LEGISLATIVE DIGEST
HOUSE REPUBLICAN CONFERENCE | CHAIRMAN ADAM PUTNAM
1420 LONGWORTH HOB, WASHINGTON, DC 20515 www.GOP.gov PHONE 202.225.5107 FAX 202.226.0154

H.R. 1424 – Emergency Economic Stabilization Act

FLOOR SITUATION

H.R. 1424 was introduced as the Paul Wellstone Mental Health and Addiction Equity Act of 2007 by Rep. Patrick Kennedy (D-RI) on March 9, 2007. The House passed this bill on March 5, 2008, by a vote of 268-148.

The Senate amended that bill to use it as the vehicle for considering the Emergency Economic Stabilization Act and other provisions regarding mental health parity, tax extenders, disaster relief, and secure rural schools. The Senate passed H.R. 1424, as amended, by a vote of 74-25 on October 1, 2008.

H.R. 1424, as amended by the Senate, will be considered under a closed rule. The rule:

- Makes in order a motion by the chairman of the Committee on Financial Services to concur in the Senate amendments.
- Waives all points of order against consideration of the motion.
- Provides that the Senate amendments and the motion shall be considered as read.
- Provides for 90 minutes of debate on the motion, with 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Financial Services and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

H.R. 1424, as amended, is expected to be considered on the House floor on October 3, 2008.

BACKGROUND

On September 7, 2008, Secretary Henry Paulson announced that the U.S. Treasury in cooperation with the Federal Reserve would be taking over control of Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac own or guarantee $5.2 trillion of mortgages in the United States. As a secondary mortgage operator, Fannie and Freddie must have enough funds available to pay their investors, which include state and local governments, regional banks, and foreign governments.

Using the authority given to the Treasury when Congress passed the Housing and Economic Recovery Act (H.R. 3221) in July, the Secretary implemented a plan to try to increase stability in the housing and financial markets. The plan allows Treasury to enter into a Senior Preferred Stock Agreement with each of the GSEs, to purchase mortgage backed securities (MBS) from the GSEs on the open market, and the Federal Reserve Bank of New York act as a credit lending facility for the GSEs. The government takeover of Fannie and Freddie Mac was followed shortly thereafter by a government rescue of AIG, in which the U.S. provided a $85 billion loan.

On September 19, 2008, Secretary Paulson, Chairman of the Federal Reserve Ben Bernanke, and the Chairman of the Securities and Exchange Commission Christopher Cox announced that further action was needed to stabilize the markets and that they had begun talks for a comprehensive approach to relieving the stress on our nation's financial institutions and markets. The following day the Administration submitted a legislative proposal to Congress that would have given Treasury $700 billion in authority to purchase distressed assets from these troubled financial institutions. After a week of negotiations, on September 29, 2008, the House considered H.R. 3997 which had been significantly improved to include provisions cracking down on golden parachutes, for example.

The House defeated H.R. 3997, the Emergency Economic Stabilization Act of 2008, by a vote of 205-228, on September 29, 2008. After that vote, the Dow Jones Industrial Average closed down 778 points on the day. The next day, on September 30, 2008, the SEC clarified its position regarding “mark-to-market” accounting, stating that additional information can and should be used for fair value purposes, especially in distressed or disorderly markets.

This legislation under consideration today, H.R. 1424 as amended by the Senate, includes the base of the economic rescue plan voted on in the House, plus an increase in the FDIC and credit union insurance cap. Additionally, this bill contains provisions regarding mental health parity, tax extenders, disaster relief, and secure rural schools. On October 1, 2008, the Senate passed the bill by a vote of 74-25.

SUMMARY

DIVISION A – EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

Note: This bill does not include several contentious provisions due to successful Republican negotiation. The following items are not included in this legislation:

- “Say on pay” proxy access which would give unions a nonbinding shareholder vote on the boards of companies in which the Treasury Department buys a direct stake in assets.
- Affordable housing slush fund which would bankroll organizations like the Association of Community Organizations for Reform Now (ACORN) at taxpayer expense.
- “Cramdown” provisions allowing bankruptcy judges to reduce mortgage principal, thus fueling a bonanza for trial lawyers.

TITLE I – TROUBLED ASSETS RELIEF PROGRAM (TARP)

Purchase of Troubled Assets: The bill authorizes the creation of a troubled assets relief program within the Department of Treasury to purchase troubled assets from financial institutions. In carrying out this program, the Treasury must consult with the Federal Reserve Board of Governors, the Federal Reserve Bank of New York, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, and the Secretary of Housing and Urban Development. The Treasury Secretary is required to establish guidelines and policies to carry out this program. This authority will terminate on December 31, 2009, but may be extended by the Secretary for another year upon certification to Congress.

Insurance of Troubled Assets: The bill requires the Treasury Department to establish an insurance program that guarantees against losses to mortgage-backed securities (MBS) issued or originated prior to March 18, 2008. The bill directs the Treasury to assess risk-based premiums on MBS to finance this insurance. The insurance program will sunset within 2 years. Holders of MBS must pay a premium to have a government guarantee, rather than be bought by Treasury. This plan will directly reduce the $700 billion dollar taxpayer liability. Every dollar used to insure assets reduces the need to spend taxpayer money to purchase MBS.

Financial Stability Oversight Board: The bill establishes the Financial Stability Oversight Board to review the authorities of this Act, make recommendations to the Secretary, and report on fraud to the Inspector General of the Treasury or the Attorney General. The Board will include the Chairman of the Federal Reserve, the Secretary of the Treasury, and the chairman of the Securities and Exchange Commission.

Reports: This legislation requires the Secretary to report to Congress on certain issues. These reports include the actions taken by the Secretary under the Act, a detailed financial statement, and a description of all transactions made for every $50 billion in assets purchased. The Secretary also will submit a report to Congress by April 30, 2009, on the current state of the financial markets.

1420 LONGWORTH HOB, WASHINGTON, DC 20515 www.GOP.gov PHONE 202.225.5107 FAX 202.226.0154

Mark-to-Market: The bill restates the Securities and Exchange Commission's (SEC) authority to suspend mark-to-market accounting regulations. The SEC must conduct a study on mark-to-market accounting standards and report to Congress with findings within 90 days.

> *Note: On September 30, 2008, the SEC clarified its position regarding "mark-to-market" accounting. The SEC's clarifications state that additional information can and should be used for fair value purposes, especially in distressed or disorderly markets. However, such additional information is not necessarily determinative of fair value; rather, the information is one of many factors to be considered in management's judgment.*
> (SEC Statement, 9/30/08)

Rights and Management: The Secretary may exercise authorities under this Act at any time. The legislation enables the Secretary to manage the assets and requires that profits from the sale of troubled assets to be used to pay down the national debt. The Secretary may determine the terms and conditions of the sale of these assets. The Federal Deposit Insurance Corporation (FDIC) is allowed to manage assets for residential mortgage loans and mortgage-backed securities.

Conflicts of Interest: The Secretary must issue regulations to manage or prohibit conflicts of interest in the administration of the program.

Foreclosures: The Secretary must implement a plan to mitigate foreclosures, and may use loan guarantees and credit enhancement to avoid foreclosures. Federal entities which hold mortgages and mortgage-backed securities must develop plans to minimize foreclosures. Such agencies will also work to encourage loan modifications, considering value to the taxpayer. Loan modifications cannot result in a loss to taxpayers.

Executive Compensation & Corporate Governance: In the event of total government takeovers there will be no "golden parachutes" or severance pay for company executives. For companies whose assets Treasury purchases at auction at a level over $300 million, there is a total ban on golden parachutes and a tax deduction limit on executive compensation above $500,000, for CEO, CFO, and the three next-highest paid officers.

Warrants: Under this provision, Treasury will receive non-voting warrants from companies participating in TARP. The bill establishes a de minimus asset threshold of $100 million for warrants. Warrants are certificates entitling the holder to buy securities at a specific price.

Market Transparency: The Secretary must disclose details of any transaction within two business days.

Graduated Purchase Authorization: This legislation immediately authorizes the Secretary to use up to $250 billion for TARP. An additional $100 billion is available to the Secretary if the President certifies to Congress that is necessary, and a final $350 billion is authorized if the President reports to Congress requesting the additional funding, unless Congress passes a joint resolution of disapproval (which will have fast track consideration). This authority will terminate on December 31, 2009, but may be extended by the Secretary for another year upon certification to Congress.

Oversight and Auditing: The Comptroller General will conduct ongoing review of TARP activities and report to Congress. An annual audit of TARP is required of the Comptroller General.

Judicial Review: The legislation bars injunctive or other forms of equitable relief against the Secretary regarding the purchase or sale of assets, the insurance of assets, and forfeiture mitigation efforts, unless meant to remedy a violation of the Constitution. Except as limited above, this bill provides for judicial review of the Secretary's final actions and requires the challenger to prove that the Secretary's actions were arbitrary, capricious, an abuse of discretion, or not in accordance with the law.

Special Inspector General: The bill creates a Special Inspector General for TARP who must report to Congress quarterly.

Public Debt Statutory Limit: The debt ceiling is raised from $10 trillion to $11.3 trillion.

Congressional Oversight: The bill establishes a Congressional bipartisan oversight commission, with members appointed evenly by the majority and minority. The panel will report to Congress every month on regulatory reform through January 20, 2009.

Recoupment of Funds: The President must submit a proposal to Congress within five years on how to recoup funds from the financial industry for any taxpayer losses.

FDIC Insurance Coverage: This legislation temporarily increases the FDIC and credit union insurance caps from $100,000 to $250,000. This additional insurance coverage expires on December 31, 2009.

Note: This provision was added by the Senate

TITLE II – BUDGET RELATED PROVISIONS

Information for Congressional Support Agencies: The Secretary must make available, upon request of congressional support agencies, all information used in connection with activities authorized by this legislation.

OMB Reports: The bill requires the Office of Management and Budget (OMB) to report to the President and Congress an estimate of the cost of the troubled assets and guarantees of the troubled assets, as well as the information used to derive the estimate within 60 days of the exercise of authority. After the first report, OMB must report this information semiannually to Congress and provide a detailed analysis of how the estimate has changed from the previous report.

CBO Reports: The bill requires the Congressional Budget Office (CBO) to submit an assessment of the OMB report to Congress within 45 days of receipt. The assessment must include the cost of the troubled assets and guarantees of the troubled assets, the information and valuation methods used to calculate such cost, and the impact on the deficit and the debt.

Analysis in the President's Budget: The bill requires that the President to include analysis and estimates relating to the costs of the actions taken by the Secretary using any authority provided by this legislation as a part of each fiscal years Budget request.

TITLE III – TAX PROVISIONS

Gain or Loss from Sale or Exchange of Certain Preferred Stock: The bill allows for the gain or loss from the sale or exchange of preferred stock in Fannie Mae and Freddie Mac to be treated as ordinary income or loss. This provision helps local community banks across the country by allowing them to write off losses on Fannie and Freddie mortgage assets they hold.

Special Rules for Tax Treatment of Executive Compensation: Any company directly selling assets to Treasury would have its executive compensation subject to Treasury's approval so long as Treasury has an equity stake in the company. The provision does not allow employers participating in the troubled assets relief program for any company selling at least $300 million of assets as part of the auction process to deduct executive remuneration that exceeds $500,000.

Exclusion of Income from Discharge of Qualified Principal Residence Indebtedness: The bill extends current law tax forgiveness on the cancellation of mortgage debt.

DIVISION B – ENERGY IMPROVEMENT AND EXTENSION ACT OF 2008

Renewable Energy Tax Credit: The bill extends and modifies the production tax credit, through the end of 2009, for generating electricity from sources such as wind. Other energy sources such as geothermal; closed-loop biomass; hydropower; landfill gas; and trash combustion facilities are also extended. It also creates a tax credit for a new energy production category – marine renewable, which is energy derived from waves, tides, and currents. The bill creates a new limitation on the amount of credits that can be claimed with respect to property placed in service after 2009.

Solar Energy and Fuel Cell Investment Tax Credit: The bill extends and modifies the tax credit for commercial solar energy and fuel cells through the end of 2016. It increases the credit limitation for fuel cell property from $500 to $1,500 per half kilowatt of capacity.

Coal Electricity Projects: The bill provides tax credits for advanced coal electricity projects. It requires the Secretary to give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions. This will decrease revenues by $1.4 billion over ten years.

Coal Excise Taxes: The bill allows for the refund of certain taxes collected on exported coal. Coal producers or exporters could receive a refund (plus interest) from the Treasury for coal exports between October 1, 1990, and the date of enactment.

Energy Tax Credits: The bill modifies and/or extends a number of energy-related tax incentives including:
- Tax credit for alternative refueling stations (decrease revenues by $87 million over 10 years)
- Biodiesel production and renewable diesel tax credits (decrease revenues by $451 million over 10 years)
- Tax credits for energy-efficient upgrades to existing homes (decrease revenues by $61 million over 10 years)
- Enhanced tax deduction for energy-efficient commercial buildings (decrease revenues by $891 million over 10 years)
- Tax credit to manufacturers of energy-efficient appliances (decrease revenues by $322 million over 10 years)

New Energy Tax Provisions
- Plug-in electric vehicle tax credit (decrease revenues by $758 billion over 10 years)
- Extending transportation fringe benefits to those who commute to work by bicycle (decrease revenues by $10 million over 10 years)
- Five-year depreciation of "smart meters"
- Bonus depreciation for cellulosic biofuel plant property
- Tax credit for steel industry fuel (decrease revenues by $61 million over 10 years)

Freeze of Manufacturing Deductions for Certain Oil Companies: The bill would freeze the manufacturing deduction (section 199 of the tax code) for exploration, production and refining of oil and natural gas at the current level of 6 percent. This deduction was created in 2004 to help encourage the preservation and expansion of manufacturing jobs in the United States.

**Note: The House voted on similar versions of this provision that would repeal the manufacturing deduction for oil companies several times this Congress during consideration of H.R. 6, H.R. 2776, H.R. 5351, and H.R. 6899.*

Basis Reporting by Brokers on Sales of Stock: This bill would create mandatory cost basis reporting by brokers for transactions involving publicly traded securities. This provision will raise $6.7 billion over ten years.

Oil Spill Liability Trust Fund: The bill would extend the oil spill tax through December 31, 2017, and increases the per barrel tax from 5 cents to 8 cents from 2009 through 2016 and to 9 cents in 2017. It also repeals the requirement that the tax be suspended when the unobligated balance exceeds $2.7 billion. This provision will raise $1.7 billion over ten years.

Foreign Oil and Gas Extraction Income: The bill eliminates the distinction between foreign oil and gas extraction income ("FOGEI") and foreign oil related income ("FORI"). Currently, these designations carry separate foreign tax credit limitations. This provision will raise $2.2 billion over ten years.

FUTA Surtax: The bill extends the Federal Unemployment Tax Act (FUTA) surtax of .2 percent through 2009. This provision will raise $1.5 billion over ten years.

DIVISION C – TAX EXTENDERS AND ALTERNATIVE MINIMUM TAX RELIEF

TITLE I
Alternative Minimum Tax (AMT): The bill increases the AMT exemption to $46,200 for individuals and $69,950 for married filing jointly. This is expected to cost $61.8 billion over ten years.

Extension and Modification of AMT Credit Allowance Against Incentive Stock Options: The bill allows 50 percent of long-term unused minimum tax credits to be refunded over each of two years instead of 20 percent over each of five years, eliminating an income phase-out. This is expected to cost $2.3 billion over ten years.

TITLE II
Extensions Primarily Affecting Individuals, including:

- Deduction for State and local sales tax. This is a retroactive extension for tax years beginning after December 31, 2007.
- Qualified Tuition and Related Expenses above the line deduction. The teacher expense deduction is retroactive to taxable years beginning after December 31, 2007.
- Special rules for the treatment of certain dividends of regulated investment companies
- Tax free distributions from individual retirement plans for charitable contributions
- Deduction for certain expenses of elementary and secondary school teachers
- Extends standard deduction for real property through 2009

TITLE III
One-Year Extensions Primarily Affecting Business, including:

- Research and Development tax credit
- Indian employment tax credit
- New Market tax credit
- Railroad Track Maintenance Credit
- The 15-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant property
- The 7-year cost recovery period for Motorsports Racing Track Facilities
- The accelerated depreciation for business property on Indian Reservation
- Extends the expensing of brown fields environmental remediation costs
- Deduction for income attributable to domestic production activities in Puerto Rico
- American Samoa economic development credit

- Deduction for charitable contributions of food inventory
- Deduction for charitable contributions of book inventory to public schools
- Deduction for corporate contributions of computer equipment for education purposes
- Work opportunity tax credit for employers who hire employees who were affected by Hurricane Katrina
- Temporary Increase in Limit on Cover over of Rum Excise Tax Revenues to Puerto Rico and the Virgin Islands
- Mine Rescue Team Training Credit
- Qualified Zone Academy Bonds
- District of Columbia Investment Incentives
- Wool Trust Fund (*five year extension*)
- Film and Television Production deduction

TITLE IV

Tax Administration Extenders: The bill permanently extends the Internal Revenue Service's authority to use proceeds from undercover operations to offset necessary expenses. This legislation additionally permanently extends the IRS' authority to disclose information related to terrorist activities.

TITLE V

Child Tax Credit: The bill increases the eligibility for the child tax credit in 2009 by lowering the refundable threshold from $12,050 to $8,500 for 2009.

Tax treatment of certain income received in connection with the Exxon Valdez litigation: The bill allows qualified taxpayers who receive qualified settlement income to use 3-year income averaging and contribute a maximum of $100,000 to their retirement plan.

Mental Health Parity

- The bill amends the Employment Retirement Income Security Act (ERISA), the Public Health Service Act, and the Internal Revenue Code to require mental health and substance-related disorder benefits to be included in employer-sponsored health care plans in the same manner that medical and surgical benefits are provided in these plans. The mental health parity requirements apply to group health plans with 51 or more employees.

  **Note*: Unlike the bill previously passed by the House (H.R. 1424), this legislation does not mandate that the plan include benefits for any of the conditions included in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) published by the American Psychiatric Association.*

- Increased Cost Exemption: The bill provides employers with a one year exemption if the cost of complying with the requirements for mental health and substance-related benefits exceeds two percent of total costs of health care coverage in the first year and one percent in each subsequent year.

- Reporting Requirement: The bill requires the Secretary to submit a report by January 1, 2012, and every two years thereafter to the appropriate Congressional committees regarding the compliance of group health plans with mental health parity.

- Out of Network Benefits: This legislation requires plans that provide medical and surgical benefits out-of-network for emergency, inpatient, or outpatient services to also provide mental health and substance-related disorder benefits outside the network of providers as well.

- GAO Study: The bill requires the Comptroller General of the United States to conduct a study within three years of the date of enactment that analyzes the specific rates, patterns, and trends in coverage and exclusion of specific mental health and substance use disorder diagnoses by health plans and health insurance.

TITLE VI
Secure Rural Schools and Community Self-Determination Act of 2000**:** The bill would authorize the Secure Rural Schools program through 2011. It also adjusts the funding distribution formula to make it more equitable, by taking into account historic payment levels to counties, average income levels in counties and acreage of federal land.

Payment in Lieu of Taxes (PILT): The bill fully funds and makes mandatory the Payments in Lieu of Taxes (PILT) program for fiscal years 2008-2012. This program helps offset losses in property taxes due to nontaxable Federal lands within their boundaries all counties.

> **Note*: Congress appropriates PILT payments each year. The formula used to compute the payments is contained in the PILT Act and is based on population, receipt sharing payments, and the amount of Federal land within an affected county. PILT payments are in addition to other Federal revenues (such as oil and gas leasing, livestock grazing, and timber harvesting) that the Federal Government transfers to the States. The full funding for PILT would nearly double the funding for the program over the President's Fiscal Year 2009 budget request. Currently, there is permanent authority for PILT payments.*

TITLE VII
Midwestern Disaster Tax Relief: The following proposal will provide tax relief to the victims of the Midwestern floods, storms, and tornadoes declared as disasters by FEMA between May 20, 2008, and August 1, 2008.

- Qualified Disaster Recovery Assistance Distributions
- Recontribution of Withdrawals for Home Purchases
- Loans from Qualified Plans
- Suspension of Casualty Loss Limitations
- Special Look-Back Rule for EIC and Refundable Child Credit
- Additional Personal Exemption for Housing Victims
- Exclusion for Certain Cancellations of Indebtedness
- Extension of Replacement Period for Property Lost in Midwestern Disaster Zone

Relief for All Eligible Counties for Individual and Public Assistance: The legislation will provide the following benefits for individuals and businesses located in counties for which FEMA declared a major disaster in the State, due to flooding, tornadoes or storms.

- Employee Retention Credit
- Expansion of Hope Scholarship and Lifetime Learning Credit
- Treasury Department Authority to Adjust Taxpayer and Dependency Status for Taxpayer
- Tax-exempt Private Activity Bonds
- Low Income Housing Tax Credits
- Five-year Net Operating Loss Carryback for Disaster-related Losses
- Tax Credit Bonds
- Temporary Suspension of Limitations on Charitable Contributions

National Disaster Relief

- Individual Loss Provision – Waives ten percent rule and raise the $100 floor to $500.
- Net Operating Losses Attributable to Qualified Disaster Casualty expenses – Extends from two to five years the period in which taxpayers can claim casualty losses or qualified disaster expenses.

1420 LONGWORTH HOB, WASHINGTON, DC 20515 www.GOP.gov PHONE 202.225.5107 FAX 202.226.0154

- Additional Business Depreciation Deduction – Equal to fifty percent of cost of new property investments in Midwestern Disaster Area.

TITLE VIII

Spending Reductions and Revenue Raisers: The bill would tax individuals on a current basis if they receive non-qualified deferred compensation from a tax indifferent party. Corporations paying the deferred compensation must defer the deduction relating to the compensation until the compensation is paid. This is estimated to raise $25.1 billion over ten years.

ADDITIONAL VIEWS

Statement of Administration Policy: "Passage of H.R. 1424 is of tremendous importance to all Americans. If the financial markets fail to function, American families will face great difficulty in getting loans to purchase a home, buy a family car, or finance a child's education. Businesses, too, will be unable to attract the credit they need to retain and create jobs. Even during the period that Congress has considered such legislation, there have been rapidly accumulating examples of businesses, State and local governments, and families all across America forced to constrain their planned activities because of a lack of access to the capital that they require to meet obligations, grow their businesses, and satisfy family priorities." (Statement of Administration Policy, 10/3/08)

COST

The Congressional Budget Office (CBO) estimates that implementing this legislation "would increase the budget deficit over the next decade." (Full CBO Cost Estimate)

STAFF CONTACT

For questions or additional information, please contact the Conference Policy Office at 6-2302.