

TARP UPDATE WHERE TARP STANDS AND WHERE IT IS GOING (JANUARY 21, 2009)

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The Emergency Economic Stabilization Act ("EESA") was signed into law on October 3, 2008 and provided the United States Department of the Treasury ("Treasury") with \$350 billion to use in a manner provided for by the EESA. The use of such funds has come to be known as the Troubled Asset Relief Program ("TARP"). All of the initial \$350 billion has been allocated through the programs established by Treasury under TARP.

Through the Capital Purchase Program ("CPP"), Treasury purchases equity securities from financial institutions to improve the balance sheets of the institutions and stimulate lending. Of the initial \$350 billion, \$250 billion has been allocated to the CPP. As of January 14, 2009, \$189 billion has been used to purchase equity securities in 257 banks in 42 states and Puerto Rico with the largest individual investment being \$25 billion and the smallest investment \$1 million. On January 14, 2009, Treasury released a term sheet for S-Corps to participate in this program through the issuance of debt securities. The S-Corp application period will run through February 13, 2009.

Of the initial \$350 billion, \$20 billion has been allocated to support the Federal Reserve's \$200 billion Term Asset-Backed Loan Facility ("TALF"). The Federal Reserve is using TALF to shore up the asset-backed securities market in hopes of stimulating the small business loan market and consumer lending such as credit cards, student loans, and auto loans. Treasury has mentioned that TALF could be expanded to provide liquidity to the issuers of commercial real estate mortgage-backed securities and other asset types.

The remaining \$80 billion has been allocated to provide aid to AIG, Citigroup, and the domestic auto industry.

The initial \$350 billion of the TARP funds has been allocated and a portion of that remains to be distributed through the established programs.

On January 12, 2009, President Bush asked Congress to release the second tranche of TARP funds totaling \$350 billion. Such request has received Senate approval. The House of Representatives has fifteen days from the date of the request to block the release of the second \$350 billion. A bill blocking the release has been introduced. An affirmative vote to block the release is subject to the presidential veto power. There may be additional restrictions and changes to the program attached to any such release. If the second

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\$350 billion is released, it is uncertain as to how Treasury will allocate the funds. Media reports have stated that President Obama would like to use some TARP funds to reduce foreclosures.

Congressman Barney Frank, Chairman of the House Financial Services Committee, has introduced the TARP Reform and Accountability Act of 2009 (the "Modification"). As with any piece of proposed legislation, there may be amendments and changes to the Modification. The major provisions of the Modification in its current form are outlined below.

- **Reporting.** The Modification requires quarterly reporting as to the use of TARP funds by any institution that has received or does receive TARP funds.
- **Executive Compensation.** All recipients of TARP funds, without regard to the program through which the recipient obtained such funds, will be subject to the same executive compensation restrictions. The executive compensation restrictions attached to the TARP loans for the automotive industry, such as restricted bonuses and incentive compensation to the 25 most highly compensated employees, would apply to all institutions receiving TARP funds, except small financial institutions. Such restrictions may be retroactively applied to recipients.
- **Insured Depository Institutions.** With respect to insured depository institution recipients, the new reporting requirements would focus on levels of lending. Insured depository institutions receiving TARP funds would be required to reach an agreement with Treasury as to the use of such funds, including benchmarks. Required examinations by the institution's primary federal regulator would specifically focus on the use of TARP funds and compliance with the program's requirements. The Modification would restrict an institution's ability to use TARP funds to acquire other healthy depository institutions.
- **Directives Regarding Use of TARP Funds.** The Modification directs Treasury to promptly make funds available to smaller community institutions. The Modification also requires the use of between \$40 billion and \$100 billion of the second \$350 billion for foreclosure mitigation. Any foreclosure mitigation efforts required by the Modification only apply to owner-occupied residences.
- **Clarification Regarding Past and Potential Future Uses of TARP Funds.** The Modification clarifies and confirms that Treasury's previous uses of the TARP funds were proper under the EESA. The Modification also clarifies Treasury's ability to use TARP funds to provide support to the issuers of municipal securities and for commercial real estate loans and mortgage-backed securities.
- **Additional Provisions.** The Modification makes permanent the increase in FDIC and NCUA deposit insurance limits. The Modification requires Treasury to establish a non-TARP program to stimulate home purchases.