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## News from [Husch Blackwell Sanders](#)

### House of Representatives Defeats Historic Financial Bail-Out Legislation

After an intense week of negotiation and debate between the Administration and Congress, the House of Representatives finally voted on compromise legislation intended to restore liquidity and stability to the country's financial system. However, the bill failed to pass by a narrow margin early Monday afternoon.

The Emergency Economic Stabilization Act of 2008 ("EESA") would have given broad authority to the Secretary of the Treasury Department to immediately invest \$250 billion in the troubled assets of covered financial institutions with additional access to the remaining \$450 billion subject to various authorized approvals. The draft Act established a number of new administrative and legislative agencies to assist and oversee the Secretary's activities including an Office of Financial Stability within the Treasury Department's Office of Domestic Finance, a Financial Stability Oversight Board, and a Congressional Oversight Board as well as a new Special Inspector General for the Troubled Asset Program to oversee audits and provide independent and objective leadership for the program.

Other key provisions in the proposed legislation included:

- Limits on executive compensation for participating firms: The Secretary is required to impose limitations applicable to the top five most highly paid executives at a covered institution from which the Secretary makes a direct purchase of troubled assets. In addition, the Secretary must require certain lesser limitations on compensation paid to new executives at institutions from which the Secretary acquires troubled assets via an auction or reverse auction method. Finally, the bill eliminates the ability of participating institutions to deduct executive compensation that is over \$500,000 pursuant to IRS 162(m).
- Authority to suspend mark-to-market accounting standards: The bill authorizes the SEC to suspend application of mark-to-market accounting standards and to direct that a study of the standard be conducted to determine the impact that imposition of the standard may have had on bank failures and to consider alternate standards.
- Government ownership rights in participating firms under certain circumstances: The Secretary is required to obtain warrants for voting,

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non-voting or preferred stock from public companies, or warrants for common or preferred stock or senior debt instrument from all other companies. The Act limits the requirements to purchases over \$100 million from a covered institution throughout the program.

- Policy protections for homeowners favoring foreclosure as-last-resort on residential mortgage assets: The bill requires all managers of residential mortgage based assets to develop a program to provide a "systematic approach" for preventing foreclosure on the properties securing the loans through loan modifications and the use of the HOPE for Homeowners Program.
- Insurance policies for trouble asset relief as an alternative to asset sales: The final version included a new provision authorizing the Secretary to establish a program to guarantee troubled assets in amounts not to exceed 100% of the payment principal and interest. Premiums for the program are to be paid by the participating financial institutions in amounts necessary to establish sufficient reserves to meet anticipate claims.
- Extending certain type of tax relief:
  - Permits banks holding preferred stock in Fannie Mae or Freddie Mac to treat any losses as ordinary loss provided that the stock was owned on September 6, 2008 or sold between January 1 and September 6, 2008 thereby potentially reducing these banks' need for capital.
  - Extends the current tax relief on forgiven mortgage debt through January 1, 2013.

Proposals from earlier House and Senate versions that included bankruptcy relief for residential homeowners and imposed corporate governance requirements on program participants were dropped from the final draft.

Additional information including full text of the proposed legislation and summary analysis is available on the firm website through the following link:

Click [Here](#)

The information on this site will be updated throughout the week until conclusion is reached on the passage of some form of financial relief or the proposals are abandoned.

Please contact your Husch Blackwell Sanders attorney or one of the firm's Business Services attorneys for additional information.

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