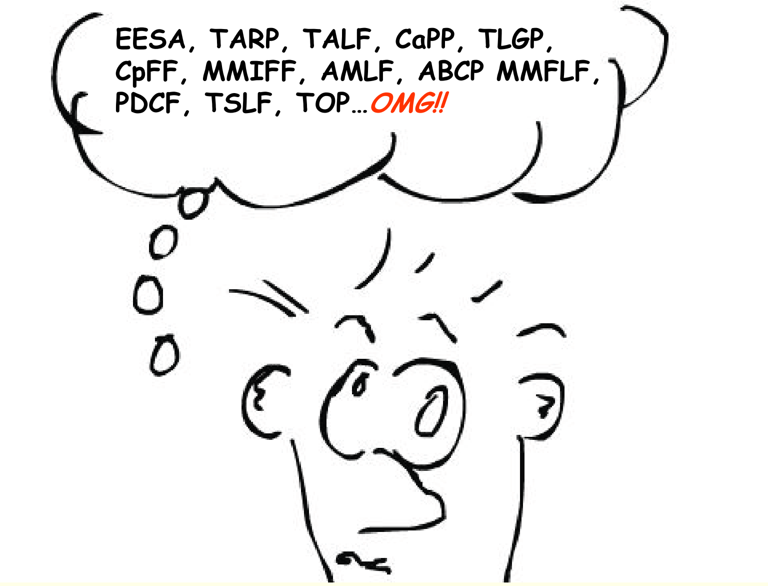
MORRISON | FOERSTER



Update on Federal Programs in Response to the Financial Crisis

April 29, 2009

Overview

- Crisis has highlighted the distinct, and necessarily separate roles of the Federal Reserve and the Treasury
- Overview of actions to date
- Discussion of possible future action

Overview (cont'd)

Areas to be covered include:

- Chronology of the financial crisis
- The Troubled Assets Relief Program (TARP)
    - CaPP
- Actions by the Federal Reserve
    - TALF
- The FDIC's Temporary Liquidity Guarantee Program
- Restrictions on Executive Compensation
- The Financial Stability Trust
    - CAP
    - Mortgage Modification
    - PPIP

Chronology

IQ 07	25 sub-prime mortgage lenders file for bankruptcy
2Q 07	New Century, the largest sub-prime lender, files for bankruptcy Dow closes above 14,000
3Q 07	Fed begins a series of rate cuts
4Q 07	President Bush proposes a plan for mortgage lenders to freeze ARMs at their teaser rates for 5 years
IQ 08	Bear Stearns acquired and Countrywide acquired – both in private “bailouts”
2Q 08	IndyMac fails SEC restricts short selling FHFA formed
3Q 08	Conservator for Fannie and Freddie Lehman Bros. files for bankruptcy Mutual Fund “breaks the buck” WaMu and Wachovia to be sold I-Banks become BHCs
4Q 08	TARP CaPP TALF TLGP Bailouts: AIG 2, Citi, Autos
1Q 09	CAP; Mortgage mod; PPIF; AIG; Exec Comp

Summary timeline

What Happened	Who Was Blamed	Reaction
Foreclosures rise (2006)	Subprime mortgage lenders	• Call for mortgage reform • Federal Reserve notes "froth"
Losses mount on subprime MBS (2007)	Blame spreads to "originate to sell" model, Wall Street and credit rating agencies	• Subprime originators file for bankruptcy • Wall Street losses perceived as retribution • Homeowner protection is focus: President Bush calls for public-private partnership to prevent foreclosures
Losses spread to other MBS and more complex securities (2007)	Credit rating agencies targeted	• Wall Street losses continue to be seen as isolated – Not "Main Street" problem • Credit rating agency reform begins in earnest
Losses continue; confidence in system falters (beg. 2008)	FAS 157 comes under pressure	• Federal Reserve launches series of programs and rate cuts
Write-downs continue; broader economy suffers	Financial industry broadly	• Congress allocates $700 billion to Treasury • Bailouts of AIG, Citi, auto industry, broker-dealers become BHCs
Nothing gets better	Government failed to address root causes of problem – no wonder nothing has gotten better	• Obama stimulus, foreclosure plan and TALF are focus of government efforts

Overview of Federal Programs

Term Securities Lending Facility and Options Facility (Mar '08)	Primary Dealers can borrow against Agency MBS, and buy options for future borrowing to enhance liquidity planning
Primary Dealer Credit Facility (Mar '08)	All tri-party eligible collateral can be pledged at discount window for overnight borrowing of U.S. Treasuries
GSE Programs (Beg. Sept '08)	Treasury commitments in GSEs; Treasury and Federal Reserve each launch programs to purchase GSE securities and support agency MBS market
ABCP Money Market Fund Liquidity Facility (Sept '08)	ABCP can be pledged by money market funds to provide ABCP liquidity and ensure redemption requests can be met
Troubled Assets Relief Program (Oct '08)	Treasury allocated $700 billion to purchase mortgage-related assets (anticipated to be mortgage-backed securities) from financial institutions
Commercial Paper Funding Facility (Oct '08)	Federal Reserve to purchase CP and ABCP from eligible issuers to provide liquidity to those issuers and markets
Temporary Liquidity Guarantee Program (Oct '08)	FDIC will guarantee newly issued unsecured senior debt. Based on success of program, various efforts are announced to extend the program
Money Market Investor Funding Facility (Nov '08)	New York Fed uses a securitization to facilitate liquidity for money market funds
Term Asset-backed Liquidity Facility (Nov '08)	Purchases of recently issued ABS backed by recently issued collateral funded by non-recourse loans from New York Fed

MORRISON | FOERSTER

Overview of Federal Programs (cont'd)

Financial Stability Plan Facility (Feb '09)	A move away from TARP to next phase of the government response; Plan includes several elements (e.g., CAP; Making Home Affordable; SBA plan; PPIP)
Homeowner Affordability and Stability Plan (Feb '09)	Multi-pronged mortgage modification plan (now branded "Making Home Affordable")
TALF Extension (Mar '09)	Extended to cover additional types of assets
PPIF (Mar '09)	Public-private purchases of "toxic" (now legacy) assets

Troubled Assets Relief Program (TARP)

TARP: The Statutory Perspective

- TARP as initially outlined by Treasury to Congress bears little resemblance to the program as implemented to date
- TARP provides for:
  - Authorization for Treasury to buy and insure "troubled assets" held by "financial institutions" (broadly defined to include any institution with significant US operations)
  - Up to $700 billion, of which over $600 billion has already been spent or allocated
  - Purchases to be conducted using either auctions or direct purchases:
    - Stated preference for auctions and other "market mechanisms"
    - The TALF, originally announced as an auction-based program, was revised in December to remove auctions from the program
  - A guaranty/insurance program for troubled assets

MORRISON | FOERSTER

TARP: Definitions

"Financial institution" is defined as 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
- Institutions owned by foreign governments or central banks specifically are excluded
- Foreign-owned financial institutions are excluded from CaPP but not necessarily from the rest of TARP
- Treasury and President Bush interpreted this to include Chrysler and GM
- Commercial mortgage companies are one of the latest groups to request inclusion

"Troubled assets" are defined as either:

- Residential or commercial mortgages and any securities, obligations based on, or related to, such mortgages
- Other financial instruments as Federal Reserve and Treasury determine.
  - ➢ The act requires no Congressional approval – only notice
- ➢ Almost all programs to date have fallen into the second category of "other," including: CaPP, TALF, Citigroup, AIG and the auto bailouts

TARP's Asset Guaranty/Insurance Program

- The statute requires Treasury to establish an Asset Guaranty Program for troubled assets originated prior to March 14, 2008, and to use guaranty fees to fund the "Troubled Assets Insurance Financing Fund"
- The guaranty/insurance provisions were a last minute addition based on Congress' belief that insurance was a more cost effective way of improving the market for mortgage-backed securities
- Treasury took an insurance role in the Citigroup bailout by taking a "second loss" position to Citigroup
- Treasury announces (Dec 31) that the guaranty/insurance program will not be widely available—and will be applied "with extreme discretion" and restricted to "systemically significant" financial institutions risking loss of market confidence

TARP Review

The Plan	The Reality
Purchase assets with depressed values from financial institutions' balance sheets	Purchasing newly created assets such as preferred stock and warrants issued by various institutions
Develop methodology to price troubled assets	Treasury passes on this issue
Focus on the mortgage industry	Broader focus on economy as a whole
Outline programs within 45 days of passage of the Act	Outline programs as needs are identified
Limit the program to financial institutions	Expand the program to include the auto industry
$700 billion considered an enormous outpouring of money	$700 billion likely not to be enough

Selected TARP Programs

Capital Purchase Program (CaPP)

(*authorized under TARP*)

MORRISON | FOERSTER

Capital Purchase Program Overview

- Treasury is making capital investments in banks, BHCs and SLHCs by acquiring preferred stock and warrants
- As of April 20, 2009 over $198 billion in hundreds of transactions had closed (reflecting approx. $467 million of preferred repurchaed by institutions)
- Market information tells us CAMEL-rated 1 and 2 will be eligible; CAMEL-rated 3 judged on a case-by-case basis; CAMEL-rated 4 and 5 probably not eligible
- Regulators used internal criteria for choosing eligible financial institutions (*e.g.,* long-term viability, funding base, matching private capital) – resulting in criticism that the program lacked transparency

CaPP: Executive Compensation Restrictions

- Emergency Economic Stabilization Act imposed restrictions where Treasury took significant equity positions
- Capital Purchase Program first program to impose these rules
- February 2009 Treasury announced harsher measures for institutions receiving special assistance
- American Recovery and Reinvestment Act retroactively amends the executive compensation and corporate governance restrictions
- Treasury has yet to issue new guidance interpreting the Recovery Act

MORRISON | FOERSTER

CaPP: Executive Compensation Restrictions

- TARP (old) rules:
  - Applies to top 5 executive officers
  - Compensation committee must review plans and certify that there is no incentive structure for excessive risk taking
  - No golden parachute payment for involuntary termination, bankruptcy or receivership
  - Clawback of incentive compensation later found to be received based on statements that were materially inaccurate
  - No tax deduction for compensation in excess of $500,000
- Recovery Act (new) changes include:
  - Apply whenever TARP funds are received
  - Extends beyond CEO, CFO and top 3
  - New “Say-on-Pay” non-binding shareholder vote on compensation plan
  - No bonus rules – limits bonuses to restricted stock with long-term vesting for top employees (no longer limited to executives)
  - Expands limits on golden parachutes
  - Extends reporting requirements to CFO
  - Requires creation of compensation committee for publicly-held institutions
  - Board must approve a “luxury” expenses program

CaPP: Eligible Institutions

- Thus far CaPP investments limited to banks, savings associations, BHCs and SLHCs. (U.S. subsidiaries of foreign banks not eligible)
- Amex, GMAC and CIT converting to BHCs and SLHCs to participate in CaPP (and in FDIC's TLGP)
- Insurance companies could qualify on their own but thus far limited to BHCs and SLHCs. Examples:
  - AIG, Ameriprise Financial, Nationwide Financial, Principal Financial
- Rush to become SLHCs. Examples:
  - Hartford, Lincoln Financial, Genworth, Transamerica
  - Phoenix Cos. (desire to make acquisition but hasn't done so yet)

Assessment of CaPP Program

- Stated purpose: to promote lending and ease the credit crunch
- However, investments are being made without specific lending requirements. This has fostered vigorous criticism from Congress that program has gone astray.
  - Congress wants credit to consumers and small businesses
  - Regulators want to build up capital cushions
  - Banks cite dearth of creditworthy borrowers
  - Regulators encourage use of TARP capital for consolidation
- Was the abandonment of TARP's original focus unwise?
- Several institutions have announced their intention to pay back the government as promptly as possible

Federal Reserve Financial Crisis Programs

Overview

- With far less fanfare than Treasury, the Fed has injected trillions of dollars of liquidity into the financial system
- Federal Reserve is using existing as well as new programs
- Many of the new programs are from the Federal Reserve's broad authority under Section 13(3) of the Federal Reserve Act (a power to be used only in "unusual and exigent" circumstances)
- Programs include:
  - Term Auction Facility (TAF)
  - Term Securities Lending Facility (TSLF)
  - Primary Dealer Credit Facility (PDCF)
  - ABCP Money Market Fund Liquidity Facility
  - Transitional Credit Extensions
  - Commercial Paper Funding Facility (CPFF)
  - Money Market Investor Funding Facility (MMIFF)
  - Term Asset-Backed Securities Loan Facility (TALF) *(with Treasury)*
  - GSE purchase program
- The Federal Reserve led both AIG 1 and AIG 2 as well as the Citigroup bailout

Commercial Paper Funding Facility – Overview

- Authorized: October 7, 2008
- Commencement Date: October 27, 2008
- Last Purchase Date: October 30, 2009
- CPFF is funded by the Federal Reserve Bank of New York and managed by PIMCO
- The CPFF purchases commercial paper of U.S. issuers
- The CPFF was established to enhance liquidity in the commercial paper market to improve overall conditions in the credit markets
- Participants must register and pay a participation fee
- Limited to U.S. issuers, including those with a foreign parent, but excluding municipalities
- Commercial paper is subject to ratings requirements and issuers are subject to issuance caps designed to retain historical funding levels

MORRISON | FOERSTER

Term Asset-Backed Securities Loan Facility (TALF)

- Announced: November 25, 2008
- Launch: March 2009
- Last Purchase Date: December 31, 2009
- The New York Fed will offer non-recourse three-year loans to U.S. borrowers collateralized with eligible asset-backed securities (ABS)
- Eligible ABS include recently issued ABS backed by recently originated auto, credit card, student loan, small business and equipment loans guaranteed by the SBA
- The borrower cannot pledge as collateral ABS for which it originated the underlying assets
- Treasury will provide TARP resources through purchase of subordinated debt to absorb the first losses
- **Participants are NOT subject to the executive compensation limitations** (because Treasury's investment is in an SPV, not direct support for any financial institution)

Federal Reserve Programs: Perspectives

- Commercial Paper Funding Facility
  - Not limited to financial institutions: Designed to provide access to the commercial paper markets to all U.S. issuers
  - Corporations relying on commercial paper financing for operating expenses risked immediate shortages of cash – payroll risk
- Term Asset-backed securities Liquidity Facility
  - Designed to restart securitization market for consumer receivables
  - Can this address widespread reports of lower credit lines and higher credit card fees?
  - Catch 22: Banks are being asked to be both more prudent lenders than in the recent past and to increase lending . . .
  - Catch 22 (remix): If the economy needs to deleverage and the savings rate needs to increase, why are we encouraging more consumer borrowing?

ABCP Money Market Fund Liquidity Facility
Money Market Investor Funding Facility

- **ABCP Money Market Mutual Fund Liquidity Facility**
  - Launched in September and will extend credit through April 30, 2009
  - U.S. depository institutions, U.S. BHCs and U.S. branches and agencies of foreign banks can borrow from the Boston Fed to purchase ABCP from money market funds
  - Designed to provide liquidity to money market funds that need to sell ABCP for redemptions or otherwise. Needed following the collapse of the formerly liquid ABCP market

- **Money Market Investor Funding Facility**
  - Launched in October and last purchase date is April 30, 2009
  - The fund will purchase certificates of deposit, bank notes and commercial paper from US money market mutual funds
  - The purchases will be funded through the issuance of ABCP by the Fund, backed by the purchased assets
  - Designed to provide liquidity to money market mutual funds

- Both designed to improve liquidity in short-term markets

MORRISON | FOERSTER

While we are talking about money market mutual funds . . .

- Before TARP there was the Treasury's Temporary Guarantee Program for Money Market Funds
  - Launched September 29, 2008 with the last extension of credit scheduled for April 30, 2009
  - Money market funds can elect to pay a premium and enter the program
  - If a participant in the program "breaks the buck" – investors will be made whole
  - Treasury used the Exchange Stabilization Fund to fund the program. However, through the EESA (enacted two weeks later), Congress required that Treasury reimburse the Exchange Stabilization Fund and not use it for additional guarantee programs for money market funds

MORRISON | FOERSTER

Federal Reserve and Treasury Money Market Programs - Perspectives

- ABCP Money Market Fund Liquidity Facility, Money Market Investor Funding Facility and Temporary Guarantee Program for Money Market Funds
  - Significant Main Street money is held in money market funds
  - Federal Reserve, FDIC and Treasury actions have been designed to stabilize and retain confidence in these investments
  - For example, the FDIC did not guarantee interest bearing accounts under the TLGP because it wanted to avoid a "run" on money market funds
  - An implicit federal guarantee on money market funds? "Deposit insurance" without safety and soundness regulation? . . . Expect a push to increase regulation in this area as regulatory reform becomes a priority in 2009
    - Investment Company Institute has published recommendations for voluntary reform efforts

The FDIC's Temporary Liquidity Guarantee Program (TLGP)

TLGP Overview

- Announced on the same day as Treasury's CaPP and the release of further information about the Federal Reserve's commercial paper funding facility

- The announcement followed a reported near shut-down of inter-bank lending. Such events, however, are opaque to Main Street in the short term and the choices of policy makers are still being questioned

- The TLGP consists of two basic components:
  - a temporary unlimited guarantee of funds in non-interest bearing transaction accounts at FDIC-insured institutions
  - a temporary guarantee of newly issued senior unsecured debt (Debt Guarantee Program) by banks and bank holding companies and bank affiliates. Insurance companies affiliated with banks and bank holding companies may be covered

- TLGP goals:
  - Strengthen confidence in the banking sector
  - Restore liquidity – with a focus on inter-bank lending

Unlimited Deposit Insurance for Transaction Accounts

- Non-interest bearing demand accounts and non-interest bearing savings accounts into which transaction accounts are swept are fully insured by the FDIC
- The estimated amount of uninsured noninterest bearing transaction account deposits, prior to the TLGP, was between $400 and $500 billion
- Banks must disclose at main office and branches whether they are participating in the Transaction Account Guarantee Program
- Participants are assessed a 10 basis point fee (annualized, but assessed quarterly) on the amount of excess deposits (above $250,000) that are covered by the additional deposit insurance on non-interest bearing transaction accounts

Debt Guarantee Program

- FDIC will guarantee newly issued senior unsecured debt issued on or after October 14, 2008 through and including June 30, 2009; some institutions are eligible or can apply to continue to issue through October 31, 2009
- Issuance of FDIC-guaranteed debt is subject to an issuance cap
  - Issuance cap is 125% of the par or face value of senior unsecured debt, excluding debt extended to affiliates, outstanding as of September 30, 2008, that was scheduled to mature by June 30, 2009
  - The extension of the program has not resulted in a change in the issuance cap
  - This amount is calculated separately for each individual participating entity within the holding company structure
- The guarantee will extend to June 30, 2012; those eligible to participate in the extended program can issue debt guaranteed through December 31, 2012
- Executive compensation restrictions are not applicable to participants in the TLGP

Debt Guarantee Program (cont'd)

- Senior unsecured debt includes:
  - federal funds purchased
  - promissory notes
  - commercial paper
  - unsubordinated unsecured notes
  - certificates of deposit standing to the credit of a bank (in other words, the depositor is another domestic or foreign bank)
  - bank deposits in an international banking facility of an insured depository institution
  - Eurodollar deposits standing to the credit of a bank (depositor is another bank)
  - Debt with maturities greater than 30 days
- Amended to include mandatory convertible debt
- FDIC guarantee is:
  - Guarantee of timely payment of interest and principal
  - Backed by the full faith and credit of the U.S. government

Debt Guarantee Program (cont'd)

Senior unsecured debt does not include:

- short-term debt (maturity of 30 days or less or "one month" maturity)
- obligations from guaranties
- derivatives
- derivative-linked products
- debt paired with another security
- capital notes
- negotiable certificates of deposit
- deposits in a foreign currency
- Eurodollar deposits that represent funds swept from accounts held at the institution
- debt marketed exclusively to retail investors

- Senior debt also does not include subordinated or secured obligations
- FDIC-guaranteed debt is exempt from SEC registration under Section 3(a)(2) as debt issued or guaranteed by the United States or an instrumentality of the United States despite the fact that the guarantee expires in three years.

Debt Guarantee Program (cont'd)

- Debt not guaranteed if the proceeds are used to *prepay* outstanding debt or if the debt is extended to an insider or an affiliate.
- Fees:
  - Maturity of 31 – 180 days: 50 basis points per annum
  - Maturity of 181 – 364 days: 75 basis points per annum
  - Maturity of 365+ days: 100 basis points per annum
  - Holding company surcharge: 10 basis points per annum for holding companies whose IDIs represent less than 50% of consolidated assets
  - Additional surcharge 10-50 basis points per annum for extended guaranteed debt program
- FDIC-guaranteed debt must include required disclosure language
- Original program:
  - Original non-guaranteed long-term debt program; participants opting into program could issue non-guaranteed debt, provided it matures after June 30, 2012
  - Otherwise, the institution is not able to select which debt is guaranteed. The guarantee applies to debt as it is issued, up to the cap
- Extended program will permit issuance of non-guaranteed debt, with FDIC approval

TLGP Perspectives

- Fees initially proposed for the program were based on current and prior credit default swap rates for healthy banks
- The FDIC has noted a significant tightening of CDS rates for banks since the launch of the program
- Generally considered one of the “success” stories

MORRISON | FOERSTER

Financial Stability Trust

(intended to be a transition from TARP)

Financial Stability Plan

- Financial Stability Trust
  - Capital Assistance Program (CAP)
  - Special Economic Assessments – Stress Tests
  - Disclosure and Transparency Initiative
- Public-Private Investment Program (PPIP)
- Consumer and Business Lending Initiative
- Transparency and Accountability Agenda
- Homeowner Affordability and Stability Plan
- A Small Business and Community Lending Initiative

Financial Stability Trust

- Capital Assistance Program (CAP)
  - Announced February 25
  - Capital investments
  - Mandatory convertible preferred stock
  - Same eligibility requirements as for Capital Purchase Program
  - Capital Purchase Program senior preferred can be exchanged into CAP mandatory converts
  - Capital Purchase Program remains in place
- Disclosure and Transparency Initiatives
  - Enhanced reporting under CAP
- Special Economic Assessments or "Stress Tests"

Financial Stability Trust - CAP

- Any publicly-traded eligible institution can apply
- Terms for privately-held institutions, subchapter S corporations and mutual organizations expected
- Deadline for publicly-held institutions is May 25, 2009
- Largest institutions do not need to wait for the assessments to conclude to apply

CAP – Executive Compensation

- CAP participants, as TARP recipients, are subject to the Emergency Economic Stabilization Act executive compensation and corporate governance rules
- These were amended in the stimulus plan (American Recovery and Reinvestment Act of 2009)
- Amendments are retroactive – as a result, there is no executive compensation benefit to avoiding participation in Treasury programs funded with TARP – like CAP
- Implementation detail generally won't be available until Treasury publishes regulations
  - One exception: Say-on-Pay applies to the current proxy season

Financial Stability Trust

- Special Economic Assessments
  - Banking institutions with $100 billion or more in assets as of Dec 31
  - 19 institutions
  - Will be completed by the end of April 2009
  - Includes base case scenario and "more adverse" scenario
  - Banking regulators will work with management to assess each institution's ability to withstand the base case and more adverse scenario
  - If additional capital is required to withstand the worse case scenario, institution must enter into a commitment for CAP
  - If private capital cannot be raised within six months, CAP investment will close
  - Some disclosure of results is expected, however, form and detail is unknown

Financial Stability Trust (cont'd)

- Special Economic Assessments
  - Only applies to largest banking institutions
  - "Too big to fail"
  - Moral Hazard Risk: Too big to fail institutions will take more risks
  - Impose stricter standards on these institutions – balance the benefits of being too big to fail

MORRISON | FOERSTER

Mortgage Loan Modification Programs

Mortgage modification efforts

- Made challenging by the historic securitization model
    - REMIC structure limits “modifications”
    - Servicer impediments – discretion leads to risk of litigation
- Initial efforts did not prove impactful
    - HOPE NOW Alliance
    - HOPE for Homeowners (H4H)
    - FDIC’s Mod in a Box

Mortgage modification efforts (cont'd)

- Streamlined modification program – announced by Fannie Mae and Freddie Mac
  - Announced in December 2008
  - Expected to be replaced by Making Home Affordable
- Homeownership Preservation Policy for Residential Mortgage Assets (Federal Reserve)

MORRISON | FOERSTER

Mortgage modification efforts (cont'd)

- Making Home Affordable
  - Part of the Financial Stability Plan
  - February 18, 2009 announcement of Homeowner Plan
  - Two programs:
    - Making Home Affordable Refinance
    - Making Home Affordable Modification - Provides standardized guidelines for mortgage modification, reflecting the input of numerous government agencies and industry groups

Making Home Affordable Modification

- **Mortgage Eligibility**
  - mortgage originated on or before January 1, 2009
  - 1- to 4-family, owner-occupied
  - no previous modification under the program
  - commenced bankruptcy or litigation won't make ineligible
  - no minimum or maximum loan-to-loan value ratio, unpaid principal balance of single unit home may not exceed $729,750
- **Shared Loss**
  - Lender/investor must absorb any losses through modifications from reducing current payments to 38% of the borrower's debt-to-income ratio
  - Thereafter, Treasury will share losses on a dollar-for-dollar basis on modifications reducing current payments to 31% of the borrower's debt-to-income ratio
- **Servicer Incentives**
  - $1,000 for each modified mortgage
  - $1,000 per year for each borrower of a modified mortgage that remains current (up to 3 yrs)
  - $500 for modifications made prior to a delinquency
  - $250 and additional compensation based on a scale to be published by Treasury for the release of a second lien
  - where modification is not feasible, compensation to encourage alternatives to foreclosure, including permitting a sale for less than the unpaid amount of the mortgage loan or deeds-in-lieu of foreclosure

Making Home Affordable Modification (cont'd)

- **Borrower Incentives**
  - monthly payments, up to $1,000 each year for five years, will be applied to reduce the principal balance of the mortgage as long as the borrower remains current
- **Lender/Investor Incentives**
  - $1,500 payment for each modification made prior to a delinquency and payments to offset probable losses from home price declines
- **Modified Mortgage Targets**
  - 31% front-end debt-to-income ratio
  - interest rate no lower than 2%, modified interest rate is fixed for five years with 1% per annum increases thereafter up to the interest rate cap determined using the guidelines at the time of modification and term extensions (40-yr mortgages)
- **Underwriting**
  - income verification is required; property value determined within 60 days of modification based on the government sponsored enterprises' automated valuation model or a brokers price opinion
- **H4H**
  - participating servicers are required to consider borrowers for H4H
  - loans may enter the Home Affordable Modification trial period pending completion of a H4H modification

Making Home Affordable (cont'd)

- Trial Period: Borrower must remain current for 90 days, or three monthly mortgage payments, before incentive payments will be made

- Transparency Provisions: Servicers required to maintain records covering borrower eligibility, underwriting, incentive payments and property verification; Fannie Mae and Freddie Mac will audit compliance

Term Asset-Backed Securities Loan Facility (TALF)

(a joint Treasury/Fed program)

TALF

- The Program:
  - New York Fed will finance the purchase of ABS by eligible borrowers
  - Non-recourse - ABS must be pledged as collateral and will be transferred to NY Fed SPV upon default
  - Newly issued consumer and small business ABS backed by newly originated assets (or to refinance maturing revolving facilities)
  - Treasury will fund a first loss piece in the SPV
  - Facility size expected to be $1 trillion Fed/$100 billion Treasury
  - First transactions March 2009 and last transaction currently scheduled for December 2009
- Impact:
  - Provides investors with “no-risk” funding for the purchase of ABS
  - Investors cannot be affiliated with the originators of the assets or the sponsor of the program

TALF Eligible ABS Asset Classes

- Underlying Asset Classes
  - March - first funding
    - Auto loans (loans and leases, cars, light trucks, RVs, motorcycles, floorplan)
    - Credit cards
    - Student loans – guaranteed and private
    - Small business loans – SBA guaranteed
  - April funding expansion
    - Commercial, government and rental auto fleet
    - Equipment loans and leases
    - Floorplan (non-auto)
    - Mortgage servicer advances
  - Other analysis for appropriate terms and conditions
    - Commercial mortgage-backed securities (CMBS)
    - Use of TALF for PPIP
  - Under consideration
    - private-label residential mortgage-backed securities, collateralized loan and debt obligations
- Stated goal for including asset classes
    - "greatest macroeconomic impact and can most efficiently be added to the TALF at a low and manageable risk to the government"

TALF Eligible ABS

Eligible ABS

- All or substantially all of the underlying borrowers must be U.S. domiciled
- ABS issued after January 1, 2009; SBA pool certificates or development company participation certificates issued after January 1, 2009
- If credit card or floorplan, must be refinancing 2009 maturities
- 95% underlying assets from U.S. obligors
- 85% of underlying assets:
  - Auto loans and leases, equipment, servicer advances: originated on/after October 1, 2007
  - Student loan: first disbursement date no later than May 1, 2007
  - SBA loans (other than pool certs and DCPCs described above) originated on/after January 1, 2008
- "AAA" rated; not rated below AAA by a major NRSRO (Fitch, S&P, Moodys)
- U.S. dollar denominated
- No synthetics or ABS as underlying assets
- Clear through DTC

TALF (cont'd)

Structure

- NY Fed will loan borrowers money to invest in eligible ABS
- Loans:
  - Three-year maturity, interest due monthly
  - Borrower may elect fixed or floating (rates set by Fed)
  - Non-recourse to borrower (collateralized by the ABS)
  - Non-recourse loan fee payable on loan closing
  - Haircut on ABS based on price volatility of asset class
  - May be pre-paid; no substitution of collateral
  - Minimize loan size of $10 million
- Treasury funds $20 billion (up to $100 billion) first loss through ownership of sub note issued by SPV
- NY Fed holds senior interest in SPV and is repaid first
- Treasury and NY Fed would share any upside
- March 2009: Federal Reserve eliminated the previously announced requirement that "Sponsor" of ABS required to comply with TARP executive compensation limitation

TALF (cont'd)

Eligible Borrowers

- U.S. persons holding eligible collateral: U.S. citizens, any business entity that is organized under the laws of the U.S., that conducts significant operations in the U.S., including any entity with a non-U.S. parent and a U.S. branch or agency of a foreign bank that maintains reserves at a Fed bank
- An investment fund: any pooled investment vehicle, hedge fund, private equity fund, mutual fund, organized under the laws of the U.S. that is managed by an investment manager that has its principal place of business in the U.S.
- No entity or investment manager controlled by a foreign government
- Must maintain an account with a primary dealer
- Borrower cannot have as collateral ABS backed by assets originated by borrower or borrower's affiliate
- Authorize primary dealer to execute master loan and security agreement

TALF (cont'd)

- Sponsor must certify:
  - ABS is TALF-eligible
  - Accountant certification of TALF eligibility obtained
  - Indemnification of New York Fed
  - Issuance of credit card and floorplan ABS does not exceed 2009 maturities
- Additional Requirements
  - Collateral must be pledged New York Fed's custodian
  - Eligible borrowers must authorize custodian to enter into a master loan and security agreement
- Next Phase for TALF
  - Creation of a "legacy securities" program
  - Current TALF designed to restart consumer and small business lending
  - Legacy TALF will support institutions removing legacy mortgage-related securities from their balance sheets

Public-Private Investment Program

(authorized under the Financial Stability Plan; a joint Treasury, FDIC, Fed and private effort)

Program Overview

- The Public-Private Investment Program aims to bolster financial institutions' ability to raise capital and to increase their willingness to lend by removing mortgage loans held by these institutions (legacy loans) and commercial and residential mortgage backed securities (legacy securities) (formerly, "toxic securities") from their balance sheets.
- The program will use $75 to $100 billion in TARP capital and capital from private investors, which will generate $500 billion in purchasing power with the potential to expand to $1 trillion.

Program Overview (cont'd)

Public-Private Investment Program

- $75 to $100 billion of TARP/FSP capital
- With financing from the FDIC and Federal Reserve, leverage $500 billion with potential to expand to $1 trillion of purchasing power

Legacy Loans Program

Capital

Public-Private Investment Funds

- Combines USG and private capital

Financing

Funds will raise FDIC guaranteed debt

- FIDC will guarantee debt
- Leverage up to 6:1

Legacy Securities Program

Capital

Public-Private Investment Funds

- Combines USG and private capital and potential USG leverage

Financing

Leverage From Federal Reserve

- Builds on existing TALF framework

MORRISON | FOERSTER

Three Basic Principles

- **Maximize the impact of each taxpayer dollar:** Using government financing in partnership with the FDIC and Federal Reserve and co-investment with private sector investors creates substantial purchasing power.
- **Shared risk and profits with private sector participants:** Private sector participants invest alongside taxpayers, with the private sector investors standing to lose their entire investment in a downside scenario and the taxpayer sharing in profitable returns.
- **Private sector price discovery:** To reduce the likelihood that the government will overpay for these assets, private sector investors, competing with one another, will establish loan prices and prices of securities purchased under the program.

Asset Types

- **Legacy Loans:** Troubled legacy loans stuck on bank balance sheets have made it difficult for banks to access private markets for new capital and limited their ability to lend.
  - Initially real estate related loans
- **Legacy Securities:** Secondary markets have become highly illiquid, and legacy securities are trading at prices below normal.
  - Initially residential and commercial mortgage-backed securities
  - These securities are held by banks as well as insurance companies, pension funds, mutual funds, and funds held in individual retirement accounts.

Legacy Loans Program

Legacy Loans Program

- The FDIC and Treasury are looking to attract private capital to purchase eligible legacy loans from participating banking entities by providing of FDIC debt guarantees and Treasury equity co-investment.

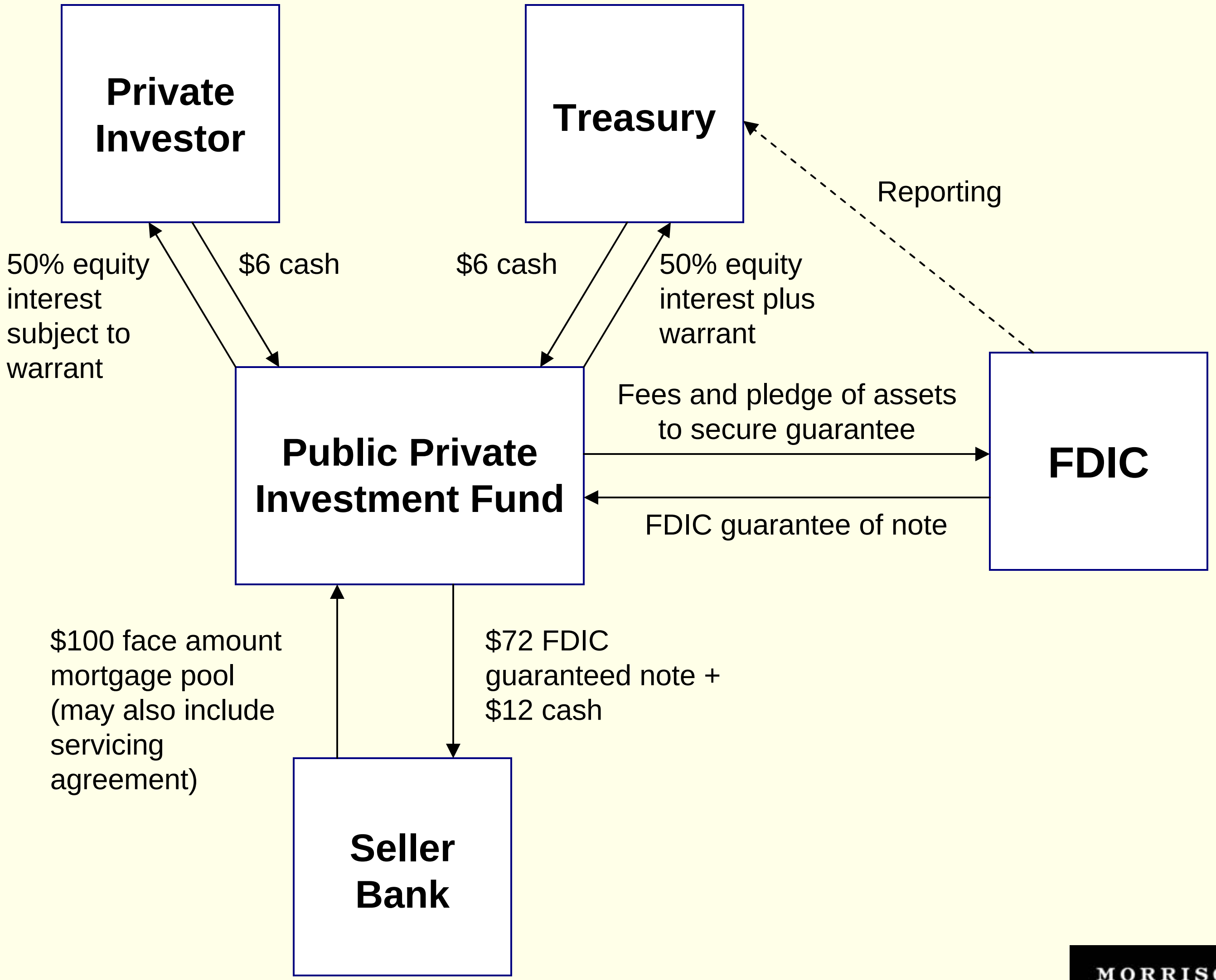
- Treasury currently anticipates that approximately half of the TARP resources for legacy assets will be devoted to the Legacy Loans Program.

  - Program allows for flexibility to allocate resources where Treasury sees the greatest impact.

Sample Investment Under the Legacy Loans Program

- **Step 1:** If a bank has a pool of residential mortgages with $100 face value that it is seeking to divest, the bank would approach the FDIC.
- **Step 2:** The FDIC would determine the debt-to-equity ratio at which it would be willing to leverage the pool (6:1 maximum leverage)
- **Step 3:** The pool would then be auctioned by the FDIC, with several private sector bidders submitting bids. The private sector investor that submitted the highest bid – in this example, $84 – would be the winner and would form a Public-Private Investment Fund to purchase the pool of mortgages.
- **Step 4:** Of the $84 purchase price, the FDIC would provide guarantees for $72 of financing, leaving $12 of equity.
- **Step 5:** The Treasury would then provide 50% of the equity funding required on a side-by-side basis with the investor. In this example, each of the Treasury and the private investor would invest $6.
- **Step 6:** The private investor would then manage the servicing of the asset pool and the timing of its disposition on an ongoing basis using asset managers approved by, and subject to oversight by, the FDIC.

Sample Legacy Loans Investment



Legacy Securities Program

Legacy Security Program

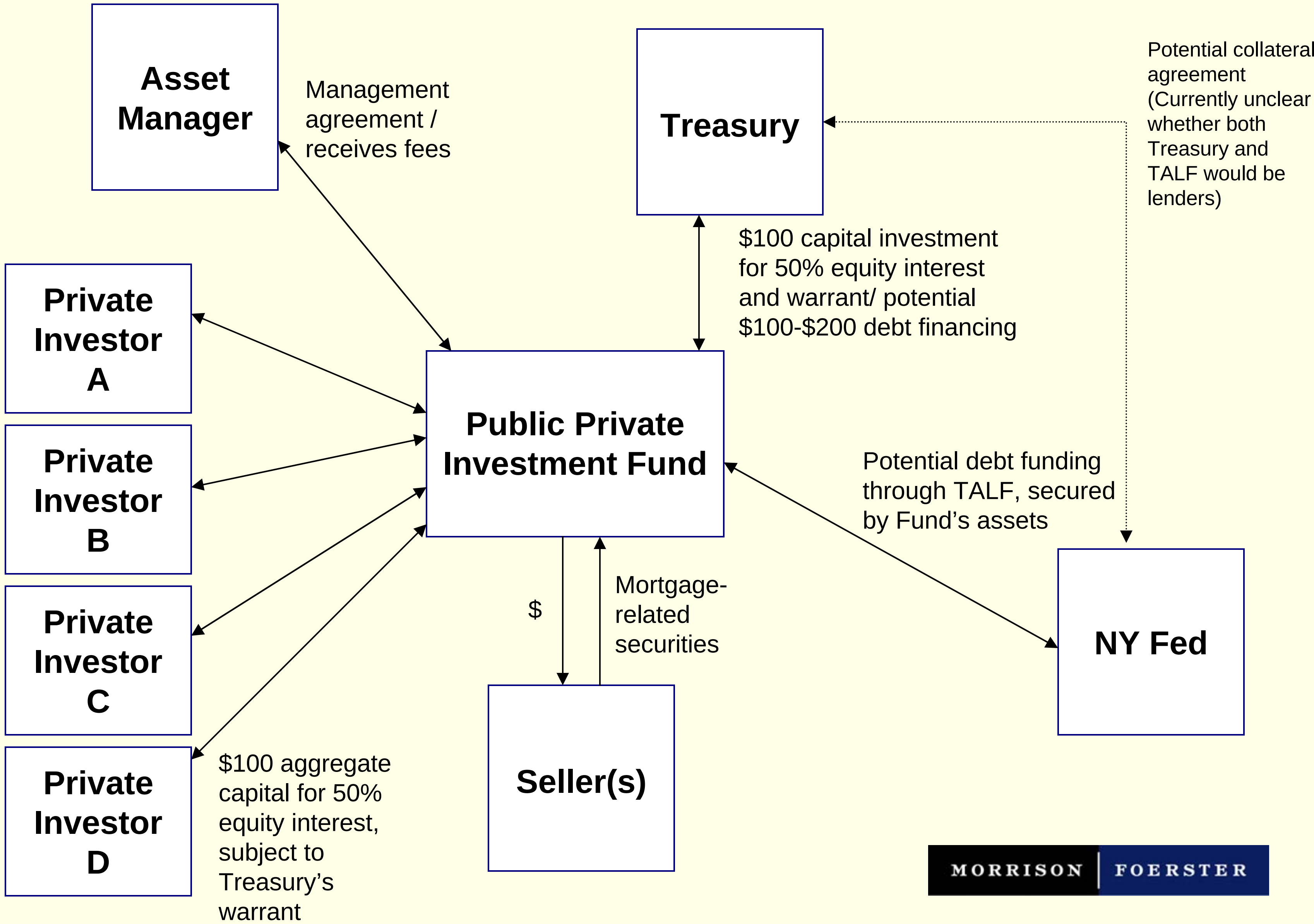
- The goal is to restart the market for legacy securities, allowing banks and other financial institutions to free up capital and stimulate the extension of new credit.
- The resulting “price discovery” also will reduce uncertainty surrounding the financial institutions holding these securities, potentially enabling them to raise new private capital.
- The Legacy Securities Program will draw from the TALF and from matching private capital.

Sample Investment Under the Legacy Securities Program

- **Step 1**: Treasury will launch the application process for managers interested in the Legacy Securities Program.
- **Step 2**: A fund manager submits a proposal to be pre-qualified to raise private capital and to participate in joint investment programs with Treasury.
- **Step 3**: The Government agrees to provide a one-for-one match for every dollar of private capital that the fund manager raises, and to provide fund-level leverage for the proposed Public-Private Investment Fund.
- **Step 4**: The fund manager commences the sales process for the investment fund and is able to raise $100 of private capital for the fund. Treasury provides $100 equity co-investment on a side-by-side basis with private capital and will provide a $100 loan to the Public-Private Investment Fund. Treasury will also consider requests from the fund manager for an additional loan of up to $100 to the fund.
- **Step 5**: As a result, the fund manager has $300 (or, in some cases, up to $400) in total capital and commences a purchase program for targeted securities.
- **Step 6**: The fund manager has full discretion in investment decisions, although it will predominately follow a long-term buy-and-hold strategy. The Public-Private Investment Fund, if the fund manager so determines, would also be eligible to take advantage of the expanded TALF program for legacy securities when it is launched.

MORRISON | FOERSTER

Sample Legacy Securities Investment



MORRISON | FOERSTER