



H.R. 3997 - Emergency Economic Stabilization Act of 2008

FLOOR SITUATION

H.R. 3997 is expected to be considered on the floor of the House on September 29, 2008.

This legislation is being considered on the floor under a closed rule. The rule:

- Provides for consideration of the Senate amendment to the House amendment to the Senate amendment to H.R. 3997.
- Makes in order a motion by the chairman of the Committee on Financial Services or his designee to concur in the Senate amendment to the House amendment with the amendment printed in the report of the Committee on Rules accompanying the resolution.
- Waives all points of order against the motion.
- Provides that the Senate amendment and the motion shall be considered as read.
- Provides three hours of debate on the motion equally divided and controlled by the chairman and ranking member of the Committee on Financial Services.
- Provides that during consideration of the motion to concur, notwithstanding the operation of the previous question, the Chair may postpone further consideration of such motion to a time designated by the Speaker.

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 \$700 billion legislative proposal to Congress that would have given Treasury the authority to purchase distressed assets from these troubled financial institutions.

After days of bicameral, bipartisan negotiations, leaders from both parties reached a tentative agreement on the outline of the bill. The final text was available late in the day on Sunday, September 28, 2008.



SUMMARY

The purpose of this bill is to provide the Secretary of the Treasury with the authority to restore liquidity and stability to the American financial system. Important provisions of this legislation are described below.

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.

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.

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.

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.

ADDITIONAL INFORMATION

According to a letter sent from OMB Director Jim Nussle to Republican Leader John Boehner on September 28, 2008, "the legislation authorizes a purchase program that allows the federal government to hold up to \$700 billion in mortgages or mortgage-backed securities, and creates a program to allow federal guarantees as an alternative to direct purchases. The \$700 billion figure is substantial, of course, but the size of the problem in our financial markets requires a commitment of this size. For several reasons, however, the impact on the taxpayer will be considerably less than \$700 billion." ([Nussle Letter](#))

COST

According to the Congressional Budget Office, "Although it is not currently possible to quantify the net budget impact given the lack of details about how the program would be implemented, CBO has concluded that enacting the bill would likely entail some net budget cost—which would, however, be substantially smaller than \$700 billion." ([CBO Cost Estimate](#))

STAFF CONTACT

For questions or further information contact the Conference Policy Office at 6-2302.