

The following information was transmitted to Congress via letter on June 2, 2011:

This letter is in reference to Section 2126(c) of the Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10, signed April 15, 2011) (FY11 Appropriations Act), pertaining to the Asian Development Bank (AsDB). This legislation requires the Secretary of the Treasury to report to Congress that the AsDB is making substantial progress toward a number of policy goals before obligating funds towards the AsDB general capital increase (GCI). We have carefully assessed the AsDB's record in the seven areas specified in the legislation. I am pleased to report, on behalf of the Secretary, that the AsDB is making substantial progress on each of these areas and, therefore, the legislative requirements have been met. As a result, Treasury will provide the U.S. paid-in capital contribution to the AsDB's Fifth General Capital Increase (GCI V) in time to meet our June 30 deadline. Below is our assessment of the individual policy goals on which Congress has requested us to report:

(1) implementing procurement guidelines that maximize international competitive bidding in accordance with sound procurement practices, including transparency, competition, and cost-effective results for Borrowers;

The AsDB's Procurement Guidelines provide for maximizing the use of international competitive bidding. They also support transparency, competition and cost-effective results. Key elements of the Guidelines that support these objectives include: 1) strong international advertising requirements, 2) endorsement and use of open competition in the contracting process; and 3) mandatory use of publicly available standard bidding documents for international competitive bidding. The Guidelines were amended in 2006 to adopt four harmonized definitions of fraud and corruption that have been adopted by other International Financial Institutions, and again in 2010 to provide for cross debarment with the other Multilateral Development Banks.

(2) providing greater public disclosure of loan documents, with particular attention to persons affected by ADB projects;

The AsDB's current Public Communications Policy is among the most robust of the MDBs, and follows a presumption in favor of disclosing all information about AsDB-assisted operations. This presumption results in a high level of dissemination of AsDB documents, including loan documents, country partnership strategies, knowledge products, bank policies and compliance review documentation.

Moreover, the AsDB is currently undertaking a review of its Public Communications Policy, to be completed in June 2011. Because we view the current policy as effective – a view that is widely shared – we are not seeking significant modifications. However, we anticipate that this review will result in new disclosure requirements for AsDB documents that will improve shareholders and stakeholder understanding of AsDB-assisted programs activities. We expect that the AsDB will improve its website to support better accessibility, search-ability and functionality, as well as making its products more accessible by providing summary documents and limiting the level of “bank-speak” in promotional documents. These changes should address a primary concern of the Non-Governmental Organization (NGO) community, which maintains that AsDB documents are too technical for affected persons to understand.

This review of the Public Communications Policy will also have a beneficial impact on the AsDB's safeguards. For example, safeguards are more effective if all affected parties have access to AsDB documents in their own languages. To improve access to AsDB documents for affected persons, the AsDB's safeguard policy requires that guidelines and project-related documentation be translated into all major languages spoken in the region as a matter of practice, and into other local languages on an as-needed basis.

(3) implementing best practices in domestic laws and international conventions against corruption for whistleblower and witness disclosures, and protections against retaliation for internal and lawful public disclosures by ADB employees and others affected by ADB operations who report illegality or other misconduct that could threaten the ADB's mission, including best practices for legal burdens of proof; access to independent adjudicative bodies; and results that eliminate the effects of proven retaliation;

The AsDB reformed its whistleblower policy in December, 2009, and it is consistent with best practices in anti-corruption and witness protection. Under this policy, any individual who reports a suspected integrity violation or misconduct can remain anonymous and has numerous protections against retaliation. In instances where retaliation is alleged, the AsDB's policy provides recourse for the whistleblower to transfer to another office, obtain security protection, or seek other reasonable measures.

The AsDB's policy provides for an independent adjudicative body for any whistleblower who claims to have been retaliated against. If adverse action was taken against a staff member who reported a suspected integrity violation or cooperated with an investigation, the policy also requires that the AsDB show, by clear and convincing evidence, that the action was taken for reasons other than the staff member's report or cooperation.

Moreover, the "Statute of the Administrative Tribunal of the Asian Development Bank" requires the tribunal, when it finds an application for relief by a staff member to be well-founded, to order the rescission of the contested decision or specific performance of the obligation invoked (e.g., that a staff member improperly fired or demoted be reinstated to his or her prior position). This remedy can be converted to compensation only if the President of the AsDB makes such a determination within 30 days of the decision.

(4) ensuring that the Investigations Office, Auditor General Office, and Evaluation Office are functionally independent, free from interference when determining the scope of investigations and audits, performing work and communicating results, and regularly report to the ADB's board of directors and, as appropriate and in a manner consistent with such functional independence of the Investigations Office and the Auditor General Office, to the ADB President;

After U.S. advocacy on this subject, the Office of Anticorruption and Integrity (or OAI, the "Investigations" office referred to in the legislation) is now a functionally independent office reporting to the President and under the oversight of the Audit Committee of the Board. OAI conducts independent and objective investigations, after serving as the initial point of contact for alleged instances of fraud, corruption or abuse, and periodically conducts integrity reviews of AsDB-financed activities. OAI provides quarterly briefings to the Audit Committee of the Board and submits an annual report on its activities to the President and the Audit Committee. OAI's annual report is posted on the AsDB's web site.

The Office of the Auditor General (OAG) is also functionally independent. OAG reports to the President and meets periodically with the Audit Committee of the Board. It contributes to the efficiency and effectiveness of AsDB operations through internal audits and advisory engagements, and works with numerous offices throughout the AsDB to promote integrity, objectivity, accountability and transparency in all operations. OAG's annual work plan, semi-annual activity report and annual reports are submitted to the President and discussed by the Board's Audit Committee.

The Independent Evaluations Department (IED) independently and systematically evaluates AsDB policies, strategies, operations and special concerns on organizational and operational effectiveness. IED contributes to improving development effectiveness by providing evaluation feedback on performance. IED reports directly to the Board of Directors, and the Board must approve IED's annual budget and work plan. The IED's terms of reference were most recently reviewed in 2008 and subsequently revised to strengthen the Department's independence by removing the President's decision making ability over the appointment of the director general of IED. The director general of the IED is now appointed solely by the Board of Executive Directors.

(5) requiring that each candidate for adjustment or budget support loans provide an assessment of reforms to budgetary and procurement processes to encourage transparency, including budget publication and public scrutiny, prior to loan or grant approval;

Prior to seeking Board approval for budget support loans, the AsDB prepares risk assessments and risk management plans for potential borrowers. These plans analyze financial management systems, with particular emphasis on the strength of procurement processes and anti-corruption controls. These assessments are prepared by the AsDB, in consultation with the borrowing country, as well as civil society. They are designed to balance the need to maintain strong fiduciary controls while identifying key areas for improvements in borrowing members to be addressed in adjustment loans.

(6) ensuring that the ADB's Accountability Mechanism provides transparency and protects local residents affected by ADB projects;

The AsDB's accountability mechanism, which was established in 2003 to replace the Bank's previously established Inspection Function, acts as a forum through which individuals affected by AsDB-assisted projects can appeal if they have concerns regarding AsDB's compliance with its operational policies and procedures. The mechanism, which is an independent body, provides a formal channel for local communities and affected persons to request an independent review of alleged policy violations in the formulation, processing or implementation of AsDB-assisted projects. Results of compliance reviews are provided to the affected persons and are posted on the AsDB's website.

The Accountability Mechanism is currently under review for further improvements. Expected improvements include measures to improve awareness of the Mechanism, chiefly through more systematic and effective outreach in developing member countries, strengthening independence from management by increasing board oversight, and streamlining the process through which the AsDB receives and reviews complaints of non-compliance.

(7) making publicly available external and internal performance and financial audits of ADB projects on the ADB's website.

The AsDB makes its performance assessments available through its annual Development Effectiveness Report, which uses four broad indicators to measure the external and internal performance of the AsDB. These indicators include project design quality, measures of poverty reduction and organizational effectiveness. This information is available on the AsDB's website.

The AsDB does not develop its own stand-alone financial audits of projects, but publishes a Bank assessment of the project audits prepared by recipient countries (which they are required to conduct). This information is contained in a Project Completion Report that is done at the end of the project phase. These documents are made public and can be accessed through AsDB's website. In practice, these Project Completion Reports contain information comparable to what would be included in a stand-alone financial audit, including project costs and, if necessary, explanations of significant overruns and underruns as part of the AsDB's financial due diligence. These Reports also provide information across major components of the project, foreign and local costs, and an assessment of the likely impact that financial costs have on the underlying project's financial rate of return. Moreover, the Project Completion Reports contain information on the project's disbursement schedules, potential delays and corrective actions taken by the borrower or AsDB.

Based on this assessment, we believe that the Asian Development Bank meets the standard set in the FY11 Appropriations Act. I also want to reiterate that I share your deep commitment to good governance and effectiveness at the AsDB, and would be pleased to provide any additional information to you on the AsDB's implementation of these policy goals.

Sec. 2126. (a) Contribution to the Asian Development Bank- In addition to amounts otherwise made available by this division, \$106,586,000, to remain available until expended, is appropriated for payment to the Asian Development Bank by the Secretary of the Treasury for the United States share of the paid-in portion of the increase in capital stock.

(b) Limitation on Callable Capital Subscriptions- The United States Governor of the Asian Development Bank may subscribe without fiscal year limitation to the callable capital portion of the United States share of such capital stock in an amount not to exceed \$2,558,048,769.

(c) Reporting On Reforms.—Funds shall not be made available for a United States contribution to the Asian Development Bank (ADB) until the Secretary of the Treasury reports to the Committees on Appropriations that the ADB is making substantial progress toward the following policy goals—

(1) implementing procurement guidelines that maximize international competitive bidding in accordance with sound procurement practices, including transparency, competition, and cost-effective results for Borrowers;

(2) providing greater public disclosure of loan documents, with particular attention to persons affected by ADB projects;

(3) implementing best practices in domestic laws and international conventions against corruption for whistleblower and witness disclosures, and protections against retaliation for internal and lawful public disclosures by ADB employees and others affected by ADB operations who report illegality or other misconduct that could threaten the ADB's mission, including best practices for legal burdens of proof; access to independent adjudicative bodies; and results that eliminate the effects of proven retaliation;

(4) ensuring that the Investigations Office, Auditor General Office, and Evaluation Office are functionally independent, free from interference when determining the scope of investigations and audits, performing work and communicating results, and regularly report to the ADB's board of directors and, as appropriate and in a manner consistent with such functional independence of the Investigations Office and the Auditor General Office, to the ADB President;

(5) requiring that each candidate for adjustment or budget support loans provide an assessment of reforms to budgetary and procurement processes to encourage transparency, including budget publication and public scrutiny, prior to loan or grant approval;

(6) ensuring that the ADB's Accountability Mechanism provides transparency and protects local residents affected by ADB projects; and

(7) making publicly available external and internal performance and financial audits of ADB projects on the ADB's website.

(d) Report Dates.—Not later than 180 days after enactment of this Act, and every 6 months thereafter until September 30, 2013, the Secretary of the Treasury shall submit to the Committees on Appropriations a report detailing the extent to which the ADB has made progress on each policy goal listed in subsection (c).