

FY2019 Dept. of State Budget Request

(2) Section 6 of Public Law 109-472 (8 U.S.C. 1714 note) is amended by inserting "and the consular protection of U.S. citizens and their interests overseas" after "in support of enhanced border security" each place it appears.

(c) **TRANSFER OF BALANCES.** Section 7081(h) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017 (division J of Public Law 115-31) shall continue in effect in fiscal year 2019.

FRAUD PREVENTION AND DETECTION FEES

SEC. 7051. In addition to the uses permitted pursuant to section 286(v)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(A)), the Secretary of State may also use fees deposited into the Fraud Prevention and Detection Account for programs and activities within the United States and at U.S. embassies and consulates abroad for the prevention and detection of visa fraud, to include increasing the number of personnel assigned exclusively or primarily to the function of preventing and detecting visa fraud.

AUTHORITY TO ISSUE ADMINISTRATIVE SUBPOENAS

SEC. 7052. Section 3486 of Title 18, United States Code, is amended—

(a) in subsection (a)(1)(A)—

(i) in clause (ii), by striking "or"; and

(2) by adding new clauses (iv) and (v) immediately prior to "may issue in writing and cause to be served a subpoena", as follows:

"(iv) an offense under section 878, or a threat against a person, foreign mission or organization authorized to receive protection by special agents of the Department of State and the Foreign Service under paragraph (3) of section 2709 of title 22, if the Assistant Secretary for Diplomatic Security or the Director of the Diplomatic Security Service determines that the threat constituting the offense or threat against the person or place protected is imminent, the Secretary of State; or

"(v) an offense under chapter 75, Passports and Visas, the Secretary of State.";

(b) in subsection (a)(9), by striking "(1)(A)(i)(II) or (1)(A)(iii)" and inserting "(1)(A)(i)(II), (1)(A)(iii), (1)(A)(iv), or (1)(A)(v)";

(c) in subsection (a)(10), by inserting before the period, ", and as soon as practicable following issuance of a subpoena under paragraph (1)(A)(iv) the Secretary of State shall notify the Attorney General of its issuance"; and

(d) in subsection (e)(1) by replacing the existing language with the following:

"(1) Health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; directly relates to the purpose for which the subpoena was authorized under paragraph (a)(1); or is authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefor."

CONSULAR NOTIFICATION COMPLIANCE

SEC. 7053. (a) **PETITION FOR REVIEW.**

(1) **JURISDICTION.** Notwithstanding any other provision of law, a Federal court shall have jurisdiction to review the merits of a petition claiming violation of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or a comparable provision of a bilateral international agreement addressing consular notification and access, filed by an individual convicted and sentenced to death by any Federal or State court before the date of enactment of this Act.

(2) **STANDARD.** To obtain relief, an individual described in paragraph (1) must make a showing of actual prejudice to the criminal conviction or sentence as a result of the violation. The court may conduct an evidentiary hearing if necessary to supplement the record and, upon a finding of actual prejudice, shall order a new trial or sentencing proceeding.

(3) **LIMITATIONS.**

(A) **INITIAL SHOWING.** To qualify for review under this subsection, a petition must make an initial showing that—

(i) a violation of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or a comparable provision of a bilateral international agreement addressing consular notification and access, occurred with respect to the individual described in paragraph (1); and

(ii) if such violation had not occurred, the consulate would have provided assistance to the individual.

(B) **EFFECT OF PRIOR ADJUDICATION.** A petition for review under this subsection shall not be granted if the claimed violation described in paragraph (1) has previously been adjudicated on the merits by a Federal or State court of competent jurisdiction in a proceeding in which no Federal or State procedural bars were raised with respect to such violation and in which the court provided review equivalent to the review provided in this subsection, unless the adjudica-

tion of the claim resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the prior Federal or State court proceeding.

(C) **FILING DEADLINE.** A petition for review under this subsection shall be filed within 1 year of the later of—

(i) the date of enactment of this Act;

(ii) the date on which the Federal or State court judgment against the individual described in paragraph (1) became final by the conclusion of direct review or the expiration of the time for seeking such review; or

(iii) the date on which the impediment to filing a petition created by Federal or State action in violation of the Constitution or laws of the United States is removed, if the individual described in paragraph (1) was prevented from filing by such Federal or State action.

(D) **TOLLING.** The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward the 1-year period of limitation.

(E) **TIME LIMIT FOR REVIEW.** A Federal court shall give priority to a petition for review filed under this subsection over all noncapital matters. With respect to a petition for review filed under this subsection and claiming only a violation described in paragraph (1), a Federal court shall render a final determination and enter a final judgment not later than one year after the date on which the petition is filed.

(4) **HABEAS PETITION.** A petition for review under this subsection shall be part of the first Federal habeas corpus application or motion for Federal collateral relief under chapter 153 of title 28, United States Code, filed by an individual, except that if an individual filed a Federal habeas corpus application or motion for Federal collateral relief before the date of enactment of this Act or if such application is required to be filed before the date that is 1 year after the date of enactment of this Act, such petition for review under this subsection shall be filed not later than 1 year after the enactment date or within the period prescribed by paragraph (3)(C)(iii), whichever is later. No petition filed in conformity with the requirements of the preceding sentence shall be considered a second or successive habeas corpus application or subjected to any bars to relief based on preenactment proceedings other than as specified in paragraph (2).

(5) **REFERRAL TO MAGISTRATE.** A Federal court acting under this subsection may refer the petition for review to a Federal magistrate for proposed findings and recommendations pursuant to 28 U.S.C. 636(b)(1)(B).

(6) **APPEAL.**

(A) **IN GENERAL.** A final order on a petition for review under paragraph (1) shall be subject to review on appeal by the court of appeals for the circuit in which the proceeding is held.

(B) **APPEAL BY PETITIONER.** An individual described in paragraph (1) may appeal a final order on a petition for review under paragraph (1) only if a district or circuit judge issues a certificate of appealability. A district or circuit court judge shall issue or deny a certificate of appealability not later than 30 days after an application for a certificate of appealability is filed. A district judge or circuit judge may issue a certificate of appealability under this subparagraph if the individual has made a substantial showing of actual prejudice to the criminal conviction or sentence of the individual as a result of a violation described in paragraph (1).

(b) **VIOLATION.**

(1) **IN GENERAL.** An individual not covered by subsection (a) who is arrested, detained, or held for trial on a charge that would expose the individual to a capital sentence if convicted may raise a claim of a violation of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or of a comparable provision of a bilateral international agreement addressing consular notification and access, at a reasonable time after the individual becomes aware of the violation, before the court with jurisdiction over the charge. Upon a finding of such a violation—

(A) the consulate of the foreign state of which the individual is a national shall be notified immediately by the detaining authority, and consular access to the individual shall be afforded in accordance with the provisions of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or the comparable provisions of a bilateral international agreement addressing consular notification and access; and

(B) the court—

(i) shall postpone any proceedings to the extent the court determines necessary to allow for adequate opportunity for consular access and assistance; and

(ii) may enter necessary orders to facilitate consular access and assistance.

(2) **EVIDENTIARY HEARINGS.** The court may conduct evidentiary hearings if necessary to resolve factual issues.

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(3) **RULE OF CONSTRUCTION.** Nothing in this subsection shall be construed to create any additional remedy.

(c) **DEFINITIONS.** In this section the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(d) **APPLICABILITY.** The provisions of this section shall apply during the current fiscal year.

INSPECTOR GENERAL PERSONNEL AUTHORITIES

SEC. 7054. (a) Section 8L of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in subsection (d)(2)(E) to read as follows:

"(E) To employ, or authorize the employment by the other Inspectors General specified in subsection (c), on a temporary basis using the authorities in section 3161 of title 5, United States Code (but without regard to subsections (a) and (b)(2) of such section), such auditors, investigators, and other personnel as the lead Inspector General considers appropriate to assist the lead Inspector General and such other Inspectors General on matters relating to the contingency operation."

(b) Section 8L of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in subsection (d)(3) to read as follows:

"(3)(A) Each Inspector General specified in subsection (c) may employ annuitants covered by section 9902(g) of title 5, United States Code, for purposes of assisting the lead Inspector General in discharging responsibilities under this subsection with respect to the contingency operation.

"(B) The employment under this subsection of an annuitant described in section 9902(g) of title 5, United States Code, shall be governed by the provisions of such section as if the position in which the annuitant is employed was a position in the Department of Defense.

"(C) For purposes of employment under this subsection, an annuitant receiving an annuity under the Foreign Service Retirement and Disability System or the Foreign Service Pension System under Chapter 52, Subchapter VIII of Title 22 may be reemployed as if covered by section 9902(g)(1) of Title 5.

"(i) Notwithstanding any other provision of law, a Foreign Service annuitant so reemployed shall continue to receive his full annuity and shall not be considered a participant for purposes of subchapter VIII of Chapter 52 of Title 22 or an employee for purposes of subchapter III of chapter 83 or chapter 84 of Title 5."

"(ii) A Foreign Service annuitant reemployed under this subsection may elect in writing for his reemployment to be subject to subsection 4064 of Title 22. Any such election must be made within 90 days of his reemployment under this subsection."

(c) Section 8L of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end of subsection (d) a new paragraph as follows:

"(5) The authority to employ personnel under this subsection for a contingency operation shall cease as provided for in subsection (e)."

WORKING CAPITAL FUND

SEC. 7055. (a) The Administrator of the United States Agency for International Development (the Administrator) is authorized to establish a Working Capital Fund (in this section referred to as the "Fund").

(b) Funds deposited in the Fund during any fiscal year shall be available without fiscal year limitation and used, in addition to other funds available for such purposes, for administrative costs resulting from agency acquisition and assistance operations, the administration of this Fund, and administrative contingencies designated by the Administrator. Such expenses may include—

- (1) personal and nonpersonal services;
- (2) training;
- (3) supplies; and
- (4) other administrative costs related to acquisition and assistance operations.

(c) There may be deposited during any fiscal year in the Fund up to 1 percent of the total value of obligations entered into by the United States Agency for International Development (USAID) from appropriations available to USAID and any appropriation made available for the purpose of providing capital. Receipts from the disposal of, or repayments for the loss or damage to, property held in the Fund, rebates, reimbursements, refunds and other credits applicable to the operation of the Fund may be deposited into the Fund.

(d) At the close of each fiscal year the Administrator shall transfer to the general fund of the Treasury amounts in excess of \$100,000,000, and such other amounts as the Administrator determines to be in excess of the needs of the Fund.

INFECTIOUS DISEASE CONTROL

SEC. 7056. Unobligated balances appropriated under the heading "Bilateral Economic Assistance" in title IX of division J of the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235) shall, notwithstanding any other provision of law, also be available for assistance or research to detect,

prevent, treat, and control malaria or other emerging infectious diseases in countries at risk of such diseases, and prevent, prepare for, and respond to emerging health threats in those countries: Provided, That amounts repurposed pursuant to this section are designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act, as amended, and shall be available only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

MILLENNIUM CHALLENGE COMPACT

SEC. 7057. (a) IN GENERAL.—Section 609 of the Millennium Challenge Act of 2003 (22 U.S.C. 7708) is amended—

- (1) in subsection (k), by striking the first sentence;
- (2) by redesignating subsection (k) as subsection (l); and
- (3) by inserting after subsection (j) the following:

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

"(1) one or both of the Compacts are or will be for the purposes of regional economic integration, increased regional trade, or cross-border collaborations; and

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

(b) **CONFORMING AMENDMENT.**—Section 613(b)(2)(a) of such Act (22 U.S.C. 7712(b)(2)(A)) is amended by striking "the" before "Compact" and inserting "any."

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

VOLUNTARY SEPARATION INCENTIVE PAYMENTS

SEC. 7058. Section 3323 of title 5, U.S. Code shall be applied with respect to funds made available by this Act by substituting "\$40,000" for "\$25,000" in subsection (b)(3)(B) of such section.

MULTILATERAL DEVELOPMENT BANK REPLENISHMENTS

SEC. 7059. (a) The Asian Development Bank Act, Public Law 89-369, as amended (22 U.S.C. 285 et seq.), is further amended by adding at the end thereof the following new section:

"Sec. 36. Eleventh Replenishment.—

"(a) The United States Governor of the Bank is authorized to contribute, on behalf of the United States, \$189,580,000 to the eleventh replenishment of the resources of the Fund, subject to obtaining the necessary appropriations.

"(b) In order to pay for the U.S. contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, \$189,580,000 for payment by the Secretary of the Treasury."

(b) The International Development Association Act, Public Law 86-565, as amended (22 U.S.C. 284 et seq.), is further amended by adding at the end thereof the following new section:

"Sec. 30. Eighteenth Replenishment.—

"(a) The United States Governor of the International Development Association is authorized to contribute on behalf of the United States \$3,291,030,000 to the eighteenth replenishment of the resources of the Association, subject to obtaining the necessary appropriations.

"(b) In order to pay for the U.S. contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, \$3,291,030,000 for payment by the Secretary of the Treasury."

(c) The African Development Fund Act, Public Law 94-302, as amended (22 U.S.C. 290g et seq.), is further amended by adding at the end thereof the following new section:

"Sec. 225. Fourteenth Replenishment.—

"(a) The United States Governor of the Fund is authorized to contribute on behalf of the United States \$513,900,000 to the fourteenth replenishment of the resources of the Fund, subject to obtaining the necessary appropriations.

"(b) In order to pay for the U.S. contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, \$513,900,000 for payment by the Secretary of the Treasury."

INSPECTOR GENERAL AUTHORITY TO WAIVE CERTAIN ANNUITY LIMITATIONS ON REHIRED FOREIGN SERVICE ANNUITANTS

SEC. 7060. Section 209 of the Foreign Service Act of 1980 (22 U.S.C. 3929) is amended by adding a new subsection (h) to read as follows:

"(h) Waiver of Annuity Limitations for Certain Rehired Foreign Service Annuitants.—