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JUBILEE ACT FOR RESPONSIBLE LENDING AND EXPANDED DEBT CANCELLATION OF 2008

AUGUST 1, 2008.—Ordered to be printed

Mr. BIDEN, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. 2166]

The Committee on Foreign Relations, having had under consideration the bill (S. 2166), to provide for greater responsibility in lending and expanded cancellation of debts owed to the United States and the international financial institutions by low-income countries, and for other purposes, having considered the same, reports the bill favorably with amendments and recommends that the bill, as amended, pass.

CONTENTS

I. PURPOSE

The purpose of S. 2166 is to provide for greater responsibility in lending and expanded cancellation of debts owed to the United States and the international financial institutions by low-income countries.

II. COMMITTEE ACTION

S. 2166 was introduced by Senator Robert P. Casey, Jr., on October 16, 2007. It is cosponsored by Senators Biden, Lugar, Dodd, Boxer, Coleman, Feingold, Hagel, Kerry, Obama, Menendez,

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Isakson, Bill Nelson, Durbin, Brown, Clinton, Collins, Klobuchar, Leahy, Lieberman, McCaskill, Mikulski, Schumer, Smith, Snowe, Sununu, and Wyden. A companion bill, H.R. 2634, was introduced by Representatives Maxine Waters and Spencer Bacchus on June 7, 2007, and approved by the House of Representatives by a vote of 285–132 on April 16, 2008. On June 24, 2008, the committee ordered S. 2166 reported favorably by voice vote with an amendment in the nature of a substitute.

III. Discussion

A. Overview

S. 2166, the "Jubilee Act for Responsible Lending and Expanded Debt Cancellation of 2008" provides for greater responsibility in lending and expanded cancellation of debts owed to the United States and the international financial institutions by low-income countries. The legislation, building on previous rounds of bilateral and multilateral debt cancellation, calls upon the Treasury Department to negotiate a multilateral framework for debt cancellation with those countries that are eligible for financing from the International Development Association, and that meet various other criteria. This group could eventually total as many as 24 additional poor countries that would benefit from debt cancellation in order to promote economic, social, and human development goals, including the United Nations Millennium Development Goals. The legislation incorporates safeguards to help ensure that the money freed up in these countries by debt cancellation is used for poverty reduction purposes; moreover, eligible countries must meet criteria regarding public financial management quality controls, transparency, and other good governance benchmarks. The legislation calls for the development of a framework to promote more responsible future lending practices and to discourage so-called "vulture fund" activity.

B. Rationale

Congress has demonstrated its support for bilateral and multilateral debt relief through the enactment of comprehensive debt relief initiatives for heavily indebted low-income countries through various legislation enacted over the past decade. In 2005, the United States and other G–8 nations reached an agreement to provide cancellation of 100 percent of the debts owed by eligible poor countries to Paris Club members, the International Monetary Fund, the World Bank, and the African Development Bank. The 2005 agreement led to the creation of the Multilateral Debt Relief Initiative (MDRI). As of April 2007, 22 countries have seen the majority of their debts to the IMF, the World Bank and the African Development Bank cancelled under the terms of the MDRI. In March 2007, the Inter-American Development Bank announced it would provide full debt cancellation to 5 Latin American countries on MDRI terms.

Reports indicate that most resources released by debt relief efforts to date are reaching the poor. Cameroon is using the $29,800,000 of savings gained from the MDRI for national poverty reduction priorities, including infrastructure and social sector and governance reforms. Uganda is using its $57,900,000 in MDRI savings on improving energy infrastructure to try to ease acute electricity shortages, as well as on primary education, malaria control, health care and water infrastructure (specifically targeting the poor and underserved villages). Zambia is using its savings of $23,800,000 under the MDRI to increase spending on agricultural projects, such as small landholder irrigation and livestock disease control, as well as to eliminate fees for health care in rural areas.

While debt cancellation has a record of success, there remains an unfinished agenda on international debt. There are a number of challenges to the effective implementation of existing commitments, and broader debt cancellation is needed if the global community is to reach key development objectives. A critical issue which needs to be addressed on debt is the way that nonconcessional lenders stand to gain financially from lending to poor countries that have benefited from debt relief. Those lenders have not contributed to past debt relief efforts or faced the prospect of paying for the future relief of unsustainable new lending. In these cases, the gains from debt relief are at risk of being eroded by new, unsustainable lending to countries that have received debt cancellation, as well as by so-called “vulture funds.”

It is also essential that all lenders and borrowers accept responsibility and learn from past mistakes by making more productive investment choices and engaging in more responsible lending and borrowing in the future. In October 2006, Norway became the first creditor to accept responsibility for past lending mistakes and cancelled the debt of five countries on the grounds that the loans reflected poor development policy. There is also an urgent need to look beyond the constraints of current debt relief initiatives to address the need for expanded debt cancellation. The Government of the United Kingdom has proposed that qualification for the MDRI be extended to the 67 countries that qualify for assistance exclusively from the International Development Association. To be eligible for cancellation, countries must meet requirements pertaining to public financial management, anticorruption measures, and budget transparency.

The committee affirms that debt cancellation is an important component of the United States development assistance strategy. The United States has been a leader in supporting debt relief efforts to date and should continue to work to improve and expand appropriate initiatives in this area.

C. Summary of major provisions

Sense of Congress on Fully Funding Existing U.S. Arrears on Previous Debt Relief Commitments

Section 3 recognizes that the United States has fallen behind in funding its appropriate share of previous multilateral commitments on debt cancellation for low-income countries. It expresses the sense of Congress in support of a renewed commitment to fund existing U.S. arrears related to debt relief. This section also expresses the sense of Congress that any additional commitments made by the United States to fund debt cancellation for additional low-income countries should not come at the expense of existing U.S. development assistance to those countries; likewise, the U.S. Government should encourage other countries to adopt a similar principle when agreeing upon debt cancellation.

Cancellation of Debt Owed by Eligible Low-Income Countries

Section 4 calls upon the Treasury Department to commence multilateral negotiations to achieve cancellation for eligible countries of their respective debts held by international financial institutions and individual countries, including the United States. Each eligible country benefiting from debt cancellation would be required to allocate the savings from debt cancellation toward poverty reduction expenditures and produce an annual report documenting how the savings were used. The section calls upon the Secretary of the Treasury to commence efforts to establish a framework for creditor transparency, including greater openness surrounding the activities of each creditor institution that makes loans to low-income countries.

Definition of Eligible Low-Income Countries

Section 4 defines an eligible low-income nation as any country that is eligible for financing from the International Development Association, has transparent and effective budget execution and public financial management systems, has demonstrated democratic governance and transparency of decisionmaking, does not have an excessive level of military expenditures, has not repeatedly provided support for acts of international terrorism, is cooperating on international narcotics control matters, is not engaging in a consistent pattern of gross violations of internationally recognized human rights, and is not engaged in the proliferation of weapons of mass destruction or related materials and components.

A Framework for Responsible Lending

Section 4 calls upon the Treasury Department to commence efforts to establish a framework for responsible lending, including the development of policies to ensure that all creditors contribute to the preservation of gains of debt relief for low-income debtor countries. This framework would also include appropriate mechanisms to discourage so-called "vulture fund" activity. The section calls upon the Government Accountability Office to undertake an audit of multilateral loans extended to previous governments in countries such as the Democratic Republic of Congo and South Africa, where significant concerns existed towards those loans at the time they were made, and complete a report on the operations and procedures undertaken by the World Bank, the IMF, and other international financial institutions for debt cancellation.

Prohibition of Harmful Economic and Policy Conditions

Section 5 calls on the Treasury Department to commence efforts within international financial institutions to ensure that the provision of debt cancellation to eligible low-income countries is not conditioned on any agreement by such a country to implement or comply with policies that deepen poverty, significantly increase the costs of public services for low-income households, or degrade the environment. Examples of such policies include: Implementing or extending user fees for primary education or primary health care, and increasing the costs of basic public services, such as education, health care, drinking water, or sanitation, for low-income households. The section calls on the Treasury Department to submit a report on the degree and extent to which previous rounds of debt cancellation for recipient countries were accompanied by such conditions.

Cancellation of Haiti's Debts

Section 6 states the sense of Congress that, due to the current humanitarian and political instability in Haiti, including food shortages and political turmoil, the Secretary of the Treasury should use his influence to expedite the complete and immediate cancellation of Haiti's debts to all international financial institutions, or at a minimum, urge those institutions to immediately suspend the requirement that Haiti make further debt service payments on that debt.

Temporary Financing to Respond to Temporary Economic Shocks

Section 7 calls on the Treasury Department to prepare a report on the feasibility and design of a potential facility, based at the International Monetary Fund or another international financial institution, to provide temporary financing to relieve debt service burdens in the case of shocks to the economies of low-income countries beyond their control, including natural disasters and sharp spikes in commodity prices. The committee determined that such a report would be appropriate in light of testimony to members at the April hearing that such a facility could supplement debt cancellation activities in boosting the prospects of low-income countries.

IV. Cost Estimate

In accordance with rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee provides this estimate of the costs of this legislation prepared by the Congressional Budget Office.

United States Congress,
Congressional Budget Office,
Washington, DC, July 18, 2008.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2166, the Jubilee Act for Responsible Lending and Expanded Debt Cancellation of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte.

Sincerely,

Peter R. Orszag.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 18, 2008.

S. 2166

JUBILEE ACT FOR RESPONSIBLE LENDING AND EXPANDED DEBT CANCELLATION OF 2008

AS ORDERED REPORTED BY THE SENATE COMMITTEE ON FOREIGN RELATIONS ON JUNE 24, 2008

Summary

S. 2166 would require the Secretary of the Treasury to cancel all debts owed by certain low-income countries to the United States and to work toward cancelling debt owed by those countries to international financial institutions (IFIs). Countries that received debt relief under this proposal would be required to use their savings to fund programs to reduce poverty.

CBO estimates that implementing S. 2166 would result in discretionary outlays of $625 million over the 2009–2013 period, assuming appropriation of the estimated amounts. (Additional amounts would be spent after 2013.) In addition, enacting S. 2166 would increase direct spending by the amount of the subsidy cost of loan modifications, as defined by the Federal Credit Reform Act. CBO estimates that forgiving direct loans and loan guarantees made to other countries would cost $1.1 billion over the 2009–2018 period. Enacting S. 2166 would have no effect on revenues.

S. 2166 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 2166 is shown in the following table. The costs of this legislation fall within budget function 150 (international affairs).

CHANGES IN SPENDING DUE TO S. 2166

[By fiscal year, in million of dollars]

	2009	2010	2011	2012	2013	2008–2013
Changes In Spending Subject To Appropriation:						
Estimated Authorization Level	0	250	250	250	250	1,000
Estimated Outlays	0	63	125	188	250	625
Changes In Direct Spending:						
Estimated Budget Authority	367	367	367	0	0	1,100
Estimated Outlays	367	367	367	0	0	1,100

Note: Components may not sum to totals because of rounding.

Basis of Estimate

For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2009, that the necessary amounts will be appropriated (over a 40-year period beginning in 2010), and that outlays will follow historical spending patterns for similar programs.

Spending Subject to Appropriation

Section 4 would require the Secretary of the Treasury to work with IFIs to cancel debt owed to them by certain low-income countries and to absorb the related costs within their existing resources. According to the Department of Treasury, those countries owe a total of $50 billion to the World Bank, the International Monetary Fund, the African Development Bank, and the Asian Development Bank.

In recent negotiations regarding the Multilateral Debt Relief Initiative (MDRI)—an effort to provide debt relief to certain poor, heavily indebted nations—the United States was unable to achieve its goal of funding debt relief from the resources of the IFIs. The United States is now responsible for 20 percent of the costs of MDRI debt relief at the World Bank, to be paid over about 40 years to match the loan repayments that would otherwise have been made. Assuming negotiations for the debt relief that would be authorized by S. 2166 would lead to a similar result, CBO expects that negotiations would take about a year, that the United States would contribute about 20 percent (or $10 billion) of the costs of debt cancellation, and that those contributions would be made over a 40-year period. Therefore, CBO estimates that the United States would contribute $250 million a year or about $10 billion in total to replenish IFIs and that implementing this provision would cost about $625 million over the 2009–2013 period, assuming appropriation of $1 billion over that period. The remaining $9 billion would be provided and spent after 2013.

Direct Spending

In addition to cancelling multilateral debt, section 4 would require the Secretary to cancel all debt owed to the United States by low-income countries that meet certain qualifications. Recent data from the Department of Treasury on direct loans and loan guarantees made to those countries indicate that their outstanding loans total about $2.5 billion. Cancelling those loans would constitute loan modifications (as defined by the Federal Credit Reform Act) and would require the federal government to write off the net present value of the expected stream of loan repayments, which would reflect the current likelihood of each country repaying its loans.

CBO estimates that such countries would become eligible for debt cancellation over the 2009–2011 period and assumes the costs would be spread evenly across that period. Based on information from the department, CBO further estimates that roughly 45 percent of the outstanding loan amounts will be repaid (with interest) under current law and that enacting the bill would increase direct spending by about $1.1 billion over both the 2009–2013 and 2009–2018 periods. That estimate is an estimated subsidy cost-calculated as a net present value of forgone principal and interest payments-for the debt forgiveness.

Intergovernmental and Private-Sector Impact

S. 2166 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO Estimate

On April 9, 2008, CBO transmitted a cost estimate for H.R. 2634, an identically titled act that was ordered reported by the House Committee on Financial Services on April 3, 2008. The House legislation would require the Secretary to begin negotiations to cancel debt, but agreements to cancel debt could not be finalized without further authorization from the Congress. CBO estimated that enacting H.R. 2634, by itself, would have no budgetary impact.

Estimate Prepared By:

Federal Costs: SUNITA D'MONTE
Impact on State, Local, and Tribal Governments: NEIL HOOD
Impact on the Private Sector: JACOB KUIPERS

Estimate Approved By:

PETER H. FONTAINE, *Assistant Director for Budget Analysis*

V. EVALUATION OF REGULATORY IMPACT

Pursuant to rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has determined that there is no regulatory impact as a result of this legislation.

VI. CHANGES IN EXISTING LAW

In compliance with rule XXVI, paragraph 12 of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

International Financial Institutions Act

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SEC. 1625. IMPROVEMENT OF THE ENHANCED HIPC INITIATIVE.

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SEC. 1626. CANCELLATION OF DEBT OWED BY ELIGIBLE LOW-INCOME COUNTRIES.

(a) IN GENERAL.—The Secretary of the Treasury shall commence immediate efforts, within the Paris Club of Official Creditors, the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (World Bank), and the other international financial institutions (as defined in section 1701(c)(2)), to accomplish the following:

(1) Cancellation by each international financial institution of all existing debts owed to the institution by eligible low-income countries, and, to the extent possible, financing the debt cancellation from the ongoing operations, procedures, and accounts of the institution.

(2) Cancellation by the United States of all existing debts owed to it by eligible low-income countries.

(3) Ensuring that any waiting period for the enhanced debt cancellation is not excessive.

(4) Requiring the government of each eligible low-income country to—

(A) allocate the savings from debt cancellation towards poverty-reducing expenditures;

(B) engage interested parties, including a broad cross-section of civil society groups, in that allocation process;

(C) develop and implement effective policy reforms to ensure that savings from debt cancellation are redirected to poverty reduction efforts and that any future borrowing be conducted in a responsible fashion; and

(D) produce an annual report during the period beginning when debt relief is granted and ending 5 years after the debt relief is completed that discloses how the savings from debt cancellation were used, and which is made publicly available and easily accessible to all interested parties, including civil society groups and the media.

(5) Encouraging the government of each eigible low-income country to allocate at least 20 percent of its national budget towards poverty-alleviation programs such as the provision of basic health care services, education services, and clean water services to all individuals in the country.

(b) ESTABLISHMENT OF FRAMEWORK FOR CREDITOR TRANSPARENCY.—The Secretary of the Treasury shall commence immediate efforts, within the Paris Club of Official Creditors, the International Monetary Fund, the World Bank, and the other international financial institutions (as so defined), to ensure that each of the institutions—

(1) continues to make efforts to promote greater transparency regarding the activities of the institution, including credit, grant, guarantee, and technical assistance operations, following a policy of maximum disclosure; and

(2) supports continued efforts to allow informed participation and input by affected communities, including translation of information on proposed projects into official languages, provision of information (including draft documents) through information technology application, oral briefings, and outreach to and dialogue with community organizations and institutions in affected areas.

(c) ESTABLISHMENT OF FRAMEWORK FOR RESPONSIBLE LENDING.—The Secretary of the Treasury shall commence immediate efforts to—

(1) develop and promote policies to ensure all creditors, with no distinction, will contribute to preserving the gains of debt relief for low-income debtor countries;

(2) collaborate with appropriate government agencies to discourage "vulture fund" activity, including by—

(A) seeking commitments from non-Paris Club bilateral creditors not to on-sell their debt claims on low-income countries to creditors who do not intend to provide debt relief under the HIPC initiative, and working with finance

ministers from other G8 countries to achieve the same goal; and

(B) providing technical assistance to recipient governments to advise on measures to address "vulture fund" activity;

(3) provide that the external financing from official creditors of low-income countries are met primarily through grant financing rather than new lending;

(4) seek the international adoption of a binding legal framework that—

(A) guarantees that no creditor can take financial advantage of debt relief through the terms and rates of their new lending to beneficiary countries;

(B) is binding on all creditors, whether multilateral, bilateral or private;

(C) foresees, as a sanction for creditors who violate it, an equitable share in the burden of the losses from any future debt relief needed by the sovereign debtor to whom lending was provided; and

(D) enables fair opportunities for the people of the affected country to be heard; and

(5) support the development of responsible financing standards by which creditors and aid or loan recipients alike promote transparency, accountability, human rights, and the avoidance of new odious unsustainable debt, while encouraging the development of renewable energy.

(d) GAO AUDIT OF DEBT PORTFOLIOS OF COUNTRIES WITH QUESTIONABLE LOANS.—The Comptroller General of the United States should undertake an audit of the multilateral debt portfolios of previous governments in countries such as the Democratic Republic of Congo and South Africa where significant concern exists that unsustainable loans were made to the government. Each such audit shall—

(1) consider debt owed to the World Bank, the IMF, and the other international financial institutions (as so defined) and debt owed to the United States Government and assess whether or not past investments produced the intended results; and

(2) investigate the process by which the loans were contracted, how the funds were used, and determine whether United States or international laws were violated in the contraction of these loans, and whether any of the loans were odious or onerous.

(e) AVAILABILITY ON TREASURY DEPARTMENT WEBSITE OF REMARKS OF UNITED STATES EXECUTIVE DIRECTORS AT MEETINGS OF INTERNATIONAL FINANCIAL INSTITUTIONS' BOARDS OF DIRECTORS.—The Secretary of the Treasury shall make available on the website of the Department of the Treasury the full record of the remarks of the United States Executive Director at meetings of the boards of directors of the International Monetary Fund, the World Bank, and the other international financial institutions (as so defined), about cancellation or reduction of debts owed to the institution involved, with redaction by the Secretary of the Treasury of material deemed too sensitive for public distribution, but showing the topic, amount of material redacted, and reason for the redaction.

(f) REPORT FROM THE COMPTROLLER GENERAL.—Within 1 year after the date of the enactment of this section, the Comptroller Gen-

eral of the United States shall prepare and submit to the Committees on Financial Services and on Foreign Affairs of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and on Foreign Relations of the Senate a report on the ongoing operations, procedures, and accounts of the IMF, the World Bank, and the other international financial institutions (as so defined) for canceling the debt of eligible low-income countries.

(g) ANNUAL REPORTS FROM THE PRESIDENT.—Not later than December 31, 2008, and annually thereafter for 4 years, the Secretary of the Treasury shall submit to the Committees on Financial Services and on Foreign Affairs of the House of Representatives and the Committees on Foreign Relations and on Banking, Housing, and Urban Affairs of the Senate a report, which shall be made available to the public, on the activities undertaken under this section, and other progress made in accomplishing the purposes of this section, for the prior fiscal year. The report shall include a list of the countries that have received debt cancellation, a list of the countries whose request for debt cancellation has been denied and the reasons therefor, and a list of the countries whose requests for debt cancellation are under consideration.

(h) ELIGIBLE LOW-INCOME COUNTRY DEFINED.—In this section, the term "eligible low-income country" means a country—

(1) that is eligible for financing from the International Development Association but not the World Bank;

(2) that has transparent and effective budget execution and public financial management systems which ensure that the savings from debt relief are spent on reducing poverty;

(3) that has demonstrated democratic governance and transparency of decision-making;

(4) the government of which does not have an excessive level of military expenditures;

(5) the government of which has not repeatedly provided support for acts of international terrorism, as determined by the Secretary of State under section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a));

(6) the government of which is cooperating on international narcotics control matters;

(7) the government of which (including its military or other security forces) does not engage in a consistent pattern of gross violations of internationally recognized human rights; and

(8) the government of which is not engaged in, and has taken effective action to prevent entities in its jurisdiction from engaging in, the proliferation of weapons of mass destruction, related materials and components, or associated delivery systems.

SEC. 1627. PROHIBITION OF HARMFUL ECONOMIC AND POLICY CONDITIONS.

(a) IN GENERAL.—The Secretary of the Treasury shall commence immediate efforts within the Paris Club of Official Creditors, the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (World Bank), and the other international financial institutions (as defined in section 1701(c)(2)), to ensure that the provision of debt cancellation to eligible low-income countries (as defined in section 1626(h)) is not conditioned on any

agreement by such a country to implement or comply with policies that deepen poverty, significantly increase the costs of public services for low-income households, or degrade the environment.

(b) REPORT ON PREVIOUS ROUNDS OF DEBT CANCELLATION.—Not later than December 31, 2009, the Secretary of the Treasury shall submit to the Committees on Financial Services and on Foreign Affairs of the House of Representatives and the Committees on Foreign Relations and on Banking, Housing, and Urban Affairs of the Senate a report, which shall be made available to the public, on the degree and extent to which previous rounds of debt cancellation for recipient nations were accompanied by the following conditions:

(1) Implementation or extension of user fees on 2 primary education or primary health care, including 3 prevention and treatment efforts for HIV/AIDS, tuberculosis, malaria, and infant, child, and maternal well-being.

(2) Increased costs for low-income households to pay for basic public services such as education, health care, drinking water, or sanitation.

(3) A prohibition on exempting increased government spending on essential health care or education expenditures from required conditions imposed by the IMF, including national budget caps or restraints and hiring or wage bill ceilings.

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