

110TH CONGRESS
2D SESSION

H. R. 7223

To suspend the capital gains tax, schedule the government-sponsored enterprises for privatization, repeal the Humphrey-Hawkins Full Employment Act, and suspend mark-to-market accounting requirements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2008

Mr. HENSARLING (for himself, Mr. PEARCE, Mrs. BLACKBURN, Mr. GOHMERT, Mr. BRADY of Texas, Mr. DOOLITTLE, Mr. GINGREY, Mr. JORDAN of Ohio, Mrs. BACHMANN, Mr. WESTMORELAND, Mr. MCCAUL of Texas, Mrs. SCHMIDT, Mr. SESSIONS, Mr. CONAWAY, Mr. GARRETT of New Jersey, Mr. FRANKS of Arizona, Mr. BURTON of Indiana, Mr. FLAKE, Mr. ADERHOLT, Mr. PRICE of Georgia, Mr. LAMBORN, Mr. BISHOP of Utah, Mr. DAVID DAVIS of Tennessee, Mr. BROUN of Georgia, Mr. CULBERSON, Mr. DEAL of Georgia, Mrs. MYRICK, Mr. KUHLMAN of New York, Ms. FOX, Mr. MCCOTTER, Mr. MANZULLO, Mr. MARCHANT, Mr. CARTER, Mr. BARRETT of South Carolina, Mr. PITTS, Mr. THORNBERRY, Mr. WILSON of South Carolina, Mr. BARTLETT of Maryland, Mr. RADANOVICH, Mr. PENCE, Mr. FEENEY, Mr. KINGSTON, Mr. SULLIVAN, Mrs. MUSGRAVE, Mr. MCHENRY, Mr. AKIN, Mr. SAM JOHNSON of Texas, Mr. LINDER, Mr. REHBERG, Mr. GOODLATTE, and Mr. SCALISE) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Ways and Means, the Budget, Education and Labor, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To suspend the capital gains tax, schedule the government-sponsored enterprises for privatization, repeal the Humphrey-Hawkins Full Employment Act, and suspend

mark-to-market accounting requirements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 SHORT TITLE.—This Act may be cited as the “Free
 5 Market Protection Act of 2008”.

6 **TITLE I—PRIVATIZATION OF**
 7 **GOVERNMENT-SPONSORED**
 8 **ENTERPRISES**

9 **SEC. 101. SHORT TITLE.**

10 This title may be cited as the “Government-Spon-
 11 sored Enterprises Free Market Reform Act of 2008”.

12 **SEC. 102. DEFINITIONS.**

13 For purposes of this title, the following definitions
 14 shall apply:

15 (1) CHARTER.—The term “charter” means—

16 (A) with respect to the Federal National
 17 Mortgage Association, the Federal National
 18 Mortgage Association Charter Act (12 U.S.C.
 19 1716 et seq.); and

20 (B) with respect to the Federal Home
 21 Loan Mortgage Corporation, the Federal Home
 22 Loan Mortgage Corporation Act (12 U.S.C.
 23 1451 et seq.).

1 (2) DIRECTOR.—The term “Director” means
2 the Director of the Federal Housing Finance Agen-
3 cy.

4 (3) ENTERPRISE.—The term “enterprise”
5 means—

6 (A) the Federal National Mortgage Asso-
7 ciation; and

8 (B) the Federal Home Loan Mortgage
9 Corporation.

10 (4) GUARANTEE.—The term “guarantee”
11 means, with respect to an enterprise, the credit sup-
12 port of the enterprise that is provided by the Fed-
13 eral Government through its charter as a govern-
14 ment-sponsored enterprise.

15 **SEC. 103. TERMINATION OF CURRENT CONSERVATORSHIP.**

16 (a) IN GENERAL.—Upon the expiration of the period
17 referred to in subsection (b), the Director of the Federal
18 Housing Finance Agency shall determine, with respect to
19 each enterprise, if the enterprise is financially viable at
20 that time and—

21 (1) if the Director determines that the enter-
22 prise is financially viable, immediately take all ac-
23 tions necessary to terminate the conservatorship for
24 each of the enterprises; or

1 (2) if the Director determines that the enter-
2 prise is not financially viable, immediately appoint
3 the Federal Housing Finance Agency as receiver
4 under section 1367 of the Federal Housing Enter-
5 prises Financial Safety and Soundness Act of 1992
6 and carry out such receivership under the authority
7 of such section.

8 (b) TIMING.—The period referred to in this sub-
9 section is, with respect to an enterprise—

10 (1) except as provided in paragraph (2), the 24-
11 month beginning upon the date of the enactment of
12 this Act; or

13 (2) if the Director determines before the expira-
14 tion of the period referred to in paragraph (1) that
15 the financial markets would be adversely affected
16 without the extension of such period under this
17 paragraph with respect to that enterprise, the 30-
18 month period beginning upon the date of the enact-
19 ment of this Act.

20 (c) FINANCIAL VIABILITY.—The Director may not
21 determine that an enterprise is financially viable for pur-
22 poses of subsection (a) if the Director determines that any
23 of the conditions for receivership set forth in paragraph
24 (3) or (4) of section 1367(a) of the Federal Housing En-
25 terprises Financial Safety and Soundness Act of 1992 (12

1 U.S.C. 4617(a)) exists at the time with respect to the en-
2 terprise.

3 **SEC. 104. LIMITATION OF ENTERPRISE AUTHORITY UPON**
4 **EMERGENCE FROM CONSERVATORSHIP.**

5 (a) REVISED AUTHORITY.—Upon the expiration of
6 the period referred to in section 103(b), if the Director
7 makes the determination under section 103(a)(1), the fol-
8 lowing provisions shall take effect:

9 (1) PORTFOLIO LIMITATIONS.—Subtitle B of
10 title XIII of the Housing and Community Develop-
11 ment Act of 1992 (12 U.S.C. 4611 et seq.) is
12 amended by adding at the end the following new sec-
13 tion:

14 **“SEC. 1369E. RESTRICTION ON MORTGAGE ASSETS OF EN-**
15 **TERPRISES.**

16 “(a) RESTRICTION.—No enterprise shall own, as of
17 any applicable date in this subsection or thereafter, mort-
18 gage assets in excess of—

19 “(1) upon the expiration of the period referred
20 to in section 103(b) of the Government-Sponsored
21 Enterprises Free Market Reform Act of 2008,
22 \$850,000,000,000; or

23 “(2) on December 31 of each year thereafter,
24 80.0 percent of the aggregate amount of mortgage

1 assets of the enterprise as of December 31 of the
2 immediately preceding calendar year;
3 except that in no event shall an enterprise be required
4 under this section to own less than \$250,000,000,000 in
5 mortgage assets.

6 “(b) DEFINITION OF MORTGAGE ASSETS.—For pur-
7 poses of this section, the term ‘mortgage assets’ means,
8 with respect to an enterprise, assets of such enterprise
9 consisting of mortgages, mortgage loans, mortgage-related
10 securities, participation certificates, mortgage-backed
11 commercial paper, obligations of real estate mortgage in-
12 vestment conduits and similar assets, in each case to the
13 extent such assets would appear on the balance sheet of
14 such enterprise in accordance with generally accepted ac-
15 counting principles in effect in the United States as of
16 September 7, 2008 (as set forth in the opinions and pro-
17 nouncements of the Accounting Principles Board and the
18 American Institute of Certified Public Accountants and
19 statements and pronouncements of the Financial Account-
20 ing Standards Board from time to time; and without giv-
21 ing any effect to any change that may be made after Sep-
22 tember 7, 2008, in respect of Statement of Financial Ac-
23 counting Standards No. 140 or any similar accounting
24 standard).”.

1 (2) INCREASE IN MINIMUM CAPITAL REQUIRE-
2 MENT.—Section 1362 of the Federal Housing En-
3 terprises Financial Safety and Soundness Act of
4 1992 (12 U.S.C. 4612), as amended by section 1111
5 of the Housing and Economic Recovery Act of 2008
6 (Public Law 110–289), is amended—

7 (A) in subsection (a), by striking “For
8 purposes of this subtitle, the minimum capital
9 level for each enterprise shall be” and inserting
10 “The minimum capital level established under
11 subsection (g) for each enterprise may not be
12 lower than”;

13 (B) in subsection (c)—

14 (i) by striking “subsections (a) and”
15 and inserting “subsection”;

16 (ii) by striking “regulated entities”
17 the first place such term appears and in-
18 serting “Federal Home Loan Banks”;

19 (iii) by striking “for the enterprises,”;

20 (iv) by striking “, or for both the en-
21 terprises and the banks,”;

22 (v) by striking “the level specified in
23 subsection (a) for the enterprises or”; and

1 (vi) by striking “the regulated entities
2 operate” and inserting “such banks oper-
3 ate”;

4 (C) in subsection (d)(1)—

5 (i) by striking “subsections (a) and”
6 and inserting “subsection”; and

7 (ii) by striking “regulated entity”
8 each place such term appears and inserting
9 “Federal home loan bank”;

10 (D) in subsection (e), by striking “regu-
11 lated entity” each place such term appears and
12 inserting “Federal home loan bank”;

13 (E) in subsection (f)—

14 (i) by striking “the amount of core
15 capital maintained by the enterprises,”;
16 and

17 (ii) by striking “regulated entities”
18 and inserting “banks”; and

19 (F) by adding at the end the following new
20 subsection:

21 “(g) ESTABLISHMENT OF REVISED MINIMUM CAP-
22 ITAL LEVELS.—

23 “(1) IN GENERAL.—The Director shall cause
24 the enterprises to achieve and maintain adequate
25 capital by establishing minimum levels of capital for

1 such the enterprises and by using such other meth-
2 ods as the Director deems appropriate.

3 “(2) AUTHORITY.—The Director shall have the
4 authority to establish such minimum level of capital
5 for an enterprise in excess of the level specified
6 under subsection (a) as the Director, in the Direc-
7 tor’s discretion, deems to be necessary or appro-
8 priate in light of the particular circumstances of the
9 enterprise.

10 “(h) FAILURE TO MAINTAIN REVISED MINIMUM
11 CAPITAL LEVELS.—

12 “(1) UNSAFE AND UNSOUND PRACTICE OR CON-
13 DITION.—Failure of a enterprise to maintain capital
14 at or above its minimum level as established pursu-
15 ant to subsection (c) of this section may be deemed
16 by the Director, in his discretion, to constitute an
17 unsafe and unsound practice or condition within the
18 meaning of this title.

19 “(2) DIRECTIVE TO ACHIEVE CAPITAL
20 LEVEL.—

21 “(A) AUTHORITY.—In addition to, or in
22 lieu of, any other action authorized by law, in-
23 cluding paragraph (1), the Director may issue
24 a directive to an enterprise that fails to main-
25 tain capital at or above its required level as es-

1 tablished pursuant to subsection (c) of this sec-
2 tion.

3 “(B) PLAN.—Such directive may require
4 the enterprise to submit and adhere to a plan
5 acceptable to the Director describing the means
6 and timing by which the enterprise shall achieve
7 its required capital level.

8 “(C) ENFORCEMENT.—Any such directive
9 issued pursuant to this paragraph, including
10 plans submitted pursuant thereto, shall be en-
11 forceable under the provisions of subtitle C of
12 this title to the same extent as an effective and
13 outstanding order issued pursuant to subtitle C
14 of this title which has become final.

15 “(3) ADHERENCE TO PLAN.—

16 “(A) CONSIDERATION.—The Director may
17 consider such enterprise’s progress in adhering
18 to any plan required under this subsection
19 whenever such enterprise seeks the requisite ap-
20 proval of the Director for any proposal which
21 would divert earnings, diminish capital, or oth-
22 erwise impede such enterprise’s progress in
23 achieving its minimum capital level.

24 “(B) DENIAL.—The Director may deny
25 such approval where it determines that such

1 proposal would adversely affect the ability of
2 the enterprise to comply with such plan.”.

3 (3) REPEAL OF INCREASES TO CONFORMING
4 LOAN LIMITS.—

5 (A) REPEAL OF TEMPORARY INCREASE IN
6 ECONOMIC STIMULUS ACT.—Section 201 of the
7 Economic Stimulus Act of 2008 (Public Law
8 110–185) is hereby repealed.

9 (B) REPEAL OF GENERAL LIMIT AND PER-
10 MANENT HIGH-COST AREA INCREASE.—Para-
11 graph (2) of section 302(b) of the Federal Na-
12 tional Mortgage Association Charter Act (12
13 U.S.C. 1717(b)(2)) and paragraph (2) of sec-
14 tion 305(a) of the Federal Home Loan Mort-
15 gage Corporation Act (12 U.S.C. 1454(a)(2))
16 are each amended to read as such sections were
17 in effect immediately before the enactment of
18 the Housing and Economic Recovery Act of
19 2008 (Public Law 110–289).

20 (C) REPEAL OF NEW HOUSING PRICE
21 INDEX.—Section 1322 of the Federal Housing
22 Enterprises Financial Safety and Soundness
23 Act of 1992, as added by section 1124(d) of the
24 Housing and Economic Recovery Act of 2008
25 (Public Law 110–289), is hereby repealed.

1 (D) REPEAL.—Section 1124 of the Hous-
2 ing and Economic Recovery Act of 2008 (Public
3 Law 110–289) is hereby repealed.

4 (E) ESTABLISHMENT OF CONFORMING
5 LOAN LIMIT.—For the year in which the expira-
6 tion of the period referred to in section 103(b)
7 of this title occurs, the limitations governing the
8 maximum original principal obligation of con-
9 ventional mortgages that may be purchased by
10 the Federal National Mortgage Association and
11 the Federal Home Loan Mortgage Corporation,
12 referred to in section 302(b)(2) of the Federal
13 National Mortgage Association Charter Act (12
14 U.S.C. 1717(b)(2)) and section 305(a)(2) of the
15 Federal Home Loan Mortgage Corporation Act
16 (12 U.S.C. 1454(a)(2)), respectively, shall be
17 considered to be—

18 (i) \$417,000 for a mortgage secured
19 by a single-family residence,

20 (ii) \$533,850 for a mortgage secured
21 by a 2-family residence,

22 (iii) \$645,300 for a mortgage secured
23 by a 3-family residence, and

24 (iv) \$801,950 for a mortgage secured
25 by a 4-family residence,

1 and such limits shall be adjusted effective each
2 January 1 thereafter in accordance with such
3 sections 302(b)(2) and 305(a)(2).

4 (F) PROHIBITION OF PURCHASE OF MORT-
5 GAGES EXCEEDING MEDIAN AREA HOME
6 PRICE.—

7 (i) FANNIE MAE.—Section 302(b)(2)
8 of the Federal National Mortgage Associa-
9 tion Charter Act (12 U.S.C. 1717(b)(2)) is
10 amended by adding at the end the fol-
11 lowing new sentence: “Notwithstanding
12 any other provision of this title, the cor-
13 poration may not purchase any mortgage
14 for a property having a principal obligation
15 that exceeds the median home price, for
16 properties of the same size, for the area in
17 which such property subject to the mort-
18 gage is located.”.

19 (ii) FREDDIE MAC.—Section
20 305(a)(2) of the Federal Home Loan
21 Mortgage Corporation Act (12 U.S.C.
22 1454(a)(2)) is amended by adding at the
23 end the following new sentence: “Notwith-
24 standing any other provision of this title,
25 the Corporation may not purchase any

1 mortgage for a property having a principal
2 obligation that exceeds the median home
3 price, for properties of the same size, for
4 the area in which such property subject to
5 the mortgage is located.”.

6 (4) REQUIREMENT TO PAY STATE AND LOCAL
7 TAXES.—

8 (A) FANNIE MAE.—Paragraph (2) of sec-
9 tion 309(c) of the Federal National Mortgage
10 Association Charter Act (12 U.S.C.
11 1723a(c)(2)) is amended—

12 (i) by striking “shall be exempt from”
13 and inserting “shall be subject to”; and

14 (ii) by striking “except that any” and
15 inserting “and any”.

16 (B) FREDDIE MAC.—Section 303(e) of the
17 Federal Home Loan Mortgage Corporation Act
18 (12 U.S.C. 1452(e)) is amended—

19 (i) by striking “shall be exempt from”
20 and inserting “shall be subject to”; and

21 (ii) by striking “except that any” and
22 inserting “and any”.

23 (5) REPEALS RELATING TO REGISTRATION OF
24 SECURITIES.—

25 (A) FANNIE MAE.—

1 (i) MORTGAGE-BACKED SECURI-
2 TIES.—Section 304(d) of the Federal Na-
3 tional Mortgage Association Charter Act
4 (12 U.S.C. 1719(d)) is amended by strik-
5 ing the fourth sentence.

6 (ii) SUBORDINATE OBLIGATIONS.—
7 Section 304(e) of the Federal National
8 Mortgage Association Charter Act (12
9 U.S.C. 1719(e)) is amended by striking the
10 fourth sentence.

11 (B) FREDDIE MAC.—Section 306 of the
12 Federal Home Loan Mortgage Corporation Act
13 (12 U.S.C. 1455) is amended by striking sub-
14 section (g).

15 (6) RECOUPMENT OF COSTS FOR FEDERAL
16 GUARANTEE.—

17 (A) ASSESSMENTS.—The Director of the
18 Federal Housing Finance Agency shall establish
19 and collect from each enterprise assessments in
20 the amount determined under subparagraph
21 (B). In determining the method and timing for
22 making such assessments, the Director shall
23 take into consideration the determinations and
24 conclusions of the study under subsection (b) of
25 this section.

1 (B) DETERMINATION OF COSTS OF GUAR-
2 ANTEE.—Assessments under subparagraph (A)
3 with respect to an enterprise shall be in such
4 amount as the Director determines necessary to
5 recoup to the Federal Government the full value
6 of the benefit the enterprise receives from the
7 guarantee provided by the Federal Government
8 for the obligations and financial viability of the
9 enterprise, based upon the dollar value of such
10 benefit in the market to such enterprise when
11 not operating under conservatorship or receiver-
12 ship. To determine such amount, the Director
13 shall establish a risk-based pricing mechanism
14 as the Director considers appropriate, taking
15 into consideration the determinations and con-
16 clusions of the study under subsection (b) of
17 this section.

18 (C) TREATMENT OF RECOUPED
19 AMOUNTS.—The Director shall cover into the
20 general fund of the Treasury any amounts re-
21 ceived from assessments made under this para-
22 graph.

23 (b) GAO STUDY REGARDING RECOUPMENT OF
24 COSTS FOR FEDERAL GOVERNMENT GUARANTEE.—The
25 Comptroller General of the United States shall conduct

1 a study to determine a risk-based pricing mechanism to
2 accurately determine the value of the benefit the enter-
3 prises receive from the guarantee provided by the Federal
4 Government for the obligations and financial viability of
5 the enterprises. Such study shall establish a dollar value
6 of such benefit in the market to each enterprise when not
7 operating under conservatorship or receivership, shall ana-
8 lyze various methods of the Federal Government assessing
9 a charge for such value received (including methods involv-
10 ing an annual fee or a fee for each mortgage purchased
11 or securitized), and shall make a recommendation of the
12 best such method for assessing such charge. Not later
13 than 12 months after the date of the enactment of this
14 Act, the Comptroller General shall submit to the Congress
15 a report setting forth the determinations and conclusions
16 of such study.

17 **SEC. 105. REQUIREMENT TO PERIODICALLY RENEW CHAR-**
18 **TER UNTIL WIND DOWN AND DISSOLUTION.**

19 (a) **REQUIRED RENEWAL; WIND DOWN AND DIS-**
20 **SOLUTION UPON NON-RENEWAL.**—Upon the expiration of
21 the 3-year period that begins upon the expiration of the
22 period referred to in section 103(b), unless the charter of
23 an enterprise is renewed pursuant to subsection (b) of this
24 section, section 106 (relating to wind down of operations
25 and dissolution of enterprise) shall apply to the enterprise.

1 (b) RENEWAL PROCEDURE.—

2 (1) APPLICATION; TIMING.—The Director shall
3 provide for each enterprise to apply to the Director,
4 before the expiration of the 3-year period under sub-
5 section (a), for renewal of the charter of the enter-
6 prise.

7 (2) STANDARD.—The Director shall approve
8 the application of an enterprise for the renewal of
9 the charter of the enterprise if—

10 (A) the application includes a certification
11 by the enterprise that the enterprise is finan-
12 cially sound and is complying with all provisions
13 of, and amendments made by, section 104 of
14 this title applicable to such enterprise; and

15 (B) the Director verifies that the certifi-
16 cation made pursuant to subparagraph (A) is
17 accurate.

18 (c) OPTION TO REAPPLY.—Nothing in this section
19 may be construed to require an enterprise to apply under
20 this section for renewal of the charter of the enterprise.

21 **SEC. 106. REQUIRED WIND DOWN OF OPERATIONS AND DIS-**
22 **SOLUTION OF ENTERPRISE.**

23 (a) APPLICABILITY.—This section shall apply to an
24 enterprise—

1 (1) upon the expiration of the 3-year period re-
2 ferred to in such section 105(a), to the extent pro-
3 vided in such section; and

4 (2) if this section has not previously applied to
5 the enterprise, upon the expiration of the 6-year pe-
6 riod that begins upon the expiration of the period re-
7 ferred to in section 103(b).

8 (b) WIND DOWN.—Upon the applicability of this sec-
9 tion to an enterprise, the Director and the Secretary of
10 the Treasury shall jointly take such action, and may pre-
11 scribe such regulations and procedures, as may be nec-
12 essary to wind down the operations of an enterprise as
13 an entity chartered by the United States Government over
14 the duration of the 10-year period beginning upon the ap-
15 plicability of this section to the enterprise (pursuant to
16 subsection (a)) in an orderly manner consistent with this
17 title and the ongoing obligations of the enterprise.

18 (c) DIVISION OF ASSETS AND LIABILITIES; AUTHOR-
19 ITY TO ESTABLISH HOLDING CORPORATION AND DIS-
20 SOLUTION TRUST FUND.—The action and procedures re-
21 quired under subsection (b)—

22 (1) shall include the establishment and execu-
23 tion of plans to provide for an equitable division and
24 distribution of assets and liabilities of the enterprise,
25 including any liability of the enterprise to the United

1 States Government or a Federal reserve bank that
2 may continue after the end of the period described
3 in subsection(b); and

4 (2) may provide for establishment of—

5 (A) a holding corporation organized under
6 the laws of any State of the United States or
7 the District of Columbia for the purposes of the
8 reorganization and restructuring of the enter-
9 prise; and

10 (B) one or more trusts to which to trans-
11 fer—

12 (i) remaining debt obligations of the
13 enterprise, for the benefit of holders of
14 such remaining obligations; or

15 (ii) remaining mortgages held for the
16 purpose of backing mortgage-backed secu-
17 rities, for the benefit of holders of such re-
18 maining securities.

19 (d) REPEAL OF CHARTER.—Effective upon the expi-
20 ration of the 10-year period referred to in subsection (b)
21 for an enterprise, the charter for the enterprise is re-
22 pealed, except that the provisions of such charter in effect
23 immediately before such repeal shall continue to apply
24 with respect to the rights and obligations of any holders

1 of outstanding debt obligations and mortgage-backed secu-
2 rities of the enterprise.

3 **TITLE II—PRICE STABILITY**

4 **SEC. 201. SHORT TITLE.**

5 This title may be cited as the “Price Stability Act
6 of 2008”.

7 **SEC. 202. FINDINGS; STATEMENT OF POLICY.**

8 (a) FINDINGS.—The Congress finds the following:

9 (1) Price stability is a prerequisite for sustain-
10 able long-term economic growth, job creation, and
11 moderate interest rates.

12 (2) Inflation erodes the value of Americans’ in-
13 come and savings.

14 (3) Inflation distorts the pricing system and the
15 efficient allocation of resources in the economy.

16 (4) Inflation makes long-term planning difficult
17 and raises the effective tax rate on capital, thereby
18 impeding investment.

19 (5) Through its determination of monetary pol-
20 icy, the Board of Governors of the Federal Reserve
21 System is ultimately responsible for controlling the
22 long-run rate of inflation in the economy.

23 (6) The multiple policy goals of the Full Em-
24 ployment and Balanced Growth Act of 1978 cause
25 confusion and ambiguity about the appropriate role

1 and aims of monetary policy, which can add to vola-
2 tility in economic activity and financial markets.

3 (7) There is a need for the Congress to clarify
4 the proper role of the Board of Governors of the
5 Federal Reserve System in economic policymaking,
6 in order to achieve the best environment for long-
7 term economic growth and job creation.

8 (8) An explicit price stability goal would pro-
9 mote transparency, accountability and credibility in
10 monetary policy.

11 (9) Price stability should be the primary long-
12 term goal of the Board of Governors of the Federal
13 Reserve.

14 (b) STATEMENT OF POLICY.—It is the policy of the
15 United States that—

16 (1) the principal economic responsibilities of the
17 Government are to establish and ensure an environ-
18 ment that is conducive to both long-term economic
19 growth and increases in living standards, by estab-
20 lishing and maintaining free markets, low taxes, re-
21 spect for private property, and the stable, long-term
22 purchasing power of the United States currency; and

23 (2) the primary long-term goal of the Board of
24 Governors of the Federal Reserve System should be
25 to promote price stability.

1 **SEC. 203. MONETARY POLICY.**

2 (a) AMENDMENT TO THE FEDERAL RESERVE ACT.—

3 Section 2A of the Federal Reserve Act (12 U.S.C. 225a)

4 is amended to read as follows:

5 **“SEC. 2A. MONETARY POLICY.**

6 “(a) PRICE STABILITY.—The Board and the Federal

7 Open Market Committee (hereafter in this section referred

8 to as the ‘Committee’) shall—

9 “(1) establish an explicit numerical definition of
10 the term ‘price stability’; and

11 “(2) maintain a monetary policy that effectively
12 promotes long-term price stability.

13 “(b) MARKET STABILITY AND LIQUIDITY.—Sub-
14 section (a) shall not be construed as a limitation on the
15 authority or responsibility of the Board—

16 “(1) to provide liquidity to markets in the event
17 of a disruption that threatens the smooth func-
18 tioning and stability of the financial sector; or

19 “(2) to serve as a lender of last resort under
20 this Act when the Board determines such action is
21 necessary.

22 “(c) CONGRESSIONAL CONSULTATION.—Not later
23 than February 20 and July 20 of each year, the Board
24 shall consult with the Congress at semiannual hearings be-
25 fore the Committee on Banking, Housing, and Urban Af-
26 fairs of the Senate and the Committee on Financial Serv-

1 ices of the House of Representatives, about the objectives
2 and plans of the Board and the Committee with respect
3 to achieving and maintaining price stability.

4 “(d) CONGRESSIONAL OVERSIGHT.—The Board
5 shall, concurrent with each semiannual hearing required
6 by subsection (c), submit a written report to the Congress
7 containing—

8 “(1) numerical measures to help assess the ex-
9 tent to which the Board and the Committee are
10 achieving and maintaining price stability in accord-
11 ance with subsection (a);

12 “(2) a description of the intermediate variables
13 used by the Board to gauge the prospects for achiev-
14 ing the objective of price stability; and

15 “(3) the definition, or any modifications there-
16 to, of the term ‘price stability’ established in accord-
17 ance with subsection (a)(1).”.

18 (b) COMPLIANCE ESTIMATE.—Concurrent with the
19 first semiannual hearing required by section 2A(b) of the
20 Federal Reserve Act (as amended by subsection (a) of this
21 section) following the date of enactment of this Act, the
22 Board of Governors of the Federal Reserve System shall
23 submit to the Congress a written estimate of the length
24 of time it will take for the Board and the Federal Open
25 Market Committee to fully achieve price stability. The

1 Board and the Committee shall take into account any po-
2 tential short-term effects on employment and output in
3 complying with the goal of price stability.

4 **SEC. 204. REPEAL OF OBSOLETE PROVISIONS.**

5 (a) FULL EMPLOYMENT AND BALANCED GROWTH
6 ACT OF 1978.—The Full Employment and Balanced
7 Growth Act of 1978 (15 U.S.C. 3101 et seq.) is hereby
8 repealed.

9 (b) EMPLOYMENT ACT OF 1946.—The Employment
10 Act of 1946 (15 U.S.C. 1021 et seq.) is amended—

11 (1) in section 3 (15 U.S.C. 1022)—

12 (A) in the section heading, by striking
13 **“AND SHORT-TERM ECONOMIC GOALS AND**
14 **POLICIES”**;

15 (B) by striking “(a)”; and

16 (C) by striking “in accord with section
17 11(c) of this Act” and all that follows through
18 the end of the section and inserting “in accord-
19 ance with section 5(c).”;

20 (2) in section 9(b) (15 U.S.C. 1022f(b)), by
21 striking “, the Full Employment and Balanced
22 Growth Act of 1978,”;

23 (3) in section 10 (15 U.S.C. 1023)—

24 (A) in subsection (a), by striking “in the
25 light of the policy declared in section 2”;

1 (B) in subsection (e)(1), by striking “sec-
2 tion 9” and inserting “section 3”; and

3 (C) in the matter immediately following
4 paragraph (2) of subsection (e), by striking
5 “and the Full Employment and Balanced
6 Growth Act of 1978”;

7 (4) by striking section 2;

8 (5) by striking sections 4, 5, 6, 7, and 8; and

9 (6) by redesignating sections 3, 9, 10, and 11
10 as sections 2, 3, 4, and 5, respectively.

11 (e) CONGRESSIONAL BUDGET ACT OF 1974.—Title
12 III of the Congressional Budget Act of 1974 (2 U.S.C.
13 631 et seq.) is amended—

14 (1) in section 301—

15 (A) in subsection (b), by striking para-
16 graph (1) and redesignating paragraphs (2)
17 through (9) as paragraphs (1) through (8), re-
18 spectively;

19 (B) in subsection (d), in the second sen-
20 tence, by striking “the fiscal policy” and all
21 that follows through the end of the sentence
22 and inserting “fiscal policy.”;

23 (C) in subsection (e)(1), in the second sen-
24 tence, by striking “as to short-term and me-
25 dium-term goals”; and

1 (D) by striking subsection (f) and inserting
2 the following:

3 “(f) Repealed”; and

4 (2) in section 305—

5 (A) in subsection (a)(3), by inserting be-
6 fore the period at the end “, as described in
7 section 2 of the Price Stability Act of 2008”;

8 (B) in subsection (a)(4)—

9 (i) by striking “House sets forth the
10 economic goals” and all that follows
11 through “designed to achieve,” and insert-
12 ing “House of Representatives sets forth
13 the economic goals and policies, as de-
14 scribed in section 2 of the Price Stability
15 Act of 2008,”; and

16 (ii) by striking “such goals,” and all
17 that follows through the end of the para-
18 graph and inserting “such goals and poli-
19 cies.”;

20 (C) in subsection (b)(3), by inserting be-
21 fore the period at the end “, as described in
22 section 2 of the Price Stability Act of 2008”;
23 and

24 (D) in subsection (b)(4)—

1 (i) by striking “goals (as” and all that
 2 follows through “designed to achieve,” and
 3 inserting “goals and policies, as described
 4 in section 2 of the Price Stability Act of
 5 2008,”; and

6 (ii) by striking “such goals,” and all
 7 that follows through the end of the para-
 8 graph and inserting “such goals and poli-
 9 cies.”.

10 **TITLE III—TAX PROVISIONS**

11 **SEC. 301. TEMPORARY ZERO PERCENT CAPITAL GAINS** 12 **RATE FOR INDIVIDUALS AND CORPORA-** 13 **TIONS.**

14 (a) IN GENERAL.—Subchapter A of chapter 1 of the
 15 Internal Revenue Code of 1986 is amended by adding at
 16 the end the following new part:

17 **“PART VIII—TEMPORARY ZERO PERCENT CAP-** 18 **ITAL GAINS RATE FOR INDIVIDUALS AND** 19 **CORPORATIONS**

“Sec. 59B. Temporary zero percent capital gains rate for individuals and corporations.

1 **“SEC. 59B. TEMPORARY ZERO PERCENT CAPITAL GAINS**
2 **RATE FOR INDIVIDUALS AND CORPORA-**
3 **TIONS.**

4 “(a) APPLICATION TO INDIVIDUALS.—In the case of
5 a specified recognition event occurring on or after Sep-
6 tember 22, 2008, and on or before December 31, 2010—

7 “(1) IN GENERAL.—Section 1(h)(1) shall be ap-
8 plied by substituting ‘shall not exceed a tax com-
9 puted at the rates and in the same manner as if this
10 subsection had not been enacted on taxable income
11 reduced by the net capital gain.’ for ‘shall not ex-
12 ceed’ and all that follows.

13 “(2) ALTERNATIVE MINIMUM TAX.—Section
14 55(b)(3) shall be applied by substituting ‘shall not
15 exceed the amount determined under such first sen-
16 tence computed at the rates and in the same manner
17 as if this paragraph had not been enacted on the
18 taxable excess reduced by the net capital gain.’ for
19 ‘shall not exceed’ and all that follows through the
20 end of the first sentence.

21 “(b) APPLICATION TO CORPORATIONS.—In the case
22 of a specified recognition event occurring on or after Sep-
23 tember 22, 2008, and on or before December 31, 2010—

24 “(1) IN GENERAL.—Section 1201 shall be ap-
25 plied—

1 “(A) by substituting ‘0 percent’ for ‘35
2 percent’ both places it appears, and

3 “(B) by treating ‘net capital gain’ as hav-
4 ing the meaning given such term by section
5 1(h)(11).

6 “(2) ALTERNATIVE MINIMUM TAX.—For pur-
7 poses of section 55, the amount determined under
8 subsection (b)(1)(B)(i) of such section shall not ex-
9 ceed the sum of—

10 “(A) the amount determined under such
11 subsection computed at the rates and in the
12 same manner as if this paragraph had not been
13 enacted on the taxable excess reduced by the
14 net capital gain (as defined in section
15 1(h)(11)), plus

16 “(B) the amount determined under section
17 1201.

18 “(c) TECHNICAL PROVISIONS.—In the case of a spec-
19 ified recognition event occurring on or after September 22,
20 2008, and on or before December 31, 2010—

21 “(1) Section 1445(e)(1) shall be applied by sub-
22 stituting ‘0 percent’ for ‘35 percent (or, to the ex-
23 tent provided in regulations, 15 percent)’.

24 “(2) Section 1445(e)(2) shall be applied by sub-
25 stituting ‘0 percent’ for ‘35 percent’.

1 “(3) Section 7518(g)(6)(A) shall be applied by
2 substituting ‘0 percent’ for ‘15 percent (34 percent
3 in the case of a corporation)’.

4 “(4) Section 607(h)(6)(A) of the Merchant Ma-
5 rine Act, 1936 shall be applied by substituting ‘0
6 percent’ for ‘15 percent (34 percent in the case of
7 a corporation)’.

8 “(d) SPECIFIED RECOGNITION EVENT.—For pur-
9 poses of this section, the term ‘specified recognition event’
10 means—

11 “(1) the sale or exchange of a capital asset held
12 for more than 1 year, and

13 “(2) the receipt of qualified dividend income (as
14 defined in section 1(h)(11)).

15 “(e) APPLICATION TO TRANSITIONAL YEARS.—The
16 Secretary shall issue regulations providing appropriate
17 transition rules for the application of the provisions of this
18 title referred to in subsections (a) or (b) for taxable years
19 which include September 22, 2008, or December 31,
20 2010.”.

21 (b) CONFORMING AMENDMENT.—The table of parts
22 for subchapter A of chapter 1 of such Code is amended
23 by adding at the end the following new item:

 “PART VIII—TEMPORARY ZERO PERCENT CAPITAL GAINS RATE FOR
 INDIVIDUALS AND CORPORATIONS”.

24 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall apply to taxable years ending after September
4 22, 2008.

5 (2) WITHHOLDING.—Paragraphs (1) and (2) of
6 section 59B(c) of the Internal Revenue Code of
7 1986, as added by this section, shall apply to dis-
8 positions and distributions after such date.

9 **SEC. 302. INDEXING OF CERTAIN ASSETS FOR PURPOSES**
10 **OF DETERMINING GAIN OR LOSS.**

11 (a) IN GENERAL.—Part II of subchapter O of chap-
12 ter 1 (relating to basis rules of general application) is
13 amended by redesignating section 1023 as section 1024
14 and by inserting after section 1022 the following new sec-
15 tion:

16 **“SEC. 1023. INDEXING OF CERTAIN ASSETS FOR PURPOSES**
17 **OF DETERMINING GAIN OR LOSS.**

18 “(a) GENERAL RULE.—

19 “(1) INDEXED BASIS SUBSTITUTED FOR AD-
20 JUSTED BASIS.—Solely for purposes of determining
21 gain or loss on the sale or other disposition by a tax-
22 payer (other than a corporation) of an indexed asset
23 which has been held for more than 3 years, the in-
24 dexed basis of the asset shall be substituted for its
25 adjusted basis.

1 “(2) EXCEPTION FOR DEPRECIATION, ETC.—
2 The deductions for depreciation, depletion, and am-
3 ortization shall be determined without regard to the
4 application of paragraph (1) to the taxpayer or any
5 other person.

6 “(3) WRITTEN DOCUMENTATION REQUIRE-
7 MENT.—Paragraph (1) shall apply only with respect
8 to indexed assets for which the taxpayer has written
9 documentation of the original purchase price paid or
10 incurred by the taxpayer to acquire such asset.

11 “(b) INDEXED ASSET.—

12 “(1) IN GENERAL.—For purposes of this sec-
13 tion, the term ‘indexed asset’ means—

14 “(A) common stock in a C corporation
15 (other than a foreign corporation), or

16 “(B) tangible property,

17 which is a capital asset or property used in the trade
18 or business (as defined in section 1231(b)).

19 “(2) STOCK IN CERTAIN FOREIGN CORPORA-
20 TIONS INCLUDED.—For purposes of this section—

21 “(A) IN GENERAL.—The term ‘indexed
22 asset’ includes common stock in a foreign cor-
23 poration which is regularly traded on an estab-
24 lished securities market.

1 “(B) EXCEPTION.—Subparagraph (A)
2 shall not apply to—

3 “(i) stock of a foreign investment
4 company,

5 “(ii) stock in a passive foreign invest-
6 ment company (as defined in section
7 1296),

8 “(iii) stock in a foreign corporation
9 held by a United States person who meets
10 the requirements of section 1248(a)(2),
11 and

12 “(iv) stock in a foreign personal hold-
13 ing company.

14 “(C) TREATMENT OF AMERICAN DEPOSI-
15 TORY RECEIPTS.—An American depository re-
16 ceipt for common stock in a foreign corporation
17 shall be treated as common stock in such cor-
18 poration.

19 “(c) INDEXED BASIS.—For purposes of this sec-
20 tion—

21 “(1) GENERAL RULE.—The indexed basis for
22 any asset is—

23 “(A) the adjusted basis of the asset, in-
24 creased by

25 “(B) the applicable inflation adjustment.

1 “(2) APPLICABLE INFLATION ADJUSTMENT.—

2 The applicable inflation adjustment for any asset is
3 an amount equal to—

4 “(A) the adjusted basis of the asset, multi-
5 plied by

6 “(B) the percentage (if any) by which—

7 “(i) the gross domestic product
8 deflator for the last calendar quarter end-
9 ing before the asset is disposed of, exceeds

10 “(ii) the gross domestic product
11 deflator for the last calendar quarter end-
12 ing before the asset was acquired by the
13 taxpayer.

14 The percentage under subparagraph (B) shall be
15 rounded to the nearest $\frac{1}{10}$ of 1 percentage point.

16 “(3) GROSS DOMESTIC PRODUCT DEFLATOR.—

17 The gross domestic product deflator for any cal-
18 endar quarter is the implicit price deflator for the
19 gross domestic product for such quarter (as shown
20 in the last revision thereof released by the Secretary
21 of Commerce before the close of the following cal-
22 endar quarter).

23 “(d) SUSPENSION OF HOLDING PERIOD WHERE DI-
24 MINISHED RISK OF LOSS; TREATMENT OF SHORT
25 SALES.—

1 “(1) IN GENERAL.—If the taxpayer (or a re-
2 lated person) enters into any transaction which sub-
3 stantially reduces the risk of loss from holding any
4 asset, such asset shall not be treated as an indexed
5 asset for the period of such reduced risk.

6 “(2) SHORT SALES.—

7 “(A) IN GENERAL.—In the case of a short
8 sale of an indexed asset with a short sale period
9 in excess of 3 years, for purposes of this title,
10 the amount realized shall be an amount equal
11 to the amount realized (determined without re-
12 gard to this paragraph) increased by the appli-
13 cable inflation adjustment. In applying sub-
14 section (c)(2) for purposes of the preceding sen-
15 tence, the date on which the property is sold
16 short shall be treated as the date of acquisition
17 and the closing date for the sale shall be treat-
18 ed as the date of disposition.

19 “(B) SHORT SALE PERIOD.—For purposes
20 of subparagraph (A), the short sale period be-
21 gins on the day that the property is sold and
22 ends on the closing date for the sale.

23 “(e) TREATMENT OF REGULATED INVESTMENT
24 COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

25 “(1) ADJUSTMENTS AT ENTITY LEVEL.—

1 “(A) IN GENERAL.—Except as otherwise
2 provided in this paragraph, the adjustment
3 under subsection (a) shall be allowed to any
4 qualified investment entity (including for pur-
5 poses of determining the earnings and profits of
6 such entity).

7 “(B) EXCEPTION FOR CORPORATE SHARE-
8 HOLDERS.—Under regulations—

9 “(i) in the case of a distribution by a
10 qualified investment entity (directly or in-
11 directly) to a corporation—

12 “(I) the determination of whether
13 such distribution is a dividend shall be
14 made without regard to this section,
15 and

16 “(II) the amount treated as gain
17 by reason of the receipt of any capital
18 gain dividend shall be increased by the
19 percentage by which the entity’s net
20 capital gain for the taxable year (de-
21 termined without regard to this sec-
22 tion) exceeds the entity’s net capital
23 gain for such year determined with re-
24 gard to this section, and

1 “(ii) there shall be other appropriate
2 adjustments (including deemed distribu-
3 tions) so as to ensure that the benefits of
4 this section are not allowed (directly or in-
5 directly) to corporate shareholders of quali-
6 fied investment entities.

7 For purposes of the preceding sentence, any
8 amount includible in gross income under section
9 852(b)(3)(D) shall be treated as a capital gain
10 dividend and an S corporation shall not be
11 treated as a corporation.

12 “(C) EXCEPTION FOR QUALIFICATION
13 PURPOSES.—This section shall not apply for
14 purposes of sections 851(b) and 856(e).

15 “(D) EXCEPTION FOR CERTAIN TAXES IM-
16 POSED AT ENTITY LEVEL.—

17 “(i) TAX ON FAILURE TO DISTRIBUTE
18 ENTIRE GAIN.—If any amount is subject to
19 tax under section 852(b)(3)(A) for any
20 taxable year, the amount on which tax is
21 imposed under such section shall be in-
22 creased by the percentage determined
23 under subparagraph (B)(i)(II). A similar
24 rule shall apply in the case of any amount
25 subject to tax under paragraph (2) or (3)

1 of section 857(b) to the extent attributable
2 to the excess of the net capital gain over
3 the deduction for dividends paid deter-
4 mined with reference to capital gain divi-
5 dends only. The first sentence of this
6 clause shall not apply to so much of the
7 amount subject to tax under section
8 852(b)(3)(A) as is designated by the com-
9 pany under section 852(b)(3)(D).

10 “(ii) OTHER TAXES.—This section
11 shall not apply for purposes of determining
12 the amount of any tax imposed by para-
13 graph (4), (5), or (6) of section 857(b).

14 “(2) ADJUSTMENTS TO INTERESTS HELD IN
15 ENTITY.—

16 “(A) REGULATED INVESTMENT COMPA-
17 NIES.—Stock in a regulated investment com-
18 pany (within the meaning of section 851) shall
19 be an indexed asset for any calendar quarter in
20 the same ratio as—

21 “(i) the average of the fair market
22 values of the indexed assets held by such
23 company at the close of each month during
24 such quarter, bears to

1 “(ii) the average of the fair market
2 values of all assets held by such company
3 at the close of each such month.

4 “(B) REAL ESTATE INVESTMENT
5 TRUSTS.—Stock in a real estate investment
6 trust (within the meaning of section 856) shall
7 be an indexed asset for any calendar quarter in
8 the same ratio as—

9 “(i) the fair market value of the in-
10 dexed assets held by such trust at the close
11 of such quarter, bears to

12 “(ii) the fair market value of all as-
13 sets held by such trust at the close of such
14 quarter.

15 “(C) RATIO OF 80 PERCENT OR MORE.—If
16 the ratio for any calendar quarter determined
17 under subparagraph (A) or (B) would (but for
18 this subparagraph) be 80 percent or more, such
19 ratio for such quarter shall be 100 percent.

20 “(D) RATIO OF 20 PERCENT OR LESS.—If
21 the ratio for any calendar quarter determined
22 under subparagraph (A) or (B) would (but for
23 this subparagraph) be 20 percent or less, such
24 ratio for such quarter shall be zero.

1 “(E) LOOK-THRU OF PARTNERSHIPS.—For
2 purposes of this paragraph, a qualified invest-
3 ment entity which holds a partnership interest
4 shall be treated (in lieu of holding a partnership
5 interest) as holding its proportionate share of
6 the assets held by the partnership.

7 “(3) TREATMENT OF RETURN OF CAPITAL DIS-
8 TRIBUTIONS.—Except as otherwise provided by the
9 Secretary, a distribution with respect to stock in a
10 qualified investment entity which is not a dividend
11 and which results in a reduction in the adjusted
12 basis of such stock shall be treated as allocable to
13 stock acquired by the taxpayer in the order in which
14 such stock was acquired.

15 “(4) QUALIFIED INVESTMENT ENTITY.—For
16 purposes of this subsection, the term ‘qualified in-
17 vestment entity’ means—

18 “(A) a regulated investment company
19 (within the meaning of section 851), and

20 “(B) a real estate investment trust (within
21 the meaning of section 856).

22 “(f) OTHER PASS-THRU ENTITIES.—

23 “(1) PARTNERSHIPS.—

24 “(A) IN GENERAL.—In the case of a part-
25 nership, the adjustment made under subsection

1 (a) at the partnership level shall be passed
2 through to the partners.

3 “(B) SPECIAL RULE IN THE CASE OF SEC-
4 TION 754 ELECTIONS.—In the case of a transfer
5 of an interest in a partnership with respect to
6 which the election provided in section 754 is in
7 effect—

8 “(i) the adjustment under section
9 743(b)(1) shall, with respect to the trans-
10 feror partner, be treated as a sale of the
11 partnership assets for purposes of applying
12 this section, and

13 “(ii) with respect to the transferee
14 partner, the partnership’s holding period
15 for purposes of this section in such assets
16 shall be treated as beginning on the date
17 of such adjustment.

18 “(2) S CORPORATIONS.—In the case of an S
19 corporation, the adjustment made under subsection
20 (a) at the corporate level shall be passed through to
21 the shareholders. This section shall not apply for
22 purposes of determining the amount of any tax im-
23 posed by section 1374 or 1375.

24 “(3) COMMON TRUST FUNDS.—In the case of a
25 common trust fund, the adjustment made under sub-

1 section (a) at the trust level shall be passed through
2 to the participants.

3 “(4) INDEXING ADJUSTMENT DISREGARDED IN
4 DETERMINING LOSS ON SALE OF INTEREST IN ENTI-
5 TY.—Notwithstanding the preceding provisions of
6 this subsection, for purposes of determining the
7 amount of any loss on a sale or exchange of an in-
8 terest in a partnership, S corporation, or common
9 trust fund, the adjustment made under subsection
10 (a) shall not be taken into account in determining
11 the adjusted basis of such interest.

12 “(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

13 “(1) IN GENERAL.—This section shall not apply
14 to any sale or other disposition of property between
15 related persons except to the extent that the basis
16 of such property in the hands of the transferee is a
17 substituted basis.

18 “(2) RELATED PERSONS DEFINED.—For pur-
19 poses of this section, the term ‘related persons’
20 means—

21 “(A) persons bearing a relationship set
22 forth in section 267(b), and

23 “(B) persons treated as single employer
24 under subsection (b) or (c) of section 414.

1 “(h) TRANSFERS TO INCREASE INDEXING ADJUST-
2 MENT.—If any person transfers cash, debt, or any other
3 property to another person and the principal purpose of
4 such transfer is to secure or increase an adjustment under
5 subsection (a), the Secretary may disallow part or all of
6 such adjustment or increase.

7 “(i) SPECIAL RULES.—For purposes of this section—

8 “(1) TREATMENT OF IMPROVEMENTS, ETC.—If
9 there is an addition to the adjusted basis of any tan-
10 gible property or of any stock in a corporation dur-
11 ing the taxable year by reason of an improvement to
12 such property or a contribution to capital of such
13 corporation—

14 “(A) such addition shall never be taken
15 into account under subsection (c)(1)(A) if the
16 aggregate amount thereof during the taxable
17 year with respect to such property or stock is
18 less than \$1,000, and

19 “(B) such addition shall be treated as a
20 separate asset acquired at the close of such tax-
21 able year if the aggregate amount thereof dur-
22 ing the taxable year with respect to such prop-
23 erty or stock is \$1,000 or more.

24 A rule similar to the rule of the preceding sentence
25 shall apply to any other portion of an asset to the

1 extent that separate treatment of such portion is ap-
2 propriate to carry out the purposes of this section.

3 “(2) ASSETS WHICH ARE NOT INDEXED ASSETS
4 THROUGHOUT HOLDING PERIOD.—The applicable in-
5 flation adjustment shall be appropriately reduced for
6 periods during which the asset was not an indexed
7 asset.

8 “(3) TREATMENT OF CERTAIN DISTRIBUTU-
9 TIONS.—A distribution with respect to stock in a
10 corporation which is not a dividend shall be treated
11 as a disposition.

12 “(4) SECTION CANNOT INCREASE ORDINARY
13 LOSS.—To the extent that (but for this paragraph)
14 this section would create or increase a net ordinary
15 loss to which section 1231(a)(2) applies or an ordi-
16 nary loss to which any other provision of this title
17 applies, such provision shall not apply. The taxpayer
18 shall be treated as having a long-term capital loss in
19 an amount equal to the amount of the ordinary loss
20 to which the preceding sentence applies.

21 “(5) ACQUISITION DATE WHERE THERE HAS
22 BEEN PRIOR APPLICATION OF SUBSECTION (a)(1)
23 WITH RESPECT TO THE TAXPAYER.—If there has
24 been a prior application of subsection (a)(1) to an
25 asset while such asset was held by the taxpayer, the

1 date of acquisition of such asset by the taxpayer
2 shall be treated as not earlier than the date of the
3 most recent such prior application.

4 “(j) REGULATIONS.—The Secretary shall prescribe
5 such regulations as may be necessary or appropriate to
6 carry out the purposes of this section.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 for part II of subchapter O of chapter 1 is amended by
9 striking the item relating to section 1023 and by inserting
10 after the item relating to section 1022 the following new
11 item:

“Sec. 1022. Indexing of certain assets for purposes of determining gain or loss.
“Sec. 1023. Cross references.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to sales and other dispositions of
14 indexed assets after the date of the enactment of this Act,
15 in taxable years ending after such date.

16 **TITLE IV—FAIR VALUE** 17 **ACCOUNTING REFORM ACT**

18 **SEC. 401. FINDINGS AND PURPOSE.**

19 (a) FINDINGS.—The Congress finds that—

20 (1) for many purposes, fair value accounting re-
21 quirements can inform and protect investors;

22 (2) in periods of market turmoil when there is
23 an inactive market, fair value accounting require-
24 ments can force financial institutions to write down

1 the value of a long-term, non-trading asset below its
2 true economic value even though the cash flow on
3 the asset remains unimpaired and other indicia of
4 value of the asset reflect value consistent with the
5 cash flow; and

6 (3) the application of fair value accounting re-
7 quirements on assets for which there is an inactive
8 market has the unintended effect of exacerbating
9 economic downturns by reducing the ability of finan-
10 cial institutions to provide credit to consumers and
11 businesses.

12 (b) PURPOSE.—The purpose of this Act is to—

13 (1) maintain the ability of all financial institu-
14 tions to provide credit in periods of market stress;

15 (2) permit financial institutions to maintain the
16 economic value of long term, non-trading assets in
17 an inactive market; and

18 (3) continue to provide transparency to inves-
19 tors.

20 **SEC. 402. DEFINITIONS.**

21 For purposes of this legislation, “long-term, non-
22 trading assets” are defined as all instances in which fair
23 value measurement is required under U.S. Generally Ac-
24 cepted Accounting Principles for which the company is not
25 actively trading and for which the company has the ability

1 to hold those financial instruments for an extended period
2 of time.

3 **SEC. 403. TEMPORARY SUSPENSION OF FAIR VALUE AC-**
4 **COUNTING.**

5 (a) IN GENERAL.—Effective on the date of enact-
6 ment of the Troubled Asset Relief Act of 2008, the Securi-
7 ties and Exchange Commission shall suspend the applica-
8 tion of fair value reporting standards to troubled assets
9 held by financial institutions, as those terms are defined
10 in such Act. The suspension required by this subsection
11 shall remain in effect until the issuance of the guidance
12 required in subsection (b). Until such guidance is issued,
13 the fair value of these assets should be estimated using
14 the best available information of the instrument’s value,
15 including the entity’s intended use of that asset, from the
16 point of view of the holder of that instrument.

17 (b) GUIDANCE.—Within 90 days of the date of enact-
18 ment of this Act, the Securities and Exchange Commission
19 shall issue guidance on the reporting requirements for
20 long-term, non-trading assets during periods in which
21 there is no active market for such assets. Such guidance
22 shall:

23 (1) define “market participants” eligible for
24 such guidance;

1 (2) define an inactive market which will trigger
2 such guidance;

3 (3) specify a valuation method that reflects the
4 economic value of such assets; and

5 (4) determine the period in which such assets
6 should be evaluated under this method.

7 **SEC. 404. GAO ANALYSIS OF FAIR VALUE ACCOUNTING.**

8 (a) IN GENERAL.—The General Accountability Office
9 shall prepare an analysis of the effect of fair value ac-
10 counting standards on financial institutions. Such analysis
11 shall—

12 (1) describe the current impact of fair value ac-
13 counting on financial institutions during different
14 economic cycles and under different market condi-
15 tions, including periods in which there is an inactive
16 market for long-term, non-trading assets held by
17 such institutions;

18 (2) evaluate auditors' practices and procedures
19 in reviewing the application of fair value accounting
20 on long-term, non-trading assets in an inactive mar-
21 ket; and

22 (3) describe the impact of the Securities and
23 Exchange Commission's application of fair value ac-
24 counting, as prescribed by such guidance required in
25 Section 4 (b).

1 (b) TIMING.—The analysis required by subsection (a)
2 shall be completed within 1 year of the date of enactment
3 of this Act, and shall be submitted to the Committee on
4 Financial Services of the House of Representatives and
5 the Committee on Banking, Housing and Urban Affairs
6 of the Senate.

7 **TITLE V—MORTGAGE-BACKED**
8 **SECURITIES**

9 **SEC. 501. THE INSURANCE OF MORTGAGE-BACKED SECURI-**
10 **TIES.**

11 (a) MORTGAGE-BACKED SECURITY INSURANCE.—
12 Upon the enactment of this Act, the timely payment of
13 up to 100 percent of principal of and interest on each
14 mortgage-backed security held by a financial institution
15 on or before September 24, 2008 is hereby insured on such
16 terms and conditions as determined by the Secretary con-
17 sistent with this title, as those terms are defined in Section
18 111.

19 (b) NECESSARY ACTIONS.—The Secretary is author-
20 ized to take such actions as he deems necessary to carry
21 out the authorities in this title, including—

22 (1) appointing such employees as may be re-
23 quired to carry out the authorities in this title and
24 defining their duties;

1 (2) entering into contracts, including contracts
2 for the services of experts and consultants as au-
3 thorized by section 3109 of title 5, United States
4 Code, without regard to any other provision of law
5 regarding public contracts;

6 (3) designating financial institutions as finan-
7 cial agents of the Government, and they shall per-
8 form all such reasonable duties related to this title
9 as financial agents of the Government as may be re-
10 quired of them;

11 (4) establishing vehicles that are authorized,
12 subject to supervision by the Secretary, to provide,
13 and make payments on, the insures referred to in
14 subsection (a) and issue obligations; and

15 (5) issuing such regulations and other guidance
16 as may be necessary or appropriate to define terms
17 or carry out the authorities of this title.

18 **SEC. 502. CONSIDERATIONS.**

19 (a) SECRETARY CONSIDERATION.—In exercising the
20 authorities granted in this title, the Secretary shall take
21 into consideration means for—

22 (1) protecting the taxpayer;

23 (2) providing stability or preventing disruption
24 to the financial markets or banking system; and

1 (3) taking appropriate steps to manage any
2 conflicts of interest in the hiring of contractors or
3 advisors.

4 (b) RULEMAKING EXEMPTION.—Any regulation
5 issued under the authority provided in this title shall not
6 be subject to the rulemaking provisions as set forth in sec-
7 tion 553 of title 5, United States Code.

8 **SEC. 503. INSURANCE PREMIUMS.**

9 (a) INSURANCE PREMIUMS.—The Secretary shall col-
10 lect premiums from each financial institution, as such
11 term is defined in section 111 of this title, in order to
12 fund the Mortgage-Backed Securities Fund established in
13 section 105 and used to satisfy obligations incurred under
14 this title.

15 (b) PREMIUM COLLECTION.—The premium collected
16 pursuant to subsection (a) shall be collected from each fi-
17 nancial institution notwithstanding such institution’s ap-
18 plication, if any, for insures set forth in section 101(a).

19 (c) AUTHORITY TO BASE INSURANCE PREMIUM ON
20 PRODUCT RISK.—In establishing the insurance premium
21 under subsection (a), the Secretary may provide for vari-
22 ations in such rates according to the credit risk associated
23 with the mortgage-backed security held by a financial in-
24 stitution as such term is defined in section 111.

1 (d) SUFFICIENT LEVEL.—The premium referred to
2 in subsection (a) shall be set by the Secretary at a level
3 necessary to maintain a level of funding in the Mortgage-
4 Backed Securities Fund, as established in section 104,
5 sufficient to meet anticipated claims based upon actuarial
6 analysis.

7 (e) EXPIRATION.—The Secretary may cease col-
8 lecting premiums set forth in subsection (a) if he deter-
9 mines the Mortgage-Backed Securities Fund has sufficient
10 reserves to meet anticipated claims as described in sub-
11 section (d).

12 **SEC. 504. MORTGAGE-BACKED SECURITIES FUND.**

13 (a) COLLECTED PREMIUMS.—The Secretary shall de-
14 posit premiums collected pursuant to section 103(a) of
15 this title into the Mortgage-Backed Securities Fund as es-
16 tablished in subsection (b).

17 (b) MORTGAGE-BACKED SECURITIES FUND.—There
18 is hereby established a Mortgage-Backed Securities Fund
19 (in this title referred to as the “Fund”).

20 (c) AUTHORITY.—Premiums deposited in the Fund
21 pursuant to subsection section (a) shall be invested in obli-
22 gations of the United States, or kept in cash on hand or
23 on deposit, as necessary.

24 (d) PAYMENTS FROM THE FUND.—The Secretary
25 shall make payments from amounts deposited in the Fund

1 to fulfill the obligations of the insurance provided to finan-
2 cial institutions as set forth in section 101(a).

3 (e) **FUND SUFFICIENCY.**—The Secretary shall in-
4 crease insurance premiums if he determines, after con-
5 sultation with the Government Accountability Office, to a
6 level sufficient to assure reserves in the Fund will meet
7 anticipated needs.

8 (f) **TRANSFER AUTHORITY.**—The Secretary of the
9 Treasury is authorized and directed to loan to the Fund,
10 on such terms as may be fixed by the Secretary, such
11 funds as in the Secretary’s judgment are from time to
12 time required for purposes of this title.

13 **SEC. 505. PAYMENT OF INSURANCE PREMIUMS.**

14 (a) **PAYMENT AND SUBROGATION.**—If a financial in-
15 stitution that holds a mortgage-backed security on Sep-
16 tember 24, 2008, for which insurance is provided pursuant
17 to this title, is unable to make any payment of principal
18 of or interest on such security, the Secretary shall make
19 such payment as and when due, in cash, and upon such
20 payment shall be subrogated fully to the rights satisfied
21 by such payment.

22 (b) **CONTRACT.**—The Secretary is hereby authorized,
23 in connection with any insurance under this title, whether
24 before or after any default, to provide by contract with
25 the holder, referred to in subsection (a), for the extin-

1 guishment, upon default by the holder, of any redemption,
2 equitable, legal, or other right, title, or interest of the
3 holder in any mortgage or mortgages constituting the
4 trust or pool against which the mortgage-backed securities
5 insured under this title are issued; and with respect to
6 any issue of such insured securities, in the event of default
7 and pursuant otherwise to the terms of the contract, the
8 mortgages that constitute such trust or pool backing the
9 security shall become the absolute property of the U.S.
10 Treasury, subject only to the unsatisfied rights of the
11 holders of the mortgage-backed securities based on and
12 backed by such trust or pool.

13 (c) LIMITATION ON APPLICATION OF LAW.—No
14 State or local law, and no Federal law, shall preclude or
15 limit the exercise of the Secretary's—

16 (1) power to contract with the issuer on the
17 terms set forth in subsection (b); or

18 (2) authorization to enforce any such contract
19 with the holder; or

20 (3) the rights, as provided in subsection (b), in
21 the mortgages constituting the trust or pool against
22 which such insured securities are issued.

23 (d) FULL FAITH AND CREDIT.—The full faith and
24 credit of the United States is pledged to the payment of

1 all amounts which may be required to be paid under any
2 insurance under this title.

3 **SEC. 506. FUNDING.**

4 For the purpose of the authorities granted in this
5 title, and for the costs of administering those authorities,
6 the Secretary may use funds from the amounts in the
7 Mortgage-Backed Securities Fund. Any funds expended
8 from the Fund for actions authorized by this title, includ-
9 ing the payment of administrative expenses, shall be
10 deemed appropriated at the time of such expenditure.

11 **SEC. 507. JUDICIAL REVIEW AND RELATED MATTERS.**

12 (a) JUDICIAL REVIEW.—

13 (1) STANDARD.—Actions by the Secretary pur-
14 suant to the authority of this Act shall be subject to
15 chapter 7 of title 5, United States Code, including
16 that such final actions shall be held unlawful and set
17 aside if found to be arbitrary, capricious, an abuse
18 of discretion, or not in accordance with law.

19 (2) LIMITATIONS ON EQUITABLE RELIEF.—

20 (A) INJUNCTION.—No injunction or other
21 form of equitable relief shall be issued against
22 the Secretary for actions pursuant to section
23 101, 102, 106, and 109, other than to remedy
24 a violation of the Constitution.

1 (B) TEMPORARY RESTRAINING ORDER.—
2 Any request for a temporary restraining order
3 against the Secretary for actions pursuant to
4 this Act shall be considered and granted or de-
5 nied by the court within 3 days of the date of
6 the request.

7 (C) PRELIMINARY INJUNCTION.—Any re-
8 quest for a preliminary injunction against the
9 Secretary for actions pursuant to this Act shall
10 be considered and granted or denied by the
11 court on an expedited basis consistent with the
12 provisions of rule 65(b)(3) of the Federal Rules
13 of Civil Procedure, or any successor thereto.

14 (D) PERMANENT INJUNCTION.—Any re-
15 quest for a permanent injunction against the
16 Secretary for actions pursuant to this Act shall
17 be considered and granted or denied by the
18 court on an expedited basis. Whenever possible,
19 the court shall consolidate trial on the merits
20 with any hearing on a request for a preliminary
21 injunction, consistent with the provisions of rule
22 65(a)(2) of the Federal Rules of Civil Proce-
23 dure, or any successor thereto.

24 (3) LIMITATION ON ACTIONS BY PARTICIPATING
25 COMPANIES.—No action or claims may be brought

1 against the Secretary by any person that divests its
2 assets with respect to its participation in a program
3 under this Act, except as provided in paragraph (1),
4 other than as expressly provided in a written con-
5 tract with the Secretary.

6 (4) STAYS.—Any injunction or other form of
7 equitable relief issued against the Secretary for ac-
8 tions pursuant to section 101, 102, 106, and 109,
9 shall be automatically stayed. The stay shall be lift-
10 ed unless the Secretary seeks a stay from a higher
11 court within 3 calendar days after the date on which
12 the relief is issued.

13 (b) RELATED MATTERS.—

14 (1) TREATMENT OF HOMEOWNERS' RIGHTS.—
15 The terms of any residential mortgage loan that is
16 part of any purchase by the Secretary under this Act
17 shall remain subject to all claims and defenses that
18 would otherwise apply, notwithstanding the exercise
19 of authority by the Secretary under this Act.

20 (2) SAVINGS CLAUSE.—Any exercise of the au-
21 thority of the Secretary pursuant to this Act shall
22 not impair the claims or defenses that would other-
23 wise apply with respect to persons other than the
24 Secretary. Except as established in any contract, a
25 servicer of pooled residential mortgages owes any

1 duty to determine whether the net present value of
2 the payments on the loan, as modified, is likely to
3 be greater than the anticipated net recovery that
4 would result from foreclosure to all investors and
5 holders of beneficial interests in such investment,
6 but not to any individual or groups of investors or
7 beneficial interest holders, and shall be deemed to
8 act in the best interests of all such investors or hold-
9 ers of beneficial interests if the servicer agrees to or
10 implements a modification or workout plan when the
11 servicer takes reasonable loss mitigation actions, in-
12 cluding partial payments.

13 **SEC. 508. CREDIT REFORM.**

14 (a) IN GENERAL.—Subject to subsection (b), the
15 costs of insures made under this title shall be determined
16 as provided under the Federal Credit Reform Act of 1990
17 (2 U.S.C. 661 et seq.), as applicable.

18 (b) COSTS.—For the purposes of Section 502(5) of
19 the Federal Credit Reform Act of 1990 (2 U.S.C.
20 661a(5)), the cost of each guarantee of a mortgage-backed
21 security under this title shall be calculated by—

22 (1) adjusting the discount rate in section
23 502(5)(E) (2 U.S.C. 661a(5)(E)) for market risks;
24 and

1 (2) using the difference between the current es-
2 timate, consistent with subparagraph (b)(1) under
3 the terms of the insured mortgage-backed security
4 and the current estimate consistent with subpara-
5 graph (b)(1) under the terms of the insured.

6 **SEC. 509. REPORTS TO CONGRESS.**

7 Within 60 days of the first exercise of the authority
8 set forth in section 101(a), and semiannually thereafter,
9 the Secretary shall report to the Committees on the Budg-
10 et, Financial Services, and Ways and Means of the House
11 of Representatives and the Committees on the Budget, Fi-
12 nance, and Banking, Housing, and Urban Affairs of the
13 Senate with respect to the authorities exercised under this
14 title and the considerations required by section 102.

15 **SEC. 510. DEFINITIONS.**

16 For purposes of this title, the following definitions
17 shall apply:

18 (1) **FINANCIAL INSTITUTION.**—The term “fi-
19 nancial institution” means any institution including,
20 but not limited to, banks, thrifts, credit unions,
21 broker-dealers, insurance companies, and the trust-
22 ees administering mortgage-backed securities trusts,
23 having significant operations in the United States;
24 and, upon the Secretary’s determination in consulta-
25 tion with the Chairman of the Board of Governors

1 of the Federal Reserve, holds or has issued applica-
2 ble mortgage-backed securities.

3 (2) SECRETARY.—The term “Secretary” means
4 the Secretary of the Treasury.

5 (3) MORTGAGE-BACKED SECURITY.—The term
6 “mortgage-backed security” means securities, obliga-
7 tions, other instruments, or other securities, other
8 than those guaranteed by the Government National
9 Mortgage Association, as shall be based on and
10 backed by a trust or pool composed of mortgages
11 that in each case was originated or issued on or be-
12 fore September 24, 2008.

13 (4) UNITED STATES.—The term “United
14 States” means the States, territories, and posses-
15 sions of the United States and the District of Co-
16 lumbia.

17 **SEC. 511. ANNUAL REPORT AND AUDIT BY THE GOVERN-**
18 **MENT ACCOUNTABILITY OFFICE.**

19 (a) ANNUAL REPORT ON THE MORTGAGE-BACKED
20 SECURITIES FUND.—The Secretary shall annually submit
21 to Congress a full report of its operations, activities, budg-
22 et, receipts, and expenditures for the preceding 12-month
23 period. The report shall include, with respect to the Mort-
24 gage-Backed Securities Fund, an analysis of—

25 (1) the current financial condition of such fund;

1 (2) the purpose, effect, and estimated cost of
2 each resolution action taken for payment of insur-
3 ance during the preceding year;

4 (3) the extent to which the actual costs pro-
5 vided to, or for the benefit of, resulting from insur-
6 ance during the preceding year exceeded the esti-
7 mated costs of such costs reported in a previous
8 year, as applicable;

9 (4) the exposure of the Mortgage-Backed Secu-
10 rities Fund to changes in those economic factors
11 most likely to affect the condition of that Fund;

12 (5) a current estimate of the resources needed
13 for the Mortgage-Backed Securities Fund to achieve
14 the purposes of this title;

15 (6) an analysis of the sufficiency of the pre-
16 mium collections, actual and projected, in meeting
17 the costs of the Fund; and

18 (7) any findings, conclusions, and recommenda-
19 tions for legislative and administrative actions con-
20 sidered appropriate to future activities of the Mort-
21 gage-Backed Securities Fund.

22 (b) SPECIAL REPORT.—Within 45 days of the enact-
23 ment of this Act, the Comptroller General shall provide
24 to the committees of Congress referred to in subsection

1 (d), and other relevant committees, an initial report on
2 the Fund.

3 (c) ANNUAL AUDIT OF THE MORTGAGE-BACKED SE-
4 CURITIES FUND.—

5 (1) AUDIT REQUIRED.—The Comptroller Gen-
6 eral shall audit annually the financial transactions of
7 the Mortgage-Backed Securities Fund (the “Fund”)
8 in accordance with generally accepted Government
9 auditing standards.

10 (2) ACCESS TO BOOKS AND RECORDS.—All
11 books, records, accounts, reports, files, and property
12 belonging to or used by the Department of the
13 Treasury that are directly related to the operations
14 and determination as to the amounts in the Fund,
15 or by an independent certified public accountant re-
16 tained to audit the Fund’s financial statements,
17 shall be made available to the Comptroller General.

18 (d) REPORT OF THE AUDIT.—A report of the audit
19 conducted under subsection (c) of this section shall be
20 made by the Comptroller General to the Congress not later
21 than July 15th of the year following the year covered by
22 such audit. The report to the Congress shall set forth the
23 scope of the audit and shall include a statement of assets
24 and liabilities and surplus or deficit of the Fund; a state-
25 ment of surplus or deficit analysis; a statement of income

1 and expenses; a statement of sources and application of
2 funds and such comments and information as may be
3 deemed necessary to inform Congress, together with such
4 recommendations with respect thereto as the Comptroller
5 General may deem advisable. The report shall also show
6 specifically any program, expenditure, or other financial
7 transaction or undertaking observed in the course of the
8 audit, which, in the opinion of the Comptroller General,
9 has been carried on or made without authority of law. A
10 copy of each report shall be furnished to the President,
11 to the Secretary of the Treasury, and to Committee on
12 Banking, Housing, and Urban Affairs, the Committee on
13 the Budget, and the Committee on Finance of the Senate
14 and the Committee on Financial Services, the Committee
15 on the Budget, and the Committee on Ways and Means
16 of the House of Representatives.

17 (e) ASSISTANCE IN AUDIT.—For the purpose of con-
18 ducting such audit the Comptroller General is authorized
19 in his discretion to employ by contract, without regard to
20 section 5 of title 41 of the United States Code, profes-
21 sional services of firms and organizations of certified pub-
22 lic accountants, with the concurrence of the Secretary, for
23 temporary periods or for special purposes.

1 **TITLE VI—UNLEASHING**
2 **PRIVATE CAPITAL**

3 **SEC. 601. 5-YEAR CARRYBACK OF LOSSES.**

4 (a) IN GENERAL.—Subparagraph (H) of section
5 172(b)(1) of the Internal Revenue Code of 1986 is amend-
6 ed to read as follows:

7 “(H) 5-YEAR CARRYBACK OF CERTAIN
8 LOSSES.—

9 “(i) TAXABLE YEARS ENDING DURING
10 2001 AND 2002.—In the case of a net oper-
11 ating loss for any taxable year ending dur-
12 ing 2001 or 2002, subparagraph (A)(i)
13 shall be applied by substituting ‘5’ for ‘2’
14 and subparagraph (F) shall not apply.

15 “(ii) TAXABLE YEARS ENDING DUR-
16 ING 2007, 2008, AND 2009.—In the case of
17 a net operating loss for any taxable year
18 ending during 2007, 2008, or 2009—

19 “(I) subparagraph (A)(i) shall be
20 applied by substituting ‘5’ for ‘2’;

21 “(II) subparagraph (E)(ii) shall
22 be applied by substituting ‘4’ for ‘2’;
23 and

24 “(III) subparagraph (F) shall not
25 apply.”.

1 (b) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT
2 ON CERTAIN NOL CARRYBACKS AND CARRYOVERS.—

3 (1) IN GENERAL.—Subclause (I) of section
4 56(d)(1)(A)(ii) of such Code is amended—

5 (A) by inserting “and 2007, 2008, or
6 2009” after “2001 or 2002”; and

7 (B) by inserting “and 2007, 2008, and
8 2009” after “2001 and 2002”.

9 (2) CONFORMING AMENDMENT.—Subclause (I)
10 of section 56(d)(1)(A)(i) of such Code is amended by
11 inserting “amount of such” before “deduction de-
12 scribed in clause (ii)(I)”.

13 (c) ANTI-ABUSE RULES.—The Secretary of the
14 Treasury or the Secretary’s designee shall prescribe such
15 rules as are necessary to prevent the abuse of the purposes
16 of the amendments made by this section, including
17 antistuffing rules, antichurning rules (including rules re-
18 lating to sale-leasebacks), and rules similar to the rules
19 under section 1091 of the Internal Revenue Code of 1986
20 relating to losses from wash sales.

21 (d) EFFECTIVE DATES.—

22 (1) SUBSECTION (a).—

23 (A) IN GENERAL.—Except as provided in
24 subparagraph (B), the amendments made by
25 subsection (a) shall apply to net operating

1 losses arising in taxable years ending in 2007,
2 2008, or 2009.

3 (B) ELECTION.—In the case of any tax-
4 payer with a net operating loss for a taxable
5 year ending during 2007 or 2008—

6 (i) any election made under section
7 172(b)(3) of the Internal Revenue Code of
8 1986 may (notwithstanding such section)
9 be revoked before October 15, 2009; and

10 (ii) any election made under section
11 172(j) of such Code shall (notwithstanding
12 such section) be treated as timely made if
13 made before October 15, 2009.

14 (2) SUBSECTION (b).—The amendments made
15 by subsection (b) shall apply to taxable years ending
16 after December 31, 2006.

17 **SEC. 602. INCENTIVES TO REINVEST FOREIGN EARNINGS IN**
18 **UNITED STATES.**

19 (a) IN GENERAL.—Section 965 of the Internal Rev-
20 enue Code of 1986 is amended to read as follows:

21 **“SEC. 965. DEDUCTION FOR DIVIDENDS RECEIVED.**

22 **“(a) DEDUCTION.—**

23 **“(1) IN GENERAL.—**In the case of a corpora-
24 tion which is a United States shareholder and for
25 which the election under this section is in effect for

1 the taxable year, there shall be allowed as a deduc-
2 tion an amount equal to the applicable percentage of
3 cash dividends which are received during such tax-
4 able year by such shareholder from controlled for-
5 eign corporations.

6 “(2) APPLICABLE PERCENTAGE.—For purposes
7 of paragraph (1)—

8 “(A) IN GENERAL.—Except as provided by
9 subparagraph (B), the term ‘applicable percent-
10 age’ means 85 percent.

11 “(B) DISTRESSED DEBT.—In the case of
12 dividends received with respect to which the re-
13 quirements of subsection (b)(4)(B) are met,
14 such term means 100 percent.

15 “(3) DIVIDENDS PAID INDIRECTLY FROM CON-
16 TROLLED FOREIGN CORPORATIONS.—If, within the
17 taxable year for which the election under this section
18 is in effect, a United States shareholder receives a
19 cash distribution from a controlled foreign corpora-
20 tion which is excluded from gross income under sec-
21 tion 959(a), such distribution shall be treated for
22 purposes of this section as a cash dividend to the ex-
23 tent of any amount included in income by such
24 United States shareholder under section

1 951(a)(1)(A) as a result of any cash dividend during
2 such taxable year to—

3 “(A) such controlled foreign corporation
4 from another controlled foreign corporation that
5 is in a chain of ownership described in section
6 958(a); or

7 “(B) any other controlled foreign corpora-
8 tion in such chain of ownership, but only to the
9 extent of cash distributions described in section
10 959(b) which are made during such taxable
11 year to the controlled foreign corporation from
12 which such United States shareholder received
13 such distribution.

14 “(b) LIMITATIONS.—

15 “(1) IN GENERAL.—The amount of dividends
16 taken into account under subsection (a) shall not ex-
17 ceed the greater of—

18 “(A) \$500,000,000;

19 “(B) the amount shown on the applicable
20 financial statement as earnings permanently re-
21 invested outside the United States; or

22 “(C) in the case of an applicable financial
23 statement which fails to show a specific amount
24 of earnings permanently reinvested outside the
25 United States and which shows a specific

1 amount of tax liability attributable to such
2 earnings, the amount equal to the amount of
3 such liability divided by 0.35.

4 The amounts described in subparagraphs (B) and
5 (C) shall be treated as being zero if there is no such
6 statement or such statement fails to show a specific
7 amount of such earnings or liability, as the case may
8 be.

9 “(2) DIVIDENDS MUST BE EXTRAORDINARY.—

10 The amount of dividends taken into account under
11 subsection (a) shall not exceed the excess (if any)
12 of—

13 “(A) the cash dividends received during
14 the taxable year by such shareholder from con-
15 trolled foreign corporations; over—

16 “(B) the sum of—

17 “(i) the dividends received during the
18 base period year by such shareholder from
19 controlled foreign corporations;

20 “(ii) the amounts includible in such
21 shareholder’s gross income for the base pe-
22 riod year under section 951(a)(1)(B) with
23 respect to controlled foreign corporations;
24 and

1 “(iii) the amounts that would have
2 been included for the base period year but
3 for section 959(a) with respect to con-
4 trolled foreign corporations.

5 The amount taken into account under clause
6 (iii) for the base period year shall not include
7 any amount which is not includible in gross in-
8 come by reason of an amount described in
9 clause (ii) with respect to a prior taxable year.
10 Amounts described in subparagraph (B) for the
11 base period year shall be such amounts as
12 shown on the most recent return filed for such
13 year; except that amended returns filed after
14 June 30, 2007, shall not be taken into account.

15 “(3) REDUCTION OF BENEFIT IF INCREASE IN
16 RELATED PARTY INDEBTEDNESS.—The amount of
17 dividends which would (but for this paragraph) be
18 taken into account under subsection (a) shall be re-
19 duced by the excess (if any) of—

20 “(A) the amount of indebtedness of the
21 controlled foreign corporation to any related
22 person (as defined in section 954(d)(3)) as of
23 the close of the taxable year for which the elec-
24 tion under this section is in effect; over

1 “(B) the amount of indebtedness of the
2 controlled foreign corporation to any related
3 person (as so defined) as of the close of Sep-
4 tember 26, 2008.

5 All controlled foreign corporations with respect to
6 which the taxpayer is a United States shareholder
7 shall be treated as one controlled foreign corporation
8 for purposes of this paragraph. The Secretary may
9 prescribe such regulations as may be necessary or
10 appropriate to prevent the avoidance of the purposes
11 of this paragraph, including regulations which pro-
12 vide that cash dividends shall not be taken into ac-
13 count under subsection (a) to the extent such divi-
14 dends are attributable to the direct or indirect trans-
15 fer (including through the use of intervening entities
16 or capital contributions) of cash or other property
17 from a related person (as so defined) to a controlled
18 foreign corporation.

19 “(4) REQUIREMENTS.—

20 “(A) REQUIREMENT TO INVEST IN UNITED
21 STATES.—Except as provided by subparagraph
22 (B), subsection (a) shall not apply to any divi-
23 dend received by a United States shareholder
24 unless the amount of the dividend is invested in

1 the United States pursuant to a domestic rein-
2 vestment plan which—

3 “(i) is approved by the taxpayer’s
4 president, chief executive officer, or com-
5 parable official before the payment of such
6 dividend and subsequently approved by the
7 taxpayer’s board of directors, management
8 committee, executive committee, or similar
9 body; and

10 “(ii) provides for the reinvestment of
11 such dividend in the United States (other
12 than as payment for executive compensa-
13 tion), including as a source for the funding
14 of worker hiring and training, infrastruc-
15 ture, research and development, capital in-
16 vestments, or the financial stabilization of
17 the corporation for the purposes of job re-
18 tention or creation.

19 “(B) DISTRESSED DEBT.—The require-
20 ments of this subparagraph are met if amounts
21 repatriated are invested in distressed debt (as
22 defined by the Secretary) for at least 1 year.

23 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
24 poses of this section—

1 “(1) APPLICABLE FINANCIAL STATEMENT.—

2 The term ‘applicable financial statement’ means—

3 “(A) with respect to a United States
4 shareholder which is required to file a financial
5 statement with the Securities and Exchange
6 Commission (or which is included in such a
7 statement so filed by another person), the most
8 recent audited annual financial statement (in-
9 cluding the notes which form an integral part
10 of such statement) of such shareholder (or
11 which includes such shareholder)—

12 “(i) which was so filed on or before
13 June 30, 2007; and

14 “(ii) which was certified on or before
15 June 30, 2007, as being prepared in ac-
16 cordance with generally accepted account-
17 ing principles; and

18 “(B) with respect to any other United
19 States shareholder, the most recent audited fi-
20 nancial statement (including the notes which
21 form an integral part of such statement) of
22 such shareholder (or which includes such share-
23 holder)—

24 “(i) which was certified on or before
25 June 30, 2007, as being prepared in ac-

1 cordance with generally accepted account-
2 ing principles; and

3 “(ii) which is used for the purposes of
4 a statement or report—

5 “(I) to creditors;

6 “(II) to shareholders; or

7 “(III) for any other substantial
8 nontax purpose.

9 “(2) BASE PERIOD YEAR.—

10 “(A) IN GENERAL.—The base period year
11 is the first taxable year ending in 2007.

12 “(B) MERGERS, ACQUISITIONS, ETC.—

13 “(i) IN GENERAL.—Rules similar to
14 the rules of subparagraphs (A) and (B) of
15 section 41(f)(3) shall apply for purposes of
16 this paragraph.

17 “(ii) SPIN-OFFS, ETC.—If there is a
18 distribution to which section 355 (or so
19 much of section 356 as relates to section
20 355) applies during the base period year
21 and the controlled corporation (within the
22 meaning of section 355) is a United States
23 shareholder—

24 “(I) the controlled corporation
25 shall be treated as being in existence

1 during the period that the distributing
2 corporation (within the meaning of
3 section 355) is in existence; and

4 “(II) for purposes of applying
5 subsection (b)(2) to the controlled cor-
6 poration and the distributing corpora-
7 tion, amounts described in subsection
8 (b)(2)(B) which are received or in-
9 cludible by the distributing corpora-
10 tion or controlled corporation (as the
11 case may be) before the distribution
12 referred to in subclause (I) from a
13 controlled foreign corporation shall be
14 allocated between such corporations in
15 proportion to their respective interests
16 as United States shareholders of such
17 controlled foreign corporation imme-
18 diately after such distribution.

19 Subclause (II) shall not apply if neither
20 the controlled corporation nor the distrib-
21 uting corporation is a United States share-
22 holder of such controlled foreign corpora-
23 tion immediately after such distribution.

24 “(3) DIVIDEND.—The term ‘dividend’ shall not
25 include amounts includible in gross income as a divi-

1 dend under section 78, 367, or 1248. In the case of
2 a liquidation under section 332 to which section
3 367(b) applies, the preceding sentence shall not
4 apply to the extent the United States shareholder
5 actually receives cash as part of the liquidation.

6 “(4) COORDINATION WITH DIVIDENDS RE-
7 CEIVED DEDUCTION.—No deduction shall be allowed
8 under section 243 or 245 for any dividend for which
9 a deduction is allowed under this section.

10 “(5) CONTROLLED GROUPS.—

11 “(A) IN GENERAL.—All United States
12 shareholders which are members of an affiliated
13 group filing a consolidated return under section
14 1501 shall be treated as one United States
15 shareholder.

16 “(B) APPLICATION OF \$500,000,000
17 LIMIT.—All corporations which are treated as a
18 single employer under section 52(a) shall be
19 limited to one \$500,000,000 amount in sub-
20 section (b)(1)(A), and such amount shall be di-
21 vided among such corporations under regula-
22 tions prescribed by the Secretary.

23 “(C) PERMANENTLY REINVESTED EARN-
24 INGS.—If a financial statement is an applicable
25 financial statement for more than one United

1 States shareholder, the amount applicable
2 under subparagraph (B) or (C) of subsection
3 (b)(1) shall be divided among such shareholders
4 under regulations prescribed by the Secretary.

5 “(d) DENIAL OF FOREIGN TAX CREDIT; DENIAL OF
6 CERTAIN EXPENSES.—

7 “(1) FOREIGN TAX CREDIT.—No credit shall be
8 allowed under section 901 for any taxes paid or ac-
9 crued (or treated as paid or accrued) with respect to
10 the deductible portion of—

11 “(A) any dividend; or

12 “(B) any amount described in subsection
13 (a)(2) which is included in income under section
14 951(a)(1)(A).

15 No deduction shall be allowed under this chapter for
16 any tax for which credit is not allowable by reason
17 of the preceding sentence.

18 “(2) EXPENSES.—No deduction shall be al-
19 lowed for expenses properly allocated and appor-
20 tioned to the deductible portion described in para-
21 graph (1).

22 “(3) DEDUCTIBLE PORTION.—For purposes of
23 paragraph (1), unless the taxpayer otherwise speci-
24 fies, the deductible portion of any dividend or other
25 amount is the amount which bears the same ratio to

1 the amount of such dividend or other amount as the
2 amount allowed as a deduction under subsection (a)
3 for the taxable year bears to the amount described
4 in subsection (b)(2)(A) for such year.

5 “(4) COORDINATION WITH SECTION 78.—Sec-
6 tion 78 shall not apply to any tax which is not allow-
7 able as a credit under section 901 by reason of this
8 subsection.

9 “(e) INCREASE IN TAX ON INCLUDED AMOUNTS NOT
10 REDUCED BY CREDITS, ETC.—

11 “(1) IN GENERAL.—Any tax under this chapter
12 by reason of nondeductible CFC dividends shall not
13 be treated as tax imposed by this chapter for pur-
14 poses of determining—

15 “(A) the amount of any credit allowable
16 under this chapter; or

17 “(B) the amount of the tax imposed by
18 section 55.

19 Subparagraph (A) shall not apply to the credit
20 under section 53 or to the credit under section 27(a)
21 with respect to taxes which are imposed by foreign
22 countries and possessions of the United States and
23 are attributable to such dividends.

24 “(2) LIMITATION ON REDUCTION IN TAXABLE
25 INCOME, ETC.—

1 “(A) IN GENERAL.—The taxable income of
2 any United States shareholder for any taxable
3 year shall in no event be less than the amount
4 of nondeductible CFC dividends received during
5 such year.

6 “(B) COORDINATION WITH SECTION 172.—
7 The nondeductible CFC dividends for any tax-
8 able year shall not be taken into account—

9 “(i) in determining under section 172
10 the amount of any net operating loss for
11 such taxable year; and

12 “(ii) in determining taxable income
13 for such taxable year for purposes of the
14 second sentence of section 172(b)(2).

15 “(3) NONDEDUCTIBLE CFC DIVIDENDS.—For
16 purposes of this subsection, the term ‘nondeductible
17 CFC dividends’ means the excess of the amount of
18 dividends taken into account under subsection (a)
19 over the deduction allowed under subsection (a) for
20 such dividends.

21 “(f) ELECTION.—The taxpayer may elect to apply
22 this section to—

23 “(1) the taxpayer’s last taxable year which be-
24 gins before the date of the enactment of this section;
25 or

1 tional Mortgage Association Charter Act (12
2 U.S.C. 1716 et seq.), or

3 (B) the Federal Home Loan Mortgage
4 Corporation, established pursuant to the Fed-
5 eral Home Loan Mortgage Corporation Act (12
6 U.S.C. 1451 et seq.), and

7 (2) which—

8 (A) was held by the applicable financial in-
9 stitution on September 6, 2008, or

10 (B) was sold or exchanged by the applica-
11 ble financial institution on or after January 1,
12 2008, and before September 7, 2008.

13 (c) APPLICABLE FINANCIAL INSTITUTION.—For pur-
14 poses of this section:

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the term “applicable financial institution”
17 means—

18 (A) a financial institution referred to in
19 section 582(c)(2) of the Internal Revenue Code
20 of 1986, or

21 (B) a depository institution holding com-
22 pany (as defined in section 3(w)(1) of the Fed-
23 eral Deposit Insurance Act (12 U.S.C.
24 1813(w)(1))).

1 (2) SPECIAL RULES FOR CERTAIN SALES.—In
2 the case of—

3 (A) a sale or exchange described in sub-
4 section (b)(2)(B), an entity shall be treated as
5 an applicable financial institution only if it was
6 an entity described in subparagraph (A) or (B)
7 of paragraph (1) at the time of the sale or ex-
8 change, and

9 (B) a sale or exchange after September 6,
10 2008, of preferred stock described in subsection
11 (b)(2)(A), an entity shall be treated as an appli-
12 cable financial institution only if it was an enti-
13 ty described in subparagraph (A) or (B) of
14 paragraph (1) at all times during the period be-
15 ginning on September 6, 2008, and ending on
16 the date of the sale or exchange of the pre-
17 ferred stock.

18 (d) SPECIAL RULE FOR CERTAIN PROPERTY NOT
19 HELD ON SEPTEMBER 6, 2008.—The Secretary of the
20 Treasury or the Secretary’s delegate may extend the appli-
21 cation of this section to all or a portion of the gain or
22 loss from a sale or exchange in any case where—

23 (1) an applicable financial institution sells or
24 exchanges applicable preferred stock after Sep-
25 tember 6, 2008, which the applicable financial insti-

1 tution did not hold on such date, but the basis of
2 which in the hands of the applicable financial insti-
3 tution at the time of the sale or exchange is the
4 same as the basis in the hands of the person which
5 held such stock on such date, or

6 (2) the applicable financial institution is a part-
7 ner in a partnership which—

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

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

12 (e) REGULATORY AUTHORITY.—The Secretary of the
13 Treasury or the Secretary’s delegate may prescribe such
14 guidance, rules, or regulations as are necessary to carry
15 out the purposes of this section.

16 (f) EFFECTIVE DATE.—This section shall apply to
17 sales or exchanges occurring after December 31, 2007, in
18 taxable years ending after such date.

19 **TITLE VII—EXECUTIVE COM-**
20 **PENSATION ADJUSTMENTS**
21 **AND MISCELLANEOUS PROVI-**
22 **SIONS**

23 **SEC. 701. COMPENSATION ADJUSTMENT.**

24 (a) COMPENSATION ADJUSTMENT DUE TO GOVERN-
25 MENT INTERVENTION.—

1 (1) IN GENERAL.—An officer of an institution
2 shall pay to the Department of the Treasury any
3 amounts received by such officer during a year as a
4 bonus or other incentive-based or equity-based com-
5 pensation from the institution during—

6 (A) a year in which the institution is sub-
7 ject to a government intervention; and

8 (B) the two years prior to a year in which
9 the institution is subject to a government inter-
10 vention.

11 (2) COMPENSATION ADJUSTMENT DEFINED.—
12 For purposes of this subsection, and with respect to
13 an issuer, the term “government intervention”
14 means—

15 (A) the placement of the issuer under con-
16 servatorship, receivership, or other assumption
17 of the management, governance, and control of
18 the issuer by the Department of the Treasury
19 or the Board of Governors of the Federal Re-
20 serve; or

21 (B) an emergency loan of public funds
22 made to the issuer by the Department of the
23 Treasury or the Board of Governors of the Fed-
24 eral Reserve, if the Chairman of the Board of
25 Governors of the Federal Reserve determines

1 risk due to borrower's not meeting traditional or
2 standard underwriting guidelines, including guide-
3 lines with respect to—

4 “(A) documentation of amount or source
5 of income or assets;

6 “(B) debt-to-income ratio;

7 “(C) assets and type of property being fi-
8 nanced;

9 “(D) credit history;

10 “(E) loan-to-value ratios; and

11 “(F) occupancy of the property being fi-
12 nanced or borrower characteristics involved; and

13 “(2) mortgages having characteristics that are
14 not typical of the lending practices of the mortgages
15 that are made to comply with a provision of Federal
16 or State law or regulation.”.

17 **SEC. 703. FINANCIAL STATEMENT REVIEW.**

18 (a) IN GENERAL.—The Securities and Exchange
19 Commission shall—

20 (1) review any financial statements required
21 under section 13 of the Securities Exchange Act of
22 1934 (15 U.S.C. 78m) of any rescued issuer for the
23 rescued issuer's fiscal year 2005 and each suc-
24 ceeding fiscal year up to and including the fiscal

1 year in which such issuer became a rescued issuer;
2 and

3 (2) examine each of the audits that were the
4 basis of such financial statements, and all the sup-
5 porting books, papers, correspondence, memoranda,
6 or other records or materials on which such audits
7 were performed.

8 (b) ADDITIONAL ACTION.—The Commission shall—

9 (1) if the Commission determines there was a
10 material misstatement made in any financial state-
11 ment reviewed under subsection (a), require the
12 issuer to file with the Commission a financial state-
13 ment correcting such misstatement; and

14 (2) take all other appropriate actions under the
15 Securities Exchange Act of 1934 (15 U.S.C. 78a et
16 seq.).

17 (c) DEFINITION.—For purposes of this section, the
18 term “rescued issuer” means any issuer (as such term is
19 defined in section 3(a)(8) of the Securities Exchange Act
20 of 1934 (15 U.S.C. 78c(a)(8)) that has received, prior to
21 the date of 5 enactment of this Act, Federal Government
22 intervention through sale negotiation assistance, loan
23 guarantee, placement under conservatorship or receiver-
24 ship, or other assumption of the management, governance,
25 and control of the issuer by the Department of the Treas-

1 ury or the Board of Governors of the Federal Reserve,
2 an emergency loan of public funds made to the issuer by
3 the Department of the Treasury or the Board of Gov-
4 ernors of the Federal Reserve, or other similar Federal
5 Government intervention.

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