

Preston Robert Tisch Center for Hospitality,
Tourism, and Sports Management
School of Continuing and
Professional Studies
New York University

Briefing and Commentary
on the
Emergency Economic
Stabilization Act of 2008

Thursday, November 6, 2008
11:00 am EST



Agenda

- Welcome and Introduction
 - Lalia Rach, Ed.D., Divisional Dean
- Briefing on the Emergency Economic Stabilization Act of 2008
 - Bjorn Hanson, Ph.D., Clinical Associate Professor
- Comments by
 - Donna Quadri-Felitti, Clinical Assistant Professor
 - Fred Mayo, Ph.D., Clinical Professor
- Next steps
 - Additional Information and Resources



Welcome by Lalia Rach, Ed.D., Divisional Dean



Briefing on the
Emergency Economic Stabilization Act of 2008
Bjorn Hanson, Ph.D., Clinical Associate Professor



Emergency Stabilization Act of 2008

- October 1, Senate passed 74 to 25
- October 3, House passed 263 to 171
- October 3, President signed



Structure of the Act

- Division A – Emergency Economic Stabilization
 - 43 pages
 - Short title and table of contents
 - Purposes
 - Definition
 - Title 1: Troubled Asset Relief Program
 - Title 2: Budget Related Items
 - Title 3: Tax Provisions



Structure of the Act – 2

- Division B – Energy Improvement and Extension Act
- Division C – Tax Extenders and Alternative Minimum Tax Relief



Purpose

- The Act's purposes include providing the Secretary of the Treasury (the "Secretary") authority to restore liquidity and stability to the financial system and to ensure that the authority is used in a way to protect home values and savings, promote job growth and homeownership, maximize returns to taxpayers, and provide public accountability for its exercise.



Selected Definitions

- Financial institution:
 - “...any bank, savings association, credit union, security broker or dealer, or insurance company regulated under the laws of the United States...excluding any...institution owned by, a foreign government.”



Selected Definitions - 2

- Troubled assets:
 - “...residential or commercial mortgages and securities, obligations, or other instruments that are based on or related to such mortgages... originated or issued on or before March 14, 2008...”
 - “...any other financial instrument that the Secretary...determines...is necessary to promote financial market stability.”
 - TARP – troubled asset relief program



Key Provisions of the Act

- **Section 101 – Purchases of Troubled Assets**
 - Authorizes the Treasury Secretary to purchase assets on terms and conditions determined by the Secretary
 - Explains no Act policies or procedures are to delay commencement
 - Requires the Treasury Secretary to consult with:
 - Comptroller of the Currency
 - Director of the Office of Thrift Supervision
 - Chairman of the National Credit Union Administration Board
 - Secretary of Housing and Urban Development
 - Requires the Treasury Secretary to establish, within two (2) days of first asset purchase
 - Criteria to identify assets
 - Purchase mechanisms
 - Pricing methods



Key Provisions – 2

- **Section 102 – Insurance of Troubled Assets**
 - Requires a program to guarantee troubled assets
 - Requires collection of premiums from participating financial institutions to fund anticipated claims; rates can vary based on category of risk
- **Section 103 – Considerations**
 - Requires considerations:
 - Taxpayer protection
 - Market stability
 - Presentation of home ownership
 - Long term viability of financial institutions
 - Institutions serving low and middle income populations



Key Provisions – 3

- **Section 104 – Financial Stability Oversight Board (FSOB)**
 - Establishes FSOB to review and make recommendations to the Treasury Secretary:
 - Treasury Secretary
 - Chairman of the Board of Governors of the Federal Reserve
 - Director of the Federal Housing Finance Agency
 - Chairman of the Securities and Exchange Commission
 - Requires a monthly meeting and quarterly reports to Congress



Key Provisions – 4

- **Section 105 – Reports**

- Requires Treasury Secretary to issue monthly reports to Congress
- Pricing, obligations, expenditures
- Current state of market
- Recommendations

- **Section 106 – Rights; Management; Sale of Troubled Assets; Revenues and Sale Proceeds**

- Requires that proceeds from sales of troubled assets be paid to the Treasury



Key Provisions – 5

- **Section 107 – Contracting Procedures**
 - Waives Federal Acquisition Regulations
 - Requires minority and women-owned business access
- **Section 108 – Conflicts of Interest**
 - Requires guidelines “...as soon as practicable...”
- **Section 109 – Foreclosure Mitigation Efforts**
 - Requires a plan to maximize homeowner assistance
 - Requires consent to reasonable current loan modification requests



Key Provisions – 6

- **Section 110 – Assistance to Homeowners**
 - Requires that foreclosures be minimized
 - Encourages interest rate reductions and reductions of principal
 - Requires monthly reports to Congress
- **Section 111 – Executive Compensation and Corporate Governance**
 - Requires direct purchase
 - Treasury Secretary will establish compensation for executives while assets are held
 - Treasury Secretary will establish corporate governance while assets are held
 - Recovery of bonuses for inaccurate statements



Key Provisions – 7

- **Section 112 – Coordination with Foreign Authorities and Central Banks**
 - Requires coordination with foreign authorities
- **Section 113 – Minimization of Long-Term Costs and Maximization of Benefits for Taxpayers**
 - Requires purchase at lowest prices consistent with the Act
 - Requires security-asset or warrants where appropriate
- **Section 114 – Market Transparency**
 - Requires “electronic” public reporting of description, amount, pricing of assets within two (2) business days of the purchases.



Key Provisions – 8

- **Section 115 – Graduated Authorization to Purchase**
 - Authorizes \$700 billion
 - Immediate \$250 billion
 - Additional funding allocated when President certification to Congress
 - Joint resolution of Congress in 15 days to disapprove Presidential certification
- **Section 116 – Oversight and Audits**
 - Requires Comptroller General to report to Congress every 60 days
 - Requires use of GAAP accounting
- **Section 117 – Study and Report on Margin Authority**
 - Requires Comptroller General to report to Congress by June 1, 2009 evaluating leveraging and deleveraging as a factor in the financial crisis



Key Provisions – 9

- **Section 118 – Funding**
 - Provides appropriations for Section 115
- **Section 119 – Judicial Review**
 - Establishes “arbitrary and capricious standard”
 - Limits injunctions and equitable relief to constitutional laws
 - Excludes actions by divestors
 - Protects rights of homeowners



Key Provisions – 10

- **Section 120 – Termination of Authority**
 - Establishes expiration of authority to purchase and guarantee assets of December 31, 2009
 - Anticipates extension to 2010 upon Treasury Secretary certification to Congress, to include justification and cost.
- **Section 121 – Special Inspector General for the Troubled Asset Relief Program**
 - Establishes Office of Special Inspector General
 - Requires quarterly reports to Congress



Key Provisions – 11

- **Section 122 – Increase in Statutory Limit on the Public Debt**
 - Increases debt ceiling from \$10 trillion to \$11.3 trillion (“\$11,315,000,000,000”)
- **Section 123 – Credit Reform**
 - Defines that the cost of the program will be scored based on “subsidy,” to disbursements – discount rates to reflect marketable risks
- **Section 124 – Hope for Homeowners Amendments**
 - Enhances National Housing Act program eligibility and ways to prevent foreclosures.



Key Provisions – 12

- **Section 125 – Congressional Oversight Panel**
 - Establishes the Congressional Oversight Panel
 - Defines membership – five members to be appointed by House and Senate Minority and Majority leaders
 - Requires monthly report
 - Requires report on regulatory reform by January 20, 2009
- **Section 126 – FDIC Authority**
 - Creates new authority to pursue false indications of FDIC coverage – surprising this does not exist (requested by FDIC)



Key Provisions – 13

- **Section 127 – Cooperation with the FBI**
 - Requires cooperation with the Federal Bureau of Investigation and other law enforcement agencies
- **Section 128 – Acceleration of Effective Date**
 - Accelerates funding for interest on reserves in the Financial Services Regulatory Relief Act
- **Section 129 – Disclosures on Exercise of Loan Authority**
 - Requires Federal Reserve to report to Congress on Federal Reserve Act emergency lending
- **Section 130 – Technical Corrections**
 - Provides technical corrections to Truth in Lending Act



Key Provisions – 14

- **Section 131 – Exchange Stabilization Fund Reimbursement**
 - Requires limits on use and reimbursement to the Exchange Stabilization
 - Fund for programs for the money market mutual fund industry
- **Section 132 – Authority to Suspend Mark-to-Market Accounting**
 - Authorizes SEC to suspend FASB 157 if the SEC determines this to be in the public interest
- **Section 133 – Study on Mark-to-Market Accounting**
 - Requires SEC to study effects of FASB 157 and report to Congress within 60 days of the enactment of the Act



Key Provisions – 15

- **Section 134 – Recoupment**
 - Requires report to Congress from the Office of Management and Budget about the cost of the Act within five years
 - Requires a Presidential proposal to Congress from the President about recovering the costs of the Act so there is no increase in the deficit or national debt
- **Section 135 – Preservation of Authority**
 - Establishes that the Act does not limit the Treasury Secretary's regular authority



Key Provisions – 16

- **Section 136 – Temporary Increase in Deposit and Share Insurance Coverage**
 - Increases coverage from \$100,000 to \$250,000 only until December 31, 2009
 - Defines that because the increase is temporary, “assessments” premiums will not be changed
- **Section 201 – Information for Congressional Support Agencies**
 - Requires that all information related to activities authorized by the Act be available to the Congressional support agencies



Key Provisions – 17

- **Section 202 – Reports by the Office of Management and Budget and the Congressional Budget Office**
 - Requires the Office of Management and Budget and Congressional Budget Office to report to Congress about activities, pricing and costs authorized by the Act, and changes since the last report
- **Section 203 – Analysis in President’s Budget**
 - Requires separate analysis and budgeting for the Act



Key Provisions - 18

- **Section 204 – Emergency Treatment**
 - Defines the Act as “emergency” so there is no effect on the 2008 budget (“budget enforcement”)
- **Section 301 – Gains or Loss From Sale or Exchange of Certain Preferred Stock**
 - Restates that Freddie Mac and Fannie Mae gains or losses will be ordinary gains or losses only for financial institutions
- **Section 302 – Special Rules for Tax Treatment of Executive Compensation of Employees Participating in the Troubled Asset Relief Program**
 - Limits deductible executive compensation of employers selling assets under the Act to \$500,000 and applies “golden parachute” provisions
- **Section 303 – Extension of Exclusion of Income From Discharge of Qualified Principal Residence Indebtedness**
 - Extends “forgiveness” of debt relief for a qualified personal residence



More Developments

1. On September 30 and October 10, 2008, the SEC and FASB issued FASB 157 guidance

- Permits preparer estimates for inactive markets.
- Provides that distressed sales are not necessarily determinative of market values.

2. Government Investment in Banks

- Establishes “voluntary capital purchase program” with \$250 of the \$700 billion for preferred stock to be held by the government paying five (5) percent interest for the first five years and there nine (9) percent interest.
- Provide unlimited FDIC insurance to non-interest bearing accounts (primarily business accounts).
- Authorizes “clawbacks” to recover compensation for compensation for the CEO, CFO, and three most highly paid employees.
- Limits golden parachutes to three (3) times five (5) years average compensation.
- Establishes warrants for purchase of 15 percent of value of preferred stock in common stock.



More Developments - 2

- 3. On October 6, Treasury Secretary Paulson selected Neil Kashari to lead the Office of Financial Stability, the entity to 'implement' the Troubled Asset Relief Program (TARP).**
- 4. The solicitation for Asset Manager proposals was issued on October 6 and were due October 8.**
- 5. Simpson, Thacher & Bartlett has been engaged to advise the Treasury Secretary on investments in banks.**
- 6. Ennis Krupp & Associates has been engaged to advise on asset manager selection.**
- 7. PricewaterhouseCoopers has been engaged to recommend accounting practices.**



Observations

1. The Act is unusual with the number of policies and procedures “to be defined”.
2. The Act is unusual with the authority granted to an individual, the Treasury Secretary.
3. There are seven forms of “oversight”.
 1. Consultation (Section 101)
 2. Financial Stability Oversight Board (Section 104)
 3. Comptroller General (Sections 116 and 117)
 4. Special Inspector General for the Troubled Asset Relief Program (Section 121)
 5. Congressional Oversight Board (Section 125)
 6. Certifications and Reports to Congress (Sections 104, 105, 110, 115, 120, 121, 129, 134, 201, 202)
 7. Certifications and analysis by the President (Sections 115, 134, 203)
 8. Public Reporting (Section 114)



Observations - 2

- 4. The “bailout” has evolved from a program to purchase troubled assets, to investments in financial institutions and increased depositor guarantees**
- 5. \$700 billion = Almost 5 percent of GDP**



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Additional Information

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