

110TH CONGRESS
2D SESSION

S. 3652

To provide for financial market investigation, oversight, and reform.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29 (legislative day, SEPTEMBER 17), 2008

Ms. CANTWELL (for herself and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide for financial market investigation, oversight, and reform.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Financial Market Investigation, Oversight, and Reform
6 Act of 2008”.

7 (1) **TABLE OF CONTENTS.**—The table of con-
8 tents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Establishing an independent, bipartisan Commission.

Sec. 3. Establishing a joint select committee on financial market oversight re-
form and investigations.

Sec. 4. Special Inspector General for financial markets oversight.

1 **SEC. 2. ESTABLISHING AN INDEPENDENT, BIPARTISAN**
2 **COMMISSION.**

3 (a) **COMMISSION ESTABLISHMENT.**—There is estab-
4 lished a temporary commission to be known as the Com-
5 mission on Financial Regulatory Reform (referred to in
6 this Act as the “Commission”). The Commission shall re-
7 view the financial regulatory structure and propose a com-
8 prehensive framework for fundamental reform of financial
9 regulation in the United States.

10 (b) **FUNCTIONS OF THE COMMISSION.**—

11 (1) **IN GENERAL.**—The Commission shall con-
12 duct a top-to-bottom review of the Nation’s existing
13 financial regulatory structure and the contribution
14 of the current structure to the stability or instability
15 of financial markets in order to develop a com-
16 prehensive framework for—

17 (A) reforming the laws governing our Na-
18 tion’s financial markets;

19 (B) strengthening and reconstituting regu-
20 latory agencies; and

21 (C) improving transparency and oversight.

22 (2) **ANALYSIS.**—In the course of its activities,
23 the Commission shall analyze—

24 (A) the impact of the financial regulatory
25 structure on the health and stability of the
26 United States economy;

1 (B) the strength, sustainability, and com-
2 petitiveness of the Nation's financial institu-
3 tions; and

4 (C) the financial well-being of American
5 taxpayers, investors, and businesses.

6 (3) CONSIDERATIONS.—The Commission shall
7 review and consider all aspects of financial regula-
8 tion, including the regulation of—

9 (A) bank holding companies, financial
10 holding companies, commercial banks, invest-
11 ment banks, thrifts, credit unions, and indus-
12 trial loan companies;

13 (B) payment and settlement systems;

14 (C) hedge funds, private equity funds, and
15 the markets for alternative investments;

16 (D) special purpose vehicles and off-bal-
17 ance sheet financing for financial companies;

18 (E) the securitization of mortgages and
19 other assets;

20 (F) exchange-based, electronic, and over-
21 the-counter markets for financial derivative
22 products;

23 (G) the mortgage finance industry, includ-
24 ing mortgage brokers and mortgage lending in-
25 stitutions;

1 (H) equity markets, including short-selling
2 practices, and commodity futures markets; and

3 (I) the insurance industry and its role in
4 the financial markets.

5 (c) POWERS OF THE COMMISSION.—

6 (1) IN GENERAL.—

7 (A) HEARINGS AND EVIDENCE.—The
8 Commission or, on the authority of the Com-
9 mission, any subcommittee or member thereof,
10 may, for the purpose of carrying out this Act—

11 (i) hold such hearings and sit and act
12 at such times and places, take such testi-
13 mony, receive such evidence, administer
14 such oaths; and

15 (ii) require the attendance and testi-
16 mony of such witnesses and the production
17 of such books, records, correspondence,
18 memoranda, papers, and documents, as the
19 Commission or such designated sub-
20 committee or designated member may de-
21 termine advisable.

22 (B) FIRST MEETING.—The first meeting of
23 the Commission shall occur not later than 30
24 days after the date of enactment of this Act.

1 (2) CONTRACTING.—The Commission may, to
2 such extent and in such amounts as are provided in
3 appropriation Acts, enter into contracts to enable
4 the Commission to discharge its duties under this
5 Act.

6 (3) INFORMATION FROM FEDERAL AGENCIES.—

7 (A) IN GENERAL.—The Commission is au-
8 thorized to secure directly from any executive
9 department, bureau, agency, board, commission,
10 office, independent establishment, or instrumen-
11 tality of the Government, information, sugges-
12 tions, estimates, and statistics for the purposes
13 of this Act. Each department, bureau, agency,
14 board, commission, office, independent estab-
15 lishment, or instrumentality shall, to the extent
16 authorized by law, furnish such information,
17 suggestions, estimates, and statistics directly to
18 the Commission, upon request made by the
19 chairman, the chairman of any subcommittee
20 created by a majority of the Commission, or
21 any member designated by a majority of the
22 Commission.

23 (B) RECEIPT, HANDLING, STORAGE, AND
24 DISSEMINATION.—Information shall only be re-
25 ceived, handled, stored, and disseminated by

1 members of the Commission and its staff con-
2 sistent with all applicable statutes, regulations,
3 and Executive orders.

4 (4) ASSISTANCE FROM FEDERAL AGENCIES.—

5 (A) GENERAL SERVICES ADMINISTRA-
6 TION.—The Administrator of General Services
7 shall provide to the Commission on a reimburs-
8 able basis administrative support and other
9 services for the performance of the Commis-
10 sion's functions.

11 (B) OTHER DEPARTMENTS AND AGEN-
12 CIES.—In addition to the assistance prescribed
13 in subparagraph (A), departments and agencies
14 of the United States may provide to the Com-
15 mission such services, funds, facilities, staff,
16 and other support services as they may deter-
17 mine advisable and as may be authorized by
18 law.

19 (5) GIFTS.—The Commission may accept, use,
20 and dispose of gifts or donations of services or prop-
21 erty.

22 (6) POSTAL SERVICES.—The Commission may
23 use the United States mails in the same manner and
24 under the same conditions as departments and agen-
25 cies of the United States.

1 (d) NON-APPLICABILITY OF FEDERAL ADVISORY
2 COMMITTEE ACT.—

3 (1) IN GENERAL.—The Federal Advisory Com-
4 mittee Act (5 U.S.C. App.) shall not apply to the
5 Commission.

6 (2) PUBLIC MEETINGS AND RELEASE OF PUB-
7 LIC VERSIONS OF REPORTS.—The Commission
8 shall—

9 (A) hold public hearings and meetings to
10 the extent appropriate; and

11 (B) release public versions of the reports
12 required under this Act.

13 (3) PUBLIC HEARINGS.—Any public hearings of
14 the Commission shall be conducted in a manner con-
15 sistent with the protection of information provided
16 to or developed for or by the Commission as re-
17 quired by any applicable statute, regulation, or Ex-
18 ecutive order.

19 (e) COMPOSITION.—

20 (1) IN GENERAL.—The Commission shall be
21 composed of 12 members, selected not later than 15
22 days after the date of enactment of this Act, of
23 whom—

24 (A) three persons shall be appointed by the
25 majority leader of the Senate, after consultation

1 with the Chairman of the Committee on Bank-
2 ing, Housing and Urban Affairs;

3 (B) three persons shall be appointed by the
4 minority leader of the Senate, after consultation
5 with the ranking minority members of the Com-
6 mittee on Banking, Housing and Urban Affairs;

7 (C) three persons shall be appointed by the
8 Speaker of the House of Representatives, after
9 consultation with the Chairman of the Com-
10 mittee on Financial Services; and

11 (D) three persons shall be appointed by
12 the minority leader of the House of Representa-
13 tives, after consultation with the ranking minor-
14 ity member of the Committee on Financial
15 Services.

16 (2) QUALIFICATIONS.—An individual appointed
17 may not be an officer or employee of the Federal
18 Government or any State or local government. It is
19 the sense of Congress that individuals appointed to
20 the Commission should be have national recognition
21 as financial sector experts, and may include former
22 government officials, private market participants,
23 and representatives of the academic community,

24 (3) OFFICERS.—Officers of the Commission are
25 to be chosen by the Commission’s membership.

1 (f) FINAL REPORT OF COMMISSION.—Not later than
2 120 days after the date of the enactment of this Act, the
3 Commission shall submit to the President and Congress
4 a final report containing such findings, conclusions, and
5 recommendations for corrective measures as have been
6 agreed to by a majority of committee members.

7 (g) COMPENSATION OF COMMISSION STAFF.—

8 (1) IN GENERAL.—

9 (A) APPOINTMENT AND COMPENSATION.—

10 The chairman, in consultation with vice chair-
11 man, in accordance with rules agreed upon by
12 the Commission, may appoint and fix the com-
13 pensation of a staff director and such other per-
14 sonnel as may be necessary to enable the Com-
15 mission to carry out its functions, without re-
16 gard to the provisions of title 5, United States
17 Code, governing appointments in the competi-
18 tive service, and without regard to the provi-
19 sions of chapter 51 and subchapter III of chap-
20 ter 53 of such title relating to classification and
21 General Schedule pay rates, except that no rate
22 of pay fixed under this subsection may exceed
23 the equivalent of that payable for a position at
24 level V of the Executive Schedule under section
25 5316 of title 5, United States Code.

1 (B) PERSONNEL AS FEDERAL EMPLOY-
2 EES.—

3 (i) IN GENERAL.—The executive di-
4 rector and any personnel of the Commis-
5 sion who are employees shall be employees
6 under section 2105 of title 5, United
7 States Code, for purposes of chapters 63,
8 81, 83, 84, 85, 87, 89, and 90 of that title.

9 (ii) MEMBERS OF COMMISSION.—Sub-
10 paragraph (A) shall not be construed to
11 apply to members of the Commission.

12 (2) DETAILEES.—Any Federal Government em-
13 ployee may be detailed to the Commission without
14 reimbursement from the Commission, and such
15 detailee shall retain the rights, status, and privileges
16 of his or her regular employment without interrup-
17 tion.

18 (3) CONSULTANT SERVICES.—The Commission
19 is authorized to procure the services of experts and
20 consultants in accordance with section 3109 of title
21 5, United States Code, but at rates not to exceed the
22 daily rate paid a person occupying a position at level
23 IV of the Executive Schedule under section 5315 of
24 title 5, United States Code.

25 (h) COMPENSATION AND TRAVEL EXPENSES.—

1 (1) COMPENSATION.—Each member of the
2 Commission may be compensated at not to exceed
3 the daily equivalent of the annual rate of basic pay
4 in effect for a position at level IV of the Executive
5 Schedule under section 5315 of title 5, United
6 States Code, for each day during which that member
7 is engaged in the actual performance of the duties
8 of the Commission.

9 (2) TRAVEL EXPENSES.—While away from
10 their homes or regular places of business in the per-
11 formance of services for the Commission, members
12 of the Commission shall be allowed travel expenses,
13 including per diem in lieu of subsistence, in the
14 same manner as persons employed intermittently in
15 the Government service are allowed expenses under
16 section 5703(b) of title 5, United States Code.

17 (i) REPORTS OF COMMISSION; TERMINATION.—

18 (1) INTERIM REPORTS.—The Commission may
19 submit to the President and Congress interim re-
20 ports containing such findings, conclusions, and rec-
21 ommendations for corrective measures as have been
22 agreed to by a majority of Commission members.

23 (2) FINAL REPORT.—Not later than 4 months
24 after the date of the enactment of this Act, the
25 Commission shall submit to the President and Con-

1 gress a final report containing such findings, conclu-
2 sions, and recommendations for corrective measures
3 as have been agreed to by a majority of Commission
4 members.

5 (3) TERMINATION.—

6 (A) IN GENERAL.—The Commission, and
7 all the authorities of this Act, shall terminate
8 60 days after the date on which the final report
9 is submitted under paragraph (2).

10 (B) ADMINISTRATIVE ACTIVITIES BEFORE
11 TERMINATION.—The Commission may use the
12 60-day period referred to in subparagraph (A)
13 for the purpose of concluding its activities, in-
14 cluding providing testimony to committees of
15 Congress concerning its reports and dissemi-
16 nating the final report.

17 (j) FUNDING.—

18 (1) TRANSFER FROM THE DEPARTMENT OF
19 THE TREASURY TARP PROGRAM.—Of the amounts
20 authorized to be appropriated by this Act and made
21 available in public law for the, not to exceed
22 \$5,000,000 shall be available for transfer to the
23 Commission for purposes of the activities of the
24 Commission under this Act and should include as-
25 sistance for participating Federal agencies.

1 (2) DURATION OF AVAILABILITY.—Amounts
2 made available to the Commission under paragraph
3 (1) shall remain available until the termination of
4 the Commission.

5 **SEC. 3. ESTABLISHING A JOINT SELECT COMMITTEE ON FI-**
6 **NANCIAL MARKET OVERSIGHT REFORM AND**
7 **INVESTIGATIONS.**

8 (a) ESTABLISHMENT AND COMPOSITION.—

9 (1) IN GENERAL.—There is established a multi-
10 disciplinary Joint Select Committee on Financial
11 Market Oversight Reform and Investigations (re-
12 ferred to in this section as the “joint select com-
13 mittee”). The Senate majority leader, Senate minor-
14 ity leader, the Speaker of the House, and House mi-
15 nority leader shall jointly determine the number of
16 members who shall serve on the committee, with
17 equal representation from each the Senate and the
18 House of Representatives, and from the majority
19 party and minority party.

20 (2) PURPOSE.—The purpose of the joint select
21 committee shall be to conduct a full investigation of
22 the causes of the financial turmoil and propose cor-
23 rective actions to the appropriate committees of ju-
24 risdiction.

1 (3) VACANCY.—A vacancy in the joint select
2 committee shall not affect the power of the remain-
3 ing members to execute the functions of the joint se-
4 lect committee, and shall be filled in the same man-
5 ner as the original selection.

6 (4) LEGISLATIVE AUTHORITY.—The joint select
7 committee shall not have any legislative authority.

8 (b) INVESTIGATION AND REPORT.—

9 (1) INVESTIGATION.—The joint select com-
10 mittee shall—

11 (A) conduct a full investigation of the
12 causes of the financial turmoil; and

13 (B) possess full investigative authority, in-
14 cluding subpoena power, to investigate mis-
15 deeds, manipulative schemes, or malfeasance by
16 executives and traders of financial sector firms
17 involved in the current financial crisis, as well
18 as failures of Federal oversight agencies to
19 meet their regulatory responsibilities.

20 (2) REPORT.—

21 (A) IN GENERAL.—The joint select com-
22 mittee shall submit to the appropriate commit-
23 tees of jurisdiction of the House of Representa-
24 tives and the Senate a report of its findings and
25 recommended corrective actions not later than

1 12 months after the date of enactment of this
2 Act.

3 (B) FRAUD.—The report shall include rec-
4 ommendations whether to increase criminal and
5 civil penalties for fraud and malfeasance.

6 (C) MAJORITY VOTE REQUIREMENT.—No
7 recommendation shall be made by the joint se-
8 lect committee except upon the majority vote of
9 the members from each House, respectively.

10 (D) RULES PROCEDURE.—Notwith-
11 standing any other provision of this section, any
12 recommendation with respect to the rules and
13 procedures of one House that only affects mat-
14 ters related solely to that House may only be
15 made and voted on by members of the joint se-
16 lect committee from that House and, upon its
17 adoption by a majority of such members, shall
18 be considered to have been adopted by the full
19 committee as a recommendation of the joint se-
20 lect committee.

21 (3) HEARINGS.—In conducting the investiga-
22 tion under paragraph (1), the joint select committee
23 shall hold not fewer than 5 public hearings.

1 (c) RESOURCES.—The joint select committee may
2 utilize the resources of the House of Representatives and
3 Senate.

4 (d) DISSOLUTION.—The joint select committee shall
5 cease to exist 30 days after the submission of the report
6 described in subsection (b)(2).

7 **SEC. 4. SPECIAL INSPECTOR GENERAL FOR FINANCIAL**
8 **MARKETS OVERSIGHT.**

9 (a) PURPOSES.—The purposes of this section are
10 to—

11 (1) provide for the appointment of an Inspector
12 General to conduct, supervise, and coordinate inves-
13 tigations into whether ethics violations or conflicts of
14 interest between regulators and their regulated enti-
15 ties or markets may have affected agency decision-
16 making between January 2002 and August 2008;
17 and

18 (2) use the forum of President’s Council on In-
19 tegrity and Efficiency and Executive Council on In-
20 tegrity and Efficiency to share findings and best
21 practices with regards to ethics, conflicts of interest,
22 oversight, and accountability.

23 (b) OFFICE OF INSPECTOR GENERAL.—There is es-
24 tablished the Office of the Inspector General for Financial
25 Markets Oversight.

1 (c) APPOINTMENT OF INSPECTOR GENERAL; RE-
2 MOVAL.—

3 (1) IN GENERAL.—The head of the Office of
4 the Inspector General for Financial Markets Over-
5 sight (referred to in this section as “Inspector Gen-
6 eral”) shall be selected by and among the Inspectors
7 General of agencies and commissions set forth in
8 subsection (e)(3).

9 (2) TIMING.—The nomination of an individual
10 as Inspector General shall be made not later than 30
11 days after the date of the enactment of this Act.

12 (3) REMOVAL.—The Inspector General shall be
13 removable from office in accordance with the provi-
14 sions of section 3(b) of the Inspector General Act of
15 1978 (5 U.S.C. App.).

16 (4) STATUS.—For purposes of section 7324 of
17 title 5, United States Code, the Inspector General
18 shall not be considered an employee who determines
19 policies to be pursued by the United States in the
20 nationwide administration of Federal law.

21 (5) PAY.—The annual rate of basic pay of the
22 Inspector General shall be the annual rate of basic
23 pay provided for positions at level IV of the Execu-
24 tive Schedule under section 5315 of title 5, United
25 States Code.

1 (d) ASSISTANT INSPECTORS GENERAL.—The Inspec-
2 tor General shall, in accordance with applicable laws and
3 regulations governing the civil service appoint an Assistant
4 Inspector General for Investigations who shall have the
5 responsibility for supervising the performance of investiga-
6 tive activities relating to possible ethics violations and or
7 conflicts of interest at the respective agencies.

8 (e) DUTIES.—

9 (1) IN GENERAL.—It shall be the duty of the
10 Inspector General to conduct, supervise, and coordi-
11 nate investigations into whether ethics violations or
12 conflicts of interest between regulators and their
13 regulated entities or markets may have affected
14 agency decision-making between January 2002 and
15 August 2008.

16 (2) ADDITIONAL DUTIES.—In addition to the
17 duties specified in paragraph (1), the Inspector Gen-
18 eral shall also have the duties and responsibilities of
19 inspectors general under the Inspector General Act
20 of 1978.

21 (3) COOPERATION.—In carrying out the duties,
22 responsibilities, and authorities of the Inspector
23 General under this section, the Inspector General
24 shall coordinate with, and receive the cooperation of,
25 each of the following:

1 (A) The Inspector General of the Securi-
2 ties and Exchange Commission.

3 (B) The Inspector General of the Treasury
4 Department.

5 (C) The Inspector General of the Commod-
6 ities Futures Trading Commission.

7 (D) The Inspector General of the Board of
8 Governors of the Federal Reserve System.

9 (E) The Inspector General of the Office of
10 the Comptroller of the Currency.

11 (F) The Inspector General of the Federal
12 Deposit Insurance Corporation.

13 (f) POWERS AND AUTHORITIES.—

14 (1) AUTHORITIES.—In carrying out the duties
15 specified in subsection (e), the Inspector General
16 shall have the authorities provided in section 6 of
17 the Inspector General Act of 1978.

18 (2) DUTIES.—The Inspector General shall carry
19 out the duties specified in subsection (e)(1) in ac-
20 cordance with section 4(b)(1) of the Inspector Gen-
21 eral Act of 1978.

22 (g) PERSONNEL, FACILITIES, AND OTHER RE-
23 SOURCES.—

24 (1) PERSONNEL.—The Inspector General may
25 select, appoint, and employ such officers and em-

1 employees as may be necessary for carrying out the du-
2 ties of the Inspector General, subject to the provi-
3 sions of title 5, United States Code, governing ap-
4 pointments in the competitive service, and the provi-
5 sions of chapter 51 and subchapter III of chapter 53
6 of such title, relating to classification and General
7 Schedule pay rates.

8 (2) SERVICES.—The Inspector General may ob-
9 tain services as authorized by section 3109 of title
10 5, United States Code, at daily rates not to exceed
11 the equivalent rate prescribed for grade GS-15 of
12 the General Schedule by section 5332 of such title.

13 (3) INFORMATION.—

14 (A) IN GENERAL.—Upon request of the In-
15 spector General for information or assistance
16 from any department, agency, or other entity of
17 the Federal Government, the head of such enti-
18 ty shall, insofar as is practicable and not in
19 contravention of any existing law, furnish such
20 information or assistance to the Inspector Gen-
21 eral, or an authorized designee.

22 (B) REPORT OF NONCOOPERATION.—
23 Whenever information or assistance requested
24 by the Inspector General is, in the judgment of
25 the Inspector General, unreasonably refused or

1 not provided, the Inspector General shall report
2 the circumstances to the appropriate commit-
3 tees of Congress without delay.

4 (h) REPORTS.—

5 (1) IN GENERAL.—Not later than March 30,
6 2009, the Inspector General shall submit to the ap-
7 propriate committees of Congress a report on wheth-
8 er ethics violations or conflicts of interest between
9 regulators and their regulated entities or markets
10 may have affected agency decision-making between
11 January 2002 and August 2008.

12 (2) CONTENTS.—The report on the Inspector
13 General findings shall include recommendations on
14 how to improve and strengthen financial market reg-
15 ulatory agencies to avert future ethics violations or
16 conflicts of interest.

17 (i) APPROPRIATE COMMITTEES OF CONGRESS DE-
18 FINED.—In this section, the term “appropriate commit-
19 tees of Congress” means—

20 (1) the Committees on Banking, Housing and
21 Urban Affairs, Homeland Security and Government
22 Affairs, Finance, and Judiciary of the Senate;

23 (2) the Committees on Financial Services,
24 Oversight and Government Reform, and Judiciary of
25 the House of Representatives; and

- 1 (3) the Joint Select Committee on Financial
- 2 Market Oversight Reform and Investigations.

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