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Treasury Seeks Comments On Guarantee Program For Troubled Assets Under EESA

The US Treasury Department has requested public comment on all aspects of the troubled assets guarantee program called for by the newly enacted Emergency Economic Stabilization Act of 2008 ("EESA"). Comments must be received by the Treasury by October 28, 2008, in order to be assured of consideration.

Section 102 of EESA requires the Secretary of the Treasury to establish a voluntary program to guarantee troubled assets that were originated or issued before March 14, 2008. The guarantee program was not a principal focus of congressional consideration of EESA and was added to provide an alternative to direct government acquisition of troubled assets. Consequently, EESA provides little firm guidance regarding the scope or purpose of the guarantee program. The definition of "troubled assets" potentially includes any financial instrument that the Secretary, in consultation with the chairman of the Federal Reserve Board, determines it is necessary to purchase to promote financial market stability. Eligibility to participate in the program, the valuation of troubled assets, the pricing of coverage and the triggering of payouts are among the issues that the Secretary must address.

The absence of congressional guidance makes it important that the Treasury receive well-considered public comments on the guarantee program. We urge those interested in the program to comment. For individual institutions, particularly non-depository institutions that hold troubled assets, public comment may determine whether or to what extent they can participate and whether the program is on terms that are beneficial to them. Subsequent challenges to the operation of the program or to the Treasury's authority may turn on whether an institution participated or an issue was raised in the comment process. The resolution of the guarantee program's features also will have significant consequences for the success of the program as a whole.

The Secretary has posed a series of detailed questions in order to elicit specific comments on what the guarantee program should do and how it should operate. These questions include the following:

- What institutions should be eligible to participate?
- What assets should be covered? For various categories of assets (such as home mortgage purchase loans, home equity loans, mortgage-backed securities and other financial instruments), what features should be considered when offering a guarantee and for measuring the payout on a guarantee?

- Should a troubled asset be valued at book or at a lesser value? Should various categories of assets be treated differently?
- How should premiums be set? Should premiums be related to the price of similar assets under the Treasury's program to purchase troubled assets under Section 101 of EESA? Are there market mechanisms that can be used to set premiums?
- What administrative or operational challenges are created? (For example, short of analyzing troubled assets individually, how can adverse selection of the assets offered be prevented?) What legal, accounting or regulatory issues are raised?

The complete notice can be found on the Treasury website. To view, please click here.

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