

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 195

To extend oversight, accountability, and transparency provisions of the Emergency Economic Assistance Act of 2008 to all Federal emergency economic assistance to private entities, to impose tough conditions for all recipients of such emergency economic assistance, to set up a Federal task force to investigate and prosecute criminal activities that contributed to our economic crisis, and to establish a bipartisan financial market investigation and reform commission, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2009

Mr. DORGAN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

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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 “Taxpayer Protection  
3 Act”.

4 **SEC. 2. INCREASED OVERSIGHT OVER FEDERAL EMER-  
5 GENCY ECONOMIC ASSISTANCE.**

6 (a) **IN GENERAL.**—Notwithstanding any other provi-  
7 sion of law, a Federal financial entity that provides emer-  
8 gency economic assistance to any private entity or group  
9 of private entities shall be subject to the oversight, report-  
10 ing, accountability, and transparency provisions of sec-  
11 tions 104, 105, 108, 116, 121, and 125 of the Emergency  
12 Economic Stabilization Act of 2008 (12 U.S.C. 5214,  
13 5215, 5218, 5226, 5231, 5233), in the same manner as  
14 those sections apply with respect to assistance provided  
15 under that Act.

16 (b) **MONTHLY REPORTS TO CONGRESS.**—Each Fed-  
17 eral financial entity that provides emergency economic as-  
18 sistance to any private entity or group of entities shall  
19 make monthly reports to Congress that provide, among  
20 other relevant information, the names and other details  
21 about the private entities receiving such financial assist-  
22 ance, together with a full description of the collateral or  
23 other interests granted to the Federal financial entity to  
24 ensure that taxpayers are repaid, to the maximum extent  
25 possible.

1 (c) DEFINITION.—As used in this Act, the term  
2 “Federal financial entity” means—

3 (1) the Secretary of the Treasury;

4 (2) each member of the Financial Institutions  
5 Examination Council established under section 1004  
6 of the Federal Financial Institutions Examination  
7 Council Act of 1978 (12 U.S.C. 3303); and

8 (3) the Federal Housing Finance Agency.

9 **SEC. 3. ESTABLISH CONDITIONS FOR EMERGENCY ECO-**  
10 **NOMIC ASSISTANCE.**

11 (a) IN GENERAL.—Notwithstanding any other provi-  
12 sion of law, before receiving funds under any program by  
13 a Federal financial entity to provide emergency economic  
14 assistance to private entities or groups of entities (includ-  
15 ing assistance under the Emergency Economic Stabiliza-  
16 tion Act of 2008), the intended recipient of such assist-  
17 ance shall agree, in writing—

18 (1) to provide a detailed monthly report to Con-  
19 gress about how emergency economic assistance pro-  
20 vided to such entity or group of entities is being  
21 used to meet the intended objectives and goals of  
22 such assistance;

23 (2) to permit the Federal financial entity pro-  
24 viding such assistance access to personnel and any  
25 books, papers, records, or other data that may be

1 relevant to the assistance, including compliance with  
2 the financial terms and conditions, and the right to  
3 audit such activities;

4 (3) to limit executive compensation and annual  
5 executive compensation tax deductions, to prohibit  
6 golden parachutes for officers and directors, and  
7 prohibit the payment of dividends or other distribu-  
8 tions, as provided, to the maximum extent possible,  
9 in section 111 of the Emergency Economic Stabiliza-  
10 tion Act of 2008 (12 U.S.C. 5221) and regulations  
11 and notices issued thereunder;

12 (4) to prohibit bonuses or incentive compensa-  
13 tion awards to the 25 most highly compensated em-  
14 ployees of the recipient;

15 (5) to prohibit any compensation plan that  
16 could encourage manipulation of reported earnings  
17 to enhance the compensation of any employee;

18 (6) to prohibit the use of emergency economic  
19 assistance for entertainment and lobbying expendi-  
20 tures;

21 (7) to sell or divest itself of any privately owned  
22 passenger aircraft or interest in such aircraft, and  
23 to prohibit the leasing of any such aircraft by or on  
24 behalf of any officer, director, or employee of the re-  
25 cipient; and

1           (8) to such other appropriate standards for ex-  
2           ecutive compensation and corporate governance as  
3           the Federal financial entity overseeing the provision  
4           of such assistance determines appropriate.

5           (b) APPLICABILITY.—Subsection (a) shall apply  
6           whether or not the recipient of emergency economic assist-  
7           ance from a Federal financial entity sells assets to the  
8           Federal financial entity.

9           (c) DURATION.—The provisions of subsection (a)  
10          shall apply, and the written agreement of the recipient of  
11          assistance described in subsection (a) shall remain in ef-  
12          fect, until such time as all obligations to the Federal finan-  
13          cial entity are repaid in full, and such entity ceases to own  
14          any equity securities, including warrants or collateral, ac-  
15          quired from the recipient of such assistance.

16          (d) VIOLATIONS.—A violation of any provision of an  
17          agreement described in subsection (a) by the recipient of  
18          emergency economic assistance from a Federal financial  
19          entity shall be considered a default on the obligation of  
20          the recipient to the Federal financial entity, and such obli-  
21          gation shall be immediately due and payable to the Fed-  
22          eral financial entity. The Federal financial entity shall be  
23          entitled to any and all remedies pursuant to such agree-  
24          ment and otherwise available under applicable provisions  
25          of law.

1 **SEC. 4. CREATION OF A TAXPAYER PROTECTION PROSECU-**  
2 **TION TASK FORCE.**

3 (a) IN GENERAL.—The Attorney General of the  
4 United States shall immediately establish a Taxpayer Pro-  
5 tection Prosecution Task Force (referred to in this section  
6 as the “Task Force”) .

7 (b) DUTIES.—The Task Force shall—

8 (1) investigate and prosecute financial fraud  
9 cases or any other violation of law that contributed  
10 to the collapse of our financial markets; and

11 (2) seek to claw back any ill-gotten gains, par-  
12 ticularly by those who received billions of dollars in  
13 compensation creating the real estate and financial  
14 bubble.

15 (c) MEMBERSHIP.—The membership of the Task  
16 Force shall include—

17 (1) Department of Justice attorneys acting as  
18 a team of Federal prosecutors;

19 (2) special agents from the Federal Bureau of  
20 Investigation, the Internal Revenue Service, and  
21 United States Postal Service; and

22 (3) additional assistance from the Board of  
23 Governors of the Federal Reserve System, the Secu-  
24 rities and Exchange Commission, and other Federal  
25 banking regulators or investigators.

1 (d) STAFFING.—The Task Force shall be staffed by  
2 Department of Justice career attorneys, enforcement at-  
3 torneys, and other private and public sector legal profes-  
4 sionals and experts in the violations of law under inves-  
5 tigation.

6 (e) DIRECTOR.—The Director of the Task Force  
7 shall be appointed by the President, subject to the advice  
8 and consent of the Senate.

9 (f) OUTSIDE EMPLOYMENT.—The Director of the  
10 Task Force and all professional members of the staff shall  
11 for a period of 2 years after their employment with the  
12 Task Force be prohibited from directly or indirectly rep-  
13 resenting any client in or in connection with any investiga-  
14 tion relating to any of the work of the Task Force.

15 (g) REPORT.—The Task Force shall file—

16 (1) a public report directly with Congress every  
17 6 months on its activities; and

18 (2) if necessary, a classified annex to protect  
19 the confidentiality of ongoing investigations or attor-  
20 ney-client privilege or other non-public information.

21 (h) STATUTE OF LIMITATIONS RECOMMENDATION.—  
22 The Task Force shall make recommendations to Congress  
23 not later than 60 days after the date of the establishment  
24 of the Task Force about extending the statute of limita-  
25 tion for complex financial fraud and other similar cases.

1 **SEC. 5. ESTABLISHMENT OF FINANCIAL MARKET INVESTIGATION AND REFORM COMMISSION TO**  
2 **LEARN HOW THE ECONOMIC CRISIS HAPPENED.**

3  
4  
5 (a) ESTABLISHMENT OF COMMISSION.—There is es-  
6 tablished the Financial Market Investigation and Reform  
7 Commission (in this Act referred to as the “Commis-  
8 sion”), the purposes of which are—

9 (1) to examine and report on the facts and  
10 causes of the collapse of the Nation’s financial sys-  
11 tem and credit crisis;

12 (2) to ascertain, evaluate, and report on the ex-  
13 tent to which Federal entities had information on fi-  
14 nancial practices that they knew or should have  
15 known were risky or reckless, and posed a threat to  
16 the well being of the Nation’s financial system;

17 (3) to build on any investigations by the Com-  
18 mittee on Banking, Housing, and Urban Affairs of  
19 the Senate and the Committee on Financial Services  
20 of the House of Representatives, by other congres-  
21 sional committees and the Federal banking agencies  
22 (as that term is defined in section 3 of the Federal  
23 Deposit Insurance Act), and the Securities and Ex-  
24 change Commission) to avoid duplication of effort;



1           (4) to make a full and complete report of the  
2 reasons for the worst financial system collapse since  
3 the Great Depression; and

4           (5) to report to the President and the Congress  
5 on its findings, conclusions, and legislative and regu-  
6 latory recommendations to prevent a similar finan-  
7 cial crisis in the future.

8           (b) MEMBERSHIP.—The Commission shall be com-  
9 posed of 10 members, of whom—

10           (1) 1 member shall be appointed by the Presi-  
11 dent, who shall serve as chairperson of the Commis-  
12 sion;

13           (2) 1 member shall be appointed by the minor-  
14 ity leader of the Senate, in consultation with the mi-  
15 nority leader of the House of Representatives, who  
16 shall serve as vice-chairperson of the Commission;

17           (3) 2 members shall be appointed by the major-  
18 ity leader of the Senate;

19           (4) 2 members shall be appointed by the minor-  
20 ity leader of the Senate;

21           (5) 2 members shall be appointed by the Speak-  
22 er of the House of Representatives; and

23           (6) 2 members shall be appointed by the minor-  
24 ity leader of the House of Representatives.

25           (c) QUALIFICATIONS; INITIAL MEETING.—

1           (1) CONFLICTS OF INTEREST.—No member of  
2 the Commission may be an employee, or an imme-  
3 diate family member of an employee, of a private en-  
4 tity or group of private entities that has received or  
5 applied for emergency economic assistance from any  
6 Federal financial entity (as defined in section 2).

7           (2) CRITERIA.—Members of the Commission  
8 shall be chosen from among United States citizens  
9 with national recognition and expertise in—

10                   (A) the operations of United States and  
11                   global financial markets;

12                   (B) the safety and soundness of United  
13                   States financial institutions;

14                   (C) the use of complex derivatives and  
15                   other structured financial instruments; or

16                   (D) the investigation and prosecution of  
17                   fraud and other intricate financial crimes.

18           (3) LIMITATION ON PUBLIC SERVICE.—Not  
19 more than 2 members of the Commission may be ap-  
20 pointed from among Federal, State, or local govern-  
21 ment employees.

22           (4) TIMING.—Members of the Commission shall  
23 be appointed not later than 30 days after the date  
24 of enactment of this Act.

1           (5) MEETINGS.—The Commission shall meet  
2 not later than 45 days after the date of enactment  
3 of this Act. After the initial meeting, the Commis-  
4 sion shall meet upon the call of the chairperson or  
5 a majority of the members of the Commission.

6           (6) QUORUM; VACANCIES.—Six members of the  
7 Commission shall constitute a quorum. Any vacancy  
8 in the Commission shall not affect its powers, but  
9 shall be filled in the same manner in which the origi-  
10 nal appointment was made.

11           (7) PROCEDURES.—To carry out this Act, the  
12 Commission may establish, by majority vote, any  
13 other rules for the conduct of the business of the  
14 Commission, if such rules are not inconsistent with  
15 this Act or other applicable law.

16           (d) POWERS AND DUTIES.—The Commission may—

17           (1) hold hearings, take testimony, and collect  
18 evidence, by subpoena or otherwise;

19           (2) issue subpoenas, under the signature of the  
20 chairperson or any member designated by a majority  
21 of the members of the Commission, by agreement of  
22 the chairperson and vice-chairperson, or by the af-  
23 firmative vote of 6 members of the Commission, and  
24 may enforce the subpoena in the United States dis-

1       trict court for the judicial district in which the sub-  
2       poenaed person resides;

3           (3) contract with appropriate entities to enable  
4       the Commission to discharge its duties;

5           (4) obtain information from Federal depart-  
6       ments and agencies;

7           (5) obtain assistance from Federal agencies, in-  
8       cluding the General Services Administration, for  
9       support services and other agencies for services,  
10      funds, facilities, and staff, as needed;

11          (6) accept, use, and dispose of gifts or dona-  
12      tions of services and property; and

13          (7) use the United States mails, in the same  
14      manner as Federal departments and agencies.

15      (e) CONFLICTS OF INTEREST.—The Commission  
16      shall issue rules to manage or prohibit conflicts of interest  
17      involving its members, staff, consultants, and any others  
18      providing assistance to the Commission.

19      (f) REPORTS.—The Commission shall submit to Con-  
20      gress 2 interim reports to discuss the Commission's  
21      progress. The Commission's final report shall be sub-  
22      mitted to Congress 12 months after the date of enactment  
23      of this Act.

24      (g) ADMINISTRATIVE SUPPORT.—Upon the request  
25      of the Commission, the Administrator of General Services

1 shall provide to the Commission, on a reimbursable basis,  
2 the administrative support services necessary for the Com-  
3 mission to carry out its responsibilities under this Act, in-  
4 cluding human resource management, budget, leasing, ac-  
5 counting, and payroll services.

6 (h) PAY.—

7 (1) NONGOVERNMENT EMPLOYEES.—Each  
8 member of the Commission who is not otherwise em-  
9 ployed by a Federal, State, or local government enti-  
10 ty shall be entitled to receive the daily equivalent of  
11 the annual rate of basic pay payable for level IV of  
12 the Executive Schedule under section 5315 of title  
13 5 United States Code, as in effect from time to time,  
14 for each day (including travel time) during which  
15 such member is engaged in the actual performance  
16 of duties of the Commission.

17 (2) GOVERNMENT EMPLOYEES.—A member of  
18 the Commission who is an officer or employee of a  
19 Federal, State or local government entity shall serve  
20 without additional pay (or benefits in the nature of  
21 compensation) for service as a member of the Com-  
22 mission.

23 (i) TRAVEL EXPENSES.—Members of the Commis-  
24 sion shall receive travel expenses, including per diem in

1 lieu of subsistence, in accordance with subchapter I of  
2 chapter 57 of title 5, United States Code 55.

3 (j) STAFF.—

4 (1) APPOINTMENT AND COMPENSATION.—The  
5 chairperson of the Commission, in consultation with  
6 the vice-chairperson, in accordance with rules agreed  
7 upon by the Commission, may appoint and fix the  
8 compensation of a staff director and such other per-  
9 sonnel as may be necessary to enable the Commis-  
10 sion to carry out its functions, without regard to the  
11 provisions of title 5, United States Code, governing  
12 appointments in the competitive service, and without  
13 regard to the provisions of chapter 51 and sub-  
14 chapter II of chapter 53 of such title relating to  
15 classification and General Schedule pay rates, except  
16 that no rate of pay fixed under this subsection may  
17 exceed the equivalent of that payable for a position  
18 at level V of the Executive Schedule under section  
19 5316 of title 5, United States Code.

20 (2) PERSONNEL AS FEDERAL EMPLOYEES.—

21 (A) IN GENERAL.—Any personnel of the  
22 Commission shall be employees under section  
23 2105 of title 5, United States Code, for pur-  
24 poses of chapters 63, 81, 83, 84, 85, 87, 89,  
25 and 90 of that title.

1           (B) DETAILEES.—Any Federal Govern-  
2           ment employee may be detailed to the Commis-  
3           sion without reimbursement from the Commis-  
4           sion, and such detailee shall retain the rights,  
5           status, and privileges of his or her regular em-  
6           ployment without interruption.

7           (C) CONSULTANT SERVICES.—The Com-  
8           mission is authorized to procure the services of  
9           experts and consultants in accordance with sec-  
10          tion 3109 of title 5, United States Code, but at  
11          rates not to exceed the daily rate paid to a per-  
12          son occupying a position at level IV of the Ex-  
13          ecutive Schedule under section 5315 of title 5,  
14          United States Code.

15          (k) TERMINATION.—The Commission shall terminate  
16          60 days after the date of submission of its final report  
17          under subsection (f).

18          (l) FUNDING.—There are authorized to be appro-  
19          priated to the Commission such sums as are necessary to  
20          carry out this Act, to remain available, without fiscal year  
21          limitation, until the termination of the Commission.

○