

**Draft of 9/21/08**

**LEGISLATIVE PROPOSAL FOR TREASURY AUTHORITY  
TO PURCHASE TROUBLED ASSETS**

Section 1. Short Title.

This Act may be cited as the Troubled Asset Relief Act of 2008.

Sec. 2. Purchases of Troubled Assets.

(a) Authority to Purchase.--The Secretary is authorized to purchase, and to make and fund commitments to purchase, on such terms and conditions as determined by the Secretary, Troubled Assets from any Financial Institution, as those terms are defined in section 16 of the Act.

(b) Necessary Actions.--The Secretary is authorized to take such actions as the Secretary deems necessary to carry out the authorities in this Act, including, without limitation:

(1) appointing such employees as may be required to carry out the authorities in this Act, and defining their duties, without regard to the provisions of chapter 33 of title 5, United States Code;

(2) entering into contracts, including contracts for services authorized by section 3109 of title 5, United States Code, without regard to any other provision of law regarding public contracts, but subject to the limitations set forth in section 6;

(3) designating financial institutions as financial agents of the Government, and they shall perform all such reasonable duties related to this Act 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 purchase Troubled Assets 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 or purposes of this Act.

Sec. 3. Considerations.

In exercising the authorities granted in this Act, the Secretary shall take into consideration means for--

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

(2) protecting the taxpayer.

#### Sec. 4. Reports.

(a) Reports to Congress.--Within 90 days of the first exercise of the authority granted in section 2(a), and every 90 days 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 Act and the considerations required by section 3 and efforts under section 7.

(b) Reports of Purchases.--Within 90 days of enactment of this Act, the Secretary shall issue guidelines for prompt public reports on results of the purchases of Troubled Assets. The reports shall include descriptions, amounts, and prices of Troubled Assets purchased.

#### Sec. 5. Rights; Management; Sale of Troubled Assets.

(a) Exercise of Rights.--The Secretary may, at any time, exercise any rights received in connection with Troubled Assets purchased under this Act.

(b) Management of Troubled Assets.--The Secretary shall have authority to manage Troubled Assets purchased under this Act, including revenues and portfolio risks therefrom.

(c) Sale of Troubled Assets.--The Secretary may, at any time, upon terms and conditions and at prices determined by the Secretary, sell, or enter into securities loans, repurchase transactions or other financial transactions in regard to, any Troubled Asset purchased under this Act.

(d) Application of Sunset to Troubled Assets.--The authority of the Secretary to hold any Troubled Asset purchased under this Act before the termination date in section 13, or to purchase or fund the purchase of a Troubled Asset under a commitment entered into before the termination date in section 13, is not subject to the provisions of section 13.

(e) Disposition of Revenues and Sale Proceeds.--Revenues of, and proceeds from the sale of, Troubled Assets will be deposited into the general fund of the United States Treasury.

#### Sec. 6. Contracting Procedures.

In awarding contracts to asset managers, that otherwise would be subject to the Federal Acquisition Regulation, the Secretary shall to the extent practicable solicit proposals from a broad range of qualified firms and publish a Request for Information seeking information from qualified vendors interested in performing the work. In awarding such contracts, the Secretary shall take appropriate steps to manage conflicts of interest, including but not limited to, where appropriate, requiring potential firms to identify potential conflicts of interest and to submit a strategy to mitigate such conflicts, requiring such vendors to acknowledge that they have a fiduciary duty to the United States, and restricting staff from sharing information received from the United States or providing services to both the United States and other clients where a conflict exists. Notwithstanding the foregoing, the Federal Deposit Insurance Corporation shall be considered in the selection of asset managers for whole loans.

#### Sec. 7. Foreclosure Mitigation Efforts.

(a) Residential Mortgage Loan Servicing Standards.--For any Troubled Assets purchased under this Act that are whole residential mortgages, the Secretary shall require the loan servicers servicing the mortgage loans to follow industry best practices, as appropriate, including entering into sustainable modifications, to avoid preventable foreclosures. Industry best practices shall be identified by the Secretary in consultation with the Hope for Homeowners Oversight Board established by the Housing and Economic Recovery Act of 2008. Where reasonable, the Secretary may direct loan servicers to take additional measures beyond industry best practices deemed appropriate to avoid preventable foreclosures.

(b) Consent to Reasonable Loan Modification Requests.--For residential mortgages underlying Troubled Assets purchased under the Act, the Secretary shall request loan servicers servicing the mortgage loans to follow industry best practices, as identified in subsection (a) of this section, to avoid preventable foreclosures, to the extent that the Secretary, as an investor, has discretion to do so under existing investment contracts. Upon any request arising under existing investment contracts, the Secretary shall consent, where appropriate, to reasonable requests for loss mitigation measures, including term extensions, rate reductions, principal write downs, increases in the proportion of loans within a trust or other structure allowed to be modified, or removal of other limitation on modifications.

#### Sec 8. Minimization of Long-Term Costs and Maximization of Benefits for Taxpayers.

(a) Long-Term Costs and Benefits.--The Secretary shall use the authority under this Act in a manner that will minimize any potential long-term negative impact on the taxpayer, taking into account the direct outlays, potential long-term returns on assets purchased, and the overall economic benefits of the program, including through improving the economic activity and the availability of credit, limiting losses to the savings and pensions of individuals, and reducing losses to the Government.

(b) Use of Market Mechanisms.--In making purchases under this Act, the Secretary shall maximize the efficiency of its use of taxpayer resources in making purchases by using market mechanisms, including auctions or reverse auctions, where appropriate.

(c) Direct Purchases.--Where the Secretary determines that the purposes of the Act are best met through direct purchases from an individual Financial Institution where no bidding process or market prices are available, the Secretary shall pursue additional measures to (a) ensure that prices paid for assets are reasonable; and (b) share potential benefits or losses of the purchase to the Financial Institution, including, but not limited to, warrants, loss participations, or other similar mechanisms. In determining whether to engage in a direct purchase from an individual Financial Institution, the Secretary shall consider the strength of the Financial Institution in determining whether the purchase represents the most efficient use of funds under this Act.

#### Sec. 9. Coordination with Foreign Authorities and Central Banks.

Treasury shall coordinate, as appropriate, with foreign financial authorities and central banks to work toward the establishment of similar programs by such authorities and central banks and to maximize the impact of purchases under this Act.

#### Sec. 10. Maximum Amount of Authorized Purchases.

The Secretary's authority to purchase Troubled Assets under this Act shall be limited to \$700,000,000,000 outstanding at any one time

#### Sec. 11. Funding.

For the purpose of the authorities granted in this Act, and for the costs of administering those authorities, the Secretary may use the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include actions authorized by this Act, including the payment of administrative expenses. Any funds expended for actions authorized by this Act, including the payment of administrative expenses, shall be deemed appropriated at the time of such expenditure.

#### Sec. 12. Review.

Decisions by the Secretary pursuant to the authority of this Act are non-reviewable and committed to agency discretion, and no injunction or other form of equitable relief may be issued by any court of law or any administrative agency.

#### Sec. 13. Termination of Authority.

The authorities under this Act, with the exception of authorities granted in sections 2(b)(5), 5, 6, 7 and 11, shall terminate two years from the date of enactment of this Act.

#### Sec. 14. Increase in Statutory Limit on the Public Debt.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof \$11,315,000,000,000.

#### Sec. 15. Credit Reform.

The costs of purchases of Troubled Assets made under section 2(a) of this Act shall be determined as provided under the Federal Credit Reform Act of 1990, as applicable.

#### Sec. 16. Definitions.

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

(1) Financial Institution.--The term "Financial Institutions" means (a) any institution including, but not limited to, banks, savings associations, credit unions, broker-dealers, and insurance companies organized and regulated under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Marianas Islands, Guam, American Samoa, or the United States Virgin Islands, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government; or (b) any institution that is providing financing secured by Troubled Assets of a Financial Institution.

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

(3) Troubled Assets.--The term "Troubled Assets" means residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case was originated or issued on or before September 17, 2008, the purchase of which the Secretary determines promotes financial market stability; and, upon the determination of the Secretary in consultation with the Chairman of the Board of Governors of the Federal Reserve, any other financial instrument, the purchase of which the Secretary determines necessary to promote financial market stability.

#### Sec 17. GAO Study on Impact of Troubled Asset Purchases.

(a) Study Required.--The Comptroller General shall conduct a study to evaluate the impact of the purchases of Troubled Assets as provided for in section 2 of this Act with respect to –

(1) the impact on Financial Institutions as defined in this Act; and

(2) the cost incurred by the Government and the likelihood of proceeds from sales of the assets being returned to the Government.

(b) Report- Not later than one year after the date of enactment of this Act, the Comptroller General shall provide an interim 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 including the initial results of the study conducted under this section. The Comptroller General shall follow up with such Committees after the second year and the fourth year after such date of enactment.