

licenses that incorporate or otherwise reflect WSA agreement terms, it is also the case that they are entitled to weigh the value of any such evidence in light of the overall circumstances of the marketplace, including any general impact of the WSA agreements.

As discussed above, in rate determinations, the CRJs are tasked with replicating a “hypothetical market” where “the webcasting statutory license [does] not exist.”<sup>86</sup> Among the tools at the CRJs’ disposal to accomplish this task are “the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements.”<sup>87</sup> As Webcasters seem to acknowledge, when considering a voluntary agreement, the CRJs may consider whether an agreement was made in the “shadow” of a statutory rate or WSA agreement in evaluating its worth as a benchmark.<sup>88</sup> As the U.S. Court of Appeals for the D.C. Circuit has stressed, “[i]t is generally within the discretion of the Judges to assess evidence of an agreement’s comparability and to decide whether to look to its rates and terms for guidance.”<sup>89</sup> This “broad discretion” includes the ability to “discount . . . benchmarks” offered by the parties.<sup>90</sup> Although section 114(f)(5)(C) may preclude the consideration or comparison of individual rates and terms contained in the WSA agreements, it does not prevent the CRJs from considering the agreements at all.

Section 114(f)(5)(C) bars the CRJs from considering the terms of agreements negotiated under the 2009 WSA. Nowhere does the statute suggest that the mere existence of such agreements, or their general effect on the marketplace or particular negotiations, may not be considered. As noted above, the statutory language is specific in limiting the scope of the prohibition to the “provisions of any [WSA] agreement.”<sup>91</sup> Section 114(f)(5)(C) provides examples of the types of provisions Congress had in mind: “rate structure, fees, terms, conditions, or notice and recordkeeping requirements.”<sup>92</sup> This list, which

appears twice in subparagraph (C),<sup>93</sup> makes clear that the ban applies only to a WSA agreement’s specific terms, as embodied in particular provisions.

A recent case from federal district court in the Southern District of New York speaks to this issue.<sup>94</sup> As part of a rate determination for the performance of musical compositions by Pandora in a ratesetting proceeding conducted under a federal consent decree, the court discussed section 114(i) of the Copyright Act, which contains the same “taken into account” language as section 114(f)(5)(C).<sup>95</sup> Section 114(i) provides relevant part:

License fees payable for the public performance of sound recordings under section 106(6) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners of musical works for the public performance of their works.<sup>96</sup>

During the course of the federal court proceeding, the licensing organization, ASCAP, the licensor, proposed a variety of benchmarks for the court to consider, including a series of licensing agreements negotiated directly between copyright owners and licensees outside of the consent decree process.<sup>97</sup> At trial, the parties disputed the extent to which the court could consider evidence relating to the rate for the public performance of sound recordings (as opposed to musical works).<sup>98</sup> While the presiding judge noted that she could “not take the [sound recording rate] into account in determining the fair market rate for a public performance license [for musical compositions],” she went on to state that “one observation may be safely made”:<sup>99</sup>

I don’t understand that that testimony about motive in negotiations and turmoil within ASCAP over these different rates [for sound recordings] would be inadmissible pursuant to Section 114. Indeed, I think it would be difficult to deal with the facts on the ground as they exist and to set a rate that is reasonable in the context of the facts . . . without knowing about that.<sup>100</sup>

<sup>93</sup> 17 U.S.C. 114(f)(5)(C).

<sup>94</sup> See *In re Pandora Media, Inc.*, 6 F. Supp. 3d 317 (S.D.N.Y. 2014).

<sup>95</sup> See *id.* at 366–67.

<sup>96</sup> 17 U.S.C. 114(i).

<sup>97</sup> *In re Pandora Media, Inc.*, 6 F. Supp. 3d at 320.

<sup>98</sup> Transcript of Trial at 729:18–733:1, *In re Pandora Media, Inc.*, 6 F. Supp. 3d 317 (S.D.N.Y. 2014) (Nos. 12 Civ. 8035, 41 Civ. 1395).

<sup>99</sup> *In re Pandora Media, Inc.*, 6 F. Supp. 3d at 366–67.

<sup>100</sup> Transcript of Trial at 731:1–7, *In re Pandora Media, Inc.*, 6 F. Supp. 3d 317 (S.D.N.Y. 2014) (Nos. 12 Civ. 8035, 41 Civ. 1395).

This commentary in the consent decree case further supports the Register’s determination that evidence concerning the general impact and influence of the WSA agreements—and the statutory licensing regime that gave rise to them—may appropriately be considered by the CRJs in evaluating the probative value of the direct agreements.

September 18, 2015

**Maria A. Pallante**

*Register of Copyrights and Director, United States Copyright Office.*

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**BILLING CODE 1410–30–P**

## MILLENNIUM CHALLENGE CORPORATION

[MCC FR 15–03]

### Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2016

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** This report to Congress is provided in accordance with Section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7707(b) (the “Act”).

Dated: September 22, 2015.

**Maame Ewusi-Mensah Frimpong,**

*VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.*

### Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2016

#### Summary

In accordance with section 608(b)(2) of the Millennium Challenge Act of 2003 (the “Act”, 22 U.S.C. 7707(b)(1)), the Millennium Challenge Corporation (MCC) is submitting the following report. This report identifies the criteria and methodology that the Millennium Challenge Corporation (MCC) intends to use to determine which candidate countries may be eligible to be considered for assistance under the Act for FY 2016.

Under section 608 (c)(1) of the Act, MCC will, for a thirty-day period following publication, accept and consider public comment for purposes of determining eligible countries under section 607 of the Act (22 U.S.C. 7706).

<sup>86</sup> *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 796 F.3d 111, 131 (D.C. Cir. 2015) (internal alterations omitted).

<sup>87</sup> 17 U.S.C. 114(f)(2)(B).

<sup>88</sup> See Pandora Responsive Br. at 10–11; iHeartMedia Responsive Br. at 12.

<sup>89</sup> *Intercollegiate Broad. Sys. v. Copyright Royalty Bd.*, 574 F.3d 748, 759 (D.C. Cir. 2009).

<sup>90</sup> *Music Choice v. Copyright Royalty Bd.*, 774 F.3d 1000, 1009 (D.C. Cir. 2014).

<sup>91</sup> See 17 U.S.C. 114(f)(5)(C) (emphasis added).

<sup>92</sup> See *id.*

## Criteria and Methodology for FY 2016

This document explains how the Board of Directors (Board) of the Millennium Challenge Corporation (MCC) will identify, evaluate, and determine eligibility of countries for Millennium Challenge Account (MCA) assistance for fiscal year (FY) 2016. The statutory basis for this report is set forth in Appendix A. Specifically, this document discusses:

- I. Which Countries MCC Will Evaluate
- II. How the Board Evaluates These Countries
  - A. Overall
  - B. For Selection for First Compact Eligibility
  - C. For Selection for Second/Subsequent Compact Eligibility
  - D. For Selection for the Threshold Program
  - E. A Note on Potential Regional Investments

### I. Which countries are evaluated?

As discussed in the August 2015 Report on Countries that are Candidates for Millennium Challenge Account Eligibility for Fiscal Year 2016 and Countries that Would be Candidates but for Legal Prohibitions (the “Candidate Country Report”), MCC evaluates all low-income countries (LICs) and lower-middle income countries (LMICs) countries as follows:

- For scorecard evaluation purposes for FY 2016, MCC defines LICs as those countries between \$0 and \$1985 GNI per capita, and LMICs as those countries between \$1986 and \$4125 GNI per capita.<sup>1</sup>
- For funding purposes for FY 2016, MCC defines the poorest 75 countries as LICs, and the remaining countries up to the upper-middle income (UMIC) threshold of \$4125 as LMICs.<sup>2</sup>

Under Appendix B, lists of all LICs, LMICs and statutorily prohibited countries for evaluation purposes are provided. The list using the “funding” definition was outlined in the FY 2016 Candidate Country Report and describes how funding categories work.

### II. How does the Board evaluate these countries?

#### A. Overall Evaluation

The Board looks at three legislatively-mandated factors in its evaluation of any candidate country for compact eligibility: (1) Policy performance; (2) the opportunity to reduce poverty and generate economic growth; and (3) the availability of MCC funds.

<sup>1</sup> This corresponds to LIC and LMIC definitions using the historic International Development Association (IDA) thresholds published by the World Bank.

<sup>2</sup> By law, no more than 25 percent of all compact funds for a given fiscal year may be provided to LMIC countries (using this “funding” definition).

#### 1. Policy Performance

Because of the importance of needing to evaluate a country’s policy performance—and needing to do so in a comparable, cross-country way—the Board relies to the maximum extent possible upon the best-available objective and quantifiable indicators of policy performance. These indicators act as proxies of the country’s commitment to good governance, as laid out in MCC’s founding legislation. Comprised of 20 third-party indicators in the categories of “encouraging economic freedom,” “investing in people,” and “ruling justly,” MCC “scorecards” are created for all LICs and LMICs. To “pass” the indicators on the scorecard, the country must perform above the median among its income group (as defined above), except in the cases of inflation, political rights, civil liberties, and immunization rates (LMICs only), where threshold scores have been established. In particular, the Board considers whether the country:

- Passed at least 10 of the 20 indicators, with at least one in each category,
- Passed the “Control of Corruption” indicator, and
- Passed either the “Political Rights” or “Civil Liberties” indicator.

While satisfaction of all three aspects means a country is termed to have “passed” the scorecard, the Board also considers whether the country performed “substantially worse” in any one policy category than it does on the scorecard overall. Appendix C describes all 20 indicators, their definitions, what is required to “pass,” their source, and their relationship to the legislative criteria.

The 20 policy performance indicators are the predominant basis for determining which countries will be eligible for MCC assistance, and the Board expects a country to be passing its scorecard at the point the Board decides to select the country for either a first or second/subsequent compact. However, the Board also recognizes that even the best-available data has inherent challenges. For example, data gaps, real-time events versus data lags, the absence of narratives and nuanced detail, and other similar weaknesses affect each of these indicators. In such instances, the Board uses its judgment to interpret policy performance as measured by the scorecards. The Board may also consult other sources of information to further enhance its understanding of a given country’s policy performance beyond the issues on the scorecard, which is especially useful given the unique perspective of each Board member (*e.g.*,

specific policy issues related to trade, civil society, other U.S. aid programs, financial sector performance, and security/foreign policy issues). The Board uses its judgment on how best to weigh such information in assessing overall policy performance.

#### 2. The Opportunity To Reduce Poverty and Generate Economic Growth

The Board also consults other sources of qualitative and quantitative information to have a more detailed view of the opportunity to reduce poverty and generate economic growth in a country.

While the Board considers a range of other information sources depending on the country, specific areas of attention typically include better understanding the issues on, trends in, and trajectory of:

- The control of corruption and rule of law;
- The state of democratic and human rights (especially of vulnerable groups<sup>3</sup>);
- The perspective of civil society on salient governance issues;
- The potential for the private sector (both local and foreign) to lead investment and growth;
- The levels of poverty within a country; and
- The country’s institutional capacity.

Where applicable, the Board also considers MCC’s own experience and ability to reduce poverty and generate economic growth in a given country—such as considering MCC’s core skills versus the country’s needs, capacity within MCC to work with a country, and the likelihood that MCC is seen by the country as a credible partner.

This information provides greater clarity on the likelihood that MCC investments will have an appreciable impact on reducing poverty and generating economic growth in a given country. The Board has used such information both to not select countries that are otherwise passing their scorecards, as well as to better understand when a country’s performance on a particular indicator may not be up to date or is about to change. More details on this subject (sometimes referred to as “supplemental information”) can be found on MCC’s Web site at <https://www.mcc.gov/pages/docs/doc/pub-guide-to-supplemental-information-fy15>.

#### 3. The Availability of MCC Funds

The final factor that the Board must consider when evaluating countries is

<sup>3</sup> For example, women; children; lesbian, gay, bisexual, and transgender individuals; people with disabilities; and workers.

the funding available. The agency's allocation of its budget is constrained, and often specifically limited, by provisions in the authorizing legislation and appropriations acts. MCC has a continuous pipeline of countries in compact development, compact implementation, and compact closeout, as well as threshold programs. Consequently, the Board factors in the overall portfolio picture when making its selection decisions given the funding available for each of the agency's planned or existing programs.

The following sub-sections describe how each of these three legislatively-mandated factors are applied with regard to the selection situations the Board encounters each December: Selection of countries for first compact eligibility, selection of countries for second/subsequent compact eligibility, and selection of countries for the threshold program. Thereafter, a note is included on consideration of countries for potential regional investments.

#### *B. Evaluation for Selection of Countries for First Compact Eligibility*

When selecting countries for compact eligibility, the Board looks at all three legislatively-mandated aspects described in the previous section: (1) Policy performance, first and foremost as measured by the scorecards and bolstered through additional information (as described in the previous section); (2) the opportunity to reduce poverty and generate economic growth, examined through the use of other supporting information (as described in the previous section); and (3) the funding available.

At a minimum, the Board looks to see that the country passes its scorecard. It also examines supporting evidence that the country's commitment to good governance is on a sound footing and performance is on a positive trajectory, and that MCC has funding to support a meaningful compact with that country. Where applicable, previous threshold program information is also considered. The Board then weighs the information described above across each of the three dimensions.

The approach described above is then applied in any additional years of selection of a country to continue to develop a first compact, with the added benefit of having cumulative scorecards, cumulative records of policy performance, and other accumulated supporting information to determine the overall pattern of performance over the emerging multi-year trajectory.

#### *C. Evaluation for Selection of Countries for Second/Subsequent Compact Eligibility*

Section 609(k) of the Millennium Challenge Act of 2003, as amended, specifically authorizes MCC to enter into "one or more subsequent Compacts." MCC does not consider subsequent compact eligibility, however, before countries have completed their compact, or are within 18 months of completion, (e.g., a second compact if they have completed or are within 18 months of completing their first compact).

Selection for subsequent compacts is not automatic and is intended only for countries that (1) exhibit successful performance on their previous compact; (2) exhibit improved scorecard policy performance during the partnership; and (3) exhibit a continued commitment to further their sector reform efforts in any subsequent partnership. As a result, the Board has an even higher standard when selecting countries for subsequent compacts.

##### 1. Successful Implementation of the Previous Compact

To evaluate the degree of success of the previous compact, the Board looks to see if there is a clear evidence base of success within the budget and time limits of the compact, in particular by looking at three aspects:

- The degree to which there is evidence of strong political will and management capacity: Is the partnership characterized by the country ensuring that both policy reforms and the compact program itself are being implemented to the best ability that the country can deliver;
- The degree to which the country has exhibited commitment and capacity to achieve program results: Are the financial and project results being achieved; to what degree is the country committing its own resources to ensure the compact is a success; to what extent is the private sector engaged (if relevant); and other compact-specific issues; and
- The degree to which the country has implemented the compact in accordance with MCC's core policies and standards: That is, is the country adhering to MCC's policies and procedures, including in critical areas such as remediating unresolved fraud and corruption and abuse or misuse of funds issues; procurement; and monitoring and evaluation.

Details on the specific types of information examined (and sources used) in each of the three areas are provided in Appendix D. Overall, the

Board is looking for evidence that the previous compact will be completed or has been completed successfully, on time and on budget, and that there is a commitment to continued, robust reform going forward.

##### 2. Improved Scorecard Policy Performance

Beyond successful implementation of the previous compact, the Board expects the country to have improved its overall scorecard policy performance during the partnership, and to pass the scorecard in the year of selection for the subsequent compact. The Board focuses on:

- The overall scorecard pass/fail rate over time, what this suggests about underlying policy performance, as well as an examination of the underlying reasons;
- The progress over time on policy areas measured by both hard-hurdle indicators—Control of Corruption, and Democratic Rights—including an examination of the underlying reasons; and
- Other indicator trajectories as deemed relevant by the Board.

In all cases, while the Board expects the country to be passing its scorecard, other sources of information are examined to understand the nuance and reasons behind scorecard or indicator performance over time, including any real-time updates, methodological changes within the indicators themselves, shifts in the relevant candidate pool, or alternative policy performance perspectives (such as gleaned through consultations with civil society and related stakeholders). Other sources of information are also consulted to look at policy performance over time in areas not covered by the scorecard, but that are deemed important by the Board (such as trade, foreign policy concerns, etc.).

##### 3. A Commitment to Further Sector Reform

The Board expects that subsequent compacts will endeavor to tackle deeper policy reforms necessary to unlock an identified constraint to growth. Consequently, the Board considers its own experience during the previous compact in considering how committed the country is to reducing poverty and increasing economic growth, and therefore tries to gauge the country's commitment for further sector reform should it be selected for a subsequent compact. This includes:

- Assessing the country's delivery of policy reform during the previous compact (as described above);
- Assessing expectations of the country's ability and willingness to

continue embarking on sector policy reform in a subsequent compact;

- Examining both other sources of information that describe the nature of the opportunity to reduce poverty and generate growth (as outlined in A.2 above), and the relative success of the previous compact overall, as already discussed; and

- Finally, considering how well funding can be leveraged for impact, given its experience in the previous compact.

Through this overall approach to subsequent compact selection, the Board applies the three legislatively mandated evaluation criteria (policy performance, the opportunity to reduce poverty and generate economic growth, and the funding available) in a way that rests critically on deeply assessing the previous partnership: From a compact success standpoint, a commitment to improved scorecard policy performance standpoint, and a commitment to continued sector policy reform standpoint. The Board then weighs all of the information described above in making its decision.

The approach described above is then applied in any additional years of selection necessary as the country continues to develop the subsequent compact, with the added benefit of having even further detail on previous compact implementation, cumulative scorecards, records of policy performance, and other accumulated supporting information to determine the overall pattern of performance over the resulting multi-year trajectory.

#### *D. Evaluation for Eligibility for Threshold Programs*

The Board may also select countries to participate in the Threshold Program. The Threshold Program provides assistance to candidate countries that exhibit a significant commitment to meeting the eligibility criteria described in the previous sub-sections, but fail to meet such requirements. Specifically, in examining the policy performance, the opportunity to reduce poverty and generate economic growth, and the funding available, the Board will consider whether a country potentially eligible for threshold program assistance appears to be on a trajectory to becoming a viable contender for compact eligibility in the medium term.

#### *E. A Note on Potential Regional Investments*

FY 2016 marks the first year that the Board may consider selecting countries where potential regional investments (*i.e.*, cross-border investments) may be developed.

With respect to regional investments, the fundamental criteria and process for selection will remain unchanged: Countries will continue to be evaluated and selected individually, as described in sections A, B, and C above. However, for countries where regional investments might be contemplated, the Board will also examine additional supplemental information looking at the policy environment from a regional dimension.

Specifically, the Board will examine additional data and information related to:

- The current state of the country's political and economic integration with its region and neighbors;
- Impediments to further integration with its region and neighbors; and
- The potential gains from investing at a regional level, including illustrative potential sector opportunities.

The Board will weigh this additional regional information in tandem with the other supplemental factors described earlier in sections A, B, and C. The Board will then decide whether or not it will direct MCC to explore some form of a regional investment with the country.

#### **Appendix A: Statutory Basis for This Report**

This report to Congress is provided in accordance with section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7707(b) (the Act).

Section 605 of the Act authorizes the provision of assistance to countries that enter into a Millennium Challenge Compact with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction. The Act requires MCC to take a number of steps in selecting countries for compact assistance for FY 2016 based on the countries' demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, MCC's opportunity to reduce poverty and generate economic growth in the country, and the availability of funds. These steps include the submission of reports to the congressional committees specified in the Act and publication of information in the **Federal Register** that identify:

1. The countries that are "candidate countries" for MCA assistance for FY 2016 based on per capita income levels and eligibility to receive assistance under U.S. law. (section 608(a) of the Act; 22 U.S.C. 7707(a));

2. The criteria and methodology that MCC's Board of Directors (Board) will use to measure and evaluate policy

performance of the candidate countries consistent with the requirements of section 607 of the Act (22 U.S.C. 7706) in order to determine "eligible countries" from among the "candidate countries" (section 608(b) of the Act; 22 U.S.C. 7707(b)); and

3. The list of countries determined by the Board to be "eligible countries" for FY 2016, with justification for eligibility determination and selection for compact negotiation, including those eligible countries with which MCC will seek to enter into compacts (section 608(d) of the Act; 22 U.S.C. 7707(d)).

This report reflects the satisfaction of item #2 above.

#### **Appendix B: Lists of all LICs, LMICs, and Statutorily Prohibited Countries for Evaluation Purposes Income Classification for Scorecards**

Since MCC was created, it has relied on the World Bank's gross national income (GNI) per capita income data (Atlas method) and the historical ceiling for eligibility as set by the World Bank's International Development Association (IDA) to divide countries into two income categories for purposes of creating scorecards: LICs and LMICs. These categories are used to account for the income bias that occurs when countries with more per capita resources perform better than countries with fewer. Using the historical IDA eligibility ceiling for the scorecards ensures that the poorest countries compete with their income level peers and are not compared against countries with more resources to mobilize.

MCC will continue to use the traditional income categories for eligibility to categorize countries in two groups for purposes of FY 2016 scorecard comparisons:

- LICs are countries with GNI per capita below IDA's historical ceiling for eligibility (\$1,985 for FY 2016); and
- LMICs are countries with GNI per capita above IDA's historical ceiling for eligibility but below the World Bank's upper middle income country threshold (\$1,986—\$4,125 for FY 2016).

The list of countries categorized as LICs and LMICs for the purpose of FY 2016 scorecard assessments can be found below.<sup>4</sup>

<sup>4</sup> In December 2011, a statutory change requested by MCC altered the way MCC must group countries for the purposes of applying MCC's 25 percent LMIC funding cap. This change, designed to bring stability to the funding stream, affects how MCC funds countries selected for compacts and does not affect the way scorecards are created. For determining whether a country can be funded as an LMIC or LIC:

- The poorest 75 countries are now considered LICs for the purposes of MCC funding. They are not limited by the 25 percent funding cap on LMICs.

**Low Income Countries (FY 2016 Scorecard)**

1. Afghanistan
2. Bangladesh
3. Benin
4. Burkina Faso
5. Burma
6. Burundi
7. Cambodia
8. Cameroon
9. Central African Republic
10. Chad
11. Comoros
12. Congo, the Democratic Republic of
13. Cote d'Ivoire
14. Djibouti
15. Eritrea
16. Ethiopia
17. Gambia
18. Ghana
19. Guinea
20. Guinea-Bissau
21. Haiti
22. India
23. Kenya
24. Korea, Democratic People's Republic of
25. Kyrgyz Republic
26. Laos
27. Lesotho
28. Liberia
29. Madagascar
30. Malawi
31. Mali
32. Mauritania
33. Mozambique
34. Nepal
35. Nicaragua
36. Niger
37. Pakistan
38. Rwanda
39. Sao Tome and Principe
40. Senegal
41. Sierra Leone
42. Solomon Islands
43. Somalia
44. South Sudan
45. Sudan
46. Tajikistan
47. Tanzania
48. Togo
49. Uganda
50. Vietnam
51. Yemen
52. Zambia
53. Zimbabwe

**Lower Middle Income Countries (FY 2016 Scorecard)**

1. Armenia

• Countries with a GNI per capita above the poorest 75 but below the World Bank's upper middle income country threshold (\$4,125 for FY 2015) are considered LMICs for the purposes of MCC funding. By law, no more than 25 percent of all compact funds for a given fiscal year can be provided to these countries.

The FY 2016 Candidate Country Report lists LICs and LMICs based on this new definition and outlines which countries are subject to the 25 percent funding cap.

2. Bhutan
3. Bolivia
4. Cabo Verde
5. Congo, Republic of
6. Egypt
7. El Salvador
8. Georgia
9. Guatemala
10. Guyana
11. Honduras
12. Indonesia
13. Kiribati
14. Kosovo
15. Micronesia
16. Moldova
17. Morocco
18. Nigeria
19. Papua New Guinea
20. Philippines
21. Samoa
22. Sri Lanka
23. Swaziland
24. Syria
25. Timor-Leste
26. Ukraine
27. Uzbekistan
28. Vanuatu

**Statutorily Prohibited Countries for FY16<sup>5</sup>**

1. Bolivia
2. Burma
3. Eritrea
4. North Korea
5. South Sudan
6. Sudan
7. Syria
8. Zimbabwe

**Appendix C: Indicator Definitions**

The following indicators will be used to measure candidate countries' demonstrated commitment to the criteria found in section 607(b) of the Act. The indicators are intended to assess the degree to which the political and economic conditions in a country serve to promote broad-based sustainable economic growth and reduction of poverty and thus provide a sound environment for the use of MCA funds. The indicators are not goals in themselves; rather, they are proxy measures of policies that are linked to broad-based sustainable economic growth. The indicators were selected based on (i) their relationship to

economic growth and poverty reduction; (ii) the number of countries they cover; (iii) transparency and availability; and (iv) relative soundness and objectivity. Where possible, the indicators are developed by independent sources.<sup>6</sup> Listed below is a brief summary of the indicators (a detailed rationale for the adoption of these indicators can be found in the Public Guide to the Indicators on MCC's public Web site at [www.mcc.gov](http://www.mcc.gov)).

**Ruling Justly**

1. Political Rights: Independent experts rate countries on the prevalence of free and fair elections of officials with real power; the ability of citizens to form political parties that may compete fairly in elections; freedom from domination by the military, foreign powers, totalitarian parties, religious hierarchies and economic oligarchies; and the political rights of minority groups, among other things. Pass: Score must be above the minimum score of 17 out of 40. Source: Freedom House

2. Civil Liberties: Independent experts rate countries on freedom of expression; association and organizational rights; rule of law and human rights; and personal autonomy and economic rights, among other things. Pass: Score must be above the minimum score of 25 out of 60. Source: Freedom House

3. Freedom of Information: Measures the legal and practical steps taken by a government to enable or allow information to move freely through society; this includes measures of press freedom, national freedom of information laws, and the extent to which a county is filtering internet content or tools. Pass: Score must be above the median score for the income group. Source: Freedom House/Centre for Law and Democracy/Access Info Europe

4. Government Effectiveness: An index of surveys and expert assessments that rate countries on the quality of public service provision; civil servants' competency and independence from political pressures; and the government's ability to plan and implement sound policies, among other things. Pass: Score must be above the

<sup>5</sup> This list is current as of July 21, 2015. Between such date and the December 2015 selection Board meeting, other countries may also be the subject of future statutory restrictions or determinations, or changed country circumstances, that affect their legal eligibility for assistance under part I of the Foreign Assistance Act by reason of application of the Foreign Assistance Act or any other provision of law for FY 2016. Even though these countries are prohibited from receiving assistance, scorecards are still created for them to ensure all countries are included in an income group in order to determine the global medians/scores for that income group.

<sup>6</sup> Special note on Kosovo: Since UN agencies do not currently publish data for Kosovo due to non-recognition status, MCC is unable to source data directly from the UN for the six indicators that are constructed in all or in part from this data: Land Rights and Access, Health Expenditures, Primary Education Expenditures, Immunization Rates, Girls' Secondary Education Enrollment Rate, and Child Health. As result, MCC publishes data from UNKT (the UN Kosovo Team) in cases where UNKT uses comparable methodologies to their UN sister organizations. See <http://www.unkt.org/> for more information.

median score for the income group. Source: Worldwide Governance Indicators (World Bank/Brookings)

5. Rule of Law: An index of surveys and expert assessments that rate countries on the extent to which the public has confidence in and abides by the rules of society; the incidence and impact of violent and nonviolent crime; the effectiveness, independence, and predictability of the judiciary; the protection of property rights; and the enforceability of contracts, among other things. Pass: Score must be above the median score for the income group. Source: Worldwide Governance Indicators (World Bank/Brookings)

6. Control of Corruption: An index of surveys and expert assessments that rate countries on: "grand corruption" in the political arena; the frequency of petty corruption; the effects of corruption on the business environment; and the tendency of elites to engage in "state capture," among other things. Pass: Score must be above the median score for the income group. Source: Worldwide Governance Indicators (World Bank/Brookings)

#### Encouraging Economic Freedom

1. Fiscal Policy: The overall budget balance divided by gross domestic product (GDP), averaged over a three-year period. The data for this measure comes primarily from IMF country reports or, where public IMF data are outdated or unavailable, are provided directly by the recipient government with input from U.S. missions in host countries. All data are cross-checked with the IMF's World Economic Outlook database to try to ensure consistency across countries and made publicly available. Pass: Score must be above the median score for the income group. Source: International Monetary Fund Country Reports, National Governments, and the International Monetary Fund's World Economic Outlook Database

2. Inflation: The most recent average annual change in consumer prices. Pass: Score must be 15 percent or less. Source: The International Monetary Fund's World Economic Outlook Database

3. Regulatory Quality: An index of surveys and expert assessments that rate countries on the burden of regulations on business; price controls; the government's role in the economy; and foreign investment regulation, among other areas. Pass: Score must be above the median score for the income group. Source: Worldwide Governance Indicators (World Bank/Brookings)

4. Trade Policy: A measure of a country's openness to international

trade based on weighted average tariff rates and non-tariff barriers to trade. Pass: Score must be above the median score for the income group. Source: The Heritage Foundation

5. Gender in the Economy: An index that measures the extent to which laws provide men and women equal capacity to generate income or participate in the economy, including the capacity to access institutions, get a job, register a business, sign a contract, open a bank account, choose where to live, and to travel freely. Pass: Score must be above the median score for the income group. Source: International Finance Corporation

6. Land Rights and Access: An index that rates countries on the extent to which the institutional, legal, and market framework provide secure land tenure and equitable access to land in rural areas and the time and cost of property registration in urban and peri-urban areas. Pass: Score must be above the median score for the income group. Source: The International Fund for Agricultural Development and the International Finance Corporation

7. Access to Credit: An index that rates countries on rules and practices affecting the coverage, scope, and accessibility of credit information available through either a public credit registry or a private credit bureau; as well as legal rights in collateral laws and bankruptcy laws. Pass: Score must be above the median score for the income group. Source: International Finance Corporation

8. Business Start-Up: An index that rates countries on the time and cost of complying with all procedures officially required for an entrepreneur to start up and formally operate an industrial or commercial business. Pass: Score must be above the median score for the income group. Source: International Finance Corporation

#### Investing in People

1. Public Expenditure on Health: Total expenditures on health by government at all levels divided by GDP. Pass: Score must be above the median score for the income group. Source: The World Health Organization

2. Total Public Expenditure on Primary Education: Total expenditures on primary education by government at all levels divided by GDP. Pass: Score must be above the median score for the income group. Source: The United Nations Educational, Scientific and Cultural Organization and National Governments

3. Natural Resource Protection: Assesses whether countries are protecting up to 17 percent of all their

biomes (e.g., deserts, tropical rainforests, grasslands, savannas and tundra). Pass: Score must be above the median score for the income group. Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy

4. Immunization Rates: The average of DPT3 and measles immunization coverage rates for the most recent year available. Pass: Score must be above the median score for LICs, and 90 percent or higher for LMICs. Source: The World Health Organization and the United Nations Children's Fund

5. Girls Education:  
a. Girls' Primary Completion Rate: The number of female students enrolled in the last grade of primary education minus repeaters divided by the population in the relevant age cohort (gross intake ratio in the last grade of primary). LICs are assessed on this indicator. Pass: Score must be above the median score for the income group. Source: United Nations Educational, Scientific and Cultural Organization

b. Girls Secondary Enrollment Education: The number of female pupils enrolled in lower secondary school, regardless of age, expressed as a percentage of the population of females in the theoretical age group for lower secondary education. LMICs will be assessed on this indicator instead of Girls Primary Completion Rates. Pass: Score must be above the median score for the income group. Source: United Nations Educational, Scientific and Cultural Organization

6. Child Health: An index made up of three indicators: (i) Access to improved water, (ii) access to improved sanitation, and (iii) child (ages 1–4) mortality. Pass: Score must be above the median score for the income group. Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy

#### Relationship to Legislative Criteria

Within each policy category, the Act sets out a number of specific selection criteria. A set of objective and quantifiable policy indicators is used to inform eligibility decisions for MCA assistance and to measure the relative performance by candidate countries against these criteria. The Board's approach to determining eligibility ensures that performance against each of these criteria is assessed by at least one of the objective indicators. Most are addressed by multiple indicators. The specific indicators appear in parentheses next to the corresponding criterion set out in the Act.

Section 607(b)(1): Just and democratic governance, including a demonstrated commitment to—

(A) promote political pluralism, equality and the rule of law (Political Rights, Civil Liberties, Rule of Law, and Gender in the Economy);

(B) respect human and civil rights, including the rights of people with disabilities (Political Rights, Civil Liberties, and Freedom of Information);

(C) protect private property rights (Civil Liberties, Regulatory Quality, Rule of Law, and Land Rights and Access);

(D) encourage transparency and accountability of government (Political Rights, Civil Liberties, Freedom of Information, Control of Corruption, Rule of Law, and Government Effectiveness); and

(E) combat corruption (Political Rights, Civil Liberties, Rule of Law, Freedom of Information, and Control of Corruption);

Section 607(b)(2): Economic freedom, including a demonstrated commitment to economic policies that—

(A) encourage citizens and firms to participate in global trade and

international capital markets (Fiscal Policy, Inflation, Trade Policy, and Regulatory Quality);

(B) promote private sector growth (Inflation, Business Start-Up, Fiscal Policy, Land Rights and Access, Access to Credit, Gender in the Economy, and Regulatory Quality);

(C) strengthen market forces in the economy (Fiscal Policy, Inflation, Trade Policy, Business Start-Up, Land Rights and Access, Access to Credit, and Regulatory Quality); and

(D) respect worker rights, including the right to form labor unions (Civil Liberties and Gender in the Economy); and

Section 607(b)(3): Investments in the people of such country, particularly women and children, including programs that—

(A) promote broad-based primary education (Girls' Primary Completion Rate, Girls' Secondary Education Enrollment Rate, and Total Public Expenditure on Primary Education);

(B) strengthen and build capacity to provide quality public health and reduce child mortality (Immunization

Rates, Public Expenditure on Health, and Child Health); and

(C) promote the protection of biodiversity and the transparent and sustainable management and use of natural resources (Natural Resource Protection).

**Appendix D: Subsequent Compact Considerations**

MCC reporting and data in the following chart are used to assess compact performance of MCC partners nearing the end of compact implementation (*i.e.*, within 18-months of compact end date). Some reporting used for assessment may contain sensitive information and adversely affect implementation or MCC-partner country relations. This information is for MCC's internal use and is not made public. However, key implementation information is summarized in compact status and results reports that are published quarterly on MCC's Web site under MCC country programs ([www.mcc.gov/pages/countries](http://www.mcc.gov/pages/countries)) or monitoring and evaluation (<http://www.mcc.gov/pages/results/m-and-e>) Web pages.

Topic	MCC Reporting/data source	Published documents
<p>COUNTRY PARTNERSHIP</p> <p>Political Will</p> <ul style="list-style-type: none"> <li>• Status of major conditions precedent</li> <li>• Program oversight/implementation                             <ul style="list-style-type: none"> <li>○ project restructures</li> <li>○ partner response to MCA capacity issues</li> </ul> </li> <li>• Political independence of MCA</li> </ul> <p>Management Capacity</p> <ul style="list-style-type: none"> <li>• Project management capacity</li> <li>• Project performance</li> <li>• Level of MCC intervention/oversight</li> <li>• Relative level of resources required</li> </ul> <p>PROGRAM RESULTS</p> <p>Financial Results</p> <ul style="list-style-type: none"> <li>• Commitments—including contributions to compact funding</li> <li>• Disbursements</li> </ul> <p>Project Results</p> <ul style="list-style-type: none"> <li>• Output, outcome, objective targets</li> <li>• MCA commitment to 'focus on results'</li> <li>• MCA cooperation on impact evaluation</li> </ul> <ul style="list-style-type: none"> <li>• Percent complete for process/outputs</li> <li>• Relevant outcome data</li> <li>• Details behind target delays</li> </ul> <p>Target Achievements</p> <p>ADHERENCE TO STANDARDS</p> <ul style="list-style-type: none"> <li>• Procurement</li> <li>• Environmental and social</li> <li>• Fraud and corruption</li> <li>• Program closure</li> <li>• Monitoring and evaluation</li> <li>• All other legal provisions</li> </ul> <p>COUNTRY SPECIFIC</p> <p>Sustainability</p> <ul style="list-style-type: none"> <li>• Implementation entity</li> <li>• MCC investments</li> </ul> <p>Role of private sector or other donors</p>	<ul style="list-style-type: none"> <li>• Quarterly implementation reporting</li> <li>• Quarterly results reporting</li> <li>• Survey of MCC staff</li> </ul> <ul style="list-style-type: none"> <li>• Indicator tracking tables</li> <li>• Quarterly financial reporting</li> <li>• Quarterly implementation reporting</li> </ul> <ul style="list-style-type: none"> <li>• Quarterly results reporting</li> <li>• Survey of MCC staff</li> <li>• Impact evaluations</li> </ul> <ul style="list-style-type: none"> <li>• Audits (GAO and OIG)</li> <li>• Quarterly implementation reporting</li> <li>• Survey of MCC staff</li> </ul> <ul style="list-style-type: none"> <li>• Quarterly implementation reporting</li> <li>• Quarterly results reporting</li> <li>• Survey of MCC staff</li> </ul>	<ul style="list-style-type: none"> <li>• Quarterly results published as "Table of Key Performance Indicators" (available by country): <a href="http://go.usa.gov/jMcC">http://go.usa.gov/jMcC</a>.</li> <li>• Survey questions to be posted: <a href="http://1.usa.gov/PE0xCX">http://1.usa.gov/PE0xCX</a>.</li> </ul> <ul style="list-style-type: none"> <li>• Monitoring and Evaluation Plans (available by country): <a href="http://go.usa.gov/jMcC">http://go.usa.gov/jMcC</a>.</li> <li>• Quarterly Status Reports (available by country): <a href="http://1.usa.gov/NfEbcl">http://1.usa.gov/NfEbcl</a>.</li> </ul> <ul style="list-style-type: none"> <li>• Quarterly results published as "Table of Key Performance Indicators" (available by country): <a href="http://1.usa.gov/QoduNI">http://1.usa.gov/QoduNI</a>.</li> <li>• Survey questions to be posted: <a href="http://1.usa.gov/PE0xCX">http://1.usa.gov/PE0xCX</a>.</li> </ul> <ul style="list-style-type: none"> <li>• Published OIG and GAO Audits</li> <li>• Survey questions to be posted: <a href="http://1.usa.gov/PE0xCX">http://1.usa.gov/PE0xCX</a>.</li> </ul> <ul style="list-style-type: none"> <li>• Quarterly results published as "Table of Key Performance Indicators" (available by country): <a href="http://1.usa.gov/QoduNI">http://1.usa.gov/QoduNI</a>.</li> <li>• Survey questions to be posted: <a href="http://1.usa.gov/PE0xCX">http://1.usa.gov/PE0xCX</a>.</li> </ul>

Topic	MCC Reporting/data source	Published documents
<ul style="list-style-type: none"> <li>• Other relevant investors/investments</li> <li>• Other donors/programming</li> <li>• Status of related reforms</li> <li>• Trajectory of private sector involvement going forward</li> </ul>		

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## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Revision of a Currently Approved Information Collection, Credit Union Service Organizations; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. NCUA previously amended its credit union service organization (CUSO) regulation to increase transparency and address certain safety and soundness concerns. The final rule extends certain requirements of the CUSO regulation to federally insured, state-chartered credit unions and imposes new requirements on federally insured credit unions (FICUs). Under the amended rule, FICUs with an investment in, or loan to, a CUSO must obtain a written agreement with the CUSO addressing accounting, financial statements, audits, reporting, and legal opinions. The rule limits the ability of a "less than adequately capitalized" FICU to recapitalize an insolvent CUSO. All CUSOs are required to annually provide basic profile information to NCUA and the appropriate state supervisory authority (SSA). CUSOs engaging in certain complex or high-risk activities are also required to report more detailed information, including audited financial statements and customer information.

**DATES:** Comments will be accepted until October 28, 2015.

**ADDRESSES:** Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

*NCUA Contact:* Joy Lee, National Credit Union Administration, 1775 Duke

Street, Alexandria, Virginia 22314-3428, Fax No. 703-837-2861, Email: [OCIOPRA@ncua.gov](mailto:OCIOPRA@ncua.gov).

*OMB Reviewer:* Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to:

*NCUA Contact:* Joy Lee, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-837-2861, Email: [OCIOPRA@ncua.gov](mailto:OCIOPRA@ncua.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract and Request for Comments

NCUA is revising the currently approved collection of information, OMB Control Number, 3133-0149, to reflect amendments to 12 CFR part 712. Part 712 implements authority in the Federal Credit Union Act<sup>1</sup> relating to FICU lending or investment activity with a CUSO. The rule addresses NCUA's safety and soundness concerns for activities conducted by CUSOs and imposes certain recordkeeping obligations on FICUs that have investment or lending relationships with, or conduct operations through, CUSOs. Certain reporting obligations are imposed on natural person credit union CUSOs and corporate CUSOs as a result of the rule.

Specifically, under the amended rule, FICUs with an investment in, or loan to, a CUSO must obtain a written agreement with the CUSO (or revise any current agreement the FICU has with a CUSO) to provide that the CUSO will:

- (1) Account for all its transactions in accordance with generally accepted accounting principles (GAAP);
- (2) prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant;
- (3) provide complete access to the books and records of the CUSO; and
- (4) annually report directly to NCUA and the appropriate state

<sup>1</sup> 12 U.S.C. 1756, 1757(5)(D), 1757(7)(I), 1766, 1782, 1785, and 1786.

supervisory authority (SSA) certain financial and other information prescribed by the rule. 12 CFR 712.3(d).

The report (CUSO Registry) must contain basic registration information, including the CUSO's name and address, point of contact, services offered, the names and charter numbers of credit unions investing in, lending to, or receiving services from the CUSO, and investor and subsidiary information. In addition, for any CUSO engaged in complex or high-risk activities, as defined in the rule, the report must contain additional, enhanced, more detailed information, including audited financial statements and more specific customer information. 12 CFR 712.3(d)(4). NCUA plans to implement secure online technology for the CUSOs' direct submission of financial and other reports.

Development of the CUSO Registry is underway, which will provide fully electronic reporting by CUSOs.

A FICU and a CUSO must be operated in a manner that demonstrates to the public the separate corporate existence of the FICU and the CUSO. Section 712.4(b) requires that prior to investing in a CUSO, the FICU must obtain a written legal opinion confirming the CUSO is established in a legally sufficient way to limit the FICU's exposure to loss of its loans or investments in the CUSO. 12 CFR 712.4(b).

The amendments also require that a FICU that is, or as a result of recapitalizing an insolvent CUSO, will become less than adequately capitalized must, under certain circumstances, obtain NCUA (or SSA, if applicable) approval to recapitalize a CUSO that has become insolvent. 12 CFR 712.2(d).

NCUA previously requested comments in response to a notice on "Information Collection Activities: Submission to OMB for Revision of a Currently Approved Information Collection, Credit Union Service Organizations" due September 4, 2015. (80 FR 38475, July 6, 2015). NCUA received a few comments in response to this sixty-day notice. Staff carefully reviewed and considered these comments.

In particular, with regard to concern about confidentiality, the rule addresses documents, such as an agreement