

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

REFERENCES IN TEXT

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

AMENDMENTS

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

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

§ 5222. Coordination with foreign authorities and central banks

The Secretary shall coordinate, as appropriate, with foreign financial authorities and central banks to work toward the establishment of similar programs by such authorities and central banks. To the extent that such foreign financial authorities or banks hold troubled assets as a result of extending financing to financial institutions that have failed or defaulted on such financing, such troubled assets qualify for purchase under section 5211 of this title.

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

§ 5223. Minimization of long-term costs and maximization of benefits for taxpayers

(a) Long-term costs and benefits

(1) Minimizing negative impact

The Secretary shall use the authority under this chapter in a manner that will minimize any potential long-term negative impact on the taxpayer, taking into account the direct outlays, potential long-term returns on assets purchased, and the overall economic benefits of the program, including economic benefits due to improvements in economic activity and the availability of credit, the impact on the savings and pensions of individuals, and reductions in losses to the Federal Government.

(2) Authority

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

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

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

(3) Private sector participation

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

(b) Use of market mechanisms

In making purchases under this chapter, the Secretary shall—

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

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

(c) Direct purchases

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

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

(1) In general

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

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

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

(2) Terms and conditions

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

(A) Purposes

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

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

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

(B) Authority to sell, exercise, or surrender

The Secretary may sell, exercise, or surrender a warrant or any senior debt instru-

¹ So in original. The comma probably should not appear.