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# Few Limits Proposed for Treasury

## *Draft Rescue Bill Bars Court Review, Riling Lawmakers*

BY JESS BRAVIN

WASHINGTON—If the Bush administration has its way, anyone harmed by the Treasury Department's handling of the \$700 billion Wall Street bailout wouldn't have a remedy.

Draft legislation proposes sweeping powers for Treasury Secretary Henry Paulson to buy and sell mortgage-related securities however he sees fit. Aside from requiring periodic reports to Congress, the bill provides no oversight of the bailout's management—and specifically bars any court or agency from reviewing it.

Congressional Democrats said they were wary of handing a lame duck administration what one aide called a “blank check.”

House Judiciary Committee Chairman John Conyers Jr. (D., Mich.) “is very concerned about the breadth of the draft language, and we are working to insure that reasonable limits are included,” a committee staffer said.

The effort to block court review reminded some congressional staffers of the Bush administra-

tion's response to the Sept. 11, 2001 terrorist attacks, when it issued language and took steps to keep judges from second-guessing decisions about wiretapping and detention of suspected enemy agents.

In that crisis, and apparently in this one, the administration argued that exposing to court review actions made on the fly would deter officials from taking risks and responding quickly.

A Treasury Department spokeswoman, citing intense negotiations with Capitol Hill, declined to say why the language was inserted or whether the administration would consider alternative forms of oversight. “We're not going to comment on a draft that is fluid” or provide the latest proposals, said spokeswoman Brookly McLaughlin.

Democratic aides said they agreed that the Treasury Department should be free to move quickly without fearing nuisance suits. But they contrasted the free hand the administration seeks for the current bailout with more-robust accountability measures Congress required of the Resolution Trust Corp., the agency created to clean up the savings-and-loans crisis of the 1980s.

“It's going to be a little hard to swallow for people if we're giving \$700 billion in authority to an administration that some would say

was lax and allowed this to happen in the first place,” said a senior Democratic Senate aide.

Sen. Barack Obama, the Democratic presidential nominee, singled out for criticism the proposed provision about barring court review. Any bailout plan should include “independent accountability and oversight,” he said in a statement.

Congress has authority to define federal court jurisdiction, and has blocked judicial review of administrative decisions in some programs.

“It's not by any means unprecedented, but I wouldn't call it usual, either,” said Mark Levy, who heads the Supreme Court practice at the law firm Kilpatrick Stockton in Washington.

In 1974, the Supreme Court upheld a statute barring judicial review of certain benefits decisions made by the Veterans Administration. While Congress can block review of discretionary decisions under a statute, it can't stop lawsuits claiming violation of constitutional rights.

Under the draft legislation, claimants apparently would be barred from suing on grounds that the Treasury Department undervalued their assets or didn't fairly consider a seller's situation, Mr. Levy said. However, a court might hear a constitutional claim, such

as allegations that the method of deciding who gets paid and how much they get paid violate the Fifth Amendment due process clause, he said.

Such claims are very difficult to prove.

The draft language blocks review only of “decisions by the Secretary” under the act. Mr. Levy said that leaves open the door to challenges to the act itself.

The senior Senate Democratic aide said that while lawmakers had confidence in the Treasury secretary, “Hank Paulson is not going to sign off on the purchase of every asset” and will instead rely on an army of lower-ranking officials. Under the administration's draft, “if one of those folks decides he's going to help out a friend, or a past employer or a potential future employer to buy some assets at a hugely inflated price,” there's nothing you can do about it,” the staffer said.

While the Bush administration may be heading out the door in January, the staffer said that Republicans on Capitol Hill had a strong interest in ensuring stronger oversight of the bailout.

“You would think that Republicans who want to give a free hand to Paulson might be worried about potentially giving a free hand to an Obama Treasury secretary in a few months,” the aide said.