

## Calendar No. 115

108TH CONGRESS } 1st Session }	SENATE	{ REPORT 108-55
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### THE MILLENNIUM CHALLENGE ACT OF 2003

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MAY 29, 2003.—Ordered to be printed

Filed under authority of the order of the Senate of May 23, 2003

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Mr. LUGAR, from the Committee on Foreign Relations,  
submitted the following

### REPORT

together with

### ADDITIONAL VIEWS

[To accompany S. 1160]

The Committee on Foreign Relations, having had under consideration an original bill to authorize appropriations for Millennium Challenge assistance, reports favorably thereon and recommends that the bill do pass.

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### I. PURPOSE

The Millennium Challenge Act of 2003 establishes a program of Millennium Challenge assistance to be coordinated by an appropriate officer designated by the Secretary of State. It authorizes foreign assistance funding and addresses the purposes, functions, and procedures relating to the operations of a Millennium Challenge Account and its expenditures.

## II. COMMITTEE ACTION

The Committee heard Secretary of State Colin Powell's views on the Millennium Challenge Account in his testimony of February 6 regarding the international affairs budget (S. Hrg. 108–19). The Committee also held an extensive hearing on the Millennium Challenge Account on March 4 (S. Hrg. 108–25). Witnesses from the Department of State, the Department of the Treasury, and the Agency for International Development testified at the hearing on the issues addressed in this legislation. The Committee also heard testimony from expert witnesses from the private sector.

The Committee considered an original bill on May 21, 2003, introduced by the Chairman. The Chairman's mark contained a number of changes to the administration's proposed bill, S. 571, introduced by the Chairman on behalf of the President on March 6, 2003. The Chairman's mark established a separate government agency, named the Millennium Challenge Corporation, and authorized appropriations for assistance to be delivered by the Corporation. It adopted the President's innovative plan to choose recipients based on objective measurements of demonstrated commitment to certain policies, and a system of contracts between recipient countries and the Corporation whereby benchmarks of success would be determined in advance and referred to throughout the period of the contract. It also mandated procedures that the Corporation would follow to choose recipients, and manage and deliver the assistance.

During the mark-up of this legislation, the Committee adopted three amendments, one by roll call vote and two by voice vote.

The first was an amendment offered by Senators Hagel and Biden that struck the provision creating a separate government corporation; instead, the amendment gives the authority to coordinate the new Millennium Challenge program to the Secretary of State, consistent with legislation enacted in 1998 (the Foreign Affairs Agencies Consolidation Act of 1998) granting the Secretary of State authority to coordinate all U.S. development and economic assistance. The Committee disagreed with the administration's proposal to create a new government agency, which would have undermined the Secretary of State's existing authority (granted just five years ago) and complicated, rather than enhanced, inter-agency coordination. The Committee is not persuaded that a separate government agency—with duplicate management structures and attendant costs to establish it—is necessary to administer this new program.

The Committee strongly supports the purposes and goals of the Millennium Challenge Account and believes that they can be carried out in a unique and innovative way as proposed by the administration. Under the provision approved by the Committee, the Secretary will have the flexibility to decide which agencies of the government will administer the various aspects of the MCA program. The bill also retains the authority to provide the assistance “notwithstanding any other provision of law.” Finally, to ensure that the economic and financial expertise of the Treasury Department is properly utilized, the provision requires the Secretary of State to consult with the Secretary of the Treasury with regard to several aspects of the program.

The vote on the Hagel-Biden amendment was 11 to 8. Those voting in the affirmative were Senators Hagel, Chafee, Biden, Sarbanes, Dodd, Kerry, Feingold, Boxer, Nelson, Rockefeller, and Corzine. Those voting in the negative were Senators Lugar, Allen, Brownback, Enzi, Voinovich, Alexander, Coleman, and Sununu.

The second amendment, offered by Senator Corzine, strikes an appropriate balance between adherence to objective criteria in selecting recipients and cases where candidate countries fail to meet such criteria because of questionable data or by only a narrow margin. The amendment allows discretion in both cases but restricts grants to such countries to only 10 percent of the available funding. It was adopted by voice vote.

The third amendment offered, by Senator Dodd, provides a specific deadline in the public disclosure requirements in section 107. It was adopted by voice vote.

The Committee ordered the bill reported, as amended, by a vote of 19 to 0. Ayes: Senators Lugar, Hagel, Chafee, Allen, Brownback, Enzi, Voinovich, Alexander, Coleman, Sununu, Biden, Sarbanes, Dodd, Kerry, Feingold, Boxer, Nelson, Rockefeller, and Corzine.

### III. SECTION-BY-SECTION ANALYSIS

#### *Section 1. Short Title; Table of Contents*

This section contains the short title and table of contents of the bill.

#### *Section 2. Findings; Purpose*

This section contains findings and purposes applicable to the bill. It recalls President George W. Bush's announcement of American support for the international development goals of the UN Millennium Declaration, and pledge of support for increased U.S. assistance through a Millennium Challenge Account to countries that govern justly, invest in their own people, and encourage economic freedom. It states that the purpose of this bill is to provide United States assistance for global development through the Millennium Challenge Account in a manner that promotes economic growth and the elimination of extreme poverty, and strengthens good governance, economic freedom, and investments in people.

#### *Section 3. Definitions*

This section contains definitions of terms used in the bill.

### TITLE I—MILLENNIUM CHALLENGE ASSISTANCE

#### *Sec. 101. Authority of the Secretary of State*

This section directs the Secretary of State to coordinate assistance provided under this bill.

Subsection (c) directs the Secretary to designate a Coordinator for the Millennium Challenge Account from among those officers serving in the Department of State in positions requiring the advice and consent of the Senate. It also specifies the Coordinator's duties, which include developing the indicators to be used to select eligible countries for Millennium Challenge Assistance and coordinating such assistance with other United States assistance pro-

grams and with assistance programs of other countries and international organizations.

Subsection (d) directs the Secretary of State to consult with the Secretary of the Treasury with respect to the development of indicators for use in selecting eligible countries, the determination of such countries, standards for use in measuring performance under Millennium Challenge Contracts, and other appropriate matters determined by the Secretary of State.

*Sec. 102. Authorization for Millennium Challenge Assistance*

Subsection (a) provides the Secretary authority to provide assistance consistent with the purposes contained in section 2(b), notwithstanding any other provision of law. The bill submitted by the administration, S. 571, provided that assistance could be provided “notwithstanding any other provision of law, except the provisions of the Anti-Deficiency Act.” The Committee does not believe that authority to make funds available “notwithstanding any other provision of law” is ever to be interpreted as making inapplicable the provisions of the Anti-Deficiency Act. Obviously, an agency cannot obligate funds it does not have. The Committee omitted the administration’s language specifically excepting the Anti-Deficiency Act from the notwithstanding authority because it did not wish to imply that other statutes which contain notwithstanding authority without such specific exceptions have the effect of making the Anti-Deficiency Act inapplicable.

Subsection (b) provides that assistance under this Act may not be used for military assistance or training.

Subsection (c) provides that assistance shall be provided in the form of grants.

Subsection (d) provides that assistance under this Act shall be coordinated with other U.S. foreign assistance programs. The Committee expects such coordination to include existing and future U.S. trade, debt, investment, and environmentally sustainable development programs.

Subsection (e) provides for entities seeking assistance under this Act to submit proposals to the Secretary accompanied by such information as he may reasonably require. It is the intention of the Committee that the Secretary should make clear his favorable disposition towards proposals that

- Include men and women equally in the development of the proposal, in plans for its implementation, and among its beneficiaries.
- Have a beneficial impact on the environment, in cases where this is applicable.
- Promote civil liberties and human rights.
- Support the development of the financial infrastructure necessary to build an entrepreneurial culture.

By citing this list of considerations that it considers especially important, the Committee does not intend to exclude other worthy projects and programs that meet the purposes and goals of Millennium Challenge assistance.

*Sec. 103. Candidate Country*

Subsection (a) sets per capita income levels as the criteria for countries to be considered as candidates for assistance under this title. In FY 2004, candidate countries will be those countries eligible to receive loans from the International Development Association (currently this consists of countries with an annual per capita income below \$1,435). In FY 2005, the number of candidate countries expands to include countries at the same per capita income level but which are ineligible for International Development Association loans for reasons other than income. In fiscal years after 2005, the rules will depend on the amount of money appropriated for MCA assistance in that year. In years in which \$5 billion or less is appropriated, the same criteria that apply for fiscal year 2005 will apply (i.e. candidate countries will be those with annual per capita incomes below the International Development Association's historical per capita income cutoff). In years in which more than \$5 billion is appropriated, candidate countries will be those with annual per capita incomes which qualify as lower middle income countries as defined by the World Bank (currently an annual per capita income of \$2,975).

The Committee has linked these criteria to recognized income benchmarks, rather than to fixed dollar figures, to ensure that they will accurately reflect countries' development needs over time. Use of International Development Association and World Bank income standards is also intended to facilitate coordination of Millennium Challenge Assistance with other assistance programs which base eligibility on these standards.

Subsection (b) provides that in years in which more than \$5 billion is appropriated, no more than 20 percent of the funds appropriated for assistance may be used to provide assistance to countries with per capita incomes that exceed the International Development Association's historical per capita income cutoff. This provision is intended to ensure that MCA assistance remains focused primarily on the poorest eligible countries, even as increasing appropriations levels make it possible to allow developing countries with higher per capita incomes to participate in MCA assistance. If the \$5 billion threshold is reached, the Committee expects that assistance to the lower middle income countries will focus on poor communities in those countries and that the Secretary will fully consider existing levels of assistance to those countries when assessing the need for MCA assistance. Finally, the Committee expects that, in using the indicators described in section 104, the Executive Branch will not require the poorer countries to "compete" with the lower middle income nations.

*Sec. 104. Eligible Country*

Subsection (a) establishes criteria for use in selecting countries eligible to receive MCA assistance from among the group of countries with low enough incomes to be considered as candidates for such assistance. The criteria are designed to identify countries with a demonstrated commitment to ensuring just and democratic governance, promoting economic freedom, and investing in people.

Subsection (b) requires the Secretary to rely on objective and quantifiable indicators of a candidate country's performance in these areas. This requirement is intended to ensure that decisions

about eligibility for MCA assistance are based on countries' development needs and their ability to make productive use of assistance, and not on short-term political considerations. The Committee expects that as countries with relatively higher incomes become eligible for MCA consideration, the Secretary will design and apply indicators in ways that ensure that lower income countries are not disadvantaged in competing for MCA eligibility. This subsection also provides for notice and public comment on the indicators to be used by the Secretary.

The Committee fully supports the principle of designating eligible countries on the basis of publicly available, objective data. Much of the data currently available for establishing quantitative indicators, however, are subject to significant gaps and time lags. In addition, an empirical correlation between some available indicators of demonstrated commitment and the goals of economic development and poverty reduction is not clearly established. The Committee believes that the publication of the indicators in the Federal Register and the promotion of public comment will help to refine the indicators and sharpen their focus on factors that have a direct bearing on a country's development potential.

The Committee believes that selecting and measuring the indicators of demonstrated commitment is a crucial component of a successful MCA, one that should be subject to regular review and refinement. The Committee expects that the Secretary's selection of indicators will reflect improvements in both theory and data on poverty reduction and economic development.

#### *Sec. 105. Eligible Entity*

This section provides that MCA assistance may be provided to MCA eligible governments, including local or regional governments, and to nongovernmental organizations or other private entities. The Committee hopes that MCA assistance will be allocated to the greatest extent possible to entities that are based in MCA eligible countries in order to develop local capacity and broaden participation in achieving Millennium Challenge goals.

#### *Sec. 106. Millennium Challenge Contract*

Subsection (a) requires the Secretary to enter into a Millennium Challenge Contract with the government of a country eligible to receive MCA assistance. The purpose of the contract is to create a multi-year plan for the eligible country to achieve specific development objectives. The Committee expects that key areas of focus for MCA assistance will include:

- poverty reduction,
- health,
- education,
- agricultural development,
- enterprise and private sector development,
- governance,
- trade and investment capacity, and
- environmentally sustainable development.

Subsection (b) specifies particular issues to be addressed in the contract.

Subsection (c) provides that the Secretary shall seek to ensure that the government of the eligible country consults with non-governmental organizations and other private entities in the country with respect to the content of the Millennium Challenge Contract. Such consultations with these and other interested local stakeholders, including indigenous women's organizations, are intended to ensure widespread public participation, and thereby build local commitment to the objectives toward which MCA assistance is directed. The Committee expects that, to the greatest extent possible, Millennium Challenge contracts include a description of the beneficiary populations disaggregated by gender.

*Sec. 107. Disclosure*

This section requires the Secretary to publish in the *Federal Register* and to make available on the Internet specified information about the selection of countries eligible to receive MCA assistance, the programs and projects for which assistance is provided, and the results achieved through MCA assistance. Disclosure under this section of information about assistance provided is intended to apply to entities that receive assistance directly from the United States; it is not intended to require reporting on individual expenditures made by those recipient entities from MCA assistance funds. In reporting on the progress each year by eligible countries, the Committee expects to see appropriate statistics disaggregated by gender and age.

*Sec. 108. Annual Report to Congress*

This section requires that the President submit an annual report to the Congress with specified information on MCA assistance provided during the prior fiscal year. The Committee will be particularly interested in learning how and to what extent Millennium Challenge assistance and the traditional programs organized and carried out by the U.S. Agency for International Development relate to one another.

*Sec. 109. Millennium Challenge Assistance to Candidate Countries*

This section provides that the Secretary may make available up to 10 percent of the funds appropriated for MCA assistance in any fiscal year to provide assistance to countries that are not eligible for MCA assistance under section 114 because of unreliability of data or because they failed to perform adequately with respect to one indicator of eligibility. Such assistance may be provided for the purposes of assisting such countries in becoming eligible countries. This provision is intended to encourage countries that are making genuine efforts to meet MCA eligibility criteria but fall just short of qualifying, and to help expand the pool of MCA eligible countries.

## TITLE II

*Sec. 201. Establishment of the Millennium Challenge Account*

This section establishes a Millennium Challenge Account on the books of the Treasury, into which all amounts made available to carry out this title are to be deposited.

*Sec. 202. Authorization of Appropriations*

Subsection (a) authorizes appropriations to carry out this Act in the following amounts: \$1,000,000,000 for fiscal year 2004; \$2,300,000,000 for fiscal year 2005; and \$5,000,000,000 for fiscal year 2006. The Committee expects that this funding will be in addition to current development assistance funds, as the President pledged in announcing the MCA program.

Subsection (b) provides that these funds are authorized to remain available until expended.

Subsection (c) authorizes the Secretary to allocate or transfer to other Federal Government agencies funds available for carrying out this title. Any such transfers or allocations must be notified to the Senate Foreign Relations Committee, the House International Relations Committee, and the Appropriations Committees of both Houses of Congress in accordance with section 634A of the Foreign Assistance Act.

IV. COST ESTIMATE

In accordance with rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the Committee provides the following estimate of the cost of this legislation prepared by the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 28, 2003.*

Hon. RICHARD G. LUGAR, *Chairman*  
*Committee on Foreign Relations,*  
*United States Senate,*  
*Washington, DC.*

DEAR MR. CHAIRMAN:

The Congressional Budget Office has prepared the enclosed cost estimate for the Millennium Challenge Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Joseph C. Whitehill.

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

[Enclosure.]

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*Millennium Challenge Act of 2003*

SUMMARY

The Millennium Challenge Act of 2003 would create a new foreign assistance program, the Millennium Challenge Account, to provide economic assistance to developing countries that have demonstrated a commitment to just and democratic government, economic freedom, and improved educational opportunities and health care for its citizens. The bill would authorize the appropriation of \$1 billion in 2004 and \$8.3 billion over the 2004-2006 period for the new program. CBO estimates that implementing the bill would cost



\$6.5 billion over the 2004-2008 period, assuming the appropriation of the authorized amounts. The bill would not affect direct spending or receipts.

The Millennium Challenge Act of 2003 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

#### ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the Millennium Challenge Act is shown in the following table. The costs of this legislation fall within budget function 150 (international affairs).

	By Fiscal Year, in Millions of Dollars				
	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level .....	1,000	2,300	5,000	0	0
Estimated Outlays .....	100	630	1,650	2,654	1,488

#### BASIS OF ESTIMATE

The estimate assumes the Millennium Challenge Act of 2003 will be enacted late in 2003 and that the amounts authorized for 2004, 2005, and 2006 will be appropriated at the start of each fiscal year. CBO estimates that outlays from the Millennium Challenge Account will be low during the first few years because of the normal delays in starting a new program and the multiyear character of the program as authorized.

CBO estimates that it would take three to six months to select a coordinator to manage the Millennium Challenge Account, hire staff, write the necessary rules and regulations to administer the program, and establish interagency coordination. Only then would eligible countries be invited to submit a multiyear plan detailing how they would use the funds provided by the new program. CBO expects that the effort to develop such plans would require considerable time since each country's plan must specify the objectives it would achieve with Millennium Challenge funds, describe the actions it would undertake to achieve those objectives, provide a time schedule for achieving those objectives, and identify benchmarks for assessing whether the country has achieved its objectives.

In addition, the bill also would require eligible countries to involve private sector and nongovernmental organizations in preparing their plans. Thus, CBO estimates that few grants would be extended before the last quarter of fiscal year 2004. Moreover, because the bill would require periodic evaluations to determine whether the country is meeting its commitments. CBO believes that this multiyear program would probably have a spending pattern similar to existing development assistance programs. Thus, CBO estimates outlays will follow historical patterns for such economic assistance spending.

#### INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The Millennium Challenge Act of 2003 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

*Estimate prepared by:*

Federal Costs: Joseph C. Whitehill.

Impact on State, local, and tribal governments: Victoria Heid Hall.

Impact on the private sector: Paige Piper/Bach.

*Estimate approved by:*

Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### V. EVALUATION OF REGULATORY IMPACT

In accordance with rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the Committee has concluded that there is no regulatory impact from this legislation.

#### VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes to existing law are made by this bill.

VII. ADDITIONAL VIEWS OF HON. RICHARD G. LUGAR,  
CHAIRMAN

Despite a Committee vote rejecting the MCC as a separate government corporation, the prospects offered by the President's initiative are so great that efforts must continue to find a way to capture his vision of designing and delivering a new American commitment to international development. The Committee made a mistake in rejecting the President's plan for a groundbreaking, highly visible, organization. With funding of more than \$8 billion over three years, the mission of the Millennium Challenge program is to boost economic growth in countries that, while very poor, demonstrate commitment to good government. It is intended to be single-mindedly focused on development and unaffected by short-term political considerations. As the Secretary of State himself has argued, this is best achieved through the establishment of an innovative, flexible, narrowly targeted and highly visible separate organization that can complement other assistance provided through more traditional means.

Every Member of this Committee is keenly aware that development assistance has garnered only modest support among the American public. It is one of the reasons that the Committee has not passed a foreign aid bill in over a decade. The President's vision of a new beginning in which America signs a contract with poor but promising countries and provides performance-based assistance is something that he is willing to take to the American public. The most important constituent for a major boost in development resources is now the President. It is incumbent on the U.S. Senate as a whole to support his enthusiasm and leadership.

