Independent Insurance Agents & Brokers of America, Inc.

This FAQ regarding the Emergency Economic Stabilization Act of 2008 is not intended to provide specific advice about individual legal, business or other questions. It was prepared solely for use as a guide, and is not a recommendation that a particular course of action be followed. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.

SUMMARY OF THE EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

Background and Purpose of this Summary

The Emergency Economic Stabilization Act of 2008 ("Act") was signed into law by President Bush on October 3, 2008. The final version of the Act can be found **here**. This law authorizes the Department of the Treasury (Treasury) to establish a troubled asset purchase program (TARP) and a principal and interest payment guarantee program for purchasers of troubled assets. This law also includes the extension of several expiring tax breaks for businesses and individuals as wells as energy programs and provisions regarding mental health benefits.

The purpose of this summary is to provide an overview of the major features of the Act and to consider some of the issues related to its implementation.

1. What are the key economic stability provisions of the Act?

The Act provides authority for the Federal Government, through Treasury, to purchase and insure certain types of troubled assets for the purposes of providing stability to and preventing disruption in the economy.

- Authorizes the Treasury Secretary to establish a TARP to purchase troubled assets from financial institutions.
- Authorizes $700 billion for implementation of TARP. The Treasury Secretary ("Secretary") may immediately use up to $250 billion. Upon a presidential certification of need, the Secretary may access an additional $100 billion. The final $350 billion may be accessed upon Presidential request unless Congress disapproves.
- Provides the Secretary with the authority to manage troubled assets, including the ability to determine the terms and conditions associated with the disposition of troubled assets.
- Establishes an Office of Financial Stability within Treasury, a Financial Stability Oversight Board, and a Congressional Oversight Panel.
- TARP expires on December 31, 2009 but may be extended.

- If, after five years, TARP results in a net loss, the President is required to submit a legislative proposal on seeking reimbursement from participating financial institutions.
- Provides a tax break to holders of Fannie Mae and Freddie Mac preferred stock.
- Raises the FDIC and the National Credit Union Share Insurance Fund deposit insurance limits from $100,000 per account to $250,000 until December 31, 2009.

2. What financial institutions can participate in TARP and are insurance companies included?

- Treasury can purchase troubled assets from any financial institution on terms and conditions it determines in consultation with other federal regulators.
- Insurers are included in the definition of financial institutions permitted to sell mortgage loans, mortgage-backed securities and other troubled assets to Treasury.

3. What is the definition of a troubled asset?

- Residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, originated or issued on or before March 14, 2008.
- Any other financial instrument that, after consultation, the Secretary determines the purchase of which is necessary to promote financial market stability.

4. What limitations are placed on TARP participation and implementation?

- The Secretary is required to take a number of considerations into account, including the interests of taxpayers, minimizing the impact on the national debt, providing stability to the financial markets, preserving homeownership, the needs of all financial institutions regardless of size or other characteristics, and the needs of local communities.
- Institutions may not sell troubled assets for more than paid.
- Requires profits from the sale of troubled assets to be used to pay down the national debt.
- Requires the Secretary to examine the long-term viability of an institution in determining whether to directly purchase assets under the TARP.
- Provides that Treasury will promulgate executive compensation rules governing financial institutions that participate in TARP:
  - Where Treasury buys assets directly, the institution must observe standards limiting incentives, allowing clawback and prohibiting golden parachutes.
  - When Treasury buys assets at auction, an institution that has sold more than $300 million in assets is subject to additional taxes, including a

20% excise tax on golden parachute payments triggered by events other than retirement, and tax deduction limits for compensation limits above $500,000.

- In order to cover losses and administrative costs, and to allow taxpayers to share in potential equity appreciation, Treasury will receive non-voting warrants from participating financial institutions.
- The Secretary is required, within 2 business days of exercising authority under the Act, to publicly disclose the details of any transaction

5. Will insurance companies participate in TARP?

Because of the limitations on participation, such as the nonvoting warrants, public disclosure of participation and executive compensation limitations, it is unclear whether insurance companies will choose to participate in TARP.

6. What does the Act mean for independent insurance agencies and agents?

While it is highly unlikely that IIABA members will participate directly in TARP, many provisions of the Act are intended to provide more stability to the financial markets, especially in the area of credit liquidity, which could indirectly help independent insurance agencies. Even though they are not to blame for the current economic meltdown, the ability to access credit is especially important to small businesses, and the Act should help to revive these frozen markets to some extent. The increase in the FDIC limit from $100,000 to $250,000 also should help provide more stability to the banking industry, maybe helping smaller banks the most. As for bank customers, this limit increase also likely will have the most positive impact on small businesses. In the words of the National Federation of Independent Businesses (NFIB), this Act is "[n]ot about Wall Street but a firewall for Main Street."

7. What tax breaks were extended by the Act?

For individuals, among other provisions, the Act includes an alternative minimum tax (AMT) patch for tax year 2008, the ability to continue to deduct state or local general sales tax in lieu of income tax for tax years through 2009, the ability to deduct the costs of qualified higher education expenses for qualified taxpayers through 2009, and extension of the additional standard deduction for real property taxes for non-itemizers through 2009. For businesses, among other provisions, the Act provides a revised research tax credit, extends the 15-year cost recovery for leasehold improvements through 2009, extends the New Markets Tax Credit through 2009, extends certain enhanced deductions for charitable contributions by businesses through 2009, extends the Work Opportunity Tax Credit for hurricane Katrina-affected employers, and extends the increased rehabilitation credit for Gulf Opportunity Zone structures through 2009.

8. What are the provisions of the Act regarding mental health parity?

The Act mandates that insurers who cover mental illnesses must now provide benefits, copayments and treatment limits equal to those for physical ailments.

9. How did my Congressman and Senators vote on the Act?

Please click **here** to find out how your Representative voted on the bill and **here** to find out how your Senators voted.

Please don't hesitate to contact the IIABA Government Affairs staff if you have any questions concerning the legislation.