

# THOMPSON HINE

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## Financial Stability Plan

The Obama administration on February 10, 2009 presented its Financial Stability Plan (the “Plan”). It will be pursuant to this Plan that the remaining \$350 billion of TARP funds will be administered. This is separate and apart from the stimulus package (the American Recovery and Reinvestment Act). The Plan is presented more as an overview with many details still to be announced.

The Plan is composed of six tenets. First is the Financial Stability Trust, which is intended to strengthen banks in order to support economic recovery. Under this tenet, U.S. financial institutions will undergo a Comprehensive Stress Test, which encompasses several factors including an increased disclosure and transparency scheme to be developed by the Treasury Department, the Securities and Exchange Commission and the bank supervisors. It will also require the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency and Office of Thrift Supervision to develop a consistent and realistic approach to assessing a financial institution’s exposure. There also will be a forward-looking assessment of the bank’s capital level and its ability to continue lending and to absorb potential loss. Banks with assets in excess of \$100 billion will be required to participate in the Comprehensive Stress Test. Upon completion of the test, a bank would be eligible under the Capital Assistance Program (CAP) to receive from the Treasury Department a preferred security investment in convertible securities that the bank can convert into common equity as needed. In short, this investment functions as “contingent equity” that the bank can access as needed to continue lending in this difficult economic environment. Presumably, access to the equity will be contingent on the bank lending. Any investment made by Treasury will be held through the Financial Stability Trust.

The second tenet is the Public-Private Investment Fund. The Treasury Department envisions a fund that would involve putting public or private capital with public financing to leverage the capital to purchase troubled assets. The Treasury Department also expects that the pricing of the troubled assets would be determined by the private sector.

The third tenet, and one of the bolder initiatives of the Plan, is the \$1 trillion expansion of the Term Asset-Backed Securities Loan Facility. Recognizing that secondary market transactions and securitization transactions account for almost half of the credit in our economy, the Treasury Department expects this expansion to support such transactions by providing financing to investors in asset-backed securities. This in turn should lower interest rates on auto and small business loans and credit cards.

The fourth tenet addresses the frustration and anger of the public regarding the lack of transparency and accountability with respect to the use of the first \$350 billion by calling for a significant increase in oversight. Entities receiving funds will be required to show how all funds received enable them to

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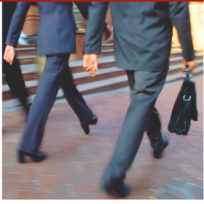
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preserve or create new lending. To show such metrics, a plan for the use of funds must be submitted with the application, detailed monthly reports will be submitted to the Treasury Department and all such information will be posted to [FinancialStability.gov](http://FinancialStability.gov). The Treasury Department has also committed to posting all contracts to this web site as well as the terms and pricing of any investments. Recipients of capital investments will also be required to participate in mortgage foreclosure mitigation programs; limit common dividends, stock repurchases and acquisitions to ensure funds received will be used to promote lending; and restrict executive compensation. There are also procedures that prohibit political interference in investment decisions.

Fifth is Housing Support and Foreclosure Prevention. A comprehensive plan will soon be released that addresses the reduction of mortgage rates, commits \$50 billion to reduce monthly payments on owner-occupied middle-class homes, establishes consistent and streamlined mortgage modification guidelines, requires all recipients to participate in foreclosure mitigation plans and builds greater flexibility into Hope for Homeowners and the FHA to enable loan modification.

The sixth and final tenet is the Small Business and Community Lending Initiative, which is expected to combat the 57 percent decline last quarter of small business and community lending. The initiative will address increasing the guarantee of SBA loans to 90 percent, reducing fees for such loans and providing funds for oversight and creation of a more streamlined system for the processing of loan applications.

#### **FOR MORE INFORMATION**

If you have questions about the Financial Stability Plan, please contact:

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