

is subject to a licensing system established by the Secretary under section 5107 of this title, if the Secretary finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this chapter or any regulation prescribed by the Secretary under this chapter or order issued under subsection (c).

(2) Maximum amount of penalty

The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$25,000.

(Pub. L. 110-289, div. A, title V, §1514, July 30, 2008, 122 Stat. 2821.)

§ 5114. State examination authority

In addition to any authority allowed under State law a State licensing agency shall have the authority to conduct investigations and examinations as follows:

(1) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the State licensing agency may review, investigate, or examine any loan originator licensed or required to be licensed under this chapter, as often as necessary in order to carry out the purposes of this chapter.

(2) Each such loan originator shall make available upon request to the State licensing agency the books and records relating to the operations of such originator. The State licensing agency may have access to such books and records and interview the officers, principals, loan originators, employees, independent contractors, agents, and customers of the licensee concerning their business.

(3) The authority of this section shall remain in effect, whether such a loan originator acts or claims to act under any licensing or registration law of such State, or claims to act without such authority.

(4) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(Pub. L. 110-289, div. A, title V, §1515, July 30, 2008, 122 Stat. 2823.)

§ 5115. Reports and recommendations to Congress

(a) Annual reports

Not later than 1 year after July 30, 2008, and annually thereafter, the Secretary shall submit a report to Congress on the effectiveness of the provisions of this chapter, including legislative recommendations, if any, for strengthening consumer protections, enhancing examination standards, streamlining communication between all stakeholders involved in residential mortgage loan origination and processing, and establishing performance based bonding requirements for mortgage originators or institutions that employ such brokers.

(b) Legislative recommendations

Not later than 6 months after July 30, 2008, the Secretary shall make recommendations to Con-

gress on legislative reforms to the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.], that the Secretary deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs.

(Pub. L. 110-289, div. A, title V, §1516, July 30, 2008, 122 Stat. 2824.)

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b), is Pub. L. 93-533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

§ 5116. Study and reports on defaults and foreclosures

(a) Study required

The Secretary shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as is available.

(b) Preliminary report to Congress

Not later than 6 months after July 30, 2008, the Secretary shall submit to Congress a preliminary report regarding the study required by this section.

(c) Final report to Congress

Not later than 12 months after July 30, 2008, the Secretary shall submit to Congress a final report regarding the results of the study required by this section, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to provide targeted assistance to populations with the highest risk of potential default or foreclosure.

(Pub. L. 110-289, div. A, title V, §1517, July 30, 2008, 122 Stat. 2824.)

CHAPTER 52—EMERGENCY ECONOMIC STABILIZATION

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§ 5201. Purposes

The purposes of this chapter are—

- (1) to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States; and
- (2) to ensure that such authority and such facilities are used in a manner that—
 - (A) protects home values, college funds, retirement accounts, and life savings;
 - (B) preserves homeownership and promotes jobs and economic growth;
 - (C) maximizes overall returns to the taxpayers of the United States; and
 - (D) provides public accountability for the exercise of such authority.

(Pub. L. 110-343, div. A, § 2, Oct. 3, 2008, 122 Stat. 3766.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 110-343, div. A, § 1(a), Oct. 3, 2008, 122 Stat. 3765, provided that: “This division [enacting this chapter, amending sections 1715z-23, 1818, 1823, and 1828 of this title, section 5315 of Title 5, Government Organization and Employees, section 1638 of Title 15, Commerce and Trade, sections 108, 162, and 280G of Title 26, Internal Revenue Code, and sections 301, 1105, and 3101 of Title 31, Money and Finance, enacting provisions set out as notes under section 1638 of Title 15, sections 108, 162, and 280G of Title 26, and section 1105 of Title 31, and amending provisions set out as a note under section 461 of this title] may be cited as the ‘Emergency Economic Stabilization Act of 2008.’”

§ 5202. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Appropriate committees of Congress

The term “appropriate committees of Congress” 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.

(2) Board

The term “Board” means the Board of Governors of the Federal Reserve System.

(3) Congressional support agencies

The term “congressional support agencies” means the Congressional Budget Office and the Joint Committee on Taxation.

(4) Corporation

The term “Corporation” means the Federal Deposit Insurance Corporation.

(5) Financial institution

The term “financial institution” means any institution, including, but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company, 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 having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government.

(6) Fund

The term “Fund” means the Troubled Assets Insurance Financing Fund established under section 5212 of this title.

(7) Secretary

The term “Secretary” means the Secretary of the Treasury.

(8) TARP

The term “TARP” means the Troubled Asset Relief Program established under section 5211 of this title.

(9) Troubled assets

The term “troubled assets” 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.

(Pub. L. 110-343, div. A, §3, Oct. 3, 2008, 122 Stat. 3766.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

SUBCHAPTER I—TROUBLED ASSETS RELIEF PROGRAM

§ 5211. Purchases of troubled assets

(a) Offices; authority

(1) Authority

The Secretary is authorized to establish the Troubled Asset Relief Program (or “TARP”) to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this chapter and the policies and procedures developed and published by the Secretary.

(2) Commencement of program

Establishment of the policies and procedures and other similar administrative requirements imposed on the Secretary by this chapter are not intended to delay the commencement of the TARP.

(3) Establishment of Treasury office

(A) In general

The Secretary shall implement any program under paragraph (1) through an Office of Financial Stability, established for such purpose within the Office of Domestic Finance of the Department of the Treasury, which office shall be headed by an Assistant Secretary of the Treasury, appointed by the President, by and with the advice and consent of the Senate, except that an interim Assistant Secretary may be appointed by the Secretary.

(B) Omitted

(b) Consultation

In exercising the authority under this section, the Secretary shall consult with the Board, the Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairman of the National Credit Union Administration Board, and the Secretary of Housing and Urban Development.

(c) Necessary actions

The Secretary is authorized to take such actions as the Secretary deems necessary to carry out the authorities in this chapter, including, without limitation, the following:

- (1) The Secretary shall have direct hiring authority with respect to the appointment of employees to administer this chapter.

- (2) Entering into contracts, including contracts for services authorized by section 3109 of title 5.

- (3) Designating financial institutions as financial agents of the Federal Government, and such institutions shall perform all such reasonable duties related to this chapter as financial agents of the Federal Government as may be required.

- (4) In order to provide the Secretary with the flexibility to manage troubled assets in a manner designed to minimize cost to the taxpayers, establishing vehicles that are authorized, subject to supervision by the Secretary, to purchase, hold, and sell troubled assets and issue obligations.

- (5) Issuing such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this chapter.

(d) Program guidelines

Before the earlier of the end of the 2-business-day period beginning on the date of the first purchase of troubled assets pursuant to the authority under this section or the end of the 45-day period beginning on October 3, 2008, the Secretary shall publish program guidelines, including the following:

- (1) Mechanisms for purchasing troubled assets.
- (2) Methods for pricing and valuing troubled assets.
- (3) Procedures for selecting asset managers.
- (4) Criteria for identifying troubled assets for purchase.

(e) Preventing unjust enrichment

In making purchases under the authority of this chapter, the Secretary shall take such steps as may be necessary to prevent unjust enrichment of financial institutions participating in a program established under this section, including by preventing the sale of a troubled asset to the Secretary at a higher price than what the seller paid to purchase the asset. This subsection does not apply to troubled assets acquired in a merger or acquisition, or a purchase of assets from a financial institution in conservatorship or receivership, or that has initiated bankruptcy proceedings under title 11.

(Pub. L. 110-343, div. A, title I, §101, Oct. 3, 2008, 122 Stat. 3767.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (2), (c), and (e), was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section is comprised of section 101 of div. A of Pub. L. 110-343. Subsec. (a)(3)(B) of section 101 of div. A of Pub. L. 110-343 amended section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance.

§ 5212. Insurance of troubled assets**(a) Authority****(1) In general**

If the Secretary establishes the program authorized under section 5211 of this title, then the Secretary shall establish a program to guarantee troubled assets originated or issued prior to March 14, 2008, including mortgage-backed securities.

(2) Guarantees

In establishing any program under this subsection, 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.

(3) Extent of guarantee

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 percent 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 this chapter.

(b) Reports

Not later than 90 days after October 3, 2008, the Secretary shall report to the appropriate committees of Congress on the program established under subsection (a).

(c) Premiums**(1) In general**

The Secretary shall collect premiums from any financial institution participating in the program established under subsection (a). Such premiums shall be in an amount that the Secretary determines necessary to meet the purposes of this chapter and to provide sufficient reserves pursuant to paragraph (3).

(2) Authority to base premiums on product risk

In establishing any premium under paragraph (1), the Secretary may provide for variations in such 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 program established under this section. The methodology shall ensure that the premium is consistent with paragraph (3).

(3) Minimum level

The premiums referred to in paragraph (1) shall be set by the Secretary at a level necessary to create reserves sufficient to meet anticipated claims, based on an actuarial analysis, and to ensure that taxpayers are fully protected.

(4) Adjustment to purchase authority

The purchase authority limit in section 5225 of this title shall be reduced by an amount equal to the difference between the total of

the outstanding guaranteed obligations and the balance in the Troubled Assets Insurance Financing Fund.

(d) Troubled Assets Insurance Financing Fund**(1) Deposits**

The Secretary shall deposit fees collected under this section into the Fund established under paragraph (2).

(2) Establishment

There is established a Troubled Assets Insurance Financing Fund that shall consist of the amounts collected pursuant to paragraph (1), and any balance in such fund shall be invested by the Secretary in United States Treasury securities, or kept in cash on hand or on deposit, as necessary.

(3) Payments from Fund

The Secretary shall make payments from amounts deposited in the Fund to fulfill obligations of the guarantees provided to financial institutions under subsection (a).

(Pub. L. 110-343, div. A, title I, § 102, Oct. 3, 2008, 122 Stat. 3768.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3) and (c)(1), was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5213. Considerations

In exercising the authorities granted in this chapter, the Secretary shall take into consideration—

(1) protecting the interests of taxpayers by maximizing overall returns and minimizing the impact on the national debt;

(2) 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;

(3) the need to help families keep their homes and to stabilize communities;

(4) 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 this chapter;

(5) 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 this chapter;

(6) providing financial assistance to financial institutions, including those serving low- and moderate-income populations and other underserved communities, and that have assets less than \$1,000,000,000, 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 institu-

tions to at least an adequately capitalized level;

(7) 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;

(8) protecting the retirement security of Americans by purchasing troubled assets held by or on behalf of an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B) of title 26, except that such authority shall not extend to any compensation arrangements subject to section 409A of such title; and

(9) the utility of purchasing other real estate owned and instruments backed by mortgages on multifamily properties.

(Pub. L. 110-343, div. A, title I, § 103, Oct. 3, 2008, 122 Stat. 3770.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5214. Financial Stability Oversight Board

(a) Establishment

There is established the Financial Stability Oversight Board, which shall be responsible for—

(1) reviewing the exercise of authority under a program developed in accordance with this chapter, including—

(A) policies implemented by the Secretary and the Office of Financial Stability created under sections 5211 and 5212 of this title, 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

(B) the effect of such actions in assisting American families in preserving home ownership, stabilizing financial markets, and protecting taxpayers;

(2) making recommendations, as appropriate, to the Secretary regarding use of the authority under this chapter; and

(3) reporting any suspected fraud, misrepresentation, or malfeasance to the Special Inspector General for the Troubled Assets Relief Program or the Attorney General of the United States, consistent with section 535(b) of title 28.

(b) Membership

The Financial Stability Oversight Board shall be comprised of—

(1) the Chairman of the Board of Governors of the Federal Reserve System;

(2) the Secretary;

(3) the Director of the Federal Housing Finance Agency;

(4) the Chairman of the Securities Exchange Commission; and

(5) the Secretary of Housing and Urban Development.

(c) Chairperson

The chairperson of the Financial Stability Oversight Board shall be elected by the members of the Board from among the members other than the Secretary.

(d) Meetings

The Financial Stability Oversight Board shall meet 2 weeks after the first exercise of the purchase authority of the Secretary under this chapter, and monthly thereafter.

(e) Additional authorities

In addition to the responsibilities described in subsection (a), the Financial Stability Oversight Board shall have the authority to ensure that the policies implemented by the Secretary are—

(1) in accordance with the purposes of this chapter;

(2) in the economic interests of the United States; and

(3) consistent with protecting taxpayers, in accordance with section 5223(a) of this title.

(f) Credit review committee

The Financial Stability Oversight Board may appoint a credit review committee for the purpose of evaluating the exercise of the purchase authority provided under this chapter and the assets acquired through the exercise of such authority, as the Financial Stability Oversight Board determines appropriate.

(g) Reports

The Financial Stability Oversight Board shall report to the appropriate committees of Congress and the Congressional Oversight Panel established under section 5233 of this title, not less frequently than quarterly, on the matters described under subsection (a)(1).

(h) Termination

The Financial Stability Oversight Board, and its authority under this section, shall terminate on the expiration of the 15-day period beginning upon the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 5212 of this title.

(Pub. L. 110-343, div. A, title I, § 104, Oct. 3, 2008, 122 Stat. 3770.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5215. Reports

(a) In general

Before the expiration of the 60-day period beginning on the date of the first exercise of the authority granted in section 5211(a) of this title,

or of the first exercise of the authority granted in section 5212 of this title, whichever occurs first, and every 30-day period thereafter, the Secretary shall report to the appropriate committees of Congress, with respect to each such period—

(1) an overview of actions taken by the Secretary, including the considerations required by section 5213 of this title and the efforts under section 5219 of this title;

(2) the actual obligation and expenditure of the funds provided for administrative expenses by section 5228 of this title during such period and the expected expenditure of such funds in the subsequent period; and

(3) a detailed financial statement with respect to the exercise of authority under this chapter, including—

(A) all agreements made or renewed;

(B) all insurance contracts entered into pursuant to section 5212 of this title;

(C) all transactions occurring during such period, including the types of parties involved;

(D) the nature of the assets purchased;

(E) all projected costs and liabilities;

(F) operating expenses, including compensation for financial agents;

(G) the valuation or pricing method used for each transaction; and

(H) a description of the vehicles established to exercise such authority.

(b) Tranche reports to Congress

(1) Reports

The Secretary shall provide to the appropriate committees of Congress, at the times specified in paragraph (2), a written report, including—

(A) a description of all of the transactions made during the reporting period;

(B) a description of the pricing mechanism for the transactions;

(C) a justification of the price paid for and other financial terms associated with the transactions;

(D) a description of the impact of the exercise of such authority on the financial system, supported, to the extent possible, by specific data;

(E) a description of challenges that remain in the financial system, including any benchmarks yet to be achieved; and

(F) an estimate of additional actions under the authority provided under this chapter that may be necessary to address such challenges.

(2) Timing

The report required by this subsection shall be submitted not later than 7 days after the date on which commitments to purchase troubled assets under the authorities provided in this chapter first reach an aggregate of \$50,000,000,000 and not later than 7 days after each \$50,000,000,000 interval of such commitments is reached thereafter.

(c) Regulatory modernization report

The Secretary shall review the current state of the financial markets and the regulatory system and submit a written report to the appro-

appropriate committees of Congress not later than April 30, 2009, analyzing the current state of the regulatory system and its effectiveness at overseeing the participants in the financial markets, including the over-the-counter swaps market and government-sponsored enterprises, and providing recommendations for improvement, including—

(1) recommendations regarding—

(A) whether any participants in the financial markets that are currently outside the regulatory system should become subject to the regulatory system; and

(B) enhancement of the clearing and settlement of over-the-counter swaps; and

(2) the rationale underlying such recommendations.

(d) Sharing of information

Any report required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(e) Sunset

The reporting requirements under this section shall terminate on the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 5212 of this title.

(Pub. L. 110-343, div. A, title I, §105, Oct. 3, 2008, 122 Stat. 3771.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3) and (b)(1)(F), (2), was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5216. Rights; management; sale of troubled assets; revenues and sale proceeds

(a) Exercise of rights

The Secretary may, at any time, exercise any rights received in connection with troubled assets purchased under this chapter.

(b) Management of troubled assets

The Secretary shall have authority to manage troubled assets purchased under this chapter, including revenues and portfolio risks therefrom.

(c) Sale of troubled assets

The Secretary may, at any time, upon terms and conditions and at a price determined by the Secretary, sell, or enter into securities loans, repurchase transactions, or other financial transactions in regard to, any troubled asset purchased under this chapter.

(d) Transfer to Treasury

Revenues of, and proceeds from the sale of troubled assets purchased under this chapter, or from the sale, exercise, or surrender of warrants

or senior debt instruments acquired under section 5223 of this title shall be paid into the general fund of the Treasury for reduction of the public debt.

(e) Application of sunset to troubled assets

The authority of the Secretary to hold any troubled asset purchased under this chapter before the termination date in section 5230 of this title, or to purchase or fund the purchase of a troubled asset under a commitment entered into before the termination date in section 5230 of this title, is not subject to the provisions of section 5230 of this title.

(Pub. L. 110-343, div. A, title I, §106, Oct. 3, 2008, 122 Stat. 3773.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5217. Contracting procedures

(a) Streamlined process

For purposes of this chapter, the Secretary may waive specific provisions of the Federal Acquisition Regulation upon a determination that urgent and compelling circumstances make compliance with such provisions contrary to the public interest. Any such determination, and the justification for such determination, shall be submitted to the Committees on Oversight and Government Reform and Financial Services of the House of Representatives and the Committees on Homeland Security and Governmental Affairs and Banking, Housing, and Urban Affairs of the Senate within 7 days.

(b) Additional contracting requirements

In any solicitation or contract where the Secretary has, pursuant to subsection (a), waived any provision of the Federal Acquisition Regulation pertaining to minority contracting, the Secretary shall develop and implement standards and procedures to ensure, to the maximum extent practicable, the inclusion and utilization of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority- and women-owned businesses (as such terms are defined in section 1441a(r)(4) of this title), in that solicitation or contract, including contracts to asset managers, servicers, property managers, and other service providers or expert consultants.

(c) Eligibility of FDIC

Notwithstanding subsections (a) and (b), the Corporation—

(1) shall be eligible for, and shall be considered in, the selection of asset managers for residential mortgage loans and residential mortgage-backed securities; and

(2) shall be reimbursed by the Secretary for any services provided.

(Pub. L. 110-343, div. A, title I, §107, Oct. 3, 2008, 122 Stat. 3773.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

Section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (b), is section 1204(c) of Pub. L. 101-73, which is set out as a note under section 1811 of this title.

§ 5218. Conflicts of interest

(a) Standards required

The Secretary shall issue regulations or guidelines necessary to address and manage or to prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities provided under this chapter, including—

(1) conflicts arising in the selection or hiring of contractors or advisors, including asset managers;

(2) the purchase of troubled assets;

(3) the management of the troubled assets held;

(4) post-employment restrictions on employees; and

(5) any other potential conflict of interest, as the Secretary deems necessary or appropriate in the public interest.

(b) Timing

Regulations or guidelines required by this section shall be issued as soon as practicable after October 3, 2008.

(Pub. L. 110-343, div. A, title I, §108, Oct. 3, 2008, 122 Stat. 3774.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5219. Foreclosure mitigation efforts

(a) Residential mortgage loan servicing standards

To the extent that the Secretary acquires mortgages, mortgage backed¹ securities, and other assets secured by residential real estate, including multifamily housing, the Secretary shall implement a plan that seeks to maximize assistance for homeowners and use the authority of the Secretary to encourage the servicers of the underlying mortgages, considering net present value to the taxpayer, to take advantage of the HOPE for Homeowners Program under section 1715z-23² of this title or other available programs to minimize foreclosures. In addition, the Secretary may use loan guarantees

¹ So in original. Probably should be “mortgage-backed”.

² See References in Text note below.

and credit enhancements to facilitate loan modifications to prevent avoidable foreclosures.

(b) Coordination

The Secretary shall coordinate with the Corporation, 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, as provided in section 5220(a)(1)(C) of this title), the Federal Housing Finance Agency, the Secretary of Housing and Urban Development, and other Federal Government entities that hold troubled assets to attempt to identify opportunities for the acquisition of classes of troubled assets that will improve the ability of the Secretary to improve the loan modification and restructuring process and, where permissible, to permit bona fide tenants who are current on their rent to remain in their homes under the terms of the lease. In the case of a mortgage on a residential rental property, the plan required under this section shall include protecting Federal, State, and local rental subsidies and protections, and ensuring any modification takes into account the need for operating funds to maintain decent and safe conditions at the property.

(c) Consent to reasonable loan modification requests

Upon any request arising under existing investment contracts, the Secretary shall consent, where appropriate, and considering 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.

(Pub. L. 110-343, div. A, title I, § 109, Oct. 3, 2008, 122 Stat. 3774.)

REFERENCES IN TEXT

Section 1715z-23 of this title, referred to in subsec. (a), was in the original “section 257 of the National Housing Act”, and was translated as meaning the section 257 of the National Housing Act as added by Pub. L. 110-289, div. A, title IV, § 1402, July 30, 2008, 122 Stat. 2800, relating to HOPE for Homeowners Program, to reflect the probable intent of Congress. Another section 257 of the National Housing Act, relating to pilot program for automated process for borrowers without sufficient credit history, is classified to section 1715z-24 of this title.

§ 5220. Assistance to homeowners

(a) Definitions

As used in this section—

(1) the term “Federal property manager” means—

(A) the Federal Housing Finance Agency, in its capacity as conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(B) the Corporation, with respect to residential mortgage loans and mortgage-backed securities held by any bridge depository institution pursuant to section 1821(n) of this title; 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, other than mortgages or securities held, owned, or controlled in connection with open market operations under sections 348a and 353 to 359 of this title,¹ or as collateral for an advance or discount that is not in default;

(2) the term “consumer” has the same meaning as in section 1602 of title 15;

(3) the term “insured depository institution” has the same meaning as in section 1813 of this title; and

(4) the term “servicer” has the same meaning as in section 2605(i)(2) of this title.

(b) Homeowner assistance by agencies

(1) In general

To the extent that the Federal property manager holds, owns, or controls mortgages, mortgage backed² securities, and other assets secured by residential real estate, including multifamily housing, the Federal property manager shall implement a plan that seeks to maximize assistance for homeowners and use its authority to encourage the servicers of the underlying mortgages, and considering net present value to the taxpayer, to take advantage of the HOPE for Homeowners Program under section 1715z-23¹ of this title or other available programs to minimize foreclosures.

(2) Modifications

In the case of a residential mortgage loan, modifications made under paragraph (1) may include—

- (A) reduction in interest rates;
- (B) reduction of loan principal; and
- (C) other similar modifications.

(3) Tenant protections

In the case of mortgages on residential rental properties, modifications made under paragraph (1) shall ensure—

(A) the continuation of any existing Federal, State, and local rental subsidies and protections; and

(B) that modifications take into account the need for operating funds to maintain decent and safe conditions at the property.

(4) Timing

Each Federal property manager shall develop and begin implementation of the plan required by this subsection not later than 60 days after October 3, 2008.

(5) Reports to Congress

Each Federal property manager shall, 60 days after October 3, 2008, and every 30 days thereafter, report to Congress specific information on the number and types of loan modifications made and the number of actual foreclosures occurring during the reporting period in accordance with this section.

(6) Consultation

In developing the plan required by this subsection, the Federal property managers shall consult with one another and, to the extent possible, utilize consistent approaches to implement the requirements of this subsection.

¹ See References in Text note below.

² So in original. Probably should be “mortgage-backed”.

(c) Actions with respect to servicers

In any case in which a Federal property manager is not the owner of a residential mortgage loan, but holds an interest in obligations or pools of obligations secured by residential mortgage loans, the Federal property manager shall—

- (1) encourage implementation by the loan servicers of loan modifications developed under subsection (b); and
- (2) assist in facilitating any such modifications, to the extent possible.

(d) Limitation

The requirements of this section shall not supersede any other duty or requirement imposed on the Federal property managers under otherwise applicable law.

(Pub. L. 110-343, div. A, title I, § 110, Oct. 3, 2008, 122 Stat. 3775.)

REFERENCES IN TEXT

Sections 348a and 353 to 359 of this title, referred to in subsec. (a)(1)(C), was in the original a reference to “section 14 of the Federal Reserve Act (12 U.S.C. 353)”. For classification of section 14 to the Code, see Codification note set out under section 353 of this title.

Section 1715z-23 of this title, referred to in subsec. (b)(1), was in the original “section 257 of the National Housing Act”, and was translated as meaning the section 257 of the National Housing Act as added by Pub. L. 110-289, div. A, title IV, § 1402, July 30, 2008, 122 Stat. 2800, relating to HOPE for Homeowners Program, to reflect the probable intent of Congress. Another section 257 of the National Housing Act, relating to pilot program for automated process for borrowers without sufficient credit history, is classified to section 1715z-24 of this title.

§ 5221. Executive compensation and corporate governance**(a) Applicability**

Any financial institution that sells troubled assets to the Secretary under this chapter shall be subject to the executive compensation requirements of subsections (b) and (c) and the provisions under title 26, as provided under the amendment by section 302,¹ as applicable.

(b) Direct purchases**(1) In general**

Where the Secretary determines that the purposes of this chapter are best met through direct purchases of troubled assets from an individual 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 that the financial institution meet appropriate standards for executive compensation and corporate governance. The standards required under this subsection shall be effective for the duration of the period that the Secretary holds an equity or debt position in the financial institution.

(2) Criteria

The standards required under this subsection shall include—

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

(B) a provision for the recovery by the financial institution of any bonus or incentive 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

(C) a prohibition on the financial institution making any golden parachute payment to its senior executive officer during the period that the Secretary holds an equity or debt position in the financial institution.

(3) Definition

For purposes of this section, the term “senior executive officer” means an individual who is 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 [15 U.S.C. 78a et seq.], and any regulations issued thereunder, and non-public company counterparts.

(c) Auction purchases

Where the Secretary determines that the purposes of this chapter are best met through auction purchases of troubled assets, and only where such purchases per financial institution in the aggregate exceed \$300,000,000 (including direct purchases), the Secretary shall 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. The Secretary shall issue guidance to carry out this paragraph not later than 2 months after October 3, 2008, and such guidance shall be effective upon issuance.

(d) Sunset

The provisions of subsection (c) shall apply only to arrangements entered into during the period during which the authorities under section 5211(a) of this title are in effect, as determined under section 5230 of this title.

(Pub. L. 110-343, div. A, title I, § 111, Oct. 3, 2008, 122 Stat. 3776.)

REFERENCES IN TEXT

This chapter, referred to in subsections (a), (b)(1), and (c), was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

Section 302, referred to in subsec. (a), is section 302 of div. A of Pub. L. 110-343. Subsection (a) of section 302 amended section 162 of Title 26, Internal Revenue Code, and subsection (b) of section 302 amended section 280G of Title 26. Subsections (c) and (d) of section 302 are classified as notes under sections 162 and 280G, respectively, of Title 26.

The Securities Exchange Act of 1934, referred to in subsec. (b)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete

¹ See References in Text note below.

classification of this Act to the Code, see section 78a of Title 15 and Tables.

§ 5222. Coordination with foreign authorities and central banks

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 section 5211 of this title.

(Pub. L. 110-343, div. A, title I, § 112, Oct. 3, 2008, 122 Stat. 3777.)

§ 5223. Minimization of long-term costs and maximization of benefits for taxpayers

(a) Long-term costs and benefits

(1) Minimizing negative impact

The Secretary shall use the authority under this chapter in a manner that will minimize any potential long-term negative impact on the taxpayer, taking into account the direct outlays, potential long-term returns on assets purchased, and the overall economic benefits of the program, including economic benefits due to improvements in economic activity and the availability of credit, the impact on the savings and pensions of individuals, and reductions in losses to the Federal Government.

(2) Authority

In carrying out paragraph (1), the Secretary shall—

(A) 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, in order to maximize the value for taxpayers; and

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

(3) Private sector participation

The Secretary shall encourage the private sector to participate in purchases of troubled assets, and to invest in financial institutions, consistent with the provisions of this section.

(b) Use of market mechanisms

In making purchases under this chapter, the Secretary shall—

(1) make such purchases at the lowest price that the Secretary determines to be consistent with the purposes of this chapter; and

(2) maximize the efficiency of the use of taxpayer resources by using market mechanisms, including auctions or reverse auctions, where appropriate.

(c) Direct purchases

If the Secretary determines that use of a market mechanism under subsection (b) is not feasible or appropriate, and the purposes of the chapter are best met through direct purchases from an individual financial institution, the Secretary shall pursue additional measures to

ensure that prices paid for assets are reasonable and reflect the underlying value of the asset.

(d) Conditions on purchase authority for warrants and debt instruments

(1) In general

The Secretary may not purchase, or make any commitment to purchase, any troubled asset under the authority of this chapter, unless the Secretary receives from the financial institution from which such assets are to be purchased—

(A) in the case of a financial institution, the securities of which are traded on a national securities exchange, a warrant giving the right to the Secretary to receive non-voting common stock or preferred stock in such financial institution, or voting stock with respect to which,¹ the Secretary agrees not to exercise voting power, as the Secretary determines appropriate; or

(B) in the case of any financial institution other than one described in subparagraph (A), a warrant for common or preferred stock, or a senior debt instrument from such financial institution, as described in paragraph (2)(C).

(2) Terms and conditions

The terms and conditions of any warrant or senior debt instrument required under paragraph (1) shall meet the following requirements:

(A) Purposes

Such terms and conditions shall, at a minimum, be designed—

(i) to provide for reasonable participation by the Secretary, for the benefit of 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

(ii) to provide additional protection for the taxpayer against losses from sale of assets by the Secretary under this chapter and the administrative expenses of the TARP.

(B) Authority to sell, exercise, or surrender

The Secretary may sell, exercise, or surrender a warrant or any senior debt instrument received under this subsection, based on the conditions established under subparagraph (A).

(C) Conversion

The warrant shall provide that if, after the warrant is received by the Secretary under this subsection, the financial institution that issued the warrant is no longer listed or traded on a national securities exchange or securities association, as described in paragraph (1)(A), such warrants shall convert to senior debt, or contain appropriate protections for the Secretary to ensure that the Treasury is appropriately compensated for the value of the warrant, in an amount determined by the Secretary.

(D) Protections

Any warrant representing securities to be received by the Secretary under this sub-

¹ So in original. The comma probably should not appear.

section shall contain anti-dilution provisions of the type employed in capital market transactions, as determined by the Secretary. Such provisions shall 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.

(E) Exercise price

The exercise price for any warrant issued pursuant to this subsection shall be set by the Secretary, in the interest of the taxpayers.

(F) Sufficiency

The financial institution shall guarantee to the Secretary that it has authorized shares of nonvoting stock available to fulfill its obligations under this subsection. Should the financial institution not have sufficient authorized shares, including preferred shares that may carry dividend rights equal to a multiple number of common shares, the Secretary may, to the extent necessary, accept a senior debt note in an amount, and on such terms as will compensate the Secretary with equivalent value, in the event that a sufficient shareholder vote to authorize the necessary additional shares cannot be obtained.

(3) Exceptions

(A) De minimis

The Secretary shall establish de minimis exceptions to the requirements of this subsection, based on the size of the cumulative transactions of troubled assets purchased from any one financial institution for the duration of the program, at not more than \$100,000,000.

(B) Other exceptions

The Secretary shall establish an exception to the requirements of this subsection and appropriate alternative requirements for any participating financial institution that is legally prohibited from issuing securities and debt instruments, so as not to allow circumvention of the requirements of this section.

(Pub. L. 110-343, div. A, title I, §113, Oct. 3, 2008, 122 Stat. 3777.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5224. Market transparency

(a) Pricing

To facilitate market transparency, the Secretary shall make available to the public, in electronic form, a description, amounts, and pricing of assets acquired under this chapter, within 2 business days of purchase, trade, or other disposition.

(b) Disclosure

For each type of financial institutions¹ that sells troubled assets to the Secretary under this chapter, the Secretary shall determine whether the public disclosure required for such financial institutions 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 for that purpose, the Secretary shall make recommendations for additional disclosure requirements to the relevant regulators.

(Pub. L. 110-343, div. A, title I, §114, Oct. 3, 2008, 122 Stat. 3780.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5225. Graduated authorization to purchase

(a) Authority

The authority of the Secretary to purchase troubled assets under this chapter shall be limited as follows:

(1) Effective upon October 3, 2008, such authority shall be limited to \$250,000,000,000 outstanding at any one time.

(2) If at any time, the President submits to the Congress a written certification that the Secretary needs to exercise the authority under this paragraph, effective upon such submission, such authority shall be limited to \$350,000,000,000 outstanding at any one time.

(3) If, at any time after the certification in paragraph (2) has been made, the President transmits to the Congress a written report detailing the plan of the Secretary to exercise the authority under this paragraph, unless there is enacted, within 15 calendar days of such transmission, a joint resolution described in subsection (c), effective upon the expiration of such 15-day period, such authority shall be limited to \$700,000,000,000 outstanding at any one time.

(b) Aggregation of purchase prices

The amount of troubled assets purchased by the Secretary outstanding at any one time shall be determined for purposes of the dollar amount limitations under subsection (a) by aggregating the purchase prices of all troubled assets held.

(c) Joint resolution of disapproval

(1) In general

Notwithstanding any other provision of this section, the Secretary may not exercise any authority to make purchases under this chapter with regard to any amount in excess of \$350,000,000,000 previously obligated, as described in this section if, within 15 calendar days after the date on which Congress receives

¹ So in original. Probably should be “institution”.

a report of the plan of the Secretary described in subsection (a)(3), there is enacted into law a joint resolution disapproving the plan of the Secretary with respect to such additional amount.

(2) Contents of joint resolution

For the purpose of this section, the term “joint resolution” means only a joint resolution—

(A) that is introduced not later than 3 calendar days after the date on which the report of the plan of the Secretary referred to in subsection (a)(3) is received by Congress;

(B) which does not have a preamble;

(C) the title of which is as follows: “Joint resolution relating to the disapproval of obligations under the Emergency Economic Stabilization Act of 2008”; and

(D) the matter after the resolving clause of which is as follows: “That Congress disapproves the obligation of any amount exceeding the amounts obligated as described in paragraphs (1) and (2) of section 115(a) of the Emergency Economic Stabilization Act of 2008.”.

(d) Fast track consideration in House of Representatives

(1) Reconvening

Upon receipt of a report under subsection (a)(3), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this section, the House shall convene not later than the second calendar day after receipt of such report;¹

(2) Reporting and discharge

Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House not later than 5 calendar days after the date of receipt of the report described in subsection (a)(3). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

(3) Proceeding to consideration

After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after Congress receives the report described in subsection (a)(3), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(4) Consideration

The joint resolution shall be considered as read. All points of order against the joint reso-

lution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

(e) Fast track consideration in Senate

(1) Reconvening

Upon receipt of a report under subsection (a)(3), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

(2) Placement on calendar

Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(3) Floor consideration

(A) In general

Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a report of the plan of the Secretary described in subsection (a)(3) and ending on the 6th day after the date on which Congress receives a report of the plan of the Secretary described in subsection (a)(3) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(B) Debate

Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(C) Vote on passage

The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

¹ So in original. The semicolon probably should be a period.

(D) Rulings of the chair on procedure

Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(f) Rules relating to Senate and House of Representatives**(1) Coordination with action by other House**

If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(A) The joint resolution of the other House shall not be referred to a committee.

(B) With respect to a joint resolution of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii) the vote on passage shall be on the joint resolution of the other House.

(2) Treatment of joint resolution of other House

If one House fails to introduce or consider a joint resolution under this section, the joint resolution of the other House shall be entitled to expedited floor procedures under this section.

(3) Treatment of companion measures

If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(4) Consideration after passage**(A) In general**

If Congress passes a joint resolution, the period beginning on the date the President is presented with the joint resolution and ending on the date the President takes action with respect to the joint resolution shall be disregarded in computing the 15-calendar day period described in subsection (a)(3).

(B) Vetoes

If the President vetoes the joint resolution—

(i) the period beginning on the date the President vetoes the joint resolution and ending on the date the Congress receives the veto message with respect to the joint resolution shall be disregarded in computing the 15-calendar day period described in subsection (a)(3), and

(ii) debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

(5) Rules of House of Representatives and Senate

This subsection and subsections (c), (d), and (e) are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but

applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(Pub. L. 110-343, div. A, title I, § 115, Oct. 3, 2008, 122 Stat. 3780.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(1), was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (c)(2)(C), (D), is div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to this chapter. Paragraphs (1) and (2) of section 115(a) of the Act are classified to paragraphs (1) and (2), respectively, of subsec. (a) of this section. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5226. Oversight and audits**(a) Comptroller General oversight****(1) Scope of oversight**

The Comptroller General of the United States shall, upon establishment of the troubled assets relief program¹ under this chapter (in this section referred to as the “TARP”), commence ongoing oversight of the activities and performance of the TARP and of any agents and representatives of the TARP (as related to the agent or representative’s activities on behalf of or under the authority of the TARP), including vehicles established by the Secretary under this chapter. The subjects of such oversight shall include the following:

(A) The performance of the TARP in meeting the purposes of this chapter, particularly those involving—

(i) foreclosure mitigation;

(ii) cost reduction;

(iii) whether it has provided stability or prevented disruption to the financial markets or the banking system; and

(iv) whether it has protected taxpayers.

(B) The financial condition and internal controls of the TARP, its representatives and agents.

(C) Characteristics of transactions and commitments entered into, including transaction type, frequency, size, prices paid, and all other relevant terms and conditions, and the timing, duration and terms of any future commitments to purchase assets.

(D) Characteristics and disposition of acquired assets, including type, acquisition

¹So in original. Probably should be “Troubled Asset Relief Program”.

price, current market value, sale prices and terms, and use of proceeds from sales.

(E) Efficiency of the operations of the TARP in the use of appropriated funds.

(F) Compliance with all applicable laws and regulations by the TARP, its agents and representatives.

(G) The efforts of the TARP to prevent, identify, and minimize conflicts of interest involving any agent or representative performing activities on behalf of or under the authority of the TARP.

(H) The efficacy of contracting procedures pursuant to section 5217(b) of this title, including, as applicable, the efforts of the TARP in evaluating proposals for inclusion and contracting to the maximum extent possible of minorities (as such term is defined in 1204(c)² of the Financial Institutions Reform, Recovery, and Enhancement Act of 1989³ (12 U.S.C. 1811 note), women, and minority- and women-owned businesses, including ascertaining and reporting the total amount of fees paid and other value delivered by the TARP to all of its agents and representatives, and such amounts paid or delivered to such firms that are minority- and women-owned businesses (as such terms are defined in section 1441a of this title).

(2) Conduct and administration of oversight

(A) GAO presence

The Secretary shall provide the Comptroller General with appropriate space and facilities in the Department of the Treasury as necessary to facilitate oversight of the TARP until the termination date established in section 5230 of this title.

(B) Access to records

To the extent otherwise consistent with law, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the TARP, or any vehicles established by the Secretary under this chapter, and to the officers, directors, employees, independent public accountants, financial advisors, and other agents and representatives of the TARP (as related to the agent or representative's activities on behalf of or under the authority of the TARP) or any such vehicle at such reasonable time as the Comptroller General may request. The Comptroller General shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General deems appropriate.

(C) Reimbursement of costs

The Treasury shall reimburse the Government Accountability Office for the full cost of any such oversight activities as billed

therefor by the Comptroller General of the United States. Such reimbursements shall be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received and remain available until expended.

(3) Reporting

The Comptroller General shall submit reports of findings under this section, regularly and no less frequently than once every 60 days, to the appropriate committees of Congress, and the Special Inspector General for the Troubled Asset Relief Program established under this chapter on the activities and performance of the TARP. The Comptroller may also submit special reports under this subsection as warranted by the findings of its oversight activities.

(b) Comptroller General audits

(1) Annual audit

The TARP shall annually prepare and issue to the appropriate committees of Congress and the public audited financial statements prepared in accordance with generally accepted accounting principles, and the Comptroller General shall annually audit such statements in accordance with generally accepted auditing standards. The Treasury shall reimburse the Government Accountability Office for the full cost of any such audit as billed therefor by the Comptroller General. Such reimbursements shall be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received and remain available until expended. The financial statements prepared under this paragraph shall be on the fiscal year basis prescribed under section 1102 of title 31.

(2) Authority

The Comptroller General may audit the programs, activities, receipts, expenditures, and financial transactions of the TARP and any agents and representatives of the TARP (as related to the agent or representative's activities on behalf of or under the authority of the TARP), including vehicles established by the Secretary under this chapter.

(3) Corrective responses to audit problems

The TARP shall—

(A) take action to address deficiencies identified by the Comptroller General or other auditor engaged by the TARP; or

(B) certify to appropriate committees of Congress that no action is necessary or appropriate.

(c) Internal control

(1) Establishment

The TARP shall establish and maintain an effective system of internal control, consistent with the standards prescribed under section 3512(c) of title 31, that provides reasonable assurance of—

(A) the effectiveness and efficiency of operations, including the use of the resources of the TARP;

²So in original. Probably should be preceded by "section".

³See References in Text note below.

(B) the reliability of financial reporting, including financial statements and other reports for internal and external use; and

(C) compliance with applicable laws and regulations.

(2) Reporting

In conjunction with each annual financial statement issued under this section, the TARP shall—

(A) state the responsibility of management for establishing and maintaining adequate internal control over financial reporting; and

(B) state its assessment, as of the end of the most recent year covered by such financial statement of the TARP, of the effectiveness of the internal control over financial reporting.

(d) Sharing of information

Any report or audit required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(e) Termination

Any oversight, reporting, or audit requirement under this section shall terminate on the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 5212 of this title.

(Pub. L. 110-343, div. A, title I, § 116, Oct. 3, 2008, 122 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(2), was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

Section 1204 of the Financial Institutions Reform, Recovery, and Enhancement Act of 1989, referred to in subsec. (a)(1)(H), probably means section 1204 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, which is set out as a note under section 1811 of this title.

§ 5227. Study and report on margin authority

(a) Study

The Comptroller General shall undertake a study to determine the extent to which leverage and sudden deleveraging of financial institutions was a factor behind the current financial crisis.

(b) Content

The study required by this section shall include—

(1) an analysis of the roles and responsibilities of the Board, the Securities and Exchange Commission, the Secretary, and other Federal banking agencies with respect to monitoring leverage and acting to curtail excessive leveraging;

(2) an analysis of the authority of the Board to regulate leverage, including by setting margin requirements, and what process the Board used to decide whether or not to use its authority;

(3) an analysis of any usage of the margin authority by the Board; and

(4) recommendations for the Board and appropriate committees of Congress with respect to the existing authority of the Board.

(c) Report

Not later than June 1, 2009, the Comptroller General shall complete and submit a report on the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(d) Sharing of information

Any reports required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(Pub. L. 110-343, div. A, title I, § 117, Oct. 3, 2008, 122 Stat. 3786.)

§ 5228. Funding

For the purpose of the authorities granted in this chapter, and for the costs of administering those authorities, the Secretary may use the proceeds of the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include actions authorized by this chapter, including the payment of administrative expenses. Any funds expended or obligated by the Secretary for actions authorized by this chapter, including the payment of administrative expenses, shall be deemed appropriated at the time of such expenditure or obligation.

(Pub. L. 110-343, div. A, title I, § 118, Oct. 3, 2008, 122 Stat. 3786.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5229. Judicial review and related matters

(a) Judicial review

(1) Standard

Actions by the Secretary pursuant to the authority of this chapter shall be subject to chapter 7 of title 5, including that such final actions shall be held unlawful and set aside if found to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

(2) Limitations on equitable relief

(A) Injunction

No injunction or other form of equitable relief shall be issued against the Secretary for actions pursuant to section¹ 5211, 5212,

¹ So in original. Probably should be “sections”.

5216, and 5219 of this title, other than to remedy a violation of the Constitution.

(B) Temporary restraining order

Any request for a temporary restraining order against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court within 3 days of the date of the request.

(C) Preliminary injunction

Any request for a preliminary injunction against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court on an expedited basis consistent with the provisions of rule 65(b)(3) of the Federal Rules of Civil Procedure, or any successor thereto.

(D) Permanent injunction

Any request for a permanent injunction against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court on an expedited basis. Whenever possible, the court shall consolidate trial on the merits with any hearing on a request for a preliminary injunction, consistent with the provisions of rule 65(a)(2) of the Federal Rules of Civil Procedure, or any successor thereto.

(3) Limitation on actions by participating companies

No action or claims may be brought against the Secretary by any person that divests its assets with respect to its participation in a program under this chapter, except as provided in paragraph (1), other than as expressly provided in a written contract with the Secretary.

(4) Stays

Any injunction or other form of equitable relief issued against the Secretary for actions pursuant to section¹ 5211, 5212, 5216, and 5219 of this title, shall be automatically stayed. The stay shall be lifted unless the Secretary seeks a stay from a higher court within 3 calendar days after the date on which the relief is issued.

(b) Related matters

(1) Treatment of homeowners' rights

The terms of any residential mortgage loan that is part of any purchase by the Secretary under this chapter shall remain subject to all claims and defenses that would otherwise apply, notwithstanding the exercise of authority by the Secretary under this chapter.

(2) Savings clause

Any exercise of the authority of the Secretary pursuant to this chapter shall not impair the claims or defenses that would otherwise apply with respect to persons other than the Secretary. Except as established in any contract, a servicer of pooled residential mortgages owes any² duty to determine whether the net present value of the payments on the loan, as modified, is likely to be greater than the anticipated net recovery that would result

from foreclosure to all investors and holders of beneficial interests in such investment, but not to any individual or groups of investors or beneficial interest holders, and shall be deemed to act in the best interests of all such investors or holders of beneficial interests if the servicer agrees to or implements a modification or workout plan when the servicer takes reasonable loss mitigation actions, including partial payments.

(Pub. L. 110-343, div. A, title I, §119, Oct. 3, 2008, 122 Stat. 3787.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (a)(2)(C), (D), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 5230. Termination of authority

(a) Termination

The authorities provided under sections 5211(a), excluding section 5211(a)(3), and 5212 of this title shall terminate on December 31, 2009.

(b) Extension upon certification

The Secretary, upon submission of a written certification to Congress, may extend the authority provided under this chapter to expire not later than 2 years from October 3, 2008. Such certification shall include a justification of why the extension is necessary to assist American families and stabilize financial markets, as well as the expected cost to the taxpayers for such an extension.

(Pub. L. 110-343, div. A, title I, §120, Oct. 3, 2008, 122 Stat. 3788.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5231. Special Inspector General for the Troubled Asset Relief Program

(a) Office of Inspector General

There is hereby established the Office of the Special Inspector General for the Troubled Asset Relief Program.

(b) Appointment of Inspector General; removal

(1) The head of the Office of the Special Inspector General for the Troubled Asset Relief Program is the Special Inspector General for the Troubled Asset Relief Program (in this section referred to as the "Special Inspector General"), who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The appointment of the Special Inspector General shall be made on the basis of integrity

²So in original. Probably should be "a".

and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(3) The nomination of an individual as Special Inspector General shall be made as soon as practicable after the establishment of any program under sections 5211 and 5212 of this title.

(4) The Special Inspector General shall be removable from office in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).

(5) For purposes of section 7324 of title 5, the Special Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

(6) The annual rate of basic pay of the Special Inspector General shall be the annual rate of basic pay for an Inspector General under section 3(e) of the Inspector General Act of 1978 (5 U.S.C. App.).

(c) Duties

(1) 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 of the Treasury under any program established by the Secretary under section 5211 of this title, and the management by the Secretary of any program established under section 5212 of this title, including by collecting and summarizing the following information:

(A) A description of the categories of troubled assets purchased or otherwise procured by the Secretary.

(B) A listing of the troubled assets purchased in each such category described under subparagraph (A).

(C) An explanation of the reasons the Secretary deemed it necessary to purchase each such troubled asset.

(D) A listing of each financial institution that such troubled assets were purchased from.

(E) A listing of and detailed biographical information on each person or entity hired to manage such troubled assets.

(F) A current estimate of the total amount of troubled assets purchased pursuant to any program established under section 5211 of this title, 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.

(G) A listing of the insurance contracts issued under section 5212 of this title.

(2) The Special Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Inspector General considers appropriate to discharge the duty under paragraph (1).

(3) In addition to the duties specified in paragraphs (1) and (2), the Inspector General shall also have the duties and responsibilities of inspectors general under the Inspector General Act of 1978.

(d) Powers and authorities

(1) In carrying out the duties specified in subsection (c), the Special Inspector General shall

have the authorities provided in section 6 of the Inspector General Act of 1978.

(2) The Special Inspector General shall carry out the duties specified in subsection (c)(1) in accordance with section 4(b)(1) of the Inspector General Act of 1978.

(e) Personnel, facilities, and other resources

(1) The Special Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Special Inspector General, subject to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(2) The Special Inspector General may obtain services as authorized by section 3109 of title 5 at daily rates not to exceed the equivalent rate prescribed for grade GS-15 of the General Schedule by section 5332 of such title.

(3) The Special Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Inspector General.

(4)(A) Upon request of the Special Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Special Inspector General, or an authorized designee.

(B) Whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress without delay.

(f) Reports

(1) Not later than 60 days after the confirmation of the Special Inspector General, and every calendar quarter thereafter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the 120-day period ending on the date of such report. Each report shall include, for the period covered by such report, a detailed statement of all purchases, obligations, expenditures, and revenues associated with any program established by the Secretary of the Treasury under sections 5211 and 5212 of this title, as well as the information collected under subsection (c)(1).

(2) Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(3) Any reports required under this section shall also be submitted to the Congressional

Oversight Panel established under section 5233 of this title.

(g) Funding

(1) Of the amounts made available to the Secretary of the Treasury under section 5228 of this title, \$50,000,000 shall be available to the Special Inspector General to carry out this section.

(2) The amount available under paragraph (1) shall remain available until expended.

(h) Termination

The Office of the Special Inspector General shall terminate on the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 5212 of this title.

(Pub. L. 110-343, div. A, title I, § 121, Oct. 3, 2008, 122 Stat. 3788.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsecs. (b)(4), (6), (c)(3), and (d), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 5232. Credit reform

(a) In general

Subject to subsection (b), the costs of purchases of troubled assets made under section 5211(a) of this title and guarantees of troubled assets under section 5212 of this title, and any cash flows associated with the activities authorized in section 5212 of this title and subsections (a), (b), and (c) of section 5216 of this title shall be determined as provided under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(b) Costs

For the purposes of section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))—

(1) the cost of troubled assets and guarantees of troubled assets shall be calculated by adjusting the discount rate in section 502(5)(E) (2 U.S.C. 661a(5)(E)) for market risks; and

(2) the cost of a modification of a troubled asset or guarantee of a troubled asset shall be the difference between the current estimate consistent with paragraph (1) under the terms of the troubled asset or guarantee of the troubled asset and the current estimate consistent with paragraph (1) under the terms of the troubled asset or guarantee of the troubled asset, as modified.

(Pub. L. 110-343, div. A, title I, § 123, Oct. 3, 2008, 122 Stat. 3790.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (a), is title V of Pub. L. 93-344, as added by Pub. L. 101-508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388-609, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see

¹ So in original.

Short Title note set out under section 621 of Title 2 and Tables.

§ 5233. Congressional Oversight Panel

(a) Establishment

There is hereby established the Congressional Oversight Panel (hereafter in this section referred to as the “Oversight Panel”) as an establishment in the legislative branch.

(b) Duties

The Oversight Panel shall review the current state of the financial markets and the regulatory system and submit the following reports to Congress:

(1) Regular reports

(A) In general

Regular reports of the Oversight Panel shall include the following:

(i) The use by the Secretary of authority under this chapter, including with respect to the use of contracting authority and administration of the program.

(ii) The impact of purchases made under the¹ chapter on the financial markets and financial institutions.

(iii) The extent to which the information made available on transactions under the program has contributed to market transparency.

(iv) The effectiveness of foreclosure mitigation efforts, and the effectiveness of the program from the standpoint of minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers.

(B) Timing

The reports required under this paragraph shall be submitted not later than 30 days after the first exercise by the Secretary of the authority under section 5211(a) or 5212 of this title, and every 30 days thereafter.

(2) Special report on regulatory reform

The Oversight Panel shall submit a special report on regulatory reform not later than January 20, 2009, analyzing the current state of the regulatory system and its effectiveness at overseeing the participants in the financial system and protecting consumers, and providing recommendations for improvement, including recommendations regarding whether any participants in the financial markets that are currently outside the regulatory system should become subject to the regulatory system, the rationale underlying such recommendation, and whether there are any gaps in existing consumer protections.

(c) Membership

(1) In general

The Oversight Panel shall consist of 5 members, as follows:

(A) 1 member appointed by the Speaker of the House of Representatives.

(B) 1 member appointed by the minority leader of the House of Representatives.

(C) 1 member appointed by the majority leader of the Senate.

¹ So in original. Probably should be “this”.

(D) 1 member appointed by the minority leader of the Senate.

(E) 1 member appointed by the Speaker of the House of Representatives and the majority leader of the Senate, after consultation with the minority leader of the Senate and the minority leader of the House of Representatives.

(2) Pay

Each member of the Oversight Panel shall each² be paid at a rate equal to the daily equivalent of the annual rate of basic pay for level I of the Executive Schedule for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Commission.

(3) Prohibition of compensation of Federal employees

Members of the Oversight Panel who are full-time officers or employees of the United States or Members of Congress may not receive additional pay, allowances, or benefits by reason of their service on the Oversight Panel.

(4) Travel expenses

Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5.

(5) Quorum

Four members of the Oversight Panel shall constitute a quorum but a lesser number may hold hearings.

(6) Vacancies

A vacancy on the Oversight Panel shall be filled in the manner in which the original appointment was made.

(7) Meetings

The Oversight Panel shall meet at the call of the Chairperson or a majority of its members.

(d) Staff

(1) In general

The Oversight Panel may appoint and fix the pay of any personnel as the Commission considers appropriate.

(2) Experts and consultants

The Oversight Panel may procure temporary and intermittent services under section 3109(b) of title 5.

(3) Staff of agencies

Upon request of the Oversight Panel, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Oversight Panel to assist it in carrying out its duties under this chapter.

(e) Powers

(1) Hearings and sessions

The Oversight Panel may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Panel considers

appropriate and may administer oaths or affirmations to witnesses appearing before it.

(2) Powers of members and agents

Any member or agent of the Oversight Panel may, if authorized by the Oversight Panel, take any action which the Oversight Panel is authorized to take by this section.

(3) Obtaining official data

The Oversight Panel may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairperson of the Oversight Panel, the head of that department or agency shall furnish that information to the Oversight Panel.

(4) Reports

The Oversight Panel shall receive and consider all reports required to be submitted to the Oversight Panel under this chapter.

(f) Termination

The Oversight Panel shall terminate 6 months after the termination date specified in section 5230 of this title.

(g) Funding for expenses

(1) Authorization of appropriations

There is authorized to be appropriated to the Oversight Panel such sums as may be necessary for any fiscal year, half of which shall be derived from the applicable account of the House of Representatives, and half of which shall be derived from the contingent fund of the Senate.

(2) Reimbursement of amounts

An amount equal to the expenses of the Oversight Panel shall be promptly transferred by the Secretary, from time to time upon the presentation of a statement of such expenses by the Chairperson of the Oversight Panel, from funds made available to the Secretary under this chapter to the applicable fund of the House of Representatives and the contingent fund of the Senate, as appropriate, as reimbursement for amounts expended from such account and fund under paragraph (1).

(Pub. L. 110-343, div. A, title I, §125, Oct. 3, 2008, 122 Stat. 3791.)

REFERENCES IN TEXT

This chapter and the chapter, referred to in text, were in the original “this Act” and “the Act”, respectively, and were translated as reading “this division” and “the division”, respectively, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

Level I of the Executive Schedule, referred to in subsec. (c)(2), is set out in section 5312 of Title 5, Government Organization and Employees.

§ 5234. Cooperation with the FBI

Any Federal financial regulatory agency shall cooperate with the Federal Bureau of Investigation and other law enforcement agencies investigating fraud, misrepresentation, and malfeasance with respect to development, advertising, and sale of financial products.

² So in original.

(Pub. L. 110-343, div. A, title I, §127, Oct. 3, 2008, 122 Stat. 3796.)

§ 5235. Disclosures on exercise of loan authority

(a) In general

Not later than 7 days after the date on which the Board exercises its authority under the third paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343; relating to discounts for individuals, partnerships, and corporations) the Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report which includes—

(1) the justification for exercising the authority; and

(2) the specific terms of the actions of the Board, including the size and duration of the lending, available information concerning the value of any collateral held with respect to such a loan, the recipient of warrants or any other potential equity in exchange for the loan, and any expected cost to the taxpayers for such exercise.

(b) Periodic updates

The Board shall provide updates to the Committees specified in subsection (a) not less frequently than once every 60 days while the subject loan is outstanding, including—

(1) the status of the loan;

(2) the value of the collateral held by the Federal reserve bank which initiated the loan; and

(3) the projected cost to the taxpayers of the loan.

(c) Confidentiality

The information submitted to the Congress under this section shall be kept confidential, upon the written request of the Chairman of the Board, in which case it shall be made available only to the Chairpersons and Ranking Members of the Committees described in subsection (a).

(d) Applicability

The provisions of this section shall be in force for all uses of the authority provided under section 13 of the Federal Reserve Act occurring during the period beginning on March 1, 2008¹ and ending on the after² October 3, 2008, and reports described in subsection (a) shall be required beginning not later than 30 days after October 3, 2008, with respect to any such exercise of authority.

(e) Sharing of information

Any reports required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(Pub. L. 110-343, div. A, title I, §129, Oct. 3, 2008, 122 Stat. 3796.)

REFERENCES IN TEXT

Section 13 of the Federal Reserve Act, referred to in subsecs. (a) and (d), is classified to sections 92, 342 to

¹ So in original. Probably should be followed by a comma.

² So in original.

347, 347c, 347d, 361, 372, and 373 of this title. The third paragraph of section 13 of the Act is classified to the second par. of section 343 of this title. For further details, see Codification notes under sections 342 and 343 of this title.

§ 5236. Exchange Stabilization Fund reimbursement

(a) Reimbursement

The Secretary shall reimburse the Exchange Stabilization Fund established under section 5302 of title 31 for any funds that are used for the Treasury Money Market Funds Guaranty Program for the United States money market mutual fund industry, from funds under this chapter.

(b) Limits on use of Exchange Stabilization Fund

The Secretary is prohibited from using the Exchange Stabilization Fund for the establishment of any future guaranty programs for the United States money market mutual fund industry.

(Pub. L. 110-343, div. A, title I, §131, Oct. 3, 2008, 122 Stat. 3797.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5237. Authority to suspend mark-to-market accounting

(a) Authority

The Securities and Exchange Commission shall have the authority under the securities laws (as such term is defined in section 78c(a)(47) of title 15) to suspend, by rule, regulation, or order, the application of Statement Number 157 of the Financial Accounting Standards Board for any issuer (as such term is defined in section 78c(a)(8) of such title) or with respect to any class or category of transaction if the Commission determines that is necessary or appropriate in the public interest and is consistent with the protection of investors.

(b) Savings provision

Nothing in subsection (a) shall be construed to restrict or limit any authority of the Securities and Exchange Commission under securities laws as in effect on October 3, 2008.

(Pub. L. 110-343, div. A, title I, §132, Oct. 3, 2008, 122 Stat. 3798.)

§ 5238. Study on mark-to-market accounting

(a) Study

The Securities and Exchange Commission, in consultation with the Board and the Secretary, shall conduct a study on mark-to-market accounting standards as provided in Statement Number 157 of the Financial Accounting Standards Board, as such standards are applicable to financial institutions, including depository institutions. Such a study shall consider at a minimum—

- (1) the effects of such accounting standards on a financial institution's balance sheet;
- (2) the impacts of such accounting on bank failures in 2008;
- (3) the impact of such standards on the quality of financial information available to investors;
- (4) the process used by the Financial Accounting Standards Board in developing accounting standards;
- (5) the advisability and feasibility of modifications to such standards; and
- (6) alternative accounting standards to those provided in such Statement Number 157.

(b) Report

The Securities and Exchange Commission shall submit to Congress a report of such study before the end of the 90-day period beginning on October 3, 2008, containing the findings and determinations of the Commission, including such administrative and legislative recommendations as the Commission determines appropriate.

(Pub. L. 110-343, div. A, title I, § 133, Oct. 3, 2008, 122 Stat. 3798.)

§ 5239. Recoupment

Upon the expiration of the 5-year period beginning upon October 3, 2008, the Director of the Office of Management and Budget, in consultation with the Director of the Congressional Budget Office, shall submit a report to the Congress on the net amount within the Troubled Asset Relief Program under this chapter. In any case where there is a shortfall, the President shall submit a legislative proposal that recoups from the financial industry an amount equal to the shortfall in order to ensure that the Troubled Asset Relief Program does not add to the deficit or national debt.

(Pub. L. 110-343, div. A, title I, § 134, Oct. 3, 2008, 122 Stat. 3798.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5240. Preservation of authority

With the exception of section 5236 of this title, nothing in this chapter may be construed to limit the authority of the Secretary or the Board under any other provision of law.

(Pub. L. 110-343, div. A, title I, § 135, Oct. 3, 2008, 122 Stat. 3799.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5241. Temporary increase in deposit and share insurance coverage

(a) Federal Deposit Insurance Act; temporary increase in deposit insurance

(1) Increased amount

Effective only during the period beginning on October 3, 2008, and ending on December 31, 2009, section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) shall apply with "\$250,000" substituted for "\$100,000".

(2) Temporary increase not to be considered for setting assessments

The temporary increase in the standard maximum deposit insurance amount made under paragraph (1) shall not be taken into account by the Board of Directors of the Corporation for purposes of setting assessments under section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)).

(3) Borrowing limits temporarily lifted

During the period beginning on October 3, 2008, and ending on December 31, 2009, the Board of Directors of the Corporation may request from the Secretary, and the Secretary shall approve, a loan or loans in an amount or amounts necessary to carry out this subsection, without regard to the limitations on such borrowing under section 14(a) and 15(c) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a), 1825(c)).

(b) Federal Credit Union Act; temporary increase in share insurance

(1) Increased amount

Effective only during the period beginning on October 3, 2008, and ending on December 31, 2009, section 207(k)(5) of the Federal Credit Union Act (12 U.S.C. 1787(k)(5)) shall apply with "\$250,000" substituted for "\$100,000".

(2) Temporary increase not to be considered for setting insurance premium charges and insurance deposit adjustments

The temporary increase in the standard maximum share insurance amount made under paragraph (1) shall not be taken into account by the National Credit Union Administration Board for purposes of setting insurance premium charges and share insurance deposit adjustments under section 202(c)(2) of the Federal Credit Union Act (12 U.S.C. 1782(c)(2)).

(3) Borrowing limits temporarily lifted

During the period beginning on October 3, 2008, and ending on December 31, 2009, the National Credit Union Administration Board may request from the Secretary, and the Secretary shall approve, a loan or loans in an amount or amounts necessary to carry out this subsection, without regard to the limitations on such borrowing under section 203(d)(1) of the Federal Credit Union Act (12 U.S.C. 1783(d)(1)).

(c) Not for use in inflation adjustments

The temporary increase in the standard maximum deposit insurance amount made under this section shall not be used to make any inflation

adjustment under section 11(a)(1)(F) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)) for purposes of that Act [12 U.S.C. 1811 et seq.] or the Federal Credit Union Act [12 U.S.C. 1751 et seq.].

(Pub. L. 110-343, div. A, title I, § 136, Oct. 3, 2008, 122 Stat. 3799.)

REFERENCES IN TEXT

That Act, referred to in subsec. (c), means the Federal Deposit Insurance Act, act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

The Federal Credit Union Act, referred to in subsec. (c), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified principally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

SUBCHAPTER II—BUDGET-RELATED PROVISIONS

§ 5251. Information for congressional support agencies

Upon request, and to the extent otherwise consistent with law, all information used by the Secretary in connection with activities authorized under this chapter (including the records to which the Comptroller General is entitled under this chapter) shall be made available to congressional support agencies (in accordance with their obligations to support the Congress as set out in their authorizing statutes) for the purposes of assisting the committees of Congress with conducting oversight, monitoring, and analysis of the activities authorized under this chapter.

(Pub. L. 110-343, div. A, title II, § 201, Oct. 3, 2008, 122 Stat. 3800.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5252. Reports by the Office of Management and Budget and the Congressional Budget Office

(a) Reports by the Office of Management and Budget

Within 60 days of the first exercise of the authority granted in section 5211(a) of this title, but in no case later than December 31, 2008, and semiannually thereafter, the Office of Management and Budget shall report to the President and the Congress—

(1) the estimate, notwithstanding section 661a(5)(F) of title 2, as of the first business day that is at least 30 days prior to the issuance of the report, of the cost of the troubled assets, and guarantees of the troubled assets, determined in accordance with section 5232 of this title;

(2) the information used to derive the estimate, including assets purchased or guaran-

teed, prices paid, revenues received, the impact on the deficit and debt, and a description of any outstanding commitments to purchase troubled assets; and

(3) a detailed analysis of how the estimate has changed from the previous report.

Beginning with the second report under subsection (a), the Office of Management and Budget shall explain the differences between the Congressional Budget Office estimates delivered in accordance with subsection (b) and prior Office of Management and Budget estimates.

(b) Reports by the Congressional Budget Office

Within 45 days of receipt by the Congress of each report from the Office of Management and Budget under subsection (a), the Congressional Budget Office shall report to the Congress the Congressional Budget Office’s assessment of the report submitted by the Office of Management and Budget, including—

(1) the cost of the troubled assets and guarantees of the troubled assets,

(2) the information and valuation methods used to calculate such cost, and

(3) the impact on the deficit and the debt.

(c) Financial expertise

In carrying out the duties in this subsection¹ or performing analyses of activities under this chapter, the Director of the Congressional Budget Office may employ personnel and procure the services of experts and consultants.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to produce reports required by this section.

(Pub. L. 110-343, div. A, title II, § 202, Oct. 3, 2008, 122 Stat. 3800.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5253. Emergency treatment

All provisions of this chapter are designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res¹ 21 (110th Congress), the concurrent resolution on the budget for fiscal year 2008 and rescissions of any amounts provided in this chapter shall not be counted for purposes of budget enforcement.

(Pub. L. 110-343, div. A, title II, § 204, Oct. 3, 2008, 122 Stat. 3801.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of

¹ So in original. Probably should be “section”.

¹ So in original. Probably should be followed by a period.

Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

S. Con. Res. 21 (110th Congress), referred to in text, is S. Con. Res. 21, May 17, 2007, 121 Stat. 2590, which is not classified to the Code.

SUBCHAPTER III—TAX PROVISIONS

§ 5261. Gain or loss from sale or exchange of certain preferred stock

(a) In general

For purposes of title 26, 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.

(b) Applicable preferred stock

For purposes of this section, the term “applicable preferred stock” means any stock—

(1) which is preferred stock in—

(A) the Federal National Mortgage Association, established pursuant to the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), or

(B) the Federal Home Loan Mortgage Corporation, established pursuant to the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), and

(2) which—

(A) was held by the applicable financial institution on September 6, 2008, or

(B) was sold or exchanged by the applicable financial institution on or after January 1, 2008, and before September 7, 2008.

(c) Applicable financial institution

For purposes of this section:

(1) In general

Except as provided in paragraph (2), the term “applicable financial institution” means—

(A) a financial institution referred to in section 582(c)(2) of title 26, or

(B) a depository institution holding company (as defined in section 1813(w)(1) of this title).

(2) Special rules for certain sales

In the case of—

(A) a sale or exchange described in subsection (b)(2)(B), an entity shall be treated as an applicable financial institution only if it was an entity described in subparagraph (A) or (B) of paragraph (1) at the time of the sale or exchange, and

(B) a sale or exchange after September 6, 2008, of preferred stock described in sub-

section (b)(2)(A), an entity shall be treated as an applicable financial institution only if it was an entity described in subparagraph (A) or (B) of paragraph (1) at all times during the period beginning on September 6, 2008, and ending on the date of the sale or exchange of the preferred stock.

(d) Special rule for certain property not held on September 6, 2008

The Secretary of the Treasury or the Secretary’s delegate may extend the application of this section to all or a portion of the gain or loss from a sale or exchange in any case where—

(1) an applicable financial institution sells or exchanges applicable preferred stock after September 6, 2008, which the applicable financial institution did not hold on such date, but the basis of which in the hands of the applicable financial institution at the time of the sale or exchange is the same as the basis in the hands of the person which held such stock on such date, or

(2) the applicable financial institution is a partner in a partnership which—

(A) held such stock on September 6, 2008, and later sold or exchanged such stock, or

(B) sold or exchanged such stock during the period described in subsection (b)(2)(B).

(e) Regulatory authority

The Secretary of the Treasury or the Secretary’s delegate may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this section.

(f) Effective date

This section shall apply to sales or exchanges occurring after December 31, 2007, in taxable years ending after such date.

(Pub. L. 110-343, div. A, title III, § 301, Oct. 3, 2008, 122 Stat. 3802.)

REFERENCES IN TEXT

The Federal National Mortgage Association Charter Act, referred to in subsec. (b)(1)(A), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsec. (b)(1)(B), is title III of Pub. L. 91-351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.