no level of acceptable fraud is assumed; and
 - (6) the government of the recipient country is taking steps to publicly disclose on an annual basis its national budget, to include income and expenditures;
- (b) the government of the recipient country is in compliance with the principles in section 7013 of the Act;
- (c) the recipient agency or ministry is not headed or controlled by an organization designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act;
- (d) the Government of the United States and the government of the recipient country have agreed in writing on clear and achievable objectives for the use of such assistance, and that such assistance should be made on a cost-reimbursable basis; and
- (e) the government of the recipient country is taking steps to protect the rights of civil society, including freedoms of association, expression and assembly.

Note, criteria listed in (a)(6), (b), and (e) in the above section are also noted in Country Checklist, item 23.

Funds may not be used for any foreign country for debt service payments owed by any country to any international financial institution, as defined by section 7034(r)(3) of the Act (Sec. 7031(a)(6)).

Is this applicable? Please comment.

21. **MILITARY ASSISTANCE.** (FAA Sec. 531(e), and "specific/general" rule of appropriations law). Congress has explicitly provided that ESF funds may not be used for military or paramilitary purposes (e.g., combat training programs and exercises). Furthermore, the "specific/general" principle also prohibits other USAID economic assistance from being used primarily for military purposes. Whether a particular proposed activity could constitute impermissible military assistance is generally an issue requiring fact-specific legal review, and program staff who require clarification should contact GC or the responsible RLO for more information on this restriction.

Is this applicable? Please comment.

22. **CULTURAL PRESERVATION.** (FY 2019 Act, Sec. 7034(i)). None of the funds appropriated in titles I and III of the Act may be used for the preservation of religious sites unless the Secretary of State or USAID Administrator determines and reports to the Committees on Appropriations that such sites are historically, artistically or culturally significant, that the purpose of the project is neither to advance nor to inhibit the free exercise of religion, and that the project is in the national interest of the United States.

Is this applicable? Please comment.

23. **UNITED NATIONS DELEGATIONS AND CONTRIBUTIONS.** (FY 2019 Act, Sec. 7048(b)). Absent a waiver by the Secretary of State, none of the funds made available by the Act may be used to pay expenses for any United States delegation to any specialized agency, body or commission of the United Nations, or as a contribution to any organization, agency, commission, or program within the United Nations system, if such entity is chaired or presided over by a country that the Secretary of State has determined supports international terrorism.

Is this applicable? Please comment.

24. **RESTRICTION ON GOVERNMENTS SUPPORTING NORTH KOREAN ACTIONS.** (FY 2019 Act, Sec. 7043(d)(1)). A restriction on assistance for the central government of a country that the Secretary determines and reports to the appropriate congressional committees engages in "significant transactions

contributing materially to the malicious cyber-intrusion capabilities of the Government of North Korea.” The Secretary may waive the application of this restriction if it is determined to be important to the national security interests of the United States.

Is this applicable? Please comment.
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PART B. CONGRESSIONAL NOTIFICATIONS

1. **GENERAL NOTIFICATION.** (FY 2019 Act, Sec. 7015; FAA Sec. 634A). Obligations must be notified to Congress. This is traditionally accomplished through the annual Congressional Presentation. Post FAA 653(a) country/bureau narratives will provide a second opportunity to notify activities after 653(a) levels have been negotiated with Congress and may also be a vehicle to meet Special Notification requirements. Additionally, unless otherwise provide by the SFOAA, a new Congressional Notification must be submitted 15 days in advance of the obligation if the amount of the additional funding for a country increases by 10 percent the amount previously notified for the country from the relevant account.

Is this applicable? Please comment.
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2. **SPECIAL NOTIFICATION.** For activities, countries, and other actions requiring special notification as a result of the FY 2019 Act see the attached Annex GC memo, paragraph 1. (Note that per section 7015(c) of the FY 2019 Act reliance on notwithstanding authority known at the time of submission of the CN for a special notification country per section 7015(f) must be mentioned in such special notification.) For a full list of special notification requirements, including those contained in other statutes, refer to the Legal References for CNs Annex to the CBN guidance, distributed by F.

Is this applicable? Please comment.
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PART C. OBLIGATING DOCUMENTS

1. **SOURCE AND NATIONALITY.** (See ADS 310 and ADS 312).
 - (a) **GENERAL.** (FAA Sec. 604(a); 22 C.F.R. Sec. 228). All procurement must be from the U.S., the recipient country or developing countries², except as otherwise determined in accordance with Agency rules, including the DFA

² 22 CFR 228 contains a definition of “developing countries” and “advanced developing countries.” ADS 310 has a current list of both developing countries (See ADS 310maa) and advanced developing countries.

Procurement Guidance and procurement authorities for the New Independent States (NIS). If planning a procurement elsewhere, a waiver must be obtained.

Is this applicable? Please comment.

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

Is this applicable? Please comment.

- (c) **AGRICULTURAL PROCUREMENT.** (FAA Sec. 604(c) and (e)). Agricultural commodities and products thereof must be procured within the U.S. under certain circumstances. This restriction applies, insofar as it is practicable and in furtherance of the FAA, to any commodity or product thereof available through Food for Peace. This restriction also applies when the domestic price of the commodity or product thereof is less than parity, unless it could not be reasonably produced in the U.S. in fulfillment of the particular assistance program. Waivers are available in some circumstances.

Is this applicable? Please comment.

- (d) **CONSTRUCTION OR ENGINEERING SERVICES.** (FAA Sec. 604(g)). No engineering or construction services may be procured from advanced developing countries³ eligible under Code 941 that have attained competitive capability in international markets, *unless*:
- (1) The advanced developing country is receiving direct economic assistance under the FAA, and
 - (2) Its own assistance program would permit U.S. firms to compete for similar services.

Is this applicable? Please comment.

³ 22 CFR 228 contains a definition of “developing countries” and “advanced developing countries.” ADS 310 has a current list of both developing and advanced developing countries.

2. **CASH TRANSFERS – REQUIREMENT FOR SEPARATE ACCOUNT.** (FY 2019 Act, Sec. 7026(b)). If assistance is in the form of a cash transfer or nonproject sector assistance, all such cash payments must be maintained by the country in a separate account and not commingled with any other funds (unless such requirements are waived by Congressional notice for nonproject sector assistance).

Is this applicable? Please comment.

3. **CAPITAL ASSISTANCE.**

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

Is this applicable? Please comment.

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

Is this applicable? Please comment.

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

Is this applicable? Please comment.

4. **ASSISTANCE GENERATING LOCAL CURRENCY.** (FY 2019 Act, Sec. 7026(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 DA or ESF chapters of the FAA (depending on which chapter is the source of the assistance) or for the administrative requirements of the United States Government.
 - (c) USAID should take all necessary steps to ensure that the equivalent of local currencies disbursed from the separate account is used for the agreed purposes.
 - (d) If assistance is terminated to a country, unencumbered balances of funds remaining in a separate account should be disposed of for purposes agreed to by the recipient government and the United States Government.

Is this applicable? Please comment.

- 5. **ALCOHOLIC BEVERAGES AND CERTAIN ENTERTAINMENT EXPENSES.** (FY 2019 Act, Sec. 7020(b)). GHP, DA, ESF or AEECA funds may not be used for alcoholic beverages or entertainment expenses that are substantially of a recreational nature.

Is this applicable? Please comment.

- 6. **STATE DEPARTMENT NOTIFICATION OF INTERNATIONAL AGREEMENTS OBLIGATING \$25 MILLION OR MORE.** (See ADS 349, ADS 308 and State Dept. Circular 175). The date of signing and the amount involved must be cabled to State's Office of Assistant Legal Adviser for Treaty Affairs (L/T) immediately upon signing and the full text of the agreement should be pouched to State/L/T within 20 days of signing.

Is this applicable? Please comment.

7. **ADEQUATE PLANNING.** (FAA Sec. 611). Before an obligation of more than \$500,000, the following must have been completed:

- (a) Plans necessary to carry out the assistance, including engineering, financial, and other plans; and
- (b) A reasonably firm estimate of the cost to the U.S. of the assistance.

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

Is this applicable? Please comment.
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USAID
FROM THE AMERICAN PEOPLE

March 14, 2019

MEMORANDUM

To: A-AA/M, Angelique Crumbly
A-AA/LPA, Eddy Acevedo
A to A/PPL, Jim Richardson

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

Subject: Changes Made by the FY 2019 Department of State, Foreign Operations, and Related Programs Appropriations Act to Current Law

On February 15, 2019, the President signed into law H. J. Res. 31, the Consolidated Appropriations Act, 2019 (P.L. 116-6). Division F is the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2019 (“the Act” or “SFOAA”). Similar to prior years, the appropriations for Department of State operations are provided under Title I, USAID’s operating accounts are under Title II, and economic assistance accounts under Title III. Additional operating and program appropriations are provided under Title VIII for Overseas Contingency Operations/Global War on Terrorism.

The Titles are arranged as follows:

Title I	Department of State and Related Agency
Title II	U.S. Agency for International Development
Title III	Bilateral Economic Assistance
Title IV	International Security Assistance
Title V	Multilateral Assistance
Title VI	Export and Investment Assistance
Title VII	General Provisions
Title VIII	Overseas Contingency Operations/Global War on Terrorism

The purpose of this memorandum is to identify and briefly describe significant changes made by the Act to legal requirements and authorities previously applicable to USAID. When relevant, an analysis of the accompanying report language relating to the change may also be included. While the changes to law are generally arranged in groupings by relevant regional bureaus, some listings have much broader implications. This

memorandum is not intended as a substitute for a further, more detailed review of the statute by relevant offices, bureaus, or missions – *especially with regard to country-specific matters*. 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. References throughout the Act to “the explanatory statement described in section 4 (in the matter preceding division A of this consolidated Act)” is a reference to the accompanying Statement of Managers (“SOM”).

1. Congressional Notifications (CNs).^{*} 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 2019 Congressional Budget Justification document (“CBJ”) is not sufficient to satisfy prior notification requirements for those countries, programs, or activities, as the case may be, which the FY 2019 Act (and its accompanying 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 2019 Act and the SOM include:

- a. prior to obligating any funds appropriated in the Capital Investment Fund (**Capital Investment Fund**, unchanged from FY 2018);
- b. prior to obligating funds for technical assistance related to the activities of the Global Fund (**Global Health Programs**, unchanged from FY 2018);
- c. at least 5 days in advance of obligating any funds appropriated in the Complex Crises Fund (**Complex Crisis Fund**, unchanged from FY 2018);
- d. prior to obligating funds provided as a gift for Development Credit Authority (DCA) purposes (**Development Credit Authority**, unchanged from FY 2018);
- e. prior to obligating DCA funds for the cost of modifying any guaranteed loans under the Act or prior Acts, and prior to entering into a transaction or a modification to a transaction resulting in a negative subsidy (**Development Credit Authority**, unchanged from FY 2018);
- f. prior to obligating funds made available for transition costs of DCA and USAID's Legacy Credit portfolio to the International Development

Finance Corporation established by the BUILD Act. (**Development Credit Authority Administrative Expenses**, new requirement);

- g. prior to obligating funds appropriated by the Act or any prior Act for the acquisition of property or award of construction contracts for overseas diplomatic facilities during FY 2018 (**Diplomatic Facilities**, section 7004(d), unchanged from FY 2018);
- h. prior to the opening, closure, or any significant modification to an interim or temporary diplomatic facility, except where there is a security risk to personnel (**Diplomatic Facilities**, section 7004(e), unchanged from FY 2018);
- i. prior to obligating or expending funds available pursuant to Titles III - VI of the Act when resuming terminated assistance to the government of any country whose duly elected head of government is deposed by military coup d'état or decree, or after the date of enactment of the Act, a coup d'état or decree in which the military plays a decisive role, or when providing assistance for the sanctioned government under the carve out for assistance to promote democratic elections or public participation in democratic processes (**Coups**, section 7008, unchanged from FY 2018);
- j. prior to entering into any agreement with any department, agency, or instrumentality of the United States Government pursuant to section 632(b) of the Foreign Assistance Act of 1961 ("FAA") valued in excess of \$1,000,000 and any agreement made pursuant to FAA section 632(a), with Global Health Programs ("GHP"), Development Assistance ("DA"), and Economic Support Fund ("ESF") funds appropriated by the Act and prior Acts. This requirement does not apply to transfers between USAID and the Department of State (**Transfer of Funds**, section 7009(c)(3), unchanged from FY 2018);
- k. prior to reprogramming funds appropriated under Titles III - VI of the Act which are specifically designated for other programs within the same account, notwithstanding the designation, if compliance with the designation is made impossible by operation of any provision of this or any other Act (**Reprogramming**, section 7014(a), unchanged from FY 2018);
- l. unless previously justified, the use of funds provided under Titles I and II of the Act or any prior Act to (1) create new programs; (2) eliminate a

program, project, or activity; (3) close, suspend, open, or reopen a mission or post; (4) create, close, downsize, reorganize, or rename bureaus, centers, or offices; or (5) contract out or privatize any functions or activities presently performed by Federal employees (**Change in Programs and Organization**, section 7015(a), unchanged from FY 2018);

- m. prior to reprogramming funds provided under Titles I and II of the Act or any prior Act in excess of \$1,000,000 or 10 percent, whichever is less, that (1) augments or changes existing programs, projects, or activities; (2) relocates an existing office or employees; (3) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (4) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, activities, or projects as approved by Congress (**Reprogramming**, section 7015(b), unchanged from FY 2018);
- n. prior to obligation to support or continue any program initially funded under any Title 10 authority or any Act making or authorizing appropriations for the Department of Defense. The notification, to be submitted by the Department of State, in consultation with the Department of Defense, must include a justification and a description of, and estimated costs for, the support or continuation of the program (**Continuation of DOD Programs**, section 7015(d)(1), unchanged from FY 2018);
- o. prior to obligating funds transferred to USAID by the Department of Defense for assistance for foreign countries and international organizations (**DOD Transfers**, section 7015(d)(2), changed from FY 2018 by removing exception for Title I programs);
- p. prior to obligating and expending funds appropriated under Titles III-VI for Afghanistan, Bahrain, Bolivia, Burma, Cambodia, Colombia, Cuba, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Iran, Iraq, Lebanon, Libya, Mexico, Nicaragua, Pakistan, Philippines, the Russian Federation, Somalia, South Sudan, Sri Lanka, Sudan, Syria, Uzbekistan, Venezuela, Yemen, and Zimbabwe (**Country Notification Countries**, section 7015(f), changed from FY 2018, adds Nicaragua and removes Ecuador; the House Report's information requirements for the Guatemala, El Salvador, and Honduras CNs are unchanged);

- q. prior to obligating funds for a trust fund held by certain international financial institutions (**Trust Funds**, section 7015(g), changed from FY 2018 by adding the International Fund for Agricultural Development to the list of International Financial Institutions covered by this requirement);
- r. prior to obligating funds for (1) the Global Engagement Center; (2) the Power Africa initiative, or any successor program; (3) community-based police assistance conducted pursuant to the authority of section 7049 of the Act; (4) programs to counter foreign fighters and extremist organizations, pursuant to section 7071(a) of the Act; (5) the Relief and Recovery Fund; (6) *countering Russian Influence*, (7) *the Indo Pacific Strategy*, (8) The Global Security Contingency Fund; and (9) programs to end modern slavery (**Certain Program Notification**, section 7015(h), *italics* added, otherwise unchanged from FY 2018);
- s. prior to reprogramming funds that were withheld from obligation or otherwise not programmed as a result of application of a provision of law in this or any other Act (**Withheld Funds**, section 7015(i), unchanged from FY 2018);
- t. prior to exercising the authority to extend the availability of funds appropriated under Titles I and III - V of the Act which have been returned or not made available for organizations and programs because of the implementation of section 307(a) of the FAA (**Withholding of Contribution to IOs**, section 7048(i), unchanged from FY 2018);
- u. prior to deviating in excess of 10 percent from the amounts specifically designated in the tables in the SOM, and subject to the additional requirements for such deviations—including a “case by case” determination by the Secretary and the Administrator (**Deviations**, section 7019(b) increased deviation authority to 10 percent and adds limitations);
- v. prior to obligating funds for any cash transfer or nonproject sector assistance, as well as prior to waiving the separate account requirement for nonproject sector assistance (**Separate Accounts for Cash Transfers**, section 7026(b)(3)-(4), unchanged from FY 2018);
- w. prior to obligating funds under section 7027(a) to nongovernmental organizations (“NGOs”) for assistance for countries that would otherwise be prohibited from receiving assistance (**Assistance through NGOs**, section 7027(a), unchanged from FY 2018);

- x. prior to using interest earned on local currency accrued to an NGO as a result of economic assistance provided under Title III of the Act and placed in an interest bearing account (**Interest Earned on Local Currency**, section 7030, unchanged from FY 2018);
- y. prior to obligating funds for direct government-to-government assistance in excess of \$10,000,000, and all funds available for cash transfer, budget support, and cash payments to individuals. Note: the CN requirement can be met through the CBJ if the prior consultation requirement is also met. The special CN requirement noted above for any cash transfer or nonproject sector assistance pursuant to section 7026(b) may also be applicable. (**Government-to-Government**, section 7031(a)(2), unchanged from FY 2018);
- z. prior to relying on new authority extending the period of availability (POA) for DA or ESF made available for "private sector partnerships" (**Private Sector Partnerships Extended POA**, section 7034(e)(7), new requirement).
- aa. prior to obligating ESF funds for programs to prevent atrocities (**Atrocities Prevention**, section 7034(c), changed from FY 2018 to include "successor" entities to the Atrocity Prevention Board);
- bb. prior to using ESF or Assistance for Europe, Eurasia and Central Asia ("AEECA") funds appropriated by the Act or prior Acts for contributions to establish or maintain genocide memorial sites (**Genocide Memorial Sites**, section 7034(e)(2), unchanged from FY 2018);
- cc. prior to obligating funds when relying on the notwithstanding authority available to ESF to counter violent extremism (**Countering Violent Extremism**, section 7034(k), unchanged from FY 2018);
- dd. prior to exercising the authority in section 525(b)(5) of the FY 2005 Act by the USAID AA/GH with respect to non-HIV/AIDS pharmaceuticals and other products. Section 525(b)(5) of the FY 2005 Act states that at the close of each fiscal year, the United States Global AIDS Coordinator may transfer out of the HIV/AIDS Working Capital 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. (**HIV/AIDS Working Capital Fund**, section 7034(o), unchanged from FY 2018);

- ee. prior to obligating ESF to establish and operate one or more enterprise funds for Egypt, Jordan, or Tunisia or to use ESF or AEECA for the costs of loan guarantees for Ukraine, Tunisia, Egypt and Jordan (**Loan Guarantees and Enterprise Funds**, section 7034(p), changed from FY 2018 by dropping Iraq from loan guarantee authority);
- ff. prior to allocating to a “selected” mission the full estimated cost of a multi-year program pursuant to the USAID Local Works (formerly Small Grants Program) (**Local Works**, section 7034(q), incorporating FY 2015 SFOAA section 7080(e)(2)), unchanged from FY 2018);
- gg. prior to obligating funds made available for West Bank and Gaza (**West Bank and Gaza**, section 7039(f), unchanged from FY 2018);
- hh. prior to making funds available pursuant to the Act for public-private partnerships in West Bank (**West Bank Public-Private Partnerships**, section 7041(k)(4), new requirement)
- ii. prior to relying on the authority to transfer funds between accounts in the **Relief and Recovery Fund** (section 7071(b), unchanged from FY 2018);
- jj. prior to obligating funds made available for the purposes of section 7080 of the FY 2017 SFOAA (PL 115-31) (programs to prevent the underlying causes of extremism) (**Fragile States and Extremism**, section 7071(e), unchanged from FY 2018);
- kk. prior to obligating funds made available pursuant to the authority of section 7041(i) for assistance for Syria. Note: all assistance for Syria is also subject to notification per section 7015(f) (**Syria**, section 7041(i)(5), unchanged from FY 2018);
- ll. prior to obligating funds for trilateral programs conducted with **China** (section 7043(e), change from FY 2018 drops reference to "counter influence" campaign);
- mm. prior to relying on the reprogramming authority for funds made available for the United States Strategy for Engagement in Central America (**Central America Strategy**, section 7045(a)(2), unchanged from FY 2018);

- mn. prior to obligating funds under the section heading “War Crimes Tribunals Drawdown” (**War Crimes in the former Yugoslavia**, section 7069, unchanged from FY 2018);
- oo. prior to using specified funds for the cost (including support costs) of individuals detailed to or employed by USAID whose primary responsibility is to carry out programs in response to natural or man-made disasters (**Disaster Surge**, section 7057(f), unchanged from FY 2018);
- pp. prior to exercising the authority to take “extraordinary measures” to respond to a public health emergency of international concern (**Contagious Disease**, section 7058(c)(2), unchanged from FY 2018);
- qq. prior to obligating “repurposed” Ebola emergency supplemental funds (**Health Emergency Transfer Authority**, section 7058(d)(1), changed from FY 2018);
- rr. prior to obligating ESF to support women and girls at risk from extremism and conflict (**Women and Girls At Risk from Extremism**, section 7059(e), unchanged from FY 2018);
- ss. prior to exercising the authority to obligate any previously unobligated balances of funds specifically designated for assistance for basic education in prior Acts, which the Administrator determined was in excess of the absorptive capacity of the recipient countries, for other sectors (**Basic Education**, section 7060(a)(1)(B), unchanged from FY 2018);
- tt. prior to obligating funds appropriated by Title III of the Act for higher education programs (**Higher Education**, section 7060(a)(2), unchanged from FY 2018);
- uu. prior to obligating funds for environment programs (**Environment**, section 7060(c)(1)(B), unchanged from FY 2018);
- vv. prior to obligating ESF, AEECA or DA for people-to-people reconciliation programs (**Reconciliation**, section 7060(g), new requirement);
- ww. prior to transferring Title III funds to the Overseas Private Investment Corporation (“OPIC”) Program Account (**OPIC Transfer Authority**, section 7063, unchanged from FY 2018);

- xx. prior to transferring ESF to the Broadcasting Board of Governors Operations account for Internet freedom “surge” programs in closed societies (**Internet Freedom Surge Support Transfer**, section 7065(e), new for FY 2019);
- yy. prior to using funds appropriated by the Act to make a future year funding pledge for any multilateral or bilateral program funded in Titles III - VI of the Act (**Multi-Year Pledges**, section 7066, unchanged from FY 2018);
- zz. prior to obligating funds appropriated by the Act for the United Nations Population Fund (UNFPA) that are transferred to the Global Health Programs account and made available for family planning, maternal and reproductive health activities (**UNFPA to GH Transfers**, section 7072(b), unchanged from FY 2018);
- aaa. prior to obligating funds made available under Titles III -VI of the Act for Enterprise Funds (**Establishing Enterprise Funds**, section 7061(a), unchanged from FY 2018);
- bbb. must submit a plan prior to the distribution of any assets resulting from the liquidation, dissolution, or winding up of an Enterprise Fund (**Closing Out Enterprise Funds**, section 7061(b), unchanged from FY 2018);
- ccc. must submit plan prior to submission of a transition or operating plan of any private equity fund or other parallel investment fund under an existing Enterprise Fund (**Enterprise Fund Transition Plan**, section 7061(c), unchanged from FY 2018);
- ddd. within 5 days of a Presidential determination made on constitutional grounds that a provision of law noted in the Act shall not apply (**Use of Funds in Contravention of the Act**, section 7017, unchanged from FY 2018);
- eee. prior to changing levels of funding in operating plans that are specified by the Act or the SOM (**Changing Levels**, section 7070(a), unchanged from FY 2018);
- fff. Prior to obligating funds to implement any reorganization, redesign, or other plan (See item 3 below) (**Reorganization**, section 7073(a)(1), noting that CNs submitted pursuant to section 7081(a)(3) of the FY 2018 Act are

deemed to meet the requirement of this section);

- ggg. prior to implementing "programmatic, funding and organizational changes" pursuant to the **Foreign Assistance Review**, (section 7073(b)(7), new requirement);
- hhh. prior to submitting a project proposal for funding from the **Technology Modernization Fund**, which must also include a copy of the project proposal, (section 7073(b)(6), new requirement);
- iii. prior to the transfer of ESF and TI OCO funds (**OCO Transfer**, section 8003(d), changed from 2018, dropping CCF and EECA funds);
- jjj. prior to a procurement action that involves awarding a sole source contract in excess of \$15,000,000; awarding a non-competitive grant or contract (other than sole source) in an amount greater than \$75,000,000; raising the ceiling on an existing IQC by an amount greater than \$35,000,000; issuing a new IQC in excess of \$75,000,000; awarding an umbrella grant in excess of \$25,000,000; or raising the ceiling on an existing umbrella grant in excess of \$25,000,000. CN not required for assistance in CPCs and for humanitarian response or post-conflict situations. (House Report 115-829, OE Account Heading, incorporated by SOM, unchanged from FY 2018).

MANAGEMENT, OPERATIONS, AND PROGRAM CYCLE ISSUES

2. Reorganization.* Section 7073 carries forward the substantial revisions made by the FY 2018 Act related to reorganization and redesign. It continues to require both consultation and notification requirements, as well as detailed justification and reporting requirements. USAID's reorganization CNs submitted in FY 18 are "deemed" to meet the notification requirements of section 7073, and therefore need not be re-submitted. Any reorganizations not contained in the CNs submitted in FY 2018 must comply with the requirements and standards of section 7073.

Section 7073(b)(2) also directs the Administrator to submit quarterly reports that detail:

- a. actual obligations "to date" for all implementation costs associated with "Reorg CNs #1-9" by the categories detailed in USAID's response to the Committees on Appropriations on October 30, 2018, to include the salaries and benefits of United States Direct Hire employees working directly on implementation of each reorganization and the source of such funding;
- b. a project status and projected timeline for each of the reorganizations

based on the milestones and timelines provided to the Committees on Appropriations on October 30, 2018; and

- c. actual and anticipated United States Direct Hire workforce level changes by bureau and operating unit as a result of the reorganizations, including staffing shifts between functions.

3. Foreign Assistance Review (FAR). The SOM under section 7073 directs the Administrator to update, as appropriate and in writing, the Committees on Appropriations if implementing the recommendations and conclusions of the FAR would affect the information or proposed changes in USAID "Reorg CN s # 1-9". The SOM also directs the Administrator, with the Secretary, to report on the anticipated impact of the FAR on Department of State and USAID programs and operations in future fiscal year budget requests. Per section 7073(b)(7), programmatic, funding, and organizational changes resulting from the FAR are subject to prior consultation and notification.

4. Strategic Transition Countries. The consultation and reporting requirements of the FY 2018 Act are not included, but the SOM under section 7073 directs the Administrator to regularly consult with the appropriate congressional committees and development stakeholders on efforts to transition nations from assistance recipients to enduring diplomatic, economic, and security partners. In these consultations, the SOM directs the Administrator to include "any changes to the guiding principles and metrics to support such efforts", and "on other matters related to the implementation plan required by section 7069(b) of the FY 2018 Act." The SOM also directs, within 180 days after enactment, the Secretary and the Administrator to submit an updated implementation plan on country transitions from assistance, as required by section 7069(b)(2) of the FY 2018 Act.

5. Development Credit Authority (DCA) Administrative Expenses. The Act, under the DCA account heading provides that \$1,000,000 of DCA Administrative Expenses may be used for administrative costs associated with moving the USAID DCA program to the new International Development Finance Corporation established pursuant to the Better Utilization of Investments Leading to Development (BUILD) Act of 2018. Use of funds for such purposes is contingent on submission of a spend plan and the submission of the reorganization plan required by the BUILD Act, and subject to special notification.

6. Records Management and Cybersecurity. The Act modifies the longstanding section (now section 7016) to require "regular reviews" as well as updates to agency policies and directives related to records management. However, it expands the scope of the provision beyond records management to include a requirement to "strengthen cybersecurity measures to mitigate vulnerabilities."

7. Technology Modernization Fund. A new section 7071(b)(6) requires prior notification of any project proposal to the Technology Modernization Board for funding from the Technology Modernization Fund. The submission must also include a copy of the project proposal. The new revision also requires, prior to funding for any project approved by the Board:(1) a copy of the approved proposal (including reimbursement of funding received for the project) be submitted to the Committees on Appropriations and (2) agreement by the Administrator to submit to the Committees copies of each report relating to the project that is submitted to the Board.

8. Deviations from SOM Tables.* The Act significantly revises section 7019. It raises the deviation authority from the SOM tables from 4 percent to 10 percent, but makes any deviation in excess of 10 percent subject to a formal determination and report by the Secretary or Administrator, as applicable, and also subject to prior consultation and notification. Prior law authorized deviation in excess of the 4 percent threshold via consultation and notification only.

The Act also significantly revises the exceptions. For FY 2019, the requirements of section 7019 do not apply to:

- International Military Education and Training SOM tables (current law);
- funds for which the initial period of availability has expired (current law);
- minimum funding levels, e.g. “floors”, contained in the statute, meaning that deviations in excess of 10 percent may take place without a determination, consultation, and CN if the statutory language reads “not less than \$XX....” (note that deviations down from statutory floors are not authorized) (new); and
- funds made available for a country pursuant to sections 7043(c) (Indo-Pacific Strategy); 7047(d)(Countering Russian Influence Fund); and 7071(d)(Relief and Recover Fund) (new).

Additionally, section 7019 retains the provision restricting the ability to deviate down from the Global Health Programs account SOM table, and also adds a new provision that limits the deviation authority to 5 percent for the Global Programs section of the ESF account SOM table.

9. Monitoring and Evaluation, Beneficiary Feedback.* Section 7034(n) requires USAID and State to establish procedures for implementing partners of IDA, DA and Migration Refugee Assistance to regularly collect and respond to the feedback from program beneficiaries on the quality and relevance of assistance. The new formulation places the onus on State/USAID to “establish procedures” for implementing partners whereas the FY 2018 language directed State/USAID to “require implementing partners . . . to establish such procedures.”

10. International Financial Institutions. Section 7034(r)(3) adds the International Fund for Agricultural Development (IFAD) to the Act's definition of "International Financial Institution." As a result, all grants to trust funds managed by IFAD must now comply with special notification requirements of section 7015(g) regarding trust funds.
11. Partner Vetting. Section 7034(f) no longer includes the directive that the Secretary and Administrator "should" provide a direct vetting option for prime awardees. The provision continues to require consultation with the Committee on Appropriations prior to initiating a partner vetting program, or making significant changes to the scope of an existing partner vetting program.
12. Spend Plans. * Prior to the initial obligation of funds, section 7070 carries forward the spend plan requirements contained in the FY 2018 Act -- adding reconciliation programs, Colombia and "countries in Central America," and funds appropriated to support implementation of the Indo-Pacific Strategy mandated by section 7043(c) and Gender Equity programming mandated by section 7059. Plans must be submitted within 120 days of enactment, a new requirement, and section 7070(d) carries forward the authority to obligate up to 10 percent of funds subject to the spend plan requirement to avoid "significant programmatic disruptions." (This authority remains subject to a consultation requirement within "seven days" of obligation.) The SOM notes that partial spend plans will not be considered complete for the spend plan pre-obligation requirements.
13. Private Sector Partnerships, Extended Availability. The provides a new authority in section 7034(e)(7) that extends the period of availability for DA and ESF made available for private sector partnerships from 2 years (through FY 2020) to 3 years (through FY 2021). Reliance on this authority is subject to special notification.

MIDDLE EAST

14. Egypt. Section 7041(a)(2)(B) modifies the directive and certification requirement for the Secretary to withhold from ESF costs associated with the 2012-2013 NGO trials to now also determine that the Government of Egypt "has not subjected the defendants to further prosecution or if convicted they have been granted full pardons." Previous versions of the certification only required that the GOE "has dismissed the convictions".
15. Iraq. Section 7041(c) includes a directive for the Marla Ruzicka War Victims Fund, a floor for stabilization assistance specified in the SOM, a directive for humanitarian assistance to include the Kurdistan region, and a directive for assistance to religious and ethnic minorities. The Act removes the FY 2018 directives that that funds

should be provided “in accordance with the constitution of Iraq.” The SOM includes a \$10,000,000 directive for “American-style higher education in Iraq.”

16. Iraq, Syria Ethnic and Religious Minorities. Section 7033(d)(2) provides “notwithstanding authority” for ESF-funded assistance for ethnic and religious minorities in Iraq and Syria. The authority applies to ESF funds appropriated by the Act and prior acts.

17. Libya. Section 7041(f) removes directives for civil society and governance assistance, but retains directives for stabilization assistance and border security.

18. Syria. Section 7041(i) adds a \$40,000,000 floor for stabilization assistance; removes “to the extent practicable” caveat from the FY 2018 Act’s list of program categories; and directs \$7,000,000 for emergency medical, rescue response and chemical weapons inspection. The Act condenses the prior Act’s enumerated categories to which the notwithstanding authority could be applied. Now ESF, International Narcotics and Law Enforcement, and Peacemaking Operations may be made available notwithstanding any other provision of law for “non-lethal stabilization assistance for Syria.” The section also removes the requirement that the Secretary submit a comprehensive strategy for Syria prior to obligation. The section includes a hortatory (i.e. “should”) restriction on use of funds in areas controlled by forces associated with the Government of Bihar al-Assad. The SOM includes a consultation requirement with the appropriate committees “on the areas inside Syria where funds made available pursuant to this section in the Act and prior acts may be used.”

19. West Bank/Gaza (WBG). Section 7041(k)(4) provides funding to support Private Sector Partnership in WBG, if authorized, and subject to prior consultation and special notification. The SOM states that “up to” \$50,000,000 may be made available for this purpose, and provides for a new report on withholding of prior year funds for WBG.

20. Yemen. Section 7041(l) adds a directive for stabilization assistance in Yemen, and the SOM specifies that this assistance include “United Nations stabilization and governance facilities.”

AFRICA

21. Ethiopia. The Act eliminates the Ethiopia subsection under section 7042 that restricted availability of funds for any activity that supports forced evictions; required U.S. directors of international financial institutions to support loans or other financing for projects in Ethiopia unless certain requirements were met, and required the Secretary to report on certain issues relating to the Ethiopian National Defense Force.

22. Lake Chad Basin and Boko Haram. The Act removes the FY 2018 section 7042(b) directive on Boko Haram and incorporates them into the Act's directives under Lake Chad Basin countries and under provisions on Gender Equity. Section 7042(d) is revised by providing that funds made available for Lake Chad Basin countries are to now also to be made available for: democracy, development, and health programs; assistance for individuals targeted by foreign terrorist and other extremist organizations, including Boko Haram; assistance for individuals displaced by violent conflict; and counterterrorism programs.

23. South Sudan. Section 7042(f) removes the FY 2018 Act's requirement for a strategy update and for the Secretary to certify the central government's reform efforts. Instead, it provides for a restriction on assistance for the central government, without a waiver. However, the new restriction excludes, subject to prior consultation, humanitarian assistance, health programs (including Ebola response), peace negotiations, and implementation of peace agreements. The SOM also directs an update by the Secretary on the strategy required in FY 2017.

EAST ASIA AND THE PACIFIC

24. Burma. Section 7043(a)(1)(C)(iv) provides that funds may only be made available for assistance for the Government of Burma to support the implementation of Nationwide Ceasefire Agreement conferences, committees, and other procedures if the Secretary reports to the Committees on Appropriations that such procedures are directed toward a sustainable peace and the Government of Burma is implementing its commitments under such Agreement. The SOM elaborates on actions that would demonstrate "commitment." The FY 2018 Act's requirement that certain human rights programs be carried out by non-governmental organizations is not retained, but is now contained in the SOM, as are previous withholding, certification and reporting requirements of the Secretary concerning cooperation between Burma and North Korea. The FY 2018 Act's requirement for funding to support implementation of the August 2017 Final Report of the Advisory Commission on Rakhine State is also now in the SOM.

25. Cambodia. Section 7043(b) provides a new exception for health programs to be obligated or expended prior to the Secretary certifying and reporting on Government of Cambodia reform efforts. The section 7043(b)(1)(A) certification requirement is also expanded to now include efforts taken with respect to the restoration of officials to elected offices held prior to the July 2018 Parliamentary elections.

26. Countering Violent Extremism in Asia. Section 7071(d) is a new provision

directing that not less than \$2,500,000 be administered by USAID/RDMA for such purposes, including within the Buddhist community.

27. Indo-Pacific Strategy (IPS). Section 7043(c) requires not less than \$160,000,000 be made available to support the implementation of the IPS (in addition to amounts otherwise made available for such purposes). Section 7070(b) requires the Secretary to submit a spend plan for the IPS prior to the initial obligation of funds, but not later than 120 days after enactment of the Act. The SOM provides details on the timing and content of the IPS. The FY 2018 Act's provisions on countering PRC influence are now, pursuant to the FY 2019 SOM, to be incorporated into the IPS.

28. Sri Lanka. The section 7044(d) certification required prior to any assistance for the central Government of Sri Lanka now includes a carve-out for funds to be made available for humanitarian assistance and victims of trauma.

SOUTH AND CENTRAL ASIA

29. Afghanistan. Section 7044(a) provides for assistance to implement the South Asia Strategy, the Revised Strategy for United States Engagement in Afghanistan, and USAID's Country Development Cooperation Strategy for Afghanistan. The Act removes the Secretary's certification and reporting requirement on an assistance strategy and Government of Afghanistan reform. The Act also removes restrictions regarding direct government-to-government assistance and taxation of assistance by the Government of Afghanistan, but the SOM carries a reporting requirement on these topics. The SOM specifies content for the spend plan required under section 7070, requiring reporting on goals, benchmarks, steps to protect girls and women's rights, monitoring and evaluation of assistance, tax exemptions, and other reporting required under the FY 2018 Act.

30. Pakistan. Section 7044(e) adds to the Secretary's reporting requirements, requiring new details on the extent to which the central government of Pakistan is strengthening democracy, including protections for expression, assembly and religion. Submission of the report to oversight committees remain a preobligation requirement of assistance for the central government.

CENTRAL AMERICA, THE CARIBBEAN AND SOUTH AMERICA

31. Central America. Section 7045(a) removes the cap on assistance for countries in Central America to implement the Strategy for Engagement in Central America. The Act also modifies the 25% and 50% tranching certification requirements, and replaces it with an overall 50% withholding restriction until the Secretary certifies that the relevant central government is taking action in several areas, including migration, security, and

governance. The revised subsection also creates carve outs to the withholding requirement for funding for the International Commission against Impunity, the Mission to Support the Fight against Corruption and Impunity in Honduras, humanitarian assistance, and food security programs. The section no longer contains a pre-obligation spend plan requirement, but instead such requirement is moved to section 7070(b). The SOM specifies requirements for the spend plan that are similar to FY 2018. The Act also removes the FY 2018 Act's provision for a \$15,000,000 increase in assistance for El Salvador, Guatemala, or Honduras if any such government makes "extraordinary progress" with respect to the certification requirements that trigger the release of withheld funds. The SOM establishes a host government cost-matching requirement of \$5 for every \$1 made available for the Northern Triangle countries, and directs that CNs submitted for such countries include a detailed description of how this directive is being met.

32. Colombia. Section 7045(b) no longer contains a pre-obligation spend plan requirement, but instead such requirement is moved to section 7070(b). The subsection also strikes the requirements to transfer funding to the MRA account and to apportion ESF for assistance for Colombia directly to USAID. Section 7045(b)(3) provides that 20 percent (down from 25%) of ESF and INCLE obligated for counternarcotics assistance be withheld from obligation until the Secretary certifies and reports on reductions by the Government of Columbia in overall drug cultivation, production, and trafficking.

33. Venezuela. Section 7045(d) provides ESF directives for democracy and rule of law programs, but the SOM "includes no funding for the central government." The SOM also directs assistance for Venezuelan refugees and migrants and the countries and communities impacted by such populations. The Department of State, in consultation with USAID, is directed to consult with Congress within 30 days and then submit a strategy for assisting such individuals, countries, and communities within 90 days of enactment of the Act.

EUROPE AND EURASIA

34. AEECA Funds Use of Notwithstanding Authority. Notification of funds under the account "Assistance for Europe, Eurasia and Central Asia" in FY 2019 and in prior years must include information on the use of "notwithstanding authority" (if known at the time of submission.) Committees on Appropriations should be informed at the "earliest opportunity" and "to the extent practicable" on the use of notwithstanding authority subsequent to notification.

35. Countering Russian Influence. Section 7047(d)(1) expands the scope of the use of the Countering Russian Influence Fund by adding "notwithstanding the country

limitation in subsection (b)" of section 254 of the Countering Russian Influence in Europe and Eurasia Act of 2017. That section of the 2017 statute specifies particular countries (e.g., E&E countries that are members of NATO or the European Union, as well as specially named countries such as Georgia, Serbia and Ukraine) that can be assisted from the "Countering Russian Influence Fund", which can be "funded" by the AEECA, INCLE, Foreign Military Financing and International Military Education & Training accounts.

SECTORS AND GENERAL APPLICABILITY

36. **Democracy Programs.** Section 7032(b) limits use of “notwithstanding authority” for democracy programs to activities attributed to the \$2.4 billion democracy earmark contained in section 7032(a). The FY 2018 Act included SOM language limiting the use of the notwithstanding authority to funds attributed to the democracy programs earmark. Section 7032(b) also requires that funds made available for the National Endowment for Democracy are made available pursuant to the NED’s authorizing legislation and its procedure for selecting local beneficiaries. Under “Democracy Programs,” the Senate Report carries forward the State and USAID requirement to report “within 30 days of a decision to significantly change the objectives or the content of a democracy program or to close such a program due to the increasingly repressive nature of the host government.” The report must include “a strategy for continuing support for democracy promotion, if such programming is feasible, and may be submitted in classified form, if necessary.” This reporting requirement had previously been carried in statutory language.

37. **Prison Conditions.** Section 7049(b)(3) carries forward the directive from prior Acts for assistance to eliminate inhumane conditions in foreign prisons and other detention facilities. However, the Act does not retain the requirement that such funds be the responsibility of the Assistant Secretary for Democracy, Human Rights, and Labor. The Act now also includes a pre-obligation consultation requirement within 120 days of enactment.

38. **Infectious Disease Outbreaks and Emerging Health Issues.** Section 7058(d) carries forward the directive to “repurpose” no-year Ebola emergency supplemental funding from FY 2015 -- \$38,000,000 to build the capacity of targeted countries to respond to infectious disease outbreaks, and \$2,000,000 for an “Emergency Relief Fund” to address emerging health threats. To access the “Emergency Reserve Fund,” section 7058(d)(1)(B) now authorizes the Administrator (vice the Secretary) to “determine and report” to the Committees on Appropriations that “it is in the national interest to respond to an emerging health threat that poses severe threats to human health.” The Administrator’s new authority applies to both current year and prior-year funding.

39. Basic Education. Section 7060(a)(1)(A) deletes the directive that such funds "should" be used to support CDCS's or similar USAID basic education strategies. The Act also modifies the subsection by changing previous language stating that funds "may" be used for secondary education activities to state that they "shall" be used for such purposes, and adds a new requirement that CNs that include funding for basic education should, as applicable, describe "activities conducted in support of non-state schools."

40. Higher Education. Section 7060(a)(2) deletes the directive that "new" higher education partnerships "should be competed and awarded not later than one year after enactment."

41. Relief and Recovery Fund (RRF). Section 7071 expands the scope of the use of the RRF by making it available globally for "assistance for areas liberated or at risk from, or under the control of, the Islamic State of Iraq and Syria, other terrorist organizations, or violent extremist organizations, including for stabilization assistance for vulnerable ethnic and religious minority communities affected by conflict." The FY 2019 statutory language no longer includes the requirement to cost-match to the maximum extent practicable, but instead moves the directive language to the SOM under section 7071.

42. Prevention of Failed States through Public-Private Partnerships.^{*} Section 7071(c) is a new provision that makes up to \$10,000,000 available from the Relief and Recovery Fund to develop and implement a public-private partnerships program to "accelerate a coherent approach to development in fragile states and states threatened or adversely impacted by economic and political instability or violent extremism," as described by the SOM. These funds are in addition to other bilateral assistance for selected states. The SOM directs the Administrator and the Secretary to consider the following factors during implementation:

- a. compatibility with the development strategy for recipient countries;
- b. central government commitment;
- c. participation of local organizations; and
- d. complementarity with other bilateral and regional programs.

Prior to the obligation of funds, State and USAID must submit a joint report to the Committees on Appropriations detailing: (1) the states potentially eligible for the program; (2) the requirements of the central governments for participation in the program and program conditionality, if any; and (3) benchmarks to measure the effectiveness of such program. The Act also makes up to \$750,000 of program funds available for administrative expenses associated with the design and implementation of the program.

43. Reconciliation Programs. Section 7060(g) removes the \$30,000,000 earmark for reconciliation programs. The SOM, however, retains the \$30,000,000 level “consistent with long-standing congressional intent,” and directs that the required prior consultation occur “not later than 60 days after enactment.”
44. Religious Minorities. Section 7033(b)(3) expands the directive to use humanitarian assistance for programs to assist persecuted religious minorities, to also include assistance to “build resilience and help reestablish livelihoods for displaced and persecuted persons in their communities of origin.”
45. Internet Freedom. The longstanding provision on Internet freedom has been substantially revised to include a requirement that such ESF, Democracy Fund, or AEECA-funded activities to support technologies must first undergo a “comprehensive security audit” conducted by the Bureau for Democracy, Human Rights, and Labor at the Department of State. The purpose of the audit is to ensure that the technology is secure and has not been compromised. The revisions also authorize \$2,500,000 in ESF for surge Internet Freedom programs in closed societies, subject to a Secretarial determination and report. Such funds may be transferred to the Broadcast Operations account of the Broadcasting Board of Governors, subject to prior consultation and notification.
46. International Disaster Assistance (IDA). Includes provision directing apportionment of IDA funds to USAID not later than 60 days after enactment.
47. Complex Crisis Fund. The Complex Crisis Fund account language now specifies that the CCF is “to support programs and activities administered by USAID” and must be apportioned to USAID not later than 60 days after enactment. The Act also does not provide funding for CCF in Title VIII, which the FY 2018 Act funded at \$20,000,000, but increases the CCF line in Title III from the FY 2018 level of \$10,000,000 to \$30,000,000. The SOM also requires increased reporting on the use of CCF funds.
48. Direct Government-to-Government Assistance.* SOM language clarifies that the 7073(a)(1)(iv) determination of whether the recipient government is making progress in disclosing its public budget, revenues, and expenditures should be based on progress made since the most recent assessment.
49. Loan Guarantees. Section 7034(p) provides authority for sovereign loan guarantees for Egypt, Ukraine, Jordan and Tunisia. The FY 2018 language is modified by removing Iraq’s loan guarantee authority.
50. Law Enforcement and Security. Section 7049 is a new general provision,

consolidating from previous Acts provisions on: community-based police assistance, combat casualty care, counterterrorism partnership fund, training related to international humanitarian law, and security force professionalization. Substantive changes made to provisions moved to this consolidated general provision are noted elsewhere in the memo under a specific heading.

OTHER SIGNIFICANT ITEMS NOT RETAINED FROM THE FY 2018 ACT.

- The authority for Enterprise Funds is not in the FY 2019 Act. Note, however, that the BUILD Act establishing the new United States International Development Financing Corporation (DFC) provides authority for the DFC to establish Enterprise Funds.
- Section 7032 does not include last year's subsection (g), requiring Country Strategy Reviews and referencing the ADVANCE Democracy Act. However, the Senate Report 115-282 requests that "Country Strategy Reviews" under the Act continue.
- Ecuador is no longer included as a special notification country.
- Section 7032 does not include the FY 2018 subsection (h), "Communications and Reports," concerning informing National Endowment for Democracy and reporting to Congress on democracy program funding instruments and program changes.
- Section 7077(a) from the FY 2018 Act requiring the public posting of reports is not in the FY 2019 Act.