STATUTE NOTE
THE FLAWED LOGIC OF CONGRESS IN THE ECONOMIC STIMULUS ACT OF 2008

Johnny Deeds[*]

I. INTRODUCTION

On February 13, 2008, President Bush signed into law the Economic Stimulus Act of 2008.[1] The bill was highly publicized, and sped through the legislative process in a mere seventeen days.[2] This quick enactment was accomplished through tremendous bipartisan efforts and extensive cooperation between the legislative branch and the executive branch.[3] While nearly every politician approved the bill, and lauded the great effect it would have on families and the economy, in reality it did little but cost the government (and taxpaying citizens) $152 billion.[4]

The passage of this bill came in the midst of a struggling economy,[5] and Congress intended it to stimulate the economy and avoid or mitigate a recession.[6] As can be seen from the events that have occured since the bill was signed into law, it has failed. This Note makes a painfully obvious observation that the bill never had a fighting chance to accomplish its desired objectives because of the flawed logic of Congress. This will be readily apparent by first looking at what the bill provided; second, looking at the purposes behind the provisions; and third, by pointing out the disconnect between the means Congress used and the desired ends. This Note concludes by suggesting that the best action for Congress in times of economic trouble is to do nothing.

---

[1] *See, e.g.*, Scott E. Vincent, *Economic Stimulus Act of 2008 – Heavy SUV Benefits May Not Be Available for Long*, 64 J. MO. B. 98, 98 (2008).

[2] *See* Govtrack.us, H.R. 5140: Economic Stimulus Act of 2008, http://www.govtrack.us/congress/bill.xpd?bill=h110-5140 (last visited Sept. 30, 2008).

[3] *See* 154 CONG. REC. H14,488 (daily ed. Jan. 29, 2008) (statement of Rep. McCrery).

[4] *See* CCH, CCH TAX BRIEFING: ECONOMIC STIMULUS PACKAGE 1 (2008), *available at* http://tax.cchgroup.com/legislation/2008-stimulus-package.pdf [hereinafter CCH TAX BRIEFING]; *see also* Thomas M. Brinker, Jr., *The Reappearance of a Familiar Tax Savings Opportunity*, 2008 J. FIN. SERV. PROFESSIONALS, 51, 51.

[5] Lynn Comer Jones, *The Economic Stimulus Act of 2008*, THE TAX ADVISER, July 2008, at 443, 443.

[6] 154 CONG. REC. H14,488 (daily ed. Jan. 29, 2008) (statement of Rep. McCrery) (explaining the purpose of the bill was to avoid a recession).

II. SUMMARY OF HR 5140, ECONOMIC STIMULUS ACT OF 2008

Amidst nine pages of legal and statutory jargon, the Economic Stimulus Act of 2008 (hereinafter the "Act") did three main things: (1) provide rebate checks to American families;[7] (2) provide incentives for businesses to invest in qualifying property;[8] and (3) increase the loan limits for Fannie Mae, Freddie Mac and the Federal Housing Administration (FHA).[9] Each of these will be discussed in greater detail below.

A. Rebate Checks

The rebate checks have been the most publicized aspect of the stimulus package.[10] The package provided most American families with a check from the federal government for an amount that varied depending on the taxpayer's income and tax liability for 2007.[11] In general, low- and middle-income families received a refund in the greater amount of (1) their net income tax liability, not to exceed $600 ($1,200 for joint filers), or (2) $300 ($600 for joint filers) if they received earned income of at least $3,000, or if they did not have earned income of $3,000 but had net income tax liability of $1 and their gross income was greater than the sum of the basic standard deduction, plus exemptions ($8,950 for singles, $17,900 for joint filers).[12] In other words, if you paid tax in 2007, you received a refund up to $600 ($1,200 for joint filers), and if you did not pay tax but earned $3,000, then you received a refund of $300 ($600 for joint filers). In addition, families received $300 for each qualifying child.[13]

There was a phase out clause included that denied the rebate checks to high income earning American individuals and families.[14] The phase out began at the

---

[7] *See* Economic Stimulus Act of 2008, Pub. L. No. 110-185 § 101, 122 Stat. 613 (2008); *see also* CCH TAX BRIEFING, *supra* note 4, at 1–4; JOINT COMMITTEE ON TAXATION, TECHNICAL EXPLANATION OF THE REVENUE PROVISIONS OF H.R. 5140, THE "RECOVERY REBATES AND ECONOMIC STIMULUS FOR THE AMERICAN PEOPLE ACT OF 2008," 2–6 (2008), *available at* http://purl.access.gpo.gov/GPO/LPS90033 [hereinafter JOINT COMMITTEE ON TAXATION].

[8] *See* Economic Stimulus Act § 102-03; *see also* CCH TAX BRIEFING, *supra* note 4, at 5–6; JOINT COMMITTEE ON TAXATION, *supra* note 7, at 7–12.

[9] *See* Economic Stimulus Act § 201-02; *see also* CCH TAX BRIEFING, *supra* note 4, at 7.

[10] *See* Brinker, *supra* note 4, at 51.

[11] *See* Economic Stimulus Act § 101; *see also* CCH TAX BRIEFING, *supra* note 4, at 1–4; JOINT COMMITTEE ON TAXATION, *supra* note 7, at 2–6.

[12] *See* Economic Stimulus Act § 101(a); *see also* CCH TAX BRIEFING, *supra* note 4, at 1; JOINT COMMITTEE ON TAXATION, *supra* note 7, at 2–3.

[13] *See* Economic Stimulus Act § 101(b)(1)(B); *see also* CCH TAX BRIEFING, *supra* note 4, at 3–4; JOINT COMMITTEE ON TAXATION, *supra* note 7, at 3.

[14] *See* Economic Stimulus Act § 101(d); *see also* CCH TAX BRIEFING, *supra* note 4, at 3; JOINT COMMITTEE ON TAXATION, *supra* note 7, at 3.

$75,000 income range for individuals and $150,000 for joint filers.[15] Once an individual reached this income limit, their rebate was reduced by 5% of the amount their income exceeded the income limit.[16] For example, if an individual made $80,000, which equates to $5,000 above the $75,000 limit, then their refund was reduced by 5% of the $5,000, or $250. The refund completely phases out for individuals if their income is $87,000 and $174,000 for joint filers.

In summary, most low- and middle-income individuals and families received a rebate check, as long as they earned $3,000 of income. At the same time, the so called rich, or high income individuals and families, did not receive a rebate. The law classified rich or high income individuals as individuals making $87,000 or greater, and joint filers making $174,000 or greater.[17] This meant that some Americans who did not pay any tax in 2007 received a rebate of at least $300 and those who paid the most in taxes did not receive any rebate.

B. Business Incentives

While receiving less publicity, business incentives are a substantial part of the Act.[18] The act allowed for enhanced expensing as well as bonus depreciation.[19] Typically, a business is able to write off up to $128,000 as a one-time expense deduction rather than taking the prescribed depreciation for qualifying depreciable property throughout the life of the asset.[20] "[Q]ualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business."[21] This typically includes "[a]ll property, other than buildings and structural components,"[22] up to $510,000 worth of qualified property, which is placed into service. Any amount above that ceiling is reduced by the amount over the limit, dollar for dollar.[23] The Act increased the amount a business can expense as a deduction for qualifying property, almost twofold, to

[15] *See* Economic Stimulus Act § 101(d); *see also* CCH TAX BRIEFING, *supra* note 4, at 3; JOINT COMMITTEE ON TAXATION, *supra* note 7, at 3.

[16] *See* Economic Stimulus Act at § 101(d); *see also* CCH TAX BRIEFING, *supra* note 4, at 3; JOINT COMMITTEE ON TAXATION, *supra* note 7, at 3.

[17] *See* Economic Stimulus Act § 101(d); *see also* CCH TAX BRIEFING, *supra* note 4, at 3; JOINT COMMITTEE ON TAXATION, *supra* note 7, at 3.

[18] *See* Brinker, *supra* note 4, at 51 (explaining of the $152 billion, the business incentives and foreclosure assistance amount to over $45 billion).

[19] *See* CCH TAX BRIEFING, *supra* note 4, at 5.

[20] *See* CCH TAX BRIEFING, *supra* note 4, at 5.

[21] JOINT COMMITTEE ON TAXATION, *supra* note 7, at 7.

[22] Brinker, *supra* note 4, at 52.

[23] *See* Economic Stimulus Act of 2008, Pub. L. No. 110-185 § 102-03, 122 Stat. 613 (2008); *see also* CCH TAX BRIEFING, *supra* note 4, at 5; JOINT COMMITTEE ON TAXATION, *supra* note 7, at 7–8.

$250,000, while at the same time raising the maximum placed in service amount from $510,000 up to $800,000.[24]

The sum of the business incentives and foreclosure assistance is around $45 billion.[25] There are certain specifics, however, that a business owner(s) must have followed in order to take advantage of the incentives. The owner(s) must have made sure the property was qualified property, and they must have been sure the property was put into use in 2008.[26] Thus, if a business owner(s) was organized and could act swiftly, they were able to capitalize on a substantial tax break offered by the new law.

C. Foreclosure Help

The third provision of the law helped to alleviate the mortgage crisis by increasing the maximum amount of principal for mortgages issued by Fannie Mae and Freddie Mac to 175% of their pre-legislation limits.[27] It also increased the maximum principal mortgage amounts issued by the FHA to 175% of their pre-legislation limits.[28] This meant that Fannie Mae, Freddie Mac, and the FHA could assume larger loans.

III. DESIRED OBJECTIVES

The main purpose of the law was to stimulate the economy.[29] It obviously attempted to do this through the three ways discussed above, but looking at the legislative history of the Act brings greater insight into the objectives sought to be achieved by this law. Much of the legislative history focuses on these objectives. In fact, one telling document gives a glimpse of the purpose and desire of the legislation, and is found in the Statement of Administration Policy that the Office of the President sent to the Senate after the House had passed the bill. It states: "This legislation meets the criteria set out by the Administration that an economic growth package be large enough to make a difference, immediate in its impact, broad-based, temporary, and based on tax relief rather than government spending programs."[30] From this and the legislative history, four objectives seem to have

---

[24] *See* Economic Stimulus Act § 102-03; *see also* CCH TAX BRIEFING, *supra* note 4, at 5; JOINT COMMITTEE ON TAXATION, *supra* note 7, at 7–8.

[25] *See* Brinker, *supra* note 4, at 51.

[26] *See* CCH TAX BRIEFING, *supra* note 4, at 5–6.

[27] *See* Economic Stimulus Act § 201-02; *see also* CCH TAX BRIEFING, *supra* note 4, at 7.

[28] *See* Economic Stimulus Act § 201-02; *see also* CCH TAX BRIEFING, *supra* note 4, at 7.

[29] *See* Jones, *supra* note 5, at 447; *see also* CCH TAX BRIEFING, *supra* note 4, at 1; *see generally* 154 CONG. REC. H14,485–509 (daily ed. Jan. 29, 2008).

[30] Office of Management and Budget, Execuive Office of the President, Statement of Administration Policy (Feb. 4, 2008), *available at* http://www.whitehouse.gov/omb/legislative/sap/110-2/saphr5140-s.pdf.

been advanced. They include (1) getting money into the hands of those who will spend it, (2) alleviating the financial burdens facing Americans, (3) fixing the struggling economy, and (4) solving the mortgage crisis. Below are excerpts from the legislative history emphasizing these four objectives.

A. Get Money into the Hands of Those Who Will Spend It

"Leaders from the business community, economists, leaders of industry, of labor, the academic community, [and] people representing workers in the diversity of our country" met in a bipartisan meeting held on December 7, 2007. During a debate of the bill that following this bipartisan meeting, the Speaker of the House of Representatives, Nancy Pelosi, explained that the action of the government would have to be timely.[31] It would have to put money into the pockets of the Americans who would immediately spend that money to meet their needs, and that it would need to inject demand into the economy to help create jobs.[32] Then, during a debate on the Senate floor about the economic stimulus package, the Majority Leader of the Senate, Harry Reid, said:

> Americans will use [this] money to pay their bills, to buy books and clothing for their children, or perhaps to make a long overdue repair of homes or cars or pay a doctor bill. Democrats, Republicans, we all agree, if we give the American people the money, they will spend it.[33]

Representative Rangel added they were targeting those who are struggling economically because "economists, conservative or liberal, agree that the assistance that we are giving has to be timely, fast. It has to be targeted to people that are going to have to spend the money."[34] Thus, it is evident from the record that a major objective of the bill was to put money into the hands of those who would spend it.

B. Alleviate the Financial Burdens Facing Americans

The Congressional Record is peppered with Representatives and Senators discussing how this bill would provide needed help to the American people and their families. Representative James Clyburn said: "it will go a long way towards stimulating our economy while helping many Americans struggling to make ends meet."[35] Representative Maxine Water said: "Individuals can look forward to up to $600 in tax relief, while married couples may get as much as $1,200 to meet their expenses, including skyrocketing costs of fueling their cars and heating their

---

[31] 154 CONG. REC. H14,490 (daily ed. Jan. 29, 2008) (statement of Rep. Pelosi).
[32] *Id.*
[33] 154 CONG. REC. S19,724 (daily ed. Feb. 6, 2008) (statement of Sen. Reid).
[34] 154 CONG. REC. H14,488 (daily ed. Jan. 29, 2008) (statement of Rep. Rangel).
[35] 154 CONG. REC. H14,488 (daily ed. Jan. 29, 2008) (statement of Rep. Clyburn).

homes."[36] Representative Phillip English said: "working Americans will have access to extra cash to cushion increased costs in food and energy; families, in fear of losing their homes, will have new opportunity to refinance their mortgages and retain homeownership."[37] Senator Ted Kennedy said: "Our actions today are vital for the entire economy, but they are most critical for these struggling families. Our decisions will help determine whether they keep their homes, whether their teenagers stay in college, and whether their children go to bed hungry."[38] There is a clear intention that this piece of legislation would provide financial assistance to American families.

C. Fix the Struggling Economy

The main overarching objective of the bill clearly was to revive the economy.[39] Representative McCrery stated during debate that this bill "[wa]s extremely important for the economic health of the country."[40] He also said, "we hope that this will have the intended effect, which is to avert a recession, and to reduce the downturn that everybody agrees is underway right now."[41] Senator Sherwood Brown said: "We have an opportunity to both jump-start our economy and solve the problems staring us right in the face."[42]

D. Solve the Mortgage Crisis

As discussed above, there is a provision in the bill that increased the loan limits of Fannie Mae, Freddie Mac and the FHA. Many Senators and Representatives recognized that much of the economic downturn was caused by the subprime mortgage meltdown. Representative Bachus summarized the purpose of increasing the loan limits well by saying:

> Greater availability of higher-cost mortgages and FHA-insured loans will help get prospective homebuyers off the sidelines and into the housing market . . . . This legislation will assist existing homeowners to refinance loans that they're struggling with. It will also allow those who want to buy and are on the sidelines now to begin making offers and to restore our housing market.[43]

---

[36] 154 CONG. REC. H14,492 (daily ed. Jan. 29, 2008) (statement of Rep. Waters).

[37] 154 CONG. REC. H14,493 (daily ed. Jan. 29, 2008) (statement of Rep. English).

[38] 154 CONG. REC. S19,720 (daily ed. Feb. 6, 2008) (statement of Sen. Kennedy).

[39] *See* Jones, *supra* note 5, at 443 ("[t]he act is intended to help mitigate or forestall the recession); *see also* CCH TAX BRIEFING, *supra* note 4, at 1 ("[t]he Economic Stimulus Act of 2008 [is] designed to jumpstart the U.S. economy"); *see generally* 154 CONG. REC. H14,485–509 (daily ed. Jan. 29, 2008).

[40] 154 CONG. REC. H14,487 (daily ed. Jan. 29, 2008) (statement of Rep. McCrery).

[41] 154 CONG. REC. H14,488 (daily ed. Jan. 29, 2008) (statement of Rep. McCrery).

[42] 154 CONG. REC. S19,719 (daily ed. Feb. 6, 2008) (statement of Sen. Brown).

[43] 154 CONG. REC. H14,489 (daily ed. Jan. 29, 2008) (statement of Rep. Bachus).

Representative Kanjorski said, "this reform will temporarily increase the conforming loan limits of Fannie Mae and Freddie Mac to enhance the liquidity of several local mortgage markets."[44] Representative Frank explained how people would not invest in buying loans above the Fannie Mae, Freddie Mac and FHA limits if they were not provided with assurance from those entities,[45] and that this was "a very important piece in trying to unlock the mortgage market and getting money flowing again."[46] Senator Kerry also stated this objective succinctly, "A strong economic stimulus package needs to address the root of the problem—the housing crisis."[47] The housing market is a major piece of the American economy;[48] and so, Congress wanted to solve the mortgage crisis in an attempt to stimulate economy. The motives and desires expressed by Congress are noble. But, did the provided provisions equate to the accomplishment of these goals and desires?

IV. EXPOSING THE FLAWED LOGIC OF CONGRESS

In summary, Congress provided rebate checks to American families, provided expense deductions for businesses to invest in new equipment, and increased the maximum amount of principal for mortgages issued by Fannie Mae, Freddie Mac, and the FHA. It did this in hopes to put money into the hands of those who would spend it, alleviate the financial burdens facing American families, fix the struggling economy, and solve the mortgage crisis. Clearly, looking in hindsight with 20/20 vision, the desired objectives were not achieved. This section explores the flawed logic of Congress by looking at each of the objectives and spotlighting the disconnect[49] between the means proscribed and its desired ends.

A. Would Recipients of the Rebate Spend the Money?

Of all the means and objectives discussed, there was certainly no disconnect between giving people money and hoping they would spend it. The intent was for the money to be put back into the economy immediately. Because of this, Congress approved rebate checks to low- and middle-income families. Legislators thought that many people would have to use this money to pay for everyday living expenses; and therefore, it would be spent quickly.[50] According to a report by the

---

[44] 154 CONG. REC. H14,491 (daily ed. Jan. 29, 2008) (statement of Rep. Kanjorski).

[45] 154 CONG. REC. H14,489 (daily ed. Jan. 29, 2008) (statement of Rep. Frank).

[46] *Id.*

[47] 154 CONG. REC. S19,721 (daily ed. Feb. 6, 2008) (statement of Sen. Kerry).

[48] *See* 154 CONG. REC. S19,717 (daily ed. Feb. 6, 2008) (statement of Sen. Domenici) (explaining that it used to be common knowledge that you could not have a strong economy without a strong housing market).

[49] By disconnect, I mean that there was no reasonable cause and effect relationship between the means and the ends.

[50] *The Economic Stimulus Package: Will It Work, and for Whom?* KNOWLEDGE@WHARTON, Feb. 20, 2008, http://knowledge.wharton.upenn.edu/articlepdf

by the Bureau of Economic Analysis, it seems that the rebates were put back into the economy. The report showed an increase in the gross domestic product (GDP) from the first quarter to the second quarter of 2008 by 2.8 percent.[51] Mark Zandi, chief economist and co-founder of Moody's Economy.com, said the rebates were "targeted to the right people, who [we]re more likely to spend them quickly." Because most people who got checks were likely "to spend it on groceries, daily living expenses, [and] electric bills."[52] Although some congressmen did not agree with giving rebates to people who paid no taxes while not giving it to others who did as a form of wealth distribution,[53] it did seem to accomplish the goal of putting the money into the hands of people who would pump it back into the economy. In that regard, the means of giving the money to those who needed it to pay everyday living expenses seemed to accomplish Congress's desired end.

B. Would the Financial Burdens Facing Americans be Relieved?

Any time an individual (or family) receives more money, his assets, and thereby his net worth, is increased. While an increase in money and net worth is a good thing, it might also send the wrong message and create a moral hazard.[54] It might cause people facing financial difficulty to look to the government to solve their problems as opposed to causing families to prepare for hard times so they could stay afloat, weather the storm, and pull themselves out of their difficulties.

The rebates were targeted to many who could not pay their bills, and would use their rebates to do so.[55] This evidenced both the financial difficulties facing American families, and that a rebate check would not solve their financial problems. While the rebate did provide struggling families with money, it was a one-time issuance. If a family's bills consistently amount to more than they earn, a one-time injection of money would not solve their problems. Representative Jeb Hensarling said:

/1904.pdf; *see also* 154 CONG. REC. S19, 724 (daily ed. Feb. 6, 2008) (statement of Sen. Reid); 154 CONG. REC. H14,488 (daily ed. Jan. 29, 2008) (statement of Rep. Rangel).

[51] News Release, Bureau Econ. Analysis, U.S. Dep't of Commerce, Gross Domestic Product: Second Quarter 2008 (Sep. 26, 2008), *available at* http://www.bea.gov/news releases/national/gdp/gdpnewsrelease.htm. The GDP is a measure of the U.S. economy which values the total goods and services produced in the United States. *See, e.g.*, Dictionary.com, Gross Domestic Product, http://dictionary.reference.com/browse/gross %20domestic%20product (last visited May 25, 2009).

[52] *The Economic Stimulus Package: Will It Work, and for Whom?*, *supra* note 53, at 2.

[53] 154 CONG. REC. H14,495 (daily ed. Jan. 29, 2008) (statement of Rep. Campbell).

[54] By moral hazard I mean the idea that an entity which is insulated from risk will behave differently than if it was fully exposed to risk.

[55] *See The Economic Stimulus Package: Will It Work, and for Whom?*, *supra* note 53, at 2; *see generally* 154 CONG. REC. H14,485–509 (daily ed. Jan. 29, 2008); 154 CONG. REC. S19,715–25 (daily ed. Feb. 6, 2008).

> [T]his package, I fear, is more akin to helping [families] pay one month's worth of credit card bills . . . instead, what they really need to know is that their paycheck is preserved and that they have opportunities to even grow that paycheck . . . . Unfortunately those components are sadly lacking.[56]

Even the most self-reliant person will not say no to free money,[57] but just giving people money does not solve the problems facing families that cannot make ends meet.

Economic downturns are not new—neither are government stimulus packages. The most recent downturn and stimulus legislation was in 2001, the Economic Growth & Tax Relief Reconciliation Act of 2001[58] (2001 Stimulus Act). Some say that this legislation did in fact help the economy recover; specifically, "Nicholas S. Souleles, finance professor at Wharton . . . conducted a study titled, Household Expenditure and the Income Tax Rebates of 2001 . . . [and concluded that the] 2001 stimulus package did indeed help the economy recover from recession."[59] However, there were differences in the 2001 Stimulus Act and the Economic Stimulus Act of 2008. One in particular was that the 2001 act provided a permanent tax cut, as opposed to a one-time tax rebate.[60] Wharton finance professor Richard Marston expressed that the 2008 tax rebate would be less effective than the 2001 rebate because it lacks the permanent tax cut.[61] A report by The Urban Institute, The Brookings Institution, and the Tax Policy Center, said: "The ability of individuals and societies to maintain or improve their living standards over time depends on their willingness to save."[62] In order to save, families must make more money than they expend. A one-time infusion of cash does not enable this, whereas actions that allow families to take home more of their earned money, such as a permanent tax cut, might.

In the 2008 Act, the means Congress pursued to achieve its objective of alleviating the financial burdens on Americans was to give them a one-time tax rebate. There is a disconnect in this logic. A one-time infusion of cash is a momentary short-term help, not a long-term solution to financial burdens. A permanent tax cut increases a family's net income and enables continued savings, whereas a one-time tax rebate does not.

---

[56] 154 CONG. REC. H14,491 (daily ed. Jan. 29, 2008) (statement of Rep. Hensarling).

[57] *See* DINESH D'SOUZA, LETTERS TO A YOUNG CONSERVATIVE 98–99 (2005).

[58] Economic Growth & Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (2001), *available at* http://www.irs.gov/pub/irs-utl/egtrra_law.pdf.

[59] *See The Economic Stimulus Package: Will It Work, and for Whom?*, *supra* note 53, at 1.

[60] *See id.*

[61] *See id.*

[62] LEONARD E. BURMAN ET AL., THE EFFECTS OF THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 ON RETIREMENT SAVINGS AND INCOME SECURITY: FINAL REPORT 1 (2004), *available at* http://www.urban.org/UploadedPDF/411361_tax_relief_act.pdf.

C. Would Troubled Economy and the Housing Crisis be Resolved?

The issues of the economy and housing crisis cannot be separated; you cannot talk about one without talking about the other. The downturn in the economy is in large part due to the subprime mortgage meltdown.[63] Senator Kerry stated that the root of the economic downturn was the housing crisis,[64] and Senator Baucus said: "[W]e are facing a time of slow growth, primarily due to the problems in the housing markets, the subprime problems."[65] In order to fix the economy, the housing crisis needs to be fixed, and the housing crisis was caused by the subprime mortgage meltdown.

Subprime mortgage loans are "loans with higher interest rates and fees that are made to borrowers with impaired or limited credit histories."[66] Over the past few years, lenders have loosened their lending standards.[67] This relaxation got to the point where lenders were making stated-income loans, loans that required little documentation, and no down payments.[68] Lenders were using a variety of loan products such as 2/28 ARM's, 80/20 splits, and interest only loans as opposed to the traditional 30 year mortgage.[69] Not only were the standards being loosened with regards to whom lenders would lend, but the relationship between the borrower and lender also was being weakened.[70] The lender was no longer responsible for making sure that the borrower paid back the debt. Instead, after the lender made the loan, they sold it on the secondary market—many to Freddie Mac and Fannie Mae, which were backed by the United States Government.[71] These mortgage backed securities were in high demand because of their perceived safety, and their good returns.[72] This led to increasingly more relaxed lending,[73] which prompted a significant rise in early payment defaults in the final quarter of 2006 and first quarter of 2007.[74] In sum, lenders lent money to people who were not

---

[63] Paulo Guimaraes, *Quarterly Outlook*, BUS. & ECON. REV., July–Sep. 2008, at 25, 25 ("[t]he weak performance of the U.S. economy can mostly be blamed on the fallout from the ongoing crisis in the housing and credit markets."); *see also* Thomas Zimmerman, *The Great Subprime Meltdown of 2007*, 13 J. STRUCTURED FIN., 7, 7 (2007) (discussing how the mortgage market can "shake the very foundations of the U.S. financial system").

[64] 154 CONG. REC. S19,721 (daily ed. Feb. 6, 2008) (statement of Sen. Kerry).

[65] 154 CONG. REC. S19,716 (daily ed. Feb. 6, 2008) (statement of Sen. Baucus).

[66] Alan Krinsman, *Subprime Mortgage Meltdown: How Did it Happen and How Will It End?*, 13(2) J. STRUCTURED FIN., 13, 13 (2007).

[67] *See* Zimmerman, *supra* note 67, at 12.

[68] *See* Krinsman, *supra* note 70, at 14–15.

[69] *See id.*

[70] *See id.* at 14.

[71] *See id.*; *see also* Zimmerman, *supra* note 67, at 18.

[72] *See* Krinsman, *supra* note 70, at 14.

[73] *See* Zimmerman, *supra* note 67, at 12–14.

[74] *See* Krinsman, *supra* note 70, at 16. An early payment default is one that is in default within the first three to four months after origination. *See id*.

credit-worthy or could not afford the amounts for which they were approved. Because of this, defaults on mortgages rose, and the meltdown ensued.

In order for the Economic Stimulus Act to save the economy, it had to provide a remedy to the cause of the problem. Representative John Campbell, in advancing this line-of-reasoning said:

> First of all, [the Economic Stimulus Package] is not really going to be stimulative . . . . This is a credit problem and a capital problem. We got into this arguably because people borrowed and spent too much money. So what are we going to do? We are going to send people a check and say, spend it. Go buy a flat screen TV and save America. I just don't think that is the proper stimulus or the right way to go about this.[75]

In order to fix the economy and the mortgage crises, lenders need to go back to traditional lending, and only give mortgages to those who are credit-worthy and can afford them. If people cannot afford their homes, they should sell them. Just giving them a rebate check and allowing them to obtain larger loans is not going to fix the problem.

The means Congress pursued to accomplish its desired end of fixing the mortgage crisis was allowing Fannie Mae, Freddie Mac, and the FHA to assume larger loans.[76] This enabled people to borrow more money, which is not what we needed to fix the problem. Instead, we need people not to borrow more than they can afford. The logic was flawed from inception, and looking at what has happened since the passage of the bill only supports the point that the Economic Stimulus Act did not fix the housing crisis or the economy. The government had to take over Fannie Mae and Freddie Mac,[77] multiple banks have collapsed,[78] and the market dropped 40% from where it was the previous year.[79] Clearly, the Economic Stimulus Act did not alleviate the mortgage crisis or the stabilize the struggling economy.

---

[75] 154 CONG. REC. H14, 495 (daily ed. Jan. 29, 2008) (statement of Rep. Campbell).

[76] *See* Economic Stimulus Act of 2008, Pub. L. No. 110-185 §201-202, 122 Stat. 613 (2008); *see also* CCH TAX BRIEFING, *supra* note 4, at 7.

[77] Stephen Labaton, *In Rescue to Stabalize Lending, U.S. Takes Over Mortgage Finance Titans*, N.Y. TIMES, Sep. 7, 2008, at D1 *available at* http://www.nytimes.com/ 2008/09/08/business/08fannie.html?8br.

[78] Michael A. Hiltzik, *Is the U.S. Going Overboard on Bailouts?,* L.A. TIMES, Sep. 17, 2008, at E1 *available at* http://www.latimes.com/business/la-fi-bailout17-2008sep17,0,4232188.story.

[79] Associated Press, *Dow Continues Drop in Week That Saw $2.4Trillion in Losses*, CHI. SUN-TIMES, Oct. 11, 2008, *available at* http://www.suntimes.com/business/currency /1215578,CST-NWS-stox11.article.

V. A SUGGESTION FOR FUTURE GOVERNMENT ACTION—INACTION

This is not the first economic stimulus package pursued by the government, nor will it be the last. When considering such governmental actions, Congress needs to act logically and ensure that there is a causal relationship between the means it proscribes and its desired ends. In analyzing what actions to take, inaction is possibly the best recourse for Congress, and if any action is taken, it should be to limit government.

The New Deal under Franklin D. Roosevelt in the wake of the Great Depression "launched the most dramatic peacetime expansion of the federal government in U.S. history."[80] It produced extensive government involvement which created regulations, federal mandates, social insurance programs, and increased federal spending in an attempt to turn the tide on the Great Depression.[81] However, such government involvement had the opposite effect; and instead, prolonged the depression.[82] Most depressions last from one to three years, but the Great Depression in the United States lasted for more than a decade.[83] The Great Depression was started by the stock market crash in October of 1929. Prior to the crash, on September 30, 1929, the Dow Jones Industrial Average was 381.[84] After the crash, on October 29, 1929 it was 230.[85] Approximately ten years later, in July of 1940, the market had collapsed to 121.[86] "At the same time, federal spending as a percentage of the Gross Domestic Product soared at an unprecedented rate: from 2.5% in 1929, to 9% in 1936."[87] The unemployment rate also had not improved. In 1931 during the Hoover administration the unemployment rate was 17.4%.[88] "Seven years later, after more than five years of FDR and literally hundreds of wildly ambitious new government programs that led to more than doubling federal spending, the national employment rate stood at 17.4%."[89] This huge expansion of government did not resolve the Great Depressions. In 1935, the Brookings institute

---

[80] Price V. Fishback et al., *Did New Deal Grant Programs Simulate Local Economies? A Study of Federal Grants and Retail Sales During The Great Depression*, 65 J. ECON. HIST. 36, 36 (2005).

[81] *See id.*

[82] *See id.* at 37 (recognizing multiple sources related to the negative impact of the New Deal); Michael Medved, *How Government Expansion Worsens Hard Times*, TOWNHALL, Oct. 24, 2007, http://townhall.com/columnists/MichaelMedved/2007/10/24/how_government_expansion_worsens_hard_times.

[83] *See* Medved, *supra* note 87.

[84] Dow Jones Interactive Learning Center, http://www.djindexes.com/DJIA110/learning-center/ (last visited May 25, 2009).

[85] Wall Street Journal Market Data Center, http://online.wsj.com/mdc/public/page/2_3047-djia_alltime.html (last visited May 25, 2009).

[86] Dow Jones Interactive Learning Center, http://www.djindexes.com/DJIA110/learning-center/ (last visited May 25, 2009).

[87] Medved, *supra* note 87.

[88] *See id.*

[89] *Id.*

wrote a nearly 1,000-page-report about the National Recovery Administration that was the centerpiece program of the New Deal, which concluded that it "on the whole retarded recovery."[90]

This idea that government should stay out of the marketplace is nothing new. America is a capitalistic country that operates best under a *laissez faire*,[91] free market system. If government not stepped in during the great depression, it would not have lasted as long and the market would have corrected itself. Milton Friedman, who was awarded a Nobel Prize in Economics, believes that the instability observed in capitalism is wholly the fault of too much government.[92] He wrote, "The fact is that the Great Depression, like most other periods of severe unemployment, was produced by government mismanagement rather than by an inherent instability of the private economy."[93]

It is likely that the struggling economy which led to the Economic Stimulus Act was a result of government interference in the free market system. Much of the cause of the struggling economy can be linked to the subprime mortgage meltdown, which was caused by government intermeddling in the market place. The University of Utah S.J. Quinney College of Law hosted a panel about the financial crisis in America on October 6, 2008. During the panel Professor Peterson stated that 8 million American families are at risk of losing their homes because of this crisis.[94] Professor Mabey provided a short description of the crisis and how it came to be. During his comments, he stated,

> The government-sponsored entities, Fannie Mae and Freddie Mac, were established to encourage home ownership. In recent years they had a mandate to encourage affordable housing. Between 2004 and 2007, they purchased a trillion dollars in subprime and alt A mortgages. The effect of having government-sponsored entities encouraged home ownership—by encouraging loans to persons whose credit-ratings were below usual standards, in other words, were subprime.[95]

---

[90] *See id.*; *see also* Amity Shlaes, *The Legacy of the 1936 Election*, 36 IMPRIMIS 1, 2 (2007), *available at* http://www.hillsdale.edu/hctools/ImprimisTool/archives/2007_09_Imprimis.pdf.

[91] BRADLEY R. SCHILLER, THE MACRO ECONOMY TODAY 13 (9th ed. 2003) (defining *laissez faire* as "the doctrine of 'leave it alone,' of nonintervention by government in the market mechanism.").

[92] *See* E.K. HUNT, HISTORY OF ECONOMIC THOUGHT 466 (2d ed. 2002).

[93] *Id.*

[94] *See* Chris Peterson, Professor, Univ. of Utah S.J. Quinney Coll. of Law, Comments at the Wall Street in Crisis Panel (Oct. 6, 2008), *available at* http://www.law.utah.edu/media/show-media.asp?MediaID=526&TypeID=4.

[95] Ralph Mabey, Professor, Univ. of Utah S.J. Quinney Coll. of Law, Comments at the Wall Street in Crisis Panel (Oct. 6, 2008), *available at* http://www.law.utah.edu/media/show-media.asp?MediaID=526&TypeID=4.

He went on to say, "Fannie Mae or Freddie Mac own or guarantee $5 trillion in mortgages in the United States, that's about half of the value of all the home mortgages in the United States. Fannie Mae and Freddie Mac were the largest buyers of subprime and alt A mortgages."[96] It was because of these government sponsored-entities that there were so many subprime loans issued. These entities created a moral hazard which interrupted the free marketplace, causing it to act irrationally. There would never have been this many families struggling to pay their mortgages if loans were only given to those who met the usual standards. Further, lenders would not have invested in these subprime mortgages if the government did not guarantee them through Fannie Mae and Freddie Mac.

If the government did nothing, it would allow the marketplace self-correct. Companies that made bad decisions would suffer the consequences and, if need be, go out of business. This would enable new and well-managed companies to fill the void created from the failures. Allowing companies to fail enables the market to self-correct, as opposed to perpetuating the problem.

Although American families would be affected by government inaction, they should rely on family, friends, and charitable organizations. Government should not be the philanthropist to subsidize families in times of hardships. Families should first seek assistance from family members, and other sources, like charities or private philanthropists. Americans are tremendously generous. They gave an estimated $306,390,000,000 to charities in 2007,[97] which was about 13% of the total receipts of the federal government for that year.[98] If the government does not subsidize struggling families, private charities would fill the void.[99]

If government action was limited, it is likely that people would not be taxed as much. The reverse is also true. For example, at the end of the Great Depression, the highest tax bracket was 88%.[100] This basically forbade anyone from making over $200,000. If people were able to keep more of their money, it is likely they would donate more. While the highest tax bracket today is dramatically lower than it was during the Great Depression, the principle holds true: if people have more money, they will likely give more. Giving creates a remarkable feeling that promotes even more giving. Such a feeling is not created when the government takes money from individuals to fund its welfare programs. It essentially robs individuals from their opportunity to give. Inaction on the part of the government

---

[96] *Id.*

[97] Press Release, Giving USA Foundation (June 23, 2008), *available at* http://www.givingusa.org/press_releases/releases/20080622.htm.

[98] OFFICE OF MANAGEMENT AND BUDGET, OVERVIEW OF THE PRESIDENTS 2007 BUDGET, *available at* http://www.gpoaccess.gov/usbudget/fy07/pdf/budget/overview.pdf (last visited May 25, 2009) (stating federal government total receipts as $2.4 trillion).

[99] *See* Medved, *supra* note 87, (discussing how government spending on welfare relief caused private charities to decrease their spending).

[100] National Taxpayers Union, History of Federal Individual Income Bottom and Top Brackets, http://www.ntu.org/main/page.php?PageID=19#_edn3 (last visited May 25, 2009).

would force struggling families to look to the proper places for help, and private charities will fill the void for families who have no other option.

Too much government intervention created the financial difficulties facing Americans—just as it was extensive government involvement that prolonged the Great Depression—and it will also be the case with future times of economic difficulty. Government needs to trust in market place and allow it to correct itself. When faced with the idea of future economic stimulus acts, Congress needs to remember that inaction is possibly the best action.

VI. CONCLUSION

The Economic Stimulus Act of 2008 seemed to be a fairytale bipartisan piece of legislation that would turn the tide on a possible recession. It received great publicity and sped through the legislative process. The legislative history contains numerous expressions of gratitude for members of opposing political parties because of their ability to come together in a time of crisis and act in a bipartisan manner to help the American people.[101] The federal government stepped in to help by passing the Economic Stimulus Act. Unfortunately, the legislation has not satisfied its purposes. American families, while maybe a little richer because of the rebate checks, are not in a safer financial condition. The government had good motives, but ended up spending $152 billion dollars on a plan that has not succeeded.

The logic of Congress was flawed. The financial burdens facing American families cannot be alleviated by a minimal one-time cash infusion. Allowing Fannie Mae, Freddie Mac, and the FHA to assume larger loans is not going to solve the problem of the subprime mortgage crisis, which exists in the first place because people borrowed more money than they could afford. With the root of the recession not corrected, the recession will not be averted nor stopped. Because of this flawed logic, the Economic Stimulus Act of 2008 proved to be an expensive mistake for the United States of America and its hard working families. In the future, possibly the best action for Congress to take in times of financial hardships is inaction.

[101] *See generally* 154 CONG. REC. H14,485–509 (daily ed. Jan. 29, 2008); *see generally* 154 CONG. REC. S19, 715–25 (daily ed. Feb. 6, 2008).