

Management Alert

Detailed Summary:

The Emergency Economic Stabilization Act of 2008

I. INTRODUCTION

On Friday, October 3, 2008 President Bush signed into law the Emergency Economic Stabilization Act of 2008 (the "Act"), legislation intended to bring relief to the troubled credit markets. For your convenience, set forth below is a detailed summary of the Act's provisions.

While not directly related to the major portion of the Act known as the Troubled Assets Relief Program, we have also included below a summary description of the principal contents of the Energy Improvement and Extension Act of 2008 and the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, which were also included in the legislation enacted on October 3, 2008.

II. DIVISION A – EMERGENCY ECONOMIC STABILIZATION

1. *Section 1 – Short Title.* Section 1 provides that the name of the bill is the Emergency Economic Stabilization Act of 2008.
2. *Section 2 – Purposes.* Section 2 provides that the purposes of the Act are to immediately provide authority and facilities that the Secretary of the Treasury (the "Secretary") can use to restore liquidity and stability to the United States financial system. Such authority and facilities are to be used in a manner that protects Americans' savings and investments, preserves home ownership, promotes jobs and economic growth and maximizes returns to taxpayers.
3. *Section 3 – Definitions.* Section 3 provides certain definitions used in the Act.

A. TITLE I – TROUBLED ASSETS RELIEF PROGRAM

1. *Section 101 – Purchase of Troubled Assets.* Section 101 authorizes the Secretary to establish the Troubled Assets Relief Program (the "Program") for the purpose of purchasing troubled assets from financial institutions. Troubled assets are defined to include residential or commercial mortgages and any securities, obligations or other instruments related thereto, so long as they were originated or issued on or before March 14, 2008, as well as any other financial instrument, the purchase of which that the Secretary, after consultation

with the Chairman of the Board of Governors of the Federal Reserve System (the “Board”), determines is necessary to promote financial market stability. Financial institutions are defined to include institutions such as banks, savings associations, credit unions, security brokers or dealers or insurance companies. Further, to qualify as a “financial institution” under the Act, an institution must be established and regulated under the laws of the United States or any State, territory or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa or the United States Virgin Islands, and must have “significant operations” in the United States. Central banks or institutions owned by foreign governments do not qualify as “financial institutions” under the Act. The Act establishes an Office of Financial Stability within the Department of the Treasury to administer the Program and requires that the Secretary consult with the Board, the Federal Deposit Insurance Corporation (the “FDIC”), the Comptroller of the Currency, the Director of the Office of Thrift Supervision and the Secretary of Housing and Urban Development (the “HUD Secretary”) in implementing the Program.

This Section 101 also authorizes the Secretary to take such actions as are necessary to carry out the provisions of the Act and requires the Secretary to publish program guidelines including mechanisms for purchasing troubled assets, methods of pricing troubled assets, procedures for selecting asset managers and criteria for identifying troubled assets to purchase.

Finally, this Section requires that the Secretary take such steps as may be necessary to prevent financial institutions participating in the Program from being unjustly enriched by the Program.

2. *Section 102 – Insurance of Troubled Assets.* Section 102 provides that if the Secretary establishes the Program, the Secretary is required to establish a program to guarantee up to 100 percent of the payment of principal of, and interest on, troubled assets originated or issued by financial institutions prior to March 14, 2008. Premiums for such guarantees shall be paid by participating financial institutions and shall be set in accordance with the credit risk of the particular asset that is being guaranteed. All premiums collected in accordance with this Section shall be deposited in a Troubled Assets Insurance Financing Fund which shall be used to pay any obligations under the guarantees provided in accordance with this Section. Section 102 also provides that the Secretary’s purchase authority limit under Section 115 of the Act shall be reduced by an amount equal to the difference between the total of the outstanding guaranteed obligations under the insurance program and the balance in the Troubled Assets Insurance Financing Fund.
3. *Section 103 – Considerations.* Section 103 provides that in using his or her authority under the Act, the Secretary is required to take a number of considerations into account including protecting the interests of taxpayers, providing stability and preventing disruption to financial markets, the need to help families keep their homes, the needs of all financial institutions regardless of size or other characteristics, the needs of local communities, the need to ensure stability for United States public instrumentalities, the need to protect the retirement security of Americans and the utility of purchasing real estate owned and instruments backed by mortgages on multi-family properties. This Section also requires the Secretary to examine the long-term viability of an institution in determining whether to directly purchase any of its assets under the Program.

4. *Section 104 – Financial Stability Oversight Board.* Section 104 establishes the Financial Stability Oversight Board (the “Oversight Board”) which shall be responsible for reviewing the exercise of authority under any program established pursuant to the Act, making recommendations, as appropriate, to the Secretary regarding use of the authority granted by the Act and reporting any suspected fraud, misrepresentation or malfeasance to the appropriate authorities. The Oversight Board shall also have the authority to ensure that the policies implemented by the Secretary are in accordance with the provisions of the Act and in the economic interests of the United States and are consistent with the goal of protecting taxpayers.

The Oversight Board shall be comprised of the Chairman of the Board, the Secretary, the Director of the Federal Home Finance Agency, the Chairman of the Securities and Exchange Commission and the HUD Secretary.

5. *Section 105 – Reports.* Section 105 requires the Secretary to report to the appropriate committees of Congress within sixty (60) days of the first exercise of authority under the Act and every month thereafter. These reports shall address, with respect to each such period, an overview of the actions taken by the Secretary, the actual obligation for the administration of the Program and the expected expenditure of funds in the subsequent period. The report shall also include a detailed financial statement with respect to the exercise of authority under the Act.

For every \$50 billion of assets purchased, the Secretary shall provide to the appropriate committees of Congress a written report containing a description of all the transactions entered into, a description of the pricing mechanism for the transactions and a justification of the price paid for the assets purchased, a description of the impact of the exercise of such authority on the financial system, a description of the challenges remaining in the financial system and an estimate of additional actions under the Act that may be necessary to address such challenges.

No later than April 30, 2009, the Secretary shall submit a written report to the appropriate committees of Congress analyzing the current state of the regulatory system and its effectiveness in overseeing the participants in the financial markets.

6. *Section 106 – Rights; Management; Sale of Troubled Assets; Revenues and Sale Proceeds.* Section 106 provides that the Secretary may exercise any rights received in connection with troubled assets purchased under the Act at any time. The Secretary shall have the authority to manage the troubled assets purchased under the Act, including the right to dispose of such assets upon terms and conditions and at a price determined by the Secretary. All revenues of and proceeds from the sale of troubled assets purchased under the Act shall be used to reduce the national debt.
7. *Section 107 – Contracting Procedures.* Section 107 provides that the Secretary may waive specific provisions of the Federal Acquisition Regulation, the principal set of rules governing the process through which the government purchases goods and services, upon his or her determination that urgent and compelling circumstances make compliance with such provisions contrary to the public interest. Any such determination must be submitted to certain specified congressional committees within seven days. In the event any provisions pertaining to minority contracting are waived, the secretary must develop and implement

standards and procedures to ensure the inclusion and utilization of minorities and women and minority- and women-owned businesses in such solicitation or contract.

8. *Section 108 – Conflicts of Interest.* Section 108 provides that the Secretary shall issue regulations or guidelines necessary to address and manage or to prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities provided under the Act. Certain specific examples are referenced including conflicts arising in the selection or hiring of contractors or advisors, conflicts relating to the purchase of troubled assets, the management of troubled assets and post employment restrictions on employees.
9. *Section 109 – Foreclosure Mitigation Efforts.* Section 109 provides that, with respect to assets acquired under the Program and secured by residential real estate, the Secretary shall implement a plan to maximize assistance for homeowners and shall encourage the servicers of the underlying mortgages to take advantage of the HOPE for Homeowners Program and other programs aimed at minimizing foreclosures. The Secretary may also use loan guarantees and credit enhancements to facilitate loan modifications to prevent avoidable foreclosures. The Secretary shall coordinate with other federal entities that own troubled assets to identify opportunities to acquire classes of troubled assets that will improve the ability of the Secretary to improve the loan modification process and permit tenants who are current on their leases to remain in their homes.
10. *Section 110 – Assistance to Homeowners.* Section 110 requires federal entities that hold mortgages and mortgage-backed securities, including the Federal Housing Finance Agency, the FDIC and the Board to develop plans to maximize assistance for homeowners and encourage the servicers of the underlying mortgages to take advantage of the HOPE for Homeowners Program and other programs aimed at minimizing foreclosures. Any modifications made to mortgages in accordance with this section shall ensure the continuation of any existing rental subsidies and take into account the need for operating funds to maintain decent and safe conditions at the property.
11. *Section 111 – Executive Compensation and Corporate Governance.* Section 111 provides that where troubled assets are purchased from an individual financial institution where no bidding process or market prices are available, and the Secretary receives a meaningful equity position in that financial institution, such financial institution must meet certain standards for executive compensation and corporate governance (additional executive compensation provisions are contained in Section 302 of the Act). These standards must include a prohibition on incentives for executive officers to take unnecessary and excessive risks that threaten the value of the financial institution, a provision for the recovery of any bonus or incentive paid to an executive based upon earnings, gains or other criteria that are later proven to be materially inaccurate (known as a “clawback” provision), and a prohibition on “golden parachute” payments to executives during the period that the Secretary holds an equity position in the financial institution. For assets purchased at auction pursuant to the Act, the Secretary shall prohibit any golden parachute for any employee hired after the successful auction who also qualifies as a covered executive under the Internal Revenue Code, as amended.

12. *Section 112 – Coordination with Foreign Authorities and Central Banks.* Section 112 provides that the Secretary shall coordinate with foreign financial authorities and central banks to work toward the establishment of programs of their own that are similar to the Program.
13. *Section 113 – Minimization of Long-Term Costs and Maximization of Benefits for Taxpayers.* Section 113 provides that the Secretary shall use the authority granted by the Act in a manner that will minimize any potential long-term negative impact on the taxpayer. The Secretary shall hold any troubled assets until such time as the Secretary determines that their sale would maximize return for investors and shall encourage the private sector to purchase troubled assets and invest in financial institutions.

The Secretary may not purchase, or make any commitment to purchase, any troubled asset from any financial institution unless he or she receives from such financial institution a non-voting common or preferred stock warrant in the case of a publicly traded financial institution or a warrant for common or preferred stock or a senior debt instrument from any other financial institution. Any such warrants or senior debt obligations shall provide for reasonable participation by the Secretary for the benefit of taxpayers in equity appreciation in the case of a warrant or a reasonable interest rate premium in the case of a debt instrument, and shall provide additional protection for the taxpayer against losses from the sale of assets by the Secretary. The Secretary shall establish “de minimis” exceptions to this requirement based on the size of the cumulative troubled assets purchased from any one financial institution for the duration of the Program but in no case more than \$100 million.

14. *Section 114 – Market Transparency.* Section 114 provides that the Secretary must make available to the public, in electronic form, a description of any transaction consummated pursuant to the Act.
15. *Section 115 – Graduated Authority to Purchase.* Section 115 provides that the Secretary may immediately use up to \$250 billion to purchase troubled assets in accordance with the Act. Upon the President's submission to Congress of a written certification that the Secretary requires more funds, the Secretary may access an additional \$100 billion. The Secretary may access an additional \$350 billion if the President transmits a written report to Congress requesting such additional funds. These \$350 billion of additional funds shall be available to the Secretary fifteen days after Congress' receipt of the President's report unless Congress passes a joint resolution of disapproval within fifteen (15) days of such receipt. The Act provides that such joint resolution may be considered on an expedited basis.

The Act does not contain provisions limiting the amount of troubled assets that the Secretary can buy from a single financial institution.

16. *Section 116 – Oversight and Audits.* Section 116 provides that the Comptroller General of the United States (the “Comptroller General”) must conduct ongoing oversight of the activities and performance of the Program and must report its findings to Congress every sixty (60) days. The Secretary must facilitate this oversight by providing the Comptroller General with space in the Treasury Department and access to all Program records and papers. The Secretary must also reimburse the Comptroller General for expenses incurred in connection with its oversight activities.

The Comptroller General must conduct an annual audit of the Program and the Secretary must take action to address any deficiencies revealed by any such audit. The Program must establish and maintain an effective system of internal controls that provides reasonable assurance of the effectiveness of operations, the reliability of financial reporting and compliance with all applicable laws and regulations.

17. *Section 117 – Study and Report on Margin Authority.* Section 117 provides that the Comptroller General shall undertake a study of the extent to which leverage and sudden deleveraging of financial institutions was a factor in the current financial crisis. The Comptroller General shall deliver a report on the study to Congress no later than June 1, 2009.
18. *Section 118 – Funding.* Section 118 provides for the authorization and appropriation of the funds necessary to carry out the provisions of the Act.
19. *Section 119 – Judicial Review and Related Matters.* Section 119 provides standards for judicial review, including injunctive and other relief, and states that actions of the Secretary shall be held unlawful and set aside if found to be arbitrary, capricious, or not in accordance with the law.
20. *Section 120 – Termination of Authority.* Section 120 provides that the authority to purchase and guarantee troubled assets provided under the Act shall terminate on December 31, 2009. The Secretary may extend such authority to October 3, 2010 upon submission of a written certification to Congress setting forth the reason for and the expected cost of such extension.
21. *Section 121 – Special Inspector General for the Troubled Asset Relief Program.* Section 121 establishes the Office of the Special Inspector General for the Program to conduct, supervise, and coordinate audits and investigations of the actions undertaken by the Secretary pursuant to the Act. It provides that the Special Inspector General is to be appointed by the President by and with the advice and consent of the Senate. The Special Inspector General is required to submit a report to Congress summarizing its activities and the activities of the Secretary under the Act sixty (60) days after the appointment of the Inspector General and every calendar quarter thereafter.
22. *Section 122 – Increase in Statutory Limit on Public Debt.* Section 122 raises the debt ceiling of the United States to \$11.315 trillion.
23. *Section 123 – Credit Reform.* Section 123 details the manner in which this legislation will be considered for budgetary purposes under the Federal Credit Reform Act of 1990.
24. *Section 124 – Hope for Homeowners Amendments.* Section 124 amends the Hope for Homeowners program by expanding the eligibility requirements and providing Congress with additional tools to prevent foreclosures.
25. *Section 125 – Congressional Oversight Panel.* Section 125 establishes a Congressional Oversight Panel (the “Oversight Panel”) which shall review the current state of the financial markets. The Oversight Panel shall also submit monthly reports to Congress detailing the Secretary’s use of the authorities provided by the Act, the impact of purchases made under the Act on the financial markets and financial institutions, the

extent to which the information provided pursuant to the Act has contributed to market transparency and the effectiveness of efforts to mitigate foreclosures and maximize benefits to the taxpayers. The Oversight Panel shall also submit a special report on regulatory reform by January 20, 2009 which analyzes the current state of the regulatory system and its effectiveness at overseeing the participants in the financial system and protecting consumers and provides recommendations for improvement.

The Oversight Panel shall consist of five members appointed by the House and Senate majority and minority leadership.

26. *Section 126 – FDIC Authority.* Section 126 prohibits false advertising which represents or implies that any uninsured deposit liability, obligation, certificate or share is insured or guaranteed by the FDIC. It also strengthens the enforcement capabilities of the appropriate federal banking agencies, and provides that the FDIC may take enforcement action against any person or institution in the event the applicable banking agency does not do so.
27. *Section 127 – Cooperation with the FBI.* Section 127 provides that any Federal financial regulatory agency shall cooperate with the Federal Bureau of Investigation and other law enforcement agencies investigating fraud, misrepresentation, and malfeasance with respect to development, advertising, and sale of financial products.
28. *Section 128 – Acceleration of the Effective Date.* Section 128 provides the Federal Reserve with the ability to pay interest on reserves beginning on October 1, 2008. The Financial Services Regulatory Relief Act of 2006 previously allowed Federal Reserve Banks to pay interest on reserves beginning on October 1, 2011.
29. *Section 129 – Disclosures on Exercise of Loan Authority.* Section 129 requires the Board to provide Congress with a report within seven (7) days of its exercise of its emergency lending authority under the third paragraph of Section 13 of the Federal Reserve Act (i.e. the Section of the Federal Reserve Act that permits the Board, in “unusual and exigent circumstances” and by the affirmative vote of not less than five members, to authorize any Federal Reserve bank to discount for any individual, partnership, or corporation, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal Reserve bank) detailing the justification for exercising such authority and the specific terms of the actions of the Board. The Board shall also provide Congress with updates at least every sixty (60) days while the subject loan is outstanding detailing the status of the loan, the value of any collateral held by the Federal Reserve Bank which initiated the loan and the projected cost to the taxpayers of the loan. All information submitted to Congress in accordance with this Section may be kept confidential at the request of the Chairman of the Board.
30. *Section 130 – Technical Corrections.* Section 130 makes technical corrections to the Truth in Lending Act.
31. *Section 131 – Exchange Stabilization Fund Reimbursement.* Section 131 requires the Program to reimburse the Exchange Stabilization Fund established under Section 5302 of Title 31 of the United States Code for any losses incurred for any funds that are used for the treasury Money Market Funds Guaranty Program for the United States money market mutual fund industry. This Section also prohibits the Secretary from using

the Exchange Stabilization Fund for the establishment of any future guaranty programs for the U.S. money market mutual fund industry.

32. *Section 132 – Authority to Suspend Mark-to-Market Accounting.* Section 132 authorizes the Securities and Exchange Commission to suspend the application of Statement Number 157 of the Financial Accounting Standards Board with respect to any transaction if it determines that doing so is in the public interest and protects investors. Statement Number 157 instructs public issuers on how to apply mark-to-market accounting, an accounting methodology of assigning a value to a position held in a financial instrument based on the current market price of the instrument or similar instruments.
33. *Section 133 – Study on Mark-to-Market Accounting.* Section 133 allows the SEC to launch a study of the effects of Statement 157 on financial institutions. The study shall analyze the effects of the standard on bank balance sheets, the impact of fair-value accounting on the current series of bank failures and how mark-to-market accounting affects the quality of financial information provided to investors. The results of the study must be reported to Congress within ninety (90) days of the passage of the Act.
34. *Section 134 – Recoupment.* Section 134 requires that five years from the effective date of the Act, the President shall submit a legislative proposal that recoups from the financial industry any losses incurred by the federal government as a result of the Program.
35. *Section 135 – Preservation of Authority.* Section 135 provides that no provision of the Act shall limit the authority of the Secretary or the Board under any other provision of law.
36. *Section 136 – Temporary Increase in Deposit and Share Insurance Coverage.* Section 136 raises the limit on FDIC and National Credit Union Share Insurance Fund deposit insurance from \$100,000 to \$250,000 until December 31, 2009 and temporarily raises the borrowing limits of both institutions.

B. TITLE II – BUDGET-RELATED PROVISIONS

1. *Section 201 – Information for Congressional Support Agencies.* All information used by the Secretary in connection with activities authorized by the Act shall be made available to congressional support agencies upon request to assist congressional committees in conducting oversight, monitoring and analysis of the activities authorized under the Act.
2. *Section 202 – Reports by the Office of Management and Budget and the Congressional Budget Office.* Section 202 requires the Congressional Budget Office (the “CBO”) to provide semiannual reports to Congress and the President containing the estimate of the costs of the Program, the information used to derive the estimate and an analysis of how such estimate has changed from any previous such estimate. It also requires the CBO to provide an assessment of the report submitted by the CBO within forty five (45) days of the submission of such report.

3. *Section 203 – Analysis in President’s Budget.* Section 203 requires the President to include certain analyses and estimates relating to costs incurred in connection with the Act in his annual budget submission to Congress.
4. *Section 204 – Emergency Treatment.* Section 204 provides that the provisions of the Act are an emergency requirement and necessary to meet emergency needs and shall not be counted for purposes of budget enforcement.

C. TITLE III – TAX PROVISIONS

1. *Section 301 – Gain or Loss from Sale or Exchange of Certain Preferred Stock.* Section 301 provides that any gain or loss from the sale or exchange of any “applicable preferred stock” by any “applicable financial institution” will be treated as ordinary income or loss for federal income tax purposes. “Applicable preferred stock” means preferred stock in Fannie Mae or Freddie Mac that was held by the applicable financial institution on September 6, 2008, or was sold or exchanged by the applicable financial institution on or after January 1, 2008, and before September 7, 2008. The Secretary may extend the application of this provision to sales or exchanges of such stock where an applicable financial institution (a) sells or exchanges such stock after September 6, 2008 that it did not hold on such date but for which it has a carry over basis in such stock or (b) holds such stock in certain pass-through entities which held and sold or exchanged such securities within the prescribed time periods. For purposes of this provision and subject to certain special rules, an “applicable financial institution” is generally a financial institution described in Internal Revenue Code Section 582(c)(2) or a depository institution holding company as defined in Federal Deposit Insurance Act Section 3(w)(1).
2. *Section 302 – Special Rules for Tax Treatment of Executive Compensation of Employers Participating in the Troubled Assets Relief Program.* Any financial institution that sells troubled assets to the Secretary under the Act shall be subject to certain executive compensation limits, including restrictions on golden parachutes. These executive compensation requirements will depend upon whether the sale of troubled assets is by direct purchase or auction. If the Secretary purchases assets directly without a bidding process or available market prices and receives a meaningful equity or debt position in the financial institution as a result of the transaction, the Secretary shall require that the financial institution observe appropriate standards for executive compensation and corporate governance including: (a) limits on compensation that exclude incentives for senior executive officers to take unnecessary and excessive risks that threaten the value of the financial institution during the period that the Secretary holds an equity or debt position in the financial institution; (b) a provision for the recovery of any bonus or other incentive compensation paid to a senior executive officer based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate; and (c) a prohibition on making any golden parachute payment to its senior executive officers during the period that the Secretary holds debt or equity in the financial institution. “Senior executive officer” means an individual who is one of the top five highly paid executives of a public company, whose compensation is subject to disclosure under the Securities Exchange Act of 1934, as amended, and their non-public company counterparts. If the Secretary purchases assets at auction, a financial institution that has sold more than \$300,000,000 (including direct purchases) in assets shall be prohibited by the Secretary (only during the period the Act is in effect) from entering into any new employment contract with a senior

executive officer that provides a golden parachute in the event of an involuntary termination, bankruptcy filing, insolvency, or receivership. Section 162(m) of the Internal Revenue Code is amended to limit the deductible compensation for any year in which the Act is in effect to \$500,000 for a covered executive of a financial institution that has sold more than \$300,000,000 of assets to the Secretary. The Act also amends Section 280G of the Internal Revenue Code to impose restrictions on severance payments paid to covered executives of the financial institutions participating in a program under the Act.

3. *Section 303 – Extension of Exclusion of Income from Discharge of Qualified Principal Residence Indebtedness.* This Section 303 extends until January 1, 2013 the exclusion of income from the discharge of qualified principal residence indebtedness.

III. DIVISION B – ENERGY IMPROVEMENT AND EXTENSION ACT OF 2008

A. TITLE I - ENERGY PRODUCTION INCENTIVES

1. *Subtitle A – Renewable Energy Incentives.* Subtitle A provides for, among other things, the following energy production incentives:
 - (a) an extension of the placed-in-service date for facilities that qualify for renewable energy tax credits through December 31, 2009 (in the case of wind and refined coal) and December 31, 2010 (in the case of other sources);
 - (b) the expansion of the types of facilities that qualify for renewable energy tax credits to new biomass facilities and to those that generate electricity from marine and hydrokinetic renewable energy sources (e.g., waves and tides);
 - (c) an extension through December 31, 2016 of the investment tax credit for solar energy, microturbine and qualified fuel cell properties and the use of the aforementioned investment tax credit to be used to offset the alternative minimum tax (the “AMT”);
 - (d) an extension of the tax credit for residential solar property through 2016, the removal of the credit cap (currently \$2,000) for solar electric investments and the addition of residential small wind investment, capped at \$4,000, and geothermal heat pumps, capped at \$2,000, as qualifying property; and
 - (e) the authorization of \$800 million of new clean renewable energy bonds to finance facilities that generate electricity from wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, qualified hydropower, landfill gas, marine renewable and trash combustion facilities.
2. *Subtitle B – Carbon Mitigation and Coal Provisions.* Subtitle B provides for, among other things, the following carbon mitigation and coal related provisions:

- (a) \$1.5 billion in new tax credits for the creation of advanced coal electricity projects and certain coal gasification projects, with \$1.25 billion being awarded to advanced coal electricity projects, and \$250 million being awarded to coal gasification projects;
- (b) the extension of the excise tax imposed on coal which is to be deposited in the Black Lung Disability Trust Fund and used to pay compensation, medical and survivor benefits to eligible miners and survivors and to cover costs of program administration;
- (c) certain tax credits for capturing and transporting carbon dioxide from an industrial source for use in enhanced oil recovery and for permanent storage in a geologic formation in the United States; and
- (d) a directive to the Secretary of the United States Treasury to request that the National Academy of Sciences undertake a comprehensive review of the tax code to identify tax provisions with the largest effect on carbon and other greenhouse gas emissions, and to estimate the magnitude of those effects.

B. TITLE II – TRANSPORTATION AND DOMESTIC FUEL SECURITY PROVISIONS

Title II provides for, among other things, the following transportation and domestic fuel security provisions:

1. the extension through December 31, 2009 of the production tax credit for biodiesel producers, the production tax credit for diesel fuel created from biomass and alternative fuel excise tax credit;
2. the establishment of new tax credits for plug-in electric drive motor vehicles which are available to be used against the AMT;
3. the extension through December 31, 2010 of the tax credit for alternative refueling property, and the addition of electric vehicle recharging property to the types of property eligible for the credit; and
4. tax incentives to employers that provide employees who commute to work by bicycle with certain limited fringe benefits to offset the costs of such commuting.

C. TITLE III – ENERGY CONSERVATION AND EFFICIENCY PROVISIONS

Title III provides for, among other things, the following energy conservation and efficiency provisions:

1. the creation of a new category of energy conservation bonds to finance State and local government initiatives designed to reduce greenhouse emissions with a national limitation of \$800 million, to be allocated to States, municipalities and tribal governments;
2. the extension of (a) the tax credit for energy-efficient existing homes through December 31, 2009, and includes energy-efficient biomass fuel stoves as a new class of energy-efficient property eligible for a consumer tax credit, (b) the energy-efficient commercial buildings deduction through December 31, 2013, and (c) the energy efficient home construction tax credit through December 31, 2009;

3. the extension through December 31, 2009 of a tax credit to manufacturers for the production of energy-efficient dishwashers, clothes washers and refrigerators;
4. accelerated depreciation for smart electric meters and smart electric grid equipment and allows taxpayers to recover the cost of this property over a 10-year period, unless the property already qualifies under a shorter recovery schedule; and
5. a mechanism by which taxpayers may claim accelerated depreciation for the purchase of equipment used to collect, distribute or recycle a variety of commodities.

D. TITLE IV – REVENUE PROVISIONS

Title IV provides for, among other things, the following revenue provisions:

1. a limit on the deduction for gross receipts derived from the sale, exchange or other disposition of oil, natural gas, or any primary product thereof;
2. the creation of mandatory basis reporting measures to the Internal Revenue Service by brokers for transactions involving publicly traded securities, such as stock, debt, commodities, derivatives and other items as specified by the United States Treasury;
3. the extension through December 31, 2009 of a temporary surtax to be paid by employers to support the continued solvency of the Federal unemployment trust funds; and
4. the extension through December 31, 2017 of the oil spill tax and the increase of the per barrel oil tax.

IV. DIVISION C – TAX EXTENDERS AND ALTERNATIVE MINIMUM TAX RELIEF

A. TITLE I – ALTERNATIVE MINIMUM TAX RELIEF

Title I provides for, among other things, the following AMT relief provisions:

1. an increase in the exemption amounts under the AMT from \$44,350 in 2007 to \$46,200 (individuals) for 2008, and from \$66,250 in 2007 to \$69,950 (married filing jointly) for 2008, and also allows personal credits to be used against the AMT; and
2. a provision allowing 50 percent of long-term unused minimum tax credits to be refunded over each of two (2) years instead of 20 percent over each of five (5) years.

B. TITLE II – EXTENSION OF INDIVIDUAL TAX PROVISIONS

Title II provides for, among other things, the following extensions of individual tax provisions through December 31, 2009:

1. the tax provision that allows a taxpayer to elect to take an itemized deduction for State and local general sales taxes in lieu of the itemized income tax deduction;
2. the tax deduction for qualified higher education expenses; and
3. (a) provisions allowing teachers a deduction for up to \$250 for educational expenses, (b) real property tax deductions for taxpayers who do not itemize, and (c) tax benefits allowing taxpayers to make tax-free contributions from their IRA plans to qualified charitable organizations.

C. TITLE III – EXTENSION OF BUSINESS TAX PROVISIONS

Title III provides for, among other things, the following business tax provisions:

1. an additional \$400 million of issuing authority to State and local governments for 2008 and 2009 for qualified zone academy bonds to help school districts that have low income populations; and
2. an increase in the gallon excise tax payments to Puerto Rico and the Virgin Islands on distilled spirits produced in or imported into the United States.

Title III also provides for, among other things, the following extensions of business tax provisions through December 31, 2009:

3. a research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenses for a taxable year exceed its base amount for that year;
4. the cost recovery point of certain leasehold improvements and restaurant property from 39 to 15 years;
5. a gallon excise tax payment to Puerto Rico and the Virgin Islands on distilled spirits produced in or imported into the United States;
6. a possessions tax credit for certain domestic corporations operating in American Samoa which offsets their United States tax liability on income earned in American Samoa from active business operations, sales of assets used in a business, or certain investments in American Samoa;
7. (a) a tax credit for the training of mine rescue team members and (b) the expensing of qualified underground mine safety equipment;

8. (a) a business tax credit for employers of qualified employees that work and live on or near an Indian reservation and (b) a special depreciation recovery period applied to qualified Indian reservation property placed in service before January 1, 2008;
9. railroad maintenance credits for maintaining railroad tracks owned or leased;
10. a special 7-year cost recovery period for property used for land improvement and support facilities at motorsports entertainment complexes;
11. a provision allowing for the expensing of costs associated with cleaning up contaminated sites;
12. a provision that encourages businesses to contribute computer equipment and software to elementary, secondary, and postsecondary schools by allowing an enhanced deduction for such contributions;
13. special tax incentives for businesses and individual residents within certain economically depressed census tracts within the District as the DC Enterprise Zone;
14. a provision allowing businesses to claim an enhanced deduction for the contribution of food inventory; and
15. a provision that allows C corporations an enhanced charitable deduction for donations of books to schools, public libraries and literacy programs.

D. TITLE IV – EXTENSION OF TAX ADMINISTRATION PROVISIONS

Title IV, among other things, permanently authorizes the IRS to use proceeds it receives from undercover operations to offset necessary expenses incurred in such operations.

E. TITLE V – ADDITIONAL TAX RELIEF AND OTHER TAX PROVISIONS

1. *Subtitle A – General Provision.* Subtitle A provides for, among other things, the following tax relief and other tax provisions:
 - (a) an allowance for commercial fishermen and other individuals whose livelihoods were negatively impacted by the 1989 Exxon Valdez oil spill to average any settlement or judgment-related income that they receive in connection with pending litigation in the Federal courts over three (3) years for federal tax purposes; and
 - (b) a five (5) year recovery period for any machinery or equipment which is used in a farming business, the original use of which commences with the taxpayer, and placed in service before January 1, 2010.

2. *Subtitle B – Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.* Subtitle B requires private insurance plans that offer mental health benefits as part of the coverage to offer such benefits on par with the medical-surgical benefits and any cost-sharing or benefit limits imposed on mental health services must not be any more restrictive than those imposed on medical-surgery services. The amendments made by this portion of the Act are effective for plan years beginning on or after October 3, 2009. For a calendar year plan, the effective date would be January 1, 2010. In the case of a plan maintained pursuant to a collective bargaining agreement, the requirements will not apply to plan years beginning before the later of the date the collective bargaining agreement terminates (determined without regard to any extension thereof), or January 1, 2009.

F. TITLE VI – OTHER PROVISIONS

Title VI, among other things, reauthorizes the Secure Rural Schools program through December 31, 2011 and adjusts the funding distribution formula to make it more equitable.

G. TITLE VII – DISASTER RELIEF

1. *Subtitle A – Heartland and Hurricane Ike Disaster Relief.* Subtitle A provides for, among other things, the following disaster relief and other provisions for residents of certain states in the Midwest:
 - (a) a waiver of the 10 percent penalty tax if a distribution from an individual retirement account or tax-favored retirement plan is considered a qualified Disaster Recovery Assistance distribution;
 - (b) an increase on the limitation on loans from a 401(k), 403(b), or a governmental 457(b) plan by allowing participants located in a Midwestern disaster area and who sustained economic loss by reason of the tornadoes and floods giving rise to the designation of the area as a disaster area to receive loans up to the lesser of \$100,000, or 100 percent of the vested accrued benefit for loans made after the date of enactment and before January 1, 2010;
 - (c) personal debt that is discharged in response to damages suffered from the Midwestern disaster shall not be considered as cancellation of indebtedness income for Federal income tax purposes;
 - (d) grants the Treasury Department the authority to ensure taxpayers do not lose deductions, credits or filing status because of dislocations from the Midwestern disaster;
 - (e) grants Iowa, Arkansas, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri and Wisconsin the authority to issue a special class of qualified private activity bonds, called Midwestern disaster area bonds, outside of the state volume caps; and
 - (f) an extension for the deductibility of costs of cleaning up a qualified contamination site, if the release (or threat of release) or disposal of a hazardous substance is attributable to the disaster described in the Presidential declaration in the Midwestern disaster area.

2. *Subtitle B – National Disaster Relief.* Subtitle B provides for, among other things, the following national disaster relief and other provisions:
 - (a) changes to the casualty loss rules to allow more disaster victims to claim individual property losses;
 - (b) disaster victims with the ability to write off and immediately recover demolition, deductible clean up and repair (regardless of whether costs are incurred due to a casualty event), and environmental remediation expenses. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010;
 - (c) an extension from two to five years the time period taxpayers can claim casualty losses or qualified disaster expenses; and
 - (d) businesses that suffered damage as a result of the Presidentially-declared disasters the ability to claim an additional first-year depreciation deduction equal to 50 percent of the cost of new real and personal property investments made in the Presidentially-declared disaster area.

H. TITLE VIII – SPENDING REDUCTIONS AND APPROPRIATE REVENUE RAISERS FOR NEW TAX RELIEF POLICY

Title VIII taxes individuals on a current basis if such individuals receive deferred compensation from a tax-indifferent party and allows individuals receiving deferred compensation from a tax-indifferent party to achieve the tax benefits of deferred compensation at the expense of the United States Treasury.



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