



# Reporting Requirements in the Emergency Economic Stabilization Act of 2008

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## Summary

The Emergency Economic Stabilization Act of 2008 (EESA, Division A of H.R. 1424, P.L. 110-343) established numerous reporting requirements regarding a variety of issues, and many of those reports have already been published. The entities charged with preparation of these reports include both new entities established by the act (e.g., the Financial Stability Oversight Board and the Congressional Oversight Panel) as well as agencies and officials who existed before the enactment of EESA (e.g., the Secretary of the Treasury and the Comptroller General of the United States). The recipients of these reports also vary, as well as their timing, frequency, and factors that trigger their development. These differences notwithstanding, all of the EESA reports appear to share a common purpose—to provide information to Congress and other entities on the implementation of the act’s provisions.

No single entity receives all of the EESA-required reports. It is not readily apparent why some of the reports are to be sent to a particular set of eight “appropriate committees,” some to a subset of those committees, and some to Congress as a whole. Although one of the purposes of the legislation is to provide “public accountability” for the use of EESA authorities, only one of the reports is required to be made to the public. Some of the reports are required to be submitted very quickly, but other reports are not required for years. Some of the reporting requirements are recurring (e.g., every 30 days, or quarterly), while others are one-time requirements. Most of the requirements include clear starting points for the submission of the reports, but in some cases, the starting points are unclear.

Many of the act’s reporting requirements seem to address the same or similar issues. The number and variety of the required reports may have been intended to provide a variety of perspectives on the implementation of EESA, but the lack of integration of those requirements may make understanding the implementation of the act difficult. Also, given the nature of the “troubled assets” currently being purchased under the act (i.e., bank stock instead of mortgages or other instruments related to mortgages), it is unclear whether some of the specific requirements are still relevant. Other information that is not specifically required by the act (e.g., how the federal funds are being used by the recipients) may be more helpful to Congress and others as they conduct oversight of the program. Finally, some of the reporting requirements expire on the date that the last troubled asset is sold or transferred, or the date that the last insurance contract expires. Without some kind of a lag period for these requirements, a complete history of the transactions may not be provided.

This report will be updated when new information becomes available.

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The Emergency Economic Stabilization Act of 2008 (EESA, Division A of H.R. 1424, which was enacted on October 3, 2008, as P.L. 110-343) established numerous reporting requirements regarding a variety of issues.<sup>1</sup> Some of the reporting requirements are assigned to newly established entities in the act, including the Financial Stability Oversight Board,<sup>2</sup> the Congressional Oversight Panel (COP),<sup>3</sup> and the Special Inspector General for the Troubled Asset Relief Program (SIG TARP).<sup>4</sup> Other reporting requirements are given to agencies and officials who existed before the enactment of EESA (e.g., the Secretary of the Treasury and the Comptroller General of the United States).<sup>5</sup> The recipients of these reports also vary, as well as their timing, frequency, and factors that trigger their development. These differences notwithstanding, all of the EESA reports appear to share a common purpose—to provide information to Congress and other entities on the implementation of the act’s provisions.

This report describes the various reporting requirements in EESA and is organized according to the entities required to prepare and submit the reports. The report also provides some concluding observations regarding those requirements. The **Appendix** of the report summarizes the act’s reporting requirements in terms of those responsible for producing and receiving the reports, the timing of the reports, and when the reports are scheduled to end.

## Reports by the Secretary of the Treasury

### Section 102(b) (Troubled Asset Relief Program)

Section 101 of EESA authorizes the Secretary of the Treasury “to establish the Troubled Asset Relief Program (or ‘TARP’) to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution.” Section 102(a) states that if the Secretary of the Treasury establishes TARP, “then the Secretary shall establish a program to guarantee troubled assets originated or issued prior to March 14, 2008, including mortgage-backed securities.”<sup>6</sup> Section 102(b) says that, “Not later than 90 days after the date of enactment of this Act, the Secretary shall report to the appropriate committees of Congress on the program established under subsection (a).”<sup>7</sup> Section 3(1) of EESA defines the term “appropriate committees of

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<sup>1</sup> For more information on EESA and related issues, see CRS Report RL34730, *The Emergency Economic Stabilization Act and Current Financial Turmoil: Issues and Analysis*, by Baird Webel and Edward V. Murphy.

<sup>2</sup> The Financial Stability Oversight Board comprises the Chairman of the Board of Governors of the Federal Reserve System, the Secretary of the Treasury, the Director of the Federal Housing Finance Agency, the Chairman of the Securities and Exchange Commission, and the Secretary of Housing and Urban Development.

<sup>3</sup> Members of the COP are appointed as follows: one each by the Speaker of the House of Representatives, the minority leader of the House, the majority leader of the Senate, and the minority leader of the Senate; and one by the Speaker and the majority leader of the Senate, after consultation with the minority leaders in each house.

<sup>4</sup> The Special Inspector General is appointed by the President, by and with the advice and consent of the Senate. For more information on how the Special Inspector General for the TARP compares with other inspectors general, see CRS Report R40099, *The Special Inspector General (SIG) for the Troubled Asset Relief Program (TARP)*, by Vanessa K. Burrows.

<sup>5</sup> For more information on the oversight and audit responsibilities established in the act, see CRS Report RL34713, *Emergency Economic Stabilization Act: Preliminary Analysis of Oversight Provisions*, coordinated by Curtis W. Copeland.

<sup>6</sup> For more information on EESA’s insurance program, see CRS Report RS22969, *The Emergency Economic Stabilization Act’s Insurance for Troubled Assets*, by Baird Webel.

<sup>7</sup> Because EESA was enacted on October 3, 2008, this report appears to be required by January 1, 2009.

Congress” in the act to mean “(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and (B) the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.”

On December 31, 2008, the Department of the Treasury filed the required Section 102(b) report.<sup>8</sup> The report describes the Asset Guarantee Program that was established pursuant to Section 102(a) of EESA, including its objectives, how eligible institutions are determined, TARP accounting and Treasury’s loss position, and other potential asset guarantee programs being considered. An appendix to the report described responses to an October 2008 *Federal Register* notice that asked for comments on programs consistent with Section 102.<sup>9</sup>

### **Section 105(a) (General Reports)**

Section 105(a) of the act states that, “Before the expiration of the 60-day period beginning on the date of the first exercise of the authority granted in section 101(a), or of the first exercise of the authority granted in section 102, whichever occurs first, and every 30-day period thereafter, the Secretary [of the Treasury] shall report to the appropriate committees of Congress.” Each such report is required to contain

- (1) an overview of actions taken by the Secretary, including the considerations required by section 103 and the efforts under section 109;
- (2) the actual obligation and expenditure of the funds provided for administrative expenses by section 118 during such period and the expected expenditure of such funds in the subsequent period; and
- (3) a detailed financial statement with respect to the exercise of authority under this Act, including (A) all agreements made or renewed; (B) all insurance contracts entered into pursuant to section 102; (C) all transactions occurring during such period, including the types of parties involved; (D) the nature of the assets purchased; (E) all projected costs and liabilities; (F) operating expenses, including compensation for financial agents; (G) the valuation or pricing method used for each transaction; and (H) a description of the vehicles established to exercise such authority.

Section 105(d) of the act requires that this report also be submitted to the COP. Section 105(g) states that this reporting requirement “shall terminate on the later of (1) the date that the last troubled asset acquired by the Secretary under section 101 has been sold or transferred out of the ownership or control of the Federal Government; or (2) the date of expiration of the last insurance contract issued under section 102.”

On December 2, 2008, the Department of the Treasury filed its first Section 105(a) report, covering the period ending on November 30, 2008.<sup>10</sup> The report describes the department’s Capital Purchase Program, the Systemically Significant Failing Institutions Program, and other

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<sup>8</sup> See <http://www.treasury.gov/initiatives/eesa/congressionalreports102.shtml> for a copy of this report.

<sup>9</sup> U.S. Department of the Treasury, “Development of a Guarantee Program for Troubled Assets,” 73 *Federal Register* 61452, October 16, 2008.

<sup>10</sup> See <http://www.treasury.gov/initiatives/eesa/docs/TARPfirst-105report.pdf> for a copy of this report.

initiatives (e.g., the Citigroup financial assistance package). It also describes TARP administrative actions (e.g., recruitment of key staff, procurement actions, and compliance guidelines and reports).

### **Section 105(b) (Tranche Reports)**

Section 105(b)(1) of the act requires the Secretary of the Treasury to provide to the “appropriate committees of Congress”

a written report, including (A) a description of all of the transactions made during the reporting period; (B) a description of the pricing mechanism for the transactions; (C) a justification of the price paid for and other financial terms associated with the transactions; (D) a description of the impact of the exercise of such authority on the financial system, supported, to the extent possible, by specific data; (E) a description of challenges that remain in the financial system, including any benchmarks yet to be achieved; and (F) an estimate of additional actions under the authority provided under this Act that may be necessary to address such challenges.

Section 105(b)(2) requires this report to be submitted “not later than 7 days after the date on which commitments to purchase troubled assets under the authorities provided in this Act first reach an aggregate of \$50,000,000,000 and not later than 7 days after each \$50,000,000,000 interval of such commitments is reached thereafter.”<sup>11</sup> Section 105(d) of the act requires that this report also be submitted to the COP. Section 105(g) of the act states that this reporting requirement “shall terminate on the later of (1) the date that the last troubled asset acquired by the Secretary under section 101 has been sold or transferred out of the ownership or control of the Federal Government; or (2) the date of expiration of the last insurance contract issued under section 102.” As of mid-January 2009, the Department of the Treasury had issued four of these tranche reports.<sup>12</sup>

### **Section 105(c) (Regulatory Modernization Report)**

Section 105(c) of the act requires the Secretary of the Treasury to “review the current state of the financial markets and the regulatory system and submit a written report to the appropriate committees of Congress not later than April 30, 2009, analyzing the current state of the regulatory system and its effectiveness at overseeing the participants in the financial markets, including the over-the-counter swaps market and government-sponsored enterprises.” Section 105(c) also requires the report to provide “recommendations for improvement, including (1) recommendations regarding (A) whether any participants in the financial markets that are currently outside the regulatory system should become subject to the regulatory system; and (B) enhancement of the clearing and settlement of over-the-counter swaps; and (2) the rationale underlying such recommendations.” Section 105(d) of the act requires that this report also be submitted to the COP. Section 105(g) of the act states that this reporting requirement “shall terminate on the later of (1) the date that the last troubled asset acquired by the Secretary under

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<sup>11</sup> On October 28, 2008, the Department of the Treasury transferred the first \$115 billion of EESA-related funds to participating institutions. See the remarks of Under Secretary for Domestic Finance Anthony Ryan at <http://www.treasury.gov/press/releases/hp1240.htm>. As required, the first of these reports was published on November 4, 2008. See <http://www.treasury.gov/initiatives/eesa/docs/Tranche-Reportfinal.pdf> for a copy of this report.

<sup>12</sup> See <http://www.treasury.gov/initiatives/eesa/tranche-reports.shtml> for copies of these tranche reports.

section 101 has been sold or transferred out of the ownership or control of the Federal Government; or (2) the date of expiration of the last insurance contract issued under section 102.”

### **Section 114(a) (Market Transparency, Pricing)**

While not a formal reporting requirement, Section 114(a) of the act states that, “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 Act, within 2 business days of purchase, trade, or other disposition.” The Department of the Treasury’s website contains links to reports on these transactions.<sup>13</sup>

## **Reports by the Financial Stability Oversight Board**

### **Section 104(g)**

Section 104(g) of the act requires the Financial Stability Oversight Board to “report to the appropriate committees of Congress and the Congressional Oversight Panel established under section 125, not less frequently than quarterly, on the matters described under subsection (a)(1).” Subsection 104(a)(1) charges the Financial Stability Oversight Board with

reviewing the exercise of authority under a program developed in accordance with this Act, including (A) policies implemented by the Secretary and the Office of Financial Stability created under sections 101 and 102, including the appointment of financial agents, the designation of asset classes to be purchased, and plans for the structure of vehicles used to purchase troubled assets; and (B) the effect of such actions in assisting American families in preserving home ownership, stabilizing financial markets, and protecting taxpayers.

Although EESA does not establish a sunset date for this reporting requirement, Section 104(h) of the act states that the Financial Stability Oversight Board and its authority “shall terminate on the expiration of the 15-day period beginning upon the later of (1) the date that the last troubled asset acquired by the Secretary under section 101 has been sold or transferred out of the ownership or control of the Federal Government; or (2) the date of expiration of the last insurance contract issued under section 102.”<sup>14</sup>

## **Reports by the Congressional Oversight Panel**

### **Section 125(b)(1) (Regular Reports)**

EESA requires the COP to submit both “regular” reports and a “special” report on regulatory reform to Congress. With regard to the panel’s regular reports, Section 125(b)(1)(A) of the act requires that they include

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<sup>13</sup> See <http://www.treasury.gov/initiatives/eesa/transactions.shtml> for copies of these transaction reports.

<sup>14</sup> See <http://www.ustreas.gov/initiatives/eesa/minutes.shtml> for the minutes of the meetings of the Financial Stability Oversight Board.

(i) the use by the Secretary of authority under this Act, including with respect to the use of contracting authority and administration of the program., (ii) the impact of purchases made under the Act on the financial markets and financial institutions; (iii) the extent to which the information made available on transactions under the program has contributed to market transparency; and (iv) the effectiveness of foreclosure mitigation efforts, and the effectiveness of the program from the standpoint of minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers.

Section 125(b)(1)(B) requires that these reports “be submitted not later than 30 days after the first exercise by the Secretary of the authority under section 101(a) or 102, and every 30 days thereafter.”<sup>15</sup> The act does not provide a sunset date for this or other reports by the panel, but Section 125(f) requires the COP to terminate six months after the authorities provided in Sections 101(a)(3) and 102 expire; Section 120 states that those authorities terminate on December 31, 2009. Therefore, the COP and its reporting requirements are currently scheduled to end on or about June 30, 2010.

### ***First COP Report***

The COP released its first report on December 10, 2008—two weeks after the panel’s first meeting.<sup>16</sup> The report posed a series of 10 questions (with subquestions), including the following:

- What does the Department of the Treasury think the central causes of the financial crisis are, and what is the department’s strategy for addressing those causes?
- What metrics can the department cite to show the effects of the \$250 billion spent thus far?
- What have financial institutions done with the taxpayer money received so far?
- Is the public receiving a fair deal?
- How is Treasury deciding which institutions receive the money?

Elizabeth Warren, the chairwoman of the COP, was quoted as saying that the federal government did not appear to have a coherent strategy for addressing the financial crisis.<sup>17</sup> However, one member of the COP (Representative Jeb Hensarling) did not sign the report, reportedly saying he could not do so until “every panel member has the resources and rights necessary to conduct effective oversight” and until “the panel adopts a serious agenda that truly brings transparency and accountability to the process.”<sup>18</sup>

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<sup>15</sup> On October 28, 2008, the Department of the Treasury transferred the first EESA-related funds to participating institutions. See the remarks of Under Secretary for Domestic Finance Anthony Ryan at <http://www.treasury.gov/press/releases/hp1240.htm>.

<sup>16</sup> See <http://cop.senate.gov/documents/cop-121008-report.pdf> for a copy of this report.

<sup>17</sup> Diana B Henriques, “Bailout Monitor Sees Lack of a Coherent Plan,” *New York Times*, December 2, 2008, available at <http://www.nytimes.com/2008/12/02/business/02tarp.html>.

<sup>18</sup> Peter Whoriskey, “Congressional Oversight Panel Questions Bailout’s Efficacy,” *Washington Post*, December 10, 2008, p. D3.



## **Second COP Report**

On December 30, 2009, the Department of the Treasury responded to the 10 questions posed in the COP's first report.<sup>19</sup> On January 9, 2009, the COP issued its second report, which included an analysis of the Treasury response to its first report.<sup>20</sup> The COP report concluded that the department's response "did not provide complete answers to several of the questions and failed to address a number of the questions at all."<sup>21</sup> For example, the report indicated that the COP "still does not know what the banks are doing with taxpayer money," and noted that while EESA does not require reports on this issue from the recipients of TARP funds, "it is within Treasury's authority to make such reports a condition of receiving funding, to establish benchmarks for TARP recipient conduct, or to have formal procedures for voluntary reporting by TARP recipient institutions or formal guidelines on the use of funds."<sup>22</sup> The COP also indicated that its third report would be issued on February 8, 2009, and its fourth report would be issued on March 11, 2009.

## **Section 125(b)(2) (Special Report on Regulatory Reform)**

The act also requires the COP to submit to Congress a "special report on regulatory reform not later than January 20, 2009, analyzing the current state of the regulatory system and its effectiveness at overseeing the participants in the financial system and protecting consumers." The report is also required to provide "recommendations for improvement, including recommendations regarding whether any participants in the financial markets that are currently outside the regulatory system should become subject to the regulatory system, the rationale underlying such recommendation, and whether there are any gaps in existing consumer protections."

In relation to this reporting requirement, the COP announced that it planned to hold a January 14, 2009, public hearing in Washington, D.C., on "regulatory reform of the financial sector."<sup>23</sup> The stated goal of the hearing is "to achieve a better understanding of current regulations and how the existing regulatory structure contributed to the ongoing financial and mortgage crises in order to determine what, if any, reforms are necessary."

## **Reports by the Special Inspector General**

### **Section 121(f)(1)**

Not later than 60 days after the confirmation of the Special Inspector General,<sup>24</sup> and every calendar quarter thereafter, EESA requires the Special Inspector General to submit to the "appropriate committees of Congress" a report "summarizing the activities of the Special

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<sup>19</sup> See <http://www.treas.gov/press/releases/reports/123108%20cop%20response.pdf> for a copy of this response.

<sup>20</sup> See <http://cop.senate.gov/documents/cop-010909-report.pdf> for a copy of this report.

<sup>21</sup> *Ibid.*, p. 3.

<sup>22</sup> *Ibid.*, p. 4.

<sup>23</sup> See <http://cop.senate.gov/press/releases/release-010809-secondhearing.cfm> for a copy of this announcement.

<sup>24</sup> The Special Inspector General was confirmed on December 8, 2008. Therefore, it appears that the first report is due by February 6, 2009.

Inspector General during the 120-day period ending on the date of such report.” The act goes on to require that each report include, for the period covered by the report, “a detailed statement of all purchases, obligations, expenditures, and revenues associated with any program established by the Secretary of the Treasury under sections 101 and 102, as well as the information collected under subsection (c)(1).” Section 121(f)(3) of the act requires that this report also be submitted to the COP. The act does not provide a sunset date for these reports, but Section 121(h) requires the Office of the Special Inspector General to terminate on the later of (1) the date that the last troubled asset acquired under Section 101 has been sold or transferred, or (2) the date that the last insurance contract under Section 102 expires.

## **Reports by the Comptroller General**

### **Section 116(a)(3) (Oversight Reporting)**

Section 116(a)(3) of the act requires the Comptroller General to submit “reports of findings under this section, regularly and no less frequently than once every 60 days, to the appropriate committees of Congress, and the Special Inspector General for the Troubled Asset Relief Program established under this Act on the activities and performance of the TARP.”<sup>25</sup> The section also permits the Comptroller to submit “special reports under this subsection as warranted by the findings of its oversight activities.” Section 116(d) requires that all of these reports also be sent to the COP. Section 116(2)(C) requires the Department of the Treasury to reimburse GAO for “the full cost of any such oversight activities.” Section 116(e) of the act states that the Comptroller General’s oversight, auditing, and reporting responsibilities end on “(1) the date that the last troubled asset acquired by the Secretary under section 101 has been sold or transferred out of the ownership or control of the Federal Government; or (2) the date of expiration of the last insurance contract issued under section 102.”

### ***GAO’s First TARP Report***

On December 2, 2008, GAO issued its first TARP report,<sup>26</sup> and the Acting Comptroller General testified about the report before the House Committee on Financial Services on December 10, 2008.<sup>27</sup> GAO concluded that the Department of the Treasury had not addressed a number of critical issues, including how it would ensure that the TARP Capital Purchase Program (CPP) was achieving its intended goals, and how it would monitor compliance with limits on executive compensation, dividend payments, and stock repurchases. Among other things, GAO recommended that the department (1) “establish a systematic means of determining and reporting in a timely manner whether financial institutions’ activities are generally consistent with the

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<sup>25</sup> Section 116(a) of the act requires the Comptroller General to conduct “ongoing oversight of the activities and performance of the TARP and of any agents and representatives of the TARP (as related to the agent or representative’s activities on behalf of or under the authority of the TARP), including vehicles established by the Secretary under this Act.” Specific issues delineated in the act include the “characteristics of transactions and commitments entered into,” “characteristics and disposition of acquired assets,” and “the efforts of the TARP to prevent, identify, and minimize conflicts of interest involving any agent or representative performing activities on behalf of or under the authority of the TARP.”

<sup>26</sup> U.S. Government Accountability Office, *Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency*, GAO-09-161, December 2, 2008.

<sup>27</sup> U.S. Government Accountability Office, *Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency*, GAO-09-266T, December 10, 2008.

purposes of the CPP and help ensure an appropriate level of accountability and transparency,” (2) “ensure that institutions participating in CPP comply with key program requirements,” and (3) “develop a comprehensive system of internal control over TARP.”<sup>28</sup> GAO went on to say that, “Until these issues are resolved, there is heightened risk that the interests of the government and taxpayers may not be adequately protected and that [the Office of Financial Stability] may not achieve its mission in an effective and efficient manner.”<sup>29</sup>

Commenting on GAO’s report, the Department of the Treasury agreed that it should develop means to determine whether financial institutions are complying with statutory and other program requirements, but expressed concern about whether the actions of individual institutions’ use of the funds needed to be monitored. However, in the wake of concerns expressed by several Members of Congress regarding poor oversight, interim Assistant Secretary Kaskhari told the House Financial Services Committee that the department would set up a monitoring system to track how each bank was spending TARP dollars.<sup>30</sup> After that hearing, the chairman of the committee reportedly said that Congress’ willingness to permit the use of the second \$350 billion may hinge on whether banks can show that the funds provided thus far were being used for lending.<sup>31</sup>

### **Section 116(b) (Audit of TARP Financial Statement)**

Section 116(b) of the act requires the TARP to prepare and issue audited financial statements to the appropriate committees of Congress and the public. That section goes on to require the Comptroller General to “annually audit such statements in accordance with generally accepted auditing standards.” Therefore, GAO will essentially be auditing the financial statement’s audit. The act also requires the Department of the Treasury to “reimburse the Government Accountability Office for the full cost of any such audit.”

Section 116(d) requires that these audits be sent to the COP.<sup>32</sup> According to GAO, the GAO audit will also be sent to the “appropriate committees of Congress.” Section 116(e) of the act states that this reporting responsibility ends on “(1) the date that the last troubled asset acquired by the Secretary under section 101 has been sold or transferred out of the ownership or control of the Federal Government; or (2) the date of expiration of the last insurance contract issued under section 102.”

### **Section 117 (Margin Authority)**

Section 117(a) of the act requires the Comptroller General to “undertake a study to determine the extent to which leverage and sudden deleveraging of financial institutions was a factor behind the current financial crisis.” Section 117(b) requires that the content of the study include

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<sup>28</sup> Ibid., p. 3.

<sup>29</sup> Ibid., p. 5.

<sup>30</sup> Dan Friedman and Bill Swindell, “Treasury Official Vows to Beef Up Oversight of Bailout Funds,” *Congress Daily*, December 10, 2008, available at <http://www.govexec.com/dailyfed/1208/121008cdpm1.htm>.

<sup>31</sup> R. Christian Bruce, “Frank Says Release of Second \$350 Billion May Hinge on Bank Loans Using TARP Funds,” *BNA Daily Report for Executives*, December 11, 2008, p. A-27.

<sup>32</sup> Although it is not required to do so, the TARP may also include GAO’s audit in the financial statement that is sent to the “appropriate committees of Congress” and the public.

(1) an analysis of the roles and responsibilities of the Board, the Securities and Exchange Commission, the Secretary, and other Federal banking agencies with respect to monitoring leverage and acting to curtail excessive leveraging; (2) an analysis of the authority of the Board to regulate leverage, including by setting margin requirements, and what process the Board used to decide whether or not to use its authority; (3) an analysis of any usage of the margin authority by the Board; and (4) recommendations for the Board and appropriate committees of Congress with respect to the existing authority of the Board.

Section 117(c) requires that the Comptroller General complete and submit this report no later than June 1, 2009, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives. Section 117(d) requires that this report also be sent to the COP.

## **Reports by the Office of Management and Budget**

### **Section 134 (Recoupment)**

EESA was signed into law on October 3, 2008. Section 134 of the act says that, five years after this date (i.e., October 3, 2013), the Director of the Office of Management and Budget (OMB), in consultation with the Director of the Congressional Budget Office, must “submit a report to the Congress on the net amount within the Troubled Asset Relief Program under this Act.” This section goes on to say that, “In any case where there is a shortfall, the President shall submit a legislative proposal that recoups from the financial industry an amount equal to the shortfall in order to ensure that the Troubled Asset Relief Program does not add to the deficit or national debt.”

### **Section 202(a) (Cost of TARP)**

Section 202(a) of the act requires OMB (but not specifically the Director) to submit a report to the President and Congress within 60 days of the first exercise of the authority granted in Section 101(a), but in no case later than December 31, 2008, and semiannually thereafter. These reports are to include

- (1) the estimate, notwithstanding section 502(5)(F) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(F)), as of the first business day that is at least 30 days prior to the issuance of the report, of the cost of the troubled assets, and guarantees of the troubled assets, determined in accordance with section 123;
- (2) the information used to derive the estimate, including assets purchased or guaranteed, prices paid, revenues received, the impact on the deficit and debt, and a description of any outstanding commitments to purchase troubled assets; and
- (3) a detailed analysis of how the estimate has changed from the previous report.

As discussed in more detail later in this report, Section 202(b) of the act requires the Congressional Budget Office to provide an assessment of OMB’s report. Beginning with the second report, Section 202(a) requires OMB to “explain the differences between the Congressional Budget Office estimates delivered in accordance with subsection (b) and prior Office of Management and Budget estimates.”

On December 5, 2008, OMB submitted its first Section 202(a) report.<sup>33</sup> OMB said that, as of November 6, 2008, the Department of the Treasury had purchased \$115 billion in preferred stock and warrants from eight financial institutions, paying an annual dividend of 5% in the first five years, and 9% thereafter. The report indicated that “Treasury is expected to recover nearly all of the \$115 billion in disbursed funds after the first ten years of the program.” OMB also described how it estimated the cash flows of preferred stock and warrants, and an alternative method of valuation. Finally, OMB said it may satisfy this reporting requirement in the future as part of its budget and mid-session reviews.

## **Reports by the Congressional Budget Office**

### **Section 202(b) (Assessment of OMB Report)**

Within 45 days of receipt by Congress of each report from OMB under Section 202(a) of the act, the Congressional Budget Office is required to report to Congress its assessment of OMB’s report, including “(1) the cost of the troubled assets and guarantees of the troubled assets, (2) the information and valuation methods used to calculate such cost, and (3) the impact on the deficit and the debt.”<sup>34</sup> Section 202(c) of the act states that “In carrying out the duties in this subsection or performing analyses of activities under this Act, the Director of the Congressional Budget Office may employ personnel and procure the services of experts and consultants.”

## **Reports to be Submitted by Others**

### **Section 110(b)(5) (Homeowner Assistance)**

Section 110(b) of EESA requires each “Federal property manager” that holds, owns, or controls mortgages, mortgage backed securities, and other assets secured by residential real estate to (among other things) “implement a plan that seeks to maximize assistance for homeowners.” Section 110(a)(1) of the act defines a “federal property manager” as

(A) the Federal Housing Finance Agency, in its capacity as conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; (B) the [Federal Deposit Insurance] Corporation, with respect to residential mortgage loans and mortgage-backed securities held by any bridge depository institution pursuant to section 11(n) of the Federal Deposit Insurance Act; and (C) the Board [of Governors of the Federal Reserve System], with respect to any mortgage or mortgage-backed securities or pool of securities held, owned, or controlled by or on behalf of a Federal reserve bank, other than mortgages or securities held, owned, or controlled in connection with open market operations under section 14 of the Federal Reserve Act (12 U.S.C. 353), or as collateral for an advance or discount that is not in default.

Section 110(b)(5) of EESA requires each federal property manager to submit a report to Congress 60 days after the date of enactment of the act, and every 30 days thereafter, providing “specific

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<sup>33</sup> See [http://www.whitehouse.gov/omb/legislative/eesa\\_120508.pdf](http://www.whitehouse.gov/omb/legislative/eesa_120508.pdf) for a copy of this report.

<sup>34</sup> Because the OMB report was submitted on December 5, 2008, the CBO report appears to be required by January 19, 2009.

information on the number and types of loan modifications made and the number of actual foreclosures occurring during the reporting period in accordance with this section.”<sup>35</sup>

### **Section 116(b) (Financial Statements)**

As noted previously in this report, Section 116(b) of the act requires the TARP to “annually prepare and issue to the appropriate committees of Congress and the public audited financial statements prepared in accordance with generally accepted accounting principles.” Those financial statements are required to be “on the fiscal year basis prescribed under section 1102 of title 31, United States Code. Section 116(c)(2) requires these audits to “(A) state the responsibility of management for establishing and maintaining adequate internal control over financial reporting; and (B) state its assessment, as of the end of the most recent year covered by such financial statement of the TARP, of the effectiveness of the internal control over financial reporting.” Section 116(d) requires this audit to be shared with the COP.

### **Section 129 (Disclosures on Exercise of Loan Authority)**

Section 129(a) of EESA states

Not later than 7 days after the date on which the Board [of Governors of the Federal Reserve System] exercises its authority under the third paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343; relating to discounts for individuals, partnerships, and corporations) the Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report which includes (1) the justification for exercising the authority; and (2) the specific terms of the actions of the Board, including the size and duration of the lending, available information concerning the value of any collateral held with respect to such a loan, the recipient of warrants or any other potential equity in exchange for the loan, and any expected cost to the taxpayers for such exercise.<sup>36</sup>

Section 129(b) requires the Board to provide updates to these committees at least every 60 days “while the subject loan is outstanding, including (1) the status of the loan; (2) the value of the collateral held by the Federal Reserve bank which initiated the loan; and (3) the projected cost to the taxpayers of the loan.” Section 129(e) requires that these reports also be sent to the COP.

### **Section 133(b) (Mark-to-Market Accounting)**

Section 133(a) requires the Securities and Exchange Commission, in consultation with the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, to “conduct a study on mark-to-market accounting standards as provided in Statement Number 157 of the Financial Accounting Standards Board, as such standards are applicable to financial institutions, including depository institutions.” That section also delineates several elements that the study

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<sup>35</sup> See <http://www.fhfa.gov/webfiles/196/EESASection110Dec208.pdf> for the Federal Housing Finance Agency’s December 2, 2008, report pursuant to this section.

<sup>36</sup> Section 13(3) of the Federal Reserve Act, invoked in the Bear Stearns and AIG interventions, authorizes the Federal Reserve Board to lend to any firm or individual in “unusual or exigent circumstances.” However, because those actions predated EESA, they did not trigger this reporting requirement. For more information on this issue, see CRS Report RL34427, *Financial Turmoil: Federal Reserve Policy Responses*, by Marc Labonte.

“shall consider,” including the effects of such standards on a financial institution’s balance sheet, and the impact of such accounting on bank failures in 2008. Section 133(b) requires the Securities and Exchange Commission to “submit to Congress a report of such study before the end of the 90-day period beginning on the date of the enactment of this Act containing the findings and determinations of the Commission, including such administrative and legislative recommendations as the Commission determines appropriate.”<sup>37</sup>

## **Concluding Observations**

The preceding review of EESA’s reporting requirements indicates that those requirements are both numerous and varied. The individuals and organizations tasked with submitting EESA reports include (1) the Secretary of the Treasury, (2) the Financial Stability Oversight Board, (3) the COP, (4) the Special Inspector General for the TARP, (5) the Comptroller General, (6) the Director of OMB (and OMB itself), (7) the Congressional Budget Office, (8) federal property managers, (9) the Board of Governors of the Federal Reserve System, and (10) the Securities and Exchange Commission. In one case (Section 116(b)), the reporting requirement is placed on a program (the Troubled Asset Relief Program) rather than an individual or an organization.<sup>38</sup>

The designated recipients of the reports are equally varied, including

- the “appropriate” congressional committees (defined as the Senate Committees on Banking, Housing, and Urban Affairs; Finance; Budget; and Appropriations; and the House Committees on Financial Services, Ways and Means, Budget, and Appropriations;
- a subset of those “appropriate committees” (e.g., in Section 116(b) and Section 117, only the Senate Committee on Banking, Housing, and Urban Affairs; and the House Committee on Financial Services);
- Congress as a whole;
- the COP;
- the Special Inspector General for the TARP;
- the President; and
- the public.

No single entity receives all of the EESA-required reports. Also, it is not readily apparent why some of the reports are filed with the set of “appropriate committees,” some to a subset of those committees, and some to Congress as a whole. When reports are required to be submitted to “the Congress,” the parliamentarian in each house of Congress (on behalf of the Speaker of the House and the presiding officer of the Senate) decides which officers and committees ultimately receive the reports.

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<sup>37</sup> Because EESA was enacted on October 3, 2008, this report appears to be required by January 1, 2009.

<sup>38</sup> In this case, because the TARP is authorized to be established by the Secretary of the Treasury (Section 101(a)(1) of the act), the Secretary or the Office of Financial Stability that is required to implement the program may actually carry out this requirement.

Many of the act's reporting requirements seem to address the same or similar issues. For example, Section 105(a) requires the Secretary of the Treasury to report to the "appropriate committees" within 60 days and every 30 days afterward on all "actions taken by the Secretary," including all agreements, transactions, and insurance contracts. Section 105(b) requires the Secretary to report to the same committees on the same transactions within seven days of each \$50 billion in commitments to purchase troubled assets. Section 116 requires the Comptroller General to oversee the activities of the TARP and report on his findings at least every 60 days, which would presumably include TARP-related agreements, transactions, and insurance contracts. Section 121 requires the Special Inspector General to report every quarter on its audits of (among other things) all "troubled assets" purchased or sold under Section 101, and the management of any insurance program under Section 102.

Also, Section 105(c) of the act requires the Secretary of the Treasury to review the current state of the financial markets and the regulatory system and submit a written report to the appropriate committees of Congress not later than April 30, 2009. That report is also required to provide recommendations regarding whether any participants in the financial markets that are currently outside the regulatory system should become subject to the regulatory system. Similarly, Section 125(b)(2) requires the COP to submit a "special report on regulatory reform" by January 20, 2009, "analyzing the current state of the regulatory system and its effectiveness at overseeing the participants in the financial system and protecting consumers." The report is also required to provide "recommendations for improvement, including recommendations regarding whether any participants in the financial markets that are currently outside the regulatory system should become subject to the regulatory system."

The number and variety of the required reports may have been intended to provide a variety of perspectives on the implementation of EESA, but the lack of integration of those requirements may make understanding the implementation of the act difficult. Also, given the nature of the "troubled assets" being purchased under the TARP (i.e., bank stock instead of mortgages or other instruments related to mortgages), it is unclear whether some of the reporting requirements are still relevant to the activities being carried out. For example, Section 105(a)(3) requires the Secretary of the Treasury to provide

a detailed financial statement with respect to the exercise of authority under this Act, including (A) all agreements made or renewed; (B) all insurance contracts entered into pursuant to section 102; (C) all transactions occurring during such period, including the types of parties involved; (D) the nature of the assets purchased; (E) all projected costs and liabilities; (F) operating expenses, including compensation for financial agents; (G) the valuation or pricing method used for each transaction; and (H) a description of the vehicles established to exercise such authority.

The Secretary of the Treasury announced on November 12 that the Department of the Treasury no longer plans to buy mortgage-based "troubled assets," and will instead "aid banks and other firms that issue student, auto, and credit card loans in part by jump-starting the market that provides financing for these companies."<sup>39</sup> Therefore, some of these particular reporting requirements may no longer be relevant or helpful. As a result, some have called for Congress to revisit EESA's reporting requirements.<sup>40</sup>

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<sup>39</sup> Peter Whoriskey, David Cho, and Binyamin Appelbaum, "Treasury Redefines Its Rescue Program," *Washington Post*, p. A1.

<sup>40</sup> See, for example, Alan B. Morrison, "Plugging the Leaks in the Bailout," *Legal Times*, November 10, 2008, p. 46. (continued...)



Other information that is not specifically required by the act may be more useful to Congress and others as they oversee the implementation of the program. For example, several Members of Congress have expressed concerns that the funds being invested in banks are being used to pay dividends to stockholders, purchase smaller banks, or finance bonuses and other types of compensation for bank executives—not to increase lending.<sup>41</sup> Although some of the reporting requirements appear to be general enough to allow the reporting entities to include how the funds were used, no individual or organization is currently required to do so. As the COP's January 9, 2009, report stated:

EESA does not require recipients of TARP funds to make reports on the use of funds. However, it is within Treasury's authority to make such reports a condition of receiving funding, to establish benchmarks for TARP recipient conduct, or to have formal procedures for voluntary reporting by TARP recipient institutions or formal guidelines on the use of funds. The adoption of any one of these options would further the purposes of helping build and restore the confidence of taxpayers, investors, and policy makers.<sup>42</sup>

Also, although Section 2(2)(D) of EESA says one of the purposes of the legislation is to provide "public accountability" for the use of the act's authorities, only one of the reports is required by EESA to be made to the public.<sup>43</sup> Most, if not all, of the required reports have been made public so far, but it is currently unclear whether, and if so, how, the practice will continue. One of the recommendations from a conference on public accountability under EESA is that "Congress should make clear that any reports required to be made to Congress under the EESA should also be made public, unless specifically made confidential in the Act or some portion is specifically designated by the reporting entity as being exempt from disclosure under FOIA."<sup>44</sup>

Some of the reports are required to be submitted to the recipients relatively quickly, and some of the reporting deadlines have already occurred. On the other hand, some of the reports are not required for years. For example, Section 134 of the act requires OMB to "submit a report to the Congress on the net amount within the Troubled Asset Relief Program under this Act" five years after the date that EESA was enacted (i.e., on October 3, 2013). Some of the reporting requirements are recurring (e.g., in Section 125(b)(1), which requires the COP to submit its regular reports every 30 days). Other reports, however, are only required to be submitted one time (e.g., in Section 125(b)(2), which requires the COP to submit a special report to Congress by January 20, 2009).

Most of the reporting requirements include clear starting or ending points for the submission of the reports (e.g., those that are required within 30 days after the date that EESA was enacted, or

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(...continued)

Specifically, he said "the bill was primarily intended to provide funds to buy up bad mortgage-related securities and to help homeowners, but it was quickly used to make the United States a co-owner of a number of large and probably smaller banks." For that and other reasons, he said, "Congress needs to take another hard look at its handiwork."

<sup>41</sup> See, for example, Binyamin Appelbaum, "Banks to Continue Paying Dividends; Bailout Money Is for Lending, Critics Say," *Washington Post*, October 30, 2008, p. A1; and Charlene Carter, "Leading House Democrats Pressure Treasury on Banks' Use of Federal Funds," *CongressNow*, October 31, 2008.

<sup>42</sup> See <http://cop.senate.gov/documents/cop-010909-report.pdf>, pp. 3-4.

<sup>43</sup> Section 116(b) of the act requires the TARP to prepare and issue audited financial statements to the appropriate committees of Congress and the public.

<sup>44</sup> See <http://www.wcl.american.edu/secle/fall/2008/documents/FinalBailoutRecommendation.pdf?rd=1> for a copy of these recommendations.

those that require a report by a certain date). In some cases, however, the starting points for the reporting deadlines are unclear. For example, Section 104(g) requires the Financial Stability Oversight Board to submit reports “not less frequently than quarterly,” but the act does not indicate when these reports are to begin. Similarly, Section 116(a)(3) requires the Comptroller General to report “no less frequently than once every 60 days,” but does not indicate when those reports are to begin.

Finally, some of the reporting requirements (e.g., those placed on the Secretary by Section 105) expire on the date that the last troubled asset is sold or transferred, or the date that the last insurance contract expires. Without some kind of a lag period for the expiration of these reporting requirements (e.g., 30 or 60 days after the last sale or transfer of troubled assets), a complete history of these transactions may not be provided to Congress or the public.

## Appendix. Reporting Requirements in the Emergency Economic Stabilization Act of 2008 (EESA, P.L. 110-343)

| <b>EESA<br/>Section</b>                                     | <b>Report<br/>Prepared by</b>                | <b>Report<br/>Delivered to</b>  | <b>When First<br/>Report is<br/>Required</b>  | <b>Frequency<br/>of Reports</b>                             | <b>When Reports<br/>End</b>   |
|---|--|---|---|---|---|
| 102(b)—<br>TARP Report                                      | Secretary of<br>the Treasury                 | “appropriate<br>committees of<br>Congress”  | 90 days after<br>enactment of<br>EESA (i.e., by<br>01/01/09)                                      | one time  | when the report is<br>submitted   |
| 105(a)—<br>General<br>Reports                               | Secretary of<br>the Treasury                 | “appropriate<br>committees of<br>Congress”  | within 60 days<br>after the first<br>exercise of<br>authority under<br>Sections 101(a)<br>and 102 | every 30 days<br>after the first<br>report                  | the date the last<br>troubled asset is<br>sold or transferred,<br>or the expiration of<br>the last insurance<br>contract  |
| 105(b)—<br>Tranche<br>Reports                               | Secretary of<br>the Treasury                 | “appropriate<br>committees of<br>Congress” and the<br>Congressional<br>Oversight Panel<br>(COP) | within seven days<br>after the purchase<br>of \$50 billion in<br>troubled assets                  | within seven<br>days after<br>each \$50<br>billion interval | seven days after the<br>last purchase of<br>troubled assets   |
| 105(c)—<br>Regulatory<br>Report                             | Secretary of<br>the Treasury                 | “appropriate<br>committees of<br>Congress” and the<br>COP                                       | by 04/30/09   | one time  | when the report is<br>submitted   |
| 104(g)—<br>Reports on<br>Sections 101<br>and 102 of<br>EESA | Financial<br>Stability<br>Oversight<br>Board | “appropriate<br>committees of<br>Congress” and the<br>COP                                       | unclear   | at least<br>quarterly                                       | unclear, although<br>the Board<br>terminates 15 days<br>after the last<br>troubled asset is<br>sold or transferred,<br>or the expiration of<br>the last insurance<br>contract |
| 125(b)(1)—<br>Regular<br>Reports                            | COP  | Congress  | within 30 days<br>after the first<br>exercise of<br>authority under<br>Sections 101(a)<br>and 102 | every 30 days<br>after the first<br>report                  | unclear, although<br>the Panel<br>terminates on or<br>about 06/30/2010  |
| 125(b)(2)—<br>Special Report<br>on Regulatory<br>Reform     | COP  | Congress  | by 01/20/09   | one time  | when the report is<br>submitted   |
| 121(f)(1)—<br>Inspector<br>General<br>Report                | Special<br>Inspector<br>General              | “appropriate<br>committees of<br>Congress” and the<br>COP                                       | within 60 days<br>after confirmation<br>of the Special<br>Inspector General                       | every<br>“calendar<br>quarter” after<br>the first<br>report | unclear, but the<br>Office of the<br>Special Inspector<br>General terminates<br>on the later of the<br>date that the last   |

| <b>EESA Section</b>                            | <b>Report Prepared by</b>                        | <b>Report Delivered to</b>   | <b>When First Report is Required</b>  | <b>Frequency of Reports</b>   | <b>When Reports End</b>   |
|--|--|--|---|---|---|
|  |  |  |   |   | troubled asset is sold or transferred, or the last insurance contract expires |
| 116(a)(3)—Oversight Report                     | Comptroller General                              | “appropriate committees of Congress,” the Special Inspector General, and the COP                       | unclear   | “regularly and no less frequently than once every 60 days”          | unclear   |
| 116(b)—Audit of TARP Financial Statement Audit | Comptroller General                              | sent to the COP, the “appropriate committees of Congress,” and the public                              | unclear   | annually  | unclear, although the TARP’s authority expires 12/31/09                       |
| 117—Margin Authority Report                    | Comptroller General                              | Senate Committee on Banking, Housing, and Urban Affairs; and the House Committee on Financial Services | By 06/01/09   | one time  | when the report is submitted  |
| 134—Recoupment Report                          | Director of the Office of Management and Budget  | Congress   | Five years after the enactment of EESA (i.e., 10/03/13)                                       | one time  | when the report is submitted  |
| 202(a)—Cost of TARP                            | Office of Management and Budget                  | President and Congress   | within 60 days after the first exercise of authority under Section 101(a) (i.e., by 12/27/08) | “semi-annually”   | unclear   |
| 202(b)—Assessment of OMB Report                | Congressional Budget Office                      | Congress   | within 45 days after the first report required in Section 202(a)                              | within 45 days after each “semi annual” report under Section 202(a) | unclear   |
| 110(b)(5)—Homeowner Assistance                 | each “federal property manager” <sup>a</sup>     | Congress   | 60 days after the enactment of EESA (i.e., by 12/03/08)                                       | every 30 days after the first report                                | unclear   |
| 116(b)—Financial Statements                    | Troubled Asset Relief Program                    | “appropriate committees of Congress” and the public  | unclear   | annually  | unclear, although the TARP’s authority expires 12/31/09                       |
| 129—Disclosures on Exercise of Loan Authority  | Board of Governors of the Federal Reserve System | Senate Committee on Banking, Housing, and Urban Affairs; House Committee                               | within seven days after the Board exercises its authority under the third                     | at least every 60 days  | until the loan is no longer outstanding                                       |

| <b>EESA Section</b>                  | <b>Report Prepared by</b>                       | <b>Report Delivered to</b>         | <b>When First Report is Required</b>                                   | <b>Frequency of Reports</b> | <b>When Reports End</b>      |
|--------------------------------------|---|------------------------------------|--|-----------------------------|------------------------------|
|                                      |   | on Financial Services; and the COP | paragraph of section 13 of the Federal Reserve Act (12 U.S.C. §343)    |                             |                              |
| 133—Mark-to-Market Accounting Report | Securities and Exchange Commission <sup>b</sup> | Congress                           | within 90 days after the date that EESA is enacted (i.e., by 01/01/09) | one-time                    | when the report is submitted |

- a. Section 110(a)(1) of EESA defines a “federal property manager” as “(A) the Federal Housing Finance Agency, in its capacity as conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; (B) the [Federal Deposit Insurance] Corporation, with respect to residential mortgage loans and mortgage-backed securities held by any bridge depository institution pursuant to section 11(n) of the Federal Deposit Insurance Act; and (C) the Board [of Governors of the Federal Reserve System], with respect to any mortgage or mortgage-backed securities or pool of securities held, owned, or controlled by or on behalf of a Federal reserve bank, other than mortgages or securities held, owned, or controlled in connection with open market operations under section 14 of the Federal Reserve Act (12 U.S.C. 353), or as collateral for an advance or discount that is not in default.”
- b. The Securities and Exchange Commission is required to consult with the Board of Governors of the Federal Reserve System and the Secretary of the Treasury in the conduct of the study underlying this report.

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