DIGEST OF THE EMERGENCY

ECONOMIC STABALIZATION ACT

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CONTENTS

GLOSSARY

"Act" = the Emergency Economic Stabilization Act of 2008

"Board" = Board of Governors of the Federal Reserve System

"FDIC" = Federal Deposit Insurance Corporation

"Fed Chairman" = the Chairman of the Board

"FHFA" = Federal Housing Finance Agency (the regulator of Fannie Mae, Freddie Mac and the Federal Home Loan Bank System)

"FSRR" = the Financial Services Regulatory Relief Act of 2006

"Secretary" = Secretary of the Treasury

"SEC" = Securities and Exchange Commission

"TARP" = the Troubled Assets Relief Program created under the Act

INTRODUCTION

This Digest is designed to assist clients' understanding of the principal features of the Emergency Economic Stabilization Act of 2008. We have not created a "section by section analysis" of the legislation. You can find the Senate's section by section analysis at http://banking.senate.gov/public/_files/latestversionBill_sectionbysectionF.pdf. On the other hand, we have not tried to anticipate the questions that the legislation will raise, or the effect it will have on resolving the credit crisis. Instead, what we have done is created a topical digest of the legislation to help clients evaluate the principal features of the legislation and determine how these features will affect their business and legal affairs.

I. Troubled Assets Relief Program

Consistent with Secretary Paulson's original proposal, the heart of the Act authorizes the Secretary to establish TARP to purchase troubled assets from financial institutions, on such terms and conditions as are determined by the Secretary. The purchase price of the troubled assets held under TARP at any one time may not exceed $700 billion.

The "troubled assets" that the Secretary is authorized to purchase include residential or commercial mortgages and residential or commercial mortgage-backed securities, if they are originated or issued on or before March 14, 2008. Little attention has been given to the other "troubled assets" that the Secretary is also permitted to purchase, which are any other financial instrument that the Secretary, in consultation with the Fed Chairman, determines the purchase of which is necessary to promote financial market stability (if he communicates that determination to Congress). The Act gives the Secretary broad power to purchase various assets to promote financial market stability.

The "financial institutions" from which the Secretary may purchase troubled assets include any institution that:

- is established and regulated under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands, and

- has significant operations in the United States.

This definition includes foreign-owned banks that are licensed to operate U.S. branches.

A central bank of, or institution owned by, a foreign government is not a financial institution, but troubled assets held by a foreign financial authority or bank as a result of extending financing to financial institutions that have failed or defaulted on such financing qualify for purchase.

The Secretary has broad powers to make purchases on such terms and conditions as the Secretary determines. The final legislation does include, however, some restrictions and requirements regarding the method and pricing for the purchase of assets, which include:

(1) Unjust Enrichment. The Secretary must take steps necessary to prevent unjust enrichment of financial institutions participating in the program.

(2) Purchase Price. The purchase prices for troubled assets are limited as follows:

- with limited exceptions, the Secretary may not purchase an asset at a higher price than what the seller paid to purchase the asset; and

- the Secretary must make purchases at the lowest price that the Secretary determines to be consistent with the purposes of the legislation.

(3) Auctions. The Secretary must:

- use market mechanisms such as auctions or reverse auctions to make his purchases; or

- if the Secretary determines that the use of such market mechanisms is not feasible or appropriate, the Secretary may make direct purchases from individual institutions to ensure that prices paid for assets are reasonable and reflect the underlying value of the asset.

(4) Warrants. With exception for de minimus transactions with any one financial institution, the Secretary must receive from each financial institution selling assets under TARP:

- if the securities of the selling financial institution are traded on a national securities exchange, a warrant giving the right to the Secretary to receive nonvoting common stock or preferred stock in such financial institution, or voting stock with respect to which the Secretary agrees not to exercise voting power; or

- if securities of the selling financial institution are not traded on a national securities exchange, a warrant for common or preferred stock, or a senior debt instrument from such financial institution.

The purposes of the warrants and senior debt instruments are:

- to provide for reasonable benefit for taxpayers in equity appreciation in the case of a warrant or other equity security, or a reasonable interest rate premium, in the case of a debt instrument; and

- to provide additional protection for taxpayers against losses from sales of assets by the Secretary and the administrative expenses of TARP.

The warrants and senior debt instruments issued pursuant to this requirement must:

- be designed to effect their stated purpose;

- provide that if, after the warrant is received by the Secretary, the financial institution that issued the warrant is no longer listed or traded on a national securities exchange or securities association, the warrants will convert to senior debt, or contain appropriate protections for the Secretary to ensure

appropriate compensation for the value of the warrant, in an amount determined by the Secretary; and

- contain antidilution provisions to protect the value of the securities from market transactions such as stock splits, stock distributions, dividends and other distributions, mergers, and other forms of reorganization or recapitalization.

The Secretary may set the exercise price for any warrant, and the Secretary may sell, exercise, or surrender a warrant or any senior debt instrument to serve its purpose.

To facilitate market transparency, the Secretary must publicize information including the description, amounts, and pricing of assets acquired under TARP within 2 business days of a purchase, trade, or other disposition.

After purchasing troubled assets, the Secretary may manage the assets and exercise any rights belonging to the owner of such assets, including collection of mortgage payments. The Secretary may sell or enter into other financial transactions with respect to any troubled asset at any time, upon terms and conditions and at a price that the Secretary determines.

Although the Secretary has broad powers in his authority to hold, manage, and sell the troubled assets, he is required to hold and sell them in a way that minimizes any potential long-term negative impact. The Secretary must:

- hold assets to maturity or for resale for and until the Secretary determines that the market is optimal for selling such assets, in order to maximize the value for taxpayers; and

- sell such assets at a price that the Secretary determines, based on available financial analysis, will maximize return on investment for the Federal Government.

The Secretary may continue to hold assets after his authority to purchase troubled assets under TARP expires, so long as the assets were purchased or committed to be purchased during the term of his authority to do so.

TARP will be implemented through a new office, the Office of Financial Stability (the "OFS"), within the Office of Domestic Finance of the Department of the Treasury. The head of the OFS will be an Assistant Secretary of the Treasury, appointed by the President, with the advice and consent of the Senate (an interim Assistant Secretary may be appointed by the Secretary). TARP must be implemented in consultation 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. The Secretary must also coordinate, as appropriate, with foreign financial authorities and central banks for the establishment of programs similar to TARP by such authorities and central banks.

The Secretary is also encouraged to engage the private sector to participate in TARP, participate in purchases of troubled assets and invest in financial institutions. The Secretary may hire financial institutions to perform functions within TARP, in particular that of asset management. The FDIC is also eligible and must be considered for the role of asset manager for residential mortgage loans and residential mortgage-backed securities.

To implement TARP and the Act, the Secretary is authorized to take such actions he deems necessary, including:

- hiring of employees to administer the Act;
- entering into contracts, including service contracts;
- designating financial institutions as financial agents of the Federal Government to perform all such reasonable duties related the Act;
- establishing vehicles that are authorized to purchase, hold, and sell troubled assets and issue obligations; and
- issuing such regulations and other guidance as may be necessary or appropriate to define terms or carry out the Act.

Although the Secretary has broad powers to take actions he deems necessary to carry out TARP, he must establish implementation guidelines that will be subject to public scrutiny. The guidelines must address the following matters:

- mechanisms for purchasing troubled assets;
- methods for pricing and valuing troubled assets;
- procedures for selecting asset managers; and
- criteria for identifying troubled assets.

The guidelines must be published within 45 days after enactment of the Act (i.e., by November 17, 2008) or within 2 days after the first purchase under TARP.

Given the intent to provide the Secretary power to act quickly in the marketplace, the Act provides that the establishment of policies, procedures, and other administrative matters should not delay the Secretary commencing to purchase troubled assets.

To further facilitate quick implementation and the utilization of the private sector as asset managers, servicers, property managers, and other service providers or expert consultants, the Secretary may waive the potentially time consuming requirements of the Federal Acquisition Regulation (regulations issued to govern the acquisition process), if he determines that urgent

and compelling circumstances make compliance contrary to the public interest. The Secretary must submit any such determination, and the justification for such determination, to certain House and Senate committees within 15 days. If the Secretary waives a provision of the Federal Acquisition Regulation pertaining to minority contracting, he must develop and implement standards and procedures to include minorities, women, and minority and women-owned businesses in the relevant solicitation or contract.

II. Troubled Assets Insurance Program

The Act also requires the Secretary to establish a program to guaranty, in lieu of purchasing, troubled assets eligible for inclusion in TARP. The type of guaranties and premiums may be determined by category or class of troubled assets to be guaranteed. Premiums are to be risk-based, and designed to create reserves sufficient to meet anticipated claims. The guaranties may be partial or full, and on such terms and conditions as are determined by the Secretary, provided such terms and conditions are consistent with the purposes of the Act.

The purposes of the insurance alternative are to eliminate the immediate outlay required to purchase assets and to minimize taxpayer expense by collecting premiums sufficient to cover the expected claims. The details of the insurance program are left to the Secretary in implementing the program.

III. Oversight Provisions

A common concern among lawmakers evaluating the Secretary's initial proposal was the need for extensive oversight. The Act empowers an array of governmental entities to examine and audit the actions taken by the Secretary under the new law, as detailed below.

The Act creates a Financial Stability Oversight Board to review administration of the new law and serve as an advisory council to the Treasury Department as TARP is implemented. The Board will consist of the Fed Chairman, the Secretary, the Director of the FHFA, the Chairman of the SEC, and the Secretary of Housing and Urban Development. The group will meet monthly and report back to the appropriate Congressional appropriations committees on at least a quarterly basis.

The Act also requires that the Secretary of the Treasury, within sixty days of the first exercise of TARP or new guarantee authority, and every 30 days thereafter, provide a report to Congress discussing the actions taken up to that point, the parties to those transactions, and a current financial assessment of TARP. In addition, each time the Secretary makes an incremental $50 billion commitment to purchase troubled assets, a report must be provided to Congress within a week detailing each agreement made, insurance contracts constructed, and the nature of the assets purchased and respective forecasted costs and liabilities. The Secretary is also required under the Act to make available to the public a description of assets acquired. Such disclosure must be made within two days of each acquisition.

This Act creates a new five person Congressional Oversight Panel. Members will be selected by the Congress, and the panel will review the current state of financial markets and the Secretary's performance under TARP. The Oversight Panel will report its findings to Congress on a monthly basis. The Panel will also submit a special, more comprehensive report by no later than January 20, 2009, detailing the current state of the regulatory system and provide findings as to whether more extensive regulation is warranted, which is discussed in Part VI.

The Comptroller General of the United States is required under this legislation to contribute oversight of TARP's implementation, and to report findings every sixty days to Congress. In addition, the Comptroller General will audit TARP annually and will undertake a study to determine the extent to which the sudden deleveraging of financial institutions was a factor behind the current economic crisis.

TARP will also be monitored by a Special Inspector General, appointed by the President and confirmed by the Senate. The Special Inspector General will supervise and investigate the actions taken by the Secretary of the Treasury under this legislation and will report those findings to Congress quarterly.

The Act requires the Federal Reserve to provide a detailed report to Congress within a week of exercising its emergency lending authority under paragraph three of the Federal Reserve Act. The Federal Reserve must also supply Congress with subsequent periodic updates

regarding the status of such loans, the value of the collateral held by the Federal Reserve, and the projected cost to the taxpayers.

The Act provides that the actions of the Secretary of the Treasury are reviewable pursuant to chapter 7 of Title 5 of U.S. Code, which authorizes judicial review of federal agency actions, and any acts deemed to be arbitrary, capricious or an abuse of discretion may be overturned by the courts.

IV. Homeownership Protection

Provisions to Reduce Foreclosures

With respect to mortgages, mortgage-backed securities and other assets secured by residential real estate (including multi-family housing) held, owned or controlled by the FHFA as conservator of Freddie Mac and Fannie Mae, the FDIC, the Board with respect to assets held, owned or controlled by any Federal Reserve Bank (the "Federal property managers"), or acquired by the Secretary under TARP, a plan shall be implemented that:

- seeks to maximize assistance for homeowners; and
- encourages the servicers of underlying mortgages (considering net present value to taxpayers) to take advantage of the HOPE for Homeowners Program or other available programs to minimize foreclosures.

With respect to residential mortgage loans, Servicer modifications may include:

- reduction in interest rates;
- reduction of loan principal; and
- term extensions.

The Secretary is also authorized to use loan guarantees and credit enhancements to facilitate loan modifications.

With respect to investment contracts (e.g., mortgage-backed securities, collateralized debt obligations, credit default swaps), the Secretary will consent where appropriate (considering net present value to taxpayers) to reasonable requests for loan modifications to prevent foreclosures. If a Federal property manager does not own the mortgage loan but rather holds interests in pools of mortgage loans, the Federal property manager shall encourage implementation by loan servicers of the loan modifications measures.

In considering any modification for a pooled residential mortgage, subject to the terms of any applicable contract, the servicer owes a duty to determine whether the net present value of the payments under a modification is likely to be greater than the anticipated net recovery from foreclosure for all levels or classes of investors or beneficial holders of interests in the pool, rather than to individual investors or classes. *This provision is not limited to loans purchased under TARP or otherwise controlled by Federal property managers*.

Tenant Protection

In the case of mortgages on residential properties, modifications shall:

- ensure the continuation of existing Federal, State and local rental subsidies and protections; and

- take into account the need for funds to maintain decent and safe rental properties.

The Secretary will coordinate with the Federal property managers that hold troubled assets to identify opportunities for the acquisition of classes of troubled assets so that the Secretary may improve the loan modification and restructuring process and, where permissible, permit *bona fide* tenants who are current on their rent to remain in their homes.

Limitations

The Act also contains language that limits the scope of the foreclosure reduction and tenant protection provisions:

- The requirements of these provisions do not supersede any other requirement imposed on Federal property managers under applicable law.

- The terms of mortgages purchased by the Secretary shall remain subject to all claims and defenses that would otherwise apply on the part of the mortgagor.

- Exercise of the authority of the Secretary shall not impair any existing claims or defenses that would otherwise apply with respect to persons other than the Secretary.

Loan modifications entered into pursuant to the Act would, obviously, change the terms and existing claims and defenses.

Expansion of HOPE for Homeowners Program

The legislation expands the Hope for Homeowners Program in the following ways:

- the Program is now available to borrowers who are likely to have a 31 percent ratio of mortgage debt to income as a result of a reset, rather than only those who have such a ratio as of March 31, 2008;

- the Board was given the discretion to raise the maximum principal amount of a refinanced eligible mortgage to be insured above the previous level of 90 percent of the appraisal value;

- the Secretary will be permitted to make payments on subordinate mortgages in lieu of future appreciation payments; and

- expands the use of Hope Bonds proceeds to make payments to the holders of subordinated mortgages.

Tax Implications for Homeowners

The existing exclusion from taxable income of any amount representing discharge of indebtedness on qualified principal residence sold before January 1, 2010, is extended to January 1, 2013.

V. Executive Compensation and Corporate Governance

The requirements of the Act concerning executive compensation are applicable to any financial institution that sells troubled assets to the Secretary under TARP.

Limitations on Compensation

Financial institutions using the direct purchase program are required to meet appropriate standards set by the Secretary for executive compensation and corporate governance, which shall be effective for the duration of the period that the Secretary holds an equity or debt position in the financial institution. Standards are to include:

- limits on compensation that exclude incentives for senior executive officers to take unnecessary and excessive risks that threaten the value of the financial institution during the time the Secretary holds an equity or debt position in the financial institution;

- claw back provisions with respect to any bonus or incentive compensation paid to a senior executive officer based on any statements of earnings, gains or other criteria that are later proven to be materially inaccurate; and

- a prohibition from making any golden parachute payment to senior executive officers while the Secretary holds a debt or equity position in the financial institution.

"Senior executive officer" is defined as one of the top 5 highly paid executives of a public company whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934, and any regulations issued thereunder, and counterparts in non-public companies.

If auction purchases from a financial institution under TARP exceed $300,000,000 in the aggregate, the Secretary shall prohibit 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.

The Secretary is required to issue guidance to carry out these limitations within 2 months following enactment of the Act, which will be effective upon issuance.

The auction purchases provisions are to apply only to arrangements entered into during the period which the authority to purchase assets under TARP is in effect.

Tax Provisions

The Act also amends the Internal Revenue Code concerning remuneration to top executives and golden parachute payments.

If auction purchases from a financial institution and TARP exceed $300,000,000, the deduction limitation on compensation to any executive is reduced from $1million to $500,000. It also limits to $500,000 deductions for "deferred deduction executive remuneration," which are amounts for executive remuneration for services where the deduction is allowed in a subsequent year. This amendment applies to taxable years ending on or after date of enactment of the Act.

Special rules apply to determine who is a covered executive under this provision and what is executive remuneration. Covered executives continue to be treated as covered executives for all subsequent taxable years in which a deferred deduction executive remuneration would be deductible.

The Act also extends existing limits on deductions of, and excise taxes on, golden parachute payments to covered executives of applicable employers who participate in the auction program, regardless of whether a change of control or sale of business is involved. The amendment concerning golden parachute payments applies to payments with respect to severances occurring while TARP is in effect.

VI. Reform Recommendations

Regulatory Modernization Report

The Act provides that the Secretary shall, within 60 days of the enactment of the legislation, review the current state of the financial markets and regulatory system and submit to Congress a written report. It is expected that this report will analyze the current state of the regulatory system, assess its effectiveness at overseeing the participants in the financial markets, which is to include the over-the-counter swap market and government-sponsored enterprises, and provide recommendations for improvement, including:

- whether or not any currently unregulated participants in the financial market should become subject to the regulatory system; and
- recommendations concerning the enhancement of the clearing and settling of over-the-counter swaps

The Secretary is to also provide the rationale used in reaching the recommendations being made.

Market Transparency – Disclosure

The Secretary is required to determine whether or not the public disclosure currently required of financial institutions provides sufficient information as to the true financial position and condition of the institutions. The specific areas of disclosure being examined by the Secretary include:

- off-balance sheet transactions;
- derivatives instruments;
- contingent liabilities; and
- and other similar sources of potential exposure to financial institutions.

If the Secretary determines that the disclosure being made for these purposes is not sufficient, the Secretary is charged with making recommendations for additional disclosure requirements to the relevant regulators.

Study and Report on Margin Authority

The legislation requires the Comptroller General to undertake a study to determine the extent to which the leveraging and de-leveraging of financial institutions was a factor in creating the current financial crisis. The study is expected to cover:

- an analysis of the roles and responsibilities, with respect to monitoring leverage and their obligations to act to curtail excessive leverage, of:
  - the Board;
  - the SEC;
  - the Secretary; and
  - other Federal banking agencies
- an analysis of the authority of the Board to regulate leverage, which includes it's setting of margin requirements, and the process it undertakes to determine whether or not to use that authority; and
- an analysis of the Board's actual usage of its margin authority.

The report is also to include recommendations with respect to the authority of the Board to both the Board and the appropriate committees of Congress. It is due no later than June 1, 2009, and is to be submitted by the Comptroller General to the Committee on Banking, Housing and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives and the Congressional Oversight Panel established under the Act.

Congressional Oversight Panel – Special Report on Regulatory Reform

By no later than January 20, 2009, the Oversight Panel is required to submit a report on regulatory reform analyzing the following:

- the current state of the regulatory system; and
- the effectiveness of the regulatory system at overseeing the participants in the financial system and protecting consumers.

The report is to provide recommendations regarding the following:

- whether or not any currently unregulated participants in the financial market should become subject to the regulatory system; and
- whether there are any gaps in existing consumer protections.

The report is to provide the rationale underlying each of its recommendations.

The report appears to either be duplicative of or a back up to the report required of the Secretary described above, but it includes one additional topic: consumer protection.

Study of Mark-to-Market Accounting

The legislation requires the SEC, in consultation with the Board and the Secretary to undertake a study on the mark-to-market accounting standards currently provided in Statement Number 157 of the Financial Accounting Standards Board, as such standards are applicable to financial institutions, including depository institutions.

This Report is to be submitted to Congress within 90 days after the date of the enactment of the Act. The report is to contain the findings and determinations of the Commission and provide administrative and legislative recommendations as the Commission deems appropriate and necessary.

The report is, at a minimum, required to consider:

- the effects of such accounting standards on a financial institution's balance sheet;
- the impacts of such accounting on bank failures in 2008;
- the impact such standards have had on the quality of financial information available to investors;
- the process used by the Financial Accounting Standards Board in developing its accounting standards;
- the advisability and feasibility of making modifications to such standards; and
- alternative accounting standards to those provided in Statement Number157.

The Act also reiterates the authority of the SEC to suspend the application of the mark-to-market requirements of Statement Number 157 of the Financial Accounting Standards Board for any issuer or any class or category of transaction.

In a related development, on September 30, 2008, the SEC's Office of the Chief Accountant issued several interpretations (together, the "Interpretation") to clarify the requirements for determining fair value for securities in an inactive or illiquid market. Those interpretations address some of the issues to be covered by the required report.

The Interpretation clarifies that "when an active market for a security does not exist" management may use "estimates that incorporate current market participants' expectations of future cash flow and include appropriate risk premiums." In such cases the Chief Accountant indicated that cash flows "would be considered alongside other relevant information."

The Interpretation states that "distressed or forced liquidation sales are not orderly transactions," and thus may not be determinative in measuring fair value. Determining when a transaction is a forced or disorderly sale may require significant judgment and analysis. The

Interpretation also notes that while a transaction in an inactive market would not be determinative of fair value, it *would be* an input required to be considered in determining fair value. Large bid and asked spreads and a small number of buyers were cited by the Chief Accountant as evidence of an inactive market.

The Chief Accountant indicated in the Interpretation that if an active market does not exist, brokers can rely to a greater extent on information available only to the broker that may not be observable by the issuer. Companies may also consider the nature of the broker's quote (i.e., is it an indicative price or a binding offer).

On October 3 the FASB issued a proposed for comment Staff Position ("FSP") to amend FASB 157 to clarify its application in an inactive market and provide an example of how to determine fair value when there is no active market. Comments on the proposed FSP are due on October 9, 2008.

VII. FDIC Amendments

The Act prohibits any person or business from falsely representing or implying that a deposit liability, obligation, certificate or share is insured or guaranteed by the FDIC. Using the terms "Federal Deposit," "Federal Deposit Insurance," and related abbreviations and symbols, in a business name, advertisement, solicitation or other document, is such an implication. The proposed law would also prohibit representing that a deposit, obligation, certificate or share is insured when it is not, and misrepresenting the extent of any applicable insurance.

The penalties for violating these prohibitions include termination of insurance for insured institutions, cease and desist orders and civil money penalties. The law is to be enforced by federal financial regulators (i.e., the Office of the Comptroller of the Currency, the Board, the Office of Thrift Supervision and the FDIC) with respect to the financial institutions they supervise, and by the FDIC with respect to everyone else.

To remove potential barriers to FDIC-arranged takeovers of troubled financial institutions, the Act renders unenforceable any standstill or confidentiality agreements that restrict the ability of a person to acquire, or to use previously disclosed information in connection with an offer to acquire, all or part of a financial institution in receivership or in danger of failure.

Finally, the legislation will temporarily increase the maximum deposit insurance limit to $250,000 per depositor, through December 31, 2009, for both banks and credit unions. Financial institutions' insurance assessments are not being increased to pay for the higher insurance limits. Instead, the FDIC and the National Credit Union Administration Board are authorized to borrow from the Treasury Department as needed to fund insurance payouts. This temporary increase will not affect inflation adjustments to the deposit insurance limit that are scheduled to start in 2010.

VIII. Budget Issues

The Act increases the statutory limit for the public debt to $11.315 trillion. While the national debt will immediately rise by $700 billion, the Congressional Budget Office argues that the net budgetary impact will be "substantially smaller" for the reasons described below.

To implement TARP, including the payment of the purchase price for troubled assets and administrative expenses of purchasing, insuring, holding, and selling the assets, the Secretary may use the proceeds of the sale of debt to the public. Although the federal debt will increase by up to $700 billion, plus administrative costs, Congress hopes to recover the expenditures from three sources:

- sale or other realization of the assets;
- sale or other realization of the warrants and debt instruments from participating financial institutions; and
- recoupment plan requirements under the Act.

Revenues from the troubled assets purchased and from the sale, exercise, or surrender of warrants or senior debt instruments acquired shall be paid into the general fund of the Treasury for reduction of the public debt. If those sources of revenue do not cover the full cost of TARP, the Act requires that, upon the expiration of the 5-year period beginning upon enactment:

- the Director of the Office of Management and Budget, in consultation with the Director of the Congressional Budget Office, must submit a report to the Congress on the net cost of TARP; and
- if the report reflects a net loss in TARP, the President must submit a legislative proposal that recoups from the financial industry an amount equal to the shortfall in order.

The Act requires only that the President submit a plan to offset losses. Additional Congressional action would be required at that time to implement a recoupment plan.

The newly added tax provisions of the legislation are estimated to cost an additional $110.4 billion by 2018, according to a recent study by the Congressional Joint Committee on Taxation. Only $3.4 billion stems from the portion of the bill directly related to the financial crisis. Although the energy provisions are paid for, the AMT adjustment and certain tax incentives extensions are estimated to cost $107 billion over the following decade.

Title II of the Act scores the outlays as emergency funding, meaning that the cost of the bill need not be offset by spending reductions. It also requires that in his annual budget, the President provide estimates of the annual costs associated with the Act.

IX. Miscellaneous Provisions

The Act requires that all federal financial regulatory agencies shall cooperate with the Federal Bureau of Investigation and other law enforcement agencies investigating financial products. This provision is a reiteration of existing law.

The Act accelerates the effectiveness of the FSSR from October 1, 2011 to October 1, 2008. The FSRR authorizes Federal Reserve Banks (i) to pay interest on reserves maintained by a depository institution and (ii) to reduce to 0% the reserves required to be maintained by a depository institution against its transaction accounts.

The Act makes technical corrections to the Truth in Lending Act, effectively clarifying that a second disclosure statement must be provided at the time of settlement or consummation of the transaction in the event an initial disclosure statement, provided with respect to an extension of credit, contains an annual percentage rate that is subsequently rendered inaccurate.

The Act directs the Secretary to use funds appropriated by the Act to reimburse the Exchange Stabilization Fund for any funds used in connection with the temporary guaranty program for the money market mutual fund industry announced by the Treasury on September 19, 2008. The Secretary is further restricted from using funds from the Exchange Stabilization Fund for any further guaranty programs for money market mutual funds.

Finally, the Act provides that, for tax purposes, gains or losses from the sale or exchange of preferred stock in Fannie Mae or Freddie Mac by any financial institution or depository institution holding company shall be treated as ordinary income or loss, so long as the preferred stock was:

(a) held by the financial institution or depository institution holding company on September 6, 2008, and at all times from September 6, 2008 until the date of the sale or exchange the owner-entity was a financial institution or depository institution holding company; or

(b) sold or exchanged by the financial institution or depository institution holding company on or after January 1, 2008 and before September 7, 2008 and at the time of the sale or exchange the owner-entity was a financial institution or depository institution holding company.

The Secretary may extend this favorable tax treatment of this section to exchanges or sales of preferred stock in Fannie Mae or Freddie Mac by a financial institution or depository institution holding company even if such financial institution or depository institution holding company did not hold the preferred stock on September 6, 2008, so long as the financial institution's or depository institution holding company's tax basis in the preferred stock is the same as that of the person which held the preferred stock on September 6, 2008 and the financial institution or depository institution holding company exchanges or sells the preferred stock subsequent to September 6, 2008.