AMENDMENT TO THE SENATE AMENDMENTS TO H.R. 22

OFFERED BY MR. MULVANEY OF SOUTH CAROLINA

Page 1032, after line 4, insert the following:

TITLE XCVI—BUDGET TRANSPARENCY

SEC. 96001. SHORT TITLE.

This title may be cited as the ‘‘Export-Import Bank Budget Transparency Act of 2015’’.

Subtitle A—Fair Value Estimates

SEC. 96101. CREDIT REFORM.

(a) IN GENERAL.—Title V of the Congressional Budget Act of 1974 is amended by adding after section 507 the following:

‘‘SEC. 508. FAIR VALUE ESTIMATES OF THE EXPORT-IMPORT BANK OF THE UNITED STATES.

‘‘(a) PURPOSES.—The purposes of this section are to—

‘‘(1) measure more accurately the costs of the Export-Import Bank of the United States by accounting for it on a fair value basis;

"(2) place the cost of the Export-Import Bank of the United States on a budgetary basis equivalent to other Federal spending;

"(3) encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries; and

"(4) improve the allocation of resources among Federal programs.

"(b) DEFINITIONS.—For purposes of this section:

"(1) The term 'the Bank' means the Export-Import Bank of the United States.

"(2) The term 'direct loan' means a disbursement of funds by the Export-Import Bank of the United States to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Government asset on credit terms.

"(3) The term 'direct loan obligation' means a binding agreement by the Export-Import Bank of the United States to make a direct loan when specified conditions are fulfilled by the borrower.

"(4) The term 'loan guarantee' means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, including medium- and long-term guarantees, working capital guarantees, supply chain finance guarantees, export credit insurance, and finance lease guarantees.

"(5) The term 'loan guarantee commitment' means a binding agreement by the Export-Import Bank of the United States to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

"(6)(A) The term 'cost' means the sum of the Treasury discounting component and the risk component of a direct loan or loan guarantee, or a modification thereof.

"(B) The Treasury discounting component shall be the estimated long-term cost to the Government of a direct loan or loan guarantee, or modification thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

"(C) The risk component shall be an amount equal to the difference between—

"(i) the estimated long-term cost to the Government of a direct loan or loan guarantee, or modification thereof, estimated on a fair value basis, applying the guidelines set forth by the Financial Accounting Standards Board in Financial Accounting Standards #157, or a successor thereto, excluding administrative costs and any incidental effects on governmental receipts or outlays; and

"(ii) the Treasury discounting component of such direct loan or loan guarantee, or modification thereof.

"(D) The Treasury discounting component of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following estimated cash flows:

"(i) Loan disbursements.

"(ii) Repayments of principal.

"(iii) Essential preservation expenses, payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries, including the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

"(E) The Treasury discounting component of a loan guarantee shall be the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

"(i) Payments by the Government to cover defaults and delinquencies, interest subsidies, essential preservation expenses, or other payments.

"(ii) Payments to the Government including origination and other fees, penalties, and recoveries, including the effects of changes in loan terms resulting from the exercise by the guaranteed lender of an option included in the loan guarantee contract, or by the borrower of an option included in the guaranteed loan contract.

"(F) The cost of a modification is the sum of—

"(i) the difference between the current estimate of the Treasury discounting component of the remaining cash flows under the terms of a direct loan or loan guarantee and the current estimate of the Treasury discounting component of the remaining cash flows under the terms of the contract, as modified; and

"(ii) the difference between the current estimate of the risk component of the remaining cash flows under the terms of a direct loan or loan guarantee and the current estimate of the risk component of the remaining cash flows under the terms of the contract as modified.

"(G) In estimating Treasury discounting components, the discount rate shall be the average interest rate on marketable Treasury securities of similar duration to the cash flows of the direct loan or loan guarantee for which the estimate is being made.

"(H) When funds are obligated for a direct loan or loan guarantee, the estimated cost shall be based on the current assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated.

"(7) The term 'program account' means the budget account into which an appropriation to cover the cost of a direct loan or loan guarantee program is made and from which such cost is disbursed to the financing account.

"(8) The term 'financing account' means the nonbudget account or accounts associated with each program account which holds balances, receives the cost payment from the program account, and also includes all other cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made on or after October 1, 1991.

"(9) The term 'liquidating account' means the budget account that includes all cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made prior to October 1, 1991. These accounts shall be shown in the budget on a cash basis.

"(10) The term 'modification' means any Government action that alters the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) from the current estimate of cash flows. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) such as a change in collection procedures.

"(11) The term 'current' has the same meaning as in section 250(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(12) The term 'Director' means the Director of the Office of Management and Budget.

"(13) The term 'Chairman of the Bank' means Chairman and President of the Export-Import Bank of the United States.

"(14) The term 'administrative costs' means costs related to program management activities, but does not include essential preservation expenses.

"(15) The term 'essential preservation expenses' means servicing and other costs that are essential to preserve the value of loan assets or collateral.

"(c) OMB AND CBO ANALYSIS, COORDINATION, AND REVIEW.—

"(1) IN GENERAL.—For the executive branch, the Director shall be responsible for coordinating the estimates required by this title. The Director shall consult with the Chairman of the Bank.

"(2) DELEGATION.—The Director may delegate to the Bank authority to make estimates of costs. The delegation of authority shall be based upon written guidelines, regulations, or criteria consistent with the definitions in this title. Any delegation of authority to the Bank pursuant to the preceding sentence shall be vested in the Bank's Board of Directors, and not solely in the Chairman of the Bank. The Chairman of the Bank shall exercise any authority granted in this section solely at the direction of the Bank's Board of Directors.

"(3) COORDINATION WITH THE CONGRESSIONAL BUDGET OFFICE.—In developing estimation guidelines, regulations, or criteria to be used by the Bank, the Director shall consult with the Director of the Congressional Budget Office.

"(4) IMPROVING COST ESTIMATES.—The Director and the Director of the Congressional Budget Office shall coordinate the development of more accurate data on historical performance and prospective risk of direct loan and loan guarantee programs of the Bank. They shall annually review the performance of outstanding direct loans and loan guarantees of the Bank to improve estimates of costs. The Office of Management and Budget and the Congressional Budget Office shall have access to all data of the Bank that may facilitate the development and improvement of estimates of costs.

"(5) HISTORICAL CREDIT PROGRAMS COSTS.—The Director shall review, to the extent possible, historical data and develop the best possible estimates of adjustments that would convert aggregate historical budget data to credit reform accounting.

"(d) BUDGETARY TREATMENT.—

"(1) PRESIDENT'S BUDGET.—Beginning with fiscal year 2017, the President's budget shall reflect the costs of direct loan and loan guarantee programs of the Bank. The budget shall also include the planned level of new direct loan obligations or loan guarantee commitments associated with each appropriations request of the Bank. For each fiscal year within the five-fiscal year period beginning with fiscal year 2017, such budget shall include subsidy estimates and costs of direct loan and loan guarantee programs with and without the risk component.

"(2) APPROPRIATIONS REQUIRED.—Notwithstanding any other provision of law, new direct loan obligations may be incurred and new loan guarantee commitments may be made for fiscal year 2017 and thereafter by the Bank only to the extent that—

"(A) new budget authority to cover their costs is provided in advance in an appropriation Act;

"(B) a limitation on the use of funds otherwise available for the cost of a direct loan or loan guarantee program of the Bank has been provided in advance in an appropriation Act; or

"(C) authority is otherwise provided in appropriation Acts.

"(3) BUDGET ACCOUNTING.—

"(A) Notwithstanding any other provision of law, the authority of the Bank to incur new direct loan obligations, make new loan guarantee commitments, or modify outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) shall constitute new budget authority in an amount equal to the cost of the direct loan or loan guarantee in the fiscal year in which definite authority becomes available or indefinite authority is used. Such budget authority shall constitute an obligation of the program account to pay to the financing account.

"(B) The outlays resulting from new budget authority for the cost of direct loans or loan guarantees described in paragraph (A) shall be paid from the program account into the financing account and recorded in the fiscal year in which the direct loan or the guaranteed loan is disbursed or its costs altered.

"(C) All collections and payments of the financing accounts shall be a means of financing.

"(4) MODIFICATIONS.—Notwithstanding any other provision of law, an outstanding direct loan (or direct loan obligation) or loan guarantee (or loan guarantee commitment) shall not be modified in a manner that increases its costs unless budget authority for the additional cost has been provided in advance in an appropriation Act.

"(5) REESTIMATES.—Notwithstanding any other provision of law, when the estimated cost for a group of direct loans or loan guarantees for a given program made in a single fiscal year is re-estimated in a subsequent year, the difference between the reestimated cost and the previous cost estimate shall be displayed as a distinct and separately identified subaccount in the program account as a change in program costs and a change in net interest. There is hereby provided permanent indefinite authority for these re-estimates.

"(6) ADMINISTRATIVE EXPENSES.—Not withstanding any other provision of law, all funding for the Bank's administrative costs associated with a direct loan or loan guarantee program shall be displayed as distinct and separately identified subaccounts within the same budget account as the program's cost.

"(e) AUTHORIZATIONS.—

"(1) AUTHORIZATION FOR FINANCING ACCOUNTS.—In order to implement the accounting required by this title, the President is authorized to establish such non-budgetary accounts as may be appropriate.

"(2) TREASURY TRANSACTIONS WITH THE FINANCING ACCOUNTS.—

"(A) IN GENERAL.—The Secretary of the Treasury shall borrow from, receive from, lend to, or pay to the financing accounts such amounts as may be appropriate. The Secretary of the Treasury may prescribe forms and denominations, maturities, and terms and conditions for the transactions described in the preceding sentence, except that the rate of interest charged by the Secretary on lending to financing accounts (including amounts treated as lending to financing accounts by the Federal Financing Bank pursuant to section 405(b)) and the rate of interest paid to financing accounts on uninvested balances in financing accounts shall be the same as the rate determined pursuant to section 508(b)(6)(G).

"(B) LOANS.—For guaranteed loans financed by the Federal Financing Bank and treated as direct loans by the Bank pursuant to section 406(b)(1), any fee or interest surcharge (the amount by which the interest rate charged exceeds the rate determined pursuant to section 508(b)(6)(G) that the Federal Financing Bank charges to a private borrower pursuant to section 6(c) of the Federal Financing Bank Act of 1973 shall be considered a cash flow to the Government for the purposes of determining the cost of the direct loan pursuant to section 508(b)(6). All such amounts shall be credited to the appropriate financing account.

"(C) REIMBURSEMENT.—The Federal Financing Bank is authorized to require reimbursement from the Bank to cover the administrative expenses of the Federal Financing Bank that are attributable to the direct loans financed for the Bank. All such payments by the Bank shall be considered administrative expenses subject to section 508(d)(6). This subsection shall apply to transactions related to direct loan obligations or loan guarantee commitments made the Bank on or after October 1, 1991.

"(D) AUTHORITY.—The authorities provided in this subsection shall not be construed to supersede or override the authority of the Chairman of the Bank to administer and operate a direct loan or loan guarantee program.

"(E) TITLE 31.—All of the transactions provided in the subsection shall be subject to the provisions of subchapter II of chapter 15 of title 31, United States Code.

"(F) TREATMENT OF CASH BALANCES.—Cash balances of the financing accounts in excess of current requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds. The Secretary of the Treasury shall charge (or pay if the amount is negative) financing accounts an amount equal to the risk component for a direct loan or loan guarantee, or modification thereof. Such amount received by the Secretary of the Treasury shall be a means of financing and shall not be considered a cash flow of the Government for the purposes of section 502(5).

"(3) AUTHORIZATION FOR LIQUIDATING ACCOUNTS.—

"(A) Amounts in liquidating accounts shall be available only for payments resulting from direct loan obligations or loan guarantee commitments made by the Bank prior to October 1, 1991, for—

"(i) interest payments and principal repayments to the Treasury or the Federal Financing Bank for amounts borrowed;

"(ii) disbursements of loans;

"(iii) default and other guarantee claim payments;

"(iv) interest supplement payments;

"(v) payments for the costs of foreclosing, managing, and selling collateral that are capitalized or routinely deducted from the proceeds of sales;

"(vi) payments to financing accounts when required for modifications;

"(vii) administrative costs and essential preservation expenses, if—

"(I) amounts credited to the liquidating account would have been available for administrative costs and essential preservation expenses under a provision of law in effect prior to October 1, 1991; and

"(II) no direct loan obligation or loan guarantee commitment has been made, or any modification of a direct loan or loan guarantee has been made, since September 30, 1991; or

"(viii) such other payments as are necessary for the liquidation of such direct loan obligations and loan guarantee commitments.

"(B) Amounts credited to liquidating accounts in any year shall be available only for payments required in that year. Any unobligated balances in liquidating accounts at the end of a fiscal year shall be transferred to miscellaneous receipts as soon as practicable after the end of the fiscal year.

"(C) If funds in liquidating accounts are insufficient to satisfy obligations and commitments of such accounts, there is hereby provided permanent, indefinite authority to make any payments required to be made on such obligations and commitments.

"(4) REINSURANCE.—Nothing in this title shall be construed as authorizing or requiring the purchase of insurance or reinsurance on a direct loan or loan guarantee from private insurers. If any such reinsurance for a direct loan or loan guarantee is authorized, the cost of such insurance and any recoveries to the Government shall be included in the calculation of the cost.

"(5) ELIGIBILITY AND ASSISTANCE.—Nothing in this title shall be construed to change the authority or the responsibility of a Federal agency to determine the terms and conditions of eligibility for, or the amount of assistance provided by a direct loan or a loan guarantee.

"(f) EFFECT ON OTHER LAWS.—

"(1) EFFECT ON OTHER LAWS.—This section shall supersede, modify, or repeal any provision of law enacted prior to the date of enactment of this title to the extent such provision is inconsistent with this section. Nothing in this section shall be construed to establish a credit limitation on any loan or loan guarantee program of the Bank.

"(2) CREDITING OF COLLECTIONS.—Collections resulting from direct loans obligated or loan guarantees committed prior to October 1, 1991, shall be credited to the liquidating accounts of the Bank. Amounts so credited shall be available, to the same extent that they were available prior to the date of enactment of this title, to liquidate obligations arising from such direct loans obligated or loan guarantees committed prior to October 1, 1991, including repayment of any obligations held by the Secretary of the Treasury or the Federal Financing Bank. The unobligated balances of such accounts that are in excess of current needs shall be transferred to the general fund of the Treasury. Such transfers shall be made from time to time but, at least once each year.".

(3) CONFORMING AMENDMENT.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 507 the following:

"Sec. 508. Fair value estimates at the Export-Import Bank of the United States.".

SEC. 96102. BUDGETARY ADJUSTMENT.

(a) IN GENERAL.—Section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence: “A change in discretionary spending solely as a result of the amendment to title V of the Congressional Budget Act of 1974 made by the Export-Import Bank Budget Transparency Act of 2015 shall be treated as a change of concept under this paragraph.”.

(b) REPORT.—Before adjusting the discretionary caps pursuant to the authority provided in subsection (a), the Office of Management and Budget shall report to the Committees on the Budget of the House of Representatives and the Senate on the amount of that adjustment, the methodology used in determining the size of that adjustment, and a program-by-program itemization of the components of that adjustment.

(c) SCHEDULE.—The Office of Management and Budget shall not make an adjustment pursuant to the authority provided in subsection (a) sooner than 60 days after providing the report required in subsection (b).

SEC. 96103. EFFECTIVE DATE.

The amendments made by section 96101 shall take effect beginning with fiscal year 2017.

Subtitle B—Budget Review and Analysis

SEC. 96201. EXPORT-IMPORT BANK BUDGET JUSTIFICATIONS.

Section 1108 of title 31, United States Code, is amended by inserting at the end the following new subsections:

"(h)(1) Whenever the Export-Import Bank of the United States prepares and submits written budget justification materials for any committee of the House of Representatives or the Senate, the Bank shall post such budget justification on the same day of such submission on the 'open' page of the public website of the Bank, and the Office of Management and Budget shall post such budget justification in a centralized location on its website, in the format developed under paragraph (2). The Bank shall include with its written budget justification the process and methodology the agency is using to comply with the Export-Import Bank Budget Transparency Act of 2015.

"(2) The Office of Management and Budget, in consultation with the Congressional Budget Office and the Government Accountability Office, shall develop and notify the Bank of the format in which to post a budget justification under paragraph (1). Such format shall be designed to ensure that the posted budget justification of the Bank—

"(A) are searchable, sortable, and downloadable by the public;

"(B) are consistent with generally accepted standards and practices for machine-discoverability;

"(C) are organized uniformly, in a logical manner that makes clear the contents of a budget justification and relationships between data elements within the budget justification and among similar documents; and

"(D) use uniform identifiers, including for programs, and projects.

"(i)(1) Not later than the day that the Office of Management and Budget issues guidelines, regulations, or criteria to agencies on how to calculate the risk component under the Export-Import Bank Budget Transparency Act of 2015, it shall submit a written report to the Committees on the Budget of the House of Representatives and the Senate containing all such guidelines, regulations, or criteria.

"(2) For fiscal year 2017 and each of the next four fiscal years thereafter, the Comptroller General shall submit an annual report to the Committees on the Budget of the House of Representatives and the Senate reviewing and evaluating the progress of the Bank in the implementation of the Export-Import Bank Budget Transparency Act of 2015.

"(3) Such guidelines, regulations, or criteria shall be deemed to be a rule for purposes of section 553 of title 5 and shall be issued after notice and opportunity for public comment in accordance with the procedures under such section.".