AFTERSHOCKS: REVERBERATIONS OF THE ECONOMIC DOWNTURN ON COMMERCIAL REAL ESTATE FINANCE

THE FEDERAL GOVERNMENT RESPONSE: EESA, ARRA and Treasury Department Actions

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I. THE EMERGENCY ECONOMIC STABILIZATION ACT

On Friday, October 3, 2008, President Bush signed the Emergency Economic Stabilization Act ("EESA"). The law establishes a framework for the Secretary of the Treasury to administer an economic recovery program that not only promotes liquidity and market stability, but also help to stabilize communities impacted by failures in the mortgage market, protect small institutions, student loans, retirement plans and multifamily properties.

The final version of the Act is divided into three sections. Division A of H.R. 1424 contains the EESA. Division B is the "Energy Improvement and Extension Act of 2008" and Division C includes the "Tax Extenders and Alternative Minimum Tax Relief Act of 2008."

The key provisions of the final EESA track the various versions negotiated between Congress and the Administration over the past two weeks. Highlights include the following provisions:

Troubled Asset Relief Program: The Act authorizes the Treasury Secretary to create a program to purchase and manage troubled assets from qualifying financial institutions. The Secretary must create and manage the program to minimize conflicts of interest in hiring contractors and avoid unjust enrichment when purchasing troubled assets. The program is to be administered in such a way to avoid foreclosures and instead to restructure loans whenever reasonable so as to mitigate the effects of the financial crisis on homeowners. The Act creates several oversight bodies to ensure that the Secretary carries out the authorities granted under the Act consistent with its objectives and limitations.

Guarantee Program: The Act creates a Troubled Assets Insurance Financing Fund and authorizes the Secretary to establish a guarantee program for mortgage-related troubled assets originated or issued before March 14, 2008. The insurance program will guarantee principal and interest payments (not to exceed 100% of such payments) of troubled assets. The Secretary is to establish premiums, which must be sufficient to create reserves necessary to cover anticipated claims.

Warrants and Debt Instruments: The Secretary is required to obtain warrants from financial institutions from which the Secretary purchases $100 million in troubled assets. The warrants must meet certain minimum guidelines depending on whether the institutions is publicly traded or not, and must contain certain anti-dilution and guarantee provisions.

Executive Compensation: If the Secretary makes a direct purchase of assets from a financial institution, the institution must adhere to certain standards for executive compensation. The standards include limits on incentive compensation that is tied to unnecessary or excessive risks, "claw-back" provisions to recoup bonus or incentive pay tied to criteria that are found to be inaccurate, and prohibitions on golden parachutes to senior executive officers. If the Secretary acquires over $300 million in troubled assets by auction, the financial institution must be prohibited from giving golden parachutes in any new contracts for senior executives. In addition, the financial institutions are restricted from deducting compensation over $500,000 for senior executives under IRS §162(m).

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Increase FDIC limits: The Act temporarily increases the deposit limits on FDIC insurance from $100,000 to $250,000 through the end of 2009.

Recoupment: The Act requires the OMB to report the net amount of TARP income to expense to Congress on the fifth anniversary of the Act and if there is a shortfall, the President is required to submit legislation to recover the shortfall from the financial industry.

The following section by section analysis highlights each provision from the Act.

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DIVISION A.

Section 1. Short title and table of contents.

The Act is entitled and may be cited as the "Emergency Economic Stabilization Act of 2008."

Section 2. Purposes.

The purpose of the Act is to immediately authorize the Secretary create and administer an economic recovery program designed to restore liquidity and stability to the financial system consistent with the limitations and obligations contained in the Act. The program must protect home values, college funds, retirement accounts, and life savings; preserve homeownership, promote jobs and economic growth; maximize overall returns to the taxpayers; and provide public accountability for the exercise of the authority.

Section 3. Definitions.

"**Appropriate Committees of Congress**" means

(A) The Senate committees on Banking, Housing and Urban Affairs, Finance, Budget, and Appropriations;

(B) House committees on Financial Services, Ways and Means, Budget and Appropriations.

"**Congressional Support Agencies**" includes the Congressional Budget Office and the Joint Committee on Taxation.

"**Financial Institution"** means any institution, including, but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company, established and regulated under the laws of the United States or any State, territory or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands and having significant operations in the United States. The term excludes any central bank of, or institution owned by, a foreign government.

"Fund" means the Troubled Assets Insurance Financing Fund.

"**TARP"** means the Troubled Asset Relief Program.

"**Troubled Assets**" means residential or commercial mortgage or any security or other instrument based on or related to such mortgage that was originated or issued on or before March 14, 2008 and the purchase of which would promote financial market stability. The term also refers to any other financial instruments identified by the Secretary in consultation with the Chairman of the Federal Reserve.

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TITLE I – TROUBLED ASSETS RELIEF PROGRAM

Sec. 101. Purchases of troubled assets.

In consultation with the Chairman of the Federal Reserve Board, the FDIC, the Office of the Comptroller of the Currency ("OCC"), the Director of the Office of Thrift Supervision ("OTS") and the Secretary of Housing and Urban Development ("HUD"), the Treasury Secretary is authorized to establish the TARP to enable the Secretary to purchase troubled assets. The Act authorizes the Secretary to take any actions necessary to create and administer the program.

The Act creates an Office of Financial Stability ("OFS") within the Treasury Department's Office of Domestic Finance to implement any program under the TARP. The Secretary is required to publish TARP guidelines within two business days of the first purchase of troubled assets or within 45 days of the enactment of the Act, whichever is earlier. The guidelines will cover the mechanism for purchasing troubled assets, methods for pricing and valuing troubled assets, procedures for selecting asset managers, and criteria for identifying troubled assets for purchase.

The Secretary is required to take steps to ensure that assets are not purchased in a manner that promotes unjust enrichment including purchasing them at higher prices than what the seller paid for the asset. However, this requirement does not apply to assets acquired in a merger or acquisition or from a financial institution in conservatorship or receivership, or that has initiated bankruptcy proceedings under title 11.

Sec. 102 Insurance of troubled assets.

The Secretary is required to establish a program to guarantee troubled assets originated or issued before March 14, 2008 including mortgage-backed securities and report to Congress within 90 days about the guarantee program. The Secretary may guarantee the timely payment of principal and interest of troubled assets up to, but not exceeding, 100% of such payments.

The Secretary is required to collect premiums from participating financial institutions. The premiums must be sufficient to provide reserves and may vary based upon the credit risk associated with the particular troubled asset being guaranteed. The Secretary must publish the methodology for setting the premiums for a class of assets within 90 days.

The premiums must be deposited into a Troubled Assets Insurance Financing Fund and the Secretary is authorized to make payments from the Fund to administer the guarantee program. The Secretary may invest the balance of the Fund in U.S. Treasury securities or may hold the balance in cash on hand or on deposit.

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Sec. 103 Consideration

The Secretary is to take the following objectives into consideration in exercising the authorities granted under the Act:

- Protecting the interests of taxpayers by maximizing overall returns and minimizing the impact on the national debt;
- Providing stability and preventing disruption to financial markets in order to limit the impact on the economy and protect American jobs, savings and retirement security;
- The need to help families keep their homes and to stabilize communities;
- The long-term viability of a particular financial institution in determining whether the purchase represents the most efficient use of funds;
- Ensuring that all financial institutions are eligible to participate in the program without discrimination based on size, geography, form of organization, size, type or number of assets eligible for purchase;
- Providing financial assistance to financial institutions including those serving low- and moderate-income populations and other underserved communities that were impacted by the economic downturn;
- Protecting the retirement security of Americans; and
- The utility of purchasing other real estate owned and instruments backed by mortgage on multifamily properties.

Sec. 104 Financial Stability Oversight Board

This board is established by the Act to review the Secretary and the OFS's exercise of authority and policies implemented under the Act, to make recommendations, and to report any suspected fraud, misrepresentation or malfeasance to the Special Inspector General for the TARP or the U.S. Attorney General. It may appoint a credit review committee to evaluate the exercise of the Secretary's purchase authority. Members of the board include the Secretary, the Federal Reserve Chairman, the Director of the Federal Home Finance Agency, the Chairman of the SEC and the Secretary of HUD. The board is to report to Congressional committees and the Congressional Oversight Committee on a quarterly basis.

Sec. 105 Reports

The Secretary is required to submit the following reports to Congress:

- A first report within 60 days of the first purchase or guarantee of troubled assets and every 30 days thereafter that includes the following information:
  - An overview of actions taken by the Secretary;
  - A report of the actual obligation and expenditure of the funds provided for administrative expenses during the reporting period included anticipated expenses;
  - A detailed financial statement including
    - All agreements made or renewed;
    - All insurance contracts entered into;

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        - All transactions including types of parties involved;
        - The nature of the assets purchased;
        - All projected costs and liabilities;
        - Operating expenses, including compensation for financial agents;
        - The valuation or pricing method used for each transaction; and
        - A description of the vehicles established to exercise such authority.
- Tranche reports to the "appropriate committees of Congress" within7 days after the date on which commitments to purchase troubled assets first reach the $50 billion threshold and 7 days after the Secretary exceeds each successive $50 billion threshold. The reports must include the following information:
    - A description of all the transactions made during the reporting period;
    - A description of the pricing mechanism for the transactions;
    - A justification of the price paid for and other financial terms associated with the transactions;
    - A description of the impact of the exercise of such authority on the financial systems including specific data;
    - A description of the challenges that remain in the financial system including any benchmarks yet to be achieved; and
    - An estimate of additional actions under the authority provided under the Act.
- No later than April 30, 2009, the Secretary is required to submit a regulatory modernization report to Congress that
    - analyzes the current state of the regulatory system and its effectiveness at overseeing the participants in the financial markets; and
    - provides recommendations for improvements such as bringing participants in the financial markets that are currently outside the regulatory system subject to the system an enhancing the clearing and settlement of over-the counter swaps.

Sec. 106 Rights, Management, Sale of Troubled Assets, Revenues and Sale Proceeds

The Secretary is authorized to manage troubled assets purchased under the Act including revenues and portfolio risks associated with such assets throughout the term of the Act and after the general sunset date of December 31, 2009. The Secretary may sell or enter into securities loans, repurchase transactions or other financial transactions involving the troubled assets purchased upon terms and conditions authorized by the Secretary. The proceeds from the sale of assets purchased under the Act will go into the general fund for reduction of the public debt.

Sec. 107 Contracting Procedures

The Secretary is authorized to waive specific provisions of the Federal Acquisition Regulation when purchasing troubled assets if the Secretary makes a determination that urgent and compelling circumstances make compliance with the provision contrary to the public interest. If the Secretary decides to waive certain provisions as permitted, the Secretary must develop and implement standards and procedures to ensure the inclusion and utilization of minorities and women in the impacted solicitation or contract.

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Sec. 108 Conflicts of Interest

The Secretary is required to issue regulations that address and manage or prohibit conflicts of interest that may arise in connection with the administration and execution of the Act.

Sec. 109 Foreclosure Mitigation Efforts

The Secretary must implement a plan that seeks to maximize assistance for homeowners and use the authority of the Secretary to encourage the servicers of the underlying mortgages acquired as a troubled asset to take advantage of the HOPE for homeowners Program. In addition, the Secretary may use loan guarantees and credit enhancement to facilitate loan modifications to prevent avoidable foreclosures.

The Secretary is also required to consent to reasonable requests for loss mitigation measures including term extensions, rate reductions, principal write downs, increase in the proportion of loans within a trust or other structure allowed to be modified, or removal of other limitations on modifications. The Secretary should consider the net present value to the taxpayer before consenting to modification requests.

Sec. 110 Assistance to Homeowners

Within 60 days after the EESA is enacted, each federal property manager holding mortgages, mortgage-backed securities and other assets secured by residential real estate must implement a plan to assist homeowners and encourage the servers of underlying mortgages to take advantage of the Hope for Homeowners Program. Such assistance may include reducing interest rates, reducing loan principal, and other similar modifications such as continuing any existing governmental rental subsidies and protections. Each federal property manager must make reports to Congress that include information on the types of loan modifications made and the number of foreclosures occurring during any reporting period.

Sec. 111 Executive Compensation and Corporate Governance

If the Secretary purchases troubled assets directly from a financial institution and receives a meaningful equity or debt position in the financial institution as a result of the transaction, the Secretary must require that the financial institution meet "appropriate standards" for executive compensation and corporate governance. The standards include:

- limits on compensation that exclude incentives for senior executive officers of financial institutions to take unnecessary and excessive risks that threaten the value of the financial institution during the period that the Secretary holds an equity or debt position;
- "claw-back" provisions that recover any bonus or incentive compensation paid to senior executive officers based on statement of earnings, gains or other criteria that are later proven to be materially inaccurate; and
- prohibitions on making any golden parachutes to senior executive officers.

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If the Secretary purchases troubled assets by auction and the purchase exceeds $300 million, the financial institution must be prohibited from entering into new employment contracts with senior executive officers that provide golden parachutes in the event of involuntary termination, bankruptcy filing, insolvency or receivership. The Secretary must issue guidance to carry out this paragraph not later than two months after the date of the Act. These standards will only apply to arrangements entered into before the sunset date.

Sec. 112 Coordination with Foreign Authorities and Central Banks

The Secretary is directed to coordinate with foreign financial authorities and central banks to work toward establishing similar programs.

Sec. 113 Minimizing Long-Term Costs and Maximizing Benefits to Taxpayers

The Secretary must use the authority under the Act to minimize long-term costs and maximize value to the taxpayers. Specifically, the Act requires the Secretary to:

- hold assets to maturity or for resale for and until such time as the Secretary determines that the market is optimal for selling to maximize taxpayer benefit; and
- sell such assets at prices determined by the Secretary to maximize return on investment for the Federal Government;
- encourage private sector purchases of the troubled assets;
- use market mechanisms such as auctions and reverse auctions, where appropriate; and
- purchase assets at the lowest price consistent with the Act.

Financial institutions must grant warrants when the Secretary purchases at least $100 million in troubled assets. Publicly traded institutions must give warrants granting nonvoting common stock or preferred stock or voting stock with respect to which the Secretary agrees not to exercise voting power. Privately held institutions must grant a warrant for common or preferred stock or execute a senior debt instrument. The warrants must be protected by anti-dilution provisions and the Secretary will have the following rights:

- The authority to sell, exercise or surrender a warrant or debt instrument;
- The ability to convert warrants to debt instruments if the institution ceases to be publicly traded;
- The authority to set the exercise price; and
- The right to require that the institution guarantee the availability of sufficient authorized shares necessary to honor the warrants.

Sec. 114 Market Transparency

The Secretary must make available to the public in electronic form, a description, a disclosure of amounts, and pricing of assets acquired within two business days of purchase, trade or other disposition.

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Sec. 115 Graduated Authorization to Purchase

The $700 billion will be allocated to the Secretary through the following schedule:

- Immediate authority to purchase $250 billion in troubled assets;
- An additional $350 billion following submission of written certification to Congress by the President;
- Additional purchases will be authorized after the President submits a written report to Congress detailing the plan of the Secretary to exercise authority to make additional purchases.

Sec. 116 Oversight and Audits

The Comptroller General is required to exercise ongoing oversight of the TARP that includes assessing the financial condition and internal controls of the program, its characteristics, disposition and management of assets acquired through the program. The Comptroller is required to submit reports every 60 days to the appropriate committees of Congress and to the Special Inspector General. The Comptroller will audit the programs, activities, receipts, expenditures and financial transactions of the TARP.

Sec. 117 Study and report on margin authority

The Comptroller General is required to complete a study and make a report to Congress to determine if leveraging and sudden deleveraging of financial institutions was a factor in the current financial crisis. The study is to examine the roles of the Federal Reserve, SEC, the Secretary and other banking agencies, the Federal Reserve's authority to regulate leverage, and the Federal Reserve's use of margin authority.

Sec. 118 Funding

The Secretary may use proceeds from the sale of Treasury securities to fund actions under the Act.

Sec. 119 Judicial Review

Actions by the Secretary that are found to be arbitrary, capricious, an abuse of discretion or not in accordance with the law will be set aside. No injunctions are permitted with respect to the purchase of assets, the insurance program, management and sale of assets or foreclosure mitigation efforts. All other injunctions must be considered on an expedited basis. No seller may sue unless permitted in a written contract. The Act preserves the rights in any residential mortgage loan acquired.

Sec. 120 Termination of Authority

The authorities granted under the Act will terminate on December 31, 2009 unless extended by certification to Congress.

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Sec. 121 Special Inspector General for TARP

The Act directs that an Office of the Special Inspector General for the Troubled Asset Program be established to provide independent and objective leadership and coordination of audits and investigations related to the program, its administration and oversight, and reporting to the Congress. The President is to appoint a Special Inspector General within 30 days.

Sec. 122 Increase in Statutory Limit on the Public Debt

This section increases the statutory limit on the amount of money that the U.S. government may borrow or guarantee at any one time to $11.315 trillion.

Sec. 123 Credit Reform

This section provides that the Federal Credit Reform Act will govern how costs and cash flows associated with the purchase or insurance of troubled assets are determined.

Sec. 124 Hope for Homeowners Amendments

The “HOPE for Homeowners Act of 2008" created a new program within FHA to back FHA-insured mortgages to distressed borrowers. The new mortgages offered by FHA-approved lenders refinance loans at a significant discount for homeowners facing difficulty meeting their mortgage payments. The Act amends this program as follows:

- Broadens coverage by including borrowers reset the terms of their mortgage and then meet the required mortgage debt-to-income ratio eligibility threshold.
- Gives the FHA board discretion to insure mortgages that exceed 90% of the appraised value.
- Authorizes the FHA to fully pay all indebtedness owed a subordinate lender in lieu of any future appreciation payments on the property.

Sec. 125 Congressional Oversight Panel

The Act creates an Oversight Panel made up of members of Congress to review the current state of the financial markets and the regulatory system and submit certain reports to Congress. The panel may hold hearings and receive evidence.

Sec. 126 FDIC Authority

Prohibits persons and institutions from implying or misrepresenting that any deposits are covered by the FDIC if the deposits are not and creates enforcement authorities in coordination with the FBI to enforce the prohibition.

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Sec. 131 Exchange Stabilization Fund reimbursement

The Act requires the Secretary to reimburse the Exchange Stabilization Fund for funds used in the temporary guarantee program for the U.S. money market mutual fund industry. The Secretary cannot use the fund to establish any future guarantee program for the money market mutual fund industry.

Sec. 132 Authority to suspend mark-to-market accounting

The Act authorizes the SEC to suspend the application of mark-to market accounting standards for any issuer or any type of transaction if the SEC determines that doing so is in the public interest.

Sec. 133 Study on Mark-to-Market Accounting

The Act authorizes the SEC and Treasury department to conduct a study on the standard including:

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

Sec. 134 Recoupment

Five years after the Act becomes effective, the Director of the OMB must submit a report to Congress on the net amount within the TARP. If there is a shortfall, the President must submit a legislative proposal that recoups from the financial industry an amount equal to the shortfall in order to ensure that the TARP does not add to the deficit or national debt.

Sec. 136 Temporary Increase in Deposit and Share Insurance Coverage

This section increases the standard maximum deposit insurance amount under the Federal Deposit Insurance Act from $100,000 to $250,000 through December 31, 2009.

Sec. 201 – 204 Budget-Related Provisions

These sections require that all information used by the Secretary in connection with the activities authorized by the Act be made available to congressional committees, that the OMB provide certain cost estimates and analysis to Congress and the President, that the President

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include analysis of the budgetary effects of the TARP under the Act and an estimate of the current value of all assets purchased, sold and guaranteed.

Sec. 301 Gain or loss from sale or exchange of certain preferred stock

The Act treats any losses on sales of Fannie Mae and Freddie Mac preferred stock by financial institutions or holding companies as ordinary losses. It allows banks to obtain the tax benefit of the loss on the preferred stock and therefore reduces the need to obtain additional capital.

Sec. 302 Special Rules for Tax Treatment of Executive Compensation of Employers Participating in the TARP

The Act prevents employers who sold over $300 million in troubled assets under the TARP from deducting compensation in excess of $500,000 paid to its top five executives or any golden parachute payments to a covered executive under IRS §162(m). The compensation limit also applies to deferred compensation after certain reductions.

Sec. 303 Extension of exclusion of income from discharge of qualified principal residence indebtedness

The Act extends the current exclusion from gross income for the discharge of principal residence indebtedness from January 1, 2010 to January 1, 2014.

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Table of Reporting Groups and Responsibilities

REPORTING GROUP	REVIEWING ENTITY	REPORT TYPE	TIMING OF REPORT
Treasury (§105)	Congressional Oversight Panel	Monthly • Review of actions taken; • Report of actual obligations and expenditures; • Financial statement.	Beginning within **60 days** of first purchase, trade or disposition of troubled assets and **monthly** thereafter.
Treasury (§105(b))	Congressional Oversight Panel	Tranche • Description of all transactions; • Description of pricing mechanisms; • Justification of price paid and other financial terms; • Description of impact on financial system based on specific data; • Description of remaining challenges to the financial systems including benchmarks to be achieved; • Estimate of additional actions necessary to address challenges.	Within **7 days** after aggregate commitments to purchase troubled assets exceed each successive $50 billion threshold
Treasury (§114)	Public disclosure (electronic)	Description, amounts and pricing of assets acquired	Within 2 business days of purchase, trade or other disposition.
Financial Stability Oversight Board (FSOB) (§104) • Chairman of the Federal Reserve • Secretary of the Treasury • Director of HUD • Chairman of the	Congress & Congressional Oversight Panel	Quarterly • Review of policies implemented; • Report on effect of actions taken preserving home ownership, stabilizing financial markets & protecting taxpayers; • Issue recommendations regarding use of the authority; • Report suspected fraud to Special Inspector or AG.	Quarterly

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SEC			
GAO (§116)	Congress and Special Inspector General for TARP	Report on • Performance of TARP in meeting the purposes of the Act; • Financial condition and internal controls of TARP • Characteristics of transactions and commitments; o Transaction type; o Frequency; o Size; o Price paid; o All other relevant terms and conditions; and o Timing, duration and terms of future commitments to purchase assets. • Characteristics and disposition of acquired assets; o Type of asset; o Acquisition price o Current market value; o Sale price and terms; and o Use of proceeds from sales. • Efficiency of TARP operations; • Compliance with laws; • Efforts of TARP to prevent and minimize conflicts of interests involving TARP agents; and • Efficacy of TARP contracting procedures.	Every **60 days**
Comptroller General (§116)	Committee on Banking, Housing & Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives	Study to determine the extent to which leverage and sudden deleveraging of financial institutions was a factor behind the current crisis including: • Analysis of the roles and responsibilities of the Federal Reserve, SEC, Treasury and other banking agencies to monitor leverage and acting to curtail excessive leveraging; • Analysis of the authority of the Board to regulate leverage; • Analysis of any usage of the margin authority by the Federal Reserve; and	**June 1, 2009**

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		• Recommendations for the Federal Reserve Board and Congress concerning scope of Board's authorities.	
Special Inspector General (§121)	Congress	Detailed statement of all purchases, obligations, expenditures and revenues associated with any program established by the Secretary over the reporting period, including: • Description of the categories of troubled assets purchased or otherwise procured by the Secretary; • Listing of the troubled assets purchased in each category; • Explanation of the reasons the Secretary deemed it necessary to purchase each troubled asset; • Listing of each financial institution from which the troubled assets were purchased; • Listing of and detailed biographical information on each person or entity hired to manage troubled assets; • Current estimate of the total amount of troubled assets purchased under TARP, the amount on of assets on Treasury's books, the amount of troubled assets sold and the profit/loss incurred on each sale or disposition; and • Listing of the insurance contracts issued.	**60 days** after confirmation of the SIG and every calendar quarter thereafter.
Congressional Oversight Panel (§125) • 1 member appointed by the Speaker; • 1 member appointed by the minority	Congress	Regular Reports • Use of the Secretary of the authority under the Act including contracting and administration authority; • Impact of purchases made under the Act on the financial markets and financial institutions; • Extent to which the information made available on transactions contributes to market	**Monthly** beginning **30 days** after the Secretary's first exercise of authority

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leader of the House; • 1 member appointed by the majority leader of the Senate; • 1 member appointed by the minority leader of the Senate.		transparency; • Effectiveness of foreclosure mitigation efforts and the effectiveness of the program in minimizing long-term costs to the taxpayers and maximizing their benefits.	
Congressional Oversight Panel (§125)	Congress	Special Report on Regulatory Reform • Analysis of current state of regulatory system and its effectiveness at overseeing the participants of the financial system and protecting consumers; and • Recommendations for improvements including whether any participants that are currently outside the regulatory system should become subject to it including the rationale underlying such recommendations and whether gaps exist in current consumer protections.	**January 20, 2009**
SEC (§133)	Congress	Study on Mark-to-market accounting, including: • Effect of the standards on financial institution's balance sheets/ • Impacts of such accounting on bank failures in 2008; • Impact of standards on the quality of financial information available to investors;	Within **90 days** of the Act.

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		• Process used by the FASB in developing the standards; • Advisability and feasibility of modifications to such standards; and • Alternative accounting standards to those provided in Statement Number 157.	
OMB (§202(a))	President and Congress	• Estimate of the Federal Credit Reform Act of 199 as of the first business day that is at least 30 days before the report of the cost of troubled assets and guarantees of the troubled assets; • Information used to derive the estimate including assets purchased or guaranteed, prices paid, revenues received, impacts on the deficit and debt; description of any outstanding commitments to purchase troubled assets; and • Detailed analysis of how the estimate has changed from the previous report.	Within **60 days** of the first exercise of authority under the Act and no later than **December 31, 2008** and **semiannually** thereafter**.**
Congressional Budget Office (§202(b))	Congress	Assessment of OMB report, including: • Cost of troubled assets and guarantees; • Information and valuation methods used to calculate such costs; and • Impact on the deficit and debt.	Within **45 days** of receipt of OMB Report (above)

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DIVISION B: ENERGY IMPROVEMENT AND EXTENSION ACT OF 2008

Title I: Energy Production Incentives

Subtitle A: Renewal Energy Incentives

This section extends and modifies certain energy incentives and tax credits, and creates new renewable energy bonds. A complete summary of these provisions may be found here.

Subtitle B: Carbon Mitigation and Coal Provision

This section provides new tax credits for advanced coal electricity and coal gasification projects, creates solvency for the Black Lung Disability Trust Fund, credits for CO_2 capture, credits for coal used in certain manufacturing, and authorizes a review of the tax code to identify tax provision with the largest effect on carbon and other greenhouse gas emissions in order to estimate the magnitude of those effects. A further summary of these provisions may be found here.

Title II: Transportation and Domestic Fuel Security

The provisions establish new credits for certain types of energy efficiencies in vehicles, bi-fuels and bio-diesel production, alternative fuel and bicycle credits, income treatment for alternative fuels and refinery expensing. Additional details are available here.

Title III: Energy Conservation and Efficiency

Key provisions in this section include tax credit bonds for government initiatives designed to reduce greenhouse emissions, tax credits and deductions for energy-efficient homes, commercial buildings, appliances, and utility meters, and investments in recycling. Additional information is available here.

Title IV: Revenue Provisions

These provisions freeze Section 199 deduction levels at 6% of a taxpayer's qualified production activities income, requires brokers of publicly traded securities (including mutual funds) to report cost basis information to shareholders and the IRS,[1] extends the Federal Unemployment Surtax, eliminates the distinction between certain oil and gas related income, and extends and increases the oil spill tax through 2017. Additional summary information is available here.

[1] The cost basis reporting provisions generally apply to fund shares one year after they apply to other stocks. Additionally, the reporting deadline for sending year-end tax information to customers generally is extended from January 31 to February 15. The Act creates two reporting categories: One for fund shares acquired before January 1, 1012, and one for shares acquired after. Fund shareholders have no obligation to use any cost basis information provided voluntarily for shares acquired through 2011, but must use the cost basis information provided for shares acquired after. Memorandum of the Investment Company Institute, "Economic Stabilization Bill Enacted Today Includes Cost Basis Reporting, Flow-Through Extension, and Other Provisions," October 3, 2008.

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DIVISION C: TAX EXTENDERS AND ALTERNATIVE MINIMUM TAX RELIEF

Title I: Alternative Minimum Tax

The provision increases the exemption amounts under the AMT to $46,200 for individuals and $69,950 for married filing jointly for 2008, allows personal credits against the AMT, and extends and modifies AMT credit allowances against incentive stock options. Additional summary information is available here.

Title II: Extension of Individual Tax Provisions

The provision extends the availability of income tax deductions for sales taxes in states without a state income tax, the deduction for qualified higher education expenses, the deduction for up to $250 for educational expenses, the real property tax deduction calculation for the standard deduction, and tax free contributions to IRA plans through 2009. It also extends treatment of certain dividends for Regulated Investment Companies, permits an estate tax look-through for RIC stock, and extends treatment of RICs as "Qualified Investment Entities." Additional summary information is available here.

Title III: Extension of Business Tax Provisions

These extensive provisions include the following:

- Extends current research and development tax credit and increases the alternative incremental research credit for the 2009 tax year;
- Extends credits for taxpayers who hold a qualified equity investment on a credit allowance date through 2009 (§302);
- Extends qualified tax deferrals for the U.S. parent of a foreign subsidiary engaged in banking, financing or other similar business through 2009 (§303);
- Extends the look-through rule for commonly controlled foreign corporations (§304);
- Extends 15-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements as well as the 15-year straight-line cost recovery for certain improvements to retail space (§305);
- Extends tax treatment for certain payments paid to a tax-exempt organization from a controlled entity (§306);
- Extends provision allowing a basis adjustment to stock of an S corporation that makes a contribution to charity (§307);
- Extends the temporary increase in the limit on cover over of rum excise tax revenues to Puerto Rico and the Virgin Islands (§308);
- Extends economic development tax relief for American Samoa (§309);
- Extends credit for the training of mine rescue team members (§310);
- Extension of expensing treatment for advanced mine safety equipment (§311);
- Extends a provision allowing a deduction for domestic production activities in Puerto Rico (§312);
- Extends provisions related to qualified zone academy bonds to help low-income school districts save on interest costs associated with public financing school renovations and repairs (§313);
- Business tax credit for employers of qualified employees that work and live on or near an Indian reservation. (§314);

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- Extends placed-in-service date for the special depreciation recovery period for qualified Indian reservation property (§315);
- Extend and expand 50% tax credit for certain maintenance expenditures associated with railroad tracks (§316);
- Extends a special 7-year cost recovery period for property used for land improvement and support facilities at motor sports entertainment complexes (§317);
- Extends permission to expense costs associated with cleaning up contaminated environmental sites (§318);
- Extends "work opportunity tax credits' for those employed with Hurricane Katrina core disaster area. (§319);
- Extends an increase in the rehabilitation credit for structures in the "Gulf Opportunity Zone Act of 2005 (§320);
- Extends a provision that encourages business to contribute computer equipment and software to schools (§321);
- Special tax incentives are made available for investments within the District of Columbia (§322);
- Enhanced charitable deductions for contributions of book inventory to schools (§323); and
- Extends a provision that reduces import duties on a limited quantity of imported wool fabrics and places duties collected on the import of certain other wool products into the Wool Trust Fund (§325).

Additional summary information is available here.

Title IV: Extension of Tax Administration Provisions

This provision permanently authorizes the IRS to use proceeds it receives from undercover operations to offset necessary expenses incurred in the operation as well permanently extending the current-law terrorist activity provisions. (§401-402)

Title V: Additional Tax Relief and Other Tax Provisions

This section contains a number of miscellaneous tax relief provisions including:

- lowering the eligibility threshold for the child tax credit;
- expanding the use of the domestic production deduction for television productions;
- exempting excise taxes on wooden practice arrows used by children;
- allowing commercial fisherman and others whose livelihoods were effected by the Exxon Valdez oil spill to average any settlement or judgment-related income over three years for tax purposes and make contributions to their retirement accounts;
- providing a five year recovery period for any equipment used in a farming business that is placed in service before January 1, 2010; and
- modifying the standards imposed on the tax return preparer penalty provisions.

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In addition, this section contains the notable Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. This act requires private insurance plans that offer mental health and medical surgical benefits to offer them on par with one another. Any cost-sharing or benefit limits imposed on mental health and addiction recovery must not be any more restrictive than those imposed on other medical benefits.

Additional summary information about these provisions is available here.

Title VI: Other Provisions

This section reauthorizes the Secure Rural Schools and Community Self-Determination Act of 2000 through 2011 and adjusts the funding distribution formula. It also transfers interest earned by the Abandoned Mine Reclamation Fund. Additional information is available here.

Title VII: Midwestern Disaster Tax Relief

The section authorizes tax relief for victims of the Midwestern disaster related to floods, severe storms and tornadoes in Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska and Wisconsin identified by FEMA between May and August, 2008. The types of relief include the following:

- Waives the 10% penalty tax for distributions from an IRA or tax-favored retirement plan if it is a "qualified Disaster Recovery Assistance distribution;
- Allows distributions from home purchases made from Code Section 401(k) or 403(b) or IRA plans that were applied for and not finalized because of the disaster;
- Doubles the limitations on loans from a 401(k), 403(b), or a governmental 457(b) plan to allow victims to receives loans up to $100,000 or 100% of the vested accrued benefit;
- Eliminates the 10% and $100 floor for casualty loss deductions;
- Permits low income families to use 2007 income amount to determine eligibility for the refundable earned income credit and child tax credit;
- Grants an additional personal exemption for taxpayers who house up to four dislocated persons from the disaster;
- Ensures that individuals will not be taxed on personal debt that is discharged in response to damage suffered from the disasters;
- Extends the replacement period to five years for principal residences and business property in order to avoid recognizing gain;
- Grants employee retention credit to employers with 200 or fewer employees who continue to pay them while their business is inoperable;
- Doubles the hope Scholarship and Lifetime Learning Credit for students attending undergraduate or graduate institutions in the disaster area;
- Authorizes the Treasury Department to ensure that victims do not lose tax benefits because they have been displaced;
- Permits states to issue tax-exempt bonds to finance low-interest loans to taxpayers whose principal residence has been damaged as a result of the disaster;

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- Authorizes each impacted state to issue a special class of qualified private activity bond outside of the state volume caps. Bond proceeds can be used to pay for acquisition, construction and renovation of nonresidential real property, qualified low income residential rental housing and public utility property;
- Authorizes states to allocate volumes of additional housing credit amounts based upon population data issued before the earliest applicable disaster date;
- Permits businesses to claim an additional first-year depreciation deduction equal to 50% of the cost of new real and personal property investments made in the disaster area;
- Increases by $100,000 the amount of expensing available for qualifying expenditures made in the disaster area through 2011;
- Allows businesses to deduct 50% of the cost related to site cleanup and demolition;
- Extends deductibility of environmental remediation costs;
- Increases the rehabilitation credit for buildings damaged or destroyed in the disaster;
- Extends net operating loss carryback period from 2 to 5 years for net operating losses attributable to certain costs and losses;
- Authorizes impacted states to issue debt service tax credit bonds for credits against Federal income tax instead of interest payments to assist communities unable to meet their debt service requirements because of the disaster;
- Temporarily waives limits on charitable contributions for contributions dedicated to the disaster relief efforts;
- Increase standard mileage rate for charitable use of vehicles; and
- Excludes income mileage reimbursements for charitable volunteers.

Additional summary information on these provisions is available here.

Title VIII: Hurricane Ike Disaster Tax Relief

This section allows Texas and Louisiana to allocate volumes of additional low-income housing credit amounts through 2010 and permits these states to issue special classes of qualified private activity bonds outside the state volume caps. Additional information is available here.

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REPORTING GROUP	REVIEWING ENTITY	REPORT TYPE	TIMING OF REPORT
Treasury (§105)	Congressional Oversight Panel	Monthly • Review of actions taken; • Report of actual obligations and expenditures; • Financial statement.	Beginning within **60 days** of first purchase, trade or disposition of troubled assets and **monthly** thereafter.
Treasury (§105(b))	Congressional Oversight Panel	Tranche • Description of all transactions; • Description of pricing mechanisms; • Justification of price paid and other financial terms; • Description of impact on financial system based on specific data; • Description of remaining challenges to the financial systems including benchmarks to be achieved; • Estimate of additional actions necessary to address challenges.	Within **7 days** after aggregate commitments to purchase troubled assets exceed each successive $50 billion threshold
Treasury (§114)	Public disclosure (electronic)	Description, amounts and pricing of assets acquired	Within 2 business days of purchase, trade or other disposition.
Financial Stability Oversight Board (FSOB) (§104) • Chairman of the Federal Reserve • Secretary of the Treasury • Director of HUD • Chairman of the SEC	Congress & Congressional Oversight Panel	Quarterly • Review of policies implemented; • Report on effect of actions taken preserving home ownership, stabilizing financial markets & protecting taxpayers; • Issue recommendations regarding use of the authority; • Report suspected fraud to Special Inspector or AG.	Quarterly

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GAO (§116)	Congress and Special Inspector General for TARP	Report on • Performance of TARP in meeting the purposes of the Act; • Financial condition and internal controls of TARP • Characteristics of transactions and commitments; o Transaction type; o Frequency; o Size; o Price paid; o All other relevant terms and conditions; and o Timing, duration and terms of future commitments to purchase assets. • Characteristics and disposition of acquired assets; o Type of asset; o Acquisition price o Current market value; o Sale price and terms; and o Use of proceeds from sales. • Efficiency of TARP operations; • Compliance with laws; • Efforts of TARP to prevent and minimize conflicts of interests involving TARP agents; and • Efficacy of TARP contracting procedures.	Every **60 days**
Comptroller General (§116)	Committee on Banking, Housing & Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives	Study to determine the extent to which leverage and sudden deleveraging of financial institutions was a factor behind the current crisis including: • Analysis of the roles and responsibilities of the Federal Reserve, SEC, Treasury and other banking agencies to monitor leverage and acting to curtail excessive leveraging; • Analysis of the authority of the Board to regulate leverage; • Analysis of any usage of the margin authority by the Federal Reserve; and • Recommendations for the	**June 1, 2009**

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		Federal Reserve Board and Congress concerning scope of Board's authorities.	
Special Inspector General (§121)	Congress	Detailed statement of all purchases, obligations, expenditures and revenues associated with any program established by the Secretary over the reporting period, including: • Description of the categories of troubled assets purchased or otherwise procured by the Secretary; • Listing of the troubled assets purchased in each category; • Explanation of the reasons the Secretary deemed it necessary to purchase each troubled asset; • Listing of each financial institution from which the troubled assets were purchased; • Listing of and detailed biographical information on each person or entity hired to manage troubled assets; • Current estimate of the total amount of troubled assets purchased under TARP, the amount on of assets on Treasury's books, the amount of troubled assets sold and the profit/loss incurred on each sale or disposition; and • Listing of the insurance contracts issued.	**60 days** after confirmation of the SIG and every calendar quarter thereafter.
Congressional Oversight Panel (§125) • 1 member appointed by the Speaker; • 1 member appointed by the minority leader of	Congress	Regular Reports • Use of the Secretary of the authority under the Act including contracting and administration authority; • Impact of purchases made under the Act on the financial markets and financial institutions; • Extent to which the information made available on transactions contributes to market transparency;	**Monthly** beginning **30 days** after the Secretary's first exercise of authority

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- the House; 1 member appointed by the majority leader of the Senate; 1 member appointed by the minority leader of the Senate.		Effectiveness of foreclosure mitigation efforts and the effectiveness of the program in minimizing long-term costs to the taxpayers and maximizing their benefits.	
Congressional Oversight Panel (§125)	Congress	Special Report on Regulatory Reform - Analysis of current state of regulatory system and its effectiveness at overseeing the participants of the financial system and protecting consumers; and - Recommendations for improvements including whether any participants that are currently outside the regulatory system should become subject to it including the rationale underlying such recommendations and whether gaps exist in current consumer protections.	**January 20, 2009**
SEC (§133)	Congress	Study on Mark-to-market accounting, including: - Effect of the standards on financial institution's balance sheets/ - Impacts of such accounting on bank failures in 2008; - Impact of standards on the quality of financial information available to investors; - Process used by the FASB in	Within **90 days** of the Act.

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		developing the standards; • Advisability and feasibility of modifications to such standards; and • Alternative accounting standards to those provided in Statement Number 157.	
OMB (§202(a))	President and Congress	• Estimate of the Federal Credit Reform Act of 199 as of the first business day that is at least 30 days before the report of the cost of troubled assets and guarantees of the troubled assets; • Information used to derive the estimate including assets purchased or guaranteed, prices paid, revenues received, impacts on the deficit and debt; description of any outstanding commitments to purchase troubled assets; and • Detailed analysis of how the estimate has changed from the previous report.	Within **60 days** of the first exercise of authority under the Act and no later than **December 31, 2008** and **semiannually** thereafter**.**
Congressional Budget Office (§202(b))	Congress	Assessment of OMB report, including: • Cost of troubled assets and guarantees; • Information and valuation methods used to calculate such costs; and • Impact on the deficit and debt.	Within **45 days** of receipt of OMB Report (above)

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II. TREASURY DEPARTMENT PRESS RELEASES FOLLOWING THE ENACTMENT OF THE EESA

October 10, 2008
HP-1194

Statement by Secretary Henry M. Paulson, Jr.
Following Meeting of the G7 Finance Ministers and Central Bank Governors

Washington, DC—At today's meeting of the G7 Finance Ministers and Central Bank Governors, we finalized an aggressive action plan to address the turmoil in global financial markets and the stresses on our financial institutions. This action plan provides a coherent framework that will direct our individual and collective policy steps to provide liquidity to markets, strengthen financial institutions, protect savers, and enforce investor protections.

The G7 is compelled to robust international partnership and cooperation. Never has it been more essential to find collective solutions to ensure stable and efficient financial markets and restore the health of the world economy.

Global financial market conditions are severely strained. In the United States, our economy has been facing a prolonged period of uncertainty and our financial markets are experiencing unprecedented and extraordinary challenges. A root cause of this situation is the housing correction and a lack of confidence in mortgage assets, as well as a lack of confidence in many of the financial institutions that hold these assets. We are squarely focused on the immediate need to stabilize our financial markets, and recognize that investor confidence is critical to restore liquidity and enhance the stability of our financial system.

As recent developments have demonstrated, the market turmoil is a global event. Governments around the world have taken actions to address financial market developments, and international cooperation and coordination has been robust. It is critical for governments to continue to take individual and collective actions to provide much-needed liquidity, strengthen financial institutions, enhance market stability, and develop a comprehensive regulatory response. We must continue to closely coordinate our actions and work within a common framework so that the action of one country does not come at the expense of others or the stability of the system as a whole.

Central banks from around the world have acted together to provide additional liquidity for financial institutions, taking the necessary steps to support the global economy. The Federal Reserve has established swap lines with nine central banks to reduce pressures in global short-term U.S. dollar markets. Additionally, the U.S. Treasury implemented a temporary guaranty program for the U.S. money market mutual fund industry.

Here in the United States, the members of the President's Working Group on Financial Markets (PWG) made it clear that we will coordinate the use of our existing and new authorities to restore market confidence. Other countries are considering appropriate programs given their national circumstances, and we pledge to stay in close contact as they

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move forward with their plans.

I briefed my colleagues on the work we are pursuing to implement swiftly and thoughtfully the new financial rescue package. We are developing strategies to use the authority to purchase and insure mortgage assets and to purchase equity in financial institutions, as deemed necessary to promote financial market stability. As we develop plans to purchase equity, as in the approach we are taking to broad mortgage asset purchases, we are working to develop a standardized program that is open to a broad array of financial institutions. Such a program would be designed to encourage the raising of new private capital to complement public capital.

Consistent with the legislation, any equity the government purchases through a broadly available equity program would be on a non-voting basis, except with respect to the market standard terms to protect our rights as investors.

Securities regulators around the world have taken measures to enhance market stability by addressing market abuse. Here in the United States, we have taken steps to protect the savings of the American people by increasing deposit insurance limits, and the European Union member states have raised individual deposit limits to an EU-wide minimum.

The G7 and others are working together through the Financial Stability Forum (FSF) to ensure a comprehensive, international regulatory response to the financial market turmoil. FSF Chairman Mario Draghi reported to us on the good progress that has been made in improving prudential supervision and regulation, increasing disclosure and transparency, and enhancing accounting frameworks. I am committed to making sure this work continues. We are also committed to tackling the next steps laid out by Chairman Draghi to be done by the end of this year and our ambitious agenda for 2009.

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October 13, 2008
hp1201

Treasury Hires Investment Adviser Under the Emergency Economic Stabilization Act

Washington- The U.S. Treasury Department today announced that EnnisKnupp and Associates will serve as its investment adviser for the implementation of the Troubled Asset Relief Program authorized under the Emergency Economic Stabilization Act. Treasury hired the Chicago-based firm Saturday and the firm began work immediately to help the Department administer the complex portfolio of troubled assets the Department will purchase.

Treasury hired the investment consultant for assistance as it evaluates potential asset managers and other vendors. The firms' duties also will include developing and maintaining investment policies and guidelines and assisting with the oversight of the portfolio's multiple asset managers. This oversight will include helping Treasury to determine asset allocations for each manager, evaluating the performance and costs, identifying conflicts of interest and identifying strategic investment and market issues impacting the overall portfolio.

The investment adviser also will conduct research on mortgage whole loan asset managers and on servicing organizations. Additionally, the firm will identify qualified minority- and women-owned businesses to provide services for the portfolio.

Treasury hired EnnisKnupp using a procurement contract under the Federal Acquisition Regulation. Treasury competitively solicited offers from six firms under compelling urgency to quickly establish the Troubled Asset Relief Program. Three firms made offers.

The contract will last for one year. More information on this contract is posted at www.fedbizepps.gov (Federal Business Opportunities website) and at https://www.fpds.gov (Federal Procurement Data System).

EnnisKnupp is one of the largest investment consulting firms in the world with aggregate assets of more than $835 billion under advisement for over 155 retainer clients, as well as approximately $1 trillion in project-related engagements. Accustomed to working with large, complex institutional investors, particularly those that operate in highly visible and transparent environments, they serve a diverse client base. Their clients include public, corporate, and jointly-trusteed retirement funds, as well as not-for-profit organizations, foundations, and other endowed institutions. EnnisKnupp has grown to 121 employees, of which 93 are consulting professionals, and as a result the firm has extensively deep bench strength and resources that are devoted to providing world class service to clients. EnnisKnupp comprehensive advisory services encompass traditional investment consulting combined with complete coverage of all alternatives consulting needs for private equity, real estate, and opportunistic strategies. In addition, they are leading experts in fiduciary services, which includes fiduciary audits and operational reviews, investment program structure and monitoring, board/committee governance, strategic planning and organizational design, and trustee education. EnnisKnupp remains dedicated to maintaining its strict independence from financial service providers, which ensures that the advice clients receive is unconflicted and always in their best interest.

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November 3, 2008
HP-1251

Treasury Hires Legal Firms Under the Emergency Economic Stabilization Act

Washington- The U.S. Treasury Department today announced that Hughes Hubbard & Reed, LLP and Squire Sanders & Dempsey, LLP will assist the Department in the implementation of the Capital Purchase Program authorized under the Emergency Economic Stabilization Act. Treasury procured the services of the law firms on Wednesday.

The firms will help the Department with executing transactions under the program, which includes reviewing executed investment agreements, working directly with accepted financial institutions to identify and resolve any legal issues before closing, and conducting the closing of transactions.

The agreements with the firms are effective until April 28, 2009. Treasury issued a request for quotes from five firms on the General Services Administration's Federal Supply Schedules on October 24. The Department received four quotes in response. Based on the estimated transactions under the program, total costs for each firm is not expected to exceed approximately $5.5 million. More information on these contracts will be posted at https://www.fpds.gov (Federal Procurement Data System).

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February 23, 2009
tg38

Joint Statement by the Treasury, FDIC, OCC, OTS and the Federal Reserve

Washington, DC — The U.S. Department of the Treasury, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Reserve Board today issued the following joint statement:

“A strong, resilient financial system is necessary to facilitate a broad and sustainable economic recovery. The U.S. government stands firmly behind the banking system during this period of financial strain to ensure it will be able to perform its key function of providing credit to households and businesses. The government will ensure that banks have the capital and liquidity they need to provide the credit necessary to restore economic growth. Moreover, we reiterate our determination to preserve the viability of systemically important financial institutions so that they are able to meet their commitments.

“We announced on February 10, 2009, a Capital Assistance Program to ensure that our banking institutions are appropriately capitalized, with high-quality capital. Under this program, which will be initiated on February 25, the capital needs of the major U.S. banking institutions will be evaluated under a more challenging economic environment. Should that assessment indicate that an additional capital buffer is warranted, institutions will have an opportunity to turn first to private sources of capital. Otherwise, the temporary capital buffer will be made available from the government. This additional capital does not imply a new capital standard and it is not expected to be maintained on an ongoing basis. Instead, it is available to provide a cushion against larger than expected future losses, should they occur due to a more severe economic environment, and to support lending to creditworthy borrowers. Any government capital will be in the form of mandatory convertible preferred shares, which would be converted into common equity shares only as needed over time to keep banks in a well-capitalized position and can be retired under improved financial conditions before the conversion becomes mandatory. Previous capital injections under the Troubled Asset Relief Program will also be eligible to be exchanged for the mandatory convertible preferred shares. The conversion feature will enable institutions to maintain or enhance the quality of their capital.

“Currently, the major U.S. banking institutions have capital in excess of the amounts required to be considered well capitalized. This program is designed to ensure that these major banking institutions have sufficient capital to perform their critical role in our financial system on an ongoing basis and can support economic recovery, even under an economic environment that is more challenging than is currently anticipated. The customers and the providers of capital and funding can be assured that as a result of this program participating banks will be able to move forward to provide the credit necessary for the stabilization and recovery of the U.S. economy_ Because our economy functions better when financial institutions are well managed in the private sector, the strong presumption of the Capital Assistance Program is that banks should remain in private hands.”

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III. THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The American Recovery and Reinvestment Act of 2009 ("ARRA") is 407 pages in length and consists of two Divisions. Division A "Appropriations Provisions" contains sixteen "Titles" and Division B "Tax, Unemployment, Health, State Fiscal Relief and Other Provisions" is divided into seven subtitles each of which has multiple parts. The stated purpose of the ARRA is: (1) to preserve and create jobs and promote economic recovery; (2) to assist those most impacted by the recession; (3) to provide investments needed to increase economic efficiency by spurring technological advances in science and health; (4) to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and (5) to stabilize State and local government budgets in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases."

The ARRA presents a variety of opportunities for a broad spectrum of industries. Some are as straightforward as targeted appropriations for specific projects such as road and bridge improvements. Others are buried in seeming unrelated sections such as grants to educational institutions to develop academic curricula that integrates certified electronic health record technology into the clinical education of health professionals. The Act creates several new programs and administrative structures, but the majority of the appropriations target existing programs and regulations. In order to fully understand the opportunities created by the influx of funding, it will be necessary to identify the funding entity and research the mechanism through which funds are awarded by those entities. Most federal agencies and States have launched recovery.gov websites to track the funded programs and highlight opportunities for potential recipients. The Treasury Department launched its new finacialstability.gov website on March 31, 2009.

The following summary provides a high level overview of some of the programs provided by the ARRA.

EDUCATION: In general, state Governors must apply for funds targeting education using existing funding mechanisms and formulas.

<u>$53.6 billion</u> to create a State Fiscal Stabilization Fund (**Title XIV**)
The funds are to be made available immediately through the Department of Education to the States to restore aid to school districts under existing State funding formulas and to help public institutions of higher education mitigate the need to raise tuition and fees, and modernize, renovate or report facilities.

<u>$15.6 billion</u> to fund Pell Grants (**Title VIII**)
Increases the maximum grant to $5,350 per year.

<u>$50 million</u> to the Community College and Career Training Grant Program
Establishes grants for eligible institutions to develop, offer or improve educational or career training programs for "eligible workers." (Div. B, Title I, Subtitle I, Part II, p. 292)

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$22 billion in new tax credit bonds
For the construction and repair of public school facilities or to acquire land for construction of new public schools.

$1.4 billion authorized for states to issue qualified zone academy bonds to finance improvements in low-income school districts.

$100 million to be provided to States administering a school lunch program as grants under a National School Lunch Program for equipment assistance with priority to school in which not less than 50% of the students are eligible for free or reduced meals under the Richard B. Russell National School Lunch Act (42 U.S. C. §1751 et seq.).

BUSINESS/SMALL BUSINESS

Allow small businesses with annual receipts under $15 million to cut taxes by writing off current losses against profits earned in the past five years, instead of the usual two years. (Div. B, Title I, Subtitle C, Part II, p. 221) Amending 26 U.S.C. §172.

Reduces the estimated tax payment requirements for many small business owners to 90% from 100%. Qualified businesses include those having an adjusted gross income less than $500,000 at least 50% of which came from a small business (defined as a business employing fewer than 500 employees on average in 2008). Div. B, Title I, Subtitle C, Part II, (p. 222) Amending 26 USC §6654.

Amends the rules that would normally impose a tax immediately following the discharge of indebtedness to allow some businesses to defer the tax on income that is recognized when they repurchase their debt at a discount. (Div. B, Title I, Subtitle C, Part IV, p. 224) Amending 26 U.S.C. §108.

Allow small businesses to exclude 75 percent of the gain from the sale of qualified small business stock held for more than five years. (Div. B, Title I, Subtitle C, Part V, p. 228) Amending 26 U.S.C. §1202(a).

Reduces the recognition period from ten years to seven for S corporations to avoid tax on any net recognized built-in gains stemming from the conversion of a corporation to a S corporation in 2009 and 2010. (Div. B, Title I, Subtitle C, Part VI, p. 228) (Amends 26 USC §1374(d)

Expands the scope of an existing tax credit of up to 40% of the first $6,000 in pay to certain types of employees (ex-felons, food stamp recipients and disabled veterans) to include "disconnected youth" and unemployed veterans. (Div. B, Title I, Subtitle C, Part III. p 223). Amends 26 USC §51.

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Extends the limit on the amount of expense that can be taken in year one for certain depreciable business assets to $250,000. (Div. B. Title I, Subtitle C, Part I p. 219) Amends 26 USC §179(b)

Extends the acceleration on alternative minimum tax and research and development credits in lieu of the 50% bonus depreciation through 2009. (Div. B., Title I, Subtitle C, Part I p. 219) Amends 26 USC §168(k).

INFRASTRUCTURE

$1.5 billion through September 30, 2011 to be distributed as discretionary grants to be awarded to State and local governments or transit agencies on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area or a region. Approved projects include highway or bridge projects eligible under title 23.
(Div. A, Title XII p. 89)

$200 million to the Federal Aviation Administration for infrastructure improvements to power systems, air route traffic control centers, air traffic control towers, terminal radar approach control facilities and navigation and landing equipment.

$27.5 billion for restoration, repair, construction and other eligible projects under 23 U.S.C. §133 (b). Half of the funds are to be made available to the States using the formulas set forth in 23 U.S.C. §104(b)(3) and the other half according to the ratios established for fiscal year 2008. Funding is to be made available within 21 days of enactment and priority is to be given to projects slated for completion within three years, and located in economically distressed areas (as defined in 42 U.S.C. 3161).

$8 billion for railroad infrastructure projects described in 49 U.S.C. §24105 (2)(A) & (B) with priority given to projects that support the development of intercity high speed rails service. The Secretary is to submit a strategic plan describing how the Secretary plans to use the funding provided within 60 days and within 120 days, is to issue interim guidance to applicants covering grant terms, conditions and procedures until final regulations are issued.

CONSTRUCTION (GENERALLY)

$360 Million to the National Institute of Standards and Technology for "Construction of Research Facilities, $180 million of which is to be used for a competitive construction grant program for research science buildings. (Div A, Title II).

$600 million to the National Oceanic and Atmospheric Administration for "Procurement Acquisition and Construction). (Div. A, Title II).

$2 Billion to the Army Corps of Engineers for construction of water-related environmental infrastructure assistance (Div. A, Title IV)

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CITIES/MUNICIPALITIES

$150 Million for "Economic Development Assistance Programs" including $50,000,000 for emergency economic development assistance for communities impacted by severe unemployment under 42 U.S.C. §3149.

ENERGY AND WATER DEVELOPMENT

$2 Billion to the Army Corps of Engineers for construction of water-related environmental infrastructure assistance (Div. A, Title IV)

$3.2 Billion to the Department of Energy for "Energy Efficiency and Renewable Energy" to provide Energy Efficiency and Conservation Block grants to states, territories, local governments, and Indian tribes to reduce fossil fuel emissions in a way that is environmentally sustainable, and to the maximum extent practicable, maximizes benefits for local and regional communities reduce the total energy use of the recipient entity, improve energy efficiency in the transportation sector, the building sector, and other appropriate sectors

- Funds are divided as follows:
  - 68% to local governments
  - 28% to states
  - 2 percent to Indian tribes
  - 2 percent to other entities (competitive grants)
- Allowed uses of funds:
  - development and implementation of an energy efficiency and conservation strategy including the use of technical consultant services,
  - conducting energy audits of residential and commercial buildings,
  - establishing a financial incentive programs to encourage energy efficiency improvements,
  - providing grants to nonprofit organizations and governmental agencies to perform energy efficiency retrofits,
  - develop and implement energy efficiency and conservation programs for buildings and facilities,
  - develop and implement programs to conserve energy used in transportation, including adoption of alternative work schedules, satellite offices,
  - develop and promote zoning guidelines or requirements that promote energy efficient development,
  - develop infrastructure, such as bike lanes and pathways and pedestrian walkways, synchronization of traffic signals, and other measures that increase energy efficiency and decrease energy consumption

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- develop and implement building codes and inspection services to promote building efficiency,
- implement energy distribution technologies to increase efficiency,
- activities to increase participation and efficiency rates for material conservation programs, including source reduction, recycling, and recycled content procurement programs,
- purchase and use of technologies to reduce, capture, and use methane and other greenhouse gases generated by landfills or other similar sources,
- replacement of traffic signals and street lighting with energy efficient lighting technologies, including light emitting diodes, and any other technology of equal or greater efficiency
- develop, implement, and install on or in any government building of onsite renewable energy technology that generates electricity from renewable sources, including solar, wind, fuel cells, biomass
- any other appropriate activity determined by the Secretary

$3.1 billion for State Energy Programs authorized under the Energy Policy and Conservation Act (42 U.S.C. §6321)

HEALTHCARE

$2 Billion for a new Health Information Technology infrastructure to benefit healthcare providers and patients. Creates a new Office of the National Coordinator for Health Information Technology who will oversee the development of policy and standards associated with the architecture. (Div. A, Title XIII)

$2 Billion to finance renovations and upgrades in technology of community health centers.

$1.2 Billion to finance renovation and construction of Veteran's hospitals and cemeteries.

STATES (miscellaneous appropriations)

$2 Billion for grant programs for "State and Local Law Enforcement Assistance" under the Omnibus Crime Control and Safe Streets Act of 1968.

$225 Million for competitive grants to improve the functioning of the criminal justice system, to assist victims of crime and youth mentoring grants.

TELECOMMUNICATIONS

$2.5 Billion: Broadband loans and loan guarantees under the Rural Electrification Act to be administered by the Secretary of Agriculture provided that:

- The amount is generally available for grants, loans and guarantees for broadband infrastructure in any area of the country;

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- At 75% of the area to be served by a project receiving funds is in a rural area without sufficient access to high speed broadband service to facilitate rural economic development;
- Priority will be given to projects that will deliver end users a choice of more than one service provider and in areas where the greatest number of people will be served;

(Div A, Title I)

<u>$4.7 Billion</u> to the Assistance Secretary of Commerce for Communications and Information for a "Broadband Technology Opportunities Program"

- $4.3 billion to fund the program the purpose of which is to provide access or improved access to broadband services to consumers in underserved areas as well as education, awareness, training, access, equipment and support to school, libraries, medical and healthcare providers, community colleges and other institutions of higher education, outreach organizations, job-creating facilities, and public safety agencies.
  - $200 million to be available for competitive grants for expanding public computer center capacity including at community colleges and public libraries;
  - $250 million for competitive grants for innovative programs to encourage sustainable adoption of broadband service; and
  - $10 million to the Commerce Department's Office of Inspector General to develop and maintain a broadband inventory map in consultation with the FCC.
- Eligible grant recipients include:
  - States
  - Nonprofit organizations and corporations
  - Any other entities, including a broadband service or infrastructure provider.

  (Appropriated under Div. A, Title I; program described in Div. B, Title VI)

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IV. TREASURY DEPARTMENT PRESS RELEASES FOLLOWING THE ENACTMENT OF THE ARRA

The following is a summary of all of the plans that Treasury is implementing as published at the end of March, 2009 on the governments new website: www.financialstability.gov

FINANCIAL STABILITY PLAN

SUMMARY

The Financial Stability Plan: Deploying our Full Arsenal to Attack the Credit Crisis on All Fronts. Today, our nation faces the most severe financial crisis since the Great Depression. It is a crisis of confidence, of capital, of credit, and of consumer and business demand. Rather than providing the credit that allows new ideas to flourish into new jobs, or families to afford homes and autos, we have seen banks and other sources of credit freeze up – contributing to and potentially accelerating what already threatens to be a serious recession. Restarting our economy and job creation requires both jumpstarting economic demand for goods and services through our American Recovery and Reinvestment Act and simultaneously ensuring through our new Financial Stability Plan that businesses with good ideas have the credit to grow and expand, and working families can get the affordable loans they need to meet their economic needs and power an economic recovery.

To address the financial crisis, the Financial Stability Plan is designed to attack our credit crisis on all fronts with our full arsenal of financial tools and the resources commensurate to the depth of the problem. To be successful, we must address the uncertainty, troubled assets and capital constraints of our financial institutions as well as the frozen secondary markets that have been the source of around half of our lending for everything from small business loans to auto loans.

To protect taxpayers and ensure that every dollar is directed toward lending and economic revitalization, the Financial Stability Plan will institute a new era of accountability, transparency and conditions on the financial institutions receiving funds. To ensure that we are responding to this crisis as one government, Secretary Timothy Geithner — working in collaboration and joined by Federal Reserve Chairman Ben Bernanke, FDIC Chair Sheila Bair, Office of Thrift Supervision Director John Reich and Comptroller of the Currency John Dugan – is bringing the full force and full range of financial tools available to cleaning up lingering problems in our banking system, opening up credit and beginning the process of financial recovery.

FINANCIAL STABILITY PLAN

1. Financial Stability Trust: A key aspect of the Financial Stability Plan is an effort to strengthen our financial institutions so that they have the ability to support recovery. This Financial Stability Trust includes:

a. *A Comprehensive Stress Test: A Forward Looking Assessment of What Banks Need to Keep Lending Even Through a Severe Economic Downturn:* Today, uncertainty about the real value of distressed assets and the ability of borrowers to repay loans as well as uncertainty as to whether some financial institutions have the capital required to weather a continued decline in the economy have caused both a dramatic slowdown in lending and a decline in the confidence required for the private sector to

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make much needed equity investments in our major financial institutions. The Financial Stability Plan will seek to respond to these challenges with:

- *Increased Transparency and Disclosure*: Increased transparency will facilitate a more effective use of market discipline in financial markets. The Treasury Department will work with bank supervisors and the Securities and Exchange Commission and accounting standard setters in their efforts to improve public disclosure by banks. This effort will include measures to improve the disclosure of the exposures on bank balance sheets. In conducting these exercises, supervisors recognize the need not to adopt an overly conservative posture or take steps that could inappropriately constrain lending.
- *Coordinated, Accurate, and Realistic Assessment:* All relevant financial regulators — the Federal Reserve, FDIC, OCC, and OTS — will work together in a coordinated way to bring more consistent, realistic and forward looking assessment of exposures on the balance sheet of financial institutions..
- *Forward Looking Assessment – Stress Test:* A key component of the Capital Assistance Program is a forward looking comprehensive "stress test" that requires an assessment of whether major financial institutions have the capital necessary to continue lending and to absorb the potential losses that could result from a more severe decline in the economy than projected.
- *Requirement for $100 Billion-Plus Banks*: All banking institutions with assets in excess of $100 billion will be required to participate in the coordinated supervisory review process and comprehensive stress test.

b. *Capital Assistance Program:* While banks will be encouraged to access private markets to raise any additional capital needed to establish this buffer, a financial institution that has undergone a comprehensive "stress test" will have access to a Treasury provided "capital buffer" to help absorb losses and serve as a bridge to receiving increased private capital. While most banks have strong capital positions, the Financial Stability Trust will provide a capital buffer that will: Operate as a form of "contingent equity" to ensure firms the capital strength to preserve or increase lending in a worse than expected economic downturn. Firms will receive a preferred security investment from Treasury in convertible securities that they can convert into common equity if needed to preserve lending in a worse-than-expected economic environment. This convertible preferred security will carry a dividend to be specified later and a conversion price set at a modest discount from the prevailing level of the institution's stock price as of February 9, 2009. Banking institutions with consolidated assets below $100 billion will also be eligible to obtain capital from the CAP after a supervisory review.

c. *Financial Stability Trust:* Any capital investments made by Treasury under the CAP will be placed in a separate entity – the Financial Stability Trust – set up to manage the government's investments in US financial institutions.

2. Public-Private Investment Fund: One aspect of a full arsenal approach is the need to provide greater means for financial institutions to cleanse their balance sheets of what are often referred to as "legacy" assets. Many proposals designed to achieve this are complicated both by their sole reliance on public purchasing and the difficulties in pricing assets. Working together in partnership with the FDIC and the Federal Reserve, the Treasury Department will initiate a Public-Private Investment Fund that takes a new approach.

- ***Public-Private Capital*:** This new program will be designed with a public-private financing component, which could involve putting public or private capital side-by-side and using public financing to leverage private capital on an initial scale of up to $500 billion, with the potential to expand up to $1 trillion.

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• *Private Sector Pricing of Assets*: Because the new program is designed to bring private sector equity contributions to make large-scale asset purchases, it not only minimizes public capital and maximizes private capital: it allows private sector buyers to determine the price for current troubled and previously illiquid assets

3. Consumer & Business Lending Initiative – Up to $1 Trillion: Addressing our credit crisis on all fronts means going beyond simply dealing with banks. While the intricacies of secondary markets and securitization – the bundling together and selling of loans – may be complex, they account for almost half of the credit going to Main Street as well as Wall Street. When banks making loans for small businesses, commercial real estate or autos are able to bundle and sell those loans into a vibrant and liquid secondary market, it instantly recycles money back to financial institutions to make additional loans to other worthy borrowers. When those markets freeze up, the impact on lending for consumers and businesses – small and large – can be devastating. Unable to sell loans into secondary markets, lenders freeze up, leading those seeking credit like car loans to face exorbitant rates. Between 2006 and 2008, there was a net $1.2 trillion decline in securitized lending (outside of the GSEs) in these markets. That is why a core component of the Financial Stability Plan is:

• A Bold Expansion Up to $1 Trillion: This joint initiative with the Federal Reserve builds off, broadens and expands the resources of the previously announced but not yet implemented Term Asset-Backed Securities Loan Facility (TALF). The Consumer & Business Lending Initiative will support the purchase of loans by providing the financing to private investors to help unfreeze and lower interest rates for auto, small business, credit card and other consumer and business credit. Previously, Treasury was to use $20 billion to leverage $200 billion of lending from the Federal Reserve. The Financial Stability Plan will dramatically increase the size by using $100 billion to leverage up to $1 trillion and kick start lending by focusing on new loans.

• Protecting Taxpayer Resources by Limiting Purchases to Newly Packaged AAA Loans: Because these are the highest quality portion of any security — the first ones to be paid — we will be able to best protect against taxpayer losses and efficiently leverage taxpayer money to support a large flow of credit to these sectors.

• Expand Reach – Including Commercial Real Estate: The Consumer & Business Lending Initiative will expand the initial reach of the Term Asset-Backed Securities Loan Facility to now include commercial mortgage-backed securities (CMBS). In addition, the Treasury will continue to consult with the Federal Reserve regarding possible further expansion of the TALF program to include other asset classes, such as non-Agency residential mortgage-backed securities (RMBS) and assets collateralized by corporate debt.

4. New Era of Transparency, Accountability, Monitoring and Conditions: A major and legitimate source of public frustration and even anger with the initial deployment of the first $350 billion of EESA funds was a lack of accountability or transparency as to whether assistance was being provided solely for the public interest and a stronger economy, rather than the private gain of shareholders, bondholders or executives. Going forward, the Financial Stability Plan will call for greater transparency, accountability and conditionality with tougher standards for firms receiving exceptional assistance. These will be the new standards going forward and are not retroactive. These stronger monitoring conditions were informed by recommendations made by formal oversight groups – the Congressional Oversight Panel, the Special Inspector General, and the Government Accountability Office — as well as Congressional committees charged with oversight of the banking system.

a. Requiring Firms to Show How Assistance from Financial Stability Plan Will Expand Lending: The core of the new monitoring requirement is to require recipients of exceptional assistance or

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capital buffer assistance to show how every dollar of capital they receive is enabling them to preserve or generate new lending compared to what would have been possible without government capital assistance.

• *Intended Use of Government Funds:* All recipients of assistance must submit a plan for how they intend to use that capital to preserve and strengthen their lending capacity. This plan will be submitted during the application process, and the Treasury Department will make these reports public upon completion of the capital investment in the firm.

• *The Impact on Lending Requirement*: Firms must detail in monthly reports submitted to the Treasury Department their lending broken out by category, showing how many new loans they provided to businesses and consumers and how many asset-backed and mortgage-backed securities they purchased, accompanied by a description of the lending environment in the communities and markets they serve. This report will also include a comparison to their most rigorous estimate of what their lending would have been in the absence of government support. For public companies, similar reports will be filed on an 8K simultaneous with the filing of their 10-Q or 10-K reports. Additionally, the Treasury Department will – in collaboration with banking agencies – publish and regularly update key metrics showing the impact of the Financial Stability Plan on credit markets. These reports will be put on the Treasury ***FinancialStability.gov*** website so that they can be subject to scrutiny by outside and independent experts.

• *Taxpayers' Right to Know*: All information disclosed or reported to Treasury by recipients of capital assistance will be posted on ***FinancialStability.gov*** because taxpayers have the right to know whether these programs are succeeding in creating and preserving lending and financial stability.

b. *Committing Recipients to Mortgage Foreclosure Mitigation*: All recipients of capital investments under the new initiatives announced today will be required to commit to participate in mortgage foreclosure mitigation programs consistent with guidelines Treasury will release on industry standard best practices.

c.*Restricting Dividends, Stock Repurchases and Acquisitions:* Limiting common dividends, stock repurchases and acquisitions provides assurance to taxpayers that all of the capital invested by the government under the Financial Stability Trust will go to improving banks' capital bases and promoting lending. All banks that receive new capital assistance will be:

• *Restricted from Paying Quarterly Common Dividend Payments in Excess Of $0.01 Until the Government Investment Is Repaid:* Banks that receive exceptional assistance can only pay $0.01 quarterly. That presumption will be the same for firms that receive generally available capital unless the Treasury Department and their primary regulator approve more based on their assessment that it is consistent with reaching their capital planning objectives.

• *Restricted from Repurchasing Shares:* All banks that receive funding from the new Capital Assistance Program are restricted from repurchasing any privately-held shares, subject to approval by the Treasury Department and their primary regulator, until the government's investment is repaid.

• *Restricted from Pursuing Acquisitions*: All banks that receive capital assistance are restricted from pursuing cash acquisitions of healthy firms until the government investment is repaid. Exceptions will be made for explicit supervisor-approved restructuring plans.

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d. *Limiting Executive Compensation:* Firms will be required to comply with the senior executive compensation restrictions announced February 4th, including those pertaining to a $500,000 in total annual compensation cap plus restricted stock payable when the government is getting paid back, "say on pay" shareholder votes, and new disclosure and accountability requirements applicable to luxury purchases.

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e. *Prohibiting Political Interference in Investment Decisions:* The Treasury Department has announced measures to ensure that lobbyists do not influence applications for, or disbursements of, Financial Stability Plan funds, and will certify that each investment decision is based only on investment criteria and the facts of the case.

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f. *Posting Contracts and Investment Information on the Web:* The Treasury Department will post all contracts under the Financial Stability Plan on FinancialStability.gov within five to 10 business days of their completion. Whenever Treasury makes a capital investment under these new initiatives, it will make public the value of the investment, the quantity and strike price of warrants received, the schedule of required payments to the government and when government is being paid back. The terms of pricing of these investments will be compared to terms and pricing of recent market transactions during the period the investment was made, if available.

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5. Housing Support and Foreclosure Prevention: There is bipartisan agreement today that stemming foreclosures and restructuring troubled mortgages will help slow the downward spiral harming financial institutions and the real American economy. Many Congressional leaders, housing advocates, and ordinary citizens have been disappointed that the Troubled Asset Relief Program was not aimed at ending the foreclosure crisis. We will soon be announcing a comprehensive plan that builds on the work of Congressional leaders and the FDIC. Among other things, our plan will:

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• Drive Down Overall Mortgage Rates: The Treasury Department and the Federal Reserve remain committed to expand as necessary the current effort by the Federal Reserve to help drive down mortgage rates – freeing up funds for working families – through continuation of its efforts to spend as much as $600 billion for purchasing of GSE mortgage-backed securities and GSE debt.

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• Commit $50 Billion to Prevent Avoidable Foreclosures of owner-occupied middle class homes by helping to reduce monthly payments in line with prudent underwriting and long-term loan performance.

• Help Bring Order and Consistency to the various efforts to address the foreclosure crisis by establishing loan modification guidelines and standards for government and private programs.

• Require All Financial Stability Plan Recipients to Participate in Foreclosure Mitigation Plans consistent with Treasury guidance.

• Build Flexibility into Hope for Homeowners and the FHA to enable loan modifications for a greater number of distressed borrowers.

6. Small Business and Community Lending Initiative: Few aspects of our current financial crisis have created more justifiable resentment than the specter of hard-working entrepreneurs and small business owners seeing their companies hurt and even bankrupt because of a squeeze on credit they played no role in creating. Currently, the increased capital constraints of banks, the inability to sell SBA loans on the secondary market and a weakening economy have combined to dramatically reduce SBA lending at the very time our economy cannot afford to deny credit to any entrepreneur with the

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potential to create jobs and expand markets. Further adding to this frustration is the sense that community banks – which still engage in relationship lending that serves their local communities -- have been overlooked not just during this crisis, but over the last several years. Over the next several days, President Obama, the Treasury Department and the SBA will announce the launch of a *Small Business and Community Bank Lending Initiative*: This effort will seek to arrest the precipitous decline in SBA lending – down 57 percent last quarter from the same quarter a year earlier for the flagship 7(a) loans through:

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• Use of the Consumer &Business Lending Initiative to finance the purchase of AAA-rated SBA loans to unfreeze secondary markets for small business loans.

• Increasing the Guarantee for SBA Loans to 90%: The Administration is seeking to pass in the American Recovery and Reinvestment Act an increase in the guarantee of SBA loans from as low as 75% to as high as 90%.

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• Reducing Fees for SBA 7(a) and 504 Lending and Provide Funds for Both Oversight and Speedier and Less Burdensome Processing of Loan Applications.

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Financial Stability Plan ¶
<#>1. Financial Stability Trust ¶
¶
<#>• A Comprehensive Stress Test for Major Banks ¶
<#>• Increased Balance Sheet Transparency and Disclosure ¶
<#>• Capital Assistance Program ¶
¶
<#>2. Public-Private Investment Fund ($500 Billion - $1 Trillion) ¶
<#>3. Consumer and Business Lending Initiative (Up to $1 trillion) ¶
¶
<#>4. Transparency and Accountability Agenda – Including Dividend Limitation ¶
<#>5. Affordable Housing Support and Foreclosure Prevention Plan ¶
<#>6. A Small Business and Community Lending Initiative ¶ ... [1]

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March 23, 2009
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Treasury Department Releases Details on Public Private Partnership Investment Program

Fact Sheet
Public-Private Investment Program

View White Paper and FAQs at http://financialstability.gov

The Financial Stability Plan — Progress So Far: Over the past six weeks, the Treasury Department has implemented a series of initiatives as part of its Financial Stability Plan that — alongside the American Recovery and Reinvestment Act — lay the foundations for economic recovery:

- ***Efforts to Improve Affordability for Responsible Homeowners:*** Treasury has implemented programs to allow families to save on their mortgage payments by refinancing, assist responsible homeowners in avoiding foreclosure through a loan modification plan, and, alongside the Federal Reserve, help bring mortgage interest rates down to near historic lows. This past month, the 30% increase in mortgage refinancing demonstrated that working families are benefiting from the savings due to these lower rates.

- ***Consumer and Business Lending Initiative to Unlock Frozen Credit Markets:*** Treasury and the Federal Reserve are expanding the TALF in conjunction with the Federal Reserve to jumpstart the secondary markets that support consumer and business lending. Last week, Treasury announced its plans to purchase up to $15 billion in securities backed by Small Business Administration loans.

- ***Capital Assistance Program:*** Treasury has also launched a new capital program, including a forward-looking capital assessment undertaken by bank supervisors to ensure that banks have the capital they need in the event of a worse-than-expected recession. If banks are confident that they will have sufficient capital to weather a severe economic storm, they are more likely to lend now — making it less likely that a more serious downturn will occur.

The Challenge of Legacy Assets: Despite these efforts, the financial system is still working against economic recovery. One major reason is the problem of "legacy assets" — both real estate loans held directly on the books of banks ("legacy loans") and securities backed by loan portfolios ("legacy securities"). These assets create uncertainty around the balance sheets of these financial institutions, compromising their ability to raise capital and their willingness to increase lending.

- ***Origins of the Problem:*** The challenge posed by these legacy assets began with an initial shock due to the bursting of the housing bubble in 2007, which generated losses for investors and banks. Losses were compounded by the lax underwriting

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standards that had been used by some lenders and by the proliferation of complex securitization products, some of whose risks were not fully understood. The resulting need by investors and banks to reduce risk triggered a wide-scale deleveraging in these markets and led to fire sales. As prices declined, many traditional investors exited these markets, causing declines in market liquidity.

- ***Creation of a Negative Economic* Cycle:** As a result, a negative cycle has developed where declining asset prices have triggered further deleveraging, which has in turn led to further price declines. The excessive discounts embedded in some legacy asset prices are now straining the capital of U.S. financial institutions, limiting their ability to lend and increasing the cost of credit throughout the financial system. The lack of clarity about the value of these legacy assets has also made it difficult for some financial institutions to raise new private capital on their own.

The Public-Private Investment Program for Legacy Assets

To address the challenge of legacy assets, Treasury — in conjunction with the Federal Deposit Insurance Corporation and the Federal Reserve — is announcing the Public-Private Investment Program as part of its efforts to repair balance sheets throughout our financial system and ensure that credit is available to the households and businesses, large and small, that will help drive us toward recovery.

Three Basic Principles: Using $75 to $100 billion in TARP capital and capital from private investors, the Public-Private Investment Program will generate $500 billion in purchasing power to buy legacy assets — with the potential to expand to $1 trillion over time. The Public-Private Investment Program will be designed around three basic principles:

- ***Maximizing the Impact of Each Taxpayer Dollar:*** First, by using government financing in partnership with the FDIC and Federal Reserve and co-investment with private sector investors, substantial purchasing power will be created, making the most of taxpayer resources.

- ***Shared Risk and Profits With Private Sector Participants:*** Second, the Public-Private Investment Program ensures that private sector participants invest alongside the taxpayer, with the private sector investors standing to lose their entire investment in a downside scenario and the taxpayer sharing in profitable returns.

- ***Private Sector Price Discovery:*** Third, to reduce the likelihood that the government will overpay for these assets, private sector investors competing with one another will establish the price of the loans and securities purchased under the program.

The Merits of This Approach: This approach is superior to the alternatives of either hoping for banks to gradually work these assets off their books or of the government purchasing the assets directly. Simply hoping for banks to work legacy assets off over time risks prolonging a financial crisis, as in the case of the Japanese experience. But if the government acts alone in directly purchasing legacy assets, taxpayers will take on all the risk of such purchases — along with the additional risk that taxpayers will overpay if government employees are setting the price for those assets.

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Two Components for Two Types of Assets: The Public-Private Investment Program has two parts, addressing both the legacy loans and legacy securities clogging the balance sheets of financial firms:

- ***Legacy Loans**:* The overhang of troubled legacy loans stuck on bank balance sheets has made it difficult for banks to access private markets for new capital and limited their ability to lend.

- ***Legacy Securities:*** Secondary markets have become highly illiquid, and are trading at prices below where they would be in normally functioning markets. These securities are held by banks as well as insurance companies, pension funds, mutual funds, and funds held in individual retirement accounts.

Public-Private
Investment Program

- $75 to 100 billion of TARP/FSP capital
- With financing from the FDIC and Federal Reserve, leverage $500 billion with potential to expand to $1 trillion of purchasing power.

Legacy Loans Program

Capital Public-Private Investment Funds	Financing Funds Will Raise FDIC Guaranteed Debt
• Continues USG and private capital	• FDIC will guarantee debt • Leverage up to 6:1

Legacy Securities Program

Capital Public-Private Investment Funds	Financing Leverage from Federal Reserve
• Continues private capital with USG capital and potential USG leverage.	• Builds on existing TALF framework

The Legacy Loans Program: To cleanse bank balance sheets of troubled legacy loans and reduce the overhang of uncertainty associated with these assets, the Federal Deposit Insurance Corporation and Treasury are launching a program to attract private capital to purchase eligible legacy loans from participating banks through the provision of FDIC debt guarantees and Treasury equity co-investment. Treasury currently anticipates that approximately half of the TARP resources for legacy assets will be devoted to the Legacy Loans Program, but our approach will allow for flexibility to allocate resources where we see the greatest impact.

- ***Involving Private Investors to Set Prices:*** A broad array of investors are expected to participate in the Legacy Loans Program. The participation of individual investors, pension plans, insurance companies and other long-term investors is particularly encouraged. The Legacy Loans Program will facilitate the creation of individual Public-Private Investment Funds which will purchase asset pools on a discrete basis. The program will boost private demand for distressed assets that are currently held by banks and facilitate market-priced sales of troubled assets.

- ***Using FDIC Expertise to Provide Oversight:*** The FDIC will provide oversight for the formation, funding, and operation of these new funds that will purchase assets from banks.
- ***Joint Financing from Treasury, Private Capita! and FDIC:*** Treasury and private capital will provide equity financing and the FDIC will provide a guarantee for debt financing issued by the Public-Private Investment Funds to fund asset purchases. The Treasury will manage its investment on behalf of taxpayers to ensure the public interest is protected. The Treasury intends to provide 50 percent of the equity capital for each fund, but private managers will retain control of asset management subject to rigorous oversight from the FDIC.
- ***The Process for Purchasing Assets Through The Legacy Loans Program:*** Purchasing assets in the Legacy Loans Program will occur through the following process:
    - o *Banks Identify the Assets They Wish to Sell:* To start the process, banks will decide which assets — usually a pool of loans — they would like to sell. The FDIC will conduct an analysis to determine the amount of funding it is willing to guarantee. Leverage will not exceed a 6-to-1 debt-to-equity ratio. Assets eligible for purchase will be determined by the participating banks, their primary regulators, the FDIC and Treasury. Financial institutions of all sizes will be eligible to sell assets.
    - o *Pools Are Auctioned* Off *to the Highest Bidder.* The FDIC will conduct an auction for these pools of loans. The highest bidder will have access to the Public-Private Investment Program to fund 50 percent of the equity requirement of their purchase.
    - o *Financing Is Provided Through FDIC Guarantee:* If the seller accepts the purchase price, the buyer would receive financing by issuing debt guaranteed by the FDIC. The FDIC-guaranteed debt would be collateralized by the purchased assets and the FDIC would receive a fee in return for its guarantee.
    - o *Private Sector Partners Manage the Assets:* Once the assets have been sold, private fund managers will control and manage the assets until final liquidation, subject to strict FDIC oversight.

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Sample Investment Under the Legacy Loans Program

Step 1: If a bank has a pool of residential mortgages with $100 face value that it is seeking to divest, the bank would approach the FDIC.
Step 2: The FDIC would determine, according to the above process, that they would be willing to leverage the pool at a 6-to-1 debt-to-equity ratio.
Step 3: The pool would then be auctioned by the FDIC, with several private sector bidders submitting bids. The highest bid from the private sector — in this example, $84 — would be the winner and would form a Public-Private Investment Fund to purchase the pool of mortgages.
Step 4: Of this $84 purchase price, the FDIC would provide guarantees for $72 of financing, leaving $12 of equity.
Step 5: The Treasury would then provide 50% of the equity funding required on a side-by-side basis with the investor. In this example, Treasury would invest approximately $6, with the private investor contributing $6.
Step 6: The private investor would then manage the servicing of the asset pool and the timing of its disposition on an ongoing basis — using asset managers approved and subject to oversight by the FDIC.

The Legacy Securities Program: The goal of this program is to restart the market for legacy securities, allowing banks and other financial institutions to free up capital and stimulate the extension of new credit. The resulting process of price discovery will also reduce the uncertainty surrounding the financial institutions holding these securities, potentially enabling them to raise new private capital. The Legacy Securities Program consists of two related parts designed to draw private capital into these markets by providing debt financing from the Federal Reserve under the Term Asset-Backed Securities Loan Facility (TALF) and through matching private capital raised for dedicated funds targeting legacy securities.

1. ***Expanding TALF to Legacy Securities to Bring Private Investors Back into the Market.*** The Treasury and the Federal Reserve are today announcing their plans to create a lending program that will address the broken markets for securities tied to residential and commercial real estate and consumer credit. The intention is to incorporate this program into the previously announced Term Asset-Backed Securities Facility (TALF).

    - ***Providing Investors Greater Confidence to Purchase Legacy Assets:As*** with securitizations backed by new originations of consumer and business credit already included in the TALF, we expect that the provision of leverage through this program will give investors greater confidence to purchase these assets, thus increasing market liquidity.
    - ***Funding Purchase of Legacy Securities:*** Through this new program, non-recourse loans will be made available to investors to fund purchases of legacy securitization assets. Eligible assets are expected to include certain non-agency residential mortgage backed securities (RMBS) that were originally rated AAA and outstanding commercial mortgage-backed securities (CMBS) and asset-

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backed securities (ABS) that are rated AAA.

- ***Working with Market Participants:*** Borrowers will need to meet eligibility criteria. Haircuts will be determined at a later date and will reflect the riskiness of the assets provided as collateral. Lending rates, minimum loan sizes, and loan durations have not been determined. These and other terms of the programs will be informed by discussions with market participants. However, the Federal Reserve is working to ensure that the duration of these loans takes into account the duration of the underlying assets.

2. ***Partnering Side-by-Side with Private investors in Legacy Securities Investment Funds:*** Treasury will make co- investment/leverage available to partner with private capital providers to immediately support the market for legacy mortgage- and asset-backed securities originated prior to 2009 with a rating of AAA at origination.

- ***Side-by-Side Investment with Qualified Fund Managers****:* Treasury will approve up to five asset managers with a demonstrated track record of purchasing legacy assets though we may consider adding more depending on the quality of applications received. Managers whose proposals have been approved will have a period of time to raise private capital to target the designated asset classes and will receive matching Treasury funds under the Public-Private Investment Program. Treasury funds will be invested one-for- one on a fully side-by-side basis with these investors.

- ***Offer of Senior Debt to Leverage More Financing****:* Asset managers will have the ability, if their investment fund structures meet certain guidelines, to subscribe for senior debt for the Public-Private Investment Fund from the Treasury Department in the amount of 50% of total equity capital of the fund. The Treasury Department will consider requests for senior debt for the fund in the amount of 100% of its total equity capital subject to further restrictions.

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Sample Investment Under the Legacy Securities Program

Step 1: Treasury will launch the application process for managers interested in the Legacy Securities Program.
Step 2: A fund manager submits a proposal and is pre-qualified to raise private capital to participate in joint investment programs with Treasury.
Step 3: The Government agrees to provide a one-for-one match for every dollar of private capital that the fund manager raises and to provide fund-level leverage for the proposed Public-Private Investment Fund.
Step 4: The fund manager commences the sales process for the investment fund and is able to raise $100 of private capital for the fund. Treasury provides $100 equity co-investment on a side-by-side basis with private capital and will provide a $100 loan to the Public-Private Investment Fund. Treasury will also consider requests from the fund manager for an additional loan of up to $100 to the fund.
Step 5: As a result, the fund manager has $300 (or, in some cases, up to $400) in total capital and commences a purchase program for targeted securities.
Step 6: The fund manager has full discretion in investment decisions, although it will predominately follow a long-term buy-and-hold strategy. The Public-Private Investment Fund, if the fund manager so determines, would also be eligible to take advantage of the expanded TALF program for legacy securities when it is launched.

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March 23, 2009
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The Role of the Federal Reserve in Preserving Financial and Monetary Stability: Joint Statement by the Department of the Treasury and the Federal Reserve

Introduction

Sound economic performance requires both financial stability and monetary stability. As the nation's central bank, the Federal Reserve has critical responsibilities in both areas.

The Congress created the Federal Reserve in 1913 **in** large part in response to the periodic panics and crises that plagued the U.S. financial system in the 19th and early 20th centuries. Over nearly a century, in the service of its original mandate as well as its monetary and regulatory responsibilities, the Federal Reserve has developed wide-ranging institutional expertise regarding financial markets and institutions, foreign as well as domestic. The Federal Reserve also has the unique ability to serve as the lender of last resort, a vital function in crises. For these reasons, it is natural and desirable that the Federal Reserve should play a central role, in cooperation with the Department of the Treasury and other agencies, in preventing and managing financial crises.

While the Federal Reserve has traditionally collaborated with other agencies in efforts to preserve financial stability, it alone is responsible for maintaining monetary stability. The monetary policy-making arm of the Federal Reserve, the Federal Open Market Committee (FOMC), determines monetary conditions in the United States, subject to its congressional mandate to foster maximum sustainable employment and stable prices. The Federal Reserve's independence with regard to monetary policy is critical for ensuring that monetary policy decisions are made with regard only to the long-term economic welfare of the nation.

This joint statement reflects the common views of the Treasury and the Federal Reserve on the appropriate roles of the Federal Reserve and the Treasury during the current financial crisis and in the future and on the steps necessary to ensure that both financial and monetary stability will be achieved.

The Treasury and the Federal Reserve agree on the following broad points:

1. Treasury-Federal Reserve cooperation in improving the functioning of credit markets and fostering financial stability

The Federal Reserve's expertise and powers are indispensable for preventing and managing financial crises. The programs it has initiated since the onset of this crisis have played a critical role in helping to contain the damage to the broader economy. As long as unusual and exigent circumstances persist, the Federal Reserve will continue to use all its tools working closely and cooperatively with the Treasury and other agencies as needed to improve the functioning of credit markets, help prevent the failure of institutions that could cause systemic damage, and to foster the stabilization and repair of the financial system.

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2. The Federal Reserve to avoid credit risk and credit allocation

The Federal Reserve's lender-of-last-resort responsibilities involve lending against collateral, secured to the satisfaction of the responsible Federal Reserve Bank. Actions taken by the Federal Reserve should also aim to improve financial or credit conditions broadly, not to allocate credit to narrowly-defined sectors or classes of borrowers. Government decisions to influence the allocation of credit are the province of the fiscal authorities.

3. Need to preserve monetary stability

Actions that the Federal Reserve takes, during this period of unusual and exigent circumstances, in the pursuit of financial stability, such as loans or securities purchases that influence the size of its balance sheet, must not constrain the exercise of monetary policy as needed to foster maximum sustainable employment and price stability. Treasury has in place a special financing mechanism called the Supplementary Financing Program, which helps the Federal Reserve manage its balance sheet. In addition, the Treasury and the Federal Reserve are seeking legislative action to provide additional tools the Federal Reserve can use to sterilize the effects of its lending or securities purchases on the supply of bank reserves.

4. Need for a comprehensive resolution regime for systemically critical financial institutions

The Treasury and the Federal Reserve remain fully committed to preventing the disorderly failure of systemically critical financial institutions. To reduce the risk of future crises, the Treasury and the Federal Reserve will work with the Congress to develop a regime that will allow the U.S. government to address effectively at an early stage the potential failure of any systemically critical financial institution. As part of the framework set forth, the legislation should spell out to the extent possible the expected role of the Federal Reserve and other U.S. government agencies in such resolutions.

In the longer term and as its authorities permit, the Treasury will seek to remove from the Federal Reserve's balance sheet, or to liquidate, the so-called Maiden Lane facilities made by the Federal Reserve as part of efforts to stabilize systemically critical financial institutions.

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March 26, 2009
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Treasury Outlines Framework For Regulatory Reform

Provides new Rules of the Road, focuses first on containing systemic risk

The crisis of the past 18 months has exposed critical gaps and weaknesses in our financial regulatory system. As risks built up, internal risk management systems, rating agencies and regulators simply did not understand or address critical behaviors until they had already resulted in catastrophic losses. These failures have caused a dramatic loss of confidence in our financial institutions and have contributed to severe recession. Our financial system failed to serve its historical purpose of helping families finance homes and college educations for their children or of providing affordable capital for entrepreneurs and innovators — enabling them to turn new ideas into jobs and growth that raise our living standards. The President's comprehensive regulatory reform is aimed at reforming and modernizing our financial regulatory system for the 21st century, providing stronger tools to prevent and manage future crises, and rebuilding confidence in the basic integrity of our financial system — for sophisticated investors and working families with 401(k)s alike.

As Secretary Geithner stated in his testimony today, "To address these failures will require comprehensive reform — not modest repairs at the margin, but new rules of the road. The new rules must be simpler and more effectively enforced and produce a more stable system, that protects consumers and investors, that rewards innovation and that is able to adapt and evolve with changes in the financial market."

Four Broad Components of Comprehensive Regulatory Reform:

1. ***Addressing Systemic Risk**:* This crisis — and the cases of firms like Lehman Brothers and AIG — has made clear that certain large, interconnected firms and markets need to be under a more consistent and more conservative regulatory regime. It is not enough to address the potential insolvency of individual institutions — we must also ensure the stability of the system itself.
2. ***Protecting Consumers and Investors:*** It is crucial that when households make choices to invest their savings we have clear rules of the road that prevent manipulation and abuse. While outright fraud like that perpetrated by Bernie Madoff is already illegal, these cases highlight the need to strengthen enforcement and improve transparency for all investors. Lax regulation also left too many households exposed to deception and abuse when taking out home mortgage loans
3. ***Eliminating Gaps in Our Regulatory Structure**:* Our regulatory structure must assign clear authority, resources, and accountability for each of its key functions. We must not let turf wars or concerns about the shape of organizational charts prevent us from establishing a substantive system of regulation that meets the needs of the American people.
4. ***Fostering International Coordination:*** To keep pace with increasingly global markets, we must ensure that international rules for financial regulation are consistent with the high standards we will be implementing in the United States. Additionally; we will launch a new, three-pronged initiative to address prudential supervision, tax havens, and money

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laundering issues in weakly-regulated jurisdictions.

Today — A Focus on One of the Four Components of Regulatory Reform: Systemic Risk: In the coming weeks, Secretary Geithner will present detailed frameworks for each of these areas. Today, his testimony focused on systemic risk — both because financial stability is critical to economic recovery and growth, and because systemic risk is expected to be a primary focus for discussions at the G20 Leaders' Meeting in London on April 2.

Addressing The First Component of Regulatory Reform: Systemic Risk

1. **A Single Independent Regulator With Responsibility Over Systemically Important Firms and Critical Payment and Settlement Systems**
2. **Higher Standards on Capital and Risk Management for Systemically Important Firms**
3. **Registration of All Hedge Fund Advisers With Assets Under Management Above a Moderate Threshold**
4. **A Comprehensive Framework of Oversight, Protections and Disclosure for the OTC Derivatives Market**
5. **New Requirements for Money Market Funds to Reduce the Risk of Rapid Withdrawals**

I. ***A Single Independent Regulator with responsibility over Systemically Important Firms and Critical Payment and Settlement Systems:*** While we strengthen prudential oversight for all firms, we must also create higher standards for all systemically important financial firms — regardless of whether they own a depository institution — to account for the risk that the distress or failure of such a firm could impose on the financial system and the economy. We will work with Congress to enact legislation that defines the characteristics of covered firms; sets objectives and principles for their oversight; and assigns responsibility for regulating these firms.

1) *Defining a Systemically Important Firm* in identifying systemically important firms, we believe that the characteristics should include:

- The financial system's interdependence with the firm;
- The firm's size, leverage (including off-balance sheet exposures), and degree of reliance on short-term funding;
- The firm's importance as a source of credit for households, businesses, and governments and as a source of liquidity for the financial system.

2) Focusing On What Companies Do, Not the Form They Take: These institutions would not be limited to banks or bank holding companies, but could include any financial institution that was deemed to be systemically important in accordance with legislative requirements. These provisions will focus on what companies do and their potential for systemic risk — and no longer on the form they take — to determine who will regulate them.

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3) *Clarifying Regulatory Authority Over Payment and Settlement Activities:* Federal authority for payment and settlement systems is incomplete and fragmented. Weaknesses in key funding and risk transfer markets, notably over-night and short term lending markets and OTC derivatives, increased uncertainty as major institutions such as Bear Stearns neared failure. This created a pathway for large financial institutions to spread financial distress between institutions and across borders.

- While some progress was made in the markets for CDS and other OTC derivatives under Secretary Geithner's leadership at the New York Fed, regulators have been forced to rely heavily on moral suasion to encourage market participants to strengthen these markets.
- We need to clarify and expand authority over these systems and activities, giving a single entity the ability to supervise, examine, and set prudential requirements for these critical parts of our financial system.

II. *Higher Standards on Capital and Risk Management for Systemically Important Firms:*

1. *Setting More Robust Capital Requirements:* Capital requirements for these firms must be more conservative than for other institutions and be sufficiently robust to be effective in a wider range of deeply adverse economic scenarios than is typically required.
2. *Imposing Stricter Liquidity, Counterparty and Credit Risk Management Requirements:* Supervisors will also need to impose liquidity, counterparty, and credit risk management requirements that are more stringent than for other financial firms. For instance, supervisors should apply more demanding liquidity constraints; and require that these firms are able to aggregate counter-party risk exposures on an enterprise-wide basis within a matter of hours.
3. *Creating Prompt-Corrective Action Regime:* The regulator of these entities will also need a prompt-corrective action regime that would allow the regulator to force protective actions as regulatory capital levels decline, similar to the powers of the FDIC with respect to its covered agencies.

III. *Requiring All Hedge Funds Above A Certain Size to Register:* U.S. law generally does not require hedge funds or other private pools of capital to register with a federal financial regulator, although some funds that trade commodity derivatives must register with the Commodity Futures Trading Commission and many funds register voluntarily with the Securities and Exchange Commission. As a result, there are no reliable, comprehensive data available to assess whether such funds individually or collectively pose a threat to financial stability. The Madoff episode is just one more reminder that, in order to protect investors, we must close gaps and weaknesses in the regulation and enforcement of broker-dealers, investment advisors and the funds they manage.

1. *Requiring Registration of All Hedge Funds:* All advisers to hedge funds (and other private pools of capital, including private equity funds and venture capital funds) whose assets under management exceed a certain threshold should be required to register with the SEC.
2. *Mandating Investor and Counterparty Disclosure:* All such funds advised by an SEC-registered investment adviser should be subject to investor and counterparty disclosure

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requirements and regulatory reporting requirements.

3. *Providing Information Necessary to Assess Threats to Financial Stability:* The regulatory reporting requirements for such funds should require reporting, on a confidential basis, information necessary to assess whether the fund or fund family is so large or highly leveraged that it poses a threat to financial stability.
4. *Sharing Reports With Systemic Risk Regulator:* The SEC should share the reports that it receives from the funds with the systemic risk regulator, which would then determine whether any hedge funds could pose a systemic threat and should be subjected to the prudential standards outlined above.

IV. *A Comprehensive Framework of Oversight, Protection and Disclosure for the OTC Derivatives Market:* The current financial crisis has been amplified by excessive risk-taking by certain insurance companies and poor counterparty credit risk management by many banks trading Credit Default Swaps on asset-backed securities. Neither counterparties to these trades nor regulators identified the risk that these complex products could threaten to bring down a company of the size and scope of AIG or the stability of the entire financial system, in part because these markets lacked transparency.

1. *Regulating Credit Default Swaps and Over-the-Counter Derivatives for the First Time:* In our proposed regulatory framework, the government will regulate the markets for credit default swaps and over-the-counter derivatives for the first time.
2. *Instituting a Strong Regulatory and Supervisory Regime:* We will subject all dealers in OTC derivative markets to a strong regulatory and supervisory regime as systemically important firms.
3. *Clearing All Contracts Through Designated Central Counterparties:* We will force all standardized OTC derivative contracts to be cleared through appropriately designed central counterparties (CCPs) and encourage greater use of exchange traded instruments. These CCPs will be subject to comprehensive settlement systems supervision and oversight, consistent with the authority outlined above.
4. *Requiring Non-Standardized Derivatives to Be Subject to Robust Standards:* We will require that all non-standardized derivatives contracts report to trade repositories and be subject to robust standards for documentation and confirmation of trades; netting; collateral and margin practices; and close-out practices.
5. *Making Aggregate Data on Trading Volumes and Positions Available*: Central counter-parties and trade repositories will be required to make aggregate data on trading volumes and positions available to the public and make individual counterparty trade and position data available on a confidential basis to appropriate federal regulators.
6. *Applying Robust Eligibility Requirements to All Market Participants:* Finally, we will apply robust eligibility requirements and, where appropriate, standards of care; and will require that they meet recordkeeping and reporting requirements.

V. *New Requirements for Money Market Funds to Reduce the Risk of Rapid Withdrawals:* In the wake of Lehman Brothers' bankruptcy, we learned that even one of the most stable and least risky investment vehicles — money market mutual funds — was not safe from the failure of a systemically important institution. These funds are subject to strict regulation by the SEC and are billed as having a stable asset value — a dollar invested will always return the same amount. But when a major prime MMF "broke the buck," the event sparked a run on the entire prime MMF industry. The run resulted in severe liquidity pressures, not only on prime MMFs but also on

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financial and non-financial companies that relied significantly on MMFs for funding. In response, we commit to:

1. *Strengthening the Regulatory Framework Around Money Market Funds:* We believe that the SEC should strengthen the regulatory framework around MMFs in order to reduce the credit and liquidity risk profile of individual MMFs and to make the MMF industry as a whole less susceptible to runs.

VI. *A Stronger Resolution Authority to Protect Against the Failure of Complex Institutions:* We must create a resolution regime that provides authority to avoid the disorderly liquidation of any nonbank financial firm whose failure would have serious adverse effects on the financial system or the U.S. economy. This authority should include:

1. *Covering Financial Institutions That May Pose Systemic Risks:* We must cover financial institutions that have the potential to pose systemic risks to our economy but that are not currently subject to the resolution authority of the FDIC. This would include bank and thrift holding companies and holding companies that control broker-dealers, insurance companies, and futures commission merchants, or any other financial firm that could pose substantial risk to our economy. This resolution authority would be undertaken through the following process:

   i. *A Triggering Determination:* Before any of the emergency measures specified could be taken, the Secretary, upon the positive recommendations of both the Federal Reserve Board and the FDIC and in consultation with the President, would have to make a triggering determination that (1) the financial institution in question is in danger of becoming insolvent; (2) its insolvency would have serious adverse effects on economic conditions or financial stability in the United States; and (3) taking emergency action as provided for in the law would avoid or mitigate those adverse effects.

   ii. *Choice Between Financial Assistance or Conservatorship/Receivership:* The Secretary and the FDIC would decide whether to provide financial assistance to the institution or to put it into conservatorship/receivership. This decision will be informed by the recommendations of the Federal Reserve Board and the appropriate federal regulatory agency (if different from the FDIC).

   - *Options for Financial Assistance:* The U.S. government would be permitted to utilize a number of different forms of financial assistance in order to stabilize the institution in question. These include making loans to the financial institution in question, purchasing its obligations or assets, assuming or guaranteeing its liabilities, and purchasing an equity interest in the institution.
   - *Options for Conservatorship/Receivership: Depending* on the circumstances, the FDIC and the Treasury would place the firm into conservatorship with the aim of returning it to private hands or a receivership that would manage the process of winding down the firm. The trustee of the conservatorship or receivership would have broad powers, including to sell or transfer the assets or liabilities of the

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institution in question, to renegotiate or repudiate the institution's contracts (including with its employees), and to deal with a derivatives book. A conservator would also have the power to restructure the institution by, for example, replacing its board of directors and its senior officers. None of these actions would be subject to the approval of the institution's creditors or other stakeholders.

iii. *Taking Advantage of FD1C/FHFA Models*: This authority is modeled on the resolution authority that the FDIC has under current law with respect to banks and that the Federal Housing Finance Agency has with regard to the GSEs. Here, conservatorships or receiverships aim to minimize the impact of the potential failure of the financial institution on the financial system and consumers as a whole, rather than simply addressing the rights of the institution's creditors as in bankruptcy.

2) *Requiring Covered Institutions to Fund the Resolution Authority:* The proposed legislation would create an appropriate mechanism to fund the limited exercise of these resolution authorities. This could take the form of a mandatory appropriation to the FDIC out of the general fund of the Treasury and/or through a scheme of assessments, ex ante or ex post, on the financial institutions covered by the legislation. The government would also receive repayment from the redemption of any loans made to the financial institution in question, and from the ultimate sale of any equity interest taken by the government in the institution. The Deposit Insurance Fund will not be used to fund such assistance.

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<u>Financial Stability Plan</u>

1. Financial Stability Trust

- **A Comprehensive Stress Test for Major Banks**
- **Increased Balance Sheet Transparency and Disclosure**
- **Capital Assistance Program**

2. Public-Private Investment Fund ($500 Billion - $1 Trillion)

3. Consumer and Business Lending Initiative (Up to $1 trillion)

4. Transparency and Accountability Agenda – Including Dividend Limitation

5. Affordable Housing Support and Foreclosure Prevention Plan

6. A Small Business and Community Lending Initiative