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## Troubled Assets Relief Program Summaries of the House and Senate Discussion Draft Bills

The Federal Government is considering groundbreaking legislation to address the credit crisis. This proposed legislation has implications for everyone and will impact every business. The following are summaries of the House and Senate Discussion Draft Bills relating to the Troubled Assets Relief Program. Also attached are the texts of the House and Senate Discussion Draft Bills. We will be providing you with updates and other information regarding this legislation as it progresses. Please contact us with any questions.

### Summary of the House Discussion Draft Bill (as of September 23, 2008)

- The Act is titled the “Troubled Asset Relief Act of 2008.”
- Key defined terms:
  - “Financial institutions” means any institution, including, but not limited to, banks, savings associations, credit unions, broker-dealers, and insurance companies organized and regulated under the laws of the United States or any state, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Marianas Islands, Guam, American Samoa, or the United States Virgin Islands, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government.
  - “Troubled assets” means residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case was originated or issued on or before September 17, 2008, the purchase of which the Secretary determines promotes financial market stability; and, upon the determination of the Secretary in consultation with the Chairman of the Board of Governors of the Federal Reserve, any other financial instrument, the purchase of which the Secretary determines necessary to promote financial market stability.
- The Secretary of the Treasury has authority to establish a program, called the “Troubled Assets Relief Program” (the “TARP”), to purchase, manage, and sell Troubled Assets.
  - In exercising this authority, the Secretary shall consult with the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, the FDIC, and the Secretary of Housing and Urban Development.
  - The maximum amount of authorized purchases outstanding at any one time is \$700 billion.
- Oversight includes the following:
  - Granting authority to the Comptroller General to perform ongoing

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oversight of the TARP and its agents.

- Establishment of the Congressional Oversight Panel in the legislative branch.
  - The Panel shall consist of three members of the Panel who are appointed by the Speaker of the House, two members on the basis of recommendations made by the majority leader of the House and one by the minority leader of the House, and three members of the Panel shall be appointed by the president pro tempore of the Senate, two on the basis of recommendations made by the majority leader of the Senate and one by the minority leader of the Senate. These six members shall select a seventh member who shall serve as Chairperson of the Panel.
- Disclosure to Congress and the public of financial statements of TARP, which are audited by the Comptroller General.
- Limits on Review: Decisions of the Secretary are final and committed to agency discretion.
- Foreclosure mitigation efforts include the Secretary's authority to consent to reasonable loan modification requests for residential mortgage loans.
  - The Secretary shall coordinate with the FDIC, the Federal Housing Finance Agency, the Department of Housing and Urban Development, and other Federal Government entities that hold Troubled Assets.
- Sets certain criteria for standards to be set by the Secretary for executive compensation and corporate governance for Financial Institutions to be eligible to sell assets through TARP, including limits on incentive compensation and severance compensation and shareholder voting rights for directors of such Financial Institutions.
- Includes amendments to the Truth in Lending Act (15 U.S.C. 1638(b)(2)), as amended by section 2502 of the Mortgage Disclosure Improvement Act of 2008 (Public Law 110-289), regarding mortgage disclosure requirements.
- The Secretary is authorized to establish an insurance or guarantee program for money market mutual funds similar to the insurance program provided to depositors by the FDIC; provided that such program shall not provide insurance in excess of the FDIC deposit insurance limits.
- Includes amendments to Chapter 13 of the Bankruptcy Code relating to residential mortgages that would allow debtors to modify interest rates and repayment terms on non-traditional and subprime mortgage loans and to cram down claims under such mortgages to current property values.
- Provides for using market mechanisms to make efficient use of taxpayer resources to ensure prices paid for Troubled Assets are reasonable and for sharing in potential benefits of the purchase to the selling Financial Institution.

To review the complete House discussion draft, [click here](#).

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**Summary of the Senate Discussion Draft Bill**  
*(as of September 23, 2008)*

- The Secretary of the Treasury has authority to establish a program to purchase and sell "Troubled Assets" from "Financial Institutions" through an Office of Financial Stability within the Office of Domestic Finance of the Department of the Treasury.

- The maximum amount of authorized purchases outstanding at any one time is \$700 billion.
- The Secretary may not purchase Troubled Assets unless the Secretary receives contingent shares in the Financial Institution from which such Assets are to be purchased or a senior contingent debt instrument in lieu of shares, in an amount equal to 125% of the difference between the amount paid by the Secretary for the Troubled Assets and the disposal price of such Assets in each case.
- 20% of any profits realized on sales of “Troubled Assets” are to be distributed as follows: (i) 65% to the Housing Trust Fund, which was established under Section 1338 of the Federal Housing Enterprises Regulatory Reform Act of 1992 (12 U.S.C. 4568) to preserve low-income housing; and (ii) 35% to the Capital Magnet Fund, which was established under Section 1339 of that Act (12 U.S.C. 4569) to create a grant program to increase investment in development and preservation of affordable housing, loan loss reserves, revolving loan funds, economic or community development funds, and risk-sharing loans.
- The remainder of the profits (80%) is to be distributed to the Treasury.
- Oversight includes the following:
  - An Emergency Oversight Board is established to review the exercise of authority and make recommendations;
    - Its five members shall include the Chairman of the Board of Governors of the Federal Reserve System, who would serve as the chairperson of the Emergency Oversight Board; the chairperson of the Board of Directors of the FDIC; the chairperson of the SEC; one non-government employee member with appropriate financial expertise in both the public and private sectors appointed jointly by the Majority leadership of the Senate and the House of Representatives; and one non-government employee member with appropriate financial expertise in both the public and private sectors appointed jointly by the Minority leadership of the Senate and the House of Representatives.
    - The Emergency Oversight Board may appoint a Credit Review Committee to evaluate the exercise of the purchase authority.
  - A Special Inspector General for the Troubled Asset Program; and
  - Monthly reports to Congress and weekly public reports.
- The FDIC shall manage all residential mortgages and residential mortgage-backed securities purchased by the Secretary.
  - The FDIC has authority to modify the underlying mortgage loans to prevent foreclosures and ensure long-term sustainable home ownership.
  - The FDIC shall set the terms and conditions for sale of Troubled Assets managed by the FDIC.
- Limits on Review: Any determination of the Secretary is final unless arbitrary, capricious, an abuse of discretion, or not in accordance with the law.
  - Exception: The terms of a residential mortgage loan that is part of any purchase by the Secretary shall remain subject to all claims and defenses that would otherwise apply.
- Homeowner Assistance: The agencies, including the Federal Housing Finance

Authority, the FDIC, and the Federal Reserve System shall establish a program to prevent foreclosure through loan modifications and use of the HOPE for Homeowners Program.

- These agencies also have authority to sell properties that they hold due to foreclosures to states and localities at a discount.
- The Secretary is authorized to establish an insurance or guarantee program for money market mutual funds similar to the insurance program provided to depositors by the FDIC; provided that such program shall not provide insurance in excess of the FDIC deposit insurance limits.
- There are provisions for a systematic homeowner assistance program, including modification of loans secured by residences and availability of foreclosed properties to states and localities.
- The Secretary shall require that all entities seeking to sell assets through a program established under this Act meet appropriate standards for executive compensation and shareholder disclosure in order to be eligible, which standards shall include certain limits on executive compensation, including claw-back provisions, and compensation not in the public interest.
- Key defined terms:
  - “Financial institution” means (A) any institution, including banks, savings associations, credit unions, securities broker and dealers, and insurance companies, having significant operations in the United States; and (B) upon the determination of the Secretary, in consultation with the Chairman of the Board of Governors of the Federal Reserve System, any other institution that the Secretary determines necessary to promote financial market stability.
  - “Troubled assets” means (A) residential or commercial mortgages, and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case were originated or issued on or before March 14, 2008; and (B) upon the determination of the Secretary, in consultation with the Chairman of the Board of Governors of the Federal Reserve System, any other financial instrument, as the Secretary determines necessary to promote financial market stability.

To review the complete Senate discussion draft, [click here](#).

### **Distressed Assets Practice Group**

Day Pitney’s Distressed Assets Practice Group is a multi-disciplinary team serving buyers and sellers in connection with acquisitions, dispositions, restructurings, and workouts of distressed companies, including their securities and assets. The group services national and regional clients from our offices in New York, Connecticut, Massachusetts, New Jersey and Washington DC. As a result of the 2007 merger of Day, Berry & Howard and Pitney Hardin, Day Pitney has harnessed each firm’s respective history of providing sophisticated distressed assets advice.

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