Troubled Asset Purchase Program (TARP)

Sponsor: U.S. Treasury

Summary:
- Treasury to buy troubled assets from financial institutions
- Limited to $700 billion (with $250 billion approved immediately)
- Purchases conducted through auctions or directly
- Participating institutions to issue securities to Treasury in connection with sales

Key Dates

Established: October 3, 2008

Guidelines to be Published: Within 2 days of first purchase or no later than November 17, 2008

Duration: December 31, 2009
(or Extension Date: October 3, 2010)

Who Can Participate?
- Any institution established and regulated under U.S. laws and having significant operations in the U.S.
- Includes banks, savings associations, credit unions, security brokers or dealers and insurance companies
- U.S. branches of foreign financial institutions with significant U.S. operations should qualify
- Institutions owned by foreign governments or central banks excluded, unless foreign financial authority acquired troubled assets as a result of extending financing to a financial institution that failed or defaulted

What are Troubled Assets?
- Residential or commercial mortgages and any securities, obligations or other instruments based on, or related to, such mortgages
- Must have been originated or issued on or before March 14, 2008 and acquisition must promote financial market stability
- Other financial instruments if, after consultation with Fed, Treasury makes a written determination that the purchase is necessary to promote financial market stability and provides such determination to Congress
- No Congressional approval required

Equity Investments – Key Terms
- Public companies must provide equity securities (warrants for non-voting common or preferred stock or warrants for voting common stock)
- Private companies may provide a warrant for common or preferred stock, or senior debt
- If voting, Treasury will agree not to exercise voting rights, other than class voting rights on matters that could adversely affect the shares
- If Treasury sells warrant, voting rights transfer to purchaser
- Warrants must contain standard anti-dilution provisions
- Warrants must protect Treasury if financial institution no longer public – either conversion to debt or other appropriate protections
- *De minimis* exception for purchases of not more than $100 million or issuers legally unable to issue securities to Treasury (appropriate alternatives will be used)

Treasury Considerations:
- The protection of the security of Americans' retirement
- The impact of the current environment on public instrumentalities, such as increased costs and losses faced by counties and cities
- Preventing the unjust enrichment of participating financial institutions, including by preventing the sale of a troubled asset at a higher price than the seller paid for it

Executive Compensation and Corporate Governance
- Applies to senior executive officers (CEO, CFO, top three compensated officers)
- Direct purchases
  - certification that no incentive structure for excessive risk taking
  - no golden parachute payments for involuntary termination, receivership or bankruptcy
  - claw-back for bonus/incentive payments made based on statements made during investment period later found to be materially inaccurate
- Indirect purchases (auctions): if exceed $300 million, no new employment contract that provides a golden parachute for involuntary termination, receivership or bankruptcy

Insurance Program
- Treasury is developing an insurance program for troubled assets
- Treasury has formed a policy group and solicited input on the structure of the program through a comment process
- Comment period ended October 28, 2009

Some Things to Think About
- Limitations in organizational documents preventing issuance of more than one class of common (*i.e.*, voting and non-voting)
- Triggers in outstanding securities with a conversion or exchange feature
- Triggers in poison pills or other limitations or triggers in corporate agreements
- Participating institutions subject to executive compensation requirements

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