



## Emergency Economic Stabilization Act of 2008

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As I sit down to write this column, the ink on the 451-page “Emergency Economic Stabilization Act of 2008” is hardly dry. Few have really had the opportunity to fully digest its contents, let alone understand, its future ramifications on our economy and industry—good or bad.

I do know we now have a whole new gaggle of acronyms to learn, such as:

- EESA (Emergency Economic Stabilization Act of 2008);
- TARP (Troubled Asset Relief Program), the name of the Treasury managed program that will purchase troubled assets from eligible financial institutions;
- FHFA (Federal Housing Finance Agency), the government conservator for Fannie Mae and Freddie Mac;
- SIG (Special Inspector General), responsible for conducting and supervising audits and investigations regarding the purchase and sale of assets and authority used under the TARP.

The list goes on...

Some of the provisions of EESA are as follows (my editorial comments italicized):

- §101 – Purchases of Troubled Assets: Authorizes Treasury to establish TARP to purchase troubled assets from the financial institutions. Treasury must take steps to prevent “unjust enrichment” including preventing the sale of troubled assets to Treasury at a higher price than what the seller paid to purchase the assets in the first place. *“Now isn't that special”...we can be assured that Treasury won't pay more than the original book value of the troubled asset—never mind that it's value is currently cents on the dollar.*
- §107-Contracting: The FDIC is eligible for consideration to serve as asset manager for residential mortgage loans and mortgage-backed securities—*RTC revisited?*
- §113-Minimization of Long-Term Losses and Maximization of Benefits for Taxpayers: This requires Treasury to minimize the negative long-term impact on the taxpayer by holding the asset until such time that Treasury determines their value is “optimal” and at a price that will maximize the return on the investment for the federal government. Treasury must encourage the private sector to purchase troubled assets. *Okay, let me get this right...Treasury, in its infinite wisdom and with its infallible crystal ball, figures out the precise moment that the troubled asset's value has reached its zenith. Then Treasury sells these assets, which, by definition, aren't supposed to appreciate any further, to “the private sector”. Hmm...Did we just move these troubled assets from one private sector group (investment banks) to another private group using the government (i.e., the Treasury) as an intermediary?—Caveat emptor!*
- §125-Congressional Oversight Panel: Establishes a five member “Congressional Oversight Panel” to review the current state of financial markets and report regularly to the House and Senate. A special report is due not later than January 20, 2009, analyzing the current regulatory system and including recommendations on whether there are any gaps in existing consumer protections and whether or not participants outside of the current regulatory system should be covered. *Hello...Can you say “mortgage brokers”? Or, as Adam Sandler exclaimed in the movie “The Wedding Singer,” “Again, information that would have been good to know yesterday!”*
- §128-Interest on Reserves: Moves up the effective date from October 1, 2011 to October 1, 2008, allowing the Fed to pay interest on sterile reserves.
- §132 & §133-Authority to Suspend and Study Effects of Mark-to-Market Accounting: Authorizes the SEC to suspend FAS 157 (mark-to-market accounting) and to conduct a study as to whether FAS 157 standards are (should be) applicable to financial institutions. The SEC has until December 31, 2008 to report back to Congress. *I think we can all agree that this is certainly one good thing that has come from this legislation. It particularly strikes a chord with me because I testified (as a member of the ABA Accounting Committee) in front of the 5-member FASB board in 2004 not to implement some of the fair value accounting rules (i.e., OTTI) they were proposing. Obviously, my arguments must not have*

*been very persuasive ...it's taken a near financial meltdown for FASB to understand the slippery slope they were pushing the accounting world into.*

- §136-Temporary Increase in FDIC Coverage: The bill provides that the FDIC limit will temporarily be increased to \$250,000. Furthermore, the FDIC is prohibited from including the temporary increased insurance level and corresponding deposits in calculating and assessing FDIC deposit premiums.
- §301-Loss on Sale of GSE Preferred Stock: Allows financial institutions that held preferred stock in Fannie or Freddie to treat losses as ordinary losses for tax purposes. *This is another “silver lining” issue that we pushed hard for when we were in Washington for the MBA visit—a small, but important victory.*

Not too surprisingly, Congress also added what I deem to be pork to this legislation, including favorable tax treatment for motor sports racing track facilities, tax incentives for investment in the District of Columbia, provisions related to film and television productions and even income averaging for those receiving payments in connection with the Exxon Valdez litigation—*they just can't help themselves, can they?!*

The bill can be viewed at: <http://financialservices.house.gov/esse/essabill.pdf>