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(Original Signature of Member)

110TH CONGRESS
2D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. HENSARLING introduced the following bill; which was referred to the Committee on _____

A BILL

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

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

SHORT TITLE.—This Act may be cited as the "Free Market Protection Act of 2008".

TITLE I—PRIVATIZATION OF GOVERNMENT-SPONSORED ENTERPRISES

SEC. 101. SHORT TITLE.

This title may be cited as the "Government-Sponsored Enterprises Free Market Reform Act of 2008".

SEC. 102. DEFINITIONS.

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

(1) CHARTER.—The term "charter" means—

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

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

(2) DIRECTOR.—The term "Director" means the Director of the Federal Housing Finance Agency

(3) ENTERPRISE.—The term "enterprise" means—

(A) the Federal National Mortgage Association; and

(B) the Federal Home Loan Mortgage Corporation.

(4) GUARANTEE.—The term "guarantee" means, with respect to an enterprise, the credit support of the enterprise that is provided by the Federal Government through its charter as a government-sponsored enterprise.

SEC. 103. TERMINATION OF CURRENT CONSERVATORSHIP.

(a) IN GENERAL.—Upon the expiration of the period referred to in subsection (b), the Director of the Federal Housing Finance Agency shall determine, with respect to

each enterprise, if the enterprise is financially viable at that time and—

(1) if the Director determines that the enterprise is financially viable, immediately take all actions necessary to terminate the conservatorship for each of the enterprises; or

(2) if the Director determines that the enterprise is not financially viable, immediately appoint the Federal Housing Finance Agency as receiver under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and carry out such receivership under the authority of such section.

(b) TIMING.—The period referred to in this subsection is, with respect to an enterprise—

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

(2) if the Director determines before the expiration of the period referred to in paragraph (1) that the financial markets would be adversely affected without the extension of such period under this paragraph with respect to that enterprise, the 30-month period beginning upon the date of the enactment of this Act.

(c) FINANCIAL VIABILITY.—The Director may not determine that an enterprise is financially viable for purposes of subsection (a) if the Director determines that any of the conditions for receivership set forth in paragraph (3) or (4) of section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)) exists at the time with respect to the enterprise.

SEC. 104. LIMITATION OF ENTERPRISE AUTHORITY UPON EMERGENCE FROM CONSERVATORSHIP.

(a) REVISED AUTHORITY.—Upon the expiration of the period referred to in section 103(b), if the Director makes the determination under section 103(a)(1), the following provisions shall take effect:

(1) PORTFOLIO LIMITATIONS.—Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended by adding at the end the following new section:

"SEC. 1369E. RESTRICTION ON MORTGAGE ASSETS OF ENTERPRISES.

"(a) RESTRICTION.—No enterprise shall own, as of any applicable date in this subsection or thereafter, mortgage assets in excess of—

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

"(2) on December 31 of each year thereafter, 80.0 percent of the aggregate amount of mortgage assets of the enterprise as of December 31 of the immediately preceding calendar year;

except that in no event shall an enterprise be required under this section to own less than $250,000,000,000 in mortgage assets.

"(b) DEFINITION OF MORTGAGE ASSETS.—For purposes of this section, the term 'mortgage assets' means, with respect to an enterprise, assets of such enterprise consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such enterprise in accordance with generally accepted accounting principles in effect in the United States as of September 7, 2008 (as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Account-

ing Standards Board from time to time; and without giving any effect to any change that may be made after September 7, 2008, in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).".

(2) INCREASE IN MINIMUM CAPITAL REQUIREMENT.—Section 1362 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4612), as amended by section 1111 of the Housing and Economic Recovery Act of 2008 (Public Law 110-289), is amended—

(A) in subsection (a), by striking "For purposes of this subtitle, the minimum capital level for each enterprise shall be" and inserting "The minimum capital level established under subsection (g) for each enterprise may not be lower than";

(B) in subsection (c)—

(i) by striking "subsections (a) and" and inserting "subsection";

(ii) by striking "regulated entities" the first place such term appears and inserting "Federal Home Loan Banks";

(iii) by striking "for the enterprises,";

(iv) by striking ", or for both the enterprises and the banks,";

(v) by striking "the level specified in subsection (a) for the enterprises or"; and

(vi) by striking "the regulated entities operate" and inserting "such banks operate";

(C) in subsection (d)(1)—

(i) by striking "subsections (a) and" and inserting "subsection"; and

(ii) by striking "regulated entity" each place such term appears and inserting "Federal home loan bank";

(D) in subsection (e), by striking "regulated entity" each place such term appears and inserting "Federal home loan bank";

(E) in subsection (f)—

(i) by striking "the amount of core capital maintained by the enterprises,"; and

(ii) by striking "regulated entities" and inserting "banks"; and

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

"(g) ESTABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.—

"(1) IN GENERAL.—The Director shall cause the enterprises to achieve and maintain adequate capital by establishing minimum levels of capital for such the enterprises and by using such other methods as the Director deems appropriate.

"(2) AUTHORITY.— The Director shall have the authority to establish such minimum level of capital for an enterprise in excess of the level specified under subsection (a) as the Director, in the Director's discretion, deems to be necessary or appropriate in light of the particular circumstances of the enterprise.

"(h) FAILURE TO MAINTAIN REVISED MINIMUM CAPITAL LEVELS.—

"(1) UNSAFE AND UNSOUND PRACTICE OR CONDITION.—Failure of a enterprise to maintain capital at or above its minimum level as established pursuant to subsection (c) of this section may be deemed by the Director, in his discretion, to constitute an unsafe and unsound practice or condition within the meaning of this title.

"(2) DIRECTIVE TO ACHIEVE CAPITAL LEVEL.—

"(A) AUTHORITY.—In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Director may issue a directive to an enterprise that fails to maintain capital at or above its required level as established pursuant to subsection (c) of this section.

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

"(C) ENFORCEMENT.—Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of subtitle C of this title to the same extent as an effective and outstanding order issued pursuant to subtitle C of this title which has become final.

"(3) ADHERENCE TO PLAN.—

"(A) CONSIDERATION.—The Director may consider such enterprise's progress in adhering to any plan required under this subsection whenever such enterprise seeks the requisite approval of the Director for any proposal which

would divert earnings, diminish capital, or otherwise impede such enterprise's progress in achieving its minimum capital level.

"(B) DENIAL.—The Director may deny such approval where it determines that such proposal would adversely affect the ability of the enterprise to comply with such plan.".".

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

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

(B) REPEAL OF GENERAL LIMIT AND PERMANENT HIGH-COST AREA INCREASE.—Paragraph (2) of section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and paragraph (2) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) are each amended to read as such sections were in effect immediately before the enactment of the Housing and Economic Recovery Act of 2008 (Public Law 110–289).

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

(D) REPEAL.—Section 1124 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) is hereby repealed.

(E) ESTABLISHMENT OF CONFORMING LOAN LIMIT.—For the year in which the expiration of the period referred to in section 103(b) of this title occurs, the limitations governing the maximum original principal obligation of conventional mortgages that may be purchased by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, referred to in section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), respectively, shall be considered to be—

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

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

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

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

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

(F) PROHIBITION OF PURCHASE OF MORTGAGES EXCEEDING MEDIAN AREA HOME PRICE.—

(i) FANNIE MAE.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this title, the corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.".

(ii) FREDDIE MAC.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this title, the Corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.".

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

(A) FANNIE MAE.—Paragraph (2) of section 309(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(c)(2)) is amended—

(i) by striking "shall be exempt from" and inserting "shall be subject to"; and

(ii) by striking "except that any" and inserting "and any".

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

(i) by striking "shall be exempt from" and inserting "shall be subject to"; and

(ii) by striking "except that any" and inserting "and any".

(5) REPEALS RELATING TO REGISTRATION OF SECURITIES.—

(A) FANNIE MAE.—

(i) MORTGAGE-BACKED SECURITIES.—Section 304(d) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(d)) is amended by striking the fourth sentence.

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

(B) FREDDIE MAC.—Section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455) is amended by striking subsection (g).

(6) RECOUPMENT OF COSTS FOR FEDERAL GUARANTEE.—

(A) ASSESSMENTS.—The Director of the Federal Housing Finance Agency shall establish

and collect from each enterprise assessments in the amount determined under subparagraph (B). In determining the method and timing for making such assessments, the Director shall take into consideration the determinations and conclusions of the study under subsection (b) of this section.

(B) DETERMINATION OF COSTS OF GUARANTEE.—Assessments under subparagraph (A) with respect to an enterprise shall be in such amount as the Director determines necessary to recoup to the Federal Government the full value of the benefit the enterprise receives from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprise, based upon the dollar value of such benefit in the market to such enterprise when not operating under conservatorship or receivership. To determine such amount, the Director shall establish a risk-based pricing mechanism as the Director considers appropriate, taking into consideration the determinations and conclusions of the study under subsection (b) of this section.

(C) TREATMENT OF RECOUPED AMOUNTS.—The Director shall cover into the general fund of the Treasury any amounts received from assessments made under this paragraph.

(b) GAO STUDY REGARDING RECOUPMENT OF COSTS FOR FEDERAL GOVERNMENT GUARANTEE.—The Comptroller General of the United States shall conduct a study to determine a risk-based pricing mechanism to accurately determine the value of the benefit the enterprises receive from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprises. Such study shall establish a dollar value of such benefit in the market to each enterprise when not operating under conservatorship or receivership, shall analyze various methods of the Federal Government assessing a charge for such value received (including methods involving an annual fee or a fee for each mortgage purchased or securitized), and shall make a recommendation of the best such method for assessing such charge. Not later than 12 months after the date of the enactment of this Act, the Comptroller General shall submit to the Congress a report setting forth the determinations and conclusions of such study.

SEC. 105. REQUIREMENT TO PERIODICALLY RENEW CHARTER UNTIL WIND DOWN AND DISSOLUTION.

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

(b) RENEWAL PROCEDURE.—

(1) APPLICATION; TIMING.—The Director shall provide for each enterprise to apply to the Director, before the expiration of the 3-year period under subsection (a), for renewal of the charter of the enterprise.

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

(A) the application includes a certification by the enterprise that the enterprise is financially sound and is complying with all provisions of, and amendments made by, section 104 of this title applicable to such enterprise; and

(B) the Director verifies that the certification made pursuant to subparagraph (A) is accurate.

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

SEC. 106. REQUIRED WIND DOWN OF OPERATIONS AND DISSOLUTION OF ENTERPRISE.

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

(1) upon the expiration of the 3-year period referred to in such section 105(a), to the extent provided in such section; and

(2) if this section has not previously applied to the enterprise, upon the expiration of the 6-year period that begins upon the expiration of the period referred to in section 103(b).

(b) WIND DOWN.—Upon the applicability of this section to an enterprise, the Director and the Secretary of the Treasury shall jointly take such action, and may prescribe such regulations and procedures, as may be necessary to wind down the operations of an enterprise as an entity chartered by the United States Government over the duration of the 10-year period beginning upon the applicability of this section to the enterprise (pursuant to subsection (a)) in an orderly manner consistent with this title and the ongoing obligations of the enterprise.

(c) DIVISION OF ASSETS AND LIABILITIES; AUTHORITY TO ESTABLISH HOLDING CORPORATION AND DISSOLUTION TRUST FUND.—The action and procedures required under subsection (b)—

(1) shall include the establishment and execution of plans to provide for an equitable division and distribution of assets and liabilities of the enterprise, including any liability of the enterprise to the United States Government or a Federal reserve bank that may continue after the end of the period described in subsection(b); and

(2) may provide for establishment of—

(A) a holding corporation organized under the laws of any State of the United States or the District of Columbia for the purposes of the reorganization and restructuring of the enterprise; and

(B) one or more trusts to which to transfer—

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

(ii) remaining mortgages held for the purpose of backing mortgage-backed secu-

rities, for the benefit of holders of such remaining securities.

(d) REPEAL OF CHARTER.—Effective upon the expiration of the 10-year period referred to in subsection (b) for an enterprise, the charter for the enterprise is repealed, except that the provisions of such charter in effect immediately before such repeal shall continue to apply with respect to the rights and obligations of any holders of outstanding debt obligations and mortgage-backed securities of the enterprise.

TITLE II—PRICE STABILITY

SEC. 201. SHORT TITLE.

This title may be cited as the "Price Stability Act of 2008".

SEC. 202. FINDINGS; STATEMENT OF POLICY.

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

(1) Price stability is a prerequisite for sustainable long-term economic growth, job creation, and moderate interest rates.

(2) Inflation erodes the value of Americans' income and savings.

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

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

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

(6) The multiple policy goals of the Full Employment and Balanced Growth Act of 1978 cause confusion and ambiguity about the appropriate role and aims of monetary policy, which can add to volatility in economic activity and financial markets.

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

(8) An explicit price stability goal would promote transparency, accountability and credibility in monetary policy.

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

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

(1) the principal economic responsibilities of the Government are to establish and ensure an environment that is conducive to both long-term economic growth and increases in living standards, by establishing and maintaining free markets, low taxes, respect for private property, and the stable, long-term purchasing power of the United States currency; and

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

SEC. 203. MONETARY POLICY.

(a) AMENDMENT TO THE FEDERAL RESERVE ACT.—Section 2A of the Federal Reserve Act (12 U.S.C. 225a) is amended to read as follows:

"SEC. 2A. MONETARY POLICY.

"(a) PRICE STABILITY.—The Board and the Federal Open Market Committee (hereafter in this section referred to as the 'Committee') shall—

"(1) establish an explicit numerical definition of the term 'price stability'; and

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

"(b) MARKET STABILITY AND LIQUIDITY.—Subsection (a) shall not be construed as a limitation on the authority or responsibility of the Board—

"(1) to provide liquidity to markets in the event of a disruption that threatens the smooth functioning and stability of the financial sector; or

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

"(c) CONGRESSIONAL CONSULTATION.—Not later than February 20 and July 20 of each year, the Board shall consult with the Congress at semiannual hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, about the objectives and plans of the Board and the Committee with respect to achieving and maintaining price stability.

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

"(1) numerical measures to help assess the extent to which the Board and the Committee are achieving and maintaining price stability in accordance with subsection (a);

"(2) a description of the intermediate variables used by the Board to gauge the prospects for achieving the objective of price stability; and

"(3) the definition, or any modifications thereto, of the term 'price stability' established in accordance with subsection (a)(1).".

(b) COMPLIANCE ESTIMATE.—Concurrent with the first semiannual hearing required by section 2A(b) of the Federal Reserve Act (as amended by subsection (a) of this section) following the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall submit to the Congress a written estimate of the length of time it will take for the Board and the Federal Open Market Committee to fully achieve price stability. The Board and the Committee shall take into account any potential short-term effects on employment and output in complying with the goal of price stability.

SEC. 204. REPEAL OF OBSOLETE PROVISIONS.

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

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

(1) in section 3 (15 U.S.C. 1022)—

(A) in the section heading, by striking "**AND SHORT-TERM ECONOMIC GOALS AND POLICIES**";

(B) by striking "(a)"; and

(C) by striking "in accord with section 11(c) of this Act" and all that follows through the end of the section and inserting "in accordance with section 5(c).";

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

(3) in section 10 (15 U.S.C. 1023)—

(A) in subsection (a), by striking "in the light of the policy declared in section 2";

(B) in subsection (e)(1), by striking "section 9" and inserting "section 3"; and

(C) in the matter immediately following paragraph (2) of subsection (e), by striking "and the Full Employment and Balanced Growth Act of 1978";

(4) by striking section 2;

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

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

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

(1) in section 301—

(A) in subsection (b), by striking paragraph (1) and redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively;

(B) in subsection (d), in the second sentence, by striking "the fiscal policy" and all that follows through the end of the sentence and inserting "fiscal policy.";

(C) in subsection (e)(1), in the second sentence, by striking "as to short-term and medium-term goals"; and

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

"(f) Repealed"; and

(2) in section 305—

(A) in subsection (a)(3), by inserting before the period at the end ", as described in section 2 of the Price Stability Act of 2008";

(B) in subsection (a)(4)—

(i) by striking "House sets forth the economic goals" and all that follows through "designed to achieve," and inserting "House of Representatives sets forth the economic goals and policies, as de-

scribed in section 2 of the Price Stability Act of 2008,"; and

(ii) by striking "such goals," and all that follows through the end of the paragraph and inserting "such goals and policies.";

(C) in subsection (b)(3), by inserting before the period at the end ", as described in section 2 of the Price Stability Act of 2008"; and

(D) in subsection (b)(4)—

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

(ii) by striking "such goals," and all that follows through the end of the paragraph and inserting "such goals and policies.".

TITLE III—TAX PROVISIONS

SEC. 301. TEMPORARY ZERO PERCENT CAPITAL GAINS RATE FOR INDIVIDUALS AND CORPORATIONS.

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

"PART VIII—TEMPORARY ZERO PERCENT CAPITAL GAINS RATE FOR INDIVIDUALS AND CORPORATIONS

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

"SEC. 59B. TEMPORARY ZERO PERCENT CAPITAL GAINS RATE FOR INDIVIDUALS AND CORPORATIONS.

"(a) APPLICATION TO INDIVIDUALS.—In the case of a specified recognition event occurring on or after September 22, 2008, and on or before December 31, 2010—

"(1) IN GENERAL.—Section 1(h)(1) shall be applied by substituting 'shall not exceed a tax computed at the rates and in the same manner as if this subsection had not been enacted on taxable income reduced by the net capital gain.' for 'shall not exceed' and all that follows.

"(2) ALTERNATIVE MINIMUM TAX.—Section 55(b)(3) shall be applied by substituting 'shall not

exceed the amount determined under such first sentence computed at the rates and in the same manner as if this paragraph had not been enacted on the taxable excess reduced by the net capital gain.' for 'shall not exceed' and all that follows through the end of the first sentence.

"(b) APPLICATION TO CORPORATIONS.—In the case of a specified recognition event occurring on or after September 22, 2008, and on or before December 31, 2010—

"(1) IN GENERAL.—Section 1201 shall be applied—

"(A) by substituting '0 percent' for '35 percent' both places it appears, and

"(B) by treating 'net capital gain' as having the meaning given such term by section 1(h)(11).

"(2) ALTERNATIVE MINIMUM TAX.—For purposes of section 55, the amount determined under subsection (b)(1)(B)(i) of such section shall not exceed the sum of—

"(A) the amount determined under such subsection computed at the rates and in the same manner as if this paragraph had not been enacted on the taxable excess reduced by the

net capital gain (as defined in section 1(h)(11)), plus

"(B) the amount determined under section 1201.

"(c) TECHNICAL PROVISIONS.—In the case of a specified recognition event occurring on or after September 22, 2008, and on or before December 31, 2010—

"(1) Section 1445(e)(1) shall be applied by substituting '0 percent' for '35 percent (or, to the extent provided in regulations, 15 percent)'.

"(2) Section 1445(e)(2) shall be applied by substituting '0 percent' for '35 percent'.

"(3) Section 7518(g)(6)(A) shall be applied by substituting '0 percent' for '15 percent (34 percent in the case of a corporation)'.

"(4) Section 607(h)(6)(A) of the Merchant Marine Act, 1936 shall be applied by substituting '0 percent' for '15 percent (34 percent in the case of a corporation)'.

"(d) SPECIFIED RECOGNITION EVENT.—For purposes of this section, the term 'specified recognition event' means—

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

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

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

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

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

(c) EFFECTIVE DATE.—

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

(2) WITHHOLDING.—Paragraphs (1) and (2) of section 59B(c) of the Internal Revenue Code of 1986, as added by this section, shall apply to dispositions and distributions after such date.

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

(a) IN GENERAL.—Part II of subchapter O of chapter 1 (relating to basis rules of general application) is

amended by redesignating section 1023 as section 1024 and by inserting after section 1022 the following new section:

"SEC. 1023. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

"(a) GENERAL RULE.—

"(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS.—Solely for purposes of determining gain or loss on the sale or other disposition by a taxpayer (other than a corporation) of an indexed asset which has been held for more than 3 years, the indexed basis of the asset shall be substituted for its adjusted basis.

"(2) EXCEPTION FOR DEPRECIATION, ETC.—The deductions for depreciation, depletion, and amortization shall be determined without regard to the application of paragraph (1) to the taxpayer or any other person.

"(3) WRITTEN DOCUMENTATION REQUIREMENT.—Paragraph (1) shall apply only with respect to indexed assets for which the taxpayer has written documentation of the original purchase price paid or incurred by the taxpayer to acquire such asset.

"(b) INDEXED ASSET.—

"(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

"(A) common stock in a C corporation (other than a foreign corporation), or

"(B) tangible property,

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

"(2) STOCK IN CERTAIN FOREIGN CORPORATIONS INCLUDED.—For purposes of this section—

"(A) IN GENERAL.—The term 'indexed asset' includes common stock in a foreign corporation which is regularly traded on an established securities market.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to—

"(i) stock of a foreign investment company,

"(ii) stock in a passive foreign investment company (as defined in section 1296),

"(iii) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2), and

"(iv) stock in a foreign personal holding company.

"(C) TREATMENT OF AMERICAN DEPOSITORY RECEIPTS.—An American depository receipt for common stock in a foreign corporation shall be treated as common stock in such corporation.

"(c) INDEXED BASIS.—For purposes of this section—

"(1) GENERAL RULE.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, increased by

"(B) the applicable inflation adjustment.

"(2) APPLICABLE INFLATION ADJUSTMENT.—The applicable inflation adjustment for any asset is an amount equal to—

"(A) the adjusted basis of the asset, multiplied by

"(B) the percentage (if any) by which—

"(i) the gross domestic product deflator for the last calendar quarter ending before the asset is disposed of, exceeds

"(ii) the gross domestic product deflator for the last calendar quarter end-

ing before the asset was acquired by the taxpayer.

The percentage under subparagraph (B) shall be rounded to the nearest 1/10 of 1 percentage point.

"(3) GROSS DOMESTIC PRODUCT DEFLATOR.—The gross domestic product deflator for any calendar quarter is the implicit price deflator for the gross domestic product for such quarter (as shown in the last revision thereof released by the Secretary of Commerce before the close of the following calendar quarter).

"(d) SUSPENSION OF HOLDING PERIOD WHERE DIMINISHED RISK OF LOSS; TREATMENT OF SHORT SALES.—

"(1) IN GENERAL.—If the taxpayer (or a related person) enters into any transaction which substantially reduces the risk of loss from holding any asset, such asset shall not be treated as an indexed asset for the period of such reduced risk.

"(2) SHORT SALES.—

"(A) IN GENERAL.—In the case of a short sale of an indexed asset with a short sale period in excess of 3 years, for purposes of this title, the amount realized shall be an amount equal to the amount realized (determined without re-

gard to this paragraph) increased by the applicable inflation adjustment. In applying subsection (c)(2) for purposes of the preceding sentence, the date on which the property is sold short shall be treated as the date of acquisition and the closing date for the sale shall be treated as the date of disposition.

"(B) SHORT SALE PERIOD.—For purposes of subparagraph (A), the short sale period begins on the day that the property is sold and ends on the closing date for the sale.

"(e) TREATMENT OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

"(1) ADJUSTMENTS AT ENTITY LEVEL.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the adjustment under subsection (a) shall be allowed to any qualified investment entity (including for purposes of determining the earnings and profits of such entity).

"(B) EXCEPTION FOR CORPORATE SHAREHOLDERS.—Under regulations—

"(i) in the case of a distribution by a qualified investment entity (directly or indirectly) to a corporation—

"(I) the determination of whether such distribution is a dividend shall be made without regard to this section, and

"(II) the amount treated as gain by reason of the receipt of any capital gain dividend shall be increased by the percentage by which the entity's net capital gain for the taxable year (determined without regard to this section) exceeds the entity's net capital gain for such year determined with regard to this section, and

"(ii) there shall be other appropriate adjustments (including deemed distributions) so as to ensure that the benefits of this section are not allowed (directly or indirectly) to corporate shareholders of qualified investment entities.

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

"(C) EXCEPTION FOR QUALIFICATION PURPOSES.—This section shall not apply for purposes of sections 851(b) and 856(c).

"(D) EXCEPTION FOR CERTAIN TAXES IMPOSED AT ENTITY LEVEL.—

"(i) TAX ON FAILURE TO DISTRIBUTE ENTIRE GAIN.—If any amount is subject to tax under section 852(b)(3)(A) for any taxable year, the amount on which tax is imposed under such section shall be increased by the percentage determined under subparagraph (B)(i)(II). A similar rule shall apply in the case of any amount subject to tax under paragraph (2) or (3) of section 857(b) to the extent attributable to the excess of the net capital gain over the deduction for dividends paid determined with reference to capital gain dividends only. The first sentence of this clause shall not apply to so much of the amount subject to tax under section 852(b)(3)(A) as is designated by the company under section 852(b)(3)(D).

"(ii) OTHER TAXES.—This section shall not apply for purposes of determining

the amount of any tax imposed by paragraph (4), (5), or (6) of section 857(b).

"(2) ADJUSTMENTS TO INTERESTS HELD IN ENTITY.—

"(A) REGULATED INVESTMENT COMPANIES.—Stock in a regulated investment company (within the meaning of section 851) shall be an indexed asset for any calendar quarter in the same ratio as—

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

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

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

"(i) the fair market value of the indexed assets held by such trust at the close of such quarter, bears to

"(ii) the fair market value of all assets held by such trust at the close of such quarter.

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

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

"(E) LOOK-THRU OF PARTNERSHIPS.—For purposes of this paragraph, a qualified investment entity which holds a partnership interest shall be treated (in lieu of holding a partnership interest) as holding its proportionate share of the assets held by the partnership.

"(3) TREATMENT OF RETURN OF CAPITAL DISTRIBUTIONS.—Except as otherwise provided by the Secretary, a distribution with respect to stock in a qualified investment entity which is not a dividend and which results in a reduction in the adjusted basis of such stock shall be treated as allocable to

stock acquired by the taxpayer in the order in which such stock was acquired.

"(4) QUALIFIED INVESTMENT ENTITY.—For purposes of this subsection, the term 'qualified investment entity' means—

"(A) a regulated investment company (within the meaning of section 851), and

"(B) a real estate investment trust (within the meaning of section 856).

"(f) OTHER PASS-THRU ENTITIES.—

"(1) PARTNERSHIPS.—

"(A) IN GENERAL.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners.

"(B) SPECIAL RULE IN THE CASE OF SECTION 754 ELECTIONS.—In the case of a transfer of an interest in a partnership with respect to which the election provided in section 754 is in effect—

"(i) the adjustment under section 743(b)(1) shall, with respect to the transferor partner, be treated as a sale of the partnership assets for purposes of applying this section, and

"(ii) with respect to the transferee partner, the partnership's holding period for purposes of this section in such assets shall be treated as beginning on the date of such adjustment.

"(2) S CORPORATIONS.—In the case of an S corporation, the adjustment made under subsection (a) at the corporate level shall be passed through to the shareholders. This section shall not apply for purposes of determining the amount of any tax imposed by section 1374 or 1375.

"(3) COMMON TRUST FUNDS.—In the case of a common trust fund, the adjustment made under subsection (a) at the trust level shall be passed through to the participants.

"(4) INDEXING ADJUSTMENT DISREGARDED IN DETERMINING LOSS ON SALE OF INTEREST IN ENTITY.—Notwithstanding the preceding provisions of this subsection, for purposes of determining the amount of any loss on a sale or exchange of an interest in a partnership, S corporation, or common trust fund, the adjustment made under subsection (a) shall not be taken into account in determining the adjusted basis of such interest.

"(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

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

"(2) RELATED PERSONS DEFINED.—For purposes of this section, the term 'related persons' means—

"(A) persons bearing a relationship set forth in section 267(b), and

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

"(h) TRANSFERS TO INCREASE INDEXING ADJUSTMENT.—If any person transfers cash, debt, or any other property to another person and the principal purpose of such transfer is to secure or increase an adjustment under subsection (a), the Secretary may disallow part or all of such adjustment or increase.

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

"(1) TREATMENT OF IMPROVEMENTS, ETC.—If there is an addition to the adjusted basis of any tangible property or of any stock in a corporation during the taxable year by reason of an improvement to such property or a contribution to capital of such corporation—

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

"(B) such addition shall be treated as a separate asset acquired at the close of such taxable year if the aggregate amount thereof during the taxable year with respect to such property or stock is $1,000 or more.

A rule similar to the rule of the preceding sentence shall apply to any other portion of an asset to the extent that separate treatment of such portion is appropriate to carry out the purposes of this section.

"(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—The applicable inflation adjustment shall be appropriately reduced for periods during which the asset was not an indexed asset.

"(3) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a corporation which is not a dividend shall be treated as a disposition.

"(4) SECTION CANNOT INCREASE ORDINARY LOSS.—To the extent that (but for this paragraph)

this section would create or increase a net ordinary loss to which section 1231(a)(2) applies or an ordinary loss to which any other provision of this title applies, such provision shall not apply. The taxpayer shall be treated as having a long-term capital loss in an amount equal to the amount of the ordinary loss to which the preceding sentence applies.

"(5) ACQUISITION DATE WHERE THERE HAS BEEN PRIOR APPLICATION OF SUBSECTION (a)(1) WITH RESPECT TO THE TAXPAYER.—If there has been a prior application of subsection (a)(1) to an asset while such asset was held by the taxpayer, the date of acquisition of such asset by the taxpayer shall be treated as not earlier than the date of the most recent such prior application.

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

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

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

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

TITLE IV—FAIR VALUE ACCOUNTING REFORM ACT

Sec. 401. Findings and Purpose. –

(a) Findings. – The Congress finds that –

(1) For many purposes, fair value accounting requirements can inform and protect investors;

(2) In periods of market turmoil when there is an inactive market, fair value accounting requirements can force financial institutions to write down the value of a long term, non-trading asset below its true economic value even though the cash flow on the asset remains unimpaired and other indicia of value of the asset reflect value consistent with the cash flow; and

(3) The application of fair value accounting requirements on assets for which there is an inactive market has the unintended effect of exacerbating economic downturns by reducing the ability of financial institutions to provide credit to consumers and businesses.

(b) Purpose. – The purpose of this Act is to:

(1) maintain the ability of all financial institutions to provide credit in periods of market stress;

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

(3) continue to provide transparency to investors.

Sec. 402. Definitions

For purposes of this legislation, "long term, non-trading assets" are defined as all instances in which fair value measurement is required under US Generally Accepted Accounting Principles for which the company is not actively trading and for which the company has the ability to hold those financial instruments for an extended period of time.

Sec. 403. Temporary Suspension of Fair Value Accounting.

(a) In General. – Effective on the date of enactment of the Troubled Asset Relief Act of 2008, the Securities and Exchange Commission shall suspend the application of fair value reporting standards to troubled assets held by financial institutions, as those terms are defined in such Act. The suspension required by this subsection shall remain in effect until the issuance of the guidance required in subsection (b). Until such guidance is issued, the fair value of these assets should be estimated using the best available information of the instrument's value, including the entity's intended use of that asset, from the point of view of the holder of that instrument.

(b) Guidance. – Within 90 days of the date of enactment of this Act, the Securities and Exchange Commission shall issue guidance on the reporting requirements for long term, non-trading assets during periods in which there is no active market for such assets. Such guidance shall:

(1) define "market participants" eligible for such guidance;

(2) define an inactive market which will trigger

such guidance;

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

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

Sec. 404. GAO Analysis of Fair Value Accounting. –

(a) In General. – The General Accountability Office shall prepare an analysis of the effect of fair value accounting standards on financial institutions. Such analysis shall

(1) describe the current impact of fair value accounting on financial institutions during different economic cycles and under different market conditions, including periods in which there is an inactive market for long term, non-trading assets held by such institutions;

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

(3) describe the impact of the Securities and Exchange Commission's application of fair value accounting, as prescribed by such guidance required in Section 4 (b).

(b) Timing. – The analysis required by subsection (a) shall be completed within one year of the date of enactment of this Act, and shall be submitted to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate.

TITLE V. MORTGAGE-BACKED SECURITIES

SEC. 501. THE INSURANCE OF MORTGAGE-BACKED SECURITIES.

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

(b) NECESSARY ACTIONS.—The Secretary is authorized to take such actions as he deems necessary to carry out the authorities in this Title, including: —

(1) appointing such employees as may be required to carry out the authorities in this Title and defining their duties;

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

(3) designating financial institutions as financial agents of the Government, and they shall per-

form all such reasonable duties related to this Title as financial agents of the Government as may be required of them;

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

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

SEC. 502. CONSIDERATIONS.

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

(1) protecting the taxpayer;

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

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

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

SEC. 503. INSURANCE PREMIUMS.

(a) INSURANCE PREMIUMS.—The Secretary shall collect premiums from each financial institution, as such term is defined in section 111 of this Title, in order to fund the Morgtage-Backed Securities Fund established in section 105 and used to satisfy obligations incurred under this Title.

(b) PREMIUM COLLECTION.—The premium collected pursuant to subsection (a) shall be collected from each financial institution notwithstanding such institution's application, if any, for insures set forth in section 101(a).

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

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

(e) EXPIRATION.—The Secretary may cease collecting premiums set forth in subsection (a) if he determines the Mortgage-Backed Securities Fund has sufficient reserves to meet anticipated claims as described in subsection (d).

SEC. 504. MORTGAGE-BACKED SECURITIES FUND.

(a) COLLECTED PREMIUMS.—The Secretary shall deposit premiums collected pursuant to section 103(a) of this Title into the Mortgage-Backed Securities Fund as established in subsection (b).

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

(c) AUTHORITY.—Premiums deposited in the Fund pursuant to subsection section (a) shall be invested in obligations of the United States, or kept in cash on hand or on deposit, as necessary.

(d) PAYMENTS FROM THE FUND.—The Secretary shall make payments from amounts deposited in the Fund to fulfill the obligations of the insurance provided to financial institutions as set forth in section 101(a).

(e) FUND SUFFICIENCY.—The Secretary shall increase insurance premiums if he determines, after consultation with the Government Accountability Office, to a level sufficient to assure reserves in the Fund will meet anticipated needs.

(f) TRANSFER AUTHORITY.—The Secretary of the Treasury is authorized and directed to loan to the Fund, on such terms as may be fixed by the Secretary, such funds as in the Secretary's judgment are from time to time required for purposes of this Title.

SEC. 505. PAYMENT OF INSURANCE PREMIUMS.

(a) PAYMENT AND SUBROGATION.—If a financial institution that holds a mortgage-backed security on September 24, 2008, for which insurance is provided pursuant to this Title, is unable to make any payment of principal of or interest on such security, the Secretary shall make such payment as and when due, in cash, and upon such payment shall be subrogated fully to the rights satisfied by such payment.

(b) CONTRACT.—The Secretary is hereby authorized, in connection with any insurance under this Title, whether before or after any default, to provide by contract with the holder, referred to in subsection (a), for the extinguishment, upon default by the holder, of any redemption, equitable, legal, or other right, title, or interest of the holder in any mortgage or mortgages constituting the trust or pool against which the mortgage-backed securities insured under this Title are issued; and with respect to any issue of such insured securities, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such trust or pool backing the security shall become the absolute property of the U.S. Treasury, subject only to the unsatisfied rights of the holders of the mortgage-backed securities based on and backed by such trust or pool.

(c) LIMITATION ON APPLICATION OF LAW.—No State or local law, and no Federal law, shall preclude or limit the exercise of the Secretary's (A) power to contract with the issuer on the terms set forth in subsection (b), or (B) authorization to enforce any such contract with the holder; or (C) the rights, as provided in subsection (b), in the mortgages constituting the trust or pool against which such insured securities are issued.

(d) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any insurance under this Title.

SEC. 506. FUNDING.

For the purpose of the authorities granted in this Title, and for the costs of administering those authorities, the Secretary may use funds from the amounts in the Mortgage-Backed Securities Fund. Any funds expended from the Fund for actions authorized by this Title, including the payment of administrative expenses, shall be deemed appropriated at the time of such expenditure.

SEC. 507. JUDICIAL REVIEW AND RELATED MATTERS.

(a) JUDICIAL REVIEW.—

(1) STANDARD.—Actions by the Secretary pursuant to the authority of this Act shall be subject to chapter 7 of title 5, United States Code, including

that such final actions shall be held unlawful and set aside if found to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

(2) LIMITATIONS ON EQUITABLE RELIEF.—

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

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

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

(D) PERMANENT INJUNCTION.—Any request for a permanent injunction against the Secretary for actions pursuant to this Act shall

be considered and granted or denied by the court on an expedited basis. Whenever possible, the court shall consolidate trial on the merits with any hearing on a request for a preliminary injunction, consistent with the provisions of rule 65(a)(2) of the Federal Rules of Civil Procedure, or any successor thereto.

(3) LIMITATION ON ACTIONS BY PARTICIPATING COMPANIES.—No action or claims may be brought against the Secretary by any person that divests its assets with respect to its participation in a program under this Act, except as provided in paragraph (1), other than as expressly provided in a written contract with the Secretary.

(4) STAYS.—Any injunction or other form of equitable relief issued against the Secretary for actions pursuant to section 101, 102, 106, and 109, shall be automatically stayed. The stay shall be lifted unless the Secretary seeks a stay from a higher court within 3 calendar days after the date on which the relief is issued.

(b) RELATED MATTERS.—

(1) TREATMENT OF HOMEOWNERS' RIGHTS.—The terms of any residential mortgage loan that is part of any purchase by the Secretary under this Act

shall remain subject to all claims and defenses that would otherwise apply, notwithstanding the exercise of authority by the Secretary under this Act.

(2) SAVINGS CLAUSE.—Any exercise of the authority of the Secretary pursuant to this Act shall not impair the claims or defenses that would otherwise apply with respect to persons other than the Secretary. Except as established in any contract, a servicer of pooled residential mortgages owes any duty to determine whether the net present value of the payments on the loan, as modified, is likely to be greater than the anticipated net recovery that would result from foreclosure to all investors and holders of beneficial interests in such investment, but not to any individual or groups of investors or beneficial interest holders, and shall be deemed to act in the best interests of all such investors or holders of beneficial interests if the servicer agrees to or implements a modification or workout plan when the servicer takes reasonable loss mitigation actions, including partial payments.

SEC. 508. CREDIT REFORM .

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

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

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

(2) using the difference between the current estimate, consistent with subparagraph (b)(1) under the terms of the insured mortgage-backed security and the current estimate consistent with subparagraph (b)(1) under the terms of the insured.

SEC. 509. REPORTS TO CONGRESS.

Within 60 days of the first exercise of the authority set forth in section 101(a), and semiannually thereafter, the Secretary shall report to the Committees on the Budget, Financial Services, and Ways and Means of the House of Representatives and the Committees on the Budget, Finance, and Banking, Housing, and Urban Affairs of the Senate with respect to the authorities exercised under this Title and the considerations required by section 102.

SEC. 510. DEFINITIONS.

For purposes of this Title, the following definitions shall apply:

(1) Financial Institution.—The term "financial institution" means any institution including, but not limited to, banks, thrifts, credit unions, broker-dealers, insurance companies, and the trustees administering mortgage-backed securities trusts, having significant operations in the United States; and, upon the Secretary's determination in consultation with the Chairman of the Board of Governors of the Federal Reserve, holds or has issued applicable mortgage-backed securities;

(2) Secretary.—The term "Secretary" means the Secretary of the Treasury;

(3) Mortgage-Backed Security.—The "term mortgage-backed security" means securities, obligations, other instruments, or other securities, other than those guaranteed by the Government National Mortgage Association, as shall be based on and backed by a trust or pool composed of mortgages that in each case was originated or issued on or before September 24, 2008;

(4) United States.—The term "United States" means the States, territories, and possessions of the United States and the District of Columbia.

SEC. 511. ANNUAL REPORT AND AUDIT BY THE GOVERNMENT ACCOUNTABILITY OFFICE.

(a) ANNUAL REPORT ON THE MORTGAGE-BACKED SECURITIES FUND.—The Secretary shall annually submit to Congress a full report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include, with respect to the Mortgage-Backed Securities Fund, an analysis of—

(1) the current financial condition of such fund;

(2) the purpose, effect, and estimated cost of each resolution action taken for payment of insurance during the preceding year;

(3) the extent to which the actual costs provided to, or for the benefit of, resulting from insurance during the preceding year exceeded the estimated costs of such costs reported in a previous year, as applicable;

(4) the exposure of the Mortgage-Backed Securities Fund to changes in those economic factors most likely to affect the condition of that fund;

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

(6) an analysis of the sufficiency of the premium collections, actual and projected, in meeting the costs of the Fund.

(7) any findings, conclusions, and recommendations for legislative and administrative actions considered appropriate to future activities of the Mortgage-Backed Securities Fund.

(b) SPECIAL REPORT.—Within 45 days of the enactment of this Act, the Comptroller General shall provide to the committees of Congress referred to in subsection (d), and other relevant committes, an initial report on the Fund.

(c) ANNUAL AUDIT OF THE MORTGAGE-BACKED SECURITIES FUND.—

(1) AUDIT REQUIRED.—The Comptroller General shall audit annually the financial transactions of the Mortgage-Backed Securities Fund (the "Fund") in accordance with generally accepted government auditing standards.

(2) ACCESS TO BOOKS AND RECORDS.—All books, records, accounts, reports, files, and property belonging to or used by the Department of the Treasury that are directly related to the operations and determination as to the amounts in the Fund, or by an independent certified public accountant retained to audit the Fund's financial statements, shall be made available to the Comptroller General.

(d) REPORT OF THE AUDIT.—A report of the audit conducted under subsection (c) of this section shall be made by the Comptroller General to the Congress not later than July 15th of the year following the year covered by such audit. The report to the Congress shall set forth the scope of the audit and shall include a statement of assets and liabilities and surplus or deficit of the Fund; a statement of surplus or deficit analysis; a statement of income and expenses; a statement of sources and application of funds and such comments and information as may be deemed necessary to inform Congress, together with such recommendations with respect thereto as the Comptroller General may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary of the Treasury, and to Committee on Banking, Housing, and Urban Affairs, the Committee on the Budget, and the Committee on Finance of the Senate and the Committee on Financial Services, the Committee on the Budget, and the Committee on Ways and Means of the House of Representatives.

(e) ASSISTANCE IN AUDIT.—For the purpose of conducting such audit the Comptroller General is authorized in his discretion to employ by contract, without regard to section 5 of title 41 of the United States Code, professional services of firms and organizations of certified public accountants, with the concurrence of the Secretary, for temporary periods or for special purposes.

TITLE VI—UNLEASHING PRIVATE CAPITAL

SECTION 601. 5-YEAR CARRYBACK OF LOSSES.

(a) IN GENERAL.—Subparagraph (H) of section 172(b)(1) of the Internal Revenue Code of 1986 is amended to read as follows:

"(H) 5-YEAR CARRYBACK OF CERTAIN LOSSES.—

"(i) TAXABLE YEARS ENDING DURING 2001 AND 2002.—In the case of a net operating loss for any taxable year ending during 2001 or 2002, subparagraph (A)(i) shall be applied by substituting '5' for '2' and subparagraph (F) shall not apply.

"(ii) TAXABLE YEARS ENDING DURING 2007, 2008, AND 2009.—In the case of a net operating loss for any taxable year ending during 2007, 2008, or 2009—

"(I) subparagraph (A)(i) shall be applied by substituting '5' for '2',

"(II) subparagraph (E)(ii) shall be applied by substituting '4' for '2', and

"(III) subparagraph (F) shall not apply.".

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

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

(A) by inserting "and 2007, 2008, or 2009" after "2001 or 2002", and

(B) by inserting "and 2007, 2008, and 2009" after "2001 and 2002".

(2) CONFORMING AMENDMENT.—Subclause (I) of section 56(d)(1)(A)(i) of such Code is amended by inserting "amount of such" before "deduction described in clause (ii)(I)".

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

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (a) shall apply to net operating losses arising in taxable years ending in 2007, 2008, or 2009.

(B) ELECTION.—In the case of any taxpayer with a net operating loss for a taxable year ending during 2007 or 2008—

(i) any election made under section 172(b)(3) of the Internal Revenue Code of

1986 may not withstanding such section) be revoked before October 15, 2009, and

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

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

SEC. 602. INCENTIVES TO REINVEST FOREIGN EARNINGS IN UNITED STATES.

(a) IN GENERAL.—Section 965 of the Internal Revenue Code of 1986 is amended to read as follows:

"SEC. 965. DEDUCTION FOR DIVIDENDS RECEIVED.

"(a) DEDUCTION.—

"(1) IN GENERAL.—In the case of a corporation which is a United States shareholder and for which the election under this section is in effect for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of cash dividends which are received during such taxable year by such shareholder from controlled foreign corporations.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1)—

"(A) IN GENERAL.—Except as provided by subparagraph (B), the term 'applicable percentage' means 85 percent.

"(B) DISTRESSED DEBT.—In the case of dividends received with respect to which the requirements of subsection (b)(4)(B) are met, such term means 100 percent.

"(3) DIVIDENDS PAID INDIRECTLY FROM CONTROLLED FOREIGN CORPORATIONS.—If, within the taxable year for which the election under this section is in effect, a United States shareholder receives a cash distribution from a controlled foreign corporation which is excluded from gross income under section 959(a), such distribution shall be treated for purposes of this section as a cash dividend to the extent of any amount included in income by such United States shareholder under section 951(a)(1)(A) as a result of any cash dividend during such taxable year to—

"(A) such controlled foreign corporation from another controlled foreign corporation that is in a chain of ownership described in section 958(a), or

"(B) any other controlled foreign corporation in such chain of ownership, but only to the

extent of cash distributions described in section 959(b) which are made during such taxable year to the controlled foreign corporation from which such United States shareholder received such distribution.

"(b) LIMITATIONS.—

"(1) IN GENERAL.—The amount of dividends taken into account under subsection (a) shall not exceed the greater of—

"(A) $500,000,000,

"(B) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

"(C) in the case of an applicable financial statement which fails to show a specific amount of earnings permanently reinvested outside the United States and which shows a specific amount of tax liability attributable to such earnings, the amount equal to the amount of such liability divided by 0.35.

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

"(2) DIVIDENDS MUST BE EXTRAORDINARY.—The amount of dividends taken into account under subsection (a) shall not exceed the excess (if any) of—

"(A) the cash dividends received during the taxable year by such shareholder from controlled foreign corporations, over

"(B) the sum of—

"(i) the dividends received during the base period year by such shareholder from controlled foreign corporations,

"(ii) the amounts includible in such shareholder's gross income for the base period year under section 951(a)(1)(B) with respect to controlled foreign corporations, and

"(iii) the amounts that would have been included for the base period year but for section 959(a) with respect to controlled foreign corporations.

The amount taken into account under clause (iii) for the base period year shall not include any amount which is not includible in gross income by reason of an amount described in clause (ii) with respect to a prior taxable year.

Amounts described in subparagraph (B) for the base period year shall be such amounts as shown on the most recent return filed for such year; except that amended returns filed after June 30, 2007, shall not be taken into account.

"(3) REDUCTION OF BENEFIT IF INCREASE IN RELATED PARTY INDEBTEDNESS.—The amount of dividends which would (but for this paragraph) be taken into account under subsection (a) shall be reduced by the excess (if any) of—

"(A) the amount of indebtedness of the controlled foreign corporation to any related person (as defined in section 954(d)(3)) as of the close of the taxable year for which the election under this section is in effect, over

"(B) the amount of indebtedness of the controlled foreign corporation to any related person (as so defined) as of the close of September 26, 2008.

All controlled foreign corporations with respect to which the taxpayer is a United States shareholder shall be treated as 1 controlled foreign corporation for purposes of this paragraph. The Secretary may prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes

of this paragraph, including regulations which provide that cash dividends shall not be taken into account under subsection (a) to the extent such dividends are attributable to the direct or indirect transfer (including through the use of intervening entities or capital contributions) of cash or other property from a related person (as so defined) to a controlled foreign corporation.

"(4) REQUIREMENTS.—

"(A) REQUIREMENT TO INVEST IN UNITED STATES.—Except as provided by subparagraph (B), subsection (a) shall not apply to any dividend received by a United States shareholder unless the amount of the dividend is invested in the United States pursuant to a domestic reinvestment plan which—

"(i) is approved by the taxpayer's president, chief executive officer, or comparable official before the payment of such dividend and subsequently approved by the taxpayer's board of directors, management committee, executive committee, or similar body, and

"(ii) provides for the reinvestment of such dividend in the United States (other

than as payment for executive compensation), including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation.

"(B) DISTRESSED DEBT.—The requirements of this subparagraph are met if amounts repatriated are invested in distressed debt (as defined by the Secretary) for at least one year.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) APPLICABLE FINANCIAL STATEMENT.—The term 'applicable financial statement' means—

"(A) with respect to a United States shareholder which is required to file a financial statement with the Securities and Exchange Commission (or which is included in such a statement so filed by another person), the most recent audited annual financial statement (including the notes which form an integral part of such statement) of such shareholder (or which includes such shareholder)—

"(i) which was so filed on or before June 30, 2007, and

"(ii) which was certified on or before June 30, 2007, as being prepared in accordance with generally accepted accounting principles, and

"(B) with respect to any other United States shareholder, the most recent audited financial statement (including the notes which form an integral part of such statement) of such shareholder (or which includes such shareholder)—

"(i) which was certified on or before June 30, 2007, as being prepared in accordance with generally accepted accounting principles, and

"(ii) which is used for the purposes of a statement or report—

"(I) to creditors,

"(II) to shareholders, or

"(III) for any other substantial nontax purpose.

"(2) BASE PERIOD YEAR.—

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

"(B) MERGERS, ACQUISITIONS, ETC..—

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

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

"(I) the controlled corporation shall be treated as being in existence during the period that the distributing corporation (within the meaning of section 355) is in existence, and

"(II) for purposes of applying subsection (b)(2) to the controlled corporation and the distributing corporation, amounts described in subsection (b)(2)(B) which are received or includible by the distributing corporation or controlled corporation (as the case may be) before the distribution

referred to in subclause (I) from a controlled foreign corporation shall be allocated between such corporations in proportion to their respective interests as United States shareholders of such controlled foreign corporation immediately after such distribution.

Subclause (II) shall not apply if neither the controlled corporation nor the distributing corporation is a United States shareholder of such controlled foreign corporation immediately after such distribution.

"(3) DIVIDEND.—The term 'dividend' shall not include amounts includible in gross income as a dividend under section 78, 367, or 1248. In the case of a liquidation under section 332 to which section 367(b) applies, the preceding sentence shall not apply to the extent the United States shareholder actually receives cash as part of the liquidation.

"(4) COORDINATION WITH DIVIDENDS RECEIVED DEDUCTION.—No deduction shall be allowed under section 243 or 245 for any dividend for which a deduction is allowed under this section.

"(5) CONTROLLED GROUPS.—

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

"(B) APPLICATION OF $500,000,000 LIMIT.—All corporations which are treated as a single employer under section 52(a) shall be limited to one $500,000,000 amount in subsection (b)(1)(A), and such amount shall be divided among such corporations under regulations prescribed by the Secretary.

"(C) PERMANENTLY REINVESTED EARNINGS.—If a financial statement is an applicable financial statement for more than 1 United States shareholder, the amount applicable under subparagraph (B) or (C) of subsection (b)(1) shall be divided among such shareholders under regulations prescribed by the Secretary.

"(d) DENIAL OF FOREIGN TAX CREDIT; DENIAL OF CERTAIN EXPENSES.—

"(1) FOREIGN TAX CREDIT.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the deductible portion of—

"(A) any dividend, or

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

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

"(2) EXPENSES.—No deduction shall be allowed for expenses properly allocated and apportioned to the deductible portion described in paragraph (1).

"(3) DEDUCTIBLE PORTION.—For purposes of paragraph (1), unless the taxpayer otherwise specifies, the deductible portion of any dividend or other amount is the amount which bears the same ratio to the amount of such dividend or other amount as the amount allowed as a deduction under subsection (a) for the taxable year bears to the amount described in subsection (b)(2)(A) for such year.

"(4) COORDINATION WITH SECTION 78.—Section 78 shall not apply to any tax which is not allowable as a credit under section 901 by reason of this subsection.

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

"(1) IN GENERAL.—Any tax under this chapter by reason of nondeductible CFC dividends shall not be treated as tax imposed by this chapter for purposes of determining—

"(A) the amount of any credit allowable under this chapter, or

"(B) the amount of the tax imposed by section 55.

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

"(2) LIMITATION ON REDUCTION IN TAXABLE INCOME, ETC.—

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

"(B) COORDINATION WITH SECTION 172.—The nondeductible CFC dividends for any taxable year shall not be taken into account—

"(i) in determining under section 172 the amount of any net operating loss for such taxable year, and

"(ii) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

"(3) NONDEDUCTIBLE CFC DIVIDENDS.—For purposes of this subsection, the term 'nondeductible CFC dividends' means the excess of the amount of dividends taken into account under subsection (a) over the deduction allowed under subsection (a) for such dividends.

"(f) ELECTION.—The taxpayer may elect to apply this section to—

"(1) the taxpayer's last taxable year which begins before the date of the enactment of this section, or

"(2) the taxpayer's first taxable year which begins during the 1-year period beginning on such date.

Such election may be made for a taxable year only if made before the due date (including extensions) for filing the return of tax for such taxable year.".

(b) CLERICAL AMENDMENT.—The item in the table of sections for subpart F of part III of subchapter N of

chapter 1 of such Code relating to section 965 is amended to read as follows:

"Sec. 965. Deduction for dividends received.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after the date of the enactment of this Act.

SEC. 603. GAIN OR LOSS FROM SALE OR EXCHANGE OF CERTAIN PREFERRED STOCK.

(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, gain or loss from the sale or exchange of any applicable preferred stock by any applicable financial institution shall be treated as ordinary income or loss.

(b) APPLICABLE PREFERRED STOCK.—For purposes of this section, the term "applicable preferred stock" means any stock—

(1) which is preferred stock in—

(A) the Federal National Mortgage Association, established pursuant to the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), or

(B) the Federal Home Loan Mortgage Corporation, established pursuant to the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), and

(2) which—

(A) was held by the applicable financial institution on September 6, 2008, or

(B) was sold or exchanged by the applicable financial institution on or after January 1, 2008, and before September 7, 2008.

(c) APPLICABLE FINANCIAL INSTITUTION.—For purposes of this section:

(1) IN GENERAL.—Except as provided in paragraph (2), the term "applicable financial institution" means—

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

(B) a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1))).

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

(A) a sale or exchange described in subsection (b)(2)(B), an entity shall be treated as an applicable financial institution only if it was an entity described in subparagraph (A) or (B) of paragraph (1) at the time of the sale or exchange, and

(B) a sale or exchange after September 6, 2008, of preferred stock described in subsection (b)(2)(A), an entity shall be treated as an applicable financial institution only if it was an entity described in subparagraph (A) or (B) of paragraph (1) at all times during the period beginning on September 6, 2008, and ending on the date of the sale or exchange of the preferred stock.

(d) SPECIAL RULE FOR CERTAIN PROPERTY NOT HELD ON SEPTEMBER 6, 2008.—The Secretary of the Treasury or the Secretary's delegate may extend the application of this section to all or a portion of the gain or loss from a sale or exchange in any case where—

(1) an applicable financial institution sells or exchanges applicable preferred stock after September 6, 2008, which the applicable financial institution did not hold on such date, but the basis of which in the hands of the applicable financial institution at the time of the sale or exchange is the same as the basis in the hands of the person which held such stock on such date, or

(2) the applicable financial institution is a partner in a partnership which—

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

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

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

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

TITLE VII—EXECUTIVE COMPENSATION ADJUSTMENTS AND MISCELLANEOUS PROVISIONS

SEC. 701. COMPENSATION ADJUSTMENT.

(a) COMPENSATION ADJUSTMENT DUE TO GOVERNMENT INTERVENTION.—

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

(A) a year in which the institution is subject to a government intervention; and

(B) the two years prior to a year in which the institution is subject to a government intervention.

(2) COMPENSATION ADJUSTMENT DEFINED.—For purposes of this subsection, and with respect to an issuer, the term "government intervention" means—

(A) the placement of the issuer under conservatorship, receivership, or other assumption of the management, governance, and control of the issuer by the Department of the Treasury or the Board of Governors of the Federal Reserve; or

(B) an emergency loan of public funds made to the issuer by the Department of the Treasury or the Board of Governors of the Federal Reserve, if the Chairman of the Board of Governors of the Federal Reserve determines that such a loan is necessary to prevent the imminent failure of the issuer.

(b) EFFECTIVE DATE.—This compensation adjustment shall take effect on enactment of this Act, and shall have no effect after the September 30, 2009.

SEC. 702. LIMITATIONS ON GSE SECURITIZATION AUTHORITY.

Part 2 of subtitle A of the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 (12 U.S.C. 4541 et seq.), as amended by the Housing and Economic Recovery Act of 2008 (Public Law 110-289) is amended by adding at the end the following new section:

"SEC. 1327. LIMITATIONS ON GSE SECURITIZATION AUTHORITY.

"(a) PROHIBITION.—The director shall, by regulation, prohibit each enterprise from issuing, guaranteeing, or selling securities based on or backed by mortgages described in subsection (b).

"(b) COVERED MORTGAGES.—The mortgages described in this subsection are—

"(1) mortgages commonly known as Alt-A or Alternative A-paper mortgages, as defined by the Director, which shall include mortgages that the Director determines to have an increased level of credit risk due to borrower's not meeting traditional or standard underwriting guidelines, including guidelines with respect to—

"(A) documentation of amount or source of income or assets;

"(B) debt-to-income ratio;

"(C) assets and type of property being financed;

"(D) credit history;

"(E) loan to value ratios; and

"(F) occupancy of the property being financed or borrower characteristics involved; and

"(2) mortgages having characteristics that are not typical of the lending practices of the mortgages that are made to comply with a provision of Federal or State law or regulation.".

SEC. 703. FINANCIAL STATEMENT REVIEW.

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

(1) review any financial statements required under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) of any rescued issuer for the rescued issuer's fiscal year 2005 and each succeeding fiscal year up to and including the fiscal year in which such issuer became a rescued issuer; and

(2) examine each of the audits that were the basis of such financial statements, and all the supporting books, papers, correspondence, memoranda, or other records or materials on which such audits were performed.

(b) ADDITIONAL ACTION.—The Commission shall—

(1) if the Commission determines there was a material misstatement made in any financial statement reviewed under subsection (a), require the issuer to file with the Commission a financial statement correcting such misstatement; and

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

(c) DEFINITION.—For purposes of this section, the term "rescued issuer" means any issuer (as such term is

defined in section 3(a)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(8)) that has received, prior to the date of 5 enactment of this Act, Federal Government intervention through sale negotiation assistance, loan guarantee, placement under conservatorship or receivership, or other assumption of the management, governance, and control of the issuer by the Department of the Treasury or the Board of Governors of the Federal Reserve, an emergency loan of public funds made to the issuer by the Department of the Treasury or the Board of Governors of the Federal Reserve, or other similar Federal Government intervention.