



U.S. SENATE REPUBLICAN POLICY COMMITTEE

Legislative Notice

No. 2

January 15, 2009

S.J. Res. 5—TARP Disapproval Resolution

Calendar No. 16

Pursuant to P.L. 110-343, Sec. 115 (e)(2), S.J. Res. 5 was read twice and placed on the Calendar.

Noteworthy

- This document supplements the legislative notices released on September 28, 2008, and October 1, 2008, entitled “H.R. 3997 – Emergency Economic Stabilization Act” and “H.R. 1424 – Shell for the Text of the Emergency Economic Stabilization Act and Other Matters,” respectively.
- On January 12, 2009, President Bush, acting on behalf of President-elect Obama, requested the third round of funding under the Troubled Assets Relief Program (TARP) statute.
- After concluding allocation of the first \$350 billion of TARP funding by the Bush administration, the operative question is whether Congress finds it necessary and appropriate to authorize an additional \$350 billion.
- S. J. Res. 5, introduced by Senator Vitter, was placed on the Senate Legislative Calendar on January 13, 2009. A similar resolution (H. J. Res. 3) was introduced in the House of Representatives by Representative Virginia Foxx (R-NC) on January 6, 2009.
- Passage and enactment of the Vitter resolution would prevent the Secretary of the Treasury from accessing the second half of TARP funding.

Background

On October 3, 2008, the Emergency Economic Stabilization Act of 2008 (EESA) was signed into law after passing the Senate by a vote of 74-25 and the House by a vote of 268-148.¹ Since its enactment, the Treasury Department issued rules and guidelines to implement these provisions, created a new Office of Financial Stability, hired and transferred a number of staff to the new office, and allocated \$350 billion authorized by the law (TARP provided \$250 billion immediately upon enactment and an additional \$100 billion via the submission of a written certification by President Bush to Congress).

Title I of EESA consists of the Troubled Assets Relief Program (TARP) with the stated purpose of restoring liquidity and stabilizing the U.S. financial system. The Treasury Department has created six new TARP-related programs with diverse functions as follows:

Capital Purchase Program (CPP) – Allocated by the Treasury Department at \$250 billion of the first \$350 billion, CPP has invested approximately \$178 billion² in purchasing senior preferred shares in healthy financial institutions, both public and private. Minimum amounts available to participating institutions are one percent of risk-weighted assets, with a maximum of the lesser of \$25 billion or three percent of risk-weighted assets. Such shares are structured similar to bonds to pay 5% per annum for the first five years and 9% thereafter.

Systemically Significant Failing Institutions (SSFI) – A much more targeted program, SSFI is designed to provide capital to institutions that “could impose significant losses on creditors and counterparties, call into question the financial strength of other similarly situated financial institutions, disrupt financial markets, raise borrowing costs for households and businesses, and reduce household wealth. The resulting financial strains could threaten the viability of otherwise financially sound businesses, institutions, and municipalities, resulting in adverse spillovers on employment, output, and income.” To date, its only investment has been in AIG at \$40 billion.

Automotive Industry Financing Program (AIFP) – As provided by the Treasury Department, this program is to “prevent a significant disruption of the American automotive industry that poses a systemic risk to financial market stability and will have a negative effect on the real economy of the United States.” Under this program, Treasury has committed a total \$19.4 billion with an additional \$4 billion available under certain conditions. Specifically, GMAC received \$5 billion, General Motors (GM) obtained \$10.4 billion (includes \$1 billion for an additional GM investment in GMAC), and Chrysler received \$4 billion. The U.S. auto companies are required to develop and submit a restructuring plan for long-term financial viability, or risk loan revocation (The new administration would have authority to rewrite these conditions as it sees appropriate). GM will also receive an additional \$4 billion on February 17, 2009, subject to approval of additional TARP funding.

¹ This represents the second House vote on the bill after it rejected a similar bill on September 29, 2008.

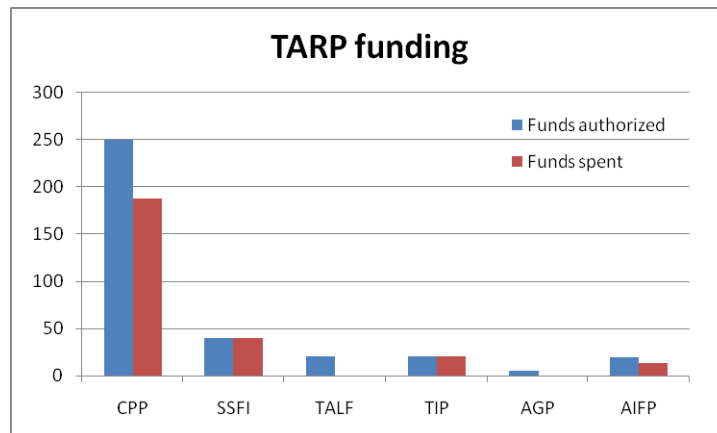
² As of January 7, 2009.

Targeted Investment Program (TIP) – TIP was created to provide investments in financial institutions facing a lack of market confidence that could result in significant market disruption and threaten other financial institutions. To date, the only transaction conducted under TIP resulted in a \$20 billion additional investment in Citigroup. This is in addition to the \$25 billion provided to Citigroup under the CPP. This allocation came with requirements that Citigroup provide the Treasury Department an 8% annual dividend, payable quarterly, in addition to new limitations on executive compensation standards and restrictions on corporate expenditures.

Asset Guarantee Program (AGP) – Designed to provide guarantees for assets for financial institutions that face a risk of quickly losing market confidence due to large percentages of investments or holdings in distressed or illiquid assets, this program has not been used yet. The Treasury Department is determining whether to use this program, which was required to be created pursuant to section 102 of EESA, for the insurance features and backing provided to Citigroup. Under the law, the Secretary is authorized to set and collect premiums from participating financial institutions by category or class of asset, taking into consideration the credit risk characteristics of the asset being guaranteed, with premiums sufficient to cover anticipated claims, based on actuarial analysis, and ensure that taxpayers are fully protected. In the case of Citigroup, the federal government agreed to guarantee up to a \$306 billion asset pool of loans and securities backed by residential and commercial real estate; Citigroup faces the first losses (up to \$29 billion of losses), the Treasury Department faces the second loss position (up to \$5 billion from TARP), and the Federal Deposit Insurance Corporation takes the third loss position at \$10 billion. In addition, the federal government agreed that additional losses would be allocated on a 90%/10% split between the federal government and Citigroup.

Term Asset-Based Securities Loan Program (TALF) – Under the TALF, Treasury will provide \$20 billion of credit protection to the Federal Reserve’s \$200 billion to be used for non-recourse three year loans to holders of AAA-rated asset-based securities consisting of new and recently originated consumer and small business loans. These securities would be collateralized by student loans, auto loans, credit card loans, and SBA loans. To date, no funding has been spent on this program.

The following chart compares how Treasury has allocated funds to those it has actually funded:



TARP Effectiveness

Numerous Members of Congress, congressional committees, federal government agencies, and various organizations with oversight responsibility are tackling the question of whether the first half of TARP funds was effective in meeting the intended purpose. This task has proven elusive as it is exceptionally hard to show that absent the passage of TARP the U.S. economy would be better or worse today.

At the current time, TARP proponents argue that one way to determine the law's success is to examine a snapshot of various measurements comparing the current situation in the credit markets to that prior to TARP's enactment. To this point, Neel Kashkari, Assistant Treasury Secretary, announced on January 13, 2009, that the Treasury Department is in the process of developing a mechanism to compare lending levels by those financial institutions that have received TARP funds with similar institutions that have not. The data is expected to come from the quarterly reports filed by all financial institutions and monthly data filed by large institutions.

Similarly, the Government Accountability Office (GAO) established in its recent report³ four indicators to determine whether the credit situation is improving. These are as follows: (1) the TED spread (the difference between the 3-month average interest rates for the London Interbank Offered Rate (LIBOR) and 3-month U.S. Treasury bill yields); (2) corporate spreads (the difference between Moody's Investor Service Baa bond rates and Aaa rates and 10-year Treasury bond yields); (3) mortgage rate spread (the difference between 30-year fixed rate conforming loans and 10-year Treasury bonds); and (4) mortgage originations. In addition, GAO is also examining whether to expand this list to include mortgage foreclosures, the prime lending rate, the survey of lending standards, commercial paper interest rates, commercial bank assets, household and business debt, stock prices, and housing prices.

Disapproval Resolution Process

Not dissimilar to the disapproval resolution process provided in the Congressional Review Act, Section 115 of EESA outlines the specific procedures for considering a request by the president to access the additional \$350 billion of TARP funding. A quick summary of the expedited process is as follows:

- The president submits a written certification and transmits a written report outlining the Treasury Secretary's plan to exercise authority to access the additional \$350 billion;
- Unless a joint resolution of disapproval outlining objections to the Secretary's plan is enacted within 15 days of submission of the report, the additional funds are authorized;

³ GAO report entitled "Troubled Assets Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency," December 2008.

- A motion to consider a disapproval resolution may be brought up after introduction, and becomes a privileged motion after four days of the president’s written report being submitted (with privilege expiring six days after being submitted);
- Debate on the resolution is limited to 10 hours, equally divided between the majority and minority leaders, and after time is disposed, a vote on passage is provided;
- A House-passed joint resolution is not referable to Senate committee, and that resolution becomes eligible for expedited procedures in the Senate; and
- A veto of a joint resolution by the president would generate an opportunity for the Senate to consider overriding the veto; in such a circumstance, debate would be limited to one hour.

New Purposes and Restrictions on TARP

President-elect Obama’s transition team released a letter signed by Larry Summers, Director-designate of the National Economic Council, to Senate and House leadership announcing broad themes for expanding TARP’s purposes and restricting future (and potentially past) TARP funds. The letter highlights a number of areas where new purposes and restrictions are likely:⁴

- Expand the scope of recipients – “strengthen financial institutions and restart lending for small businesses, auto purchases, and municipalities.”
- Increase transparency and oversight – “analyze the recommendations of the Congressional Oversight Panel and other oversight bodies and implement those we believe will make the program more effective.”
- Directly impose foreclosure mitigation proposals – “reduce the number of preventable foreclosures by helping to reduce mortgage payments for economically stressed but responsible homeowners while also reforming our bankruptcy laws and strengthening existing housing initiatives like Hope for Homeowners.”
- Increase conditions on recipients – “limit executive compensation until taxpayer money is paid back, ban dividend payments beyond de minimis amounts, and put limits on stock buybacks and the acquisition of already financially strong companies.”
- Prevent funding to healthy institutions – “invest money only when sufficient private capital cannot be attracted.”

Separately, legislation has been introduced by House Financial Services Chairman Barney Frank to impose these and many more obligations on the Treasury Department’s use of TARP funding. This legislation is expected to be considered and approved by the House this week but is not expected to be combined with the disapproval resolution process in the Senate.

Strong concerns have been raised regarding the use of TARP funds for industry sectors, along the lines of the AIFP. In fact, since the creation of the AIFP, numerous requests have been made from other segments of the economy to be specifically included. Such an action may seriously reduce flexibility or available funds necessary to address a systemic risk faced by other financial

⁴ Quotes are taken from Summers’ letter from January 12, 2009.

institutions. Additionally, a sector-by-sector type allocation may promote inefficient or improper uses of funds by recipients. In particular, the new limitations and purposes discussed publically, such as those contained in the Frank bill and the Summers letter, have further undercut support for additional TARP funds.

Bill Provisions

The TARP statute establishes the specific language required and prohibited (e.g., a preamble) for the resolution. The Vitter resolution (S. J. Res. 5) appears to comply with the form required by the disapproval resolution provisions (section 115(c)(2)).

Cost

No Congressional Budget Office (CBO) score is available at the time of this publication. It is reasonable, however, to estimate that the enactment of the resolution would result in substantial savings to the U.S. government. In fact, given the possibility of getting TARP funds back, CBO has estimated the total subsidy cost of the entire \$700 billion in TARP funds at \$62 billion.

Administration Position

The current administration has made the request for the second tranche of TARP funding on behalf of President-elect Obama. The Obama transition team is supportive of the request: “Today, he [Obama] is asking for the authority to implement the rest of the financial rescue plan...”⁵

⁵ Ibid.