Summary of TARP Reform and Accountability Act Discussion Draft

This bill will amend the Troubled Assets Relief Program (TARP) provisions of the *Emergency Economic Stabilization Act of 2008* (EESA) to strengthen accountability, close loopholes, increase transparency, and require Treasury to take significant steps on foreclosure mitigation. It further requires that Treasury act promptly to permit the smaller community financial institutions that have been shut out so far to participate on the same terms as the large institutions that have already received funds.

Title I - Modification to TARP and TARP Oversight

Reporting, Monitoring and Accountability

General. Treasury shall require any existing or future institution that receives funding under TARP to provide no less than quarterly public reporting on its use of the funding. Treasury may establish additional reporting and information requirements and must establish mechanisms to ensure appropriate use and compliance with all terms of use of TARP funds, as described below.

Insured depository institutions. Any insured depository institution that receives funding under TARP is required to report quarterly on the amount of any increased lending (or reduction in decrease of lending) and related activity attributable to such financial assistance. Where an institution cannot categorize effect of investment it shall report on lending and related activity during the period, with comparable prior period data. Treasury, in consultation with the bank regulatory agencies, shall establish standards for the required reporting (expanded version of LaTourette amendment from House auto bill)

Agreements on use of funds. In connection with any new receipt of TARP funds, Treasury is required to reach agreement with the institution and its primary federal regulator on how the funds are to be used and benchmarks the institution is required to meet so as to advance the purposes of the Act to strengthen the soundness of the financial system and the availability of credit to the economy.

Examinations. Examinations by a recipient institution's primary federal regulator must specifically examine use of funds and compliance with any program requirements, including executive compensation and any specific agreement terms.

Acquisition of healthy institutions from TARP funds prohibited. Treasury shall require that any acquisition of another depository institution by an institution receiving TARP funds be conditioned on a finding by Treasury, in consultation with the relevant bank regulatory agencies, 1) that the acquisition reduces the risk to taxpayers or 2) that the transaction could have been accomplished without funds provided under the TARP.

Non-depository institutions. For recipients that are not insured depository institutions or that do not have a federal regulator, Treasury shall directly require any reporting and impose any other terms, and shall examine the institution, or may delegate such functions to the Federal Reserve.

Executive Compensation

All types of funding get same treatment. For any new receipt of TARP funds (except those by small financial institutions as defined below), applies the most stringent non-tax executive compensation restrictions (see note) from EESA across the board:

1) requires Treasury to prohibit incentives that encourage excessive risks,
2) provides for claw-back of compensation received based on materially inaccurate statements
3) prohibits all golden parachute payment for the duration of the investment

Stricter auto bill rules apply. Also applies the executive compensation requirements included in auto bill to any new receipt of TARP funds:

1) prohibits paying or accruing any bonus or incentive compensation to the 25 most highly compensated employees;
2) prohibits any compensation plan that would encourage manipulation of earnings to enhance compensation; and
3) requires divestment of private aircraft or leases.

Authority retroactive. Provides authority to Treasury to apply these expanded executive compensation provisions retroactively to existing recipients of direct assistance.

Removes de minimus exception. Prospectively removes de minimus exception under which institutions smaller than $300 million in assets are not subject to the golden parachute limitations in auction purchases of troubled assets.

[**Note**: Existing tax-related executive compensation provisions under EESA Section 302 are not modified in this draft bill.]

Government board representation. Authorizes Treasury to have an observer at board or board committee meetings of recipient institutions.

Directive to make TARP funds available to smaller community institutions. Directs the Treasury to promptly make funds available for smaller community institutions, few of which have received funding to date. Depository institutions that have applied and are still waiting for action on their applications or for which no funding terms have been issued (privately held institutions, S-corporations, mutually owned institutions) will not be penalized and may receive funding on terms comparable to institutions that received funds prior to this Act.

Changes to structure and authority of TARP board. The Financial Stability Oversight Board is expanded to include the Chairman of the FDIC and two additional members who are not currently federal employees, who shall be appointed by President and subject to Senate confirmation. The Board will have the authority to overturn policy decisions of the Treasury Secretary by a 2/3 vote.

Warrants. Unless otherwise specified, Treasury must obtain warrants equal to no less than 15% of any financing provided, and the $100M de minimus exclusion from the warrant requirement is removed.
No impediment to withdrawal - Subject to consultation with the appropriate bank regulatory agency, Treasury shall permit a recipient of TARP funds to repay those funds, whether or not the recipient has replaced those funds with private capital, as currently required by Treasury.

Title II - Foreclosure relief

TARP Foreclosure Mitigation Plan. Use of the second $350 billion is conditioned on the use of a minimum of $[50] billion for foreclosure mitigation, with plan required by March 15, 2009. By that date, the Secretary shall develop (subject to TARP Board approval) a comprehensive plan to prevent and mitigate foreclosures on residential mortgages. The Secretary shall begin committing TARP funds to implement the plan no later than April 1, 2009.

Required Elements of Plan. The foreclosure mitigation plans must apply only to owner-occupied residences and shall leverage private capital to the maximum extent possible consistent with maximizing prevention of foreclosures. Treasury must use some combination of the following program alternatives:

1) guarantee program for qualifying loan modifications under a systematic plan, which may be delegated to the FDIC or other contractor
2) bringing costs of Hope for Homeowner loans down (beyond mandatory changes in Title V below), either through coverage of fees, purchasing H4H mortgages to ensure affordable rates, or both
3) program for loans to pay down second lien mortgages that are impeding a loan modification subject to any write-down by existing lender Treasury may require

4) servicer incentives/assistance - payments to servicers in connection with implementation of qualifying loan modifications
5) purchase of whole loans for the purpose of modifying or refinancing the loans (with authorization to delegate to FDIC)

Implementation of Plan. In consultation with the FDIC and HUD and with the approval of the Board, Treasury may determine that modifications to an initial plan are necessary to achieve the purposes of this act or that modifications to component programs of the plan are necessary to maximize prevention of foreclosure and minimize costs to the taxpayers.

Servicer authority for foreclosure mitigation. Provides a safe harbor from liability to servicers who engage in loan modifications, regardless of any provisions in a servicing agreement, so long as the servicer acts in a manner consistent with the duty established in Homeowner Emergency Relief Act (maximize the net present value (NPV) of pooled mortgages to all investors as a whole; engage in loan mods for mortgages that are in default or for which default is reasonably foreseeable; the property is owner-occupied; the anticipated recovery on the mod would exceed, on an NPV basis, the anticipated recovery through foreclosure).

Requires persons who bring suit unsuccessfully against servicers for engaging in loan modifications under the Act to pay the servicers' court costs and legal fees.

Requires Servicers who modify loans under the safe harbor to regularly report to the Treasury on the extent, scope and results of the servicer's modification activities.

Report required by Congressional Oversight Panel. The Panel is required to report to Congress by July 1st on the actions taken by Treasury on foreclosure mitigation and the impact and effectiveness of the actions in minimizing foreclosures and minimizing costs to the taxpayers.

Title III - Automobile manufacturers

Clarifies and confirms Treasury authorization to provide assistance to automobile manufacturers under the TARP. With respect to the assistance already provided to domestic automobile industry, includes conditions of the House auto bill, including long-term restructuring requirements.

Clarifies Treasury's authority to provide support to the financing arms of automakers for financing activities to ensure that they can continue to provide needed credit, including through dealer and other financing of consumer and business auto and other vehicle loans and dealer floor loans]

Title IV - Clarification of authority under TARP for additional uses

Consumer loans. Clarifies Treasury's authority to establish facilities to support the availability of consumer loans, such as student loans, and auto and other vehicle loans. Such support may include the purchase of asset-backed securities, directly or through the Federal Reserve.

Commercial Real Estate Loans and MBS. Clarifies Treasury's authority to provide support for commercial real estate loans and mortgage-backed securities.

Muni bonds/bond insurers. Clarifies Treasury's authority to provide support to issuers of municipal securities for new issuance or remarketing of existing auction rate securities.

Title V - Hope for Homeowners Improvements

Eliminates 3% upfront premium.

Reduces 1.5% annual premium to a range between .55% and .75%, based on risk-based pricing (also makes technical fix to permit discontinuation of fees when loan balance drops below certain levels, consistent with normal FHA policy).

Raises maximum loan to value (LTV) from 90% to 93% for borrowers above a 31% mortgage debt to income (DTI) ratio or above a 43% ratio.

Eliminates government profit sharing of appreciation over market value of home at time of refi. Retains government declining share (from 100% to 50% after five years) of equity created by the refinance, to be paid at time of sale or refinance as an exit fee.

Authorizes payments to servicers participating in successful refinancings.

Administrative simplification: (a) eliminates borrower certifications regarding not intentionally defaulting on any debt, (b) eliminates special requirement to collect 2 years of tax returns, (c) eliminates originator liability for first payment default, (d) eliminates March 1, 2008 31% DTI test, (e) eliminates prohibition against taking out future second loans, (f) requires Board to make documents, forms, and procedures conform to those under normal FHA loans to the maximum extent possible consistent with statutory requirements.

Title VI - Home Buyer Stimulus

Requires Treasury to develop a program, outside of the TARP, to stimulate demand for home purchases and clear inventory of properties, including through ensuring the availability of affordable mortgages rates for qualified home buyers. In developing such program, Treasury may take into consideration impact on areas with highest inventories of foreclosed properties. The program will be executed through the purchase of mortgages and MBS using funding under HERA.

In developing such program, Treasury shall provide mechanisms to ensure availability of such reduced rate loans through financial institutions that act as either originators or as portfolio lenders.

Treasury shall make the affordable rates available under this program available in connection with Hope for Homeowner refinancing program.