

October 2008 / Special Alert

A legal update from Dechert's Financial Services and Finance and Real Estate Groups

Emergency Economic Stabilization Act of 2008 Troubled Asset Relief Program

The Emergency Economic Stabilization Act of 2008 (the "Act") was signed into law on October 3, 2008 after a tumultuous week in Congress. The center of this legislation is the Troubled Asset Relief Program ("TARP"), the most significant economic intervention by the federal government in the financial system since the Great Depression. In order to restore liquidity and stability to the financial system, the Secretary of the Treasury (the "Secretary") is authorized under the Act to purchase residential and commercial mortgage loans and mortgage-backed securities or other related obligations that were originated or issued on or before March 14, 2008 ("troubled assets") from financial institutions including, but not limited to, banks, savings associations, credit unions, security brokers or dealers, and insurance companies established and regulated under the laws of the U.S. or any state, territory, or possession of the U.S. that have significant operations in the U.S. (excluding any central bank of, or institution owned by, a foreign government) and from foreign financial authorities and central banks that hold troubled assets as a result of extending financing to such financial institutions that have failed or defaulted on such financing. The Secretary is required to establish program guidelines no later than November 16, 2008, including mechanisms for purchasing troubled assets and methods for pricing and valuing such assets. By establishing a price discovery mechanism, it is expected that private capital, as well as government funds, will reenter the market, restoring the flow of capital to consumers and businesses and easing the credit crunch. By permitting the Secretary to purchase and

remove troubled assets from a financial institution's balance sheet, it is expected that such a financial institution will be in a better position to raise capital and obtain credit from other financial institutions.

In implementing the TARP, the Secretary is required to consider, among other factors, protecting the interests of taxpayers by maximizing overall returns and minimizing the impact on the national debt, providing stability and preventing disruption to the financial markets, helping families keep their homes, and ensuring that all financial institutions are eligible to take part in the program. The Secretary is required to use the authority under the Act to minimize any potential long-term negative impact on taxpayers, taking into account direct outlays made under the program, potential long-term returns on troubled assets purchased, and the overall economic benefits of the program, including improvements in economic activity and the availability of credit, the impact on savings and pensions, and reductions of losses to the federal government. To further these goals, the Secretary may hold assets to maturity or for resale at such time as the Secretary determines that the market is optimal for selling such assets at a price the Secretary determines will maximize return on investment for the federal government. If there is a shortfall on the net amount within the TARP five years after the enactment of the Act, the President is required to submit a legislative proposal to recoup such a shortfall from the financial industry in order to ensure that the TARP does not add to the deficit or national debt.

In addition to establishing the TARP, the Secretary is required by the Act to establish a program to guarantee troubled assets of financial institutions, although the Secretary is not required to use this program.

The Secretary's authority to purchase and insure troubled assets will terminate on December 31, 2009, unless extended through October 3, 2010 upon certification by the Secretary to Congress including a justification of why the extension is necessary and the expected cost to the taxpayers of such an extension. Initially, the maximum amount of troubled assets purchases by the Secretary is limited to \$250 billion outstanding at any one time. Upon notification of Congress by the President, such limit is increased to \$350 billion. The Secretary will be authorized to purchase a maximum of \$700 billion of troubled assets outstanding at any one time unless, after the President sends Congress a written report regarding the Secretary's plan to exercise such authority, Congress enacts a joint resolution disapproving the Secretary's plan with respect to such additional amount. The amount of troubled assets purchased by the Secretary that are outstanding at any one time will be determined by aggregating the purchase prices of all troubled assets held. The Secretary will fund the costs of the program by issuing Treasury securities.

Revenues and sales proceeds from troubled assets will be paid into the general fund of the Treasury. The TARP will be implemented under the newly created Office of Financial Stability within the Office of Domestic Finance of the Department of the Treasury. Significant oversight has been built into the Act. The Secretary's actions with respect to the TARP will be subject to judicial review and final actions shall be held unlawful and set aside if they are found to be arbitrary, capricious, an abuse of discretion or are not in accordance with law. The key provisions of the Act are summarized below and are further detailed in a chart attached to this update.

Purchase of Troubled Assets

The Secretary is required to make purchases of troubled assets under the Act at the lowest price that the Secretary determines to be consistent with the purposes of the Act and to use market mechanisms, including auctions or reverse auctions where appropriate. If the Secretary determines that a market mechanism is not appropriate and that the purposes of the Act are best met by a direct purchase from a financial institution, the Secretary must pursue additional measures to ensure

that the purchase price is reasonable and reflects the underlying value of the assets and must assess the long-term viability of such financial institutions and whether such a direct purchase represents the most efficient use of funds under the Act. To further market transparency, the Secretary must make available to the public a description, amounts, and pricing of all assets purchased within two business days of purchase, disposition, or trade.

Insurance of Troubled Assets

In addition to establishing the TARP, the Secretary is also required to establish a program to guarantee troubled assets originated or issued prior to March 14, 2008. The Secretary will collect premiums from financial institutions participating in the guarantee program in an amount determined by the Secretary that may vary based on the credit risk of the troubled asset. Premiums must be set at a level necessary to create reserves sufficient to meet anticipated claims and to ensure that taxpayers are fully protected. Troubled assets will be guaranteed in amounts not greater than 100% of the amount of the payment of principal and interest on such assets. Premiums will be held in a Troubled Assets Insurance Financing Fund. The Secretary's purchase authority limits under the TARP will be reduced by an amount equal to the difference between the total outstanding guaranteed obligations and the balance of the Troubled Assets Insurance Financing Fund.

Receipt of Equity Interest

To cover losses and administrative costs of the program, and to give taxpayers an opportunity to recoup some of the government outlay, subject to certain de minimis exceptions, the Treasury will be required to receive warrants from publicly traded participating financial institutions or debt securities from participating financial institutions that are not publicly traded. Any warrants must contain anti-dilution provisions to protect the value of the securities.

Contracting Procedures

The Secretary may use a streamlined process in awarding contracts under the Act and will issue regulations or guidelines to address conflicts of interest that may arise in connection with the hiring of contractors,

advisors, and asset managers; the purchase and management of troubled assets; post-employment restrictions on employees; and any other potential conflict of interest.

Oversight

A Financial Stability Oversight Board (composed of the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the SEC, the Director of the Federal Housing Finance Agency, the Secretary of Housing and Urban Development, and the Secretary of the Treasury) and myriad reporting requirements included throughout the Act are designed to ensure that taxpayers are adequately protected and that the purposes of the Act are being properly carried out. The Financial Stability Oversight Board has authority to review the exercise of authority under the program (including the appointment of financial agents, the designation of asset classes to be purchased, and plans for the structure of vehicles used to purchase troubled assets), make recommendations, report any suspected fraud or malfeasance to a Special Inspector General for TARP, and ensure the policies implemented are consistent with protecting taxpayers and in the economic interests of the federal government. The Financial Stability Oversight Board may appoint a Credit Review Committee to evaluate the exercise of the purchase authority and the assets acquired under the Act. In addition, a Congressional Oversight Panel is established to review the Secretary's use of authority under the TARP, the current state of the financial markets and the regulatory system. This panel will be comprised of five experts appointed by designated members of Congress and will submit monthly reports to Congress.

A Special Inspector General for TARP appointed by the President is required to conduct audits and investigations of the purchase, management, and sale of assets by the Secretary under the Act and the guarantee program and to collect and report quarterly to certain Congressional committees. The Act also mandates that the Comptroller General oversee the program to ensure strong internal controls are in place and to conduct a study to determine the extent to which leverage was a factor behind the current financial crisis and the role of the SEC, the Federal Reserve Board and banking agencies relating thereto. The Comptroller General will report to Congress no less than every 60 days on the performance of the program, conduct an annual audit of the program, and report findings so that corrective

action will be taken with respect to any identified deficiencies.

Foreclosure Mitigation

The TARP requires that to the extent residential mortgages, residential mortgage-backed securities, and other assets secured by residential real estate, including multifamily housing, are held, owned, or controlled by the Secretary or by a federal property manager, each will seek (and will collectively coordinate a plan to seek) to maximize assistance to homeowners and encourage servicers, considering net present value to the taxpayer, to take advantage of programs to minimize foreclosures including, with respect to the Secretary, consenting to reasonable requests for loss mitigation measures under existing investment contracts and, with respect to each federal property manager, loan modifications that may include reduction of interest rates, reduction of loan principal, and other similar modifications. For residential rental properties, modifications may include the continuation of existing government rental subsidies. Where the federal property manager is not the owner of a residential mortgage but has an interest in that mortgage, the federal property manager will encourage implementation by loan servicers of loan modifications and assist in facilitating such modifications. Federal property managers include the Federal Housing Finance Agency, as conservator of Freddie Mac and Fannie Mae, the FDIC with respect to such residential assets held by any bridge depository institution pursuant to section 11(n) of the Federal Deposit Insurance Act, and the Federal Reserve Board with respect to such residential assets held, owned, or controlled by a Federal Reserve bank with certain exceptions. These requirements under the Act do not supersede any other requirements imposed on the federal property managers under applicable law.

Limits on Executive Compensation

The Act imposes limits on the compensation of senior executive officers at financial institutions that participate in the TARP through a direct purchase of troubled assets where no bidding process or market prices are available and in which the Secretary receives a "meaningful" equity or debt position. The Act mandates that the Secretary require that such financial institutions meet appropriate standards for executive compensation and corporate governance for senior executive officers (the top five highly-paid executives of a public company

and non-public company counterparts), including limits on compensation that exclude incentives to take unnecessary and excessive risks and a prohibition on golden parachutes, in each case during the period the Secretary holds equity or debt in the related financial institution, and provides for the recovery by the financial institution of any bonus or compensation based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate. In addition, where the Secretary has purchased in excess of \$300 million of troubled assets (whether by auction or direct purchase), the Act prohibits golden parachutes with respect to any new employment contract with a senior executive officer in the event of an involuntary termination, bankruptcy filing, insolvency, or receivership and reduces tax deductions associated with compensation paid by such a participating financial institution to a covered executive (the chief executive officer or the chief financial officer or an executive who is one of the three highest compensated officers in that taxable year).

Exchange Stabilization Fund Reimbursement

The Act provides that the Secretary shall use TARP funds to reimburse the Exchange Stabilization Fund for any funds used for the Treasury Money Market Funds Guaranty Program for the money market mutual fund industry. The Act also prohibits any future use of the Exchange Stabilization Fund for the establishment of any guaranty program for the money market mutual fund industry.

Mark-to-Market Accounting

The Act states that the SEC has the authority to suspend the application of Statement Number 157 of the Financial Accounting Standards Board for any issuer or class or category of transaction the SEC deems appropriate and is consistent with the protection of investors. The Act also requires the SEC, in consultation with the Federal Reserve Board and the Secretary, to conduct a study on mark-to-market accounting standards as provided in FAS 157 (accounting standards that many blame for fueling the current economic crisis) including its effects on a financial institution's balance sheet, its impact on bank failures in 2008, its impact on the quality of financial information available, the process used in developing accounting standards, and the advisability of modifying the standards. We note that the SEC's Office of the Chief Accountant and the staff of

the Financial Accounting Standards Board clarified their views on fair value accounting in a release issued September 30, 2008.

Ordinary Loss on Sale of Certain Preferred Stock

Pursuant to the Act, gains or losses from the sale or exchange of any Federal National Mortgage Association or Federal Home Loan Mortgage Corporation preferred stock that was held by any applicable financial institution (as defined in the Act) on September 6, 2008 or sold or exchanged on or after January 1, 2008 but before September 7, 2008 shall be treated as ordinary income or loss.

Temporary Increase in Deposit Insurance

The Act provides for the increase until December 31, 2009 in the limit on federal deposit insurance to \$250,000 from \$100,000.

Taxation of Offshore Deferred Compensation

In provisions designed to apply to deferred compensation arrangements for advisors of offshore investment companies, the Act imposes current taxation on deferred compensation payable by certain foreign corporations and certain partnerships if that compensation is not subject to a substantial risk of forfeiture. Where the amount includible is not determinable, taxation is deferred until the amount becomes determinable, but the amount of tax imposed is then increased by the sum of (i) 20% of the amount of the compensation and (ii) interest for the period of income deferral. The new provision is applicable to compensation for services rendered after December 31, 2008 and transition rules apply for taxation of deferred compensation in respect of services rendered before January 1, 2009.

* * *

There remain many important details related to the process for carrying out the purposes of the Act that will need to be developed by the Treasury and its advisors. Dechert attorneys will continue to monitor the development of these processes and will be available to assist

clients interested in selling assets to or buying assets from the TARP, serving as agents to the TARP, or otherwise participating in the TARP. For your reference, we have attached a chart highlighting certain key aspects of the Act.

This update was authored by Cynthia J. Williams (+1 617 654 8604; cindy.williams@dechert.com), Ralph R. Mazzeo (+1 215 994 2417; ralph.mazzeo@dechert.com), and Joseph W. Beach (+1 704 339 3154; joseph.beach@dechert.com).



Practice group contacts

For more information, please contact one of the authors or any Dechert attorney with whom you regularly work. Visit us at www.dechert.com/financialservices or www.dechert.com/finance&realestate.

Karen L. Anderberg

London
+44 20 7184 7313
karen.anderberg@dechert.com

Katherine A. Burroughs

Hartford
+1 860 524 3953
katherine.burroughs@dechert.com

Douglas P. Dick

Washington, D.C.
+1 202 261 3305
douglas.dick@dechert.com

Kimberly S. Andrascik

London, Philadelphia
+1 215 994 2520
kimberly.andrascik@dechert.com

Ciaran P. Carvalho

London
+44 20 7184 7473
ciaran.carvalho@dechert.com

Patrick D. Dolan

New York
+1 212 698 3555
patrick.dolan@dechert.com

Peter D. Astleford

London
+44 20 7184 7860
peter.astleford@dechert.com

Lawrence A. Ceriello

New York
+1 212 698 3659
lawrence.ceriello@dechert.com

Malcolm S. Dorris

New York
+1 212 698 3519
malcolm.dorris@dechert.com

Margaret A. Bancroft

New York
+1 212 698 3590
margaret.bancroft@dechert.com

Daphne T. Chisolm

Charlotte
+1 704 339 3153
daphne.chisolm@dechert.com

Peter Draper

London
+44 20 7184 7614
peter.draper@dechert.com

Sander M. Bieber

Washington, D.C.
+1 202 261 3308
sander.bieber@dechert.com

Christopher D. Christian

Boston
+1 617 728 7173
christopher.christian@dechert.com

Jennifer O. Epstein

London
+44 20 7184 7403
jennifer.epstein@dechert.com

Stephen H. Bier

New York
+1 212 698 3889
stephen.bier@dechert.com

Steven Choo

London
+44 20 7184 7370
steven.choo@dechert.com

Ruth S. Epstein

Washington, D.C.
+1 202 261 3322
ruth.epstein@dechert.com

Timothy J. Boyce

Charlotte
+1 704 339 3129
timothy.boyce@dechert.com

Laura G. Ciabarra

Hartford
+1 860 524 3926
laura.ciabarra@dechert.com

Susan C. Ervin

Washington, D.C.
+1 202 261 3325
susan.ervin@dechert.com

Lewis A. Burleigh

Boston
+1 617 654 8601
lewis.burleigh@dechert.com

Elliott R. Curzon

Washington, D.C.
+1 202 261 3341
elliott.curzon@dechert.com

Dr. Olaf Fasshauer

Munich
+49 89 21 21 63 28
olaf.fasshauer@dechert.com

Joseph R. Fleming
Boston
+1 617 728 7161
joseph.fleming@dechert.com

Steven A. Fogel
London
+44 20 7184 7444
steven.fogel@dechert.com

David W. Forti
Philadelphia
+1 215 994 2647
david.forti@dechert.com

Brendan C. Fox
Washington, D.C.
+1 202 261 3381
brendan.fox@dechert.com

Wendy Robbins Fox
Washington, D.C.
+1 202 261 3390
wendy.fox@dechert.com

Richard Frase
London
+44 20 7184 7692
richard.frase@dechert.com

William Fryzer
London
+44 20 7184 7454
william.fryzer@dechert.com

Joseph V. Gatti
Washington
+1 202 261 3436
joseph.gatti@dechert.com

David M. Geffen
Boston
+1 617 728 7112
david.geffen@dechert.com

John J. Gillies, Jr.
Hartford
+1 860 524 3938
john.gillies@dechert.com

John Gordon
London
+44 20 7184 7524
john.gordon@dechert.com

David J. Harris
Washington, D.C.
+1 202 261 3385
david.harris@dechert.com

Richard L. Heffner
London
+44 20 7184 7665
richard.heffner@dechert.com

Joseph B. Heil
San Francisco
+1 415 262 4510
joseph.heil@dechert.com

Robert W. Helm
Washington, D.C.
+1 202 261 3356
robert.helm@dechert.com

Bruce D. Hickey
Boston
+1 617 654 8602
bruce.hickey@dechert.com

Andrew Hougie
London
+44 20 7184 7373
andrew.hougie@dechert.com

Geoffrey K. Hurley
New York
+1 212 698 3598
geoffrey.hurley@dechert.com

Paul Huey-Burns
Washington, D.C.
+1 202 261 3433
Paul.huey-burns@dechert.com

Andrew Hutchinson
London
+44 20 7184 7428
andrew.hutchinson@dechert.com

Eric P. Iversen
New York
+1 212 698 3538
eric.iversen@dechert.com

Les Jacobowitz
New York
+1 212 698 3814
les.jacobowitz@dechert.com

Richard D. Jones
Philadelphia
+1 215 994 2501
richard.jones@dechert.com

Andreas Junius
New York
+1 212 698 3578
andreas.junius@dechert.com

Jane A. Kanter
Washington, D.C.
+1 202 261 3302
jane.kanter@dechert.com

Geoffrey R.T. Kenyon
Boston
+1 617 728 7126
geoffrey.kenyon@dechert.com

Angelyn Lim
Hong Kong
+852 3518 4718
angelyn.lim@dechert.com

David M. Linder
San Francisco
+1 415 262 4511
david.linder@dechert.com

Stuart Martin
London
+44 20 7184 7542
stuart.martin@dechert.com

George J. Mazin
New York
+1 212 698 3570
george.mazin@dechert.com

Ralph R. Mazzeo
Philadelphia
+1 215 994 2417
ralph.mazzeo@dechert.com

Steven J. Molitor
Philadelphia
+1 215 994 2777
steven.molitor@dechert.com

Jack W. Murphy
Washington, D.C.
+1 202 261 3303
jack.murphy@dechert.com

John V. O'Hanlon
Boston
+1 617 728 7111
john.ohanlon@dechert.com

Sean H. Porter
New York
+1 212 698 3579
sean.porter@dechert.com

Jeffrey S. Poretz
Washington, D.C.
+1 202 261 3358
jeffrey.poretz@dechert.com

Jon S. Rand
New York
+1 212 698 3634
jon.rand@dechert.com

Robert A. Robertson
Newport Beach
+1 949 442 6037
robert.robertson@dechert.com

Keith T. Robinson
Hong Kong
+1 852 3518 4705
keith.robinson@dechert.com

Alan Rosenblat
Washington, D.C.
+1 202 261 3332
alan.rosenblat@dechert.com

Jason S. Rozes
Philadelphia
+1 215 994 2830
jason.rozes@dechert.com

Kevin P. Scanlan
New York
+1 212 649 8716
kevin.scanlan@dechert.com

Frederick H. Sherley
Charlotte
+1 704 339 3100
frederick.sherley@dechert.com

Timothy A. Stafford
New York
+1 212 698 3504
timothy.stafford@dechert.com

William C. Stefko
New York
+1 212 698 3895
william.stefko@dechert.com

Barry J. Thorne
London
+44 20 7184 7413
barry.thorne@dechert.com

John M. Timperio
Charlotte
+1 704 339 3180
john.timperio@dechert.com

Stephanie M. Tita
New York
+1 212 698 3896
stephanie.tita@dechert.com

Patrick W. D. Turley
Washington, D.C.
+1 202 261 3364
patrick.turley@dechert.com

Brian S. Vargo
Philadelphia
+1 215 994 2880
brian.vargo@dechert.com

David A. Vaughan
Washington, D.C. / New York
+1 202 261 3355 / +1 212 698 3652
david.vaughan@dechert.com

Cynthia J. Williams
Boston
+1 617 654 8604
cindy.williams@dechert.com

Anthony H. Zacharski
Hartford
+1 860 524 3937
anthony.zacharski@dechert.com

Jay Zagoren
Philadelphia
+1 215 994 2644
jay.zagoren@dechert.com

EESA Provisions

Definitions	<p><u>Act</u> means the Emergency Economic Stabilization Act of 2008 (“<u>EESA</u>”).</p> <p><u>Appropriate Committees of Congress</u> means (a) the Committee on Banking, Housing and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and (b) the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.</p> <p>(Sec. 3(1))</p> <p><u>Board</u> means the Board of Governors of the Federal Reserve System.</p> <p><u>Financial institution</u> means any institution, including, but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company, organized and regulated under the laws of the United States or any State, Territory, or possession of the United States and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government.</p> <p>(Sec. 3(5))</p> <p><u>Secretary</u> means the Secretary of the Treasury.</p> <p>(Sec. 3(7))</p> <p><u>Troubled assets</u> means (a) residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case was originated or issued on or before March 14, 2008, the purchase of which the Secretary determines promotes financial market stability; and (b) any other financial instrument that the Secretary, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines the purchase of which is necessary to promote financial market stability, but only upon transmittal of such determination, in writing, to the appropriate committees of Congress.</p> <p>(Sec. 3(9))</p>
--------------------	---

EESA Provisions

Purchase of Troubled Assets	<p>The Secretary may establish a program to purchase troubled assets on terms and conditions determined by the Secretary, and in accordance with the Act, known as the Troubled Asset Relief Program (“<u>TARP</u>”).</p> <p>(Sec. 101(a)(1))</p> <p>The program shall be implemented under the newly created Office of Financial Stability, within the Office of Domestic Finance of the Department of the Treasury, headed by an Assistant Secretary of the Treasury.</p> <p>(Sec. 101(a)(3)(A))</p> <p>In exercising his authority with respect to the program, the Secretary shall consult with the Board, the FDIC, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Secretary of Housing and Urban Development.</p> <p>(Sec. 101(b))</p> <p>Necessary Actions: The Secretary is authorized to take such actions as the Secretary deems necessary to carry out the authorities in the Act including, without limitation:</p> <ul style="list-style-type: none">▪ Direct hiring authority with respect to the appointment of employees to administer the Act;▪ Entering into contracts, including contracts for services, such as contracts with experts and consultants;▪ Designate financial institutions as financial agents of the federal government;▪ In order to provide the Secretary with flexibility to manage troubled assets in a manner designed to minimize cost to the taxpayers, establish vehicles that are authorized to purchase, hold and sell troubled assets and issue obligations; and▪ Issue regulations and other guidance as necessary to define terms and to carry out the authorities of the Act. <p>(Sec. 101(c))</p> <p>Program Guidelines: Before the earlier of the end of the two-business day period beginning on the date of the first purchase of troubled assets under the Act or November 16, 2008, the Secretary must publish program guidelines, including:</p> <ul style="list-style-type: none">▪ Mechanisms for purchasing troubled assets;▪ Methods for pricing and valuing troubled assets;▪ Procedures for selecting asset managers; and▪ Criteria for identifying troubled assets for purchase. <p>(Sec. 101(d))</p> <p>Preventing Unjust Enrichment: In making purchases under the Act, the Secretary must act to prevent unjust enrichment of financial institutions participating in programs established under the Act, including preventing the resale of a troubled asset to the Secretary at a higher price than what the seller paid to purchase the asset (excluding troubled assets acquired in a merger or acquisition or purchased from a financial institution in conservatorship, receivership, or bankruptcy).</p> <p>(Sec. 101(e))</p>
------------------------------------	---

EESA Provisions

Insurance of Troubled Assets	<p>Authority (General): In addition to establishing the TARP, the Secretary is required to establish a program to guarantee troubled assets originated or issued prior to March 14, 2008, including mortgage-backed securities.</p> <p>(Sec. 102(a)(1))</p> <p>Authority (Guarantees): The Secretary may develop guarantees of troubled assets and the associated premiums for such guarantees. Such guarantees and premiums may be determined by category or class of the troubled assets to be guaranteed.</p> <p>(Sec. 102(a)(2))</p> <p>Extent of Guarantees: Upon request of a financial institution, the Secretary may guarantee the timely payment of principal of, and interest on, troubled assets in amounts not to exceed 100% of such payments. Such guarantee may be on such terms and conditions as are determined by the Secretary, provided that such terms and conditions are consistent with the purposes of the Act</p> <p>(Sec. 102(a)(3))</p> <p>Premiums: The Secretary shall collect premiums from any financial institution participating in the guarantee program. Such premiums shall be in an amount that the Secretary determines necessary to meet the purposes of the Act and to provide sufficient reserves to meet anticipated claims based on actuarial analysis, and to ensure that taxpayers are fully protected.</p> <p>(Sec. 102(c)(1) & (3))</p> <p>Authority to Base Premiums on Product Risk: The Secretary may provide for variations in premium rates according to the credit risk associated with the particular troubled asset that is being guaranteed. The Secretary shall publish the methodology for setting the premium for a class of troubled assets together with an explanation of the appropriateness of the class of assets for participation in the guarantee program.</p> <p>(Sec. 102(c)(2))</p> <p>Adjustment to Purchase Authority: The purchase authority of the TARP will be reduced by an amount equal to the difference between the total outstanding guaranteed obligation and the balance in the Troubled Assets Insurance Financing Fund.</p> <p>(Sec. 102(c)(4))</p> <p>Troubled Assets Insurance Financing Fund: The Secretary will deposit all premiums received on guarantees into the newly created Troubled Assets Insurance Financing Fund. The Secretary will utilize this fund to fulfill obligations on the guarantees made to financial institutions.</p> <p>(Sec. 102(d))</p>
-------------------------------------	---

EESA Provisions

Considerations	<p>In exercising the authorities of the Act, the Secretary shall consider:</p> <ul style="list-style-type: none">▪ protecting the interests of taxpayers by maximizing overall returns and minimizing the impact on the national debt;▪ providing stability and preventing disruption to financial markets in order to limit the impact on the economy and protect American jobs, savings, and retirement security;▪ the need to help families keep their homes and to stabilize communities;▪ in determining whether to engage in a direct purchase from an individual financial institution, the long-term viability of the financial institution in determining whether the purchase represents the most efficient use of funds under the Act;▪ ensuring that all financial institutions are eligible to participate in the program, without discrimination based on size, geography, form of organization, or the size, type, and number of assets eligible for purchase under the Act;▪ providing financial assistance to financial institutions, including those serving low- and moderate-income populations and other underserved communities, and that have assets less than \$1 billion, that were well or adequately capitalized as of June 30, 2008, and that as a result of the devaluation of the preferred government-sponsored enterprises stock will drop one or more capital levels, in a manner sufficient to restore the financial institutions to at least an adequately capitalized level;▪ the need to ensure stability for United States public instrumentalities, such as counties and cities, that may have suffered significant increased costs or losses in the current market turmoil;▪ protecting the retirement security of Americans by purchasing troubled assets held by or on behalf of certain eligible retirement plans; and▪ the utility of purchasing other real estate owned and instruments backed by mortgages on multifamily properties. <p>(Sec. 103)</p>
-----------------------	---

EESA Provisions

Financial Stability Oversight Board	<p>Establishment and Membership: The Act establishes the Financial Stability Oversight Board, comprised of the Chairman of the Board of Governors of the Federal Reserve System, the Secretary, the Director of the Federal Housing Finance Agency, the Chairman of the SEC, and the Secretary of Housing and Urban Development, responsible for:</p> <ul style="list-style-type: none">▪ Reviewing the exercise of authority and policies implemented under the program (including the appointment of financial agents, the designation of asset classes to be purchased, and plans for the structure of vehicles used to purchase troubled assets), and the effect those actions have on preserving home ownership, stabilizing financial markets, and protecting taxpayers;▪ Making recommendations to the Secretary regarding use of authority under the Act; and▪ Reporting any suspected fraud, misrepresentation, or malfeasance to the Special Inspector General for the TARP or the Attorney General of the United States. <p>(Sec. 104(a)-(c))</p> <p>Additional Authorities: The Financial Stability Oversight Board will have the authority to ensure the policies implemented by the Secretary are:</p> <ul style="list-style-type: none">▪ In accordance with the purposes of the Act;▪ In the economic interests of the United States; and▪ Consistent with protecting taxpayers in accordance with Section 113(a), discussed below. <p>(Sec. 104(e))</p> <p>Credit Review Committee: The Financial Stability Oversight Board may appoint a Credit Review Committee to evaluate the exercise of the purchase authority provided under the Act and the assets acquired thereby.</p> <p>(Sec. 104(f))</p> <p>Reporting: The Financial Stability Oversight Board will report to Congress and the Congressional Oversight Panel not less frequently than quarterly.</p> <p>(Sec. 104(g))</p> <p>Termination: The Financial Stability Oversight Board and its authority will terminate 15 days after the later of (1) the date the last troubled asset has been sold or transferred out of government ownership or (2) the date of the expiration of the last insurance contract.</p> <p>(Sec. 104(h))</p>
--	---

EESA Provisions

Reports	<p>General: Within 60 days after the first exercise of purchase or guarantee authority under the Act, and every 30-day period thereafter, the Secretary must report to the appropriate committees of Congress concerning:</p> <ul style="list-style-type: none">▪ An overview of actions taken by the Secretary;▪ The actual obligation and expenditure of funds for administrative expenses and an estimate of administrative expenses for the next reporting period; and▪ A detailed financial statement with regard to all authority exercised under the Act. <p>(Sec. 105(a))</p> <p>Tranche Reporting: No later than 7 days after committing to purchase (in aggregate) the first \$50 billion in troubled assets, and again after each \$50 billion of commitments thereafter, the Secretary must submit a written report the appropriate committees of Congress detailing:</p> <ul style="list-style-type: none">• A description of all transactions during that period;▪ A description of the pricing mechanism for each transaction;▪ A justification for the price paid and terms of each transaction;▪ A description of the impact of purchases on the financial system;▪ A description of challenges in the financial system, including benchmarks yet to be achieved; and▪ An estimate of additional actions necessary to address remaining challenges. <p>(Sec. 105(b))</p> <p>Regulatory Modernization Report: The Secretary must submit a report no later than April 30, 2009 analyzing the current state of the regulatory system and its effectiveness in overseeing participants in the financial markets (including the over-the-counter swaps market and government-sponsored enterprises) and providing recommendations whether any participants in the financial markets that are currently outside the regulatory system should become subject to the regulatory system and enhancement of the clearing and settlement of over-the-counter swaps.</p> <p>(Sec. 105(c))</p> <p>Sunset: These reporting requirements terminate on the later of (1) the date the last troubled asset has been sold or transferred out of government ownership, or (2) the date of the expiration of the last insurance contract.</p> <p>(Sec. 105(e))</p>
----------------	---

EESA Provisions

<p>Rights, Management, Sale of Troubled Assets, Revenue, Proceeds</p>	<p>Exercise of Rights: The Secretary may exercise rights received from the troubled assets. (Sec. 106(a))</p> <p>Management of Troubled Assets: The Secretary shall have the authority to manage the troubled assets (including revenues and portfolio risks). (Sec. 106(b))</p> <p>Sale of Troubled Assets: The Secretary may sell or enter into other financial transactions with regard to any troubled asset. (Sec. 106(c))</p> <p>Transfer to Treasury: Revenues of and proceeds from the sale of troubled assets purchased will be deposited into the Treasury general fund for reduction of the public debt. (Sec. 106(d))</p>
<p>Contracting Procedures</p>	<p>Streamlined Process: The Secretary may use a streamlined process in awarding contracts under the Act and may waive any provision of the Federal Acquisition Regulation upon a determination that urgent and compelling circumstances make compliance with such provision contrary to the public interest. (Sec. 107(a))</p> <p>Eligibility of FDIC: The FDIC shall be eligible and considered as an asset manager for residential mortgages and mortgage-backed securities. (Sec. 107(c))</p>
<p>Conflicts of Interest</p>	<p>The Secretary will use regulations or guidelines to address conflicts of interest that may arise in administration of the Act, including:</p> <ul style="list-style-type: none"> ▪ Hiring of contractors or advisors, including asset managers; ▪ The purchase of troubled assets; ▪ The management of troubled assets; ▪ Post-employment restrictions on employees; and ▪ Any other potential conflict of interest. <p>(Sec. 108)</p>

EESA Provisions

Foreclosure Mitigation Efforts	<p>Servicing Standards: To the extent the Secretary acquires mortgages, mortgage-backed securities, and other assets secured by residential real estate, the Secretary will maximize assistance to homeowners and encourage servicers, considering the net present value to the taxpayer, to take advantage of the HOPE for Homeowners Program or any other available mitigation program. The Secretary may also use loan guarantees and credit enhancements to facilitate loan modification to prevent avoidable foreclosures.</p> <p>(Sec. 109(a))</p> <p>Coordination: The Secretary will coordinate with the FDIC, the Board, the FHFA, the Secretary of Housing and Urban Development, and other Federal Government entities that hold troubled assets to identify opportunities to purchase classes of troubled assets to improve the ability to modify and restructure loans and permit tenants current on their rent to remain in their homes under the terms of the lease.</p> <p>(Sec. 109(b))</p> <p>Loan Modifications: Upon any request arising under existing investment contracts, the Secretary will consent, where appropriate and considering the net present value to the taxpayer, to reasonable requests for loss mitigation measures, including term extensions, rate reductions, principal write downs, increases in the proportion of loans within a trust or other structure allowed to be modified, or removal of other limitation on modifications.</p> <p>(Sec. 109(c))</p>
---------------------------------------	--

EESA Provisions

Assistance to Homeowners	<p>Federal property manager means (a) the Federal Housing Finance Agency, in its capacity as conservator of Fannie Mae or Freddie Mac; (b) the FDIC, with respect to residential mortgage loans and mortgage-backed securities held by any bridge depository institution pursuant to section 11(n) of the Federal Deposit Insurance Act; and (c) the Board, with respect to any mortgage or mortgage-backed securities or pool of securities held, owned, or controlled by or on behalf of a Federal Reserve bank, subject to limited exceptions.</p> <p>Homeowner Assistance: Each federal property manager will implement a plan to maximize assistance to homeowners and to encourage servicers, considering the net present value to the taxpayer, and the use of HOPE for Homeowners Program and other mitigation programs to minimize foreclosures.</p> <p>(Sec. 110(b)(1))</p> <p>Loan Modifications: For residential mortgages, modifications may include reduction in interest rates, reduction of loan principal, and other similar modifications.</p> <p>(Sec. 110(b)(2))</p> <p>Tenant Protections: For mortgages on residential rental properties, modifications shall ensure the continuation of existing government rental subsidies and shall take into account the need for operating funds to maintain decent and safe conditions.</p> <p>(Sec. 110(b)(3))</p> <p>Reports: Each federal property manager will report to Congress by December 1, 2008 and every 30 days thereafter about the number and type of loan modifications made and the number of foreclosures occurring.</p> <p>(Sec. 110(b)(5))</p> <p>Actions with Respect to Servicers: Where the federal property manager only has an interest in a residential mortgage (or a pool of obligations secured by residential mortgage loans), the federal property manager will encourage implementation by servicers of loan modifications of the type set forth in this section of the Act and assist in facilitating such modifications.</p> <p>(Sec. 110(c))</p>
---------------------------------	---

EESA Provisions

<p>Executive Compensation and Corporate Governance</p>	<p>Senior Executive Officer means an individual who is one of the top five highly-paid executives of a public company (whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934) and non-public company counterparts.</p> <p>(Sec. 111(b)(3))</p> <p>Direct Purchases: Where the Secretary determines to make a direct purchases of troubled assets from a financial institution where no bidding process or market prices are available and the Secretary receives a meaningful equity or debt position in the financial institution as a result of the transaction, the Secretary shall require, for the duration of the period that the Secretary holds an equity or debt position in the financial institution:</p> <ul style="list-style-type: none"> ▪ Limits on compensation that exclude incentives for executive officers to take excessive and unnecessary risks for the period the in which the Secretary holds an equity or debt position in the financial institution; ▪ Provisions for the recovery of any bonus or compensation paid to a senior executive officer based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate; and ▪ Prohibition on golden parachutes to senior executive officers for the period in which the Secretary holds an equity or debt position in the financial institution. <p>(Sec. 111(b)(1) & (2))</p> <p>Auction Purchases: Where the aggregate purchases from a financial institution exceed \$300 million (by direct purchase or auction purchase), the Secretary will prohibit for such financial institution any new employment contract with a senior executive officer that provides a golden parachute in the event of an involuntary termination, bankruptcy filing, insolvency or receivership.</p> <p>(Sec. 111(c))</p>
<p>Coordination with Foreign Authorities and Central Banks</p>	<p>The Secretary shall coordinate, as appropriate, with foreign financial authorities and central banks to work toward the establishment of similar programs by such authorities and central banks. To the extent that such foreign financial authorities or banks hold troubled assets as a result of extending financing to financial institutions that have failed or defaulted on such financing, such troubled assets qualify for purchase under the TARP.</p> <p>(Sec. 112)</p>

EESA Provisions

<p>Minimization of Long-Term Costs and Maximization of Long-Term Benefits</p>	<p>Long-Term Costs and Benefits: The Secretary must use its authority under the Act to minimize the potential long-term negative impact on the taxpayer. The Secretary will hold the assets to maturity or for resale for and until such time as the Secretary determines that the market is optimal for selling such assets and sell such assets at a price that the Secretary determines will maximize return on investment for the federal government. The Secretary will encourage the private sector to participate in the purchase of troubled assets and to invest in financial institutions.</p> <p>(Sec. 113(a))</p> <p>Use of Market Mechanisms: The Secretary will make purchases at the lowest price determined to be consistent with the purposes of the Act and maximize efficiency by using market mechanisms, including auctions or reverse auctions, where appropriate.</p> <p>(Sec. 113(b))</p> <p>Direct Purchases: When market mechanisms are not feasible or appropriate, and the purpose of the Act is best implemented through direct purchases, the Secretary shall use additional measures to ensure that prices paid for the troubled assets are reasonable and reflect the underlying value of the asset.</p> <p>(Sec. 113(c))</p>
--	--

EESA Provisions

Receipt of Equity Interest	<p>Requirement: The Secretary may not purchase any troubled asset without receiving from the selling financial institution:</p> <ul style="list-style-type: none">▪ For registered and nationally traded financial institutions, a warrant giving the government the right to receive non-voting common stock, preferred stock, or voting stock with respect to which the Secretary agrees not to exercise voting power; or▪ For all other financial institutions, a warrant for common or preferred stock or a senior debt instrument. <p>(Sec. 113(d)(1))</p> <p>Purposes: The terms and conditions of warrants and senior debt instruments shall be designed to:</p> <ul style="list-style-type: none">▪ Provide reasonable participation in equity appreciation or a reasonable rate of interest;▪ Provide additional protection against losses from sales of troubled assets; and▪ Provide additional protection against the administrative costs of the TARP. <p>(Sec. 113(d)(2)(A))</p> <p>Authority over Assets: The Secretary has the power to sell, exercise, or surrender any warrant or senior debt instrument received in furtherance of the purposes described above.</p> <p>(Sec. 113(d)(2)(B))</p> <p>Conversion: Should the issuer of a warrant received by the Secretary no longer be listed or traded on a national exchange, the warrant will convert to a senior debt instrument or contain appropriate protections for the Secretary to ensure that the Treasury is appropriately compensated for the value of the warrant.</p> <p>(Sec. 113(d)(2)(C))</p> <p>Protections: All warrants received by the Secretary must include anti-dilution provisions sufficient to protect the value of the securities from market transactions such as stock splits, stock distributions, dividends, and any form of reorganization or recapitalization.</p> <p>(Sec. 113(d)(2)(D))</p> <p>Exercise Price: The exercise price for the warrant shall be set by the Secretary.</p> <p>(Sec.113(d)(2)(E))</p> <p>Sufficiency: A participating institution must guarantee the Secretary that it has adequate shares available to cover any warrant given. Otherwise, the Secretary may accept an equivalent value senior debt instrument in lieu of such warrant if a sufficient shareholder vote to authorize the additional shares cannot be obtained.</p> <p>(Sec. 113(d)(2)(F))</p> <p>Exceptions: There is a <i>de minimis</i> exception for any financial institution selling to the Secretary a cumulative total of less than \$100 million in troubled assets. The Secretary will create appropriate alternative requirement for financial institutions that are legally prohibited from issuing equity or debt obligations.</p> <p>(Sec. 113(d)(3))</p>
-----------------------------------	---

EESA Provisions

<p>Market Transparency</p>	<p>Pricing: The Secretary must make available to the public a description, amount, and price of all assets purchased within two businesses days of purchase, disposition, or trade.</p> <p>(Sec. 114(a))</p> <p>Disclosure: The Secretary will determine whether the public disclosure required for each participating institution with respect to off-balance sheet transactions, derivatives instruments, contingent liabilities, and similar sources of potential exposure is adequate to provide to the public sufficient information as to the true financial position of the institutions. If such disclosure is not adequate, the Secretary will recommend additional disclosure requirements.</p> <p>(Sec.114(b))</p>
<p>Graduated Authorization to Purchase</p>	<p>Authority. The maximum amount of purchases authorized at the time of enactment is \$250 billion outstanding at any one time.</p> <p>(Sec. 115(a)(1))</p> <p>Authority: Upon submission of a written certification by the President to Congress that the Secretary needs additional purchase authority, the Secretary may purchase \$350 billion of troubled assets outstanding at any one time.</p> <p>(Sec. 115(a)(2))</p> <p>Authority: If, thereafter, the President sends to Congress a written report detailing the plan of the Secretary to exercise additional spending authority, then the Secretary may purchase up to a maximum of \$700 billion of troubled assets outstanding at any one time. This additional spending authority shall be deemed granted unless Congress enacts a joint resolution disapproving such plan within 15 days of such submission.</p> <p>(Sec. 115(a)(3) & (c))</p> <p>Aggregation of Purchase Price: The amount of troubled assets purchased by the Secretary outstanding at any time will be determined by aggregating the purchase prices of all troubled assets held.</p> <p>(Sec. 115(b))</p> <p>Fast Track Consideration: The House and Senate will give special fast track consideration to the request to raise the limit on maximum purchases to \$700 billion.</p> <p>(Sec. 115(d))</p>

EESA Provisions

Oversight and Audits	<p>Scope of Oversight: The Comptroller General of the United States (“<i>Comptroller General</i>”) will engage in ongoing oversight of the activities and performance of TARP, including agents of the program and vehicles established by the Secretary. Oversight shall include:</p> <ul style="list-style-type: none">• TARP’s performance in meeting goals, especially foreclosure; mitigation, cost reduction, stabilization of the financial markets or banking system, and taxpayer protection;• The financial condition and internal controls of TARP and its agents;• Characteristics of transactions entered into by TARP and its agents;• Characteristics and disposition of acquired assets;• Efficiency of TARP’s use of funds;• Compliance with applicable laws;• TARP’s efforts to prevent, identify, and minimize conflicts of interest; and• The efficacy of contracting procedures (including efforts to utilize woman- and minority-owned businesses). <p>(Sec. 116(a)(1))</p> <p>Access to Records The Secretary will make relevant records and agents available to the Comptroller General for inspection as the Comptroller General may request.</p> <p>(Sec. 116(a)(2)(B))</p> <p>Reporting: The Comptroller General will report to the appropriate committees of Congress no less than every 60 days on the performance of the program. The Comptroller General may submit special reports at any time.</p> <p>(Sec. 116(a)(3))</p> <p>Audits: The Comptroller General will conduct an annual audit of TARP. The TARP will take corrective action in response to any deficiencies identified. The Comptroller General may audit TARP agents (as related to such agent’s actions on behalf of the TARP) and vehicles established under the Act.</p> <p>(Sec. 116(b))</p> <p>Internal Control: TARP will implement sufficient internal controls to monitor the effectiveness of the program, the reliability of financial reporting, and compliance with applicable laws. TARP will report annually as to the effectiveness of the internal controls over financial reporting.</p> <p>(Sec. 116(c))</p>
-----------------------------	---

EESA Provisions

Studies and Reports	<p>Study: The Comptroller General will undertake a study to determine the extent to which leverage and sudden deleveraging of financial institutions was a factor behind the current crisis, including:</p> <ul style="list-style-type: none">• An analysis of the roles and responsibilities of the Board, the SEC, the Secretary, and other banking agencies;• An analysis of the authority of the Board to regulate leverage by setting margin requirements;• An analysis of any usage of the margin authority of the Board; and• Recommendations for the Board and appropriate committees of Congress with regard to existing authority of the Board. <p>(Sec. 117(a) & (b))</p> <p>Report: The Comptroller General will report its findings to Congress not later than June 1, 2009.</p> <p>(Sec. 117(c))</p>
Funding	<p>The costs of the Act shall be funded through the auction of U.S. Government public debt, without the need for any appropriations by Congress.</p> <p>(Sec. 118)</p>

EESA Provisions

<p>Judicial Review</p>	<p>Standard of Review: Actions of the Secretary under the Act will be subject to judicial review under chapter 7 of title 5, United States Code, including that final actions shall be held unlawful only if found to be arbitrary, capricious, or otherwise inconsistent with the law, or an abuse of discretion or not in accordance with the law.</p> <p>(Sec. 119(a)(1))</p> <p>Equitable Relief: Except for violations of the Constitution, no injunction or other equitable relief will be granted against the Secretary for purchases, sales, insurance, management, or foreclosure mitigation actions. A request for a temporary restraining order against the Secretary must be considered and granted or denied within three days of the date of request. Any request for a preliminary or permanent injunction must be considered on an expedited basis.</p> <p>(Sec. 119(a)(2))</p> <p>Limitation on Claims: No claim or action may be brought against the Secretary by anyone selling assets to the Federal Government, except as provided under the standard of review in Section 119(a)(1) of the Act or as expressly provided in a written contract with the Secretary.</p> <p>(Sec. 119(a)(3))</p> <p>Automatic Stay: Any injunction or other form of equitable relief issued against the Secretary for purchases, sales, insurance, management, or foreclosure mitigation shall be automatically stayed. The stay shall be lifted unless the Secretary seeks a stay from a higher court within three calendar days after the date on which the relief is issued.</p> <p>(Sec. 119(a)(4))</p> <p>Homeowners' Rights: The terms of any residential mortgage loan that is part of any purchase by the Secretary under the Act shall remain subject to all claims and defenses that would otherwise apply, notwithstanding the exercise of authority by the Secretary under the Act.</p> <p>(Sec. 119(b)(1))</p> <p>Savings Clause: Any exercise of authority of the Secretary pursuant to the Act will not impair the claims or defenses otherwise available. Unless set forth otherwise in a contract, a servicer of pooled residential mortgages owes a duty to all investors (but not any specific group of investors) to determine whether the net present value of the payments on a loan, as modified, is likely to be greater than the anticipated net recovery from a foreclosure, and shall be deemed to act in the best interests of all such investors if the servicer agrees to implement a modification plan or workout plan where the servicer takes reasonable loss mitigation actions including partial payments.</p> <p>(Sec. 119(b)(2))</p>
<p>Termination of Authority</p>	<p>Termination: The authorities to purchase and insure troubled assets will terminate on December 31, 2009.</p> <p>(Sec. 120(a))</p> <p>Extension: The Secretary may extend the authorities of the Act until October 3, 2010.</p> <p>(Sec. 120(b))</p>

EESA Provisions

<p>Special Inspector General for the Troubled Asset Relief Program</p>	<p>Inspector General: The Act creates the Office of the Special Inspector General for the Troubled Asset Relief Program.</p> <p>(Sec. 121(a))</p> <p>Appointment: The Special Inspector General for the Troubled Asset Relief Program will be appointed by the President with the advice and consent of the Senate.</p> <p>(Sec. 121(b)(1))</p> <p>Duties: It shall be the duty of the Special Inspector General to conduct, supervise, and coordinate audits and investigations of the purchase, management, and sale of assets by the Secretary and the management of the guarantee program including among other things:</p> <ul style="list-style-type: none"> • A description of the categories of troubled assets purchased or otherwise procured by the Secretary; • A listing of the troubled assets purchased in each such category described above; • An explanation of the reasons the Secretary deemed it necessary to purchase each such troubled asset; • A listing of each financial institution that such troubled assets were purchased from; • A listing of and detailed biographical information on each person or entity hired to manage such troubled assets; • A current estimate of the total amount of troubled assets purchased pursuant to the TARP, the amount of troubled assets on the books of the Treasury, the amount of troubled assets sold, and the profit and loss incurred on each sale or disposition of each such troubled asset; and • A listing of the insurance contracts issued under the Act. <p>(Sec. 121(c))</p> <p>Reports: The Special Inspector General will report to the appropriate committees of Congress within 60 days after confirmation of the Inspector General and every quarter thereafter summarizing the activities of the Special Inspector General, including a detailed statement of all purchases, obligation, expenditures, and revenues associated with the TARP and the guarantee program.</p> <p>(Sec. 121(f))</p>
<p>Credit Reform</p>	<p>In General: The costs of purchases of troubled assets and any cash flows from the exercise of rights, management, or sale of troubled assets will be determined under the Federal Credit Reform Act of 1990.</p> <p>(Sec. 123(a))</p> <p>Costs: For purposes of Section 502(5) of the Credit Reform Act, the cost of each troubled asset shall be calculated by adjusting the discount rate in section 502(5)(E) for market risks, and the cost of a modification of a troubled asset shall be the difference between the current estimate under the terms of the troubled asset or guarantee of the troubled asset and an estimate under the terms of the troubled asset or guarantee of the troubled asset as modified.</p> <p>(Sec. 123(b))</p>

EESA Provisions

<p>HOPE for Homeowners Amendments</p>	<p>To be insured under the HOPE for Homeowners Program, the maximum amount of principal on the loan to be refinanced is changed from 90% to (or such higher percentage as the HOPE for Homeowners Board determines). Also, in order to qualify for insurance under the HOPE for Homeowners Program, all subordinate liens on the mortgage to be insured must be extinguished. Subordinate liens may be extinguished by making payments, which shall be accepted as payment in full of all indebtedness under the eligible mortgage, to any holder of an existing subordinate mortgage, in lieu of any future appreciation payments the subordinate lien holders would otherwise be entitled to.</p> <p>(Sec. 124(1))</p>
<p>Congressional Oversight Panel</p>	<p>Establishment: The Act establishes the Congressional Oversight Panel.</p> <p>(Sec. 125(a))</p> <p>Duties: The Congressional Oversight Panel will review the current state of financial markets and submit the following reports to Congress:</p> <ul style="list-style-type: none"> • Regular reports on the Secretary's use of authority under the Act (including contracting authority and administration of TARP), the impact of purchases on the financial market, the extent to which information made available under the Act has led to market transparency, the effectiveness of foreclosure mitigations, and the effectiveness of minimizing long-term costs to the taxpayer; and • A special report on regulatory reform, not later than January 20, 2009, analyzing the current state of the regulatory system and recommendations regarding whether those currently outside of the regulatory system should be subject to the system. <p>(Sec. 125(b))</p> <p>Membership: The Congressional Oversight Panel shall consist of one member appointed by the Speaker of the House, one Member appointed by the minority leader of the House, one member appointed by the majority leader of the Senate, one member appointed by the minority leader of the Senate, and one member appointed by the Speaker of the House and Majority leader of the Senate after consultation with the minority leaders.</p> <p>(Sec. 125(c))</p> <p>Powers: The Oversight Panel may hold hearings, take testimony, receive evidence, and make reports.</p> <p>(Sec. 125(e))</p> <p>Termination: The Oversight Panel will terminate six months after the authority of the Act terminates.</p> <p>(Sec. 124(f))</p>
<p>FDIC Authority</p>	<p>Unenforceability of Certain Agreements: Section 13(c) of the Federal Deposit Insurance Act is amended to include a provision that renders unenforceable as contrary to public policy any existing or future standstill, confidentiality, or other agreement that, directly or indirectly affects, restricts, limits, or prohibits any person from offering to acquire or acquiring (or using previously disclosed information in connection with acquiring) all or part of any insured depository institution in connection with any transactions in which the FDIC exercises its authority under sections 11 or 13 of the Federal Deposit Insurance Act.</p> <p>(Sec. 126(c))</p>

EESA Provisions

<p>Cooperation with the FBI</p>	<p>All Federal financial regulatory agencies must cooperate with the FBI investigating fraud, misrepresentation, and malfeasance with respect to development, advertising, and sale of financial products.</p> <p>(Sec. 127)</p>
<p>Changes to Financial Services Regulatory Relief Act of 2006</p>	<p>The Financial Services Regulatory Relief Act of 2006 will be amended to allow depository institutions to receive interest on reserves deposited with Federal Reserve Banks effective as of October 1, 2008, rather than the original effective date of October 1, 2011.</p> <p>(Sec. 128)</p>
<p>Disclosures on Exercise of Loan Authorization</p>	<p>In General: The Board must submit a report to certain committees in the House and Senate, within seven days after the Board exercises its authority under section 13 of the Federal Reserve Act (relating to discounts for individuals, partnerships, and corporations), including:</p> <ul style="list-style-type: none"> • The justification for exercising its authority; and • The terms of the actions of the Board, including the size and duration of the loan, the value of any collateral held, the receipt of warrants, and the potential costs to the taxpayer. <p>(Sec. 129(a))</p> <p>Periodic Updates: The Board must report to the relevant committees every 60 days while such loan is outstanding on the status of the loan, the value of collateral held, and the cost to the taxpayer.</p> <p>(Sec. 129(b))</p> <p>Confidentiality: The information submitted will be kept confidential at the request of the Chairman of the Board.</p> <p>(Sec. 129(c))</p> <p>Applicability: These provisions apply to any use of such authority by the Board during the time period from and including March 1, 2008 and ending after the enactment of the Act.</p> <p>(Sec. 129(d))</p>
<p>Exchange Stabilization Fund Reimbursement</p>	<p>Reimbursements: The Secretary must reimburse the Exchange Stabilization Fund for any funds used for the Treasury Money Market Funds Guaranty Program for the money market mutual fund industry from TARP funds.</p> <p>(Sec. 131(a))</p> <p>Limits: The Secretary is prohibited from using the Exchange Stabilization Fund for the establishment of any guaranty programs for the United States money market mutual fund industry.</p> <p>(Sec. 131(b))</p>
<p>Authority to Suspend Mark-to-Market Accounting</p>	<p>The SEC will have the authority to suspend the application of Statement Number 157 of the Financial Accounting Standards Board for any issuer or class or category of transaction the SEC deems appropriate.</p> <p>(Sec. 132(a))</p>

EESA Provisions

Study on Mark-to-Market Accounting	<p>Study: The SEC, in consultation with the Federal Reserve Board and the Secretary, will conduct a study on mark-to-market accounting, including:</p> <ul style="list-style-type: none">• The effects of such accounting standards on financial institutions' balance sheets;• The impact of such accounting on bank failures in 2008;• The impact of the standard on the quality of information available;• The process used in developing accounting standards;• The advisability and feasibility of modifying the standards; and• Alternative accounting standards to those in Statement Number 157. <p>(Sec. 133(a))</p> <p>Report: The SEC will submit the study and its recommendations to Congress by December 31, 2008.</p> <p>(Sec. 133(b))</p>
Recoupment	<p>On October 3, 2013, the Director of the Office of Management and Budget, in consultation with the Congressional Budget Office, will submit a report on the net amount in TARP. If there is a shortfall in the program, the President will submit a legislative proposal for recoupment of the shortfall.</p> <p>(Sec. 134)</p>

EESA Provisions

<p>Temporary Increase in Deposit and Share Insurance Coverage</p>	<p>FDIA Temporary Increase: During the period from October 3, 2008 and ending on December 31, 2009 the maximum limit of deposits insured under the FDIA will be \$250,000.</p> <p>(Sec. 136(a)(1))</p> <p>Assessments: The temporary increase in the standard maximum deposit insurance amount will not be taken into account by the FDIC when setting assessments under the FDIA.</p> <p>(Sec. 136(a)(2))</p> <p>Borrowing Authorized: The FDIC may request from the Secretary a loan in an amount to meet the obligations under this section.</p> <p>(Sec. 136(a)(3))</p> <p>FCUA Temporary Increase: During the period from October 3, 2008 and ending on December 31, 2009, the standard maximum deposit insurance amount under the Federal Credit Union Act (“FCUA”) will be \$250,000.</p> <p>(Sec. 136(b)(1))</p> <p>Assessments: The temporary increase in the standard maximum deposit insurance amount will not be taken into account by the National Credit Union Administration Board when setting assessments under the FCUA.</p> <p>(Sec. 136(b)(2))</p> <p>Borrowing Authorized: The National Credit Union Administration Board may request from the Secretary a loan in an amount to meet the obligations under this section.</p> <p>(Sec. 136(a)(3))</p> <p>Inflation Adjustments: The temporary increase in the standard maximum deposit insurance amount will not be used to make any inflation adjustment under the FDIA or the FCUA.</p> <p>(Sec. 136(c))</p>
<p>Budget Related Provisions</p>	<p>Reports by OMB: The Office of Management and Budget must report within 60 days of the first exercise of authority under the Act, and semiannually thereafter:</p> <ul style="list-style-type: none"> • An estimate of the cost of the purchases and guarantees of troubled assets; • Information used to derive the estimate, the impact on the deficit and debt, and a description of any outstanding commitments to purchase troubled assets; and • An analysis of how the estimate changed from the previous report. <p>(Sec. 202(a))</p> <p>Reports by CBO: The Congressional Budget Office will report within 45 days after receipt of the Office of Management and Budget’s report on the cost of the assets, valuation methods, and the impact on the budget deficit and public debt.</p> <p>(Sec. 202(b))</p> <p>President’s Budget: The President shall include an analysis of all activities under the Act in the previous year and estimates for the following year in the annual budget.</p> <p>(Sec. 203)</p>

EESA Provisions

<p>Tax Provisions</p>	<p>Gain or Loss from the Sale or Exchange of Certain Preferred Stock: Gain or loss from the sale or exchange of any applicable preferred stock by any applicable financial institution shall be treated as ordinary income or loss.</p> <p>(Sec. 301(a))</p> <p>Applicable preferred stock means any stock in the Federal National Mortgage Associations or the Federal Home Loan Mortgage Corporation which was held by an applicable financial institution on September 6, 2008 or sold on or after January 1, 2008 but before September 7, 2008.</p> <p>(Sec. 301(b))</p> <p>Applicable financial institution generally means any bank or other financial institution referred to in 582(c)(2) of the Internal Revenue Code of 1986 or a depository institution holding company.</p> <p>(Sec. 301(c))</p> <p>Regulatory Authority: The Treasury Department may prescribe guidance, regulations, and rules as necessary to carry out the purposes of the section.</p> <p>(Sec. 301(e))</p> <p>Taxation of Executive Compensation: No deduction shall be allowed to an applicable employer for any covered executive to the extent the amount of remuneration exceeds \$500,000. For a deferred deduction, no deduction will be allowed to the extent the amount of remuneration exceeds \$500,000 reduced by the executive remuneration for such applicable taxable year plus the portion of the deferred deduction executive remuneration for such services which was taken into account under this clause in a proceeding taxable year.</p> <p>(Section 302(a))</p> <p>Applicable employer means any employer from whom one or more troubled assets are acquired under the TARP if the aggregate amount of the assets so acquired for all taxable years exceeds \$300 million.</p> <p>(Section 302(a))</p> <p>Covered executive means any employee who is either the chief executive officer or the chief financial officer of the applicable corporation or who is one of the three highest compensated officers in that taxable year.</p> <p>(Sec. 302(a))</p>
<p>Taxation of Certain Deferred Compensation Payable by Tax Indifferent Parties:</p>	<p>Under complex rules, deferred compensation payable by certain foreign corporations and certain partnerships is includible in income when there is no substantial risk of forfeiture of rights to such compensation. In the case of deferred compensation whose amount is not determinable at the time it otherwise becomes includible in income under the preceding sentence, inclusion will be deferred until such amount becomes determinable, and the tax then imposed will be increased by the sum of 20% of the amount of compensation and interest for the period of income deferral. This provision applies generally to compensation for services rendered after December 31, 2008 and in the case of compensation for services performed before January 1, 2009, such compensation will be includible in income in the later of (1) the taxpayer's last taxable year beginning before 2018 or (2) the taxable year in which there is no substantial risk of forfeiture of the right to such compensation. Regulations and/or other guidance will be issued to permit changes to deferred compensation plans to conform to these new rules.</p> <p>(Sec. 801)</p>