

111TH CONGRESS
1ST SESSION

H. R. 472

To reform the Troubled Assets Relief Program of the Secretary of the Treasury by establishing the Family Foreclosure Rescue Corporation modeled on the successful Home Owner's Loan Corporation, and to purchase and insure home mortgage loans for the purposes of providing relief to homeowners, restoring stability to the financial system, preventing further harm to the economy, and protecting taxpayers.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 2009

Mr. BACA introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reform the Troubled Assets Relief Program of the Secretary of the Treasury by establishing the Family Foreclosure Rescue Corporation modeled on the successful Home Owner's Loan Corporation, and to purchase and insure home mortgage loans for the purposes of providing relief to homeowners, restoring stability to the financial system, preventing further harm to the economy, and protecting taxpayers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Family Foreclosure
3 Rescue Corporation Act of 2009”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are—

6 (1) to provide immediate authority and facilities
7 that the Secretary of the Treasury can use to assist
8 struggling homeowners in order to restore liquidity
9 and stability to the financial system of the United
10 States; and

11 (2) to ensure that such authority and such fa-
12 cilities are used in a manner that—

13 (A) protects America’s family equity in-
14 cluding home values, college funds, retirement
15 accounts, and life savings;

16 (B) preserves homeownership and pro-
17 motes jobs and economic growth;

18 (C) maximizes overall returns to the tax-
19 payers of the United States; and

20 (D) provides public accountability for the
21 exercise of such authority.

22 **SEC. 3. AMENDMENTS TO TARP.**

23 (a) FAMILY FORECLOSURE RESCUE CORPORATION
24 PROGRAM UNDER TARP.—Title I of the Emergency Eco-
25 nomic Stabilization Act of 2008 (12 U.S.C. 5211) is
26 amended—

1 (1) by inserting after the title designation and
2 heading the following:

3 **“Subtitle A—Program for**
4 **Purchases of Troubled Assets”;** and

5 (2) by adding at the end the following new sub-
6 title:

7 **“Subtitle B—Family Foreclosure**
8 **Rescue Corporation Program**

9 **“SEC. 150. AUTHORITY UNDER TARP PROGRAM.**

10 “The authority of the Secretary to take any action
11 under this title includes the authority to take the actions
12 authorized under this subtitle and to use amounts made
13 available under subtitle A under the provisions of this sub-
14 title.

15 **“SEC. 151. PURCHASES OF HOME MORTGAGES.**

16 “(a) OFFICES; AUTHORITY.—

17 “(1) AUTHORITY.—The Secretary is authorized
18 to establish a Family Foreclosure Rescue Corpora-
19 tion program (or ‘FFRC program’) to purchase, and
20 to make and fund commitments to purchase, home
21 mortgage loans from any financial institution, on
22 such terms and conditions as are determined by the
23 Secretary, and in accordance with this subtitle and
24 the policies and procedures developed and published
25 by the Secretary.

1 “(2) COMMENCEMENT OF PROGRAM.—Estab-
2 lishment of the policies and procedures and other
3 similar administrative requirements imposed on the
4 Secretary by this subtitle are not intended to delay
5 the commencement of the FFRC program.

6 “(3) ESTABLISHMENT OF THE FAMILY FORE-
7 CLOSURE RESCUE CORPORATION.—The Family
8 Foreclosure Rescue Corporation is hereby estab-
9 lished as an independent office within the Treasury,
10 which office shall be headed by Chairman, who shall
11 report to the Secretary, and shall be appointed by
12 the President, by and with the advice and consent
13 of the Senate, except that an interim Chairman may
14 serve pending confirmation by the Senate.

15 “(b) CONSULTATION.—In exercising the authority
16 under this section, the Secretary shall consult with the
17 Board of Governors of the Federal Reserve System, the
18 Corporation, the Comptroller of the Currency, the Direc-
19 tor of the Office of Thrift Supervision, and the Secretary
20 of Housing and Urban Development.

21 “(c) NECESSARY ACTIONS.—The Secretary is author-
22 ized to take such actions as the Secretary deems necessary
23 to carry out the authorities in this subtitle, including,
24 without limitation, the following:

1 “(1) The Secretary shall have direct hiring au-
2 thority with respect to the appointment of employees
3 to administer this subtitle.

4 “(2) Entering into contracts, including con-
5 tracts for services authorized by section 3109 of title
6 5, United States Code.

7 “(3) Designating financial institutions, the Cor-
8 poration, the Board, the Federal Housing Adminis-
9 tration, the Federal National Mortgage Association,
10 and the Federal Home Loan Mortgage Corporation,
11 as financial agents of the Federal Government for
12 purposes of implementing the provisions of this sub-
13 title, and such institutions shall perform all such
14 reasonable duties related to this subtitle as financial
15 agents of the Federal Government as may be re-
16 quired

17 “(4) In order to provide the Secretary with the
18 flexibility to manage home mortgages in a manner
19 designed to minimize cost to the taxpayers, estab-
20 lishing vehicles that are authorized, subject to super-
21 vision by the Secretary, to purchase, hold, guarantee
22 and sell home mortgages and to issue obligations.

23 “(5) Issuing such regulations and other guid-
24 ance as may be necessary or appropriate to define

1 terms or carry out the authorities or purposes of
2 this subtitle.

3 “(6) Entering into indemnity agreements with
4 servicers or trustees that would indemnify the
5 servicer or trustees for legal liability to investors
6 arising from sale, disposition or modification of
7 home mortgages if—

8 “(A) the servicer or trustee has acted rea-
9 sonably in selling, disposing of or modifying the
10 mortgage; and

11 “(B) the servicer or trustee has acted in
12 accordance with a request for sale, modification
13 or disposition from the Secretary or his des-
14 ignee under the FFRC program established by
15 this subtitle.

16 “(7) Developing a program, with respect to
17 first-lien home mortgage loans purchased by the
18 Secretary, through which the security interests of
19 second lien-holders with respect to the residential
20 property securing the first-lien home mortgage loan
21 purchased by the Secretary, are extinguished in ex-
22 change for partial payment.

23 “(d) PROGRAM GUIDELINES.—Before the earlier of
24 the end of the 2-business-day period beginning on the date
25 of the first purchase of home mortgages pursuant to the

1 authority under this section or the end of the 45-day pe-
2 riod beginning on the date of enactment of this subtitle,
3 the Secretary shall publish program guidelines, including
4 the following:

5 “(1) Mechanisms for purchasing home mort-
6 gages in exchange for cash, Treasury securities or
7 other assets.

8 “(2) Methods for pricing and valuing home
9 mortgages.

10 “(3) Procedures for selecting home mortgage
11 asset managers.

12 “(4) Criteria for identifying home mortgages
13 for purchase. Such criteria shall include (A) loan-to-
14 value ratio, (B) debt-to-income ratio; and (C) such
15 other criteria as the Secretary may prescribe.

16 “(e) PREVENTING UNJUST ENRICHMENT.—In mak-
17 ing purchases under the authority of this subtitle, the Sec-
18 retary shall take such steps as may be necessary to pre-
19 vent unjust enrichment of financial institutions and home
20 owners participating in a program established under this
21 subtitle.

22 **“SEC. 152. INSURANCE OF HOME MORTGAGES.**

23 “(a) AUTHORITY.—

24 “(1) IN GENERAL.—The Secretary shall estab-
25 lish a program to guarantee home mortgages con-

1 sistent with section 159(b) and the purposes of this
2 subtitle.

3 “(2) GUARANTEES.—In establishing any pro-
4 gram under this subsection, the Secretary shall de-
5 velop guarantees of home mortgages and the associ-
6 ated premiums for such guarantees. Such guaran-
7 tees and premiums may be determined by category
8 or class of the home mortgages to be guaranteed.

9 “(3) EXTENT OF GUARANTEE.—The Secretary
10 may guarantee the timely payment of principal of,
11 and interest on, home mortgages in amounts not to
12 exceed 100 percent of such payments. Such guar-
13 antee may be on such terms and conditions as are
14 determined by the Secretary, provided that such
15 terms and conditions are consistent with section
16 159(b) and the purposes of this subtitle.

17 “(b) REPORTS.—Not later than 90 days after the
18 date of enactment of this subtitle, the Secretary shall re-
19 port to the appropriate committees of Congress on the
20 program established under subsection (a).

21 “(c) PREMIUMS.—

22 “(1) IN GENERAL.—The Secretary shall collect
23 premiums from any financial institution and any
24 borrower participating in the program established
25 under subsection (a). Such premiums shall be in an

1 amount that the Secretary determines necessary to
2 meet the purposes of this subtitle and to provide suf-
3 ficient reserves pursuant to paragraph (3).

4 “(2) **AUTHORITY TO BASE PREMIUMS ON PROD-**
5 **UCT RISK.**—In establishing any premium under
6 paragraph (1), the Secretary may provide for vari-
7 ations in such rates according to the credit risks and
8 other risks associated with the particular home
9 mortgage that is being guaranteed. The Secretary
10 shall publish the methodology for setting the pre-
11 mium for a class of home mortgages together with
12 an explanation of the appropriateness of the class of
13 home mortgages for participation the program estab-
14 lished under this section. The methodology shall en-
15 sure that the premium is consistent with paragraph
16 (3).

17 “(3) **MINIMUM LEVEL.**—The premiums referred
18 to in paragraph (1) shall be set by the Secretary at
19 a level necessary to create reserves sufficient to meet
20 anticipated claims, based on an actuarial analysis,
21 and to ensure that taxpayers are fully protected, un-
22 less the Secretary determines that a lower premium
23 combined with other protections for taxpayers, in-
24 cluding but not limited to provisions for shared eq-

1 uity mortgages would more fully meet the purposes
2 of this subtitle.

3 “(d) HOME MORTGAGE INSURANCE FINANCING
4 FUND.—

5 “(1) DEPOSITS.—The Secretary shall deposit
6 fees collected under this section into the Fund estab-
7 lished under paragraph (2)

8 “(2) ESTABLISHMENT.—There is established a
9 Home Mortgage Insurance Financing Fund within
10 the Family Foreclosure Rescue Corporation that
11 shall consist of the amounts collected pursuant to
12 paragraph (1), and any balance in such fund shall
13 be invested by the Secretary in United States Treas-
14 ury securities, or kept in cash on hand or on deposit,
15 as necessary.

16 “(3) PAYMENTS FROM FUND.—The Secretary
17 shall make payments from amounts deposited in the
18 Fund and from other sums authorized by this sub-
19 title to fulfill obligations of the guarantees provided
20 to financial institutions under subsection (a).

21 “(4) TERMINATION OF FUND.—The Fund shall
22 be terminated by the period ending one year after
23 the repayment of the last home mortgage loan in-
24 sured or guaranteed by the Secretary and any

1 amounts remaining in the Fund shall be deposited
2 as provided in section 156(e).

3 **“SEC. 153. CONSIDERATIONS.**

4 “In exercising the authorities granted in this subtitle,
5 the Secretary shall take into consideration—

6 “(1) providing mechanisms for families to keep
7 their homes and to stabilize communities;

8 “(2) ensuring stability and preventing disrup-
9 tion to financial market in order to limit the impact
10 of the financial crisis on the economy and protect
11 American jobs, savings, and retirement security;

12 “(3) protecting the interests of taxpayers by
13 maximizing overall returns and minimizing the im-
14 pact on the national debt;

15 “(4) determining the most efficient use of funds
16 under this subtitle;

17 “(5) ensuring that all financial institutions are
18 eligible to participate in the program, without dis-
19 crimination based on size, geography, form of orga-
20 nization, or the size, type, and number of assets eli-
21 gible for purchase under this subtitle;

22 “(6) paying due attention to financial institu-
23 tions, including those serving low- and moderate-in-
24 come populations and other underserved commu-

1 nities, and that have assets less than
2 \$1,000,000,000;

3 “(7) stabilizing United States public instrumen-
4 talities, such as counties and cities, which may have
5 suffered significant increased costs or losses in the
6 current market turmoil;

7 “(8) protecting the retirement security of Amer-
8 icans by purchasing home mortgages by or on behalf
9 of an eligible retirement plan described in clause
10 (iii), (iv), (v), or (vi) of section 402(c)(8)(B) of the
11 Internal Revenue Code of 1986, except that such au-
12 thority shall not extend to any compensation ar-
13 rangements subject to section 409A of such Code;
14 and

15 “(9) purchasing home mortgage loans, residen-
16 tial other real estate owned by financial institutions
17 and mortgages on multifamily properties.

18 **“SEC. 154. FFRC OVERSIGHT BOARD.**

19 “(a) ESTABLISHMENT.—There is established the
20 Family Foreclosure Rescue Corporation Oversight Board,
21 which shall be responsible for—

22 “(1) reviewing the exercise of authority under a
23 program developed in accordance with this subtitle,
24 including

1 “(A) policies implemented by the Secretary
2 and the Family Foreclosure Rescue Corporation
3 created under sections 151 and 152, including
4 the appointment of financial agents, the des-
5 ignation of asset classes to be purchased, and
6 plans for the structure of vehicles used to pur-
7 chase home mortgages; and

8 “(B) the effect of such actions in assisting
9 American families in preserving home owner-
10 ship, stabilizing financial markets, and pro-
11 tecting taxpayers;

12 “(2) making recommendations, as appropriate,
13 to the Secretary regarding use of the authority
14 under this subtitle; and

15 “(3) reporting any suspected fraud, misrepre-
16 sentation, or malfeasance to the Special Inspector
17 General for the FFRC Program or the Attorney
18 General of the United States, consistent with section
19 535(b) of title 28, United States Code.

20 “(b) MEMBERSHIP.—The Oversight Board shall be
21 comprised of—

22 “(1) the Chairman of the Board of Governors
23 of the Federal Reserve System;

24 “(2) the Secretary;

1 “(3) the Director of the Federal Home Finance
2 Agency;

3 “(4) the Chairman of the Securities Exchange
4 Commission;

5 “(5) the Chairman of the Corporation; and

6 “(6) the Secretary of Housing and Urban De-
7 velopment.

8 “(c) CHAIRPERSON.—The chairperson of the Over-
9 sight Board shall be the Chairman of the Corporation.

10 “(d) MEETINGS.—The Oversight Board shall meet 2
11 weeks after the first exercise of the purchase authority of
12 the Secretary under this subtitle, and at least monthly
13 thereafter.

14 “(e) ADDITIONAL AUTHORITIES.—In addition to re-
15 sponsibilities described in subsection (a), the Oversight
16 Board shall have the authority to ensure that the policies
17 implemented the Secretary are—

18 “(1) in accordance with the purposes of this
19 subtitle;

20 “(2) in the economic interests of the United
21 States; and

22 “(3) consistent with protecting taxpayers, in ac-
23 cordance with section 161(a).

24 “(f) CREDIT REVIEW COMMITTEE.—The Oversight
25 Board may appoint a credit review committee for the pur-

1 pose of evaluating the exercise of the purchase authority
2 provided under this subtitle and the assets acquired
3 through the exercise of such authority, as the Oversight
4 Board determines appropriate.

5 “(g) **REPORTS.**—The Oversight Board shall report to
6 the appropriate committees of Congress and the Congres-
7 sional Oversight Panel established under section 125,
8 semiannually, on the matters described under subsection
9 (a)(1).

10 “(h) **TERMINATION.**—The Oversight Board, and the
11 authority of the Oversight Board under this section, shall
12 terminate on the expiration of the 15-day period beginning
13 upon the later of—

14 “(1) the date that the last home mortgage loan
15 acquired by the Secretary under section 151 has
16 been sold or transferred out of the ownership or con-
17 trol of the Federal Government; or

18 “(2) the date of expiration of the last insurance
19 contract issued under section 152.

20 **“SEC. 155. REPORTS.**

21 “(a) **IN GENERAL.**—Before the expiration of the 60-
22 day period beginning on the date of the first exercise of
23 the authority granted in section 151(a), or of the first ex-
24 ercise of the authority granted in section 152, whichever
25 occurs first, and every 30-day period thereafter, the Sec-

1 retary shall report to the appropriate committees of Con-
2 gress, with respect to each such period—

3 “(1) an overview of actions taken by the Sec-
4 retary, including the factors to be taken in consider-
5 ation in section 153;

6 “(2) the actual obligation and expenditure of
7 the funds provided for administrative expenses by
8 section 164 during such period and the expected ex-
9 penditure of such funds in the subsequent period;
10 and

11 “(3) a detailed financial statement with respect
12 to the exercise of authority under this subtitle, in-
13 cluding—

14 “(A) all agreements made or renewed;

15 “(B) all insurance contracts entered into
16 pursuant to section 152;

17 “(C) all transactions occurring during such
18 period, including the types of parties involved;

19 “(D) the nature of the assets purchased;

20 “(E) all projected costs and liabilities;

21 “(F) operating expenses, including com-
22 pensation for financial agents;

23 “(G) the valuation or pricing method used
24 for each transaction; and

1 “(H) a description of the vehicles estab-
2 lished to exercise such authority.

3 “(b) TRANCHE REPORTS TO CONGRESS.—

4 “(1) REPORTS.—The Secretary shall provide to
5 the appropriate committees of Congress, at the times
6 specified in paragraph (2), a written report, includ-
7 ing—

8 “(A) a description of all of the transactions
9 made during the reporting period;

10 “(B) a description of the pricing mecha-
11 nism for the transactions;

12 “(C) a justification of the price paid for
13 and other financial terms associated with the
14 transactions;

15 “(D) a description of the impact of the ex-
16 ercise of such authority on the financial system,
17 supported to the extent possible, by specific
18 data;

19 “(E) a description of challenges that re-
20 main in the financial system, including any
21 benchmarks yet to be achieved; and

22 “(F) an estimate of additional actions
23 under the authority provided under this subtitle
24 that may be necessary to address such chal-
25 lenges.

1 “(2) TIMING.—The report required by this sub-
2 section shall be submitted not later than 7 days
3 after the date on which commitments to purchase
4 home mortgages under the authorities provided in
5 this subtitle first reach an aggregate of
6 \$50,000,000,000 and not later than 7 days after
7 each \$50,000,000,000 interval of such commitments
8 is reached thereafter.

9 “(c) SHARING OF INFORMATION.—Any report re-
10 quired under this section shall also be submitted to the
11 Congressional Oversight Panel established under section
12 125.

13 “(d) SUNSET.—The reporting requirements under
14 this section shall terminate on the later of—

15 “(1) the date that the last home mortgage ac-
16 quired by the Secretary under section 101 has been
17 sold or transferred out of the ownership or control
18 of the Federal Government; or

19 “(2) the date of expiration of the last insurance
20 contract issued under section 152.

21 **“SEC. 156. RIGHTS; MANAGEMENT; SALE OF HOME MORT-**
22 **GAGES; REVENUES AND SALE PROCEEDS.**

23 “(a) EXERCISE OF RIGHTS.—The Secretary may, at
24 any time, exercise any rights received in connection with
25 home mortgages purchased under this subtitle

1 “(b) MANAGEMENT OF HOME MORTGAGES.—

2 “(1) IN GENERAL.—The Secretary shall have
3 authority to manage home mortgages purchased
4 under this subtitle, including revenues and portfolio
5 risks therefrom.

6 “(2) In managing home mortgages purchased
7 under the authorities of this subtitle, the Secretary
8 shall implement a systematic plan to maximize loan
9 modifications in order to minimize foreclosures, in-
10 cluding by reducing interest rates, writing down
11 principal sums owed, providing guarantees, and
12 other measures.

13 “(3) With respect to loans not eligible for modi-
14 fication, and with respect to loans that enter into de-
15 fault, the Secretary shall implement a plan to mini-
16 mize foreclosures, through short sales or by other
17 means, and to reduce negative impacts on commu-
18 nities from foreclosures, short sales or other disposi-
19 tions, consistent with the purposes of this subtitle.

20 “(4) With respect to loans modified by the Sec-
21 retary, the Secretary shall implement a program of
22 shared equity mortgages such that upon any sale or
23 disposition within five years from the date of loan
24 modification any increases in the equity of any home
25 securing a loan modified by the Secretary are shared

1 between the home owner and the Family Foreclosure
2 Rescue Corporation, based upon a schedule to be
3 issued by the Secretary, such schedule to provide for
4 an increasingly smaller share of such equity increase
5 to be payable to the Secretary over that five-year pe-
6 riod.

7 “(c) SALE OF HOME MORTGAGES.—The Secretary
8 may, at any time, upon terms and conditions and at a
9 price determined by the Secretary, guarantee, sell, or enter
10 into securities loans, repurchase transactions, or other fi-
11 nancial transactions in regard to, any home mortgages
12 purchased under this subtitle.

13 “(d) PROCEEDS OF SALES AND OTHER REVE-
14 NUES.—Revenues of, and proceeds from the sale of home
15 mortgages purchased under this subtitle, or from any
16 shared equity home mortgage program established by the
17 Secretary under this subtitle, or from the sale, exercise,
18 or surrender of warrants or senior debt instruments ac-
19 quired under section 161, and any amounts remaining in
20 the Fund upon its termination, shall be paid into the gen-
21 eral fund of the Treasury for reduction of the public debt
22 except as provided in section (e).

23 “(e) TRANSFER OF A PERCENTAGE OF PROFITS.—

24 “(1) DEPOSITS.—Not less than 20 percent of
25 any revenues of, and proceeds from the sale of home

1 mortgages purchased under this subtitle, or from
2 any shared equity home mortgage program estab-
3 lished by the Secretary under this subtitle, or from
4 the sale, exercise, or surrender of warrants or senior
5 debt instruments acquired under section 161, and
6 not less than 20 percent of any amounts remaining
7 in the Fund upon its termination, shall be deposited
8 as provided in paragraph (2).

9 “(2) USE OF DEPOSITS.—Of the amount re-
10 ferred to in paragraph (1)—

11 “(A) 65 percent shall be deposited into the
12 Housing Trust Fund established under section
13 1338 of the Federal Housing Enterprises Fi-
14 nancial Safety and Soundness Act of 1992 (12
15 U.S.C. 4568);

16 “(B) 35 percent shall be deposited into the
17 Capital Magnet Fund established under section
18 1339 of that Act (12 U.S.C. 4569).

19 “(3) REMAINDER DEPOSITED IN THE TREAS-
20 URY.—All amounts remaining after payments under
21 paragraph (1) shall be paid into the General Fund
22 of the Treasury for reduction of the public debt.

23 “(f) APPLICATION OF SUNSET TO HOME MORT-
24 GAGES.—The authority of the Secretary to hold, guar-
25 antee, sell or dispose of any home mortgage purchased

1 under this subtitle before the termination date in section
2 165, or to purchase or fund the purchase of a home mort-
3 gage under a commitment entered into before the termi-
4 nation date in section 165, is not subject to the provisions
5 of section 165.

6 **“SEC. 157. CONTRACTING PROCEDURES.**

7 “(a) STREAMLINED PROCESS.—For purposes of this
8 subtitle, the Secretary may waive specific provisions of the
9 Federal Acquisition Regulation upon a determination that
10 urgent and compelling circumstances make compliance
11 with such provisions contrary to the public interest. Any
12 such determination, and the justification for such deter-
13 mination, shall be submitted to the Committees on Over-
14 sight and Government Reform and Financial Services of
15 the House of Representatives and the Committees on
16 Homeland Security and Governmental Affairs and Bank-
17 ing, Housing, and Urban Affairs of the Senate within 7
18 days.

19 “(b) ADDITIONAL CONTRACTING REQUIREMENTS.—
20 In any solicitation or contract where the Secretary has,
21 pursuant to subsection (a), waived any provision of the
22 Federal Acquisition Regulation pertaining to minority con-
23 tracting, the Secretary shall develop and implement stand-
24 ards and procedures to ensure, to the maximum extent
25 practicable, the inclusion and utilization of minorities (as

1 such term is defined in section 1204(e) of the Financial
2 Institutions Reform, Recovery, and Enforcement Act of
3 1989 (12 U.S.C. 1811 note)) and women, and minority
4 and women-owned businesses (as such terms are defined
5 in section 21A(r)(4) of the Federal Home Loan Bank Act
6 (12 U.S.C. 1441a(r)(4)), in that solicitation or contract,
7 including contracts to asset managers, servicers, property
8 managers, and other service providers or expert consult-
9 ants.

10 “(c) ELIGIBILITY OF FDIC, BOARD, FEDERAL
11 HOUSING ADMINISTRATION, FEDERAL NATIONAL MORT-
12 GAGE ASSOCIATION AND THE FEDERAL HOME LOAN
13 MORTGAGE CORPORATION.—Notwithstanding subsections
14 (a) and (b), the Corporation, Board, Federal Housing Ad-
15 ministration, Federal National Mortgage Association and
16 the Federal Home Loan Mortgage Corporation—

17 “(1) shall be eligible for, and shall be consid-
18 ered in, the selection of financial agents to perform
19 any duty assigned to the Secretary by this subtitle;

20 “(2) in performing such duties shall report to
21 the Chairman of the Family Foreclosure Rescue
22 Corporation; and

23 “(3) shall be reimbursed by the Secretary for
24 any services provided.

1 **“SEC. 158. CONFLICTS OF INTEREST.**

2 “(a) STANDARDS REQUIRED.—The Secretary shall
3 issue regulations or guidelines necessary to address and
4 manage or to prohibit conflicts of interest that may arise
5 in connection with the administration and execution of the
6 authorities provided under this subtitle, including conflicts
7 arising in—

8 “(1) the selection or hiring of contractors or ad-
9 visors, including asset managers;

10 “(2) the purchase of home mortgages;

11 “(3) the management of the assets held;

12 “(4) post-employment restrictions on employees;

13 and

14 “(5) any other potential conflict of interest, as
15 the Secretary deems necessary or appropriate in the
16 public interest.

17 “(b) TIMING.—Regulations or guidelines required by
18 this section shall be issued as soon as practicable after
19 the date of enactment of this subtitle.

20 **“SEC. 159. FORECLOSURE MITIGATION EFFORTS.**

21 “(a) RESIDENTIAL MORTGAGE LOAN SERVICING
22 STANDARDS.—To the extent that the Secretary acquires
23 home mortgages, including mortgages securing loans for
24 multifamily housing, the Secretary shall implement a plan
25 within 60 days of enactment of this subtitle that seeks

1 to maximize loan restructuring on a sustainable basis and
2 to minimize foreclosures.

3 “(b) LOAN GUARANTEES.—

4 “(1) IN GENERAL.—The Secretary may use
5 loan guarantees and other credit enhancements to
6 facilitate loan modifications, to prevent avoidable
7 foreclosures, and to provide necessary liquidity to
8 home mortgage markets.

9 “(2) Such loan guarantee authority may be
10 used by the Secretary with respect to any and all
11 classes of home mortgage loans the Secretary has
12 acquired and wishes to sell.

13 “(3) Such loan guarantee authority may be
14 used by the Secretary with respect to other home
15 mortgage loans not acquired by the Secretary pro-
16 vided that the holder, servicer, or trustee with re-
17 spect to such home mortgage loan to be guaranteed
18 by the Secretary shall through modification, refi-
19 nancing, or otherwise write down the principal
20 amount owed and reduce the interest rate charged
21 such that the new loan amount does not exceed 90
22 percent of the home’s currently and independently
23 appraised value and loan payments to be made by
24 the borrower do not exceed 38 percent of the bor-
25 rower’s currently documented and verified income.

1 “(4) The percentage requirements with respect
2 to the result of loan modifications specified in the
3 immediately preceding sentence of paragraph (3)
4 may be altered upon request of the Secretary by
5 unanimous vote of the Oversight Board and upon 60
6 days notice to the appropriate Committees of Con-
7 gress.

8 “(c) COORDINATION.—The Secretary shall coordinate
9 with the Corporation, the Board, the Federal Housing Fi-
10 nance Agency, the Secretary of Housing and Urban Devel-
11 opment, and other Federal Government entities that hold
12 assets to attempt to identify opportunities for the acquisi-
13 tion of classes of home mortgages that will improve the
14 ability of the Secretary to improve the loan modification
15 and restructuring process.

16 “(d) TENANTS.—The Secretary shall, where permis-
17 sible, permit bona fide tenants who are current on their
18 rent to remain in their homes under the terms of the lease.
19 In the case of a mortgage on a residential rental property,
20 the plan required under this section shall include pro-
21 tecting Federal, State, and local rental subsidies and pro-
22 tections, and ensuring any modification takes into account
23 the need for operating funds to maintain decent and safe
24 conditions at the property.

1 “(e) CONSENT TO REASONABLE LOAN MODIFICA-
2 TION REQUESTS.—The Secretary shall consent, where ap-
3 propriate, and considering net present value to the tax-
4 payer, to reasonable requests for loss mitigation measures,
5 including term extensions, rate reductions, principal write
6 downs, increases in the proportion of loans within a trust
7 or other structure allowed to be modified, or removal of
8 other limitations on modifications.

9 **“SEC. 160. ASSISTANCE TO HOMEOWNERS.**

10 “(a) DEFINITIONS.—As used in this section—

11 “(1) the term ‘Federal property manager’
12 means—

13 “(A) the Federal Housing Finance Agency,
14 in its capacity as conservator of the Federal
15 National Mortgage Association and the Federal
16 Home Loan Mortgage Corporation;

17 “(B) the Corporation, with respect to resi-
18 dential mortgage loans and mortgage-backed se-
19 curities held by any bridge depository institu-
20 tion pursuant to section 11(n) of the Federal
21 Deposit Insurance Act (12 U.S.C. 1821(n));
22 and

23 “(C) the Board, with respect to any mort-
24 gage or mortgage-backed securities or pool of
25 securities held, owned, or controlled by or on

1 behalf of a Federal reserve bank, other than
2 mortgages or securities held, owned, or con-
3 trolled in connection with open market oper-
4 ations under section 14 of the Federal Reserve
5 Act (12 U.S.C. 353), or as collateral for an ad-
6 vance or discount that is not in default;

7 “(2) the term ‘consumer’ has the same meaning
8 as in section 103 of the Truth in Lending Act (15
9 U.S.C. 1602);

10 “(3) the term ‘insured depository institution’
11 has the same meaning as in section 3 of the Federal
12 Deposit Insurance Act (12 U.S.C. 1813); and

13 “(4) the term ‘servicer’ has the same meaning
14 as in section 6(i)(2) of the Real Estate Settlement
15 Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).

16 “(b) HOMEOWNER ASSISTANCE BY AGENCIES.—

17 “(1) IN GENERAL.—To the extent that the Fed-
18 eral property manager holds, owns, or controls mort-
19 gages, mortgage backed securities, and other assets
20 secured by residential real estate, including multi-
21 family housing, the Federal property manager shall
22 implement a systematic plan that seeks to maximize
23 assistance for homeowners and minimize fore-
24 closures, to use its authority to modify mortgage
25 loans held by the Federal property manager, and to

1 provide incentives to the servicers of other mortgage
2 loans to take advantage of the HOPE for Home-
3 owners Program under section 257 of the National
4 Housing Act, the authorities provided under this
5 subtitle, and other available programs to minimize
6 foreclosures.

7 “(2) MODIFICATIONS.—In the case of a resi-
8 dential mortgage loan, modifications made under
9 paragraph (1) may include—

10 “(A) reduction in interest rates;

11 “(B) reduction of loan principal; and

12 “(C) other similar modifications.

13 “(3) TENANT PROTECTIONS.—In the case of
14 mortgages on residential rental properties, modifica-
15 tions made under paragraph (1) shall ensure—

16 “(A) the continuation of any existing Fed-
17 eral, State, and local rental subsidies and pro-
18 tections; and

19 “(B) that modifications take into account
20 the need for operating funds to maintain decent
21 and safe conditions at the property.

22 “(4) TIMING.—Each Federal property manager
23 shall develop and begin implementation of the plan
24 required by this subsection not later than 60 days
25 after the date of enactment of this subtitle.

1 “(5) REPORTS TO CONGRESS.—Each Federal
2 property manager shall, 60 days after the date of
3 enactment of this subtitle and every 30 days there-
4 after, report to Congress specific information on the
5 number and types of loan modifications made and
6 the number of actual foreclosures occurring during
7 the reporting period in accordance with this section.

8 “(6) CONSULTATION.—In developing the plan
9 required by this subsection, the Federal property
10 managers shall consult with one another and, to the
11 extent possible, utilize consistent approaches to the
12 requirements of this subsection.

13 “(c) ACTIONS WITH RESPECT TO SERVICERS.—In
14 any case in which a Federal property manager is not the
15 owner of a residential mortgage loan, but holds an interest
16 in obligations or pools of obligations secured by residential
17 mortgage loans, the Federal property manager shall—

18 “(1) encourage implementation by the loan
19 servicers of loan modifications developed under sub-
20 section (b);

21 “(2) assist in facilitating any such modifica-
22 tions, to the extent possible; and

23 “(3) encourage loan servicers to make fore-
24 closed properties available for sale to State and local
25 governments at a discount.

1 “(d) AVAILABILITY OF FORECLOSED PROPERTIES TO
2 STATE AND LOCALITIES.—

3 “(1) IN GENERAL.—Each Federal property
4 manager shall make available to any State or local
5 government that is receiving emergency assistance
6 under section 2301 of the Foreclosure Prevention
7 Act of 2008 (Division B of Public Law 110–289) for
8 purchase, at a discount, residential properties that it
9 owns through foreclosure in that State or locality, in
10 order to facilitate the sale of such properties and to
11 stabilize neighborhoods affected by foreclosures.

12 “(2) INFORMATION CLEARINGHOUSE.—

13 “(A) PROVISION OF INFORMATION TO THE
14 SECRETARY.—Each Federal property manager
15 shall make available to the Secretary of Hous-
16 ing and Urban Development information on
17 properties available for purchase under this
18 subsection.

19 “(B) CLEARINGHOUSE.—The Secretary of
20 Housing and Urban Development and the Fed-
21 eral property managers shall develop a clearing-
22 house for the information compiled under this
23 paragraph, and make such clearinghouse easily
24 accessible by States and local governments de-
25 scribed in paragraph (1).

1 “(e) LIMITATION.—The requirements of this section
2 shall be in addition to any other duty or requirement im-
3 posed on the Federal property managers under otherwise
4 applicable law.

5 **“SEC. 161. MINIMIZATION OF LONG-TERM COSTS AND MAXI-
6 MIZATION OF BENEFITS FOR TAXPAYERS.**

7 “(a) LONG-TERM COSTS AND BENEFITS.—

8 “(1) MINIMIZING NEGATIVE IMPACT.—The Sec-
9 retary shall use the authority under this subtitle in
10 a manner that will minimize any potential long-term
11 negative impact on the taxpayer, taking into account
12 the direct outlays, potential long-term returns on as-
13 sets purchased, and the overall economic benefits of
14 the program, including economic benefits due to re-
15 duced foreclosures and defaults, reduced bank-
16 ruptcies, neighborhood impacts, improvements in
17 economic activity and the availability of credit, the
18 impact on the savings and pensions of individuals,
19 reductions in losses to the Federal Government, and
20 other factors.

21 “(2) AUTHORITY.—In carrying out paragraph
22 (1), the Secretary shall—

23 “(A) hold the assets to maturity or for re-
24 sale for and until such time as the Secretary
25 determines that the market is appropriate for

1 selling such assets, in order to maximize the
2 value for taxpayers;

3 “(B) issue loan guarantees or credit en-
4 hancements on loans to be sold, where appro-
5 priate; and

6 “(C) sell such assets at a price that the
7 Secretary determines, based on available finan-
8 cial analysis, will maximize return on invest-
9 ment for the Federal Government.

10 “(3) PRIVATE SECTOR PARTICIPATION.—The
11 Secretary shall encourage the private sector to par-
12 ticipate in purchases of home mortgage loans con-
13 sistent with the provisions of this subtitle.

14 “(b) USE OF MARKET MECHANISMS.—In making
15 purchases under this subtitle, the Secretary shall—

16 “(1) make such purchases at the lowest price
17 that the Secretary determines to be consistent with
18 the purposes of this subtitle;

19 “(2) maximize the efficiency of the use of tax-
20 payer resources by using market mechanisms, in-
21 cluding auctions or reverse auctions, where appro-
22 priate; and

23 “(3) encourage private sector participation in
24 purchases of home mortgage loans through auctions,

1 reverse auctions and direct purchases as authorized
2 by this subtitle.

3 “(c) DIRECT PURCHASES.—If the Secretary deter-
4 mines that use of a market mechanism under subsection
5 (b) is not feasible or appropriate, and the purposes of the
6 subtitle are best met through direct purchases by the Sec-
7 retary from an individual financial institution, the Sec-
8 retary shall pursue additional measures to ensure that
9 prices paid for assets are reasonable and reflect the under-
10 lying value of the asset.

11 “(d) PURCHASE AUTHORITY FOR WARRANTS AND
12 DEBT INSTRUMENTS.—

13 “(1) IN GENERAL.—In exchange for asset pur-
14 chases, guarantees or capital infusions, the Sec-
15 retary may receive from any financial institution—

16 “(A) in the case of a financial institution
17 that is registered (or approved for registration)
18 and traded on a national securities exchange or
19 a national securities association registered pur-
20 suant to section 15A of the Securities Exchange
21 Act of 1934 (15 U.S.C. 78o–3), a warrant giv-
22 ing the right to the Secretary to receive non-
23 voting common stock or preferred stock in such
24 financial institution, as the Secretary deter-
25 mines appropriate; or

1 “(B) in the case of any financial institu-
2 tion other than one described in subparagraph
3 (A), a senior debt instrument from such finan-
4 cial institution, as described in paragraph
5 (2)(C).

6 “(2) TERMS AND CONDITIONS.—The terms and
7 conditions of any warrant or senior debt instrument
8 acquired under paragraph (1) shall meet the fol-
9 lowing requirements:

10 “(A) PURPOSES.—Such terms and condi-
11 tions shall, at a minimum, be designed—

12 “(i) to provide for reasonable partici-
13 pation by the Secretary, for the benefit of
14 taxpayers, in equity appreciation in the
15 case of a warrant, or a reasonable interest
16 rate premium, in the case of a debt instru-
17 ment; and

18 “(ii) to provide additional protection
19 for the taxpayer and stability to the finan-
20 cial system.

21 “(B) AUTHORITY TO SELL, EXERCISE,
22 SURRENDER.—The Secretary may sell, exercise,
23 or surrender a warrant or any senior debt in-
24 strument received under this subsection, based

1 on the conditions established under subpara-
2 graph (A).

3 “(C) CONVERSION.—The warrant shall
4 provide that if, after the warrant is received by
5 the Secretary under this subsection, the finan-
6 cial institution that issued the warrant is no
7 longer listed or traded on a national securities
8 exchange or securities association, as described
9 in paragraph (1)(A), such warrants shall con-
10 vert to senior debt, in an amount determined by
11 the Secretary and subject to such other condi-
12 tions as are determined by the Secretary.

13 “(D) PROTECTIONS.—Any warrant rep-
14 resenting securities to be received by the Sec-
15 retary under this subsection shall contain
16 antidilution provisions of the type employed in
17 capital market transactions, as determined by
18 the Secretary. Such provisions shall protect the
19 value of the securities from market transactions
20 such as stock splits, stock distributions, divi-
21 dends, and other distributions, mergers, and
22 other forms of reorganization or recapitaliza-
23 tion.

24 “(E) EXERCISE PRICE.—The exercise price
25 for any warrant issued pursuant to this sub-

1 section shall be set by the Secretary, in the in-
2 terest of the taxpayers.

3 “(F) SUFFICIENCY.—The financial institu-
4 tion shall guarantee to the Secretary that it has
5 authorized shares of nonvoting stock available
6 to fulfill its obligations under this subsection.
7 Should the financial institution not have suffi-
8 cient authorized shares, including preferred
9 shares that may carry dividend rights equal to
10 a multiple number of common shares, the Sec-
11 retary may, to the extent necessary, accept a
12 senior debt note in an amount, and on such
13 terms, as will compensate the Secretary equiva-
14 lently, in the event that a sufficient shareholder
15 vote to authorize the necessary additional
16 shares cannot be obtained.

17 **“SEC. 162. MARKET TRANSPARENCY.**

18 “(a) PRICING.—To facilitate market transparency,
19 the Secretary shall make available to the public, in elec-
20 tronic form, a description, the amounts, and the pricing
21 of assets acquired under this subtitle, within 2 business
22 days of purchase, trade, or other disposition.

23 “(b) DISCLOSURE.—For each type of financial insti-
24 tutions that sells home mortgages to the Secretary under
25 this subtitle, the Secretary shall determine whether the

1 public disclosure required for such financial institutions
2 with respect to off-balance sheet transactions, derivatives
3 instruments, contingent liabilities, and similar sources of
4 potential exposure is adequate to provide to the public suf-
5 ficient information as to the true financial position of the
6 institutions. If such disclosure is not adequate for that
7 purpose, the Secretary shall make recommendations for
8 additional disclosure requirements to the relevant regu-
9 lators.

10 **“SEC. 163. OVERSIGHT AND AUDITS.**

11 “(a) COMPTROLLER GENERAL OVERSIGHT.—

12 “(1) SCOPE OF OVERSIGHT.—The Comptroller
13 General of the United States shall, upon enactment
14 of this subtitle, commence ongoing oversight of the
15 activities and performance of the Secretary and of
16 any agents and representatives the Secretary (as re-
17 lated to the agent or representative’s activities on
18 behalf of or under the authority of the Secretary),
19 including vehicles established by the Secretary under
20 this subtitle. The subjects of oversight shall include
21 the following:

22 “(A) The performance of the Secretary in
23 meeting the purposes of this subtitle, particu-
24 larly those involving—

25 “(i) foreclosure mitigation;

- 1 “(ii) cost reduction;
2 “(iii) financial market stability;
3 “(iv) neighborhood stabilization; and
4 “(v) taxpayer protection.

5 “(B) The financial condition and internal
6 controls of the Secretary’s programs, represent-
7 atives and agents.

8 “(C) Characteristics of transactions and
9 commitments entered into, including trans-
10 action type, frequency, size, price paid, and all
11 other relevant terms and conditions, and the
12 timing, duration and terms of any future com-
13 mitments to purchase assets.

14 “(D) Characteristics and disposition of ac-
15 quired assets, including type, acquisition price,
16 current market value, sale prices and terms,
17 and use of proceeds from sales.

18 “(E) Efficiency of the operations of the
19 Secretary in the use of appropriated funds.

20 “(F) Compliance with all applicable laws
21 and regulation by the Secretary, its agents and
22 representatives.

23 “(G) The efforts of the Secretary to pre-
24 vent, identify, and minimize conflicts of interest
25 involving any agent or representative per-

1 forming activities on behalf of or under the au-
2 thority of the Secretary.

3 “(H) The efficacy of contracting proce-
4 dures pursuant to section 157(b), including, as
5 applicable, the efforts of the Secretary in evalu-
6 ating proposals for inclusion and contracting to
7 the maximum extent possible of minorities (as
8 such term is defined in 1204(c) of the Financial
9 Institutions Reform, Recovery, and Enhance-
10 ment Act of 1989 (12 U.S.C. 1811 note),
11 women, and minority- and women-owned busi-
12 nesses, including ascertaining and reporting the
13 total amount of fees paid and other value deliv-
14 ered by the Secretary to all of his agents and
15 representatives, and such amounts paid or de-
16 livered to such firms that are minority- and
17 women-owned businesses (as such terms are de-
18 fined in section 21A of the Federal Home Loan
19 Bank Act (12 U.S.C. 1441a)).

20 “(2) CONDUCT AND ADMINISTRATION OF OVER-
21 SIGHT.—

22 “(A) GAO PRESENCE.—The Secretary
23 shall provide the Comptroller General with ap-
24 propriate space and facilities in the Department
25 of the Treasury as necessary to facilitate over-

1 sight until the termination date established in
2 section 165.

3 “(B) ACCESS TO RECORDS.—To the extent
4 otherwise consistent with law, the Comptroller
5 General shall have access, upon request, to any
6 information, data, schedules, books, accounts,
7 financial records, reports, files, electronic com-
8 munications, or other papers, things or property
9 belonging to or in use by the Secretary, or any
10 vehicles established by the Secretary under this
11 subtitle, and to the officers, directors, employ-
12 ees, independent public accountants, financial
13 advisors, and other agents and representatives
14 of the Secretary (as related to the agent or rep-
15 resentative’s activities on behalf of or under the
16 authority of the Secretary) or any such vehicle
17 at such reasonable time as the Comptroller
18 General may request. The Comptroller General
19 shall be shall be afforded full facilities for
20 verifying transactions with the balances or secu-
21 rities held transactions with the balances or se-
22 curities held by depositaries, fiscal agents, and
23 custodians. The Comptroller General may make
24 and retain copies of such books, accounts, and

1 other records as the Comptroller General appro-
2 priate.

3 “(C) REIMBURSEMENT OF COSTS.—The
4 Treasury shall reimburse the Government Ac-
5 countability Office for the full cost of any such
6 oversight activities as billed therefore by the
7 Comptroller General of the United States. Such
8 reimbursements shall be credited to the appro-
9 priation account ‘Salaries and Expenses’, Gov-
10 ernment received and remain available until ex-
11 pended.

12 “(3) REPORTING.—The Comptroller General
13 shall submit reports of findings under this section,
14 regularly and no less frequently than once every 60
15 days, to the appropriate committees of Congress,
16 and the Special Inspector General for the Home
17 Mortgage Program established under this subtitle on
18 activities and performance of the Secretary. The
19 Comptroller may also submit special reports under
20 may also submit special reports under this sub-
21 section as warranted by the findings of its oversight
22 activities.

23 “(b) COMPTROLLER GENERAL AUDITS.—

24 “(1) ANNUAL AUDIT.—The Secretary shall an-
25 nually prepare and issue to the appropriate commit-

1 tees of Congress and the public audited financial
2 statements prepared in accordance with generally ac-
3 cepted accounting principles, and the Comptroller
4 General shall annually audit such statements in ac-
5 cordance with generally accepted auditing standards.
6 The Treasury shall reimburse the Government Ac-
7 countability Office for the full cost of any such audit
8 as billed therefore by the Comptroller General. Such
9 reimbursements shall be credited to the appropria-
10 tion account ‘Salaries and Expenses, Government
11 Accountability Office’ current when payment is re-
12 ceived and remain available until expended. The fi-
13 nancial statements under this paragraph shall be on
14 the fiscal year basis prescribed under section 1102
15 of title 31, United States Code.

16 “(2) AUTHORITY.—The Comptroller General
17 may audit the programs, activities, receipts, expendi-
18 tures, and financial transactions of the Secretary
19 and any agents and representatives of the Secretary
20 (as related to the agent or representative’s activities
21 on behalf of or under the authority of the Sec-
22 retary), including vehicles established by the Sec-
23 retary under this subtitle.

24 “(3) CORRECTIVE RESPONSES TO AUDIT PROB-
25 LEMS.—The Secretary shall—

1 “(A) take action to address deficiencies
2 identified by the Comptroller General or other
3 auditor engaged by the Secretary; or

4 “(B) certify to appropriate committees of
5 Congress that no action is necessary or appro-
6 priate.

7 “(c) INTERNAL CONTROL.—

8 “(1) ESTABLISHMENT.—The Secretary shall es-
9 tablish and maintain an effective system of internal
10 control, consistent with the standards prescribed
11 under section 3512(c) of title 31, United States
12 Code, that provides reasonable assurance of—

13 “(A) the effectiveness and efficiency of op-
14 erations, including the use of the resources of
15 the Secretary;

16 “(B) the reliability of financial reporting,
17 including financial statements and other reports
18 for internal and external use; and

19 “(C) compliance with applicable laws and
20 regulations.

21 “(2) REPORTING.—In conjunction with each
22 annual financial statement issued under this section,
23 the Secretary shall—

1 “(A) state the responsibility of manage-
2 ment for establishing and maintaining adequate
3 internal control over financial reporting; and

4 “(B) state its assessment, as of the end of
5 the most recent year covered by such financial
6 statement of the Secretary, of the effectiveness
7 of the internal control over financial reporting.

8 “(d) SHARING OF INFORMATION.—Any report or
9 audit required under this section shall also be submitted
10 to the Congressional Oversight Panel established under
11 section 125.

12 “(e) TERMINATION.—Any oversight, reporting, or
13 audit requirement under this section shall terminate on
14 the later of—

15 “(1) the date that the last asset acquired by the
16 Secretary under section; or

17 “(2) the date of expiration of the last insurance
18 contract issued under section 152.

19 **“SEC. 164. JUDICIAL REVIEW AND RELATED MATTERS.**

20 “(a) JUDICIAL REVIEW.—

21 “(1) STANDARD.—Actions by the Secretary
22 pursuant to the authority of this subtitle shall be
23 subject to chapter 7 of title 5, United States Code,
24 including that such final actions shall be held unlaw-
25 ful and set aside if found to be arbitrary, capricious,

1 an abuse of discretion, or not in accordance with
2 law.

3 “(2) LIMITATIONS ON EQUITABLE RELIEF.—

4 “(A) INJUNCTION.—No injunction or other
5 form of equitable relief shall be issued against
6 the Secretary for actions pursuant to section
7 151, 152, 156, and 159, other than to remedy
8 a violation of the Constitution.

9 “(B) TEMPORARY RESTRAINING ORDER.—

10 Any request for a temporary restraining order
11 against the Secretary for actions pursuant to
12 this subtitle shall be considered and granted or
13 denied by the court within 3 days of the date
14 of the request.

15 “(C) PRELIMINARY INJUNCTION.—Any re-

16 quest for a preliminary injunction against the
17 Secretary for actions pursuant to this subtitle
18 shall be considered and granted or denied by
19 the court on an expedited basis consistent with
20 the provisions of rule 65(b)(3) of the Federal
21 Rules of Civil Procedure, or any successor
22 thereto.

23 “(D) PERMANENT INJUNCTION.—Any re-

24 quest for a permanent injunction against the
25 Secretary for actions pursuant to this subtitle

1 shall be considered and granted or denied by
2 the court on an expedited basis. Whenever pos-
3 sible, the court shall consolidate trial on the
4 merits with any hearing on a request for a pre-
5 liminary injunction, consistent with the provi-
6 sions of rule 65(a)(2) of the Federal Rules of
7 Civil Procedure, or any successor thereto.

8 “(3) LIMITATION ON ACTIONS BY PARTICI-
9 PATING COMPANIES.—Unless expressly provided in a
10 written contract with the Secretary, no action or
11 claim, other than one brought under chapter 7 of
12 Title 5, United States Code, may be brought against
13 the Secretary by any person that divests its assets
14 under a program under this subtitle.

15 “(4) STAYS.—Any injunction or other form of
16 equitable relief issued against the Secretary for ac-
17 tions pursuant to section 151, 152, 156, and 159,
18 shall be automatically stayed. The stay shall be lift-
19 ed unless the Secretary seeks a stay from a higher
20 court within 3 calendar days after the date on which
21 the relief is issued.

22 “(b) RELATED MATTERS.—

23 “(1) TREATMENT OF HOMEOWNERS’ RIGHTS.—
24 The terms of any residential mortgage loan that is
25 part of any purchase by the Secretary under this

1 subtitle shall remain subject to all claims and de-
2 fenses that would otherwise apply, notwithstanding
3 the exercise of authority by the Secretary under this
4 subtitle.

5 “(2) SAVINGS CLAUSE.—Any exercise of the au-
6 thority of the Secretary pursuant to this subtitle
7 shall not impair the claims or defenses that would
8 otherwise apply with respect to persons other than
9 the Secretary.

10 “(3) TREATMENT OF INVESTORS’ RIGHTS.—(A)
11 Under existing standard industry practice, if a
12 servicer of pooled residential mortgages owes a duty
13 to determine whether the net present value of the
14 payments on a mortgage loan, as modified, sold, re-
15 financed or otherwise disposed of, is likely to be
16 greater than the anticipated net recovery that would
17 result from default or foreclosure, such servicer owes
18 such duty to all investors and holders of beneficial
19 interests in such loan, but not to any individual or
20 group of investors or beneficial interest holders.

21 “(B) Any servicer of pooled residential mort-
22 gages shall be deemed to have satisfied the duty
23 specified in subsection (A) if the servicer agrees to
24 or implements a modification, sale, refinancing, or
25 other disposition, including acceptance of partial

1 payments, interest rate reductions, principal write
2 downs, short sales, and other measures to mitigate
3 loss, so long as the servicer reasonably determines
4 that the net present value of the payments on a
5 mortgage loan, as modified, sold, refinanced or oth-
6 erwise disposed of, is likely to be greater than the
7 anticipated net recovery that would result from de-
8 fault or foreclosure.

9 **“SEC. 165. TERMINATION OF AUTHORITY.**

10 “(a) **TERMINATION.**—The authorities provided under
11 sections 151(a) and 152 shall terminate on December 31,
12 2009.

13 “(b) **EXTENSION UPON CERTIFICATION.**—The Sec-
14 retary, upon submission of a written certification to Con-
15 gress, may extend the authority provided under this sub-
16 title to expire not later than 2 years from the date of en-
17 actment of this subtitle. Such certification shall include
18 a justification of why the extension is necessary to assist
19 American families and stabilize financial markets, as well
20 as the expected cost to the taxpayers for such an exten-
21 sion.

22 **“SEC. 166. CREDIT REFORM.**

23 “(a) **IN GENERAL.**—Subject to subsection (b), the
24 costs of purchases of assets made under section 151(a)
25 and guarantees of assets under section 152, and any cash

1 flows associated with the activities authorized in section
2 102 and subsections (a), (b), and (c) of section 156 shall
3 be determined as provided under the Federal Credit Re-
4 form Act of 1990 (2 U.S.C. 661 et seq.), as applicable.

5 “(b) COSTS.—For the purposes of section 502(5) of
6 the Federal Credit Reform Act of 1990 (2 U.S.C.
7 661a(5))—

8 “(1) the cost of assets and guarantees of assets
9 shall be calculated by adjusting the discount rate in
10 section 502(5)(E) (2 U.S.C. 661a(5)(E)) for market
11 risks; and

12 “(2) the cost of a modification of a asset or
13 guarantee of a asset shall be the difference between
14 the current estimate consistent with paragraph (1)
15 under the terms of the asset or guarantee of the
16 asset and the current estimate consistent with para-
17 graph (1) under the terms of the asset or guarantee
18 of the asset, as modified.

19 **“SEC. 167. PRESERVATION OF QUALIFIED SPECIAL PUR-**
20 **POSE ENTITY STATUS.**

21 “Notwithstanding Statement Number 140 of the Fi-
22 nancial Accounting Standards Board or and any other
23 provision of law, a Qualified Special Purpose Entity (in
24 this section referred to as a ‘QSPE’) may participate in
25 a program established by the Secretary under this subtitle,

1 in the discretion of the servicer or trustee of the QSPE,
2 by selling, disposing of or modifying any home mortgage
3 loan from the assets of the QSPE, as provided by the Sec-
4 retary, and such participation shall not alter the status
5 of the entity selling, modifying or disposing of such loans
6 as a QSPE for purposes of Statement 140 or any other
7 provision of law.

8 **“SEC. 168. DEFINITIONS.**

9 “For purposes of this subtitle, the following defini-
10 tions shall apply:

11 “(1) APPROPRIATE COMMITTEES OF CON-
12 GRESS.—The term ‘appropriate committees of Con-
13 gress’ means—

14 “(A) the Committee on Banking, Housing,
15 and Urban Affairs, the Committee on Finance,
16 the Committee on the Budget, and the Com-
17 mittee on Appropriations of the Senate; and

18 “(B) the Committee on Financial Services,
19 the Committee on Ways and Means, the Com-
20 mittee on the Budget, and the Committee on
21 Appropriations of the House of Representatives.

22 “(2) BOARD.—The term ‘Board’ means the
23 Board of Governors of the Federal Reserve System.

24 “(3) CONGRESSIONAL SUPPORT AGENCIES.—
25 The term ‘congressional support agencies’ means the

1 Congressional Budget Office and the Joint Com-
2 mittee on Taxation.

3 “(4) CORPORATION.—The term ‘Corporation’
4 means the Federal Deposit Insurance Corporation.

5 “(5) FAMILY FORECLOSURE RESCUE CORPORA-
6 TION.—The term ‘Family Foreclosure Rescue Cor-
7 poration’ mean the entity established by the Sec-
8 retary under section 151.

9 “(6) FINANCIAL INSTITUTION.—The term ‘fi-
10 nancial institution’ means any institution, trust,
11 partnership, incorporated entity or other legal form,
12 including but not limited to, any bank, savings asso-
13 ciation, credit union, security broker or dealer, in-
14 surance company, or securitization trust.

15 “(7) FUND.—The term ‘Fund’ means the
16 Home Mortgage Insurance Financing Fund estab-
17 lished under section 102.

18 “(8) HOME MORTGAGES.—The term ‘home
19 mortgages’ means residential mortgages originated
20 on or before the date of enactment of this subtitle,
21 including residential mortgages held in securitization
22 trusts, residential mortgages held by financial insti-
23 tutions, mortgages supporting multifamily housing,
24 servicing rights with respect to home mortgages,
25 other real estate owned by financial institutions, and

1 residential mortgage-backed securities, the purchase,
2 guarantee, modification or disposition of which the
3 Secretary determines promotes financial market sta-
4 bility.

5 “(9) SECRETARY.—The term ‘Secretary’ means
6 the Secretary of the Treasury.

7 “(10) FFRC PROGRAM.—The term ‘FFRC pro-
8 gram’ means the home mortgage relief program es-
9 tablished under section 151(a)(3).

10 “(11) SHARED EQUITY MORTGAGE.—The term
11 ‘shared equity mortgage’ means a mortgage product
12 through which increases in the equity in a home re-
13 alized upon sale or disposition are shared among the
14 homeowner, the Secretary, or other parties.

15 **“SEC. 169. PRESERVATION OF AUTHORITY.**

16 “Nothing in this subtitle may be construed to limit
17 the authority of the Secretary under any other provision
18 of law.”.

19 (b) CLERICAL AMENDMENTS.—

20 (1) TITLE 5.—Section 5314 of title 5, United
21 States Code, is amended by adding at the end the
22 following new item:

23 “Chairman, Family Foreclosure Rescue Cor-
24 poration.”.

1 (2) TITLE 31.—Section 301 of title 31, United
2 States Code, is amended by adding at the end the
3 following new subsection:

4 “(h) The Department has one Chairman of the Fam-
5 ily Foreclosure Rescue Corporation, appointed by the
6 President, by and with the advice and consent of the Sen-
7 ate, who reports to the Secretary .”.

8 (3) TABLE OF CONTENTS AMENDMENT.—The
9 table of contents in section (1)(b) of the Emergency
10 Economic Stabilization Act of 2008 (Public Law
11 110–343; 122 Stat. 3765) is amended—

12 (A) by adding after the item relating to
13 title I the following:

“Subtitle A—Program for Purchases of Troubled Assets”;

14 and

15 (B) by adding after the item relating to
16 section 136 the following:

“Subtitle B—Family Foreclosure Rescue Corporation Program

“Sec. 150. Authority under TARP Program.

“Sec. 151. Purchases of home mortgages.

“Sec. 152. Insurance of home mortgages.

“Sec. 153. Considerations.

“Sec. 154. FFRC Oversight Board.

“Sec. 155. Reports.

“Sec. 156. Rights; management; sale of home mortgages; revenues and sale
proceeds.

“Sec. 157. Contracting procedures.

“Sec. 158. Conflicts of interest.

“Sec. 159. Foreclosure mitigation efforts.

“Sec. 160. Assistance to homeowners.

“Sec. 161. Minimization of long-term costs and maximization of benefits for
taxpayers.

“Sec. 162. Market transparency.

“Sec. 163. Oversight and audits.

“Sec. 164. Judicial review and related matters.

“Sec. 167. Preservation of qualified special purpose entity status.

“Sec. 168. Definitions.

“Sec. 169. Preservation of authority.”.

1 **SEC. 4. TAX PROVISIONS.**

2 (a) PRESERVATION OF STATUS AS REAL ESTATE
3 MORTGAGE INVESTMENT CONDUIT.—If a REMIC (as de-
4 fined in section 860D(a) of the Internal Revenue Code of
5 1986) sells, modifies or otherwise disposes of a home
6 mortgage loan under a program established by the Sec-
7 retary of the Treasury under this Act—

8 (1) such sale, modification or disposition shall
9 not be treated as a prohibited transaction under sec-
10 tion 860F(a)(2) of such Code, and

11 (2) for purposes of part IV of subchapter M of
12 chapter 1 of such Code—

13 (A) an interest in the REMIC shall not fail
14 to be treated as a regular interest (as defined
15 in section 860G(a)(1) of such Code) solely be-
16 cause of such sale, modification or disposition,
17 and

18 (B) any proceeds of such sale, modification
19 or disposition shall be treated as amounts re-
20 ceived under qualified mortgages.

21 (b) CONTINUED REMIC STATUS.—

22 (1) Any REMIC shall cease to be a REMIC if,
23 after the period ending three months from the date
24 of enactment of this Act, instruments governing the

1 conduct of servicers or trustees with respect to home
2 mortgage loans underlying the REMIC have the ef-
3 fect of prohibiting servicers or trustees from exer-
4 cising discretion to sell, modify or dispose of a home
5 mortgage loan in order to participate in a program
6 established by the Secretary of the Treasury under
7 section 101 of this Act.

8 (2) Any REMIC shall cease to be a REMIC if,
9 after the period ending three months from the date
10 of enactment of this Act, instruments governing the
11 conduct of servicers or trustees with respect to home
12 mortgage loans underlying the REMIC either—

13 (A) commit to a party, other than the
14 servicer or trustee, any discretion regarding
15 loan modifications for loans that are in default
16 or whose default is reasonably foreseeable; or

17 (B) have the effect of restricting servicers'
18 or trustees' exercise of their discretion to mod-
19 ify, sell or dispose of any and all home mort-
20 gage loans as part of a program established by
21 the Secretary of the Treasury under section
22 101 of this Act, including, without limitation,
23 by—

24 (i) restricting in any way the type of
25 modification, sale or disposition a servicer

1 or trustee may engage in for loans that are
2 in default or whose default is reasonably
3 foreseeable;

4 (ii) restricting in any way the percent-
5 age, absolute amount, or number of loans
6 held by the REMIC that may be modified,
7 sold or disposed of;

8 (iii) restricting in any way the fre-
9 quency of modifications, sales or disposi-
10 tions of loans that are in default or whose
11 default is reasonably foreseeable; or

12 (iv) requiring servicers or trustees to
13 purchase modified loans from the REMIC.

14 (c) EFFECTIVE DATE.—Subsection (a) shall apply to
15 sales, dispositions or modifications made after the date of
16 the enactment of this Act, in taxable years ending on or
17 after such date, and subsections (b) and (c) shall be effec-
18 tive on the date of enactment of this Act.

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