



Troubled Asset Relief Program (TARP) Legislation Joint Agreement (Evening of September 28, 2008)

Program Operations

- Location: Office in Treasury headed by Assistant Secretary
- Consultation with Federal Reserve, FRB of NY, FDIC, OTS, OCC and HUD required.
- Considerations: This version expands the factors Treasury must consider beyond liquidity and market stability, to community stability, diversity, small institutions, student loans, retirement plans, and multifamily properties.
- Treasury must establish a program to insure purchased assets; risk-based premiums to be paid by participating institutions.
- Treasury must work with non-U.S. regulators and central banks to establish similar programs.
- Program expires: 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 fin institutions.

Maximum Amount

- \$700 billion in installments based on congressional approval of request by President.

Oversight

- 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.
- Judicial Review: Actions will not be overturned unless arbitrary/capricious, abuse of discretion or illegal. No injunction or equitable relief permitted, but injunctions are allowed.

Transparency

- Treasury must publicize program policies, procedures and guidelines.

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 and Federal Reserve must report to Congress on impact of mark-to-market accounting on financial institutions.
- OMB and CBO must report to Congress on program and budget estimates.

Purchase and Sale of Troubled Assets

- Secretary consults with FDIC in managing assets.
- Treasury sets terms, conditions and prices.
- Profits: 20 percent of profits go to Housing Trust Fund (65 percent) and Capital Magnet Fund (35 percent). Balance goes to general fund of Treasury.
- Treasury, FHFA, FDIC, HUD and Federal Reserve must permit state/local governments to purchase foreclosed properties at a discount.
- Institutions cannot sell troubled assets to Treasury for more than they paid.

Loan Modifications/Servicing

- Treasury and other federal agencies should coordinate loan modification programs with HOPE for Homeowners program and protect renters and state/local subsidies; guarantees and credit enhancements are allowed; servicers should maximize loan modifications.

Warrants/Equity

- In direct troubled asset purchases where Treasury acquires a meaningful equity position, Treasury gets shares or a senior debt so that Treasury shares equity appreciation, and losses/expenses are covered.

Contracting

- Treasury can “fast track” vendor contracting, but must promote diversity.

Conflicts of interest

- Treasury must issue regulations/guidelines to prevent conflicts of interest in 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 and commercial mortgage-related assets. Treasury must consult with Fed Chairman to expand definition.
- Financial Institution: Similar to earlier House version which does not specifically include independent mortgage banks/servicers. Definition cannot be expanded.

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. Also provides special tax rules to prevent deductibility of overly generous executive compensation programs.

September 28, 2008