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U P D A T E

News of Developments in the Financial Sector and Related Areas

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New Treasury TARP Program

Recently President Obama announced a new plan to encourage small business lending by providing additional capital support to community banks. The plan will be put into place by the Treasury under the Capital Purchase Program ("CPP") which was created in October 2008 to stabilize the financial system by providing capital to viable financial institutions throughout the United States. Under the program, capital will be available to viable institutions with less than $1 billion in assets. In order to be eligible for the capital, participants must first submit a plan in which they would explain how the capital will allow them to increase lending to small businesses. In addition, participants will be required to submit quarterly reports detailing their small business lending activities.

Subject to approval by their primary federal banking regulator, participants will be eligible to receive new capital at an initial dividend rate of 3% as compared to the 5% available under the original CPP program. The dividend increases to 9% after five years to encourage timely repayment. Participants will be eligible to receive capital totaling up to 2% of risk-weighted assets.

Our firm has experience in representing institutions in the CPP program, and is available to assist and answer questions.

FDIC Prepaid Assessments

At its meeting on September 29, 2009, the Federal Deposit Insurance Corporation's ("FDIC") Board of Directors adopted a proposed rule to restore losses to the Deposit Insurance Fund ("DIF") by requiring insured institutions to prepay their estimated quarterly risk-based assessments on December 30, 2009, for the fourth quarter 2009 and for all of 2010, 2011 and 2012. The FDIC estimates that the total prepaid assessments collected would be approximately $45 billion. An institution's assessment rate would be its total base assessment rate in effect on September 30, 2009, with that rate being increased by three basis points for all of 2011 and 2012. For purposes of calculating the prepaid amount, an institution's third quarter 2009 assessment base is increased quarterly by an estimated 5 percent annual growth rate through the end of 2012. Changes to the underlying data received by the FDIC after December 24, 2009 would not affect an institution's prepayment amount.

Each institution would record the entire amount of its prepaid assessment as a prepaid expense and asset on its balance sheet as of December 30, 2009. As of December 31, 2009, and each quarter thereafter, each institution would record an expense, or a charge to its earnings, for its quarterly assessment invoiced on its quarterly statement and offsetting credit to the prepaid assessment until the asset is exhausted. Once the asset is exhausted, the institution would record an expense and an accrued expense payable each quarter for its regular assessment, which would be paid in arrears to the FDIC at the end of the following quarter. If the prepaid assessment is not exhausted by June 30, 2013, any remaining amount would be returned by the FDIC to the institution. The federal banking agencies' risk-based capital regulations permit an institution to apply a zero percent risk weight to claims on U.S. government agencies, and the FDIC has indicated that the prepayment will qualify for such treatment.

The FDIC will exercise its supervisory discretion to exempt an institution from the prepayment requirement if the FDIC determines that the prepayment would adversely affect the safety and soundness of the institution. An institution may apply to the FDIC for an exemption of all or part of the prepayment if the prepayment would significantly impair the institution's liquidity or otherwise create significant hardship. The FDIC will consider exemption requests on a case-by-case basis. An application for exemption must include a full explanation of the institution's need for the exemption and include supporting documentation, such as current financial statements and cash flow projections, a description of management's plans to correct the circumstances that caused the inability of the institution to pay the assessment and any other relevant information that the FDIC deems appropriate. The FDIC will notify an institution applying for an exemption no later than December 24, 2009.

An institution will be permitted to transfer any portion of its prepaid assessment to another insured institution providing that the institutions notify the FDIC's Division of Finance and submit a legal agreement signed by the representatives of both institutions. In their submission to the FDIC to transfer a portion of the prepaid assessment, the institutions must include documentation that each representative has legal authority to bind the institution.

One of the purposes of the prepaid assessment is to allow the FDIC to rebuild the DIF to its statutory 1.15% reserve level. The FDIC projects that the DIF will not be solvent again until 2012 and will not reach its statutory minimum balance until 2017. The FDIC has given itself eight years to rebuild the DIF to its statutory reserve level of 1.15%

On June 30, 2009, the DIF had $10.4 billion of reserves and a reserve ratio of 0.22%. During the next four years, the FDIC estimates that the DIF will incur approximately $100 billion in costs relating to the closure of institutions. This estimate is significantly higher than the $70 billion projected by the FDIC in May 2009.

Other alternatives available to the FDIC in going forward include another special assessment as in the special assessment on each institution's assets minus tier 1 capital which was collected on September 30, 2009, and borrowing on its credit line with the Treasury Department. Borrowings of the FDIC from the U.S. Treasury would be treated as a liability and would have no affect on the DIF's reserve level, whereas assessments on insured institutions increase the DIF reserve.

The FDIC has posted on its website at *www.fdic.gov* a listing of frequently asked questions regarding the reasoning of the FDIC relating to the prepaid assessment. The FDIC states that the line of credit with the U.S. Treasury is available in the event of an emergency or other unforeseen event, but the current liquidity need does not represent an emergency and can be planned for and met by industry resources. The FDIC has an assessment rate calculator on its website which institutions may use in calculating the amount of the prepaid assessment.