

EMERGENCY ECONOMIC STABILIZATION ACT SIGNED INTO LAW

IN EARLY OCTOBER 2008, Congress acted quickly to pass legislation in an effort to repair the U.S. economy. The Senate amended the "Emergency Economic Stabilization Act of 2008" bill and passed it by a vote of 74 to 25 on October 1, 2008. Two days later the House voted 223 to 205 to approve of the Senate's changes. Hours later, the President signed the Emergency Economic Stabilization Act of 2008 into law. Provisions of the 451-page law that are of particular interest to IREM Members are highlighted below.

HIGHLIGHTS OF TAX PROVISIONS:

Extends the Energy Efficient Commercial Buildings Deduction for five years, through December 31, 2013.

Current law allows taxpayers to deduct the cost of energy-efficient property installed in commercial buildings. The amount deductible is up to \$1.80 per square foot of building floor area for buildings achieving a 50 percent energy savings target. The energy savings must be accomplished through energy and power cost reductions for the building's heating, cooling, ventilation, hot water, and interior lighting systems.

Provides AMT relief. The Alternative Minimum Tax (AMT) was created in 1969 to prevent a small number of wealthy Americans from evading taxes. The AMT has come to affect more people every year because it is not indexed for inflation. This law prevents 26 million Americans from paying more taxes this year.

Natural disaster tax relief. Provides temporary tax relief for areas damaged by severe storms, tornados and flooding in the Midwest during 2008. Also, temporary tax-exempt bond financing and low-income housing tax relief for areas damaged by Hurricane Ike.

Extends leasehold improvements. Extends the 15-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements through January 1, 2010 for property placed in service after December 31, 2007. Extends the 15-year recovery

period for depreciation of certain improvements to retail space through January 1, 2010 for property placed in service after December 31, 2008.

HIGHLIGHTS OF THE TROUBLED ASSET RELIEF PROGRAM:

Purchases of troubled assets. The U.S. Treasury is authorized to establish a Troubled Asset Relief Program (TARP) to purchase troubled assets from financial institutions. The law includes provisions to prevent unjust enrichment by participants in the program. A financial stability oversight board will be established to ensure the policies are in accordance with the economic interests of the United States.

Mitigation of foreclosures. For mortgages and mortgage-backed securities acquired through TARP, the Treasury Secretary must plan to mitigate foreclosures and to encourage servicers of mortgages to modify loans. The Secretary will be allowed to use loan guarantees and credit enhancements to avoid foreclosures.

Limits executive compensation. The Treasury Secretary will write executive compensation rules governing financial institutions that sell the government troubled assets. For assets the Treasury buys directly, the financial institution must observe standards limiting incentives and prohibit golden parachutes.

Authorization to purchase troubled assets. Authorizes the full \$700 billion requested by the Treasury Secretary for implementation of TARP. The Secretary is allowed to use \$250 billion of those funds immediately under this law. Upon a Presidential certification of need, the Secretary may access an additional \$100 billion. The final \$350 billion may be accessed if the President transmits a written report to Congress requesting such authority.

Raises the statutory limit on public debt from \$10 trillion to \$11.3 trillion. As of October 3, 2008 the public debt was \$10.128 trillion.

Strengthens the Hope for Homeowners program.

Increases eligibility and improves the tools available to prevent foreclosures.

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.

Temporarily raises the borrowing limits at the Treasury for the FDIC and the National Credit Union Share Insurance Fund.

State Budget Conditions Continue to Slip

In many states across the country, the finances of state governments are worsening. State revenues have been much lower than many states expected. While state officials expected revenue growth to slow in Fiscal Year (FY) 2008, they did not anticipate it to increase at such a gradual pace or decline. Budget gaps are growing because many FY 2008 budgets were based on revenue forecasts that are not materializing as expected.

Commercial real estate professionals need to be aware of state financial situations because when state revenues decrease, state legislators and governors propose new taxes and fees.



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CREDIT CRISIS KEEPS COMMERCIAL PROPERTY DEALS ON HOLD

Although the current economic crisis hinges largely on problems in the housing sector, nearly all financing has felt the crunch. Further consolidation in the financial markets due to bank failures and closing of investment houses put all types of lending at risk. The independent investment banking industry (once lead by Bear Stearns, Lehman Brothers and Merrill Lynch) is virtually gone. The continued failure of banks (IndyMac, Washington Mutual, and Wachovia) strains liquidity for all sectors—car loans, student loans, business loans, and of course real estate loans.

When financial markets are gripped by fear, one failure leads to another. Despite low defaults and well-performing credit instruments, credit to the commercial mortgage-backed securities (CMBS) market has almost completely stalled. While commercial markets hold steady with strong industry

supply and demand, credit markets are frozen and the commercial mortgage-backed securities market is non-functioning. Without action to liquefy credit markets, new construction and development projects will most certainly be affected, and with them the potential for further job loss in this sector of the economy. Credit markets are terrorized by the fear that debt may be deemed less valuable shortly after it is issued. Commercial real estate deals are, for the most part, on hold these days as buyers and sellers wait for the credit crunch to ease and the economy to rebound, according to a report released in October by PricewaterhouseCoopers.

The Emergency Economic Stabilization Act of 2008 (EESA) is intended to allow financial institutions to rid themselves of “troubled assets” and resume regular lending activities. The law creates a Troubled Asset Relief Program

(TARP) (described above) to allow the Treasury Department to purchase assets from financial institutions, allowing the financial institutions to clean up their balance sheets, and enabling them to infuse credit back into the market.

“Troubled Assets,” as defined under the TARP program, include “residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case was originated or issued on or before March 14, 2008, the purchase of which the Secretary determines promotes financial market stability.” As of November 13, 2008, Secretary Paulson moved the focus of TARP from buying troubled assets from financial institutions to focusing on the nation’s struggling consumers.

NAR and IREM are fully engaged with the government agencies who are overseeing this new program. ■