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(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R. 384

To reform the Troubled Assets Relief Program of the Secretary of the Treasury and ensure accountability under such Program.

IN THE HOUSE OF REPRESENTATIVES

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on _____

A BILL

To reform the Troubled Assets Relief Program of the Secretary of the Treasury and ensure accountability under such Program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "TARP Reform and Accountability Act of 2009".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MODIFICATIONS TO TARP AND TARP OVERSIGHT

Sec. 101. New conditionality for TARP-assisted institutions.
Sec. 102. Executive compensation and corporate governance.
Sec. 103. New lending by insured depository institutions that is attributable to TARP investments and assistance.
Sec. 104. Other protections for the taxpayer.
Sec. 105. Availability of TARP funds to smaller community institutions.
Sec. 106. Increase in size and authority of Financial Stability Oversight Board.
Sec. 107. Clarification.

TITLE II—FORECLOSURE RELIEF

Sec. 201. TARP foreclosure mitigation plan and implementation.
Sec. 202. Elements of plan.
Sec. 203. Program alternatives.
Sec. 204. Systematic foreclosure prevention and mortgage modification plan established.
Sec. 204. Modification of plan.
Sec. 205. Servicer safe harbor.
Sec. 206. Report by Congressional Oversight Panel.

TITLE III—AUTO INDUSTRY FINANCING AND RESTRUCTURING

Sec. 301. Short title.
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TITLE IV—CLARIFICATION OF AUTHORITY

Sec. 401. Consumer loans.
Sec. 402. Municipal securities.
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TITLE V—HOPE FOR HOMEOWNERS PROGRAM IMPROVEMENTS

Sec. 501. Changes to HOPE for Homeowners Program.
Sec. 502. Funding of increased HOPE for Homeowners Program credit subsidy costs.

TITLE VI—HOME BUYER STIMULUS

Sec. 601. Home buyer stimulus program.

TITLE VII—FDIC PROVISIONS

Sec. 701. Permanent increase in deposit insurance.
Sec. 702. Extension of restoration plan period.
Sec. 703. Borrowing authority.
Sec. 704. Systemic risk special assessments.

TITLE I—MODIFICATIONS TO TARP AND TARP OVERSIGHT

SEC. 101. NEW CONDITIONALITY FOR TARP-ASSISTED INSTITUTIONS.

(a) IN GENERAL.—Section 113 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5223) is amended by adding at the end the following new subsections:

"(e) REPORTING, MONITORING AND ACCOUNTABILITY.—

"(1) PERIODIC PUBLIC REPORTING ON USE OF ASSISTANCE.—The Secretary shall require any assisted institution that became an assisted institution on or after October 3, 2008, to publicly report, not less than quarterly, on such institution's use of the assistance .

"(2) ADDITIONAL REQUIREMENTS AND COMPLIANCE.—The Secretary—

"(A) may establish additional reporting and information requirements for any direct or indirect recipient of any assistance or benefit at any time on or after October 3, 2008, that involves the obligation or expenditure, loan, or investment of funds available to the Secretary under this title; and

"(B) shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any use of funds made available under this title.

"(3) CONSULTATION.—The Secretary shall consult with the appropriate Federal banking agencies in establishing the reporting requirements under this subsection that are applicable to insured depository institutions.

"(f) USE AND ACCOUNTABILITY FOR USE OF FUNDS.—

"(1) INSURED DEPOSITORY INSTITUTION.—

"(A) INVESTMENT IN OR OTHER INJECTION OF FUNDS INTO A DEPOSITORY INSTITUTION.—As a condition for the provision of any investment in the capital or assets of, or any other provision of assistance to or for the benefit of, any insured depository institution, the Secretary shall incorporate into the agreement for such investment or assistance an agreement between the depository institution and the appropriate Federal banking agency with respect to such institution on the manner in which the funds are to be used and benchmarks that the institution is required to meet in using the

funding so as to advance the purposes of this Act to strengthen the soundness of the financial system and the availability of credit to the economy.

"(B) EXAMINATIONS.—In the case of any assisted insured depository institution that became an assisted institution on or after October 3, 2008, the appropriate Federal banking agency shall specifically review at least once annually the use, by the institution, of funds made available under this Act and compliance by the institution with the requirements established by or pursuant to this title or by agreement of the institution with the Secretary or the appropriate Federal banking agency, including executive compensation and any other specific agreement terms. Such review may be conducted in connection with the regular full-site examination, or any other examination.

"(C) COMPLIANCE PROCEDURES REQUIRED.—Each appropriate Federal banking agency shall prescribe regulations requiring assisted insured depository institutions to establish and maintain procedures designed to assure and monitor the compliance of such depository

institutions with the requirements established by or pursuant to this title or by agreement of the institution with the Secretary or such agency.

"(2) USE OF TARP FUNDS FOR MERGERS OR ACQUISITIONS.—Effective as of the date of the enactment of the TARP Reform and Accountability Act of 2009, no assisted institution that became an assisted institution at any time on or after October 3, 2008, may merge or consolidate with any insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any insured depository institution, and no Federal banking agency may approve any such action under section 18(c) of the Federal Deposit Insurance Act, while any of such assistance is outstanding unless, prior to the approval of such agency, the Secretary has determined in consultation with any relevant Federal banking agencies that—

"(A) such action will reduce risk to the taxpayer; or

"(B) the transaction could have been consummated without funds provided under this title.

"(3) NONDEPOSITORY INSTITUTIONS.—In the case of any assisted institution that became an assisted institution on or after October 3, 2008, and is not described in and subject to paragraph (1), the Secretary shall establish such reporting requirements and require any other conditions or agreements no less stringent than those applicable to assisted insured depository institutions, including requirements to conduct examinations of the books, affairs, and procedures of any such financial institution by the Secretary or by delegation to the Board.

"(g) NO IMPEDIMENT TO WITHDRAWAL.—Subject to consultation with the appropriate Federal banking agencies, the Secretary may permit an insured depository institution to repay any assistance previously provided under this title to such depository institution without regard to whether the depository institution has replaced such funds from any other source.".

(b) DEFINITIONS.—Section 3 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5202) is amended by adding at the end the following new paragraphs:

"(10) DEFINITIONS RELATING TO INSURED DEPOSITORY INSTITUTIONS.—The terms 'depository institution', 'insured depository institution', 'Federal

banking agency' and 'appropriate Federal banking agency' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

"(11) ASSISTED INSTITUTION.—The terms 'assisted institution' or 'assisted insured depository institution' means any such institution that receives, directly or indirectly, any assistance or benefit that involves the obligation or expenditure, loan, or investment of funds available to the Secretary under title I.".

SEC. 102. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.

(a) IN GENERAL.—Section 111 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221) is amended by adding at the end the following new subsections:

"(e) ACROSS-THE-BOARD EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE REQUIREMENTS.—

"(1) STANDARDS REQUIRED.—Effective as of the date of the enactment of the TARP Reform and Accountability Act of 2009 and notwithstanding any provision of, and in addition to any requirement of subsection (a), (b), or (c) (other than the definitions in subsection (b)(3)), the Secretary shall require any assisted institution to meet standards for executive

compensation and corporate governance while any assistance under this title is outstanding.

"(2) SPECIFIC REQUIREMENTS.—The standards established under paragraph (1) shall include—

"(A) limits on compensation that exclude incentives for senior executive officers of an assisted institution which received assistance under this title to take unnecessary and excessive risks that threaten the value of such institution during the period that any assistance under this title is outstanding;

"(B) a provision for the recovery by such institution of any bonus or incentive compensation paid to a senior executive officer based on statements of earnings, gains, or other criteria that are later found to be materially inaccurate;

"(C) a prohibition on such institution making any golden parachute payment to a senior executive officer during the period that the assistance under this title is outstanding;

"(D) a prohibition on such institution paying or accruing any bonus or incentive compensation, during the period that the assistance under this title is outstanding, to the 25 most highly-compensated employees; and

"(E) a prohibition on any compensation plan that would encourage manipulation of such institution's reported earnings to enhance the compensation of any of its employees.

"(3) DIVESTITURE.—During the period in which any assistance under this title to any assisted institution is outstanding, the institution may not own or lease any private passenger aircraft, or have any interest in such aircraft, except that such institution shall not be treated as being in violation of this provision with respect to any aircraft or interest in any aircraft that was owned or held by the institution immediately before receiving such assistance, as long as the recipient demonstrates to the satisfaction of the Secretary that all reasonable steps are being taken to sell or divest such aircraft or interest.

"(4) APPLICABILITY TO PRIOR ASSISTANCE.—Notwithstanding any limitations included in subsection (a), (b), or (c) with regard to applicability, the Secretary may apply the requirements of and the standards established under this subsection to any assisted institution that received any assistance under this title on or after the date of the enactment of the TARP Reform and Accountability Act of 2009.

"(f) BOARD OBSERVER.—The Secretary may require the attendance of an observer delegated by the Secretary, on behalf of the Secretary, to attend the meetings of the board of directors of any assisted institution that became an assisted institution on or after October 3, 2008, and any committees of such board of directors, while any assistance under this title is outstanding.".

(b) REPEAL OF DE MINIMIS EXCEPTION .—Section 111(c) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(c)) is amended by striking "and only where such purchases per financial institution in the aggregate exceed $300,000,000 (including direct purchases),".

SEC. 103. NEW LENDING BY INSURED DEPOSITORY INSTITUTIONS THAT IS ATTRIBUTABLE TO TARP INVESTMENTS AND ASSISTANCE.

Section 7(a) of the Federal Deposit Insurance Act (U.S.C. 1817(a)) is amended by adding at the end the following new paragraph:

"(12) LENDING INCREASES ATTRIBUTABLE TO INVESTMENT OR OTHER ASSISTANCE UNDER THE TROUBLED ASSETS RELIEF PROGRAM.—

"(A) IN GENERAL.—Each report of condition filed pursuant to this subsection by an insured depository institution which received an

investment or other assistance under the Troubled Assets Relief Program established by the Emergency Economic Stabilization Act of 2008 or section 136(d) of the Energy Independence and Security Act of 2007 shall report the amount of any increase in new lending in the period covered by such report (or the amount of any reduction in any decrease in new lending) that is attributable to such investment or assistance, to the extent possible.

"(B) ALTERNATIVE MEASURE.—If an insured depository institution that is subject to subparagraph (A) cannot accurately quantify the effect that an investment or other assistance under such Troubled Assets Relief Program has had on new lending by the institution, the insured depository institution shall report the total amount of the increase in new lending, if any, in the period covered by such report.

"(C) DESIGNATION OF REPORTING REQUIREMENT.—The Federal banking agencies and the Secretary of the Treasury shall specify the form, content, and manner of reports required under this paragraph.".

SEC. 104. OTHER PROTECTIONS FOR THE TAXPAYER.

(a) WARRANT REQUIREMENTS.—Subsection (d) of section 113 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5223(d)) is amended by striking paragraph (1) and inserting the following new paragraph:

"(1) WARRANTS.—

"(A) IN GENERAL.—The Secretary may not provide any assistance under this title to any institution, unless the Secretary, receives from the institution—

"(I) in the case of an institution the securities of which are traded on a national securities exchange, a warrant giving the right to the Secretary to receive nonvoting common stock or preferred stock in such institution, or voting stock, with respect to which the Secretary agrees not to exercise voting power, whichever the Secretary determines appropriate; or

"(ii) in the case of an institution other than one described in clause (I), a warrant for common or preferred stock, or an instrument that is the economic equivalent (as determined by the Secretary) of such a warrant in the financial institution (in the case of a mutual association), hold-

ing company of the financial institution, or any company that controls a majority stake in the financial institution, whichever the Secretary determines appropriate.

"(B) AMOUNT.—

"(I) IN GENERAL.—The warrants or instruments described in subparagraph (A) with respect to an assisted institution shall have a value equal to 15 percent of the aggregate amount of all assistance provided to the institution under this title. Such warrants or instruments shall entitle the Government to purchase—

"(I) nonvoting common stock, up to a maximum amount of 15 percent of the issued and outstanding common stock of —

"(aa) the assisted institution; or

"(bb) in the case of an assisted institution, the securities of which are not traded on a national securities exchange, a holding company or company that controls a majority of the stock

thereof (in this section referred to as the 'warrant common'); and

"(II) preferred stock having an aggregate liquidation preference equal to 15 percent of such aggregate loan amount, less the value of common stock available for purchase under the warrant common (in this section referred to as the 'warrant preferred').

"(ii) COMMON STOCK WARRANT PRICE.—The exercise price on a warrant or instrument described in paragraph (1) shall be—

"(I) the 15-day trailing average, as of 1 day prior to the date on which any commitment to provide assistance under this title was entered into, of the market price of the common stock of the assisted institution; or

"(II) in the case of an assisted institution, which is a mutual association or the securities of which are not traded on a national securities exchange, the economic equivalent of the

market price described in clause (I), as determined by the Secretary.

"(iii) TERMS OF PREFERRED STOCK WARRANT.—

"(I) IN GENERAL.—The initial exercise price for the preferred stock warrant shall be $0.01 per share or such greater amount as the corporate charter may require as the par value per share of the warrant preferred. The Government shall have the right to immediately exercise the warrants.

"(II) REDEMPTION.—The warrant preferred may be redeemed at any time after exercise of the preferred stock warrant at 100 percent of its issue price, plus any accrued and unpaid dividends.".

(b) REPEAL OF CERTAIN EXCEPTION.—Section 113(d)(3) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5223(d)(3)) is amended by striking subparagraph (A).

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 113(d)(2) of the Emergency Economic Stabiliza-

tion Act of 2008 (12 U.S.C. 2553(d)) is amended by striking subparagraph (E).

SEC. 105. AVAILABILITY OF TARP FUNDS TO SMALLER COMMUNITY INSTITUTIONS.

(a) PROMPT ACTION.—The Secretary shall promptly take all necessary actions to make available funds under title I of the Emergency Economic Stabilization Act of 2008 to smaller community financial institutions.

(b) COMPARABLE TERMS.—If any institution becomes an assisted institution after the date of the enactment of this Act, such funding for depository institutions that—

(1) have submitted applications on which no action has been taken, such as institutions that are C corporations (including privately held institutions) and community development financial institutions; or

(2) are of a type for which the Secretary has not yet established an application deadline or for which any such deadline has not yet occurred as of the date of the enactment of this Act, such as institutions that are non-stock corporations, S-corporations, mutually-owned insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act),

shall receive such funding on terms comparable to the terms applicable to institutions that received funding prior to the date of the enactment of this Act.

(c) DEFINITIONS.—For purposes of this section, the terms "S Corporation" and "C Corporation" shall have the same meaning given to those terms in section 1361(a) of the Internal Revenue Code of 1986.

SEC. 106. INCREASE IN SIZE AND AUTHORITY OF FINANCIAL STABILITY OVERSIGHT BOARD.

(a) AUTHORITY.—Section 104 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 2514) is amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (I), respectively; and

(2) by inserting after subsection (f) the following new subsection:

"(g) REVIEW AND DECISIONMAKING.—After conducting any review under this section of a policy determination made by the Secretary, the Financial Stability Oversight Board may overturn any such policy determination by a 2/3 vote of all members of such board.".

(b) APPOINTMENT OF 3 ADDITIONAL MEMBERS.—Section 104(b) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 2514(b)) is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(6) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation; and

"(7) 2 members appointed by the President, by and with the consent of the Senate, from among individuals who are not officers or employees of the United States Government.".

SEC. 107. CLARIFICATION.

Section 101 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 2514(b)) is amended by adding at the end the following new subsection:

"(f) CLARIFICATION.—Any provision of capital to, purchase of equity in, or assistance provided to any institution under this title shall be considered to be a purchase of troubled assets for purposes of this title.".

TITLE II—FORECLOSURE RELIEF

SEC. 201. TARP FORECLOSURE MITIGATION PLAN AND IMPLEMENTATION.

(a) PLAN REQUIRED.—Notwithstanding any provision of title I of the Emergency Economic Stabilization Act of 2008, none of the funds otherwise available to the Secretary of the Treasury (in this title referred to as the "Secretary") pursuant to section 115(a)(3) of such Act shall be available to the Secretary after March 15, 2009, unless a comprehensive plan to prevent and mitigate foreclosures on residential properties, in accordance with the requirements of this title, has been developed by the Secretary and approved by the Financial Stability Oversight Board by such date.

(b) COMMITMENT OF RESOURCES.—The comprehensive plan established pursuant to subsection (a) shall require the commitment of funds made available to the Secretary under title I of the Emergency Economic Stabilization Act of 2008 in an amount up to $100,000,000,000, but in no case less than $40,000,000,000.

(c) IMPLEMENTATION REQUIRED.—The Secretary shall begin committing funds available to the Secretary under title I of the Emergency Economic Stabilization Act

of 2008 to implement the comprehensive plan established pursuant to subsection (a) by not later than April 1, 2009.

(d) CERTIFICATION.—If by May 1, 2009, the Secretary does not commit more than the minimum of $40,000,000,000 as required under subsection (b), the Secretary shall certify to the Congress, no later than May 15, 2009, the specific reasons that such additional funds have not been committed.

SEC. 202. ELEMENTS OF PLAN.

(a) REQUIRED ELEMENTS.—The comprehensive plan established pursuant to section 201(a) shall comply with the following requirements:

(1) OWNER-OCCUPIED RESIDENCES ONLY.—The programs implemented under the plan shall prevent and mitigate foreclosures specifically on owner-occupied residential properties.

(2) LEVERAGING OF PRIVATE CAPITAL.—The plan shall leverage private capital to the maximum extent possible consistent with the purpose of preventing and mitigating foreclosures on such properties.

(3) USE OF PROGRAM ALTERNATIVES.—The actions to be taken under the plan shall consist of one, or a combination of more than one, of the program alternatives set forth in section 203.

(b) CONCENTRATIONS OF FORECLOSURES.—The comprehensive plan established pursuant to section 201(a) may include provisions designed to prevent and mitigate foreclosures on residential properties located in areas that are most seriously affected by such foreclosures.

SEC. 203. PROGRAM ALTERNATIVES.

The program alternatives set forth in this section are as follows:

(1) SYSTEMATIC LOAN MODIFICATION PROGRAM.—The systematic foreclosure prevention and mortgage modification program under section 204.

(2) REDUCTION OF HOPE FOR HOMEOWNERS PROGRAM COSTS.—A program under which the Secretary—

(A) provides coverage for fees under the HOPE for Homeowners Program under section 257 of the National Housing Act (12 U.S.C. 1715z–23), as amended by title V of this Act; or

(B) ensures the affordability of interest rates of mortgages insured under such Program.

(3) BUY-DOWN OF SECOND LIEN MORTGAGES.—A program under which the Secretary makes available to owners of owner-occupied residen-

tial properties a direct mortgage loan the proceeds of which shall be used only to reduce the outstanding debt of such owner under an existing second lien mortgage on such residential property, for the purpose of facilitating loan modification, subject to such reductions in the principal of such existing second lien mortgages as the Secretary may require.

(4) SERVICER INCENTIVES AND ASSISTANCE.—A program under which the Secretary may make payments to servicers who implement modifications to mortgages that result in mortgages that meet such requirements as the Secretary shall establish.

(5) LOAN PURCHASES.—A program under which the Secretary, or one or more entities that the Secretary, in consultation with the Secretary of Housing and Urban Development, enters into a contract with to carry out the program under this paragraph, which may include the Federal Deposit Insurance Corporation and entities selected as contractors under section 107 of the Emergency Economic Stabilization Act of 2008, purchases whole loans for the purpose of modifying or refinancing the loans.

SEC. 204. SYSTEMATIC FORECLOSURE PREVENTION AND MORTGAGE MODIFICATION PLAN ESTABLISHED.

(a) IN GENERAL.—The systematic foreclosure prevention and mortgage modification program under this section shall be a program established by the Secretary, in consultation with the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and the Secretary of Housing and Urban Development, that—

(1) provides lenders and loan servicers with certain compensation to cover administrative costs for each loan modified according to the required standards; and

(2) provides loss sharing or guarantees for certain losses incurred if a modified loan should subsequently re-default.

(b) PROGRAM ADMINISTRATION.—The Secretary, in consultation with the Secretary of Housing and Urban Development, may contract with one or more entities, including the Federal Deposit Insurance Corporation and entities selected as contractors under section 107 of the Emergency Economic Stabilization Act of 2008, to conduct the program activities required under the program under this section.

(c) PROGRAM COMPONENTS.—The program established under subsection (a) may include the following components:

(1) ELIGIBLE BORROWERS.—The program shall be limited to loans secured by owner-occupied properties.

(2) EXCLUSION FOR EARLY PAYMENT DEFAULT.—To promote sustainable mortgages, loss sharing or guarantees shall be available only after the borrower has made a specified minimum number of payments on the modified mortgage.

(3) STANDARD NET PRESENT VALUE TEST.—In order to promote consistency and simplicity in implementation and audit, the Secretary shall prescribe a standardized net present value analysis for participating lenders and servicers comparing the expected net present value of modifying past due loans compared to the net present value of foreclosing on them will be applied. Under this test, standard assumptions shall be used to ensure that a consistent standard for affordability is provided based on a ratio of the borrower's mortgage-related expenses for the first priority mortgage-to-gross income specified by the Secretary.

(4) SYSTEMATIC LOAN REVIEW BY PARTICIPATING LENDERS AND SERVICERS.—Participating lenders and servicers shall be required to undertake a systematic review of all of the loans under their management, to subject each loan to a standard net present value test to determine whether it is a suitable candidate for modification, and to offer modifications for all loans that pass this test. The penalty for failing to undertake such a systematic review and to carry out modifications where they are justified would be disqualification from further participation in the program until such a systematic program was introduced.

(5) MODIFICATIONS.—Modifications may include any of the following:

(A) Reduction in interest rates and fees.

(B) Term or amortization extensions.

(C) Forbearance or forgiveness of principal.

(D) Other similar modifications.

(6) SIMPLIFIED LOSS SHARE CALCULATION.—In order to ensure the administrative efficiency and effective operation of the program, the Secretary shall define appropriate measures for loss sharing or guarantees designed to reduce the risk and loss upon

redefault of modified mortgages in order to provide adequate incentives to lenders, servicers, and investors to modify eligible mortgages and avoid unnecessary foreclosures. Interim modifications shall be allowed.

(7) DE MINIMIS TEST.—To lower administrative costs, a de minimis test shall be used to exclude from loss sharing any modification that does not lower the monthly payment at least 10 percent.

(8) 8 YEAR LIMIT ON LOSS SHARING PAYMENT.—The loss sharing guarantee shall terminate at the end of the 8-year period beginning on the date the modification was consummated.

(d) ALTERNATIVE COMPONENTS.—The Secretary may, with the approval of the Board, implement foreclosure prevention and mitigation actions other than those included pursuant to subsection (c) in the comprehensive plan initially approved by the Board pursuant to section 201(a) that the Secretary believes would provide equivalent or greater impact on foreclosure mitigation.

(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to implement this section and prevent evasions thereof.

(f) TROUBLED ASSETS.—The costs incurred by the Federal Government in carrying out the loan modification

program established under this section shall be covered out of the funds made available to the Secretary of the Treasury under section 118 of the Emergency Economic Stabilization Act of 2008 or such other funds as may be available to the Secretary.

(g) REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary shall submit a progress report to the Congress containing such findings and such recommendations for legislative or administrative action as the Secretary may determine to be appropriate.

SEC. 204. MODIFICATION OF PLAN.

(a) IN GENERAL.—If the Secretary, in consultation with the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and the Secretary of Housing and Urban Development, determines at any time that modification of the comprehensive plan initially approved by the Board pursuant to section 201(a) (as such plan may subsequently have been modified pursuant to this section), or that modification of any component program element, is necessary to maximize the prevention of foreclosures on residential properties or minimize costs to taxpayers of such foreclosure mitigation, the Secretary may modify the plan or program element, but only to the extent such modifications are approved by the Board.

SEC. 205. SERVICER SAFE HARBOR.

(a) SAFE HARBOR.—

(1) LOAN MODIFICATIONS AND WORKOUT PLANS.—Notwithstanding any other provision of law, and notwithstanding any investment contract between a servicer and a securitization vehicle or investor, a servicer that acts consistent with the duty set forth in section 129A(a) of Truth in Lending Act (15 U.S.C. 1639a) shall not be liable for entering into a loan modification or workout plan with respect to any such mortgage that meets all of the criteria set forth in paragraph (2)(B) to—

(A) any person, based on that person's ownership of a residential mortgage loan or any interest in a pool of residential mortgage loans or in securities that distribute payments out of the principal, interest and other payments in loans on the pool;

(B) any person who is obligated to make payments determined in reference to any loan or any interest referred to in subparagraph (A); or

(C) any person that insures any loan or any interest referred to in subparagraph (A) under any law or regulation of the United

States or any law or regulation of any State or political subdivision of any State.

(2) ABILITY TO MODIFY MORTGAGES.—

(A) ABILITY.—Notwithstanding any other provision of law, and notwithstanding any investment contract between a servicer and a securitization vehicle or investor, a servicer—

(I) shall not be limited in the ability to modify mortgages, the number of mortgages that can be modified, the frequency of loan modifications, or the range of permissible modifications, and

(ii) shall not be obligated to repurchase loans from or otherwise make payments to the securitization vehicle on account of a modification, workout, or other loss mitigation plan for a residential mortgage or a class of residential mortgages that constitute a part or all of the mortgages in the securitization vehicle,

if any mortgage so modified meets all of the criteria set forth in subparagraph (B).

(B) CRITERIA.—The criteria under this subparagraph with respect to a mortgage are as follows:

(I) Default on the payment of such mortgage has occurred or is reasonably foreseeable.

(ii) The property securing such mortgage is occupied by the mortgagor of such mortgage.

(iii) The servicer reasonably and in good faith believes that the anticipated recovery on the principal outstanding obligation of the mortgage under the particular modification or workout plan or other loss mitigation action will exceed, on a net present value basis, the anticipated recovery on the principal outstanding obligation of the mortgage to be realized through foreclosure.

(3) APPLICABILITY.—This subsection shall apply only with respect to modifications, workouts, and other loss mitigation plans initiated before January 1, 2012.

(b) LEGAL COSTS.—If an unsuccessful action is brought against a servicer by any person described in subparagraph (A), (B), or (C) of subsection (a)(1), such person shall bear any actual legal costs of the servicer, including reasonable attorney fees and expert witness fees, in-

curred in good faith in such action, as determined by the court.

(c) REPORTING.—Each servicer that engages in loan modifications or workout plans subject to the safe harbor in subsection (a) shall report to the Secretary on a regular basis regarding the extent, scope and results of the servicer's modification activities. The Secretary shall prescribe regulations specifying the form, content, and timing of such reports.

(d) DEFINITION OF SECURITIZATION VEHICLES.—For purposes of this section, the term "securitization vehicle" means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—

(1) is the issuer, or is created by the issuer, of mortgage pass-through certificates, participation certificates, mortgage-backed securities, or other similar securities backed by a pool of assets that includes residential mortgage loans; and

(2) holds such mortgages.

SEC. 206. REPORT BY CONGRESSIONAL OVERSIGHT PANEL.

The Congressional Oversight Panel established by section 125 of the Emergency Economic Stabilization Act of 2008 shall submit a report to the Congress, not later than July 1, 2009, regarding—

(1) the actions taken by the Secretary pursuant to this title;

(2) the impact and effectiveness of such actions on foreclosures on residential properties; and

(3) the effectiveness of such actions from the standpoint of minimizing costs to the taxpayers.

TITLE III—AUTO INDUSTRY FINANCING AND RESTRUCTURING

SEC. 301. SHORT TITLE.

This title may be cited as the "TARP Reform and Accountability Act of 2009".

SEC. 302. DIRECT LOAN PROVISIONS.

(a) IN GENERAL.—The Emergency Economic Stabilization Act of 2008 (division A of Public Law 110–343) is amended by adding at the end the following:

"TITLE IV—AUTO INDUSTRY FINANCING AND RESTRUCTURING

"SEC. 401. PURPOSES.

"The purposes of this title are—

"(1) to clarify and confirm the authority and facilities to restore liquidity and stability to domestic vehicle manufacturers in the United States; and

"(2) to ensure that such authority and such facilities are used in a manner that—

"(A) results in a viable and competitive domestic automobile industry that minimizes adverse effects on the environment;

"(B) enhances the ability and the capacity of the domestic automobile industry to pursue the timely and aggressive production of energy-efficient advanced technology vehicles;

"(C) preserves and promotes the jobs of American workers employed directly by the domestic automobile industry and in related industries;

"(D) safeguards the ability of the domestic automobile industry to provide retirement and health care benefits for the industry's retirees and their dependents; and

"(E) stimulates manufacturing and sales of automobiles produced by automobile manufacturers in the United States.

"SEC. 402. PRESIDENTIAL DESIGNATION.

"(a) DESIGNATION.—The President shall designate 1 or more officers from the Executive Branch having appropriate expertise in such areas as economic stabilization, financial aid to commerce and industry, financial restruc-

turing, energy efficiency, and environmental protection (who shall hereinafter in this title be collectively referred to as the 'President's designee') to carry out the purposes of this title, including the facilitation of restructuring necessary to achieve the long-term financial viability of domestic automobile manufacturers, who shall serve at the pleasure of the President.

"(b) ADDITIONAL PERSONS.—The President or the President's designee may also employ, appoint, or contract with additional persons having such expertise as the President or the President's designee believes will assist the Government in carrying out the purposes of this title.

"(c) PARTICIPATION BY OTHER AGENCY PERSONNEL.—Other Federal agencies may provide, at the request of the President's designee, staff on detail from such agencies for purposes of carrying out this title.

"SEC. 403. BRIDGE FINANCING.

"(a) IN GENERAL.—The President's designee shall authorize and direct the disbursement of bridge loans or enter into commitments for lines of credit to each automobile manufacturer that submitted a plan to the Congress on December 2, 2008 (hereafter in this title referred to as an 'eligible automobile manufacturer'), and has submitted a request for such loan or commitment. Nothing in this section shall preclude the President's designee from

authorizing and directing the disbursement of bridge loans or entering into commitments for lines of credit to other entities.

"(b) AMOUNT OF ASSISTANCE.—The President's designee shall authorize bridge loans or commitments for lines of credit to each eligible automobile manufacturer in an amount that is intended to facilitate the continued operations of the eligible automobile manufacturer and to prevent the failure of the eligible automobile manufacturer, consistent with the plan submitted on December 2, 2008, and subject to available funds.

"SEC. 404. RESTRUCTURING PROGRESS ASSESSMENT.

"(a) ESTABLISHMENT OF MEASURES FOR ASSESSING PROGRESS.—Not later than February 1, 2009, the President's designee shall determine appropriate measures for assessing the progress of each eligible automobile manufacturer toward transforming the plan submitted by such manufacturer to the Congress on December 2, 2008, into the restructuring plan to be submitted under section 405(b).

"(b) EVALUATION OF PROGRESS ON BASIS OF RESTRUCTURING PROGRESS ASSESSMENT MEASURES.—

"(1) IN GENERAL.—The President's designee shall evaluate the progress of each eligible automobile manufacturer toward the development of a

restructuring plan, on the basis of the restructuring progress assessment measures established under this section for such manufacturer.

"(2) TIMING.—Each evaluation required under paragraph (1) for any eligible automobile manufacturer shall be conducted at the end of the 15-day period beginning on the date on which the restructuring progress assessment measures were established by the President's designee for such eligible automobile manufacturer.

"SEC. 405. SUBMISSION OF PLANS.

"(a) NEGOTIATED PLANS.—

"(1) FACILITATION.—

"(A) IN GENERAL.—Beginning on the date of any disbursement under the facility, the President's designee shall seek to facilitate agreement on any restructuring plan to achieve and sustain the long-term viability, international competitiveness, and energy efficiency of an eligible automobile manufacturer, negotiated and agreed to by representatives of interested parties (in this title referred to as a 'negotiated plan') with respect to any eligible automobile manufacturer.

"(B) INTERESTED PARTIES.—For purposes of this section, the term 'interested party' shall be construed broadly so as to include all persons who have a direct financial interest in a particular automobile manufacturer, including—

"(I) employees and retirees of the eligible automobile manufacturer;

"(ii) trade unions;

"(iii) creditors;

"(iv) suppliers;

"(v) automobile dealers; and

"(vi) shareholders.

"(2) ACTIONS OF THE PRESIDENT'S DESIGNEE.—

"(A) IN GENERAL.—For the purpose of achieving a negotiated plan, the President's designee may convene, chair, and conduct formal and informal meetings, discussions, and consultations, as appropriate, with interested parties of an eligible automobile manufacturer.

"(B) CLARIFICATION.—The Federal Advisory Committee Act shall not apply with respect to any of the activities conducted or taken by the President's designee pursuant to this title.

"(b) RESTRUCTURING PLAN.—Not later than March 31, 2009, each eligible automobile manufacturer shall submit to the President's designee a restructuring plan to achieve and sustain the long-term viability, international competitiveness, and energy efficiency of the eligible automobile manufacturer (in this title referred to as the 'restructuring plan') in accordance with this section. The President's designee shall approve the restructuring plan if the President's designee determines that the plan will result in—

"(1) the repayment of all Government-provided financing, consistent with the terms specified in section 408, or otherwise agreed to;

"(2) the ability—

"(A) to comply with applicable fuel efficiency and emissions requirements;

"(B) to commence domestic manufacturing of advanced technology vehicles, as described in section 136 of the Energy Independence and Security Act of 2007 (Public Law 110–140; 42 U.S.C. 17013); and

"(C) to produce new and existing products and capacity;

"(3) the achievement of a positive net present value, using reasonable assumptions and taking into

account all existing and projected future costs, including repayment of any financial assistance provided pursuant to this title;

"(4) the ability to rationalize costs, capitalization, and capacity with respect to the manufacturing workforce, suppliers, and dealerships of the eligible automobile manufacturer;

"(5) proposals to restructure existing debt, including, where appropriate, the conversion of debt to equity, to improve the ability of the eligible automobile manufacturer to raise private capital; and

"(6) a product mix and cost structure that is competitive in the marketplace.

"(c) EXTENSION OF NEGOTIATIONS AND PLAN DEADLINE.—Notwithstanding the time limitations in subsection (b), the President's designee, upon making a determination that the interested parties are negotiating in good faith, are making significant progress, and that an additional period of time would likely facilitate agreement on a negotiated plan, and upon notification of the Congress, may extend for not longer than 30 additional days the negotiation period under subsection (b).

"SEC. 406. FINANCING FOR RESTRUCTURING.

"Upon approval by the President's designee of a restructuring plan, the President's designee may provide fi-

nancial assistance to an eligible automobile manufacturer to implement the restructuring plan.

"SEC. 407. DISAPPROVAL AND CALL OF LOAN.

"If the President's designee has not approved the restructuring plan at the expiration of the period provided in section 405 for submission and approval of the restructuring plan, the President's designee shall call the loan or cancel the commitment within 30 days, unless a restructuring plan is approved within that period.

"SEC. 408. TERMS AND CONDITIONS.

"(a) DURATION.—The duration of any loan made under this title shall be 7 years, or such period as the President's designee may determine with respect to such loan.

"(b) NO PREPAYMENT PENALTY.—A loan made under this title shall be prepayable without penalty at any time.

"(c) INFORMATION ACCESS.—As a condition for the receipt of any financial assistance made under this title, an eligible automobile manufacturer shall agree—

"(1) to allow the President's designee to examine any books, papers, records, or other data of the eligible automobile manufacturer, and those of any subsidiary, affiliate, or entity holding an ownership interest of 50 percent or more of such automobile

manufacturer, that may be relevant to the financial assistance, including compliance with the terms of a loan or any conditions imposed under this title; and

"(2) to provide in a timely manner any information requested by the President's designee, including requiring any officer or employee of the eligible automobile manufacturer, any subsidiary, affiliate, or entity referred to in paragraph (1) with respect to such manufacturer, or any person having possession, custody, or care of the reports and records required under paragraph (1), to appear before the President's designee at a time and place requested and to provide such books, papers, records, or other data, as requested, as may be relevant or material.

"(d) OVERSIGHT OF TRANSACTIONS AND FINANCIAL CONDITION.—

"(1) DUTY TO INFORM.—During the period in which any loan extended under this title remains outstanding, the eligible automobile manufacturer which received such loan shall promptly inform the President's designee of—

"(A) any asset sale, investment, contract, commitment, or other transaction proposed to be entered into by such eligible automobile

manufacturer that has a value in excess of $100,000,000; and

"(B) any other material change in the financial condition of such eligible automobile manufacturer.

"(2) AUTHORITY OF THE PRESIDENT'S DESIGNEE.—During the period in which any loan extended under this title remains outstanding, the President's designee may—

"(A) review any asset sale, investment, contract, commitment, or other transaction described in paragraph (1); and

"(B) prohibit the eligible automobile manufacturer which received the loan from consummating any such proposed sale, investment, contract, commitment, or other transaction, if the President's designee determines that consummation of such transaction would be inconsistent with or detrimental to the long-term viability of the eligible automobile manufacturer.

"(3) PROCEDURES.—The President's designee may establish procedures for conducting any review under this subsection.

"(e) CONSEQUENCES FOR FAILURE TO COMPLY.—The terms of any financial assistance made under this title shall provide that if—

"(1) an evaluation by the President's designee under section 404(b) demonstrates that the eligible automobile manufacturer which received the financial assistance has failed to make adequate progress towards meeting the restructuring progress assessment measures established by the President's designee under section 404(a) with respect to such recipient;

"(2) after March 31, 2009, the eligible automobile manufacturer which received the financial assistance fails to submit an acceptable restructuring plan under section 405(b), or fails to comply with any conditions or requirement applicable under this title or applicable fuel efficiency and emissions requirements; or

"(3) after a restructuring plan of an eligible automobile manufacturer has been approved by the President's designee, the auto manufacturer fails to make adequate progress in the implementation of the plan, as determined by the President's designee,

the repayment of any loan may be accelerated to such earlier date or dates as the President's designee may deter-

mine and any other financial assistance may be cancelled by the President's designee.

"SEC. 409. TAXPAYER PROTECTION.

"(a) WARRANTS.—

"(1) IN GENERAL.—The President's designee may not provide any loan under this title, unless the President's designee, or such department or agency as is designated for such purpose by the President, receives from the eligible automobile manufacturer—

"(A) in the case of an eligible automobile manufacturer, the securities of which are traded on a national securities exchange, a warrant giving the right to the President's designee to receive nonvoting common stock or preferred stock in such eligible automobile manufacturer, or voting stock, with respect to which the President's designee agrees not to exercise voting power, whichever the President's designee determines appropriate; or

"(B) in the case of an eligible automobile manufacturer other than one described in subparagraph (A), a warrant for common or preferred stock, or an instrument that is the economic equivalent (as determined by the President's designee) of such a warrant in the hold-

ing company of the eligible automobile manufacturer, or any company that controls a majority stake in the eligible automobile manufacturer, whichever the President's designee determines appropriate.

"(2) AMOUNT.—

"(A) IN GENERAL.—The warrants or instruments described in paragraph (1) shall have a value equal to 20 percent of the aggregate amount of all loans provided to the eligible automobile manufacturer under this title. Such warrants or instruments shall entitle the Government to purchase—

"(I) nonvoting common stock, up to a maximum amount of 20 percent of the issued and outstanding common stock of—

"(I) the eligible automobile manufacturer; or

"(II) in the case of an eligible automobile manufacturer, the securities of which are not traded on a national securities exchange, a holding company or company that controls a majority of the stock thereof (in this

section referred to as the 'warrant common'); and

"(ii) preferred stock having an aggregate liquidation preference equal to 20 percent of such aggregate loan amount, less the value of common stock available for purchase under the warrant common (in this section referred to as the 'warrant preferred').

"(B) COMMON STOCK WARRANT PRICE.—The exercise price on a warrant or instrument described in paragraph (1) shall be—

"(I) the 15-day trailing average, as of the day before the date on which any commitment to provide a loan was entered into, of the market price of the common stock of the eligible automobile manufacturer which received any loan under this title; or

"(ii) in the case of an eligible automobile manufacturer, the securities of which are not traded on a national securities exchange, the economic equivalent of the market price described in clause (I), as determined by the President's designee.

"(C) TERMS OF PREFERRED STOCK WARRANT.—

"(I) IN GENERAL.—The initial exercise price for the preferred stock warrant shall be $0.01 per share or such greater amount as the corporate charter may require as the par value per share of the warrant preferred. The Government shall have the right to immediately exercise the warrants.

"(ii) REDEMPTION.—The warrant preferred may be redeemed at any time after exercise of the preferred stock warrant at 100 percent of its issue price, plus any accrued and unpaid dividends.

"(iii) OTHER TERMS AND CONDITIONS.—Other terms and conditions of the warrant preferred shall be determined by the President's designee to protect the interests of taxpayers.

"(3) APPLICATION OF OTHER PROVISIONS OF LAW.—Except as otherwise provided in this section, the requirements for the purchase of warrants under section 113(d)(2) of the Emergency Economic Stabilization Act of 2008 (division A of Public Law

110–343) shall apply to any warrant or instrument described in paragraph (1), including the antidilution protection provisions therein.

"(b) EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.—

"(1) IN GENERAL.—During the period in which any financial assistance under this title remains outstanding, the eligible automobile manufacturer which received such assistance shall be subject to—

"(A) the standards established by the President's designee under paragraph (2); and

"(B) the provisions of section 162(m)(5) of the Internal Revenue Code of 1986, as applicable.

"(2) STANDARDS REQUIRED.—The President's designee shall require any eligible automobile manufacturer which received any financial assistance under this title to meet appropriate standards for executive compensation and corporate governance.

"(3) SPECIFIC REQUIREMENTS.—The standards established under paragraph (2) shall include—

"(A) limits on compensation that exclude incentives for senior executive officers of an eligible automobile manufacturer which received assistance under this title to take unnecessary

and excessive risks that threaten the value of such manufacturer during the period that the loan is outstanding;

"(B) a provision for the recovery by such automobile manufacturer of any bonus or incentive compensation paid to a senior executive officer based on statements of earnings, gains, or other criteria that are later found to be materially inaccurate;

"(C) a prohibition on such automobile manufacturer making any golden parachute payment to a senior executive officer during the period that the loan is outstanding;

"(D) a prohibition on such automobile manufacturer paying or accruing any bonus or incentive compensation during the period that the loan is outstanding to the 25 most highly-compensated employees; and

"(E) a prohibition on any compensation plan that would encourage manipulation of such automobile manufacturer's reported earnings to enhance the compensation of any of its employees.

"(4) DIVESTITURE.—During the period in which any financial assistance provided under this

title to any eligible automobile manufacturer is outstanding, the eligible automobile manufacturer may not own or lease any private passenger aircraft, or have any interest in such aircraft, except that such eligible automobile manufacturer shall not be treated as being in violation of this provision with respect to any aircraft or interest in any aircraft that was owned or held by the manufacturer immediately before receiving such assistance, as long as the recipient demonstrates to the satisfaction of the President's designee that all reasonable steps are being taken to sell or divest such aircraft or interest.

"(5) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) SENIOR EXECUTIVE OFFICER.—The term 'senior executive officer' means an individual who is 1 of the top 5 most highly paid executives of a public company, whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934, and any regulations issued thereunder, and non-public company counterparts.

"(B) GOLDEN PARACHUTE PAYMENT.—The term 'golden parachute payment' means any payment to a senior executive officer for

departure from a company for any reason, except for payments for services performed or benefits accrued.

"(c) PROHIBITION ON PAYMENT OF DIVIDENDS.—Except with respect to obligations owed pursuant to law to any nonaffiliated party or any existing contract with any nonaffiliated party in effect as of December 2, 2008, no dividends or distributions of any kind, or the economic equivalent thereof (as determined by the President's designee), may be paid by any eligible automobile manufacturer which receives financial assistance under this title, or any holding company or company that controls a majority stake in the eligible automobile manufacturer, while such financial assistance is outstanding.

"(d) OTHER INTERESTS SUBORDINATED.—

"(1) IN GENERAL.—In the case of an eligible automobile manufacturer which received a loan under this title, to the extent permitted by the terms of any obligation, liability, or debt of the eligible automobile manufacturer in effect as of December 2, 2008, any other obligation of such eligible automobile manufacturer shall be subordinate to such loan, and such loan shall be senior and prior to all obligations, liabilities, and debts of the eligible automobile manufacturer, and such eligible automobile

manufacturer shall provide to the Government, all available security and collateral against which the loans under this title shall be secured.

"(2) APPLICABILITY IN CERTAIN CASES.—In the case of an eligible automobile manufacturer referred to in paragraph (1), the securities of which are not traded on a national securities exchange, a loan under this title to the eligible automobile manufacturer shall—

"(A) be treated as a loan to any holding company of, or company that controls a majority stake in, the eligible automobile manufacturer; and

"(B) be senior and prior to all obligations, liabilities, and debts of any such holding company or company that controls a majority stake in the eligible automobile manufacturer.

"(e) ADDITIONAL TAXPAYER PROTECTIONS.—

"(1) DISCHARGE.—A discharge under title 11, United States Code, shall not discharge an eligible automobile manufacturer, or any successor in interest thereto, from any debt for financial assistance received pursuant to this title.

"(2) EXEMPTION.—Any financial assistance provided to an eligible automobile manufacturer

under this title shall be exempt from the automatic stay established by section 362 of title 11, United States Code.

"(3) INTERESTED PARTIES.—Notwithstanding any provision of title 11, United States Code, any interest in property or equity rights of the United States arising from financial assistance provided to an eligible automobile manufacturer under this title shall remain unaffected by any plan of reorganization, except as the United States may agree to in writing.

"SEC. 410. OVERSIGHT AND AUDITS.

"(a) COMPTROLLER GENERAL OVERSIGHT.—

"(1) SCOPE OF OVERSIGHT.—The Comptroller General of the United States shall conduct ongoing oversight of the activities and performance of the President's designee.

"(2) CONDUCT AND ADMINISTRATION OF OVERSIGHT.—

"(A) GAO PRESENCE.—The President's designee shall provide to the Comptroller General appropriate space and facilities for purposes of this subsection.

"(B) ACCESS TO RECORDS.—To the extent otherwise consistent with law, the Comptroller

General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the President's designee, at such reasonable time as the Comptroller General may request. The Comptroller General shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General deems appropriate.

"(3) REPORTING.—The Comptroller General shall submit reports of findings under this section to Congress, regularly and not less frequently than once every 60 days. The Comptroller General may also submit special reports under this subsection, as warranted by the findings of its oversight activities.

"(b) SPECIAL INSPECTOR GENERAL.—It shall be the duty of the Special Inspector General established under section 121 of Public Law 110–343 to conduct, supervise, and coordinate audits and investigations of the President's designee in addition to the duties of the Special Inspector

General under such section and for such purposes. The Special Inspector General shall also have the duties, responsibilities, and authorities of inspectors general under the Inspector General Act of 1978, including section 6 of such Act. In the event that the Office of the Special Inspector General is terminated, the Inspector General of the Department of the Treasury shall assume the responsibilities of the Special Inspector General under this subsection.

"(c) ACCESS TO RECORDS OF BORROWERS BY GAO.—Notwithstanding any other provision of law, during the period in which any financial assistance provided under this title is outstanding, the Comptroller General of the United States shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the eligible automobile manufacturer, and any subsidiary, affiliate, or entity holding an ownership interest of 50 percent or more of such eligible automobile manufacturer (collectively referred to in this section as 'related entities'), and to any officer, director, or other agent or representative of the eligible automobile manufacturer and its related entities, at such reasonable times as the Comptroller General may request. The Comptroller General may

make and retain copies of such books, accounts, and other records as the Comptroller General deems appropriate.

"SEC. 411. REPORTING AND MONITORING.

"(a) REPORTING ON CONSUMMATION OF LOANS.—The President's designee shall submit a report to the Congress on each bridge loan made under this title not later than 5 days after the date of the consummation of such loan.

"(b) REPORTING ON RESTRUCTURING PROGRESS ASSESSMENT MEASURES.—The President's designee shall submit a report to the Congress on the restructuring progress assessment measures established for each manufacturer under section 404(a) not later than 10 days after establishing the restructuring progress assessment measures.

"(c) REPORTING ON EVALUATIONS.—The President's designee shall submit a report to the Congress containing the detailed findings and conclusions of the President's designee in connection with the evaluation of an eligible automobile manufacturer under section 404(b).

"(d) REPORTING ON CONSEQUENCES FOR FAILURE TO COMPLY.—The President's designee shall submit a report to the Congress on the exercise of a right under section 408(e) to accelerate indebtedness of an eligible automobile manufacturer under this title or to cancel any other

financial assistance provided to such eligible automobile manufacturer, and the facts and circumstances on which such exercise was based, before the end of the 10-day period beginning on the date of the exercise of the right.

"(e) MONITORING.—The President's designee shall monitor the use of loan funds received by eligible automobile manufacturers under this title, and shall report to Congress once every 90 days (beginning 30 days after the date of enactment of this title) on the progress of the ability of the recipient of the loan to continue operations and proceed with restructuring processes that restore the financial viability of the recipient and promote environmental sustainability.

"SEC. 412. REPORT TO CONGRESS ON LACK OF PROGRESS TOWARD ACHIEVING AN ACCEPTABLE NEGOTIATED PLAN.

"(a) AUTHORITY TO FACILITATE A NEGOTIATED PLAN.—At any such time as the President's designee determines that action is necessary to avoid disruption to the economy or to achieve a negotiated plan, the President's designee shall submit to Congress a report outlining any additional powers and authorities necessary to facilitate the completion of a negotiated plan required under section 405.

"(b) IMPEDIMENTS TO ACHIEVING NEGOTIATED PLANS.—If the President's designee determines, on the basis of an evaluation by the President's designee of the progress being made by an eligible automobile manufacturer toward meeting the restructuring progress assessment measures established under section 404, that adequate progress is not being made toward achieving a negotiated plan by March 31, 2009, the President's designee shall submit to Congress a report detailing the impediments to achievement of a negotiated plan by the eligible automobile manufacturer.

"SEC. 413. SUBMISSION OF PLAN TO CONGRESS BY THE PRESIDENT'S DESIGNEE.

"Upon submission of a report pursuant to section 412(b), the President's designee shall provide to Congress a plan that represents the judgement of the President's designee as to the steps necessary to achieve the long-term viability, international competitiveness, and energy efficiency of the eligible automobile manufacturer, consistent with the factors set forth in section 405(b), including through a negotiated plan, a plan to be implemented by legislation, or a reorganization pursuant to chapter 11 of title 11, United States Code.

"SEC. 414. COORDINATION WITH OTHER LAWS.

"(a) IN GENERAL.—No provision of this title may be construed as altering, affecting, or superseding—

"(1) the provisions of section 129 of division A of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, relating to funding for the manufacture of advanced technology vehicles;

"(2) any existing authority to provide financial assistance or liquidity for purposes of the day-to-day operations in the ordinary course of business or research and development.

"(b) ANTITRUST PROVISIONS.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (4), the antitrust laws shall not apply to meetings, discussions, or consultations among an eligible automobile manufacturer and its interested parties for the purpose of achieving a negotiated plan pursuant to section 405(a)(2).

"(2) EXCLUSIONS.—Paragraph (1) shall not apply with respect to price-fixing, allocating a market between competitors, monopolizing (or attempting to monopolize) a market, or boycotting.

"(3) ANTITRUST AGENCY PARTICIPATION.—The Attorney General of the United States and the Federal Trade Commission shall, to the extent prac-

ticable, receive reasonable advance notice of, and be permitted to participate in, each meeting, discussion, or consultation described in paragraph (1).

"(4) PRESERVATION OF ENFORCEMENT AUTHORITY.—Paragraph (1) shall not be construed to preclude the Attorney General of the United States or the Federal Trade Commission from bringing an enforcement action under the antitrust laws for injunctive relief.

"(5) SUNSET.—Paragraph (1) shall apply only with respect to meetings, discussions, or consultations that occur within the 3-year period beginning on the date of the enactment of this title.

"(6) DEFINITION.—For purposes of this subsection, the term 'antitrust laws'—

"(A) has the same meaning as in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45), to the extent that such section 5 applies to unfair methods of competition; and

"(B) includes any provision of State law that is similar to the laws referred to in subparagraph (A).

"SEC. 415. TREATMENT OF RESTRUCTURING FOR PURPOSES OF APPLYING LIMITATIONS ON NET OPERATING LOSS CARRYFORWARDS AND CERTAIN BUILT-IN LOSSES.

"Section 382 of the Internal Revenue Code of 1986 shall not apply in the case of an ownership change resulting from this title or pursuant to a restructuring plan approved under this title.

"SEC. 416. CLARIFICATION OF AVAILABILITY OF FINANCIAL SUPPORT FOR FINANCING ARMS.

"The authority of the President's designee to provide assistance to any eligible automobile manufacturer includes the authority to provide support to finance company affiliates of the manufacturer to ensure that such affiliates have the necessary resources to continue to provide needed credit, including through dealer and other financing of consumer and business auto and other vehicle loans and dealer floor plan loans.".

TITLE IV—CLARIFICATION OF AUTHORITY

SEC. 401. CONSUMER LOANS.

Title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) is amended by adding at the end the following new section:

"SEC. 137. CLARIFICATION OF AUTHORITY REGARDING CONSUMER LOANS.

"The authority of the Secretary to take any action under this title includes the authority to establish or support facilities to support the availability of consumer loans, including loans for autos and other vehicles and student loans, including through purchase of asset-backed securities, directly or through the Board or any Federal reserve bank.".

SEC. 402. MUNICIPAL SECURITIES.

Section 103 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211) is amended by inserting after subsection (f) (as added by section 401 of this title) the following new subsection:

"(g) CLARIFICATION OF AUTHORITY REGARDING MUNICIPAL SECURITIES.—

"(1) CLARIFICATION.—The authority of the Secretary to take any action under this title includes the authority to provide support to State and local governments, and other issuers of municipal securities, which are having difficulty accessing appropriate financing in the capital markets. Such support includes the direct purchase of municipal securities and providing credit enhancement in connection with municipal securities whose purchase is fi-

nanced under any facility provided by the Board or any Federal reserve bank.

"(2) DEFINITION.—For purposes of this subsection, the term 'municipal security' has the meaning given the term 'State or local bond' in section 103(c) of the Internal Revenue Code of 1986 (26 U.S.C. 103(c)) and the regulations issued thereunder.".

SEC. 403. COMMERCIAL REAL ESTATE LOANS.

Title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) is amended by adding after section 137 (as added by section 401 of this title) the following new section:

"SEC. 138. CLARIFICATION OF AUTHORITY REGARDING COMMERCIAL REAL ESTATE LOANS.

"The authority of the Secretary to take any action under this title includes the authority to establish or support facilities to support the availability of commercial real estate loans, including through purchase of asset-backed securities, directly or through the Board of Governors of the Federal Reserve System or any Federal reserve bank.".

TITLE V—HOPE FOR HOMEOWNERS PROGRAM IMPROVEMENTS

SEC. 501. CHANGES TO HOPE FOR HOMEOWNERS PROGRAM.

Section 257 of the National Housing Act (12 U.S.C. 1715z–23) is amended—

(1) in subsection (e)—

(A) by striking paragraph (1);

(B) in paragraph (2)(B), by striking "90 percent" and inserting "93 percent";

(C) by striking paragraph (7);

(D) in paragraph (9), by striking "by procuring" and all that follows through "by any other method"; and

(E) by redesignating paragraphs (2), (3), (4), (5), (6), (8), (9), (10), and (11) as paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9), respectively;

(2) in subsection (h)(2), by striking ", or in any case in which a mortgagor fails to make the first payment on a refinanced eligible mortgage";

(3) by striking subsection (i) and inserting the following new subsection:

"(i) ANNUAL PREMIUMS.—

"(1) IN GENERAL.—For each refinanced eligible mortgage insured under this section, the Secretary shall establish and collect an annual premium in an amount equal to not less than 0.55 percent of the amount of the remaining insured principal balance of the mortgage and not more than 0.75 percent of such remaining insured principal balance, as determined according to a schedule established by the Board that assigns such annual premiums based upon the credit risk of the mortgage.

"(2) REDUCTION OR TERMINATION DURING MORTGAGE TERM.—Notwithstanding paragraph (1), the Secretary may provide that the annual premiums charged for refinanced eligible mortgages insured under this section are reduced over the term of the mortgage or that the collection of such premiums is discontinued at some time during the term of the mortgage, in a manner that is consistent with policies for such reduction or discontinuation of annual premiums charged for mortgages in accordance with section 203(c).";

(4) in subsection (k)—

(A) by striking the subsection heading and inserting "EXIT FEE";

(B) in paragraph (1), in the matter preceding subparagraph (A), by striking "such sale or refinancing" and inserting "the mortgage being insured under this section"; and

(C) by striking paragraph (2);

(5) in subsection (s)(3)(A)(ii), by striking "subsection (e)(1)(B) and such other" and inserting "such";

(6) in subsection (v), by inserting after the period at the end the following: "The Board shall conform documents, forms, and procedures for mortgages insured under this section to those in place for mortgages insured under section 203(b) to the maximum extent possible consistent with the requirements of this section.";

(7) in subsection (w)(1)(C), by striking "(e)(4)(A)" and inserting "(e)(3)(A)"; and

(8) by adding at the end the following new subsection:

"(x) PAYMENT TO EXISTING LOAN SERVICER.—The Board may establish a payment to the servicer of the existing senior mortgage for every loan insured under the HOPE for Homeowners Program.".

SEC. 502. FUNDING OF INCREASED HOPE FOR HOMEOWNERS PROGRAM CREDIT SUBSIDY COSTS.

Section 257 of the National Housing Act (12 U.S.C. 1715z–23) is amended by adding after subsection (x) (as added by section 501 of this title) the following new subsection:

"(y) FUNDING OF CREDIT SUBSIDY COSTS OF 2009 AMENDMENTS.—Notwithstanding section 1338(b) of the Housing and Community Development Act of 1992 (12 U.S.C. 4568(b)) and subsection (w) of this section—

"(1) to the extent amounts are available to the Secretary of the Treasury pursuant to section 118 of the Emergency Economic Stabilization Act of 2008, the Secretary shall use such amounts to cover any increase in the net costs to the Federal Government of the HOPE for Homeowners program under this section resulting from the amendments made by title V of the TARP Reform and Accountability Act of 2009, and actions authorized by title I of the Emergency Economic Stabilization Act of 2008 shall include such use; and

"(2) any remaining net costs to the Federal Government of the HOPE for Homeowners program under this section not resulting from the amendments made under this title shall be paid, and the Secretary of the Treasury shall be reimbursed for

such costs, in accordance with the provisions of such section 1338 and subsection (w) of this section.".

TITLE VI—HOME BUYER STIMULUS

SEC. 601. HOME BUYER STIMULUS PROGRAM.

(a) IN GENERAL.—The Secretary of the Treasury (in this title referred to as the "Secretary") shall carry out a program using the authority made available by section 1117 of the Housing and Economic Recovery Act of 2008 to stimulate demand for home purchases and reduce unsold inventories of residential properties, which shall include ensuring the availability of affordable interest rates on mortgages made for the purchase, by qualified home buyers, of 1- to 4-family residential properties.

(b) PURCHASE OBLIGATIONS AND SECURITIES USING HERA AUTHORITY.—The Secretary shall execute the program under this section through the purchase of obligations and other securities issued by—

(1) the Federal National Mortgage Association, pursuant to the authority under section 304(g) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(g)),

(2) the Federal Home Loan Mortgage Corporation, pursuant to the authority under section 304(l)

of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(l)), and

(3) any Federal Home Loan Bank, pursuant to the authority under section 11(l) of the Federal Home Loan Bank Act (12 U.S.C. 1431(l)),

as added by section 1117 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289).

(c) USE OF LOAN ORIGINATORS AND PORTFOLIO LENDERS.—The program under this section shall provide mechanisms to ensure availability of such mortgages for home purchase having affordable interest rates through financial institutions that act as loan originators or as portfolio lenders.

(d) AVAILABILITY OF AFFORDABLE LOANS UNDER HOPE FOR HOMEOWNERS PROGRAM.—The Secretary, in consultation with the Secretary of Housing and Urban Development, shall ensure that the affordable interest rates made available through the program under this section are made available in connection with mortgages made for refinancing eligible mortgages, as such term is defined in section 257 of the National Housing Act (12 U.S.C. 1715z–23), to be insured under the HOPE for Homeowners Program under such section.

(e) TARGETING.—In carrying out the program under this section, the Secretary may take into consideration the

impact of activities under the program on geographical areas having the greatest number of properties with foreclosed-upon mortgages.

TITLE VII—FDIC PROVISIONS

SEC. 701. PERMANENT INCREASE IN DEPOSIT INSURANCE.

(a) AMENDMENTS TO FEDERAL DEPOSIT INSURANCE ACT.—Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended—

(1) in paragraph (1)(E), by striking "$100,000" and inserting "$250,000"

(2) in paragraph (1)(F)(i), by striking "2010" and inserting "2015";

(3) in subclause (I) of paragraph (1)(F)(i), by striking "$100,000" and inserting "$250,000";

(4) in subclause (II) of paragraph (1)(F)(i), by striking "the calendar year preceding the date this subparagraph takes effect under the Federal Deposit Insurance Reform Act of 2005" and inserting "calendar year 2008"; and

(5) in paragraph (3)(A)(iii), by striking ", except that $250,000 shall be substituted for $100,000 wherever such term appears in such paragraph".

(b) REPEAL OF EESA PROVISION.—Section 136 of the Emergency Economic Stabilization Act (Public Law 110–343; 122 Stat. 3765) is hereby repealed.

(c) AMENDMENT TO FEDERAL CREDIT UNION ACT.—Section 207(k) of the Federal Credit Union Act (12 U.S.C. 1787(k) is amended—

(1) in paragraph (3)—

(A) by striking the opening quotation mark before "$250,000";

(B) by striking ", except that $250,000 shall be substituted for $100,000 wherever such term appears in such section"; and

(C) by striking the closing quotation mark after the closing parenthesis; and

(2) in paragraph (5), by striking "$100,000" and inserting "$250,000";

SEC. 702. EXTENSION OF RESTORATION PLAN PERIOD.

Section 7(b)(3)(E)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(E)(ii)) is amended by striking "5-year period" and inserting "8-year period".

SEC. 703. BORROWING AUTHORITY.

Section 14(a) of the Federal Deposit Insurance Act (12 U.S.C. 1814(a)) is amended—

(1) by striking "$30,000,000,000" and inserting "$100,000,000,000"; and

(2) by inserting prior to the last sentence, the following new sentence: "The Corporation may request in writing to borrow, and the Secretary may

authorize and approve the borrowing of, additional amounts above $100,000,000,000 to the extent that the Board of Directors and the Secretary determine such borrowing to be necessary.".

SEC. 704. SYSTEMIC RISK SPECIAL ASSESSMENTS.

Section 13(c)(4)(G)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(ii)) is amended to read as follows:

"(ii) REPAYMENT OF LOSS.—

"(I) IN GENERAL.—The Corporation shall recover the loss to the Deposit Insurance Fund arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) from 1 or more special assessments on insured depository institutions, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the Corporation determines to be appropriate.

"(II) TREATMENT OF DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of this clause,

sections 7(c)(2) and 18(h) shall apply to depository institution holding companies as if they were insured depository institutions.

"(III) REGULATIONS.—The Corporation shall prescribe such regulations as it deems necessary to implement this clause. In prescribing such regulations, defining terms, and setting the appropriate assessment rate or rates, the Corporation shall consider: the types of entities that benefit from any action taken or assistance provided under this subparagraph; economic conditions; the effects on the industry; and such other factors as the Corporation deems appropriate.".