



Emergency Economic Stabilization Act of 2008

Summary of Selected Provisions

*** ICBA Priority

***FDIC Insurance Increase—Immediately raises to \$250,000 the FDIC insurance limit on deposits currently insured at the \$100,000 limit through Dec. 31, 2009. The FDIC may not take the temporary higher limit into account when determining assessment rates. The FDIC is given unlimited stand-by borrowing authority from the Treasury through December 31, 2009.

***GSE Preferred Stock Tax Provision—Tax code change for FDIC-insured institutions that makes losses on Fannie and Freddie preferred stock "ordinary" losses vs. "capital" losses. For example, this could convert a 100% write-down into a 59% net-of-tax write-down (35% federal income tax rate and average 6% state tax rate). Applies to Fannie and Freddie Preferred stock held on September 6, 2008, and to sales or exchanges occurring after December 31, 2007, in taxable years ending after such date.

Troubled Asset Purchase Program (TARP)—Creates a \$700 billion program within the Treasury Department to purchase troubled assets from any financial institution through December 31, 2009. Troubled assets include residential and commercial mortgages, and securities based on such mortgages, originated or issued on or before March 14, 2008. To promote financial market stability, Treasury may include other financial instruments in the program.

***Access to the TARP—Treasury is to ensure that all financial institutions are eligible to participate in TARP, without discrimination as to size, or number or size of troubled assets. Treasury is to take into consideration providing capital assistance to banks and thrifts with less than \$1 billion in assets whose capital category dropped as a result of the devaluation of GSE preferred stock (if bank at least adequately capitalized on the date of the GSE conservatorship).

Pricing for Asset Purchases—Treasury shall make purchases at the lowest cost consistent with market stability and it should use market mechanisms. For direct purchases, the price must be reasonable and reflect the underlying value of the asset. Purchases and prices must be disclosed within two days.

Limits on Executive Compensation—When Treasury directly purchases troubled assets from a financial institution (or auction purchases exceeding \$300 million), Treasury shall require the financial institution to meet appropriate standards for executive compensation and corporate governance, for example, regarding bonuses and golden parachutes.

Equity Warrants—In order to cover losses and administrative costs, and allow taxpayers to share in equity appreciation, requires the Treasury receive warrants for non-voting common or preferred shares in participating financial institutions. Stakes are not required in institutions where purchases of troubled assets are less than \$100 million.

Insurance of Troubled Assets—Treasury is also required to establish a guarantee program for troubled assets, including mortgage-backed securities, held by financial institutions and charge participating institutions risk-based premiums sufficient to cover anticipated claims. Premium rates would be set according to the credit risk of the particular troubled asset being guaranteed.

Foreclosure Mitigation—For mortgages and mortgage-backed securities acquired through TARP, Treasury must implement a plan to mitigate foreclosures and to encourage servicers of mortgages to modify loans through FHA Hope for Homeowners and other programs.

Homeowner Assistance—Requires federal entities that hold mortgages and mortgage-backed securities, including the Federal Housing Finance Agency, the FDIC, and the Federal Reserve to develop plans to minimize foreclosures. Requires federal entities to work with mortgage servicers to encourage loan modifications.

Graduated Authorization to Purchase—Authorizes the full \$700 billion requested by Treasury for implementation of TARP. Allows Treasury to immediately use up to \$250 billion. Upon a Presidential certification of need, Treasury may access an additional \$100 billion. The final \$350 billion may be accessed if the President requests through a written report to Congress.

Recoupment of Costs—If , after five years, the TARP experiences net losses, the President must submit a legislative proposal to Congress to recoup the shortfall from the "financial industry" (which should include hedge funds, private equity entities, insurance companies, brokers, commodity firms, credit unions, and others in addition to traditional financial institutions). The

Congress would have to enact any such legislation before any recoupment plan could be put in place.

*****Mark-to-Market Accounting**—Reiterates SEC authority to suspend mark-to-market accounting rules if necessary and appropriate for the public interest or for investors. Requires the SEC, FASB and Treasury to conduct a study within 90 days on the impact of mark-to-market accounting on bank balance sheets, on the impact of mark-to-market on bank failures in 2008, on the process the Financial Accounting Standards Board used to set the rules, and on alternatives to mark-to-market accounting.

*****Money Market Funds Guaranty Program**—Prohibits Treasury from using the Economic Stabilization Fund to establish any future MMF guaranty program. (Under guidance issued by Treasury, the current program will last at least for 90 days from September 19, 2008, but can be extended for three more 90-day periods.)

Regulatory Reform Reports—A Oversight Panel appointed by Congressional leaders will submit a report by Jan. 20, 2009 on the effectiveness of the current regulatory system in overseeing financial system participants and protecting consumers, and recommendations for improvement. The Treasury must submit a similar report and recommendations to Congress not later than April 30, 2009.

Leverage Study—The Comptroller General shall conduct a study to determine the extent to which leverage and sudden deleveraging of financial institutions was a factor behind the current financial crisis and submit a report to Congress by June 1, 2009.

*****Sterile Reserves**—Allows the Federal Reserve to pay interest to banks on "sterile reserves" beginning Oct. 1, 2008, three years earlier than previously permitted.

Major Tax "Extenders"—Includes a net of \$112 billion in tax relief largely by extending expiring tax relief provisions. These include patching the Alternative Minimum Tax (\$64 billion), extending the federal deduction for state and local sales taxes, extending the additional standard deduction for real property taxes, extending and modifying the new markets tax credit, and allowing a beneficial basis adjustment for S corporation stock for making charitable contributions.