



Emergency Economic Stabilization Act H.R. 1424 (House and Senate Passed) Key Highlights

On October 3, 2008, the House passed the Emergency Economic Stabilization Act of 2008 (H.R. 1424), a bill authorizing Treasury to establish a troubled asset purchase program (TARP). The bill also includes the extension of several tax provisions and energy-related programs. Highlighted below are key provisions of primary interest to MBA members.

Program Overview

- Considerations: In undertaking the program, Treasury must promote not only liquidity and market stability, but also community stability, diversity, small institutions, student loans, retirement plans, and multifamily properties.
- Treasury can purchase troubled assets from any financial institution on terms and conditions it decides in consultation with the Federal Reserve Board, Federal Reserve Bank of New York, FDIC, OTS, OCC and HUD. Treasury consults with FDIC in managing purchased assets.
- Treasury must publish the program's policies and procedures for identifying, pricing and purchasing troubled assets, and for selecting asset managers.
- Institutions cannot sell troubled assets to Treasury for more than they paid.
- Guarantee Program: Treasury must establish an insurance program to guarantee principal and interest payments to purchasers of troubled assets; the program's risk-based premiums must be paid by participating institutions.
- Termination: Program expires on December 31, 2009 but may be extended; committees expire after all assets have been transferred or last insurance contract expires.
- If TARP results in net loss after five years, the President must submit a legislative proposal on how to seek reimbursement from participating financial institutions.

Funding Amount and Procedures

- \$700 billion disbursed in increments: Treasury receives \$250 billion upon enactment; an additional \$100 billion will be disbursed if the President certifies its need to Congress; a final \$350 billion is disbursed upon presidential request unless Congress disapproves.

Warrants/Equity

- In direct troubled asset purchases, Treasury also receives nonvoting shares or a senior debt so that Treasury shares equity appreciation and losses/expenses are covered.

Loan Modifications/Servicing

- Treasury and other federal agencies should coordinate loan modification programs with HOPE for Homeowners program (H4H) and protect renters and state/local subsidies; guarantees and credit enhancements are allowed; servicers should maximize loan modifications. Permits the H4H Board to refinance loans higher than 90 percent of appraised value. Servicers are deemed to have acted in the best interest of MBS investors if the servicer agrees to/implements a modification/workout plan when the servicer takes reasonable loss mitigation actions, including partial payments.

Structure and Oversight

- Location: The law establishes a new “Office of Financial Stability” in Treasury headed by an Assistant Secretary. It is likely Treasury will hire vendors to purchase, manage and sell troubled assets, since the law contains extensive contracting provisions.
- Financial Stability Oversight Board: five-member board includes Federal Reserve, FDIC, SEC, HUD and SEC. Executive Committee of board can limit or prohibit Treasury from taking action. Credit review committee of board reviews purchases.
- Congressional Oversight Panel: five-member bipartisan panel selected by Congress to review financial markets, regulatory oversight and TARP performance.
- Comptroller General: provides on-site review performance and administration of TARP.
- Special Inspector General: Appointed by the President, for auditing and investigations.
- Treasury must work with non-U.S. regulators and central banks to establish similar programs.
- Judicial Review: Actual damages relief permitted, Injunctions permitted only for non-asset management related activities.

Reports

- Treasury and other banking agencies must issue several public and congressional reports on purchases, pricing, expenses and impact of program.
- Regulatory Modernization Report: By April 30, Treasury must submit report to Congress on state of financial and regulatory system and recommendations for improvement.
- GAO studies: (1) The impact of leveraging and deleveraging of financial institutions contributed to the current financial crisis; and (2) Impact of the TARP program.
- Congressional Oversight Panel submits reports to Congress on the impact of TARP in providing transparency, mitigating foreclosures and financial market transactions.
- SEC, Treasury and Federal Reserve must report to Congress on the impact of mark-to-market accounting on financial institutions.
- OMB and CBO must report to Congress on program and budget estimates.

Conflicts of interest

- Treasury must issue regulations/guidelines to prevent conflicts of interest with any aspect of TARP.

Executive Compensation

- Participating institutions must have executive compensation limits that: 1) exclude incentives for inappropriate risk taking; 2) include claw-back provisions for compensation based on inaccurate earnings, gains or other criteria; and 3) prohibit golden parachutes.
- For Treasury auction purchases over \$300 million, the participating financial institution also cannot give golden parachutes to employees hired after the purchase.

Definitions

- Troubled asset: Residential or commercial mortgage-related assets, including securities, obligations or other instruments Treasury believes purchasing would promote financial stability. Assets must have been originated or issued before March 14, 2008. Treasury must consult with the Federal Reserve Board Chairman and notify Congress prior to expanding the definition.
- Financial Institution: Any institution, including any bank, savings association, credit union, security broker or dealer, or insurance company established and regulated under the U.S. or state/territorial laws. The definition specifically states it is not limited to these institution types, and Congressional staff has reassured MBA that mortgage banks are eligible to participate.

Federal Reserve Disclosure

- If the Federal Reserve provides emergency discounts to any entity, it must report to Congress regarding the justification for and terms of the discount.

Accounting

- SEC is authorized to suspend mark-to-market accounting (FAS 157).

Tax Provisions

- Tax break to holders of Fannie and Freddie preferred stock. Provides “ordinary gain or loss” treatment. It appears to limit that tax break to banks, savings and loans, cooperatives, small business investment companies, and business development corporations.
- Provides special tax rules to prevent deductibility of overly generous executive compensation programs.

Temporary Increase in Deposit Insurance

- From the date of enactment until December 31, 2009, the amount of qualifying deposits the FDIC and NCUA will insure increases from \$100,000 to \$250,000. The increased amount will not be factored into setting premium assessments.

October 3, 2008