

115TH CONGRESS
2^D SESSION

H. R. 3445

AN ACT

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

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

1 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. TABLE OF CONTENTS.**

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

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

TITLE I—ENHANCEMENT OF THE AFRICAN GROWTH AND
OPPORTUNITY ACT

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

TITLE II—MODERNIZATION OF THE MILLENNIUM CHALLENGE
CORPORATION

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

8 **TITLE I—ENHANCEMENT OF THE**
9 **AFRICAN GROWTH AND OP-**
10 **PORTUNITY ACT**

11 **SEC. 101. STATEMENT OF POLICY.**

12 It is the policy of the United States to support efforts
13 to—

1 (1) improve the rule of law, promote free and
2 fair elections, strengthen and expand the private sec-
3 tor, and fight corruption in sub-Saharan Africa; and

4 (2) promote the role of women in social, polit-
5 ical, and economic development in sub-Saharan Afri-
6 ca.

7 **SEC. 102. DEFINITIONS.**

8 In this title—

9 (1) AGOA WEBSITE.—The term “AGOA
10 Website” means the website established pursuant to
11 section 103(a).

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

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

19 (a) AGOA WEBSITE.—

20 (1) IN GENERAL.—The President shall establish
21 a publicly available website for the collection and
22 dissemination of information regarding the African
23 Growth and Opportunity Act (19 U.S.C. 3701 et
24 seq.).

1 (2) CONTENTS.—The President shall publish on
2 the AGOA Website the information described in
3 paragraph (1), including—

4 (A) information and technical assistance
5 provided at United States Agency for Inter-
6 national Development regional trade hubs; and

7 (B) a link to the websites of United States
8 embassies located in eligible sub-Saharan Afri-
9 can countries.

10 (3) ACTIONS BY UNITED STATES EMBASSIES.—
11 The Secretary of State should direct United States
12 embassies located in eligible sub-Saharan African
13 countries to—

14 (A) encourage individuals and businesses
15 in such countries to use the benefits available
16 under the African Growth and Opportunity Act;
17 and

18 (B) include a link to the AGOA Website on
19 the websites of such diplomatic missions.

20 (b) AGOA FORUM.—After each meeting of the
21 United States–Sub-Saharan Africa Trade and Economic
22 Cooperation Forum, the President should publish on the
23 AGOA Website the following:

1 (1) The outcomes of the meeting of the Forum,
2 including any commitments made by member coun-
3 tries and the private sector.

4 (2) An assessment of progress made with re-
5 spect to any commitments made by member coun-
6 tries and the private sector from the previous meet-
7 ing of the Forum.

8 (c) OTHER INFORMATION.—The President should
9 disseminate the information required under this section in
10 a digital format to the public and publish such information
11 on the AGOA Website.

12 **SEC. 104. ACTIVITIES IN SUPPORT OF TRADE CAPACITY**
13 **BUILDING.**

14 The President should—

15 (1) develop and implement policies that—

16 (A) encourage and facilitate cross-bound-
17 ary cooperation among eligible sub-Saharan Af-
18 rican countries in order to facilitate trade; and

19 (B) encourage the provision of technical
20 assistance to eligible sub-Saharan African coun-
21 tries to establish and sustain adequate trade ca-
22 pacity development;

23 (2) provide specific training for businesses in el-
24 igible sub-Saharan African countries and govern-
25 ment trade officials of such countries on accessing

1 the benefits under the African Growth and Oppor-
2 tunity Act and other trade preference programs;

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

7 (4) provide capacity building training to pro-
8 mote diversification of African products and value-
9 added processing; and

10 (5) provide capacity building and technical as-
11 sistance funding for African businesses and institu-
12 tions to help such businesses and institutions comply
13 with United States counterterrorism initiatives and
14 policies.

15 **TITLE II—MODERNIZATION OF**
16 **THE MILLENNIUM CHAL-**
17 **LENGE CORPORATION**

18 **SEC. 201. CANDIDACY STATUS.**

19 (a) **LOW INCOME COUNTRIES.**—Section 606(a) of the
20 Millennium Challenge Act of 2003 (22 U.S.C. 7705(a))
21 is amended—

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

24 (2) in paragraph (2)—

1 (A) by amending the paragraph heading to
2 read as follows: “FISCAL YEARS 2005 THROUGH
3 2012”; and

4 (B) by striking “fiscal year 2005 or a sub-
5 sequent fiscal year” and inserting “each of fis-
6 cal years 2005 through 2012”;

7 (3) by redesignating paragraph (3) as para-
8 graph (4); and

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

11 “(3) FISCAL YEAR 2013 AND SUBSEQUENT FIS-
12 CAL YEARS.—A country shall be a candidate country
13 for purposes of eligibility for assistance for fiscal
14 year 2013 or a subsequent fiscal year if the coun-
15 try—

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

21 “(B) is among the 75 countries identified
22 by the International Bank for Reconstruction
23 and Development as having the lowest per cap-
24 ita income; and

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

3 (b) LOWER MIDDLE INCOME COUNTRIES.—Section
4 606(b) of the Millennium Challenge Act of 2003 (22
5 U.S.C. 7705(b)) is amended—

6 (1) in paragraph (1)—

7 (A) by amending the paragraph heading to
8 read as follows: “FISCAL YEARS 2006 THROUGH
9 2012”; and

10 (B) in the matter preceding subparagraph
11 (A), by striking “fiscal year 2006 or a subse-
12 quent fiscal year” and inserting “fiscal years
13 2006 through 2012”;

14 (2) by redesignating paragraph (2) as para-
15 graph (3); and

16 (3) by inserting after paragraph (1) the fol-
17 lowing:

18 “(2) FISCAL YEAR 2013 AND SUBSEQUENT FIS-
19 CAL YEARS.—In addition to the countries described
20 in subsection (a), a country shall be a candidate
21 country for purposes of eligibility for assistance for
22 fiscal year 2013 or a subsequent fiscal year if the
23 country—

24 “(A) has a per capita income not greater
25 than the lower middle income country threshold

1 established by the International Bank for Re-
2 construction and Development for the fiscal
3 year;

4 “(B) is not among the 75 countries identi-
5 fied by the International Bank for Reconstruc-
6 tion and Development as having the lowest per
7 capita income; and

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

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

13 (1) by redesignating subsection (c) as sub-
14 section (d); and

15 (2) by inserting after subsection (b) the fol-
16 lowing:

17 “(c) TREATMENT OF COUNTRIES WITH PER CAPITA
18 INCOME CHANGES.—A country qualifying for candidate
19 status under this section with a per capita income that
20 changes during the fiscal year such that the country would
21 be reclassified from a low income country to a lower mid-
22 dle income country or from a lower middle income country
23 to a low income country shall retain its candidacy status
24 in its former income classification for such fiscal year and
25 the 2 subsequent fiscal years.”.

1 **SEC. 202. CARRYOVER AUTHORITY FOR PRIVATE-SECTOR**
2 **MEMBERS OF BOARD OF DIRECTORS.**

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

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

8 “(i) shall be appointed for a term of
9 3 years;

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

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

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

16 “(II) the date that is 1 year after
17 the expiration of his or her appoint-
18 ment or reappointment, as the case
19 may be.”.

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

23 Section 607 of the Millennium Challenge Act of 2003
24 (22 U.S.C. 7706) is amended—

25 (1) in subsection (a), by adding at the end the
26 following: “A determination whether a country is eli-

1 gible for a subsequent, non-concurrent Millennium
2 Challenge Compact shall also be based, to the extent
3 practicable, on significantly improved performance
4 across the criteria in subsection (b) that, at a min-
5 imum, are relevant to the preceding Compact, com-
6 pared to the country’s performance with respect to
7 such criteria when selected for such preceding Com-
8 pact.”

9 (2) in subsection (b)(1)—

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

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

14 (C) by adding at the end the following:

15 “(F) the quality of the civil society ena-
16 bling environment;”;

17 (3) by redesignating subsections (d) and (e) as
18 subsections (e) and (f), respectively; and

19 (4) by inserting after subsection (c) the fol-
20 lowing:

21 “(d) REPORTING ON TREATMENT OF CIVIL SOCI-
22 ETY.—For the 7-year period beginning on the date of the
23 enactment of this subsection, before the Board selects an
24 eligible country for a Compact under subsection (c), the
25 Corporation shall provide information to the Board re-

1 guarding the country’s treatment of civil society, including
2 classified information, as appropriate. The information
3 shall include an assessment and analysis of factors includ-
4 ing—

5 “(1) any relevant laws governing the formation
6 or establishment of a civil society organization, par-
7 ticularly laws intended to curb the activities of for-
8 eign civil society organizations;

9 “(2) any relevant laws governing the operations
10 of a civil society organization, particularly those laws
11 seeking to define or otherwise regulate the actions of
12 foreign civil society organizations;

13 “(3) laws relating to the legal status of civil so-
14 ciety organizations, including laws which effectively
15 discriminate against foreign civil society organiza-
16 tions as compared to similarly situated domestic or-
17 ganizations;

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

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

22 **SEC. 204. CONCURRENT COMPACTS UNDER THE MILLEN-**
23 **NIUM CHALLENGE ACT OF 2003.**

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

1 (1) by striking the first sentence of subsection
2 (k);

3 (2) by redesignating subsection (k) (as so
4 amended) as subsection (l); and

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

7 “(k) CONCURRENT COMPACTS.—An eligible country
8 that has entered into and has in effect a Compact under
9 this section may enter into and have in effect at the same
10 time not more than one additional Compact in accordance
11 with the requirements of this title if—

12 “(1) one or both of the Compacts are or will be
13 for purposes of regional economic integration, in-
14 creased regional trade, or cross-border collabora-
15 tions; and

16 “(2) the Board determines that the country is
17 making considerable and demonstrable progress in
18 implementing the terms of the existing Compact and
19 supplementary agreements thereto.”.

20 (b) CONFORMING AMENDMENT.—Section
21 613(b)(2)(A) of such Act (22 U.S.C. 7712(b)(2)(A)) is
22 amended by striking “the” before “Compact” and insert-
23 ing “any”.

24 (c) APPLICABILITY.—The amendments made by this
25 section apply with respect to Compacts entered into be-

1 tween the United States and an eligible country under the
2 Millennium Challenge Act of 2003 before, on, or after the
3 date of the enactment of this Act.

4 **SEC. 205. PUBLIC NOTIFICATION OF ENTERING INTO A**
5 **COMPACT.**

6 Section 610 of the Millennium Challenge Act of 2003
7 (22 U.S.C. 7709) is amended to read as follows:

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

9 “(a) CONGRESSIONAL CONSULTATIONS AND NOTIFI-
10 CATIONS.—

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

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

18 “(A) providing assistance for an eligible
19 country under section 609(g);

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

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

23 “(ii) an agreement under section 616;

24 “(C) signing such a Compact or agree-
25 ment; and

1 “(D) terminating assistance under such a
2 Compact or agreement.

3 “(3) ECONOMIC JUSTIFICATION.—Any notifica-
4 tion relating to the intent to negotiate or sign a
5 Compact shall include a report describing the pro-
6 jected economic justification for the Compact, in-
7 cluding, as applicable—

8 “(A) the expected economic rate of return
9 of the Compact;

10 “(B) a cost-benefit analysis of the Com-
11 pact;

12 “(C) a description of the impact on bene-
13 ficiary populations;

14 “(D) the likelihood that the investment will
15 catalyze private sector investments; and

16 “(E) any other applicable economic factors
17 that justify each project to be funded under
18 such a Compact to the extent practicable and
19 appropriate.

20 “(4) RISK MANAGEMENT PLAN.—Not later than
21 60 days before signing each concurrent Compact, as
22 authorized under section 609, the Board, acting
23 through the Chief Executive Officer, shall consult
24 with and provide to the appropriate congressional
25 committees—

1 “(A) an assessment and, as appropriate,
2 the identification of potential measures to miti-
3 gate risks, of—

4 “(i) the countries’ commitment to re-
5 gional integration and cross-border co-
6 operation and capacity to carry out com-
7 mitments;

8 “(ii) political and policy risks, includ-
9 ing risks that could affect country eligi-
10 bility;

11 “(iii) risks associated with realizing
12 economic returns;

13 “(iv) time and completion risks; and

14 “(v) cost and financial risks; and

15 “(B) an assessment of measures to be
16 taken to mitigate any identified risks, includ-
17 ing—

18 “(i) securing other potential donors to
19 finance projects or parts of projects as
20 needed; and

21 “(ii) partnering with regional organi-
22 zations to support and oversee effective
23 cross-border cooperation.

24 “(b) CONGRESSIONAL AND PUBLIC NOTIFICATION
25 AFTER ENTERING INTO A COMPACT.—Not later than 10

1 days after entering into a Compact with an eligible coun-
2 try, the Board, acting through the Chief Executive Officer,
3 shall—

4 “(1) publish the text of the Compact on the
5 website of the Corporation;

6 “(2) provide the appropriate congressional com-
7 mittees with a detailed summary of the Compact
8 and, upon request, the text of the Compact; and

9 “(3) publish in the Federal Register a detailed
10 summary of the Compact and a notice of availability
11 of the text of the Compact on the website of the
12 Corporation.”.

13 **SEC. 206. DISCLOSURE.**

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

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

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

20 (A) by striking “The Corporation” and in-
21 sserting “Not later than 90 days after the last
22 day of each fiscal quarter, the Corporation”;
23 and

24 (B) by striking “on at least a quarterly
25 basis,”.

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

4 “(b) DISSEMINATION.—The Board, acting through
5 the Chief Executive Officer, shall make the information
6 required to be disclosed under subsection (a) available to
7 the public—

8 “(1) by publishing it on the website of the Cor-
9 poration;

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

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

14 **SEC. 207. RESTRICTION ON THE USE OF ASSISTANCE**
15 **UNDER SECTION 616.**

16 Section 616(d) of the Millennium Challenge Act of
17 2003 (22 U.S.C. 7715(d)) is amended to read as follows:

18 “(d) FUNDING.—

19 “(1) LIMITATION.—Not more than 10 percent
20 of the amounts made available to carry out this Act
21 for a fiscal year may be made available to carry out
22 this section.

23 “(2) RESTRICTION RELATING TO ASSIST-
24 ANCE.—None of the funds authorized to carry out
25 the purposes of this Act shall be available for assist-

1 ance under this section to a country that does not
2 qualify as a candidate country under section 606 for
3 the fiscal year during which such assistance is pro-
4 vided.”.

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

6 (a) IN GENERAL.—Not later than 180 days after the
7 date of the enactment of this Act, the Board of the Millen-
8 nium Challenge Corporation, acting through the Chief Ex-
9 ecutive Officer, shall submit a study to the appropriate
10 congressional committees that assesses the feasibility and
11 desirability of developing partnerships at the subnational
12 level within candidate countries that would be complemen-
13 tary to, and, as applicable, concurrent with, any Millen-
14 nium Challenge Corporation national-level or regional in-
15 vestments.

16 (b) CONTENT.—The study required under subsection
17 (a) shall examine—

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

21 (2) the extent to which traditional approaches
22 to defining poverty may not adequately capture the
23 nature of poverty within a country;

1 (3) the types of subnational entities that might
2 be appropriate partners for subnational Millennium
3 Challenge Corporation compacts;

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

6 (5) what role each national government should
7 play in creating or implementing a subnational part-
8 nership.

9 (c) APPROPRIATE CONGRESSIONAL COMMITTEES.—

10 In this subsection, the term “appropriate congressional
11 committees” means—

12 (1) the Committee on Foreign Relations of the
13 Senate;

14 (2) the Committee on Appropriations of the
15 Senate;

16 (3) the Committee on Foreign Affairs of the
17 House of Representatives; and

18 (4) the Committee on Appropriations of the
19 House of Representatives.

 Passed the House of Representatives January 17,
2018.

Attest:

Clerk.

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