

SECTION-BY-SECTION SUMMARY OF SENATE PROPOSED BAILOUT

Section 1 – Short Title. “Emergency Economic Stabilization Act of 2008.”

Section 2 – Purposes. Provides authority to the Treasury Secretary to restore liquidity and stability to the U.S. financial system and to ensure that such authority (a) protects home values, college funds, retirement accounts and life savings; (b) preserves home ownership and promotes jobs and economic growth; (c) maximizes overall returns to the taxpayers of the United States; and (d) provides public accountability for the exercise of such authority.

Section 3 – Definitions. Contains various definitions used under this Act.

Title I. Troubled Assets Relief Program.

Section 101 – Purchase of Troubled Assets. The legislation authorizes the Secretary of the Treasury (Secretary) to establish a “troubled asset relief program” (TARP) to purchase and make commitments to purchase troubled assets from financial institutions (troubled assets are not limited to mortgage related assets but could include auto loans, credit card debt, student loans or any other paper related to commercial loans). Section 101(a)(1). In exercising the authority, the Secretary is required to consult with the Federal Reserve Board (Fed), the Federal Deposit Insurance Corporation (FDIC), the Comptroller of the Currency, the Director of the Office of Thrift Supervision (OTS) and the Secretary of Housing and Urban Development (HUD). Section 101(b). The Secretary is required to take steps to ensure that the financial institutions participating in the TARP program are not unjustly enriched. Section 101(e).

Section 102 – Insurance of Troubled Assets. If the Secretary exercises authority to create the TARP program, the Secretary is required to also establish an insurance program to guarantee troubled assets including any mortgage backed securities issued prior to March 18, 2008. Section 102(a)(1). Upon the request of a financial institution, the Secretary may guarantee the timely payment of principal and interest to the financial institution up to 100 percent of such payments. Section 102(a)(3). In order to cover the claims, the Secretary is required to collect premiums from participating financial institutions which are both risk-based and actuarially-based. Section 102(c)(2) and (3).

Section 103 – Considerations. In using authority under this Act, the Treasury Secretary is required to take a number of considerations into account, including the interests of taxpayers, minimizing the impact on the national debt, providing stability to the financial markets, preserving homeownership, the needs of all financial institutions regardless of size or other characteristics, and the needs of local communities. It requires the Secretary to examine the long-term viability of an institution in determining whether to directly purchase assets under the TARP.

Section 104 – Financial Stability Oversight Board. The legislation creates a Financial Stability Oversight Board (Board) which will meet monthly to oversee the TARP program. Section 104(a) and (d). The Board will be comprised of the Chairman of the Fed, the Treasury Secretary, the Director of the Federal Home Finance Agency, the Chairman of the Securities and Exchange Commission (SEC), and the Secretary of Housing and Urban Development (HUD).

Section 105 – Reports. Within 60 days of the first exercise of TARP authority or the guarantee authority, and every 30 days thereafter, the Secretary is required to report to Congress the actions the Secretary has taken together with a detailed financial statement regarding the TARP program. Section 105(a). An additional report to Congress is required within seven days after the Secretary makes each \$50 billion commitment to purchase troubled assets; the report shall detail each of the agreements made, insurance contracts entered into, and the nature of the asset purchased and projected costs and liabilities. An additional report is also required from the Secretary with an analysis of the current financial regulatory framework and making recommendations for improvements. Section 105(c).

Section 106 – Rights; Management; Sale of Troubled Assets; Revenues and Sale Proceeds. Establishes the right of the Secretary to exercise authorities under this Act at any time and provides the Secretary with the authority to manage troubled assets, including the ability to determine the terms and conditions associated with the disposition of troubled assets. Requires profits from the sale of troubled assets to be used to pay down the national debt.

Section 107 – Contracting Procedures. Allows the Secretary to waive provisions of the Federal Acquisition Regulation where compelling circumstances make compliance contrary to the public interest. Such waivers must be reported to Congress within seven days. If provisions related to minority contracting are waived, the Secretary must develop alternate procedures to ensure the inclusion of minority contractors. Allows the FDIC to be selected as an asset manager for residential mortgage loans and mortgage-backed securities (MBS).

Section 108 – Conflicts of Interest. Requires the Secretary to issue regulations and guidelines to address, manage or prohibit conflicts of interest arising pursuant to authorities exercised under this bill.

Section 109 – Foreclosure Mitigation Efforts. Requires the Secretary to implement a plan to maximize assistance for homeowners and to encourage mortgage servicers to work with homeowners under various homeowner assistance programs. Section 109(a).

Section 110 – Assistance to Homeowners and Localities. To the extent that the Federal Property Manager (FPM)(which is defined collectively as the Federal Housing Finance Agency as conservator for Fannie and Freddie, the FDIC and the Board) holds, owns or controls mortgages, MBS, and other assets secured by residential real estate, the FPM is required to implement a program to help distressed homeowners by reducing interest rates, loan principal, or similar modifications.

Section 111 – Executive Compensation and Corporate Governance. Provides that Treasury will promulgate executive compensation rules governing financial institutions that sell it troubled assets. Where Treasury buys assets directly (but not by auction or other means), the selling institution must observe standards limiting incentives, allowing claw-back and prohibiting golden parachutes for as long as Treasury holds the equity position in the institution. When Treasury buys assets at auction, an institution that has sold more than \$300 million in assets is subject to additional taxes, including a 20 percent excise tax on golden parachute payments triggered by events other than retirement, and tax deduction limits for compensation limits above \$500,000 (current law provides deductibility up to \$1,000,000).

Section 112 – Coordination with Foreign Authorities and Central Banks. Provides that troubled assets held by foreign financial authorities and banks are eligible for the TARP program if the banks hold such assets as a result of having extended financing to financial institutions that have failed or defaulted.

Section 113 – Minimization of Long Term Costs and Maximization of Benefits for Taxpayers. Requires the Secretary to make purchases of troubled assets at the lowest price consistent with the purposes of the Act and to hold until maturity or sell such assets at the highest price. The Secretary is required to take warrants giving the Secretary the right to receive non-voting common stock or preferred stock in such financial institution as a condition to purchasing or making a commitment to purchase troubled assets.

Section 114 – Market Transparency. The Secretary is required, within two business days of exercising authority under this Act, to publicly disclose the details of any transaction.

Section 115 – Graduated Authorization to Purchase. Authorizes an initial \$250 billion in authority for the TARP program. An additional \$100 billion can be made available following a presidential certification to Congress. Thereafter, additional authority can be accessed up to \$700 billion following presidential certification unless a joint resolution is passed by Congress, with a veto-proof majority, within 15 days which disapproves of the additional certifications.

Section 116 – Oversight and Audits. Requires the Comptroller General of the United States to conduct ongoing oversight of the activities and performance of TARP, and to report every 60 days to Congress. The Comptroller General is required to conduct an annual audit of TARP. In addition, TARP is required to establish and maintain an effective system of internal controls.

Section 117 – Study and Report on Margin Authority. Directs the Comptroller General to conduct a study and report back to Congress on the role in which leverage and sudden deleveraging of financial institutions was a factor behind the current financial crisis.

Section 118 – Funding. Provides for the authorization and appropriation of funds consistent with Section 115.

Section 119 – Judicial Review and Related Matters. Provides that acts of the Secretary are reviewable pursuant to chapter 7 of Title 5 of the United States Code (Judicial Review of agency action).

Section 120 – Termination of Authority. The TARP and insurance authorities under Sections 101 and 101 sunset on December 31, 2009 unless the Secretary submits a certification to Congress to extend the authorities for an additional two years.

Section 121 – Special Inspector General for the Troubled Asset Relief Program. Establishes the Office of the Special Inspector General for the TARP program to conduct, supervise, and coordinate audits and investigations of the actions undertaken by the Secretary under this Act. The Special Inspector General is required to submit a quarterly report to Congress summarizing its activities and the activities of the Secretary under this Act.

Section 122 – Increase in Statutory Limit on the Public Debt. Increases the public debt limit by an additional \$700 billion to \$11.315 trillion. This Congress approved a debt limit increase of \$800 billion earlier this year with the enactment of the Housing and Economic Recovery Act of 2008 (Section 3083 of P.L. 110-289, which became law on July 30, 2008).

Section 123 – Credit Reform. Details the manner in which the legislation will be treated for budgetary purposes under the Federal Credit Reform Act.

Section 124 – Hope for Homeowners Amendments. Strengthens the Hope for Homeowners program to increase eligibility and improve the tools available to prevent foreclosures.

Section 125 – Congressional Oversight Panel. Creates a new five person panel whose members are appointed by Congress to review the current state of financial markets and the current regulatory system. This panel will also be responsible for reporting to Congress their review of the Secretary's actions under the TARP program and the effectiveness of foreclosure mitigation efforts. Such reports are required to be issued within 30 days after the Secretary first exercises TARP authority and each 30 days thereafter.

Section 126 – FDIC Enforcement Enhancement. Prohibits the misuse of the FDIC logo and name to falsely represent that deposits are insured. Strengthens enforcement by appropriate federal banking agencies, and allows the FDIC to take enforcement action against any person or institution where the banking agency has not acted.

Section 127 – Cooperation with the FBI. Requires any federal financial regulatory agency to cooperate with the FBI and other law enforcement agencies investigating fraud, misrepresentation, and malfeasance with respect to development, advertising, and sale of financial products.

Section 128 – Acceleration of Effective Date. Provides the Federal Reserve with the ability to pay interest on reserves.

Section 129 – Disclosures on Exercise of Loan Authority. Requires the Federal Reserve to provide a detailed report to Congress, in an expedited manner, upon the use of its emergency lending authority under Section 13(3) of the Federal Reserve Act.

Section 130 – Technical Corrections. Makes technical corrections to the Truth in Lending Act.

Section 131 – Exchange Stabilization Fund Reimbursement. Protects the Exchange Stabilization Fund from incurring any losses due to the temporary money market mutual fund guarantee by requiring the program created in this Act to reimburse the Fund. Prohibits any future use of the Fund for any guarantee program for the money market mutual fund industry.

Section 132 – Suspension of Mark-to-Market Accounting. Gives the SEC the authority under securities laws to suspend by rule, regulation or order the Statement Number 157 of the Financial Accounting Standards Board (FASB) if determined necessary or appropriate.

Section 133 – Study on Mark-to-Market Accounting. Requires the SEC, in consultation with the Federal Reserve and the Treasury, to conduct a study on mark-to-market accounting

standards as provided in Financial Accounting Standard (FAS) 157, including its effects on balance sheets, impact on the quality of financial information, and other matters. The SEC is required to report to Congress within 90 days on its findings.

Section 134 – Recoupment. Requires that in five years, the President submit to Congress a proposal that recoups from the financial industry any projected losses to the taxpayer.

Section 135 – Preservation of Authority. Clarifies that nothing in this Act shall limit the authority of the Secretary or the Federal Reserve under any other provision of law.

Title II—Budget-Related Provisions

Section 201 – Information for Congressional Support Agencies. Requires that information used by the Treasury Secretary in connection with activities under this Act be made available to CBO and the Joint Committee on Taxation.

Section 202 – Reports by the Office of Management and Budget and the Congressional Budget Office. Requires that CBO and OMB report cost estimates and related information to Congress and the President regarding the authorities that the Secretary of the Treasury has exercised under the Act.

Section 203 – Analysis in President’s Budget. Requires that the President include in his annual budget submission to the Congress certain analyses and estimates relating to costs incurred as a result of the Act.

Section 204 – Emergency Treatment. Specifies scoring of the Act for purposes of budget enforcement.

Title III—Tax Provisions

Section 301 – Gain or Loss from Sale or Exchange of Certain Preferred Stock. Details certain changes in the tax treatment of losses on the preferred stock of certain GSEs for financial institutions. The section treats any losses on sales of Fannie Mae and Freddie Mac preferred stock by financial institutions or financial institution holding companies as ordinary losses. The provision applies to any preferred stock that was owned on September 6, 2008 or sold between January 1, 2008 and September 6, 2008.

Section 302 – Special Rules for Tax Treatment of Executive Compensation of Employers Participating in the Troubled Assets Relief Program. Applies limits on executive compensation and golden parachutes for certain executives of employers who participate in the auction program. Executive compensation in excess of \$500,000 is not deductible, and the definition of executive compensation is expanded to include performance pay and stock options. Golden parachutes will be prohibited prospectively for the top five executives in the case of termination, bankruptcy, insolvency, or receivership of the financial institution.

Section 303 – Extension of Exclusion of Income from Discharge of Qualified Principal Residence Indebtedness. Extends current law tax forgiveness on the cancellation of mortgage debt. Proposal extends for three years, through 2012, the provision enacted in the

housing bill that forgives income from the cancellation of indebtedness. It does not extend the relief to home equity loans.