

[DISCUSSION DRAFT]

110TH CONGRESS
2D SESSION

H. R. _____

To provide authority for the Federal Government to purchase and insure certain types of troubled assets for the purposes of providing stability to and preventing disruption in the economy and financial system and protecting taxpayers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To provide authority for the Federal Government to purchase and insure certain types of troubled assets for the purposes of providing stability to and preventing disruption in the economy and financial system and protecting taxpayers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Emergency Economic Stabilization Act of 2008”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

TITLE I—TROUBLED ASSETS RELIEF PROGRAM

- Sec. 101. Purchases of troubled assets.
- Sec. 102. Insurance of troubled assets.
- Sec. 103. Considerations.
- Sec. 104. Financial Stability Oversight Board.
- Sec. 105. Reports.
- Sec. 106. Rights; management; sale of troubled assets; revenues and sale proceeds.
- Sec. 107. Contracting procedures.
- Sec. 108. Conflicts of interest.
- Sec. 109. Foreclosure mitigation efforts.
- Sec. 110. Assistance to homeowners.
- Sec. 111. Executive compensation and corporate governance.
- Sec. 112. Coordination with foreign authorities and central banks.
- Sec. 113. Minimization of long-term costs and maximization of benefits for taxpayers.
- Sec. 114. Market transparency.
- Sec. 115. Graduated authorization to purchase.
- Sec. 116. Oversight and audits.
- Sec. 117. Study and report on margin authority.
- Sec. 118. Funding.
- Sec. 119. Judicial review and related matters.
- Sec. 120. Termination of authority.
- Sec. 121. Special Inspector General for the Troubled Asset Relief Program.
- Sec. 122. Increase in statutory limit on the public debt.
- Sec. 123. Credit reform.
- Sec. 124. HOPE for Homeowners amendments.
- Sec. 125. Congressional Oversight Panel.
- Sec. 126. FDIC authority.
- Sec. 127. Cooperation with the FBI.
- Sec. 128. Acceleration of effective date.
- Sec. 129. Disclosures on exercise of loan authority.
- Sec. 130. Technical corrections.
- Sec. 131. Exchange Stabilization Fund reimbursement.
- Sec. 132. Authority to suspend mark-to-market accounting.
- Sec. 133. Study on mark-to-market accounting.
- Sec. 134. Recoupment.
- Sec. 135. Preservation of authority.

TITLE II—BUDGET-RELATED PROVISIONS

- Sec. 201. Information for congressional support agencies.
- Sec. 202. Reports by the Office of Management and Budget and the Congressional Budget Office.
- Sec. 203. Analysis in President's Budget.
- Sec. 204. Emergency treatment.

TITLE III—TAX PROVISIONS

Sec. 301. Gain or loss from sale or exchange of certain preferred stock.

Sec. 302. Special rules for tax treatment of executive compensation of employees participating in the troubled assets relief program.

Sec. 303. Extension of exclusion of income from discharge of qualified principal residence indebtedness.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to immediately provide authority and facilities that the Secretary of the Treasury can use to
4 restore liquidity and stability to the financial system
5 of the United States; and

6 (2) to ensure that such authority and such facilities are used in a manner that—

7 (A) protects home values, college funds, retirement accounts, and life savings;

8 (B) preserves homeownership and promotes jobs and economic growth;

9 (C) maximizes overall returns to the taxpayers of the United States; and

10 (D) provides public accountability for the exercise of such authority.

11 **SEC. 3. DEFINITIONS.**

12 For purposes of this Act, the following definitions shall apply:

13 (1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—
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1 (A) the Committee on Banking, Housing,
2 and Urban Affairs, the Committee on Finance,
3 the Committee on the Budget, and the Com-
4 mittee on Appropriations of the Senate; and

5 (B) the Committee on Financial Services,
6 the Committee on Ways and Means, the Com-
7 mittee on the Budget, and the Committee on
8 Appropriations of the House of Representatives.

9 (2) BOARD.—The term “Board” means the
10 Board of Governors of the Federal Reserve System.

11 (3) CONGRESSIONAL SUPPORT AGENCIES.—The
12 term “congressional support agencies” means the
13 Congressional Budget Office and the Joint Com-
14 mittee on Taxation.

15 (4) CORPORATION.—The term “Corporation”
16 means the Federal Deposit Insurance Corporation.

17 (5) FINANCIAL INSTITUTION.—The term “fi-
18 nancial institution” means any institution, including,
19 but not limited to, any bank, savings association,
20 credit union, security broker or dealer, or insurance
21 company, established and regulated under the laws
22 of the United States or any State, territory, or pos-
23 session of the United States, the District of Colum-
24 bia, Commonwealth of Puerto Rico, Commonwealth
25 of Northern Mariana Islands, Guam, American

1 Samoa, or the United States Virgin Islands, and
2 having significant operations in the United States,
3 but excluding any central bank of, or institution
4 owned by, a foreign government.

5 (6) FUND.—The term “Fund” means the Trou-
6 bled Assets Insurance Financing Fund established
7 under section 102.

8 (7) SECRETARY.—The term “Secretary” means
9 the Secretary of the Treasury.

10 (8) TARP.—The term “TARP” means the
11 troubled asset relief program established under sec-
12 tion 101.

13 (9) TROUBLED ASSETS.—The term “troubled
14 assets” means—

15 (A) residential or commercial mortgages
16 and any securities, obligations, or other instru-
17 ments that are based on or related to such
18 mortgages, that in each case was originated or
19 issued on or before March 14, 2008, the pur-
20 chase of which the Secretary determines pro-
21 motes financial market stability; and

22 (B) any other financial instrument that the
23 Secretary, after consultation with the Chairman
24 of the Board of Governors of the Federal Re-
25 serve System, determines the purchase of which

1 is necessary to promote financial market sta-
2 bility, but only upon transmittal of such deter-
3 mination, in writing, to the appropriate commit-
4 tees of Congress.

5 **TITLE I—TROUBLED ASSETS** 6 **RELIEF PROGRAM**

7 **SEC. 101. PURCHASES OF TROUBLED ASSETS.**

8 (a) OFFICES; AUTHORITY.—

9 (1) AUTHORITY.—The Secretary is authorized
10 to establish a troubled asset relief program (or
11 “TARP”) to purchase, and to make and fund com-
12 mitments to purchase, troubled assets from any fi-
13 nancial institution, on such terms and conditions as
14 are determined by the Secretary, and in accordance
15 with this Act and the policies and procedures devel-
16 oped and published by the Secretary.

17 (2) COMMENCEMENT OF PROGRAM.—Establish-
18 ment of the policies and procedures and other simi-
19 lar administrative requirements imposed on the Sec-
20 retary by this Act are not intended to delay the com-
21 mencement of the TARP.

22 (3) ESTABLISHMENT OF TREASURY OFFICE.—

23 (A) IN GENERAL.—The Secretary shall im-
24 plement any program under paragraph (1)
25 through an Office of Financial Stability, estab-

1 lished for such purpose within the Office of Do-
2 mestic Finance of the Department of the Treas-
3 ury, which office shall be headed by an Assist-
4 ant Secretary of the Treasury, appointed by the
5 President, by and with the advice and consent
6 of the Senate, except that an interim Assistant
7 Secretary may serve pending confirmation by
8 the Senate.

9 (B) CLERICAL AMENDMENTS.—

10 (i) TITLE 5.—Section 5315 of title 5,
11 United States Code, is amended in the
12 item relating to Assistant Secretaries of
13 the Treasury, by striking “(9)” and insert-
14 ing “(10)”.

15 (ii) TITLE 31.—Section 301(e) of title
16 31, United States Code, is amended by
17 striking “9” and inserting “10”.

18 (b) CONSULTATION.—In exercising the authority
19 under this section, the Secretary shall consult with the
20 Board of Governors of the Federal Reserve System, the
21 Corporation, the Comptroller of the Currency, the Direc-
22 tor of the Office of Thrift Supervision, and the Secretary
23 of Housing and Urban Development.

24 (c) NECESSARY ACTIONS.—The Secretary is author-
25 ized to take such actions as the Secretary deems necessary

1 to carry out the authorities in this Act, including, without
2 limitation, the following:

3 (1) The Secretary shall have direct hiring au-
4 thority with respect to the appointment of employees
5 to administer this Act.

6 (2) Entering into contracts, including contracts
7 for services authorized by section 3109 of title 5,
8 United States Code.

9 (3) Designating financial institutions as finan-
10 cial agents of the Federal Government, and such in-
11 stitutions shall perform all such reasonable duties
12 related to this Act as financial agents of the Federal
13 Government as may be required.

14 (4) In order to provide the Secretary with the
15 flexibility to manage troubled assets in a manner de-
16 signed to minimize cost to the taxpayers, estab-
17 lishing vehicles that are authorized, subject to super-
18 vision by the Secretary, to purchase, hold, and sell
19 troubled assets and issue obligations.

20 (5) Issuing such regulations and other guidance
21 as may be necessary or appropriate to define terms
22 or carry out the authorities or purposes of this Act.

23 (d) PROGRAM GUIDELINES.—Before the earlier of
24 the end of the 2-business-day period beginning on the date
25 of the first purchase of troubled assets pursuant to the

1 authority under this section or the end of the 45-day pe-
2 riod beginning on the date of enactment of this Act, the
3 Secretary shall publish program guidelines, including the
4 following:

5 (1) Mechanisms for purchasing troubled assets.

6 (2) Methods for pricing and valuing troubled
7 assets.

8 (3) Procedures for selecting asset managers.

9 (4) Criteria for identifying troubled assets for
10 purchase.

11 (e) PREVENTING UNJUST ENRICHMENT.—In making
12 purchases under the authority of this Act, the Secretary
13 shall take such steps as may be necessary to prevent un-
14 just enrichment of financial institutions participating in
15 a program established under this section, including by pre-
16 venting the sale of a troubled asset to the Secretary at
17 a higher price than what the seller paid to purchase the
18 asset. This subsection does not apply to troubled assets
19 acquired in a merger or acquisition, or a purchase of as-
20 sets from a financial institution in conservatorship or re-
21 ceivership, or that has initiated bankruptcy proceedings
22 under title 11, United States Code.

23 **SEC. 102. INSURANCE OF TROUBLED ASSETS.**

24 (a) AUTHORITY.—

1 (1) IN GENERAL.—If the Secretary establishes
2 the program authorized under section 101, then the
3 Secretary shall establish a program to guarantee
4 troubled assets originated or issued prior to March
5 14, 2008, including such mortgage-backed securities.

6 (2) GUARANTEES.—In establishing any pro-
7 gram under this subsection, the Secretary may de-
8 velop guarantees of troubled assets and the associ-
9 ated premiums for such guarantees. Such guaran-
10 tees and premiums may be determined by category
11 or class of the troubled assets to be guaranteed.

12 (3) EXTENT OF GUARANTEE.—Upon request of
13 a financial institution, the Secretary may guarantee
14 the timely payment of principal of, and interest on,
15 troubled assets in amounts not to exceed 100 per-
16 cent of such payments. Such guarantee may be on
17 such terms and conditions as are determined by the
18 Secretary, provided that such terms and conditions
19 are consistent with the purposes of this Act.

20 (b) REPORTS.—Not later than 90 days after the date
21 of enactment of this Act, the Secretary shall report to the
22 appropriate committees of Congress on the program estab-
23 lished under subsection (a).

24 (c) PREMIUMS.—

1 (1) IN GENERAL.—The Secretary shall collect
2 premiums from any financial institution partici-
3 pating in the program established under subsection
4 (a). Such premiums shall be in an amount that the
5 Secretary determines necessary to meet the purposes
6 of this Act and to provide sufficient reserves pursu-
7 ant to paragraph (3).

8 (2) AUTHORITY TO BASE PREMIUMS ON PROD-
9 UCT RISK.—In establishing any premium under
10 paragraph (1), the Secretary may provide for vari-
11 ations in such rates according to the credit risk as-
12 sociated with the particular troubled asset that is
13 being guaranteed. The Secretary shall publish the
14 methodology for setting the premium for a class of
15 troubled assets together with an explanation of the
16 appropriateness of the class of assets for participa-
17 tion in the program established under this section.
18 The methodology shall ensure that the premium is
19 consistent with paragraph (3).

20 (3) MINIMUM LEVEL.—The premiums referred
21 to in paragraph (1) shall be set by the Secretary at
22 a level necessary to create reserves sufficient to meet
23 anticipated claims, based on an actuarial analysis,
24 and to ensure that taxpayers are fully protected.

1 (4) ADJUSTMENT TO PURCHASE AUTHORITY.—

2 The purchase authority limit in section 115 shall be
3 reduced by an amount equal to the difference be-
4 tween the total of the outstanding guaranteed obli-
5 gations and the balance in the Troubled Assets In-
6 surance Fund.

7 (d) TROUBLED ASSETS INSURANCE FINANCING
8 FUND.—

9 (1) DEPOSITS.—The Secretary shall deposit
10 fees collected under this section into the Fund estab-
11 lished under paragraph (2).

12 (2) ESTABLISHMENT.—There is established a
13 Troubled Assets Insurance Financing Fund that
14 shall consist of the amounts collected pursuant to
15 paragraph (1), and any balance in such fund shall
16 be invested by the Secretary in United States Treas-
17 ury securities, or kept in cash on hand or on deposit,
18 as necessary.

19 (3) PAYMENTS FROM FUND.—The Secretary
20 shall make payments from amounts deposited in the
21 Fund to fulfill obligations of the guarantees provided
22 to financial institutions under subsection (a).

23 **SEC. 103. CONSIDERATIONS.**

24 In exercising the authorities granted in this Act, the
25 Secretary shall take into consideration—

1 (1) protecting the interests of taxpayers by
2 maximizing overall returns and minimizing the im-
3 pact on the national debt;

4 (2) providing stability and preventing disrup-
5 tion to financial markets in order to limit the impact
6 on the economy and protect American jobs, savings,
7 and retirement security;

8 (3) the need to help families keep their homes
9 and to stabilize communities;

10 (4) in determining whether to engage in a di-
11 rect purchase from an individual financial institu-
12 tion, the long-term viability of the financial institu-
13 tion in determining whether the purchase represents
14 the most efficient use of funds under this Act;

15 (5) ensuring that all financial institutions are
16 eligible to participate in the program, without dis-
17 crimination based on size, geography, form of orga-
18 nization, or the size, type, and number of assets eli-
19 gible for purchase under this Act;

20 (6) providing financial assistance to financial
21 institutions, including those serving low- and mod-
22 erate-income populations and other underserved
23 communities, and that have assets less than
24 \$1,000,000,000, that were well or adequately cap-
25 italized as of June 30, 2008, and that as a result

1 of the devaluation of the preferred government-spon-
2 sored enterprises stock will drop one or more capital
3 levels, in a manner sufficient to restore the financial
4 institutions to at least an adequately capitalized
5 level;

6 (7) the need to ensure stability for United
7 States public instrumentalities, such as counties and
8 cities, that may have suffered significant increased
9 costs or losses in the current market turmoil;

10 (8) protecting the retirement security of Ameri-
11 cans by purchasing troubled assets held by or on be-
12 half of an eligible retirement plan described in clause
13 (iii), (iv), (v), or (vi) of section 402(c)(8)(B) of the
14 Internal Revenue Code of 1986, except that such au-
15 thority shall not extend to any compensation ar-
16 rangements subject to section 409A of such Code;
17 and

18 (9) the utility of purchasing other real estate
19 owned and instruments backed by mortgages on
20 multifamily properties.

21 **SEC. 104. FINANCIAL STABILITY OVERSIGHT BOARD.**

22 (a) ESTABLISHMENT.—There is established the Fi-
23 nancial Stability Oversight Board, which shall be respon-
24 sible for—

1 (1) reviewing the exercise of authority under a
2 program developed in accordance with this Act, in-
3 cluding—

4 (A) policies implemented by the Secretary
5 and the Office of Financial Stability created
6 under sections 101 and 102, including the ap-
7 pointment of financial agents, the designation
8 of asset classes to be purchased, and plans for
9 the structure of vehicles used to purchase trou-
10 bled assets; and

11 (B) the effect of such actions in assisting
12 American families in preserving home owner-
13 ship, stabilizing financial markets, and pro-
14 tecting taxpayers;

15 (2) making recommendations, as appropriate, to
16 the Secretary regarding use of the authority under
17 this Act; and

18 (3) reporting any suspected fraud, misrepresen-
19 tation, or malfeasance to the Special Inspector Gen-
20 eral for the Troubled Assets Relief Program or the
21 Attorney General of the United States, consistent
22 with section 535(b) of title 28, United States Code.

23 (b) MEMBERSHIP.—The Financial Stability Over-
24 sight Board shall be comprised of—

1 (1) the Chairman of the Board of Governors of
2 the Federal Reserve System;

3 (2) the Secretary;

4 (3) the Director of the Federal Home Finance
5 Agency;

6 (4) the Chairman of the Securities Exchange
7 Commission; and

8 (5) the Secretary of Housing and Urban Devel-
9 opment.

10 (c) CHAIRPERSON.—The chairperson of the Financial
11 Stability Oversight Board shall be elected by the members
12 of the Board from among the members other than the Sec-
13 retary.

14 (d) MEETINGS.—The Financial Stability Oversight
15 Board shall meet 2 weeks after the first exercise of the
16 purchase authority of the Secretary under this Act, and
17 monthly thereafter.

18 (e) ADDITIONAL AUTHORITIES.—In addition to the
19 responsibilities described in subsection (a), the Financial
20 Stability Oversight Board shall have the authority to en-
21 sure that the policies implemented by the Secretary are—

22 (1) in accordance with the purposes of this Act;

23 (2) in the economic interests of the United
24 States; and

1 (3) consistent with protecting taxpayers, in ac-
2 cordance with section 112(a).

3 (f) CREDIT REVIEW COMMITTEE.—The Financial
4 Stability Oversight Board may appoint a credit review
5 committee for the purpose of evaluating the exercise of
6 the purchase authority provided under this Act and the
7 assets acquired through the exercise of such authority, as
8 the Financial Stability Oversight Board determines appro-
9 priate.

10 (g) REPORTS.—The Financial Stability Oversight
11 Board shall report to the appropriate committees of Con-
12 gress and the Congressional Oversight Panel established
13 under section 125, semiannually, on the matters described
14 under subsection (a)(1).

15 (h) TERMINATION.—The Financial Stability Over-
16 sight Board, and the authority of the Oversight Board
17 under this section, shall terminate on the expiration of the
18 15-day period beginning upon the later of—

19 (1) the date that the last troubled asset ac-
20 quired by the Secretary under section 101 has been
21 sold or transferred out of the ownership or control
22 of the Federal Government; or

23 (2) the date of expiration of the last insurance
24 contract issued under section 102.

1 **SEC. 105. REPORTS.**

2 (a) IN GENERAL.—Before the expiration of the 60-
3 day period beginning on the date of the first exercise of
4 the authority granted in section 101(a), or of the first ex-
5 ercise of the authority granted in section 102, whichever
6 occurs first, and every 30-day period thereafter, the Sec-
7 retary shall report to the appropriate committees of Con-
8 gress, with respect to each such period—

9 (1) an overview of actions taken by the Sec-
10 retary, including the considerations required by sec-
11 tion 103 and the efforts under section 109;

12 (2) the actual obligation and expenditure of the
13 funds provided for administrative expenses by sec-
14 tion 118 during such period and the expected ex-
15 penditure of such funds in the subsequent period;
16 and

17 (3) a detailed financial statement with respect
18 to the exercise of authority under this Act, includ-
19 ing—

20 (A) all agreements made or renewed;

21 (B) all insurance contracts entered into
22 pursuant to section 102;

23 (C) all transactions occurring during such
24 period, including the types of parties involved;

25 (D) the nature of the assets purchased;

26 (E) all projected costs and liabilities;

1 (F) operating expenses, including com-
2 pensation for financial agents;

3 (G) the valuation or pricing method used
4 for each transaction; and

5 (H) a description of the vehicles estab-
6 lished to exercise such authority.

7 (b) TRANCHE REPORTS TO CONGRESS.—

8 (1) REPORTS.—The Secretary shall provide to
9 the appropriate committees of Congress, at the times
10 specified in paragraph (2), a written report, includ-
11 ing—

12 (A) a description of all of the transactions
13 made during the reporting period;

14 (B) a description of the pricing mechanism
15 for the transactions;

16 (C) a justification of the price paid for and
17 other financial terms associated with the trans-
18 actions;

19 (D) a description of the impact of the exer-
20 cise of such authority on the financial system,
21 supported, to the extent possible, by specific
22 data;

23 (E) a description of challenges that remain
24 in the financial system, including any bench-
25 marks yet to be achieved; and

1 (F) an estimate of additional actions under
2 the authority provided under this Act that may
3 be necessary to address such challenges.

4 (2) TIMING.—The report required by this sub-
5 section shall be submitted not later than 7 days
6 after the date on which commitments to purchase
7 troubled assets under the authorities provided in this
8 Act first reach an aggregate of \$50,000,000,000 and
9 not later than 7 days after each \$50,000,000,000 in-
10 terval of such commitments is reached thereafter.

11 (c) REGULATORY MODERNIZATION REPORT.—The
12 Secretary shall review the current state of the financial
13 markets and the regulatory system and submit a written
14 report to the appropriate committees of Congress not later
15 than April 30, 2009, analyzing the current state of the
16 regulatory system and its effectiveness at overseeing the
17 participants in the financial markets, including the over-
18 the-counter swaps market and government-sponsored en-
19 terprises, and providing recommendations for improve-
20 ment, including—

21 (1) recommendations regarding—

22 (A) whether any participants in the finan-
23 cial markets that are currently outside the reg-
24 ulatory system should become subject to the
25 regulatory system; and

1 (B) enhancement of the clearing and set-
2 tlement of over-the-counter swaps; and

3 (2) the rationale underlying such recommenda-
4 tions.

5 (d) SHARING OF INFORMATION.—Any report re-
6 quired under this section shall also be submitted to the
7 Congressional Oversight Panel established under section
8 125.

9 (e) SUNSET.—The reporting requirements under this
10 section shall terminate on the later of—

11 (1) the date that the last troubled asset ac-
12 quired by the Secretary under section 101 has been
13 sold or transferred out of the ownership or control
14 of the Federal Government; or

15 (2) the date of expiration of the last insurance
16 contract issued under section 102.

17 **SEC. 106. RIGHTS; MANAGEMENT; SALE OF TROUBLED AS-**
18 **SETS; REVENUES AND SALE PROCEEDS.**

19 (a) EXERCISE OF RIGHTS.—The Secretary may, at
20 any time, exercise any rights received in connection with
21 troubled assets purchased under this Act.

22 (b) MANAGEMENT OF TROUBLED ASSETS.—The Sec-
23 retary shall have authority to manage troubled assets pur-
24 chased under this Act, including revenues and portfolio
25 risks therefrom.

1 (c) SALE OF TROUBLED ASSETS.—The Secretary
2 may, at any time, upon terms and conditions and at a
3 price determined by the Secretary, sell, or enter into secu-
4 rities loans, repurchase transactions, or other financial
5 transactions in regard to, any troubled asset purchased
6 under this Act.

7 (d) TRANSFER TO TREASURY.—Revenues of, and
8 proceeds from the sale of troubled assets purchased under
9 this Act, or from the sale, exercise, or surrender of war-
10 rants or senior debt instruments acquired under section
11 113 shall be paid into the general fund of the Treasury
12 for reduction of the public debt.

13 (e) APPLICATION OF SUNSET TO TROUBLED AS-
14 SETS.—The authority of the Secretary to hold any trou-
15 bled asset purchased under this Act before the termination
16 date in section 120, or to purchase or fund the purchase
17 of a troubled asset under a commitment entered into be-
18 fore the termination date in section 120, is not subject
19 to the provisions of section 120.

20 **SEC. 107. CONTRACTING PROCEDURES.**

21 (a) STREAMLINED PROCESS.—For purposes of this
22 Act, the Secretary may waive specific provisions of the
23 Federal Acquisition Regulation upon a determination that
24 urgent and compelling circumstances make compliance
25 with such provisions contrary to the public interest. Any

1 such determination, and the justification for such deter-
2 mination, shall be submitted to the Committees on Over-
3 sight and Government Reform and Financial Services of
4 the House of Representatives and the Committees on
5 Homeland Security and Governmental Affairs and Bank-
6 ing, Housing, and Urban Affairs of the Senate within 7
7 days.

8 (b) ADDITIONAL CONTRACTING REQUIREMENTS.—In
9 any solicitation or contract where the Secretary has, pur-
10 suant to subsection (a), waived any provision of the Fed-
11 eral Acquisition Regulation pertaining to minority con-
12 tracting, the Secretary shall develop and implement stand-
13 ards and procedures to ensure, to the maximum extent
14 practicable, the inclusion and utilization of minorities (as
15 such term is defined in section 1204(c) of the Financial
16 Institutions Reform, Recovery, and Enforcement Act of
17 1989 (12 U.S.C. 1811 note)) and women, and minority-
18 and women-owned businesses (as such terms are defined
19 in section 21A(r)(4) of the Federal Home Loan Bank Act
20 (12 U.S.C. 1441a(r)(4)), in that solicitation or contract,
21 including contracts to asset managers, servicers, property
22 managers, and other service providers or expert consult-
23 ants.

24 (c) ELIGIBILITY OF FDIC.—Notwithstanding sub-
25 sections (a) and (b), the Corporation—

1 (1) shall be eligible for, and shall be considered
2 in, the selection of asset managers for residential
3 mortgage loans and residential mortgage-backed se-
4 curities; and

5 (2) shall be reimbursed by the Secretary for
6 any services provided.

7 **SEC. 108. CONFLICTS OF INTEREST.**

8 (a) **STANDARDS REQUIRED.**—The Secretary shall
9 issue regulations or guidelines necessary to address and
10 manage or to prohibit conflicts of interest that may arise
11 in connection with the administration and execution of the
12 authorities provided under this Act, including—

13 (1) conflicts arising in the selection or hiring of
14 contractors or advisors, including asset managers;

15 (2) the purchase of troubled assets;

16 (3) the management of the troubled assets held;

17 (4) post-employment restrictions on employees;

18 and

19 (5) any other potential conflict of interest, as
20 the Secretary deems necessary or appropriate in the
21 public interest.

22 (b) **TIMING.**—Regulations or guidelines required by
23 this section shall be issued as soon as practicable after
24 the date of enactment of this Act.

1 **SEC. 109. FORECLOSURE MITIGATION EFFORTS.**

2 (a) RESIDENTIAL MORTGAGE LOAN SERVICING
3 STANDARDS.—To the extent that the Secretary acquires
4 mortgages, mortgage backed securities, and other assets
5 secured by residential real estate, including multifamily
6 housing, the Secretary shall implement a plan that seeks
7 to maximize assistance for homeowners and use the au-
8 thority of the Secretary to encourage the servicers of the
9 underlying mortgages, considering net present value to the
10 taxpayer, to take advantage of the HOPE for Home-
11 owners Program under section 257 of the National Hous-
12 ing Act or other available programs to minimize fore-
13 closures. In addition, the Secretary may use loan guaran-
14 tees and credit enhancements to facilitate loan modifica-
15 tions to prevent avoidable foreclosures.

16 (b) COORDINATION.—The Secretary shall coordinate
17 with the Corporation, the Board (with respect to any
18 mortgage or mortgage-backed securities or pool of securi-
19 ties held, owned, or controlled by or on behalf of a Federal
20 reserve bank, as provided in section 110(a)(1)(C)), the
21 Federal Housing Finance Agency, the Secretary of Hous-
22 ing and Urban Development, and other Federal Govern-
23 ment entities that hold troubled assets to attempt to iden-
24 tify opportunities for the acquisition of classes of troubled
25 assets that will improve the ability of the Secretary to im-
26 prove the loan modification and restructuring process and,

1 where permissible, to permit bona fide tenants who are
2 current on their rent to remain in their homes under the
3 terms of the lease. In the case of a mortgage on a residen-
4 tial rental property, the plan required under this section
5 shall include protecting Federal, State, and local rental
6 subsidies and protections, and ensuring any modification
7 takes into account the need for operating funds to main-
8 tain decent and safe conditions at the property.

9 (c) CONSENT TO REASONABLE LOAN MODIFICATION
10 REQUESTS.—Upon any request arising under existing in-
11 vestment contracts, the Secretary shall consent, where ap-
12 propriate, and considering net present value to the tax-
13 payer, to reasonable requests for loss mitigation measures,
14 including term extensions, rate reductions, principal write
15 downs, increases in the proportion of loans within a trust
16 or other structure allowed to be modified, or removal of
17 other limitation on modifications.

18 **SEC. 110. ASSISTANCE TO HOMEOWNERS.**

19 (a) DEFINITIONS.—As used in this section—

20 (1) the term “Federal property manager”
21 means—

22 (A) the Federal Housing Finance Agency,
23 in its capacity as conservator of the Federal
24 National Mortgage Association and the Federal
25 Home Loan Mortgage Corporation;

1 (B) the Corporation, with respect to resi-
2 dential mortgage loans and mortgage-backed se-
3 curities held by any bridge depository institu-
4 tion pursuant to section 11(n) of the Federal
5 Deposit Insurance Act; and

6 (C) the Board, with respect to any mort-
7 gage or mortgage-backed securities or pool of
8 securities held, owned, or controlled by or on
9 behalf of a Federal reserve bank, other than
10 mortgages or securities held, owned, or con-
11 trolled in connection with open market oper-
12 ations under section 14 of the Federal Reserve
13 Act (12 U.S.C. 353), or as collateral for an ad-
14 vance or discount that is not in default;

15 (2) the term “consumer” has the same meaning
16 as in section 103 of the Truth in Lending Act (15
17 U.S.C. 1602);

18 (3) the term “insured depository institution”
19 has the same meaning as in section 3 of the Federal
20 Deposit Insurance Act (12 U.S.C. 1813); and

21 (4) the term “servicer” has the same meaning
22 as in section 6(i)(2) of the Real Estate Settlement
23 Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).

24 (b) HOMEOWNER ASSISTANCE BY AGENCIES.—

1 (1) IN GENERAL.—To the extent that the Fed-
2 eral property manager holds, owns, or controls mort-
3 gages, mortgage backed securities, and other assets
4 secured by residential real estate, including multi-
5 family housing, the Federal property manager shall
6 implement a plan that seeks to maximize assistance
7 for homeowners and use its authority to encourage
8 the servicers of the underlying mortgages, and con-
9 sidering net present value to the taxpayer, to take
10 advantage of the HOPE for Homeowners Program
11 under section 257 of the National Housing Act or
12 other available programs to minimize foreclosures.

13 (2) MODIFICATIONS.—In the case of a residen-
14 tial mortgage loan, modifications made under para-
15 graph (1) may include—

- 16 (A) reduction in interest rates;
17 (B) reduction of loan principal; and
18 (C) other similar modifications.

19 (3) TENANT PROTECTIONS.—In the case of
20 mortgages on residential rental properties, modifica-
21 tions made under paragraph (1) shall ensure—

- 22 (A) the continuation of any existing Fed-
23 eral, State, and local rental subsidies and pro-
24 tections; and

1 (B) that modifications take into account
2 the need for operating funds to maintain decent
3 and safe conditions at the property.

4 (4) TIMING.—Each Federal property manager
5 shall develop and begin implementation of the plan
6 required by this subsection not later than 60 days
7 after the date of enactment of this Act.

8 (5) REPORTS TO CONGRESS.—Each Federal
9 property manager shall, 60 days after the date of
10 enactment of this Act and every 30 days thereafter,
11 report to Congress specific information on the num-
12 ber and types of loan modifications made and the
13 number of actual foreclosures occurring during the
14 reporting period in accordance with this section.

15 (6) CONSULTATION.—In developing the plan re-
16 quired by this subsection, the Federal property man-
17 agers shall consult with one another and, to the ex-
18 tent possible, utilize consistent approaches to imple-
19 ment the requirements of this subsection.

20 (c) ACTIONS WITH RESPECT TO SERVICERS.—In any
21 case in which a Federal property manager is not the owner
22 of a residential mortgage loan, but holds an interest in
23 obligations or pools of obligations secured by residential
24 mortgage loans, the Federal property manager shall—

1 (1) encourage implementation by the loan
2 servicers of loan modifications developed under sub-
3 section (b); and

4 (2) assist in facilitating any such modifications,
5 to the extent possible.

6 (d) **LIMITATION.**—The requirements of this section
7 shall not supersede any other duty or requirement imposed
8 on the Federal property managers under otherwise appli-
9 cable law.

10 **SEC. 111. EXECUTIVE COMPENSATION AND CORPORATE**
11 **GOVERNANCE.**

12 (a) **APPLICABILITY.**—Any financial institution that
13 sells troubled assets to the Secretary under this Act shall
14 be subject to the executive compensation requirements of
15 subsections (b) and (c) and the provisions under the Inter-
16 nal Revenue Code of 1986, as provided under the amend-
17 ment by section 302, as applicable.

18 (b) **DIRECT PURCHASES.**—

19 (1) **IN GENERAL.**—Where the Secretary deter-
20 mines that the purposes of this Act are best met
21 through direct purchases of troubled assets from an
22 individual financial institution where no bidding
23 process or market prices are available, and the Sec-
24 retary receives a meaningful equity or debt position
25 in the financial institution as a result of the trans-

1 action, the Secretary shall require that the financial
2 institution meet appropriate standards for executive
3 compensation and corporate governance. The stand-
4 ards required under this subsection shall be effective
5 for the duration of the period that the Secretary
6 holds an equity or debt position in the financial in-
7 stitution.

8 (2) CRITERIA.—The standards required under
9 this subsection shall include—

10 (A) limits on compensation that exclude in-
11 centives for executive officers of a financial in-
12 stitution to take unnecessary and excessive
13 risks that threaten the value of the financial in-
14 stitution during the period that the Secretary
15 holds an equity or debt position in the financial
16 institution;

17 (B) a provision for the recovery by the fi-
18 nancial institution of any bonus or incentive
19 compensation paid to a senior executive officer
20 based on statements of earnings, gains, or other
21 criteria that are later proven to be materially
22 inaccurate; and

23 (C) a prohibition on the financial institu-
24 tion making any golden parachute payment to
25 its senior executive officer during the period

1 that the Secretary holds an equity or debt posi-
2 tion in the financial institution.

3 (3) DEFINITION.—For purposes of this section,
4 the term “senior executive officer” means an indi-
5 vidual who is one of the top 5 executives of a public
6 company, whose compensated is required to be dis-
7 closed pursuant to the Securities Exchange Act of
8 1934, and any regulations issued thereunder, and
9 non-public company counterparts.

10 (c) AUCTION PURCHASES.—Where the Secretary de-
11 termines that the purposes of this Act are best met
12 through auction purchases of troubled assets, and only
13 where such purchases per financial institution, in the ag-
14 gregate exceed \$300,000,000 (including direct purchases),
15 the Secretary shall prohibit, for such financial institution,
16 any new employment contract with a senior executive offi-
17 cer that provides a golden parachute in the event of an
18 involuntary termination, bankruptcy filing, insolvency, or
19 receivership. The Secretary shall issue guidance to carry
20 out this paragraph not later than 2 months after the date
21 of enactment of this Act, and such guidance shall be effec-
22 tive upon issuance.

23 (d) SUNSET.—The provisions of subsection (c) shall
24 apply only to arrangements entered into during the period

1 during which the authorities under section 101(a) are in
2 effect, as determined under section 120.

3 **SEC. 112. COORDINATION WITH FOREIGN AUTHORITIES**
4 **AND CENTRAL BANKS.**

5 The Secretary shall coordinate, as appropriate, with
6 foreign financial authorities and central banks to work to-
7 ward the establishment of similar programs by such au-
8 thorities and central banks. To the extent that such for-
9 eign financial authorities or banks hold troubled assets as
10 a result of extending financing to financial institutions
11 that have failed or defaulted on such financing, such trou-
12 bled assets qualify for purchase under section 101.

13 **SEC. 113. MINIMIZATION OF LONG-TERM COSTS AND MAXI-**
14 **MIZATION OF BENEFITS FOR TAXPAYERS.**

15 (a) LONG-TERM COSTS AND BENEFITS.—

16 (1) MINIMIZING NEGATIVE IMPACT.—The Sec-
17 retary shall use the authority under this Act in a
18 manner that will minimize any potential long-term
19 negative impact on the taxpayer, taking into account
20 the direct outlays, potential long-term returns on as-
21 sets purchased, and the overall economic benefits of
22 the program, including economic benefits due to im-
23 provements in economic activity and the availability
24 of credit, the impact on the savings and pensions of

1 individuals, and reductions in losses to the Federal
2 Government.

3 (2) AUTHORITY.—In carrying out paragraph
4 (1), the Secretary shall—

5 (A) hold the assets to maturity or for re-
6 sale for and until such time as the Secretary
7 determines that the market is optimal for sell-
8 ing such assets, in order to maximize the value
9 for taxpayers; and

10 (B) sell such assets at a price that the Sec-
11 retary determines, based on available financial
12 analysis, will maximize return on investment for
13 the Federal Government.

14 (3) PRIVATE SECTOR PARTICIPATION.—The
15 Secretary shall encourage the private sector to par-
16 ticipate in purchases of troubled assets, and to in-
17 vest in financial institutions, consistent with the pro-
18 visions of this section.

19 (b) USE OF MARKET MECHANISMS.—In making pur-
20 chases under this Act, the Secretary shall—

21 (1) make such purchases at the lowest price
22 that the Secretary determines to be consistent with
23 the purposes of this Act; and

24 (2) maximize the efficiency of the use of tax-
25 payer resources by using market mechanisms, in-

1 including auctions or reverse auctions, where appro-
2 priate.

3 (c) DIRECT PURCHASES.—If the Secretary deter-
4 mines that use of a market mechanism under subsection
5 (b) is not feasible or appropriate, and the purposes of the
6 Act are best met through direct purchases from an indi-
7 vidual financial institution, the Secretary shall pursue ad-
8 ditional measures to ensure that prices paid for assets are
9 reasonable and reflect the underlying value of the asset.

10 (d) CONDITIONS ON PURCHASE AUTHORITY FOR
11 WARRANTS AND DEBT INSTRUMENTS.—

12 (1) IN GENERAL.—The Secretary may not pur-
13 chase, or make any commitment to purchase, any
14 troubled asset under the authority of this Act, unless
15 the Secretary receives from the financial institution
16 from which such assets are to be purchased—

17 (A) in the case of a financial institution
18 that is registered (or approved for registration)
19 and traded on a national securities exchange or
20 a national securities association registered pur-
21 suant to section 15A of the Securities Exchange
22 Act of 1934 (15 U.S.C. 78o-3), a warrant giv-
23 ing the right to the Secretary to receive non-
24 voting common stock or preferred stock in such

1 financial institution, as the Secretary deter-
2 mines appropriate; or

3 (B) in the case of any financial institution
4 other than one described in subparagraph (A),
5 a senior debt instrument from such financial in-
6 stitution, as described in paragraph (2)(C).

7 (2) TERMS AND CONDITIONS.—The terms and
8 conditions of any warrant or senior debt instrument
9 required under paragraph (1) shall meet the fol-
10 lowing requirements:

11 (A) PURPOSES.—Such terms and condi-
12 tions shall, at a minimum, be designed—

13 (i) to provide for reasonable participa-
14 tion by the Secretary, for the benefit of
15 taxpayers, in equity appreciation in the
16 case of a warrant, or a reasonable interest
17 rate premium, in the case of a debt instru-
18 ment; and

19 (ii) to provide additional protection
20 for the taxpayer against losses from sale of
21 assets by the Secretary under this Act and
22 the administrative expenses of the TARP.

23 (B) AUTHORITY TO SELL, EXERCISE, OR
24 SURRENDER.—The Secretary may sell, exercise,
25 or surrender a warrant or any senior debt in-

1 strument received under this subsection, based
2 on the conditions established under subpara-
3 graph (A).

4 (C) CONVERSION.—The warrant shall pro-
5 vide that if, after the warrant is received by the
6 Secretary under this subsection, the financial
7 institution that issued the warrant is no longer
8 listed or traded on a national securities ex-
9 change or securities association, as described in
10 paragraph (1)(A), such warrants shall convert
11 to senior debt, in an amount determined by the
12 Secretary.

13 (D) PROTECTIONS.—Any warrant rep-
14 resenting securities to be received by the Sec-
15 retary under this subsection shall contain anti-
16 dilution provisions of the type employed in cap-
17 ital market transactions, as determined by the
18 Secretary. Such provisions shall protect the
19 value of the securities from market transactions
20 such as stock splits, stock distributions, divi-
21 dends, and other distributions, mergers, and
22 other forms of reorganization or recapitaliza-
23 tion.

24 (E) EXERCISE PRICE.—The exercise price
25 for any warrant issued pursuant to this sub-

1 section shall be set by the Secretary, in the in-
2 terest of the taxpayers.

3 (F) SUFFICIENCY.—The financial institu-
4 tion shall guarantee to the Secretary that it has
5 authorized shares of nonvoting stock available
6 to fulfill its obligations under this subsection.
7 Should the financial institution not have suffi-
8 cient authorized shares, including preferred
9 shares that may carry dividend rights equal to
10 a multiple number of common shares, the Sec-
11 retary may, to the extent necessary, accept a
12 senior debt note in an amount, and on such
13 terms, as will compensate the Secretary equiva-
14 lently, in the event that a sufficient shareholder
15 vote to authorize the necessary additional
16 shares cannot be obtained.

17 (3) EXCEPTIONS.—

18 (A) DE MINIMIS.—The Secretary shall es-
19 tablish de minimis exceptions to the require-
20 ments of this subsection, based on the size of
21 the cumulative transactions of troubled assets
22 purchased from any one financial institution for
23 the duration of the program, at not more than
24 \$100,000,000.

1 (B) OTHER EXCEPTIONS.—The Secretary
2 shall establish an exception to the requirements
3 of this subsection and appropriate alternative
4 requirements for any participating financial in-
5 stitution that is legally prohibited from issuing
6 securities and debt instruments, so as not to
7 allow circumvention of the requirements of this
8 section.

9 **SEC. 114. MARKET TRANSPARENCY.**

10 (a) PRICING.—To facilitate market transparency, the
11 Secretary shall make available to the public, in electronic
12 form, a description, amounts, and pricing of assets ac-
13 quired under this Act, within 2 business days of purchase,
14 trade, or other disposition.

15 (b) DISCLOSURE.—For each type of financial institu-
16 tions that sells troubled assets to the Secretary under this
17 Act, the Secretary shall determine whether the public dis-
18 closure required for such financial institutions with re-
19 spect to off-balance sheet transactions, derivatives instru-
20 ments, contingent liabilities, and similar sources of poten-
21 tial exposure is adequate to provide to the public sufficient
22 information as to the true financial position of the institu-
23 tions. If such disclosure is not adequate for that purpose,
24 the Secretary shall make recommendations for additional
25 disclosure requirements to the relevant regulators.

1 **SEC. 115. GRADUATED AUTHORIZATION TO PURCHASE.**

2 (a) **AUTHORITY.**—The authority of the Secretary to
3 purchase troubled assets under this Act shall be limited
4 as follows:

5 (1) Effective upon the date of enactment of this
6 Act, such authority shall be limited to
7 \$250,000,000,000 outstanding at any one time.

8 (2) If at any time, the President submits to the
9 Congress a written certification that the Secretary
10 needs to exercise the authority under this paragraph,
11 effective upon such submission, such authority shall
12 be limited to \$350,000,000,000 outstanding at any
13 one time.

14 (3) If, at any time after the certification in
15 paragraph (2) has been made, the President trans-
16 mits to the Congress a written report detailing the
17 plan of the Secretary to exercise the authority under
18 this paragraph, unless there is enacted, within 15
19 calendar days of such transmission, a joint resolu-
20 tion described in subsection (c), effective upon the
21 expiration of such 15-day period, such authority
22 shall be limited to \$700,000,000,000 outstanding at
23 any one time.

24 (b) **AGGREGATION OF PURCHASE PRICES.**—The
25 amount of troubled assets purchased by the Secretary out-
26 standing at any one time shall be determined for purposes

1 of the dollar amount limitations under subsection (a) by
2 aggregating the purchase prices of all troubled assets held.

3 (c) JOINT RESOLUTION OF DISAPPROVAL.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of this section, the Secretary may not exer-
6 cise any authority to make purchases under this Act
7 with regard to any amount in excess of
8 \$350,000,000,000 previously obligated, as described
9 in this section if, within 15 calendar days after the
10 date on which Congress receives a report of the plan
11 of the Secretary described in subsection (a)(3), there
12 is enacted into law a joint resolution disapproving
13 the plan of the Secretary with respect to such addi-
14 tional amount.

15 (2) CONTENTS OF JOINT RESOLUTION.—For
16 the purpose of this section, the term “joint resolu-
17 tion” means only a joint resolution—

18 (A) that is introduced not later than 3 cal-
19 endar days after the date on which the report
20 of the plan of the Secretary referred to in sub-
21 section (a)(3) is received by Congress;

22 (B) which does not have a preamble;

23 (C) the title of which is as follows: “Joint
24 resolution relating to the disapproval of obliga-

1 tions under the Emergency Economic Stabiliza-
2 tion Act of 2008”; and

3 (D) the matter after the resolving clause of
4 which is as follows: “That Congress disapproves
5 the obligation of any amount exceeding the
6 amounts obligated as described in paragraphs
7 (1) and (2) of section 114(a) of the Emergency
8 Economic Stabilization Act of 2008.”.

9 (d) FAST TRACK CONSIDERATION IN HOUSE OF REP-
10 RESENTATIVES.—

11 (1) RECONVENING.—Upon receipt of a report
12 under subsection (a)(3), the Speaker, if the House
13 would otherwise be adjourned, shall notify the Mem-
14 bers of the House that, pursuant to this section, the
15 House shall convene not later than the second cal-
16 endar day after receipt of such report;

17 (2) REPORTING AND DISCHARGE.—Any com-
18 mittee of the House of Representatives to which a
19 joint resolution is referred shall report it to the
20 House not later than 5 calendar days after the date
21 of receipt of the report described in subsection
22 (a)(3). If a committee fails to report the joint resolu-
23 tion within that period, the committee shall be dis-
24 charged from further consideration of the joint reso-

1 lution and the joint resolution shall be referred to
2 the appropriate calendar.

3 (3) PROCEEDING TO CONSIDERATION.—After
4 each committee authorized to consider a joint resolu-
5 tion reports it to the House or has been discharged
6 from its consideration, it shall be in order, not later
7 than the sixth day after Congress receives the report
8 described in subsection (a)(3), to move to proceed to
9 consider the joint resolution in the House. All points
10 of order against the motion are waived. Such a mo-
11 tion shall not be in order after the House has dis-
12 posed of a motion to proceed on the joint resolution.
13 The previous question shall be considered as ordered
14 on the motion to its adoption without intervening
15 motion. The motion shall not be debatable. A motion
16 to reconsider the vote by which the motion is dis-
17 posed of shall not be in order.

18 (4) CONSIDERATION.—The joint resolution
19 shall be considered as read. All points of order
20 against the joint resolution and against its consider-
21 ation are waived. The previous question shall be con-
22 sidered as ordered on the joint resolution to its pas-
23 sage without intervening motion except two hours of
24 debate equally divided and controlled by the pro-
25 ponent and an opponent. A motion to reconsider the

1 vote on passage of the joint resolution shall not be
2 in order.

3 (e) FAST TRACK CONSIDERATION IN SENATE.—

4 (1) RECONVENING.—Upon receipt of a report
5 under subsection (a)(3), if the Senate has adjourned
6 or recessed for more than 2 days, the majority lead-
7 er of the Senate, after consultation with the minority
8 leader of the Senate, shall notify the Members of the
9 Senate that, pursuant to this section, the Senate
10 shall convene not later than the second calendar day
11 after receipt of such message.

12 (2) PLACEMENT ON CALENDAR.—Upon intro-
13 duction in the Senate, the joint resolution shall be
14 placed immediately on the calendar.

15 (3) FLOOR CONSIDERATION.—

16 (A) IN GENERAL.—Notwithstanding Rule
17 XXII of the Standing Rules of the Senate, it is
18 in order at any time during the period begin-
19 ning on the 4th day after the date on which
20 Congress receives a report of the plan of the
21 Secretary described in subsection (a)(3) and
22 ending on the 6th day after the date on which
23 Congress receives a report of the plan of the
24 Secretary described in subsection (a)(3) (even
25 though a previous motion to the same effect has

1 been disagreed to) to move to proceed to the
2 consideration of the joint resolution, and all
3 points of order against the joint resolution (and
4 against consideration of the joint resolution)
5 are waived. The motion to proceed is not debat-
6 able. The motion is not subject to a motion to
7 postpone. A motion to reconsider the vote by
8 which the motion is agreed to or disagreed to
9 shall not be in order. If a motion to proceed to
10 the consideration of the resolution is agreed to,
11 the joint resolution shall remain the unfinished
12 business until disposed of.

13 (B) DEBATE.—Debate on the joint resolu-
14 tion, and on all debatable motions and appeals
15 in connection therewith, shall be limited to not
16 more than 10 hours, which shall be divided
17 equally between the majority and minority lead-
18 ers or their designees. A motion further to limit
19 debate is in order and not debatable. An
20 amendment to, or a motion to postpone, or a
21 motion to proceed to the consideration of other
22 business, or a motion to recommit the joint res-
23 olution is not in order.

24 (C) VOTE ON PASSAGE.—The vote on pas-
25 sage shall occur immediately following the con-

1 clusion of the debate on a joint resolution, and
2 a single quorum call at the conclusion of the de-
3 bate if requested in accordance with the rules of
4 the Senate.

5 (D) RULINGS OF THE CHAIR ON PROCE-
6 DURE.—Appeals from the decisions of the Chair
7 relating to the application of the rules of the
8 Senate, as the case may be, to the procedure re-
9 lating to a joint resolution shall be decided
10 without debate.

11 (f) RULES RELATING TO SENATE AND HOUSE OF
12 REPRESENTATIVES.—

13 (1) COORDINATION WITH ACTION BY OTHER
14 HOUSE.—If, before the passage by one House of a
15 joint resolution of that House, that House receives
16 from the other House a joint resolution, then the fol-
17 lowing procedures shall apply:

18 (A) The joint resolution of the other House
19 shall not be referred to a committee.

20 (B) With respect to a joint resolution of
21 the House receiving the resolution—

22 (i) the procedure in that House shall
23 be the same as if no joint resolution had
24 been received from the other House; but

1 ceives the veto message with respect to the
2 joint resolution shall be disregarded in
3 computing the 15-calendar day period de-
4 scribed in subsection (a)(3), and

5 (ii) debate on a veto message in the
6 Senate under this section shall be 1 hour
7 equally divided between the majority and
8 minority leaders or their designees.

9 (5) RULES OF HOUSE OF REPRESENTATIVES
10 AND SENATE.—This subsection and subsections (c),
11 (d), and (e) are enacted by Congress—

12 (A) as an exercise of the rulemaking power
13 of the Senate and House of Representatives, re-
14 spectively, and as such it is deemed a part of
15 the rules of each House, respectively, but appli-
16 cable only with respect to the procedure to be
17 followed in that House in the case of a joint
18 resolution, and it supersedes other rules only to
19 the extent that it is inconsistent with such
20 rules; and

21 (B) with full recognition of the constitu-
22 tional right of either House to change the rules
23 (so far as relating to the procedure of that
24 House) at any time, in the same manner, and

1 to the same extent as in the case of any other
2 rule of that House.

3 **SEC. 116. OVERSIGHT AND AUDITS.**

4 (a) COMPTROLLER GENERAL OVERSIGHT.—

5 (1) SCOPE OF OVERSIGHT.—The Comptroller
6 General of the United States shall, upon establish-
7 ment of the troubled assets relief program under
8 this Act (in this section referred to as the “TARP”),
9 commence ongoing oversight of the activities and
10 performance of the TARP and of any agents and
11 representatives of the TARP (as related to the agent
12 or representative’s activities on behalf of or under
13 the authority of the TARP), including vehicles es-
14 tablished by the Secretary under this Act. The sub-
15 jects of such oversight shall include the following:

16 (A) The performance of the TARP in
17 meeting the purposes of this Act, particularly
18 those involving—

19 (i) foreclosure mitigation;

20 (ii) cost reduction;

21 (iii) whether it has provided stability
22 or prevented disruption to the financial
23 markets or the banking system; and

24 (iv) whether it has protected tax-
25 payers.

1 (B) The financial condition and internal
2 controls of the TARP, its representatives and
3 agents.

4 (C) Characteristics of transactions and
5 commitments entered into, including trans-
6 action type, frequency, size, prices paid, and all
7 other relevant terms and conditions, and the
8 timing, duration and terms of any future com-
9 mitments to purchase assets.

10 (D) Characteristics and disposition of ac-
11 quired assets, including type, acquisition price,
12 current market value, sale prices and terms,
13 and use of proceeds from sales.

14 (E) Efficiency of the operations of the
15 TARP in the use of appropriated funds.

16 (F) Compliance with all applicable laws
17 and regulations by the TARP, its agents and
18 representatives.

19 (G) The efforts of the TARP to prevent,
20 identify, and minimize conflicts of interest in-
21 volving any agent or representative performing
22 activities on behalf of or under the authority of
23 the TARP.

24 (H) The efficacy of contracting procedures
25 pursuant to section 107(b), including, as appli-

1 cable, the efforts of the TARP in evaluating
2 proposals for inclusion and contracting to the
3 maximum extent possible of minorities (as such
4 term is defined in 1204(c) of the Financial In-
5 stitutions Reform, Recovery, and Enhancement
6 Act of 1989 (12 U.S.C. 1811 note), women,
7 and minority- and women-owned businesses, in-
8 cluding ascertaining and reporting the total
9 amount of fees paid and other value delivered
10 by the TARP to all of its agents and represent-
11 atives, and such amounts paid or delivered to
12 such firms that are minority- and women-owned
13 businesses (as such terms are defined in section
14 21A of the Federal Home Loan Bank Act (12
15 U.S.C. 1441a)).

16 (2) CONDUCT AND ADMINISTRATION OF OVER-
17 SIGHT.—

18 (A) GAO PRESENCE.—The Secretary shall
19 provide the Comptroller General with appro-
20 priate space and facilities in the Department of
21 the Treasury as necessary to facilitate oversight
22 of the TARP until the termination date estab-
23 lished in section 120.

24 (B) ACCESS TO RECORDS.—To the extent
25 otherwise consistent with law, the Comptroller

1 General shall have access, upon request, to any
2 information, data, schedules, books, accounts,
3 financial records, reports, files, electronic com-
4 munications, or other papers, things, or prop-
5 erty belonging to or in use by the TARP, or
6 any vehicles established by the Secretary under
7 this Act, and to the officers, directors, employ-
8 ees, independent public accountants, financial
9 advisors, and other agents and representatives
10 of the TARP (as related to the agent or rep-
11 resentative's activities on behalf of or under the
12 authority of the TARP) or any such vehicle at
13 such reasonable time as the Comptroller Gen-
14 eral may request. The Comptroller General
15 shall be afforded full facilities for verifying
16 transactions with the balances or securities held
17 by depositaries, fiscal agents, and custodians.
18 The Comptroller General may make and retain
19 copies of such books, accounts, and other
20 records as the Comptroller General deems ap-
21 propriate.

22 (C) REIMBURSEMENT OF COSTS.—The
23 Treasury shall reimburse the Government Ac-
24 countability Office for the full cost of any such
25 oversight activities as billed therefor by the

1 Comptroller General of the United States. Such
2 reimbursements shall be credited to the appro-
3 priation account “Salaries and Expenses, Gov-
4 ernment Accountability Office” current when
5 the payment is received and remain available
6 until expended.

7 (3) REPORTING.—The Comptroller General
8 shall submit reports of findings under this section,
9 regularly and no less frequently than once every 60
10 days, to the appropriate committees of Congress,
11 and the Special Inspector General for the Troubled
12 Asset Relief Program established under this Act on
13 the activities and performance of the TARP. The
14 Comptroller may also submit special reports under
15 this subsection as warranted by the findings of its
16 oversight activities.

17 (b) COMPTROLLER GENERAL AUDITS.—

18 (1) ANNUAL AUDIT.—The TARP shall annually
19 prepare and issue to the appropriate committees of
20 Congress and the public audited financial statements
21 prepared in accordance with generally accepted ac-
22 counting principles, and the Comptroller General
23 shall annually audit such statements in accordance
24 with generally accepted auditing standards. The
25 Treasury shall reimburse the Government Account-

1 ability Office for the full cost of any such audit as
2 billed therefor by the Comptroller General. Such re-
3 imbursements shall be credited to the appropriation
4 account “Salaries and Expenses, Government Ac-
5 countability Office” current when the payment is re-
6 ceived and remain available until expended. The fi-
7 nancial statements prepared under this paragraph
8 shall be on the fiscal year basis prescribed under
9 section 1102 of title 31, United States Code.

10 (2) AUTHORITY.—The Comptroller General
11 may audit the programs, activities, receipts, expendi-
12 tures, and financial transactions of the TARP and
13 any agents and representatives of the TARP (as re-
14 lated to the agent or representative’s activities on
15 behalf of or under the authority of the TARP), in-
16 cluding vehicles established by the Secretary under
17 this Act.

18 (3) CORRECTIVE RESPONSES TO AUDIT PROB-
19 LEMS.—The TARP shall—

20 (A) take action to address deficiencies
21 identified by the Comptroller General or other
22 auditor engaged by the TARP; or

23 (B) certify to appropriate committees of
24 Congress that no action is necessary or appro-
25 priate.

1 (c) INTERNAL CONTROL.—

2 (1) ESTABLISHMENT.—The TARP shall estab-
3 lish and maintain an effective system of internal
4 control, consistent with the standards prescribed
5 under section 3512(c) of title 31, United States
6 Code, that provides reasonable assurance of—

7 (A) the effectiveness and efficiency of oper-
8 ations, including the use of the resources of the
9 TARP;

10 (B) the reliability of financial reporting, in-
11 cluding financial statements and other reports
12 for internal and external use; and

13 (C) compliance with applicable laws and
14 regulations.

15 (2) REPORTING.—In conjunction with each an-
16 nual financial statement issued under this section,
17 the TARP shall—

18 (A) state the responsibility of management
19 for establishing and maintaining adequate in-
20 ternal control over financial reporting; and

21 (B) state its assessment, as of the end of
22 the most recent year covered by such financial
23 statement of the TARP, of the effectiveness of
24 the internal control over financial reporting.

1 (d) SHARING OF INFORMATION.—Any report or audit
2 required under this section shall also be submitted to the
3 Congressional Oversight Panel established under section
4 125.

5 (e) TERMINATION.—Any oversight, reporting, or
6 audit requirement under this section shall terminate on
7 the later of—

8 (1) the date that the last troubled asset ac-
9 quired by the Secretary under section 101 has been
10 sold or transferred out of the ownership or control
11 of the Federal Government; or

12 (2) the date of expiration of the last insurance
13 contract issued under section 102.

14 **SEC. 117. STUDY AND REPORT ON MARGIN AUTHORITY.**

15 (a) STUDY.—The Comptroller General shall under-
16 take a study to determine the extent to which leverage
17 and sudden deleveraging of financial institutions was a
18 factor behind the current financial crisis.

19 (b) CONTENT.—The study required by this section
20 shall include—

21 (1) an analysis of the roles and responsibilities
22 of the Board, the Securities and Exchange Commis-
23 sion, the Secretary, and other Federal banking agen-
24 cies with respect to monitoring leverage and acting
25 to curtail excessive leveraging;

1 (2) an analysis of the authority of the Board to
2 regulate leverage, including by setting margin re-
3 quirements, and what process the Board used to de-
4 cide whether or not to use its authority;

5 (3) an analysis of any usage of the margin au-
6 thority by the Board; and

7 (4) recommendations for the Board and appro-
8 priate committees of Congress with respect to the
9 existing authority of the Board.

10 (c) REPORT.—Not later than June 1, 2009, the
11 Comptroller General shall complete and submit a report
12 on the study required by this section to the Committee
13 on Banking, Housing, and Urban Affairs of the Senate
14 and the Committee on Financial Services of the House of
15 Representatives.

16 (d) SHARING OF INFORMATION.—Any reports re-
17 quired under this section shall also be submitted to the
18 Congressional Oversight Panel established under section
19 125.

20 **SEC. 118. FUNDING.**

21 For the purpose of the authorities granted in this
22 Act, and for the costs of administering those authorities,
23 the Secretary may use the proceeds of the sale of any secu-
24 rities issued under chapter 31 of title 31, United States
25 Code, and the purposes for which securities may be issued

1 under chapter 31 of title 31, United States Code, are ex-
2 tended to include actions authorized by this Act, including
3 the payment of administrative expenses. Any funds ex-
4 pended or obligated by the Secretary for actions author-
5 ized by this Act, including the payment of administrative
6 expenses, shall be deemed appropriated at the time of such
7 expenditure or obligation.

8 **SEC. 119. JUDICIAL REVIEW AND RELATED MATTERS.**

9 (a) JUDICIAL REVIEW.—

10 (1) STANDARD.—Actions by the Secretary pur-
11 suant to the authority of this Act shall be subject to
12 chapter 7 of title 5, United States Code, including
13 that such final actions shall be held unlawful and set
14 aside if found to be arbitrary, capricious, an abuse
15 of discretion, or not in accordance with law.

16 (2) LIMITATIONS ON EQUITABLE RELIEF.—

17 (A) INJUNCTION.—No injunction or other
18 form of equitable relief shall be issued against
19 the Secretary for actions pursuant to section
20 101, 102, 106, and 109, other than to remedy
21 a violation of the Constitution.

22 (B) TEMPORARY RESTRAINING ORDER.—

23 Any request for a temporary restraining order
24 against the Secretary for actions pursuant to
25 this Act shall be considered and granted or de-

1 nied by the court within 3 days of the date of
2 the request.

3 (C) PRELIMINARY INJUNCTION.—Any re-
4 quest for a preliminary injunction against the
5 Secretary for actions pursuant to this Act shall
6 be considered and granted or denied by the
7 court on an expedited basis consistent with the
8 provisions of rule 65(b)(3) of the Federal Rules
9 of Civil Procedure, or any successor thereto.

10 (D) PERMANENT INJUNCTION.—Any re-
11 quest for a permanent injunction against the
12 Secretary for actions pursuant to this Act shall
13 be considered and granted or denied by the
14 court on an expedited basis. Whenever possible,
15 the court shall consolidate trial on the merits
16 with any hearing on a request for a preliminary
17 injunction, consistent with the provisions of rule
18 65(a)(2) of the Federal Rules of Civil Proce-
19 dure, or any successor thereto.

20 (3) LIMITATION ON ACTIONS BY PARTICIPATING
21 COMPANIES.—No action or claims may be brought
22 against the Secretary by any person that divests its
23 assets with respect to its participation in a program
24 under this Act, except as provided in paragraph (1),

1 other than as expressly provided in a written con-
2 tract with the Secretary.

3 (4) STAYS.—Any injunction or other form of
4 equitable relief issued against the Secretary for ac-
5 tions pursuant to section 101, 102, 106, and 109,
6 shall be automatically stayed. The stay shall be lift-
7 ed unless the Secretary seeks a stay from a higher
8 court within 3 calendar days after the date on which
9 the relief is issued.

10 (b) RELATED MATTERS.—

11 (1) TREATMENT OF HOMEOWNERS' RIGHTS.—
12 The terms of any residential mortgage loan that is
13 part of any purchase by the Secretary under this Act
14 shall remain subject to all claims and defenses that
15 would otherwise apply, notwithstanding the exercise
16 of authority by the Secretary under this Act.

17 (2) SAVINGS CLAUSE.—Any exercise of the au-
18 thority of the Secretary pursuant to this Act shall
19 not impair the claims or defenses that would other-
20 wise apply with respect to persons other than the
21 Secretary. Except as established in any contract, a
22 servicer of pooled residential mortgages owes any
23 duty to determine whether the net present value of
24 the payments on the loan, as modified, is likely to
25 be greater than the anticipated net recovery that

1 would result from foreclosure to all investors and
2 holders of beneficial interests in such investment,
3 but not to any individual or groups of investors or
4 beneficial interest holders, and shall be deemed to
5 act in the best interests of all such investors or hold-
6 ers of beneficial interests if the servicer agrees to or
7 implements a modification or workout plan when the
8 servicer takes reasonable loss mitigation actions, in-
9 cluding partial payments.

10 **SEC. 120. TERMINATION OF AUTHORITY.**

11 (a) **TERMINATION.**—The authorities provided under
12 sections 101(a) and 102 shall terminate on December 31,
13 2009.

14 (b) **EXTENSION UPON CERTIFICATION.**—The Sec-
15 retary, upon submission of a written certification to Con-
16 gress, may extend the authority provided under this Act
17 to expire not later than 2 years from the date of enact-
18 ment of this Act. Such certification shall include a jus-
19 tification of why the extension is necessary to assist Amer-
20 ican families and stabilize financial markets, as well as
21 the expected cost to the taxpayers for such an extension.

1 **SEC. 121. SPECIAL INSPECTOR GENERAL FOR THE TROU-**
2 **bled ASSET RELIEF PROGRAM.**

3 (a) OFFICE OF INSPECTOR GENERAL.—There is
4 hereby established the Office of the Special Inspector Gen-
5 eral for the Troubled Asset Relief Program.

6 (b) APPOINTMENT OF INSPECTOR GENERAL; RE-
7 MOVAL.—(1) The head of the Office of the Special Inspec-
8 tor General for the Troubled Asset Relief Program is the
9 Special Inspector General for the Troubled Asset Relief
10 Program (in this section referred to as the “Special In-
11 spector General”), who shall be appointed by the Presi-
12 dent, by and with the advice and consent of the Senate.

13 (2) The appointment of the Special Inspector General
14 shall be made on the basis of integrity and demonstrated
15 ability in accounting, auditing, financial analysis, law,
16 management analysis, public administration, or investiga-
17 tions.

18 (3) The nomination of an individual as Special In-
19 spector General shall be made as soon as practicable after
20 the establishment of any program under sections 101 and
21 102.

22 (4) The Special Inspector General shall be removable
23 from office in accordance with the provisions of section
24 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).

25 (5) For purposes of section 7324 of title 5, United
26 States Code, the Special Inspector General shall not be

1 considered an employee who determines policies to be pur-
2 sued by the United States in the nationwide administra-
3 tion of Federal law.

4 (6) The annual rate of basic pay of the Special In-
5 spector General shall be the annual rate of basic pay pro-
6 vided for positions at level IV of the Executive Schedule
7 under section 5315 of title 5, United States Code.

8 (c) DUTIES.—(1) It shall be the duty of the Special
9 Inspector General to conduct, supervise, and coordinate
10 audits and investigations of the purchase, management,
11 and sale of assets by the Secretary of the Treasury under
12 any program established by the Secretary under section
13 101, and the management by the Secretary of any pro-
14 gram established under section 102, including by col-
15 lecting and summarizing the following information:

16 (A) A description of the categories of troubled
17 assets purchased or otherwise procured by the Sec-
18 retary.

19 (B) A listing of the troubled assets purchased
20 in each such category described under subparagraph
21 (A).

22 (C) An explanation of the reasons the Secretary
23 deemed it necessary to purchase each such troubled
24 asset.

1 (D) A listing of each financial institution that
2 such troubled assets were purchased from.

3 (E) A listing of and detailed biographical infor-
4 mation on each person or entity hired to manage
5 such troubled assets.

6 (F) A current estimate of the total amount of
7 troubled assets purchased pursuant to any program
8 established under section 101, the amount of trou-
9 bled assets on the books of the Treasury, the
10 amount of troubled assets sold, and the profit and
11 loss incurred on each sale or disposition of each such
12 troubled asset.

13 (G) A listing of the insurance contracts issued
14 under section 102.

15 (2) The Special Inspector General shall establish,
16 maintain, and oversee such systems, procedures, and con-
17 trols as the Special Inspector General considers appro-
18 priate to discharge the duty under paragraph (1).

19 (3) In addition to the duties specified in paragraphs
20 (1) and (2), the Inspector General shall also have the du-
21 ties and responsibilities of inspectors general under the In-
22 specter General Act of 1978.

23 (d) POWERS AND AUTHORITIES.—(1) In carrying out
24 the duties specified in subsection (c), the Special Inspector

1 General shall have the authorities provided in section 6
2 of the Inspector General Act of 1978.

3 (2) The Special Inspector General shall carry out the
4 duties specified in subsection (c)(1) in accordance with
5 section 4(b)(1) of the Inspector General Act of 1978.

6 (e) PERSONNEL, FACILITIES, AND OTHER RE-
7 SOURCES.—(1) The Special Inspector General may select,
8 appoint, and employ such officers and employees as may
9 be necessary for carrying out the duties of the Special In-
10 spector General, subject to the provisions of title 5, United
11 States Code, governing appointments in the competitive
12 service, and the provisions of chapter 51 and subchapter
13 III of chapter 53 of such title, relating to classification
14 and General Schedule pay rates.

15 (2) The Special Inspector General may obtain serv-
16 ices as authorized by section 3109 of title 5, United States
17 Code, at daily rates not to exceed the equivalent rate pre-
18 scribed for grade GS–15 of the General Schedule by sec-
19 tion 5332 of such title.

20 (3) The Special Inspector General may enter into
21 contracts and other arrangements for audits, studies,
22 analyses, and other services with public agencies and with
23 private persons, and make such payments as may be nec-
24 essary to carry out the duties of the Inspector General.

1 (4)(A) Upon request of the Special Inspector General
2 for information or assistance from any department, agen-
3 cy, or other entity of the Federal Government, the head
4 of such entity shall, insofar as is practicable and not in
5 contravention of any existing law, furnish such informa-
6 tion or assistance to the Special Inspector General, or an
7 authorized designee.

8 (B) Whenever information or assistance requested by
9 the Special Inspector General is, in the judgment of the
10 Special Inspector General, unreasonably refused or not
11 provided, the Special Inspector General shall report the
12 circumstances to the appropriate committees of Congress
13 without delay.

14 (f) REPORTS.—(1) Not later than 60 days after the
15 confirmation of the Special Inspector General, and every
16 calendar quarter thereafter, the Special Inspector General
17 shall submit to the appropriate committees of Congress
18 a report summarizing the activities of the Special Inspec-
19 tor General during the 120-day period ending on the date
20 of such report. Each report shall include, for the period
21 covered by such report, a detailed statement of all pur-
22 chases, obligations, expenditures, and revenues associated
23 with any program established by the Secretary of the
24 Treasury under sections 101 and 102, as well as the infor-
25 mation collected under subsection (c)(1).

1 (2) Nothing in this subsection shall be construed to
2 authorize the public disclosure of information that is—

3 (A) specifically prohibited from disclosure by
4 any other provision of law;

5 (B) specifically required by Executive order to
6 be protected from disclosure in the interest of na-
7 tional defense or national security or in the conduct
8 of foreign affairs; or

9 (C) a part of an ongoing criminal investigation.

10 (3) Any reports required under this section shall also
11 be submitted to the Congressional Oversight Panel estab-
12 lished under section 125.

13 (g) FUNDING.—(1) Of the amounts made available
14 to the Secretary of the Treasury under section 118,
15 \$50,000,000 shall be available to the Special Inspector
16 General to carry out this section.

17 (2) The amount available under paragraph (1) shall
18 remain available until expended.

19 (h) TERMINATION.—The Office of the Special Inspec-
20 tor General shall terminate on the later of—

21 (1) the date that the last troubled asset ac-
22 quired by the Secretary under section 101 has been
23 sold or transferred out of the ownership or control
24 of the Federal Government; or

1 (2) the date of expiration of the last insurance
2 contract issued under section 102.

3 **SEC. 122. INCREASE IN STATUTORY LIMIT ON THE PUBLIC**
4 **DEBT.**

5 Subsection (b) of section 3101 of title 31, United
6 States Code, is amended by striking out the dollar limita-
7 tion contained in such subsection and inserting
8 “\$11,315,000,000,000”.

9 **SEC. 123. CREDIT REFORM.**

10 (a) IN GENERAL.—Subject to subsection (b), the
11 costs of purchases of troubled assets made under section
12 101(a) and guarantees of troubled assets under section
13 102, and any cash flows associated with the activities au-
14 thorized in section 102 and subsections (a), (b), and (c)
15 of section 106 shall be determined as provided under the
16 Federal Credit Reform Act of 1990 (2 U.S.C. 661 et.
17 seq.), as applicable.

18 (b) COSTS.—For the purposes of section 502(5) of
19 the Federal Credit Reform Act of 1990 (2 U.S.C.
20 661a(5))—

21 (1) the cost of troubled assets and guarantees
22 of troubled assets shall be calculated by adjusting
23 the discount rate in section 502(5)(E) (2 U.S.C.
24 661a(5)(E)) for market risks; and

1 (2) the cost of a modification of a troubled
2 asset or guarantee of a troubled asset shall be the
3 difference between the current estimate consistent
4 with paragraph (1) under the terms of the troubled
5 asset or guarantee of the troubled asset and the cur-
6 rent estimate consistent with paragraph (1) under
7 the terms of the troubled asset or guarantee of the
8 troubled asset, as modified.

9 **SEC. 124. HOPE FOR HOMEOWNERS AMENDMENTS.**

10 Section 257 of the National Housing Act (12 U.S.C.
11 1715z-23) is amended—

12 (1) in subsection (e)—

13 (A) in paragraph (1)(B), by inserting be-
14 fore “a ratio” the following: “, or thereafter is
15 likely to have, due to the terms of the mortgage
16 being reset,”;

17 (B) in paragraph (2)(B), by inserting be-
18 fore the period at the end “(or such higher per-
19 centage as the Board determines, in the discre-
20 tion of the Board)”;

21 (C) in paragraph (4)(A)—

22 (i) in the first sentence, by inserting
23 after “insured loan” the following: “and
24 any payments made under this para-
25 graph,”; and

1 (ii) by adding at the end the fol-
2 lowing: “Such actions may include making
3 payments, which shall be accepted as pay-
4 ment in full of all indebtedness under the
5 eligible mortgage, to any holder of an ex-
6 isting subordinate mortgage, in lieu of any
7 future appreciation payments authorized
8 under subparagraph (B).”; and

9 (2) in subsection (w), by inserting after “ad-
10 ministrative costs” the following: “and payments
11 pursuant to subsection (e)(4)(A)”.

12 **SEC. 125. CONGRESSIONAL OVERSIGHT PANEL.**

13 (a) ESTABLISHMENT.—There is hereby established
14 the Congressional Oversight Panel (hereafter in this sec-
15 tion referred to as the “Oversight Panel”) as an establish-
16 ment in the legislative branch.

17 (b) DUTIES.—The Oversight Panel shall review the
18 current state of the financial markets and the regulatory
19 system and submit the following reports to Congress:

20 (1) REGULAR REPORTS.—

21 (A) IN GENERAL.—Regular reports of the
22 Oversight Panel shall include the following:

23 (i) The use by the Secretary of au-
24 thority under this Act, including with re-

1 spect to the use of contracting authority
2 and administration of the program.

3 (ii) The impact of purchases made
4 under the Act on the financial markets and
5 financial institutions.

6 (iii) The extent to which the informa-
7 tion made available on transactions under
8 the program has contributed to market
9 transparency.

10 (iv) The effectiveness of foreclosure
11 mitigation efforts, and the effectiveness of
12 the program from the standpoint of mini-
13 mizing long-term costs to the taxpayers
14 and maximizing the benefits for taxpayers.

15 (B) TIMING.—The reports required under
16 this paragraph shall be submitted not later
17 than 30 days after the first exercise by the Sec-
18 retary of the authority under section 101(a) or
19 102, and every 30 days thereafter.

20 (2) SPECIAL REPORT ON REGULATORY RE-
21 FORM.—The Oversight Panel shall submit a special
22 report on regulatory reform not later than January
23 20, 2009, analyzing the current state of the regu-
24 latory system and its effectiveness at overseeing the
25 participants in the financial system and protecting

1 consumers, and providing recommendations for im-
2 provement, including recommendations regarding
3 whether any participants in the financial markets
4 that are currently outside the regulatory system
5 should become subject to the regulatory system, the
6 rationale underlying such recommendation, and
7 whether there are any gaps in existing consumer
8 protections.

9 (c) MEMBERSHIP.—

10 (1) IN GENERAL.—The Oversight Panel shall
11 consist of 5 members, as follows:

12 (A) 1 member appointed by the Speaker of
13 the House of Representatives.

14 (B) 1 member appointed by the minority
15 leader of the House of Representatives.

16 (C) 1 member appointed by the majority
17 leader of the Senate.

18 (D) 1 member appointed by the minority
19 leader of the Senate.

20 (E) 1 member appointed by the Speaker of
21 the House of Representatives and the majority
22 leader of the Senate, after consultation with the
23 minority leader of the Senate and the minority
24 leader of the House of Representatives.

1 (2) PAY.—Each member of the Oversight Panel
2 shall each be paid at a rate equal to the daily equiv-
3 alent of the annual rate of basic pay for level I of
4 the Executive Schedule for each day (including trav-
5 el time) during which such member is engaged in
6 the actual performance of duties vested in the Com-
7 mission.

8 (3) PROHIBITION OF COMPENSATION OF FED-
9 ERAL EMPLOYEES.—Members of the Oversight
10 Panel who are full-time officers or employees of the
11 United States or Members of Congress may not re-
12 ceive additional pay, allowances, or benefits by rea-
13 son of their service on the Oversight Panel.

14 (4) TRAVEL EXPENSES.—Each member shall
15 receive travel expenses, including per diem in lieu of
16 subsistence, in accordance with applicable provisions
17 under subchapter I of chapter 57 of title 5, United
18 States Code.

19 (5) QUORUM.—Four members of the Oversight
20 Panel shall constitute a quorum but a lesser number
21 may hold hearings.

22 (6) VACANCIES.—A vacancy on the Oversight
23 Panel shall be filled in the manner in which the
24 original appointment was made.

1 (7) MEETINGS.—The Oversight Panel shall
2 meet at the call of the Chairperson or a majority of
3 its members.

4 (d) STAFF.—

5 (1) IN GENERAL.—The Oversight Panel may
6 appoint and fix the pay of any personnel as the
7 Commission considers appropriate.

8 (2) EXPERTS AND CONSULTANTS.—The Over-
9 sight Panel may procure temporary and intermittent
10 services under section 3109(b) of title 5, United
11 States Code.

12 (3) STAFF OF AGENCIES.—Upon request of the
13 Oversight Panel, the head of any Federal depart-
14 ment or agency may detail, on a reimbursable basis,
15 any of the personnel of that department or agency
16 to the Oversight Panel to assist it in carrying out its
17 duties under this Act.

18 (e) POWERS.—

19 (1) HEARINGS AND SESSIONS.—The Oversight
20 Panel may, for the purpose of carrying out this sec-
21 tion, hold hearings, sit and act at times and places,
22 take testimony, and receive evidence as the Panel
23 considers appropriate and may administer oaths or
24 affirmations to witnesses appearing before it.

1 (2) POWERS OF MEMBERS AND AGENTS.—Any
2 member or agent of the Oversight Panel may, if au-
3 thorized by the Oversight Panel, take any action
4 which the Oversight Panel is authorized to take by
5 this section.

6 (3) OBTAINING OFFICIAL DATA.—The Over-
7 sight Panel may secure directly from any depart-
8 ment or agency of the United States information
9 necessary to enable it to carry out this section. Upon
10 request of the Chairperson of the Oversight Panel,
11 the head of that department or agency shall furnish
12 that information to the Oversight Panel.

13 (4) REPORTS .—The Oversight Panel shall re-
14 ceive and consider all reports required to be sub-
15 mitted to the Oversight Panel under this Act.

16 (f) TERMINATION.—The Oversight Panel shall termi-
17 nate 6 months after the termination date specified in sec-
18 tion 120.

19 (g) FUNDING FOR EXPENSES.—

20 (1) AUTHORIZATION OF APPROPRIATIONS.—
21 There is authorized to be appropriated to the Over-
22 sight Panel such sums as may be necessary for any
23 fiscal year, half of which shall be derived from the
24 applicable account of the House of Representatives,

1 and half of which shall be derived from the contin-
2 gent fund of the Senate.

3 (2) REIMBURSEMENT OF AMOUNTS.—An
4 amount equal to the expenses of the Oversight Panel
5 shall be promptly transferred by the Secretary, from
6 time to time upon the presentment of a statement
7 of such expenses by the Chairperson of the Over-
8 sight Panel, from funds made available to the Sec-
9 retary under this Act to the applicable fund of the
10 House of Representatives and the contingent fund of
11 the Senate, as appropriate, as reimbursement for
12 amounts expended from such account and fund
13 under paragraph (1).

14 **SEC. 126. FDIC AUTHORITY.**

15 (a) IN GENERAL.—Section 18(a) of the Federal De-
16 posit Insurance Act (12 U.S.C. 1828(a)) is amended by
17 adding at the end the following new paragraph:

18 “(4) FALSE ADVERTISING, MISUSE OF FDIC
19 NAMES, AND MISREPRESENTATION TO INDICATE IN-
20 SURED STATUS.—

21 “(A) PROHIBITION ON FALSE ADVER-
22 TISING AND MISUSE OF FDIC NAMES.—No per-
23 son may represent or imply that any deposit li-
24 ability, obligation, certificate, or share is in-
25 sured or guaranteed by the Corporation, if such

1 deposit liability, obligation, certificate, or share
2 is not insured or guaranteed by the Corpora-
3 tion—

4 “(i) by using the terms ‘Federal De-
5 posit’, ‘Federal Deposit Insurance’, ‘Fed-
6 eral Deposit Insurance Corporation’, any
7 combination of such terms, or the abbrevi-
8 ation ‘FDIC’ as part of the business
9 name or firm name of any person, includ-
10 ing any corporation, partnership, business
11 trust, association, or other business entity;
12 or

13 “(ii) by using such terms or any other
14 terms, sign, or symbol as part of an adver-
15 tisement, solicitation, or other document.

16 “(B) PROHIBITION ON MISREPRESENTA-
17 TIONS OF INSURED STATUS.—No person may
18 knowingly misrepresent—

19 “(i) that any deposit liability, obliga-
20 tion, certificate, or share is insured, under
21 this Act, if such deposit liability, obliga-
22 tion, certificate, or share is not so insured;
23 or

24 “(ii) the extent to which or the man-
25 ner in which any deposit liability, obliga-

1 tion, certificate, or share is insured under
2 this Act, if such deposit liability, obliga-
3 tion, certificate, or share is not so insured,
4 to the extent or in the manner represented.

5 “(C) AUTHORITY OF THE APPROPRIATE
6 FEDERAL BANKING AGENCY.—The appropriate
7 Federal banking agency shall have enforcement
8 authority in the case of a violation of this para-
9 graph by any person for which the agency is the
10 appropriate Federal banking agency, or any in-
11 stitution-affiliated party thereof.

12 “(D) CORPORATION AUTHORITY IF THE
13 APPROPRIATE FEDERAL BANKING AGENCY
14 FAILS TO FOLLOW RECOMMENDATION.—

15 “(i) RECOMMENDATION.—The Cor-
16 poration may recommend in writing to the
17 appropriate Federal banking agency that
18 the agency take any enforcement action
19 authorized under section 8 for purposes of
20 enforcement of this paragraph with respect
21 to any person for which the agency is the
22 appropriate Federal banking agency or any
23 institution-affiliated party thereof.

24 “(ii) AGENCY RESPONSE.—If the ap-
25 propriate Federal banking agency does not,

1 within 30 days of the date of receipt of a
2 recommendation under clause (i), take the
3 enforcement action with respect to this
4 paragraph recommended by the Corpora-
5 tion or provide a plan acceptable to the
6 Corporation for responding to the situation
7 presented, the Corporation may take the
8 recommended enforcement action against
9 such person or institution-affiliated party.

10 “(E) ADDITIONAL AUTHORITY.—In addi-
11 tion to its authority under subparagraphs (C)
12 and (D), for purposes of this paragraph, the
13 Corporation shall have, in the same manner and
14 to the same extent as with respect to a State
15 nonmember insured bank—

16 “(i) jurisdiction over—

17 “(I) any person other than a per-
18 son for which another agency is the
19 appropriate Federal banking agency
20 or any institution-affiliated party
21 thereof; and

22 “(II) any person that aids or
23 abets a violation of this paragraph by
24 a person described in subclause (I);
25 and

1 “(ii) for purposes of enforcing the re-
2 quirements of this paragraph, the author-
3 ity of the Corporation under—

4 “(I) section 10(c) to conduct in-
5 vestigations; and

6 “(II) subsections (b), (c), (d) and
7 (i) of section 8 to conduct enforce-
8 ment actions.

9 “(F) OTHER ACTIONS PRESERVED.—No
10 provision of this paragraph shall be construed
11 as barring any action otherwise available, under
12 the laws of the United States or any State, to
13 any Federal or State agency or individual.”.

14 (b) ENFORCEMENT ORDERS.—Section 8(c) of the
15 Federal Deposit Insurance Act (12 U.S.C. 1818(c)) is
16 amended by adding at the end the following new para-
17 graph:

18 “(4) FALSE ADVERTISING OR MISUSE OF
19 NAMES TO INDICATE INSURED STATUS.—

20 “(A) TEMPORARY ORDER.—

21 “(i) IN GENERAL.—If a notice of
22 charges served under subsection (b)(1)
23 specifies on the basis of particular facts
24 that any person engaged or is engaging in
25 conduct described in section 18(a)(4), the

1 Corporation or other appropriate Federal
2 banking agency may issue a temporary
3 order requiring—

4 “(I) the immediate cessation of
5 any activity or practice described,
6 which gave rise to the notice of
7 charges; and

8 “(II) affirmative action to pre-
9 vent any further, or to remedy any ex-
10 isting, violation.

11 “(ii) EFFECT OF ORDER.—Any tem-
12 porary order issued under this subpara-
13 graph shall take effect upon service.

14 “(B) EFFECTIVE PERIOD OF TEMPORARY
15 ORDER.—A temporary order issued under sub-
16 paragraph (A) shall remain effective and en-
17 forceable, pending the completion of an admin-
18 istrative proceeding pursuant to subsection
19 (b)(1) in connection with the notice of
20 charges—

21 “(i) until such time as the Corpora-
22 tion or other appropriate Federal banking
23 agency dismisses the charges specified in
24 such notice; or

1 “(ii) if a cease-and-desist order is
2 issued against such person, until the effec-
3 tive date of such order.

4 “(C) CIVIL MONEY PENALTIES.—Any vio-
5 lation of section 18(a)(4) shall be subject to
6 civil money penalties, as set forth in subsection
7 (i), except that for any person other than an in-
8 sured depository institution or an institution-af-
9 filiated party that is found to have violated this
10 paragraph, the Corporation or other appro-
11 priate Federal banking agency shall not be re-
12 quired to demonstrate any loss to an insured
13 depository institution.”.

14 (c) UNENFORCEABILITY OF CERTAIN AGREE-
15 MENTS.—Section 13(c) of the Federal Deposit Insurance
16 Act (12 U.S.C. 1823(c)) is amended by adding at the end
17 the following new paragraph:

18 “(11) UNENFORCEABILITY OF CERTAIN AGREE-
19 MENTS.—No provision contained in any existing or
20 future standstill, confidentiality, or other agreement
21 that, directly or indirectly—

22 “(A) affects, restricts, or limits the ability
23 of any person to offer to acquire or acquire,

24 “(B) prohibits any person from offering to
25 acquire or acquiring, or

1 “(C) prohibits any person from using any
2 previously disclosed information in connection
3 with any such offer to acquire or acquisition of,
4 all or part of any insured depository institution, in-
5 cluding any liabilities, assets, or interest therein, in
6 connection with any transaction in which the Cor-
7 poration exercises its authority under section 11 or
8 13, shall be enforceable against or impose any liabil-
9 ity on such person, as such enforcement or liability
10 shall be contrary to public policy.”.

11 (d) TECHNICAL AND CONFORMING AMENDMENTS.—
12 Section 18 of the Federal Deposit Insurance Act (12
13 U.S.C. 1828) is amended—

14 (1) in subsection (a)(3)—

15 (A) by striking “this subsection” the first
16 place that term appears and inserting “para-
17 graph (1)”; and

18 (B) by striking “this subsection” the sec-
19 ond place that term appears and inserting
20 “paragraph (2)”; and

21 (2) in the heading for subsection (a), by strik-
22 ing “INSURANCE LOGO.—” and inserting “REP-
23 RESENTATIONS OF DEPOSIT INSURANCE.—”.

1 **SEC. 127. COOPERATION WITH THE FBI.**

2 Any Federal financial regulatory agency shall cooper-
3 ate with the Federal Bureau of Investigation and other
4 law enforcement agencies investigating fraud, misrepre-
5 sentation, and malfeasance with respect to development,
6 advertising, and sale of financial products.

7 **SEC. 128. ACCELERATION OF EFFECTIVE DATE.**

8 Section 203 of the Financial Services Regulatory Re-
9 lief Act of 2006 (12 U.S.C. 461 note) is amended by strik-
10 ing “October 1, 2011” and inserting “October 1, 2008”.

11 **SEC. 129. DISCLOSURES ON EXERCISE OF LOAN AUTHOR-**
12 **ITY.**

13 (a) IN GENERAL.—Not later than 7 days after the
14 date on which the Board exercises its authority under the
15 third paragraph of section 13 of the Federal Reserve Act
16 (12 U.S.C. 343; relating to discounts for individuals, part-
17 nerships, and corporations) the Board shall provide to the
18 Committee on Banking, Housing, and Urban Affairs of
19 the Senate and the Committee on Financial Services of
20 the House of Representatives a report which includes—

21 (1) the justification for exercising the authority;
22 and

23 (2) the specific terms of the actions of the
24 Board, including the size and duration of the lend-
25 ing, available information concerning the value of
26 any collateral held with respect to such a loan, the

1 recipient of warrants or any other potential equity in
2 exchange for the loan, and any expected cost to the
3 taxpayers for such exercise.

4 (b) PERIODIC UPDATES.—The Board shall provide
5 updates to the Committees specified in subsection (a) not
6 less frequently than once every 60 days while the subject
7 loan is outstanding, including—

8 (1) the status of the loan;

9 (2) the value of the collateral held by the Fed-
10 eral reserve bank which initiated the loan; and

11 (3) the projected cost to the taxpayers of the
12 loan.

13 (c) CONFIDENTIALITY.—The information submitted
14 to the Congress under this section may be kept confiden-
15 tial, upon the written request of the Chairman of the
16 Board, in which case it shall made available only to the
17 Chairpersons and Ranking Members of the Committees
18 described in subsection (a).

19 (d) APPLICABILITY.—The provisions of this section
20 shall be in force for all uses of the authority provided
21 under section 13 of the Federal Reserve Act occurring
22 during the period beginning on March 1, 2008 and ending
23 on the after the date of enactment of this Act, and reports
24 described in subsection (a) shall be required beginning not

1 later than 30 days after that date of enactment, with re-
2 spect to any such exercise of authority.

3 (e) SHARING OF INFORMATION.—Any reports re-
4 quired under this section shall also be submitted to the
5 Congressional Oversight Panel established under section
6 125.

7 **SEC. 130. TECHNICAL CORRECTIONS.**

8 (a) IN GENERAL.—Section 128(b)(2) of the Truth in
9 Lending Act (15 U.S.C. 1638(b)(2)), as amended by sec-
10 tion 2502 of the Mortgage Disclosure Improvement Act
11 of 2008 (Public Law 110-289), is amended—

12 (1) in subparagraph (A), by striking “In the
13 case” and inserting “Except as provided in subpara-
14 graph (G), in the case”; and

15 (2) by amending subparagraph (G) to read as
16 follows:

17 “(G)(i) In the case of an extension of cred-
18 it relating to a plan described in section
19 101(53D) of title 11, United States Code—

20 “(I) the requirements of subpara-
21 graphs (A) through (E) shall not apply;
22 and

23 “(II) a good faith estimate of the dis-
24 closures required under subsection (a) shall
25 be made in accordance with regulations of

1 States money market mutual fund industry, from funds
2 under this Act.

3 (b) LIMITS ON USE OF EXCHANGE STABILIZATION
4 FUND.—The Secretary is prohibited from using the Ex-
5 change Stabilization Fund for the establishment of any
6 future guaranty programs for the United States money
7 market mutual fund industry.

8 **SEC. 132. AUTHORITY TO SUSPEND MARK-TO-MARKET AC-**
9 **COUNTING.**

10 (a) AUTHORITY.—The Securities and Exchange Com-
11 mission shall have the authority under the securities laws
12 (as such term is defined in section 3(a)(47) of the Securi-
13 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) to sus-
14 pend, by rule, regulation, or order, the application of
15 Statement Number 157 of the Financial Accounting
16 Standards Board for any issuer (as such term is defined
17 in section 3(a)(8) of such Act) or with respect to any class
18 or category of transaction if the Commission determines
19 that is necessary or appropriate in the public interest and
20 is consistent with the protection of investors.

21 (b) SAVINGS PROVISION.—Nothing in subsection (a)
22 shall be construed to restrict or limit any authority of the
23 Securities and Exchange Commission under securities
24 laws as in effect on the date of enactment of this Act.

1 **SEC. 133. STUDY ON MARK-TO-MARKET ACCOUNTING.**

2 (a) STUDY.—The Securities and Exchange Commis-
3 sion, in consultation with the Board and the Secretary,
4 shall conduct a study on mark-to-market accounting
5 standards as provided in Statement Number 157 of the
6 Financial Accounting Standards Board, as such standards
7 are applicable to financial institutions, including deposi-
8 tory institutions. Such a study shall consider at a min-
9 imum—

10 (1) the effects of such accounting standards on
11 a financial institution's balance sheet;

12 (2) the impacts of such accounting on bank fail-
13 ures in 2008;

14 (3) the impact of such standards on the quality
15 of financial information available to investors;

16 (4) the process used by the Financial Account-
17 ing Standards Board in developing accounting
18 standards;

19 (5) the advisability and feasibility of modifica-
20 tions to such standards; and

21 (6) alternative accounting standards to those
22 provided in such Statement Number 157.

23 (b) REPORT.—The Securities and Exchange Commis-
24 sion shall submit to Congress a report of such study before
25 the end of the 90-day period beginning on the date of the
26 enactment of this Act containing the findings and deter-

1 tion with activities authorized under this Act (including
2 the records to which the Comptroller General is entitled
3 under this Act) shall be made available to congressional
4 support agencies (in accordance with their obligations to
5 support the Congress as set out in their authorizing stat-
6 utes) for the purposes of assisting the committees of Con-
7 gress with conducting oversight, monitoring, and analysis
8 of the activities authorized under this Act.

9 **SEC. 202. REPORTS BY THE OFFICE OF MANAGEMENT AND**
10 **BUDGET AND THE CONGRESSIONAL BUDGET**
11 **OFFICE.**

12 (a) **REPORTS BY THE OFFICE OF MANAGEMENT AND**
13 **BUDGET.**—Within 60 days of the first exercise of the au-
14 thority granted in section 101(a), but in no case later than
15 December 31, 2008, and semiannually thereafter, the Of-
16 fice of Management and Budget shall report to the Presi-
17 dent and the Congress—

18 (1) the estimate, notwithstanding section
19 502(5)(F) of the Federal Credit Reform Act of 1990
20 (2 U.S.C. 661a(5)(F)), as of the first business day
21 that is at least 30 days prior to the issuance of the
22 report, of the cost of the troubled assets, and guar-
23 antees of the troubled assets, determined in accord-
24 ance with section 123;

1 (2) the information used to derive the estimate,
2 including assets purchased or guaranteed, prices
3 paid, revenues received, the impact on the deficit
4 and debt, and a description of any outstanding com-
5 mitments to purchase troubled assets; and

6 (3) a detailed analysis of how the estimate has
7 changed from the previous report.

8 Beginning with the second report under subsection (a), the
9 Office of Management and Budget shall explain the dif-
10 ferences between the Congressional Budget Office esti-
11 mates delivered in accordance with subsection (b) and
12 prior Office of Management and Budget estimates.

13 (b) REPORTS BY THE CONGRESSIONAL BUDGET OF-
14 FICE.—Within 45 days of receipt by the Congress of each
15 report from the Office of Management and Budget under
16 subsection (a), the Congressional Budget Office shall re-
17 port to the Congress the Congressional Budget Office’s
18 assessment of the report submitted by the Office of Man-
19 agement and Budget, including—

20 (1) the cost of the troubled assets and guaran-
21 tees of the troubled assets,

22 (2) the information and valuation methods used
23 to calculate such cost, and

24 (3) the impact on the deficit and the debt.

1 (c) FINANCIAL EXPERTISE.—In carrying out the du-
2 ties in this subsection or performing analyses of activities
3 under this Act, the Director of the Congressional Budget
4 Office may employ personnel and procure the services of
5 experts and consultants.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated such sums as may be
8 necessary to produce reports required by this section.

9 **SEC. 203. ANALYSIS IN PRESIDENT'S BUDGET.**

10 (a) IN GENERAL.—Section 1105(a) of title 31,
11 United States Code, is amended by adding at the end the
12 following new paragraph:

13 “(35) as supplementary materials, a separate
14 analysis of the budgetary effects for all prior fiscal
15 years, the current fiscal year, the fiscal year for
16 which the budget is submitted, and ensuing fiscal
17 years of the actions the Secretary of the Treasury
18 has taken or plans to take using any authority pro-
19 vided in the Emergency Economic Stabilization Act
20 of 2008, including—

21 “(A) an estimate of the current value of all
22 assets purchased, sold, and guaranteed under
23 the authority provided in the Emergency Eco-
24 nomic Stabilization Act of 2008 using method-
25 ology required by the Federal Credit Reform

1 Act of 1990 (2 U.S.C. 661 et seq.) and section
2 123 of the Emergency Economic Stabilization
3 Act of 2008;

4 “(B) an estimate of the deficit, the debt
5 held by the public, and the gross Federal debt
6 using methodology required by the Federal
7 Credit Reform Act of 1990 and section 123 of
8 the Emergency Economic Stabilization Act of
9 2008;

10 “(C) an estimate of the current value of all
11 assets purchased, sold, and guaranteed under
12 the authority provided in the Emergency Eco-
13 nomic Stabilization Act of 2008 calculated on a
14 cash basis;

15 “(D) a revised estimate of the deficit, the
16 debt held by the public, and the gross Federal
17 debt, substituting the cash-based estimates in
18 subparagraph (C) for the estimates calculated
19 under subparagraph (A) pursuant to the Fed-
20 eral Credit Reform Act of 1990 and section 123
21 of the Emergency Economic Stabilization Act of
22 2008; and

23 “(E) the portion of the deficit which can
24 be attributed to any action taken by the Sec-
25 retary using authority provided by the Emer-

1 gency Economic Stabilization Act of 2008 and
2 the extent to which the change in the deficit
3 since the most recent estimate is due to a re-
4 estimate using the methodology required by the
5 Federal Credit Reform Act of 1990 and section
6 123 of the Emergency Economic Stabilization
7 Act of 2008.”

8 (b) CONSULTATION.—In implementing this section,
9 the Director of Office of Management and Budget shall
10 consult periodically, but at least annually, with the Com-
11 mittee on the Budget of the House of Representatives, the
12 Committee on the Budget of the Senate, and the Director
13 of the Congressional Budget Office.

14 (c) EFFECTIVE DATE.—This section and the amend-
15 ment made by this section shall apply beginning with re-
16 spect to the fiscal year 2010 budget submission of the
17 President.

18 **SEC. 204. EMERGENCY TREATMENT.**

19 All provisions of this Act are designated as an emer-
20 gency requirement and necessary to meet emergency needs
21 pursuant to section 204(a) of S. Con. Res 21 (110th Con-
22 gress), the concurrent resolution on the budget for fiscal
23 year 2008 and rescissions of any amounts provided in this
24 Act shall not be counted for purposes of budget enforce-
25 ment.

1 **TITLE III—TAX PROVISIONS**

2 **SEC. 301. GAIN OR LOSS FROM SALE OR EXCHANGE OF**
3 **CERTAIN PREFERRED STOCK.**

4 (a) **IN GENERAL.**—For purposes of the Internal Rev-
5 enue Code of 1986, gain or loss from the sale or exchange
6 of any applicable preferred stock by any applicable finan-
7 cial institution shall be treated as ordinary income or loss.

8 (b) **APPLICABLE PREFERRED STOCK.**—For purposes
9 of this section, the term “applicable preferred stock”
10 means any stock—

11 (1) which is preferred stock in—

12 (A) the Federal National Mortgage Asso-
13 ciation, established pursuant to the Federal Na-
14 tional Mortgage Association Charter Act (12
15 U.S.C. 1716 et seq.), or

16 (B) the Federal Home Loan Mortgage
17 Corporation, established pursuant to the Fed-
18 eral Home Loan Mortgage Corporation Act (12
19 U.S.C. 1451 et seq.), and

20 (2) which—

21 (A) was held by the applicable financial in-
22 stitution on September 6, 2008, or

23 (B) was sold or exchanged by the applica-
24 ble financial institution on or after January 1,
25 2008, and before September 7, 2008.

1 (c) APPLICABLE FINANCIAL INSTITUTION.—For pur-
2 poses of this section:

3 (1) IN GENERAL.—Except as provided in para-
4 graph (2), the term “applicable financial institution”
5 means—

6 (A) a financial institution referred to in
7 section 582(c)(2) of the Internal Revenue Code
8 of 1986, or

9 (B) a depository institution holding com-
10 pany (as defined in section 3(w)(1) of the Fed-
11 eral Deposit Insurance Act (12 U.S.C.
12 1813(w)(1))).

13 (2) SPECIAL RULES FOR CERTAIN SALES.—In
14 the case of—

15 (A) a sale or exchange described in sub-
16 section (b)(2)(B), an entity shall be treated as
17 an applicable financial institution only if it was
18 an entity described in subparagraph (A) or (B)
19 of paragraph (1) at the time of the sale or ex-
20 change, and

21 (B) a sale or exchange after September 6,
22 2008, of preferred stock described in subsection
23 (b)(2)(A), an entity shall be treated as an appli-
24 cable financial institution only if it was an enti-
25 ty described in subparagraph (A) or (B) of

1 paragraph (1) at all times during the period be-
2 ginning on September 6, 2008, and ending on
3 the date of the sale or exchange of the pre-
4 ferred stock.

5 (d) SPECIAL RULE FOR CERTAIN PROPERTY NOT
6 HELD ON SEPTEMBER 6, 2008.—The Secretary of the
7 Treasury or the Secretary’s delegate may extend the appli-
8 cation of this section to all or a portion of the gain or
9 loss from a sale or exchange in any case where—

10 (1) an applicable financial institution sells or
11 exchanges applicable preferred stock after Sep-
12 tember 6, 2008, which the applicable financial insti-
13 tution did not hold on such date, but the basis of
14 which in the hands of the applicable financial insti-
15 tution at the time of the sale or exchange is the
16 same as the basis in the hands of the person which
17 held such stock on such date, or

18 (2) the applicable financial institution is a part-
19 ner in a partnership which—

20 (A) held such stock on September 6, 2008,
21 and later sold or exchanged such stock, or

22 (B) sold or exchanged such stock during
23 the period described in subsection (b)(2)(B).

24 (e) REGULATORY AUTHORITY.—The Secretary of the
25 Treasury or the Secretary’s delegate may prescribe such

1 guidance, rules, or regulations as are necessary to carry
2 out the purposes of this section.

3 (f) EFFECTIVE DATE.—This section shall apply to
4 sales or exchanges occurring after December 31, 2007, in
5 taxable years ending after such date.

6 **SEC. 302. SPECIAL RULES FOR TAX TREATMENT OF EXECU-**
7 **TIVE COMPENSATION OF EMPLOYERS PAR-**
8 **TICIPATING IN THE TROUBLED ASSETS RE-**
9 **LIEF PROGRAM.**

10 (a) DENIAL OF DEDUCTION.—Subsection (m) of sec-
11 tion 162 of the Internal Revenue Code of 1986 is amended
12 by adding at the end the following new paragraph:

13 “(5) SPECIAL RULE FOR APPLICATION TO EM-
14 PLOYERS PARTICIPATING IN THE TROUBLED ASSETS
15 RELIEF PROGRAM.—

16 “(A) IN GENERAL.—In the case of an ap-
17 plicable employer, no deduction shall be allowed
18 under this chapter—

19 “(i) in the case of executive remunera-
20 tion for any applicable taxable year which
21 is attributable to services performed by a
22 covered executive during such applicable
23 taxable year, to the extent that the amount
24 of such remuneration exceeds \$500,000, or

1 acquired for all taxable years exceeds
2 \$300,000,000.

3 “(ii) DISREGARD OF CERTAIN ASSETS
4 SOLD THROUGH DIRECT PURCHASE.—If
5 the only sales of troubled assets by an em-
6 ployer under the program described in
7 clause (i) are through 1 or more direct
8 purchases (within the meaning of section
9 113(c) of the Emergency Economic Sta-
10 bilization Act of 2008), such assets shall
11 not be taken into account under clause (i)
12 in determining whether the employer is an
13 applicable employer for purposes of this
14 paragraph.

15 “(iii) AGGREGATION RULES.—Two or
16 more persons who are treated as a single
17 employer under subsection (b) or (c) of
18 section 414 shall be treated as a single em-
19 ployer, except that in applying section
20 1563(a) for purposes of either such sub-
21 section, paragraphs (2) and (3) thereof
22 shall be disregarded.

23 “(C) APPLICABLE TAXABLE YEAR.—For
24 purposes of this paragraph, the term ‘applicable

1 taxable year’ means, with respect to any em-
2 ployer—

3 “(i) the first taxable year of the em-
4 ployer—

5 “(I) which includes any portion
6 of the period during which the au-
7 thorities under section 101(a) of the
8 Emergency Economic Stabilization
9 Act of 2008 are in effect (determined
10 under section 120 thereof), and

11 “(II) in which the aggregate
12 amount of troubled assets acquired
13 from the employer during the taxable
14 year pursuant to such authorities
15 (other than assets to which subpara-
16 graph (B)(ii) applies), when added to
17 the aggregate amount so acquired for
18 all preceding taxable years, exceeds
19 \$300,000,000, and

20 “(ii) any subsequent taxable year
21 which includes any portion of such period.

22 “(D) COVERED EXECUTIVE.—For pur-
23 poses of this paragraph—

1 “(i) IN GENERAL.—The term ‘covered
2 executive’ means, with respect to any ap-
3 plicable taxable year, any employee—

4 “(I) who, at any time during the
5 portion of the taxable year during
6 which the authorities under section
7 101(a) of the Emergency Economic
8 Stabilization Act of 2008 are in effect
9 (determined under section 120 there-
10 of), is the chief executive officer of the
11 applicable employer or the chief finan-
12 cial officer of the applicable employer,
13 or an individual acting in either such
14 capacity, or

15 “(II) who is described in clause
16 (ii).

17 “(ii) HIGHEST COMPENSATED EM-
18 PLOYEES.—An employee is described in
19 this clause if the employee is 1 of the 3
20 highest compensated officers of the appli-
21 cable employer for the taxable year (other
22 than an individual described in clause
23 (i)(I)), determined—

24 “(I) on the basis of the share-
25 holder disclosure rules for compensa-

1 tion under the Securities Exchange
2 Act of 1934 (without regard to wheth-
3 er those rules apply to the employer),
4 and

5 “(II) by only taking into account
6 employees employed during the por-
7 tion of the taxable year described in
8 clause (i)(I).

9 “(iii) EMPLOYEE REMAINS COVERED
10 EXECUTIVE.—If an employee is a covered
11 executive with respect to an applicable em-
12 ployer for any applicable taxable year, such
13 employee shall be treated as a covered ex-
14 ecutive with respect to such employer for
15 all subsequent applicable taxable years and
16 for all subsequent taxable years in which
17 deferred deduction executive remuneration
18 with respect to services performed in all
19 such applicable taxable years would (but
20 for this paragraph) be deductible.

21 “(E) EXECUTIVE REMUNERATION.—For
22 purposes of this paragraph, the term ‘executive
23 remuneration’ means the applicable employee
24 remuneration of the covered executive, as deter-
25 mined under paragraph (4) without regard to

1 subparagraphs (B), (C), and (D) thereof. Such
2 term shall not include any deferred deduction
3 executive remuneration with respect to services
4 performed in a prior applicable taxable year.

5 “(F) DEFERRED DEDUCTION EXECUTIVE
6 REMUNERATION.—For purposes of this para-
7 graph, the term ‘deferred deduction executive
8 remuneration’ means remuneration which would
9 be executive remuneration for services per-
10 formed in an applicable taxable year but for the
11 fact that the deduction under this chapter (de-
12 termined without regard to this paragraph) for
13 such remuneration is allowable in a subsequent
14 taxable year.

15 “(G) COORDINATION.—Rules similar to
16 the rules of subparagraphs (F) and (G) of para-
17 graph (4) shall apply for purposes of this para-
18 graph.

19 “(H) REGULATORY AUTHORITY.—The Sec-
20 retary may prescribe such guidance, rules, or
21 regulations as are necessary to carry out the
22 purposes of this paragraph and the Emergency
23 Economic Stabilization Act of 2008, including
24 the extent to which this paragraph applies in

1 the case of any acquisition, merger, or reorga-
2 nization of an applicable employer.”.

3 (b) GOLDEN PARACHUTE RULE.—Section 280G of
4 the Internal Revenue Code of 1986 is amended—

5 (1) by redesignating subsection (e) as sub-
6 section (f), and

7 (2) by inserting after subsection (d) the fol-
8 lowing new subsection:

9 “(e) SPECIAL RULE FOR APPLICATION TO EMPLOY-
10 ERS PARTICIPATING IN THE TROUBLED ASSETS RELIEF
11 PROGRAM.—

12 “(1) IN GENERAL.—In the case of the sever-
13 ance from employment of a covered executive of an
14 applicable employer during the period during which
15 the authorities under section 101(a) of the Emer-
16 gency Economic Stabilization Act of 2008 are in ef-
17 fect (determined under section 120 of such Act), this
18 section shall be applied to payments to such execu-
19 tive with the following modifications:

20 “(A) Any reference to a disqualified indi-
21 vidual (other than in subsection (c)) shall be
22 treated as a reference to a covered executive.

23 “(B) Any reference to a change described
24 in subsection (b)(2)(A)(i) shall be treated as a
25 reference to an applicable severance from em-

1 employment of a covered executive, and any ref-
2 erence to a payment contingent on such a
3 change shall be treated as a reference to any
4 payment made during an applicable taxable
5 year of the employer on account of such appli-
6 cable severance from employment.

7 “(C) Any reference to a corporation shall
8 be treated as a reference to an applicable em-
9 ployer.

10 “(D) The provisions of subsections
11 (b)(2)(C), (b)(4), (b)(5), and (d)(5) shall not
12 apply.

13 “(2) DEFINITIONS AND SPECIAL RULES.—For
14 purposes of this subsection:

15 “(A) DEFINITIONS.—Any term used in
16 this subsection which is also used in section
17 162(m)(5) shall have the meaning given such
18 term by such section.

19 “(B) APPLICABLE SEVERANCE FROM EM-
20 PLOYMENT.—The term ‘applicable severance
21 from employment’ means any severance from
22 employment of a covered executive—

23 “(i) by reason of an involuntary ter-
24 mination of the executive by the employer,
25 or

1 “(ii) in connection with any bank-
2 ruptcy, liquidation, or receivership of the
3 employer.

4 “(C) COORDINATION AND OTHER
5 RULES.—

6 “(i) IN GENERAL.—If a payment
7 which is treated as a parachute payment
8 by reason of this subsection is also a para-
9 chute payment determined without regard
10 to this subsection, this subsection shall not
11 apply to such payment.

12 “(ii) REGULATORY AUTHORITY.—The
13 Secretary may prescribe such guidance,
14 rules, or regulations as are necessary—

15 “(I) to carry out the purposes of
16 this subsection and the Emergency
17 Economic Stabilization Act of 2008,
18 including the extent to which this sub-
19 section applies in the case of any ac-
20 quisition, merger, or reorganization of
21 an applicable employer,

22 “(II) to apply this section and
23 section 4999 in cases where one or
24 more payments with respect to any in-
25 dividual are treated as parachute pay-

1 ments by reason of this subsection,
2 and other payments with respect to
3 such individual are treated as para-
4 chute payments under this section
5 without regard to this subsection, and
6 “(III) to prevent the avoidance of
7 the application of this section through
8 the mischaracterization of a severance
9 from employment as other than an
10 applicable severance from employ-
11 ment.”.

12 (c) EFFECTIVE DATES.—

13 (1) IN GENERAL.—The amendment made by
14 subsection (a) shall apply to taxable years ending on
15 or after the date of the enactment of this Act.

16 (2) GOLDEN PARACHUTE RULE.—The amend-
17 ments made by subsection (b) shall apply to pay-
18 ments with respect to severances occurring during
19 the period during which the authorities under sec-
20 tion 101(a) of this Act are in effect (determined
21 under section 120 of this Act).

1 **SEC. 303. EXTENSION OF EXCLUSION OF INCOME FROM**
2 **DISCHARGE OF QUALIFIED PRINCIPAL RESI-**
3 **DENCE INDEBTEDNESS.**

4 (a) **EXTENSION.**—Subparagraph (E) of section
5 108(a)(1) of the Internal Revenue Code of 1986 is amend-
6 ed by striking “January 1, 2010” and inserting “January
7 1, 2013”.

8 (b) **EFFECTIVE DATE.**—The amendment made by
9 this subsection shall apply to discharges of indebtedness
10 occurring on or after January 1, 2010.