BUDGET COMMITTEE

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Budget Perspective: "Offsets" in Financial Regulatory Reform Conference Report Are Budget Gimmicks

Congress Continues to Be Baffled About How to Think About the Orderly Liquidation Fund, the Budget Window, and Budgeting for Insurance

As passed by the House on June 30, the conference report on Dodd-Frank Wall Street Reform and Consumer Protection Act (HR 4173; H. Rept. 111-517 http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:hr517.111.pdf) would eliminate the unused authority of the Troubled Assets Relief Program (TARP) and increase the reserves of the Deposit Insurance Fund at the Federal Deposit Insurance Corporation (FDIC) by increasing deposit insurance premiums paid by banks. The conferees added those two provisions as a replacement for the bank tax that they had approved earlier to offset to the cost of the bill.

A recent *Budget Perspective* http://budget.senate.gov/republican/pressarchive/2010-05-10BudgetPerspective.pdf has already examined how the new Orderly Liquidation Fund does not fit neatly into the stock budgetary presentations that Congress is used to working with. Yet rather than grapple with the extra layer of complexity associated with pre-paid or post-paid insurance-like programs, Congress continues to try to fit a square peg in a round hole. As a result, the two latest offsets for the financial reg reform conference report are budget gimmicks.

The law that created the TARP also prohibited Congress from using any later reduction in TARP authority as offsets for purposes of budget enforcement. And the increased deposit insurance premiums to be paid by banks will be spent later for to cover losses in future bank failures. Neither proposal will reduce future government liabilities, but Congress is nevertheless pretending that the two proposals represent savings relative to the increased spending that the rest of the conference report produces over the next 10 years.

It Is Illegal To Use TARP As an Offset

The Emergency Economic Stabilization Act (EESA) of 2008 (P.L. 110-343), which established the TARP, states:

SEC. 204. EMERGENCY TREATMENT.

All provisions of this Act are designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res 21 (110th Congress), the concurrent resolution on the budget for fiscal year 2008 and **rescissions of any amounts provided in this Act shall not be counted for purposes of budget enforcement**. [emphasis added]

The first part of section 204 of EESA is the language that EESA needed to designate its provisions as an emergency so that the associated costs would not count for purposes of budget enforcement in the Senate and would not violate any points of order such as Pay-go (the House did not need to designate EESA provisions as an emergency since, in the House, it is only possible to designate items in an appropriations bill as an emergency, and EESA was not an appropriations bill).

The second part of section 204 (in bold and underlined above) is a blanket edict that Congress (both the House and Senate) cannot use any subsequent reductions in TARP authority as a piggy-bank of offsets for future spending. This second part of section 204 applies especially to the House, as it already would have been impossible for the Senate to use TARP rescissions as an offset since EESA designated TARP as an emergency (it is a long-established principle that any amounts rescinded from emergency-designated spending cannot be used as an offset for non-emergency spending). Accordingly, the rescission of remaining TARP authority in the conference report cannot be counted as an offset by the House for purposes of budget enforcement. But the House ignored the law, counted the TARP rescission anyway so it could claim that the conference report did not violate the House's Pay-go rule, and then passed the conference report.

By contrast, in the Senate, Budget Committee Chairman Conrad will follow the law and will not count the termination of TARP as an offset. (Though if he had tried to count TARP as an offset, that move still would not have been large enough to relieve one of the Budget Act points of order [302(f) – for exceeding the Banking Committee's allocation] that applies against the conference report. Further, at least one [increasing the deficit by more than $5 billion over a 10-year period in the long-term] and perhaps two other Budget Act points of order apply against the conference report as well.)

Nevertheless, some people will insist that terminating TARP is an appropriate offset. Why? Perhaps because in CBO's cost estimate of the conference report, it appears as saving $11 billion relative to CBO's March 2010 baseline. But one must go beyond the numbers that appear on a table to understand the emptiness of the offset.

CBO's baseline had assumed that only $45 billion of some $200 billion in as-yet unused TARP authority might be used for some as-yet unspecified purpose before the end of the program on October 3, but only $1 billion of that amount has been used through the end

of June. Since half of the time has now passed between March and October, CBO also assumes that the likely use of the remaining authority has been reduced by half to $22 billion. The 50 percent subsidy rate associated with this unspecified loan authority translates to $11 billion in budget authority and outlays.

However, the Administration has widely advertised that it is shutting TARP down and has no plans to use the remaining TARP authority. Because it is unlikely that any of the remaining TARP authority will be used, the savings scored to the bill do not represent the reduction of current obligations, but rather only the elimination of prospective spending that we now know is not likely to occur. Rescinding TARP funds that will not be used in order to pay for new spending that will happen guarantees that our nation will fall farther into debt.

Increasing Deposit Insurance Premiums Is a Double-Counting Cash-Flow Game

The Dodd-Frank bill would increase the required reserve ratio of the FDIC's Deposit Insurance Fund (DIF) from 1.15 percent to 1.35 percent. The reserve ratio is the ratio of the balance in the DIF to total insured deposits in the banking system (under current law, the amount of deposit insurance available for each account in a FDIC-insured institution is temporarily raised from $100,00 to $250,000, although the conference report would permanently increase the limit to $250,000.) The FDIC will meet the higher reserve ratio by increasing the insurance premiums that banks pay to the FDIC for deposit insurance coverage.

According to the CBO cost estimate, higher premiums would be charged beginning in fiscal year 2014 and would total $5.7 billion over 2014-2020. Under CBO's current economic assumptions, the increased premiums would merely add to the amounts "invested" by the DIF in U.S. Treasury securities — without any change in expected payouts from the DIF. The higher premiums reduce the deficit while the DIF is being capitalized, but the liability of the government to the DIF increases by the same amount. The premium increase thus does nothing to reduce the debt.

The higher insurance premiums represent funds that will be available in the future to protect depositors and pay deposit insurance claims. When those funds are needed, the government will draw down the funds in the DIF to pay claims. New, increased deposit insurance premiums cannot be used both to offset the other costs of this bill now and to repay depositors of failed banks in the future. A similar gimmick was used in the health reform bill, which counted as offsets the premiums charged today for a new long-term care insurance program that will begin to pay benefits in the future.