

**(d) Limitation on luxury expenditures**

The board of directors of any TARP recipient shall have in place a company-wide policy regarding excessive or luxury expenditures, as identified by the Secretary, which may include excessive expenditures on—

- (1) entertainment or events;
- (2) office and facility renovations;
- (3) aviation or other transportation services;

or

(4) other activities or events that are not reasonable expenditures for staff development, reasonable performance incentives, or other similar measures conducted in the normal course of the business operations of the TARP recipient.

**(e) Shareholder approval of executive compensation****(1) Annual shareholder approval of executive compensation**

Any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding shall permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).

**(2) Nonbinding vote**

A shareholder vote described in paragraph (1) shall not be binding on the board of directors of a TARP recipient, and may not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

**(3) Deadline for rulemaking**

Not later than 1 year after February 17, 2009, the Commission shall issue any final rules and regulations required by this subsection.

**(f) Review of prior payments to executives****(1) In general**

The Secretary shall review bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most highly-compensated employees of each entity receiving TARP assistance before February 17, 2009, to determine whether any such payments were inconsistent with the purposes of this section or the TARP or were otherwise contrary to the public interest.

**(2) Negotiations for reimbursement**

If the Secretary makes a determination described in paragraph (1), the Secretary shall seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses.

**(g) No impediment to withdrawal by TARP recipients**

Subject to consultation with the appropriate Federal banking agency (as that term is defined

in section 1813 of this title), if any, the Secretary shall permit a TARP recipient to repay any assistance previously provided under the TARP to such financial institution, without regard to whether the financial institution has replaced such funds from any other source or to any waiting period, and when such assistance is repaid, the Secretary, at the market price, may liquidate warrants associated with such assistance.

**(h) Regulations**

The Secretary shall promulgate regulations to implement this section.

(Pub. L. 110-343, div. A, title I, § 111, Oct. 3, 2008, 122 Stat. 3776; Pub. L. 111-5, div. B, title VII, § 7001, Feb. 17, 2009, 123 Stat. 516; Pub. L. 111-22, div. A, title IV, § 403, May 20, 2009, 123 Stat. 1658.)

**Editorial Notes****REFERENCES IN TEXT**

The Securities Exchange Act of 1934, referred to in subsecs. (a)(1) and (c)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

**AMENDMENTS**

2009—Pub. L. 111-5 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to applicability of requirements, direct purchases of troubled assets, auction purchases of troubled assets, and sunset of provisions, respectively.

Subsec. (g). Pub. L. 111-22 substituted “, at the market price, may liquidate warrants associated with such assistance” for “shall liquidate warrants associated with such assistance at the current market price”.

**§ 5222. Coordination with foreign authorities and central banks**

The Secretary 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. To the extent that such foreign financial authorities or banks hold troubled assets as a result of extending financing to financial institutions that have failed or defaulted on such financing, such troubled assets qualify for purchase under section 5211 of this title.

(Pub. L. 110-343, div. A, title I, § 112, Oct. 3, 2008, 122 Stat. 3777.)

**§ 5223. Minimization of long-term costs and maximization of benefits for taxpayers****(a) Long-term costs and benefits****(1) Minimizing negative impact**

The Secretary shall use the authority under this chapter 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 economic benefits due to improvements in economic activity and the availability of credit, the impact on the savings and pensions of individuals, and reductions in losses to the Federal Government.

**(2) Authority**

In carrying out paragraph (1), the Secretary shall—

(A) hold the assets to maturity or for resale for and until such time as the Secretary determines that the market is optimal for selling such assets, in order to maximize the value for taxpayers; and

(B) sell such assets at a price that the Secretary determines, based on available financial analysis, will maximize return on investment for the Federal Government.

**(3) Private sector participation**

The Secretary shall encourage the private sector to participate in purchases of troubled assets, and to invest in financial institutions, consistent with the provisions of this section.

**(b) Use of market mechanisms**

In making purchases under this chapter, the Secretary shall—

(1) make such purchases at the lowest price that the Secretary determines to be consistent with the purposes of this chapter; and

(2) maximize the efficiency of the use of taxpayer resources by using market mechanisms, including auctions or reverse auctions, where appropriate.

**(c) Direct purchases**

If the Secretary determines that use of a market mechanism under subsection (b) is not feasible or appropriate, and the purposes of the chapter are best met through direct purchases from an individual financial institution, the Secretary shall pursue additional measures to ensure that prices paid for assets are reasonable and reflect the underlying value of the asset.

**(d) Conditions on purchase authority for warrants and debt instruments**

**(1) In general**

The Secretary may not purchase, or make any commitment to purchase, any troubled asset under the authority of this chapter, unless the Secretary receives from the financial institution from which such assets are to be purchased—

(A) in the case of a financial institution, the securities of which are traded on a national securities exchange, a warrant giving the right to the Secretary to receive nonvoting common stock or preferred stock in such financial institution, or voting stock with respect to which,<sup>1</sup> the Secretary agrees not to exercise voting power, as the Secretary determines appropriate; or

(B) in the case of any financial institution other than one described in subparagraph (A), a warrant for common or preferred stock, or a senior debt instrument from such financial institution, as described in paragraph (2)(C).

**(2) Terms and conditions**

The terms and conditions of any warrant or senior debt instrument required under paragraph (1) shall meet the following requirements:

**(A) Purposes**

Such terms and conditions shall, at a minimum, be designed—

(i) to provide for reasonable participation by the Secretary, for the benefit of taxpayers, in equity appreciation in the case of a warrant or other equity security, or a reasonable interest rate premium, in the case of a debt instrument; and

(ii) to provide additional protection for the taxpayer against losses from sale of assets by the Secretary under this chapter and the administrative expenses of the TARP.

**(B) Authority to sell, exercise, or surrender**

The Secretary may sell, exercise, or surrender a warrant or any senior debt instrument received under this subsection, based on the conditions established under subparagraph (A).

**(C) Conversion**

The warrant shall provide that if, after the warrant is received by the Secretary under this subsection, the financial institution that issued the warrant is no longer listed or traded on a national securities exchange or securities association, as described in paragraph (1)(A), such warrants shall convert to senior debt, or contain appropriate protections for the Secretary to ensure that the Treasury is appropriately compensated for the value of the warrant, in an amount determined by the Secretary.

**(D) Protections**

Any warrant representing securities to be received by the Secretary under this subsection shall contain anti-dilution provisions of the type employed in capital market transactions, as determined by the Secretary. Such provisions shall protect the value of the securities from market transactions such as stock splits, stock distributions, dividends, and other distributions, mergers, and other forms of reorganization or recapitalization.

**(E) Exercise price**

The exercise price for any warrant issued pursuant to this subsection shall be set by the Secretary, in the interest of the taxpayers.

**(F) Sufficiency**

The financial institution shall guarantee to the Secretary that it has authorized shares of nonvoting stock available to fulfill its obligations under this subsection. Should the financial institution not have sufficient authorized shares, including preferred shares that may carry dividend rights equal to a multiple number of common shares, the Secretary may, to the extent necessary, accept a senior debt note in an amount, and on such terms as will compensate the Secretary with equivalent value, in the event that a sufficient shareholder vote to authorize the necessary additional shares cannot be obtained.

**(3) Exceptions**

**(A) De minimis**

The Secretary shall establish de minimis exceptions to the requirements of this subsection, based on the size of the cumulative

<sup>1</sup> So in original. The comma probably should not appear.

transactions of troubled assets purchased from any one financial institution for the duration of the program, at not more than \$100,000,000.

**(B) Other exceptions**

The Secretary shall establish an exception to the requirements of this subsection and appropriate alternative requirements for any participating financial institution that is legally prohibited from issuing securities and debt instruments, so as not to allow circumvention of the requirements of this section.

(Pub. L. 110-343, div. A, title I, § 113, Oct. 3, 2008, 122 Stat. 3777.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

**§ 5224. Market transparency**

**(a) Pricing**

To facilitate market transparency, the Secretary shall make available to the public, in electronic form, a description, amounts, and pricing of assets acquired under this chapter, within 2 business days of purchase, trade, or other disposition.

**(b) Disclosure**

For each type of financial institutions<sup>1</sup> that sells troubled assets to the Secretary under this chapter, the Secretary shall determine whether the public disclosure required for such financial institutions with respect to off-balance sheet transactions, derivatives instruments, contingent liabilities, and similar sources of potential exposure is adequate to provide to the public sufficient information as to the true financial position of the institutions. If such disclosure is not adequate for that purpose, the Secretary shall make recommendations for additional disclosure requirements to the relevant regulators.

(Pub. L. 110-343, div. A, title I, § 114, Oct. 3, 2008, 122 Stat. 3780.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

**§ 5225. Graduated authorization to purchase**

**(a) Authority**

The authority of the Secretary to purchase troubled assets under this chapter shall be limited as follows:

(1) Effective upon October 3, 2008, such authority shall be limited to \$250,000,000,000 outstanding at any one time.

(2) If at any time, the President submits to the Congress a written certification that the Secretary needs to exercise the authority under this paragraph, effective upon such submission, such authority shall be limited to \$350,000,000,000 outstanding at any one time.

(3) If, at any time after the certification in paragraph (2) has been made, the President transmits to the Congress a written report detailing the plan of the Secretary to exercise the authority under this paragraph, unless there is enacted, within 15 calendar days of such transmission, a joint resolution described in subsection (c), effective upon the expiration of such 15-day period, such authority shall be limited to \$475,000,000,000.

(4) For purposes of this subsection, the amount of authority considered to be exercised by the Secretary shall not be reduced by—

(A) any amounts received by the Secretary before, on, or after July 21, 2010, from repayment of the principal of financial assistance by an entity that has received financial assistance under the TARP or any other program enacted by the Secretary under the authorities granted to the Secretary under this chapter;

(B) any amounts committed for any guarantees pursuant to the TARP that became or become uncommitted; or

(C) any losses realized by the Secretary.

(5) No authority under this chapter may be used to incur any obligation for a program or initiative that was not initiated prior to June 25, 2010.

**(b) Aggregation of purchase prices**

The amount of troubled assets purchased by the Secretary outstanding at any one time shall be determined for purposes of the dollar amount limitations under subsection (a) by aggregating the purchase prices of all troubled assets held.

**(c) Joint resolution of disapproval**

**(1) In general**

Notwithstanding any other provision of this section, the Secretary may not exercise any authority to make purchases under this chapter with regard to any amount in excess of \$350,000,000,000 previously obligated, as described in this section if, within 15 calendar days after the date on which Congress receives a report of the plan of the Secretary described in subsection (a)(3), there is enacted into law a joint resolution disapproving the plan of the Secretary with respect to such additional amount.

**(2) Contents of joint resolution**

For the purpose of this section, the term “joint resolution” means only a joint resolution—

(A) that is introduced not later than 3 calendar days after the date on which the report of the plan of the Secretary referred to in subsection (a)(3) is received by Congress;

(B) which does not have a preamble;

<sup>1</sup> So in original. Probably should be “institution”.