

for actions pursuant to section¹ 5211, 5212, 5216, and 5219 of this title, other than to remedy a violation of the Constitution.

(B) Temporary restraining order

Any request for a temporary restraining order against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court within 3 days of the date of the request.

(C) Preliminary injunction

Any request for a preliminary injunction against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court on an expedited basis consistent with the provisions of rule 65(b)(3) of the Federal Rules of Civil Procedure, or any successor thereto.

(D) Permanent injunction

Any request for a permanent injunction against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court on an expedited basis. Whenever possible, the court shall consolidate trial on the merits with any hearing on a request for a preliminary injunction, consistent with the provisions of rule 65(a)(2) of the Federal Rules of Civil Procedure, or any successor thereto.

(3) Limitation on actions by participating companies

No action or claims may be brought against the Secretary by any person that divests its assets with respect to its participation in a program under this chapter, except as provided in paragraph (1), other than as expressly provided in a written contract with the Secretary.

(4) Stays

Any injunction or other form of equitable relief issued against the Secretary for actions pursuant to section¹ 5211, 5212, 5216, and 5219 of this title, shall be automatically stayed. The stay shall be lifted unless the Secretary seeks a stay from a higher court within 3 calendar days after the date on which the relief is issued.

(b) Related matters

(1) Treatment of homeowners' rights

The terms of any residential mortgage loan that is part of any purchase by the Secretary under this chapter shall remain subject to all claims and defenses that would otherwise apply, notwithstanding the exercise of authority by the Secretary under this chapter.

(2) Savings clause

Any exercise of the authority of the Secretary pursuant to this chapter shall not impair the claims or defenses that would otherwise apply with respect to persons other than the Secretary. Except as established in any contract, a servicer of pooled residential mortgages owes any² duty to determine whether the net present value of the payments on the

loan, as modified, is likely to be greater than the anticipated net recovery that would result from foreclosure to all investors and holders of beneficial interests in such investment, but not to any individual or groups of investors or beneficial interest holders, and shall be deemed to act in the best interests of all such investors or holders of beneficial interests if the servicer agrees to or implements a modification or workout plan when the servicer takes reasonable loss mitigation actions, including partial payments.

(Pub. L. 110-343, div. A, title I, §119, Oct. 3, 2008, 122 Stat. 3787.)

REFERENCES IN TEXT

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

The Federal Rules of Civil Procedure, referred to in subsec. (a)(2)(C), (D), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 5230. Termination of authority

(a) Termination

The authorities provided under sections 5211(a), excluding section 5211(a)(3), and 5212 of this title shall terminate on December 31, 2009.

(b) Extension upon certification

The Secretary, upon submission of a written certification to Congress, may extend the authority provided under this chapter to expire not later than 2 years from October 3, 2008. Such certification shall include a justification of why the extension is necessary to assist American families and stabilize financial markets, as well as the expected cost to the taxpayers for such an extension.

(Pub. L. 110-343, div. A, title I, §120, Oct. 3, 2008, 122 Stat. 3788.)

REFERENCES IN TEXT

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

§ 5231. Special Inspector General for the Troubled Asset Relief Program

(a) Office of Inspector General

There is hereby established the Office of the Special Inspector General for the Troubled Asset Relief Program.

(b) Appointment of Inspector General; removal

(1) The head of the Office of the Special Inspector General for the Troubled Asset Relief Program is the Special Inspector General for the Troubled Asset Relief Program (in this section referred to as the "Special Inspector General"), who shall be appointed by the President, by and with the advice and consent of the Senate.

¹ So in original. Probably should be "sections".

² So in original. Probably should be "a".

(2) The appointment of the Special Inspector General shall be made on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(3) The nomination of an individual as Special Inspector General shall be made as soon as practicable after the establishment of any program under sections 5211 and 5212 of this title.

(4) The Special Inspector General shall be removable from office in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).

(5) For purposes of section 7324 of title 5, the Special Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

(6) The annual rate of basic pay of the Special Inspector General shall be the annual rate of basic pay for an Inspector General under section 3(e) of the Inspector General Act of 1978 (5 U.S.C. App.).

(c) Duties

(1) It shall be the duty of the Special Inspector General to conduct, supervise, and coordinate audits and investigations of the purchase, management, and sale of assets by the Secretary of the Treasury under any program established by the Secretary under section 5211 of this title, and the management by the Secretary of any program established under section 5212 of this title, including by collecting and summarizing the following information:

(A) A description of the categories of troubled assets purchased or otherwise procured by the Secretary.

(B) A listing of the troubled assets purchased in each such category described under subparagraph (A).

(C) An explanation of the reasons the Secretary deemed it necessary to purchase each such troubled asset.

(D) A listing of each financial institution that such troubled assets were purchased from.

(E) A listing of and detailed biographical information on each person or entity hired to manage such troubled assets.

(F) A current estimate of the total amount of troubled assets purchased pursuant to any program established under section 5211 of this title, the amount of troubled assets on the books of the Treasury, the amount of troubled assets sold, and the profit and loss incurred on each sale or disposition of each such troubled asset.

(G) A listing of the insurance contracts issued under section 5212 of this title.

(2) The Special Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Inspector General considers appropriate to discharge the duty under paragraph (1).

(3) In addition to the duties specified in paragraphs (1) and (2), the Inspector General shall also have the duties and responsibilities of inspectors general under the Inspector General Act of 1978.

(4)(A) Except as provided under subparagraph (B) and in addition to the duties specified in

paragraphs (1), (2), and (3), the Special Inspector General shall have the authority to conduct, supervise, and coordinate an audit or investigation of any action taken under this subchapter as the Special Inspector General determines appropriate.

(B) Subparagraph (A) shall not apply to any action taken under section 5225, 5226, 5227, or 5233 of this title.

(d) Powers and authorities

(1) In carrying out the duties specified in subsection (c), the Special Inspector General shall have the authorities provided in section 6 of the Inspector General Act of 1978.

(2) The Special Inspector General shall carry out the duties specified in subsection (c)(1) and (4) in accordance with section 4(b)(1) of the Inspector General Act of 1978.

(3) The Office of the Special Inspector General for the Troubled Asset Relief Program shall be treated as an office included under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App.) relating to the exemption from the initial determination of eligibility by the Attorney General.

(e) Personnel, facilities, and other resources

(1)(A) The Special Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Special Inspector General, subject to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(B)(i) Subject to clause (ii), the Special Inspector General may exercise the authorities of subsections (b) through (i) of section 3161 of title 5 (without regard to subsection (a) of that section).

(ii) In exercising the employment authorities under subsection (b) of section 3161 of title 5, as provided under clause (i) of this subparagraph—

(I) the Special Inspector General may not make any appointment on and after the date occurring 6 months after April 24, 2009;

(II) paragraph (2) of that subsection (relating to periods of appointments) shall not apply; and

(III) no period of appointment may exceed the date on which the Office of the Special Inspector General terminates under subsection (k).

(2) The Special Inspector General may obtain services as authorized by section 3109 of title 5 at daily rates not to exceed the equivalent rate prescribed for grade GS-15 of the General Schedule by section 5332 of such title.

(3) The Special Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Inspector General.

(4)(A) Upon request of the Special Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contraven-

tion of any existing law, furnish such information or assistance to the Special Inspector General, or an authorized designee.

(B) Whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress without delay.

(5)(A) Except as provided under subparagraph (B), if an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in a position within the Office of the Special Inspector General for the Troubled Asset Relief Program, his annuity shall continue. An annuitant so reemployed shall not be considered an employee for purposes of chapter 83 or 84.¹

(B) Subparagraph (A) shall apply to—

(i) not more than 25 employees at any time as designated by the Special Inspector General; and

(ii) pay periods beginning after April 24, 2009.

(f) Corrective responses to audit problems

The Secretary shall—

(1) take action to address deficiencies identified by a report or investigation of the Special Inspector General or other auditor engaged by the TARP; or

(2) certify to appropriate committees of Congress that no action is necessary or appropriate.

(g) Cooperation and coordination with other entities

In carrying out the duties, responsibilities, and authorities of the Special Inspector General under this section, the Special Inspector General shall work with each of the following entities, with a view toward avoiding duplication of effort and ensuring comprehensive oversight of the Troubled Asset Relief Program through effective cooperation and coordination:

(1) The Inspector General of the Department of Treasury.

(2) The Inspector General of the Federal Deposit Insurance Corporation.

(3) The Inspector General of the Securities and Exchange Commission.

(4) The Inspector General of the Federal Reserve Board.

(5) The Inspector General of the Federal Housing Finance Board.

(6) The Inspector General of any other entity as appropriate.

(h) Council of the Inspectors General on Integrity and Efficiency

The Special Inspector General shall be a member of the Council of the Inspectors General on Integrity and Efficiency established under section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) until the date of termination of the Office of the Special Inspector General for the Troubled Asset Relief Program.

(i) Reports

(1) Not later than 60 days after the confirmation of the Special Inspector General, and not

later than 30 days following the end of each fiscal quarter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during that fiscal quarter. Each report shall include, for the period covered by such report, a detailed statement of all purchases, obligations, expenditures, and revenues associated with any program established by the Secretary of the Treasury under sections 5211 and 5212 of this title, as well as the information collected under subsection (c)(1).

(2) Not later than September 1, 2009, the Special Inspector General shall submit a report to Congress assessing use of any funds, to the extent practical, received by a financial institution under the TARP and make the report available to the public, including posting the report on the home page of the website of the Special Inspector General within 24 hours after the submission of the report.

(3) Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(4) Any reports required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(5) Except as provided under paragraph (3), all reports submitted under this subsection shall be available to the public.

(j) Funding

(1) Of the amounts made available to the Secretary of the Treasury under section 5228 of this title, \$50,000,000 shall be available to the Special Inspector General to carry out this section, not later than 7 days after April 24, 2009.

(2) The amount available under paragraph (1) shall remain available until expended.

(k) Termination

The Office of the Special Inspector General shall terminate on the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title 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 5212 of this title.

(Pub. L. 110-343, div. A, title I, § 121, Oct. 3, 2008, 122 Stat. 3788; Pub. L. 111-15, §§ 2-6, Apr. 24, 2009, 123 Stat. 1603-1605.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsecs. (b)(4), (6), (c)(3), (d), and (h), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

Chapter 83 or 84, referred to in subsec. (e)(5)(A), probably means chapter 83 or 84 of Title 5, Government Organization and Employees.

¹ See References in Text note below.

AMENDMENTS

2009—Subsec. (c)(4). Pub. L. 111-15, §2(1), added par. (4).

Subsec. (d)(2). Pub. L. 111-15, §2(2)(A), substituted “subsection (c)(1) and (4)” for “subsection (c)(1)”.

Subsec. (d)(3). Pub. L. 111-15, §2(2)(B), added par. (3).

Subsec. (e)(1). Pub. L. 111-15, §3(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e)(5). Pub. L. 111-15, §3(2), added par. (5).

Subsecs. (f) to (h). Pub. L. 111-15, §4(2), added subsecs. (f) to (h). Former subsecs. (f) to (h) redesignated (i) to (k), respectively.

Subsec. (i). Pub. L. 111-15, §4(1), redesignated subsec. (f) as (i).

Subsec. (i)(1). Pub. L. 111-15, §5(1), substituted “Not later than 60 days after the confirmation of the Special Inspector General, and not later than 30 days following the end of each fiscal quarter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during that fiscal quarter.” for “Not later than 60 days after the confirmation of the Special Inspector General, and every calendar quarter thereafter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the 120-day period ending on the date of such report.”

Subsec. (i)(2) to (4). Pub. L. 111-15, §5(2), (3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (i)(5). Pub. L. 111-15, §5(4), added par. (5).

Subsec. (j). Pub. L. 111-15, §4(1), redesignated subsec. (g) as (j).

Subsec. (j)(1). Pub. L. 111-15, §6, inserted “, not later than 7 days after April 24, 2009” before period at end.

Subsec. (k). Pub. L. 111-15, §4(1), redesignated subsec. (h) as (k).

§ 5231a. Public-Private Investment Program; additional appropriations for the Special Inspector General for the Troubled Asset Relief Program

(a) Short title

This section may be cited as the “Public-Private Investment Program Improvement and Oversight Act of 2009”.

(b) Public-Private Investment Program

(1) In general

Any program established by the Federal Government to create a public-private investment fund shall—

(A) in consultation with the Special Inspector General of the Trouble¹ Asset Relief Program (in this section referred to as the “Special Inspector General”), impose strict conflict of interest rules on managers of public-private investment funds to ensure that securities bought by the funds are purchased in arms-length transactions, that fiduciary duties to public and private investors in the fund are not violated, and that there is full disclosure of relevant facts and financial interests (which conflict of interest rules shall be implemented by the manager of a public-private investment fund prior to such fund receiving Federal Government financing);

(B) require each public-private investment fund to make a quarterly report to the Secretary of the Treasury (in this section re-

ferred to as the “Secretary”) that discloses the 10 largest positions of such fund (which reports shall be publicly disclosed at such time as the Secretary of the Treasury determines that such disclosure will not harm the ongoing business operations of the fund);

(C) allow the Special Inspector General access to all books and records of a public-private investment fund, including all records of financial transactions in machine readable form, and the confidentiality of all such information shall be maintained by the Special Inspector General;

(D) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(E) require each manager of a public-private investment fund to acknowledge, in writing, a fiduciary duty to both the public and private investors in such fund;

(F) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(G) require strict investor screening procedures for public-private investment funds; and

(H) require each manager of a public-private fund to identify for the Secretary, on a periodic basis, each investor that, individually or together with affiliates, directly or indirectly, holds equity interests equal to at least 10 percent of the equity interest of the fund including if such interests are held in a vehicle formed for the purpose of directly or indirectly investing in the fund.

(2) Interaction between public-private investment funds and the Term-Asset Backed Securities Loan Facility

The Secretary shall consult with the Special Inspector General and shall issue regulations governing the interaction of the Public-Private Investment Program, the Term-Asset Backed Securities Loan Facility, and other similar public-private investment programs. Such regulations shall address concerns regarding the potential for excessive leverage that could result from interactions between such programs.

(3) Report

Not later than 60 days after the date of the establishment of a program described in paragraph (1), the Special Inspector General shall submit a report to Congress on the implementation of this section.

(c) Additional appropriations for the Special Inspector General

(1) In general

Of amounts made available under section 115(a) of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343) [12 U.S.C. 5225(a)], \$15,000,000 shall be made available to the Special Inspector General, which shall be in addition to amounts otherwise made available to the Special Inspector General.

(2) Priorities

In utilizing funds made available under this section, the Special Inspector General shall

¹ So in original. Probably should be “Troubled”.