



## SUMMARY OF THE PROPOSED ECONOMIC STABILIZATION ACT

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On October 1, the Senate passed the Emergency Economic Stabilization Act (EESA) on a bipartisan vote of 74 to 25. NAR supported both the Senate package and the one the House defeated September 29.

This summary uses some general subject headings to illustrate the many pro-taxpayer and pro-borrower provisions in the bill, as well as to showcase the provisions that encourage banks to work more closely with borrowers in foreclosures and short sales.

**Help Homeowners and Borrowers:** The legislation responded to the criticisms that lenders have been slow and/or unwilling to work with homeowners and borrowers. It encouraged negotiation in short sales and consumer efforts to refinance or reconfigure existing mortgages:

- When the Treasury (or other federal agency that holds mortgages) acquires troubled existing mortgages from financial institutions, agencies are *required* to work with lenders and mortgage servicers to find ways to avoid foreclosures.
- All federal agencies are *required* to work with servicers to facilitate loan modifications that will consider the net present value of the mortgage.
- Similar refinancing and foreclosure prevention requirements apply to mortgages involving owners of multi-family properties and owners of commercial properties. Policy goal is to assure that tenants don't lose their residence or their place of business when an owner has problems with the mortgage.
- Changes to existing mortgages can include (but are not limited to) revisions in principal, interest rate and period for repayment.

**Tax Relief:** The Senate added an extensive package of extensions of expired and expiring provisions that had passed previously on a vote of 93 – 2. Extended provisions include the 15-year life on leasehold improvements, brownfields clean-up deductions and relief from the Alternative Minimum Tax.

**Get Money into the Financial System Quickly:** The credit markets are nearly frozen. Lenders can't lend because they are receiving no payments on existing loans. The legislation allowed the government to buy troubled loans and mortgage securities. The funds that the institutions received when the government purchased the existing portfolios were to be available to issue new mortgages with more carefully specified and monitored lending standards. Provisions include:

- Create a Troubled Asset Relief Program (TARP) to purchase and guarantee the troubled assets from the financial institutions that hold mortgages and/or mortgage-backed securities.
- A new Office of Financial Stability within the Treasury to operate TARP, with input from the Federal Reserve, Federal Deposit Insurance Corp (FDIC – the agency that works with failed and failing financial institutions to insure and protect consumers), the Comptroller of the Currency (bank regulator), Office of Thrift Supervision (regulator of former savings and loan companies) and the Secretary of Housing and Urban Development.
- Timing for TARP purchases designed to assure that all the authorized \$700 Billion is not released at one time.
- First release of funds to purchase troubled assets will be \$250 Billion. Second release of up to \$100 Billion must be authorized by the President. Final \$350 Billion can be issued only on Congressional approval. Congress given 15 days to act.

**Follow, Protect and Watch Over the Money:** Congress will keep a tight rein on TARP. Congress will have the assistance of numerous agencies charged with specific tasks and reporting responsibilities.

- TARP Oversight Board at Treasury -- monthly activity reports to Congress.
- Secretary of Treasury -- detailed reports to Congress for each \$50 Billion in transactions as the transactions are completed.
- Government Accountability Office (Congress's auditor) -- financial reports about TARP activities every 60 days.
- Judicial Review -- Federal courts may issue injunctions when there is a finding that the Secretary of the Treasury has acted in a manner that is arbitrary, capricious or outside the law.
- Create a new Inspector General (IG) for TARP. An IG might be viewed as the "cop on duty" who has authority to investigate TARP's activities. IG will make quarterly reports to Congress.
- Appoint a Congressional Oversight Panel – receive and process all these reports to keep Congress apprised of the state of financial markets, activities of the regulatory system and the use of TARP's asset acquisition and disposition authority.
- Federal Reserve -- provide reports to Congress on utilization of the lending authority created earlier this year. That authority was intended to assist ailing financial institutions.

**Put Brakes on the Bad Guys:** Congress wanted to curtail "bad acts" of executives who gambled and lost.

- Assure that skilled asset managers who buy and sell TARP assets have no conflicts of interest with prior employers or firms.
- No golden parachute or severance payments to executives of companies that sell assets to TARP. If a company that sells assets to TARP does make any post-employment payments (other than retirement compensation), the executive (not the company) must pay a 20% excise tax.
- If a company sells assets to TARP, then no tax deductions for salary or other compensation will be allowed if a worker's compensation package is more than \$500,000.
- All financial regulatory agencies are required to cooperate with the FBI in its investigations of fraud, misrepresentation or malfeasance in the selling or advertising of financial products.

**Give the Taxpayers a Stake in the Profits:** Historically, when the government has intervened to shore up a company's or government's financial dealings (such as the loan guarantees made to Chrysler and the aid given to New York City during a fiscal crisis), the long-term effect has been that the government has made money back on the deal. The legislation provided an "upside" benefit for taxpayers:

- Any profits generated when the government subsequently sells TARP assets would be used to pay down the national debt.
- The government will receive warrants in the companies that participate in TARP. The warrants are similar to stock, but do not grant any voting authority to the government. If the participating company pays dividends at some future time, the warrants would allow the government to receive the dividend. Similarly, if the government sells its stake in the company, the warrants would entitle the government to any appreciation.

**Recoup What's Still Owed:** If, after five years from the date of enactment (the date the President signs a bill), the program has lost money, the sitting President will be required to present a plan to Congress for ways to recover the funds from the financial institutions that benefited from the TARP relief.