TITLE V
CREDIT REFORM[739]

§ 500

SEC. 500. SHORT TITLE.

This title may be cited as the "Federal Credit Reform Act of 1990".[740]

[739] Section 13201(a) of the Budget Enforcement Act created the new title V on credit reform. *See infra* p. 713. Public Law 97-258 repealed sections 501-504. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, 96 Stat. 877, 1082 (1982). What used to be section 501 was codified in section 1102 of title 31 and what used to be section 503 was codified in section 1552 of title 31. Section 13201(a) of the Budget Enforcement Act (which created the new title V on credit reform) repealed the title heading and sections 505 and 506. *See infra* p. 713.

[740] The statement of managers accompanying the conference report on the Budget Enforcement Act explains generally the credit reform provisions:

VII. CREDIT REFORM

Current law

The credit programs of the Federal Government are displayed in the budget on a cash accounting basis. Cash accounting overstates the real economic cost of direct loan programs and understates the real economic costs of loan guarantee programs in the year loans are made.

House bill

The House bill provides for a revised system of accounting for Federal credit programs that requires the appropriation of budget authority equal to the cost to the government, which is the estimated net present value of the cash flows associated with federal direct loan and loan guarantee programs. The revised accounting would also apply to any modifications in the costs of outstanding direct loans or loan guarantees. An exception from the requirement for an appropriation is provided for existing entitlement credit programs and the credit activities of the Commodity Credit Corporation. The credit program cost estimates will not include administrative expenses, but these expenses will be displayed in the program account as a separate subaccount on a cash basis. All of the residual cash flows associated

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with direct loan and loan guarantee programs not included in the cost to the government estimate would be non-budgetary and treated as means of financing.

The House bill gives the Director of the Office of Management and Budget (OMB) the authority to make credit cost estimates for the Executive Branch. The OMB Director could also delegate such authority to any Federal agency through written guidelines. The Director of the OMB would have access to necessary data from the Federal agencies and has a mandate to work with the Congressional Budget Office to improve cost estimates through an annual review process. The House bill authorizes the President to establish the necessary non-budgetary accounts and the Secretary of the Treasury to borrow from, receive from, lend to, or pay to such amounts as may be appropriate to these non-budgetary accounts. These transactions will be subject to the Antideficiency Act. The House bill also authorizes the funds necessary to implement this change in credit accounting.

The House bill makes credit reform effective starting in fiscal year 1992 and provides that direct loans and loan guarantees made before this date shall be reflected in the budget on a cash basis. The House also provides permanent indefinite authority to liquidate the loan obligations and guarantee commitments made prior to October 1, 1991.

The House bill also calls for a study by the OMB and the CBO concerning whether the accounting for Federal deposit insurance programs should be made on a cash basis, on the same basis as loan guarantees, or on some other basis.

Finally, the House bill would no longer require the inclusion of credit authority amounts in budget resolutions, allocations, costs estimates, or any other document related to the Budget Act.

Senate amendment

The Senate amendment states that the purposes of credit reform is to measure accurately the costs of Federal credit programs, place the cost of credit programs on a budgetary basis equivalent to other Federal spending, encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries, coordinate accounting and review of credit programs by CBO and OMB, and enhance the Congressional oversight of credit programs.

The Senate amendment defines "Federal agency", "direct loan", "direct loan obligation", "loan guarantee", "loan guarantee commitment", "cost to the government", "subsidy account", "financing account", and "liquidating account". Of particular note, the "cost to the government" was defined as the estimated long-term net present value of a loan guarantee. The
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Senate bill emphasized the variety of cash flows to be estimated by listing the specific contractual cash flows to be measured and the variations to the contractual cash flows that could occur.

The Senate amendment made in the responsibility of the Director of OMB to estimate the costs to the government of federal credit programs, establish reporting requirements by the agencies, and monitor agency performance with respect to credit programs. In developing the estimates, the Senate mandates coordination with the CBO and consultation with the Congress. Any changes to the estimating criteria are to be reported to the Congress. CBO and OMB are to study the differences in long-term administrative costs for credit programs vis-a-vis grant programs.

The Senate amendment requires that the executive budget submission include both direct loan obligation and loan guarantee commitment levels, and the estimated cost to the government of these credit levels. No direct loan or loan guarantee or modification of an outstanding loan could be made without appropriations in advance.

The Senate Amendment lays out the responsibilities of each Federal Agency to credit timely submissions of credit data, make annual requests for credit appropriations, use due diligence in carrying out responsibilities for credit programs under the new credit cost controls, and maintaining the reserves of the financing accounts. [] And applied the 302(f)(2) point of order to credit limitations in the Senate for fiscal year 1991. The point of order would sunset with the effective date of credit reform. The financing accounts were made exempt from sequestration.

Section 1107 lays out the budgetary treatment of federal credit programs. The cost to the government of direct loan and loan guarantee programs will be carried in the appropriate budget function. The financing accounts will be treated as a means of financing, but their aggregated activity will be displayed in the budget documents in a function known as "credit financing activities". The section makes it clear that the financing activities are off-budget and not subject to budget act points of order.

Section 1108 provided the authority necessary for appropriations of budget authority for the cost to the government. The head of each Federal agency has authority to issue notes to the Secretary of the Treasury should the resources of the financing accounts prove insufficient to meet the obligations of the financing account. The Secretary of the Treasury has authority set the terms and conditions of such borrowings. The Senate bill authorizes app[r]opriations for the funding needs of the liquidating accounts and authorized appropriations for the salaries and expenses necessary to carry out credit reform.

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Deposit insurance programs and other government programs are excluded from credit reform. OMB and CBO are directed to study the applicability of credit reform to the excluded programs and to Government Sponsored Enterprises.

Nothing in the Senate bill is to be construed as limiting existing mandatory credit authorities nor establishing a limit on existing credit programs. Nor does the Senate bill contemplate changing the existing authorities for the liquidation of obligations made prior to enactment of credit reform. Excess funds in the liquidating accounts are to be transferred to the Treasury on at least an annual basis.

Credit reform is made effective for fiscal year 1992. OMB is to submit an explanation of its credit reform methodology with its annual budget submission; CBO is to include the cost to the government for all reported bills.

The Senate amendment defines a government sponsored enterprise (GSE) to emphasize that to qualify as a GSE and thereby escape budget act treatment, GSE must: have a federal charter; be privately owned; be controlled by a board of directors elected by the owners; and be a financial institution with powers to make loans, guarantee loans, issue debt, or guarantee the debt of others. Further, a GSE could not exercise powers that are reserved to the Government (eg. taxing powers or regulating interstate commerce), commit the Government financially, or employ federal civil servants.

The Senate amendment creates a new point of order that will lie against legislation that did not provide a subsidy appropriation for the cost to the government of credit activities and applied the 302(f)(2) point of order to credit limitations in the Senate for fiscal year 1991. The 302(f)(2) point of order will sunset with the effective date of credit reform. The financing accounts were made exempt from sequestration.

Conference agreement

The conference agreement indicates that the purpose of credit accounting reform is to measure more accurately the costs of Federal direct loan and loan guarantee programs, to place the cost of those programs on a basis equivalent to other spending, to encourage more efficient delivery of Federal assistance, and to improve the allocation of resources between credit and other spending programs. The conference agreement also substantially accepts the definitions in the Senate bill.

The conference agreement requires that, starting with fiscal year 1992, the budget cost of credit programs be the net present value of the long-term

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costs to the Government, excluding administrative costs and incidental effects on governmental receipts and outlays. All of the other cash flows resulting from credit programs will be treated as means of financing and included in non-budgetary financing accounts. The cash flows resulting from direct loan obligations and loan guarantee commitments made prior to fiscal year 1992 will be reflected in the budget on a cash flow basis.

The conference agreement provides that the Director of the Office of Management and Budget will be responsible for coordinating credit cost estimates for the executive branch and may delegate that authority to other agencies based upon written guidelines. The Director of the Office of Management and Budget is to consult with the Director of the Congressional Budget Office in developing guidelines for credit cost estimates and in reviewing and improving those estimates.

The conference agreement requires the appropriation of new budget authority to cover the cost of direct loan and loan guarantee programs before new assistance can be provided. An exception to this requirement is provided for entitlement credit programs (such as the guaranteed student loan program and veteran's home loan guaranty program)and for the credit programs of the Commodity Credit Corporation. The agreement also provides that budget authority must be available to cover the cost of modifying any outstanding direct loan or loan guarantee. Administrative expenses for credit programs will continue to be counted on a cash flow basis, but displayed in a separate subaccount within the account for the credit program.

In a few cases, the cost to government of a loan or guarantee may be zero or negative. In such case, it is still necessary for appropriations bills to provide specific authority before loans could be made. Providing such authority will generate an off-setting receipt (negative budget authority and outlays) which would be credited to the appropriations committees and count against discretionary spending limits.

The conference agreement provides that, if initial estimates of the costs of credit activity are determined to be incorrect, reestimates are recorded on the budget as soon as possible. These reestimates will take the form of payments from the treasury to the financing accounts or vice versa. The reestimate is discounted back to the time when the loan was disbursed; the discounted portion is charged to the program account (as a mandatory) and the rest is charged to net interest.

The conference agreement provides authority for the Secretary of the Treasury to conduct the transactions necessary to maintain the non-budgetary financing accounts.

As part of the transition provisions, new credit authority is made
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subject to a 302 point of order in the Senate in fiscal year 1991. However, the agreement sunsets this point of order in both houses in 1992.

If excesses were to develop in the financing accounts, the agreement presumes that these excesses would revert to the treasury. These excesses do not include balances necessary to maintain adequate reserves, achieve mandated capital levels, or preserve the mutuality of certain credit programs.

The financing accounts are made subject to the Antideficiency Act. However, Federal agencies will continue to administer and operate direct loan and loan guarantee programs as they do now. Permanent indefinite authority is provided to make any payments required to liquidate direct loan obligations and loan guarantee commitments made prior to fiscal year 1992. The agreement provides an authorization to cover the administrative expenses of implementing credit accounting reform. Finally, the activities of Federal insurance programs are excluded from credit accounting reform, but the Director of the Office of Management and Budget and the Director of the Congressional Budget are required to study whether the accounting for Federal deposit insurance programs should be a cash basis, on the same basis as loan guarantees, or on a different basis.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1161-66 (1990), *reprinted in* 1990 U.S.C.C.A.N. 2374, 2866-71.