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by: Steven J. Eisen

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FEDS gone WILD!

The Feds' Impact on Tennessee Banking

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Federal legislation intended to improve the United States banking system, and ultimately the national economy, has had an insignificant impact on the banking industry in Tennessee. The hodge podge of congressional and federal bank regulatory agency efforts may have rescued the nation's largest "financial institutions" (as that term is now extremely broadly defined), but for Tennessee-based banking institutions, it has had limited effect and is just another showing of "Girls Gone Wild."

After the true crisis began in the national banking system during the spring and summer of 2008, as evidenced by failures of Bear Stearns, Fannie Mae/Freddie Mac, and Lehman Brothers and rescue packages provided to Citigroup, AIG, Bank of America, and others, a number of legislative and federal executive agency actions were taken to improve the confidence in the banking system and provide cash and guarantees to struggling companies. As the economy continued to plunge into a deeper recession, hindsight probably will show that these federal actions sustained many of our large institutions, but the impact on the Tennessee banking system will be deemed minimal, and possibly even counter-productive.

Even after the first major federal legislation, the Emergency Economic Stabilization Act of 2008 (EESA),¹ which included the Troubled Asset Relief Program (TARP) to invest up to \$700 billion² in financial

institutions (the definition of which was greatly expanded to include insurance companies, car manufacturers, and other businesses), the banking industry in Tennessee was issuing official statements that banks were conducting business in Tennessee in the normal course and were not suffering the negative economic impact described in the national press. In his 2008 Annual Report, Commissioner Greg Gonzales of the Tennessee Department of Financial Institutions stated, "The condition of the Tennessee banking system remains sound despite challenging economic times. Depository institutions remain well-capitalized, profitable as a whole and innovative in their diverse offerings of products and services."³ While business conditions might have been tightening, Tennessee financial institutions seemed to be well prepared for the normal downward trend in the economic cycle, and year-end 2008 earnings, while not breaking any records, were basically sustained.

As the year 2009 began and the recession worsened, the economic repercussions on Tennessee business in general,⁴ and ultimately the Tennessee banking industry, began to be felt. Banks' non-performing assets, which basically are past-due loans, began to increase beyond the reserves set aside by banks. Most of the banks in Tennessee

are deemed community banks, which are locally owned and operated banks concentrating their activities in a local geographic area. Community banks have an ability, even at the top executive level, to know their customers more intimately and to be able to understand what actions need to be taken to help their customers through the economic downturn. Sometimes, this includes restructuring loans in a manner where the borrower ultimately can pay and the bank ultimately can collect. Opposing these efforts generally are the federal and state banking regulators, who have an immediate obligation to protect the FDIC insurance fund, which insures the deposits of these banks, and protect the customers of the banks.

The Squeeze

The interesting dichotomy of the government involvement in the banking and economic crisis is, on the one hand, statements made at the highest levels that the “government is here to help” by adopting legislation and throwing around taxpayer dollars to help the industry and ultimately the economy, while, on the other hand, bank examiners at ground zero are ratcheting up their efforts to find problems in the institutions they examine and seeking immediate remedies, such as demands for changes in bank policies, additional capital, and immediate collection or sale of loans.

This dichotomy of governmental efforts is further squeezing the ability of Tennessee banks to react prudently to the economic downturn and the needs of their customers. The regulators shout for “more capital, more capital, and even more capital,” where the source of this capital in most financial institutions in Tennessee is from private investors, many of whom are the customers of the banks themselves. The recent controversy among the various regulatory agencies in reaction to the FDIC’s attempts

to triple capital requirements in certain instances⁵ is proof that this part of the battle is significant. While investors also want to add capital to protect their banks from failure, they also have an interest in a reasonable return on their capital, which is greatly diluted by the regulatory requests for excessive capital.

Another area where the regulators are squeezing Tennessee banks is the push by the regulators for the banks to shore up their loan portfolios or remove the loans from their books. This does not give the banks the ability to work with their customers, but may force the banks to sell these loans to the myriad of vulture investors waiting in the wings to take advantage of the banks’ battle with their regulators.

Another source of the squeeze is in the enforcement of compliance regulations. While consumer protection is important, the pendulum of consumer protection regulations has swung so heavily in the favor of consumer protectionist groups that it is very difficult and extremely costly for smaller banks to comply. Anyone who closes a mortgage loan in the State of Tennessee lately can see this result in the quantity of paper that has to be provided and signed upon the initial request for a loan, during the course of the loan approval process, and then especially at the loan closing, and the paperwork is so massive and confusing to the consumer that it is counterproductive to its purpose. Regulators have recently increased enforcement actions against Tennessee institutions for non-compliance with certain consumer regulations, and now the Obama administration is threatening to yank these responsibilities from the banking regulators and establish a new federal bureaucracy⁶ to enforce these directives.

Other enforcement actions against Tennessee banks have increased greatly in the last few months as they relate

to management issues, liquidity issues, and general safety and soundness of the institutions. These actions, which sometimes take the form of a cease and desist order or a memorandum of understanding, seem to be based on a number of ancient regulatory principals and outdated knee-jerking responses. For example, many of our clients are being asked to submit their directors to additional training even where the directors have been in their positions for many years and are very competent in exercising their business judgment duties; in other words, how is additional board training going to collect loans? There are also outdated policies on brokered deposits, corporate governance (a new buzz word that is really just an old concept of following corporate law requirements and fiduciary duties), and executive compensation.

While there may be many reasons for the regulatory squeeze, the standard excuse, when the regulators are asked why they are doing this, is that they feel squeezed by someone at a higher level. This might be the Inspector General of the FDIC, which seems to keep blaming many bank failures on the laxity of regulatory action.⁷ It may be the political comments of Chairman Barney Frank or Chairman Chris Dodd of the House and Senate banking committees. It may be the “get tough” attitude of Ms. Sheila Bair, Chairman of the FDIC. It may just be a reaction to the media, which always has a tendency to attack big business and the government.

As even the Connecticut Commissioner of Banking recently stated, “regulators are fallible. Sometimes the workload is overwhelming; sometimes regulators get too close to the institutions we supervise to fully appreciate emerging risks. Sometimes regulators are not close enough to an institution or a community

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and unfairly or inappropriately apply sweeping remedies.”⁸

Bearing It All

With the continuing recession, Congress passed its second major piece of reactionary legislation in February of 2009, called the American Recovery and Reinvestment Act of 2009 (ARRA),⁹ which is commonly referred to as the Stimulus Act. ARRA, like ESSA, was a lengthy piece of legislation that was passed by Congress extremely quickly without many of the Congressmen reading the details of the provisions of the law. One of the major provisions of ARRA impacting the financial institution industry was the adoption of a new set of executive compensation restrictions on those institutions that had received assistance from the federal government. Everyone seemed to forget that there had been executive compensation restrictions in the original ESSA (see below), as well as additional restrictions adopted through regulations in the fall of 2008.¹⁰ This was not enough for the politically-motivated Congressmen or the media, so additional provisions were adopted that basically were unworkable in many situations, especially for community banks.

For example, there is still major confusion as to the “golden parachute” provisions applicable to the top 10 most highly compensated executive officers (differs from the EESA limit that only prohibited amounts in excess of 3x base salary) prohibiting “any payment to a senior executive officer for departure from a company for any reason.”¹¹ Does this provision prohibit death benefits, split dollar insurance plans, bank owned life insurance plans, noncompete payments, COBRA, phantom stock plans (used by closely held banks rather than restricted stock), unrestricted stock (used by non-SEC companies), acquisition-negotiated agreements, and all other types of compensation plans used by banks which might not necessarily be for “services

performed or benefits accrued”? For example, it is very typical for a community bank to have such provisions either to protect against hostile takeovers or to compensate an executive for a noncompete he might give in exchange for the severance. If the severance becomes illegal, (1) the executives, who do not make much anyway, can be terminated without compensation, (2) the institution’s shareholders are deprived of their expected anti-takeover mechanism, and (3) an executive may still be subject to the noncompete provisions and could not maximize his value by seeking local employment. This is just one of many concerns raised by the legislation.¹²

ARRA was the last straw for many of the large financial institutions, which decided it was time to repay government assistance and go back to the private markets, in which they have not had much trouble raising capital. Many community banks actually have withdrawn their TARP requests as a result.¹³ These actions by the government of continuing to change the rules, as well as it coming to light that the government had forced many institutions to take part in the federal programs, was *déjà vu* to these institutions of their experience with governmental and regulatory reaction to the financial crisis of the 1980’s.

In the meantime, a number of financial institutions in Tennessee, with the increasing pressure from regulators and with the lengthening impact of the recession on their financial statements, still decided to proceed with accepting TARP funds from the government, even with all of the regulatory restrictions, or seeking additional private capital to protect their assets. According to the tranche report of Treasury,¹⁴ 23 banks in Tennessee have received TARP funds totaling \$1.275 billion through July 31, 2009.

Whipping

Unfortunately, every time the financial institutions in Tennessee feel that the economy is turning or that they have their own financial situation under control, another whipping occurs which is totally outside their control. For example, in the fall of 2008, Fannie Mae and Freddie Mac, which basically were viewed as almost government guaranteed and which were touted by bank regulators as a safe investment for banks, failed, and many banks in Tennessee had to write off their ownership in Fannie Mae/Freddie Mac 100%. One bank in Tennessee almost failed as a result until it was purchased by another institution. In addition to the Fannie Mae/Freddie Mac write-offs, many other assets generally held by banking institutions, such as trust preferred securities or collateralized mortgage obligations, have had to be written down as a result of a freeze and a lack of liquidity in the market for these securities.¹⁵

Another hit was the closure by bank regulators of Silverton Bank,¹⁶ a “bankers’ bank,” which basically provided services to other banks throughout the country. Many banks in Tennessee had a common stock, preferred stock, or subordinated debt interest in Silverton, which had to be written off 100%. Many Tennessee banks also had loan participations with Silverton, which, prior to failure, were already in trouble, but with the FDIC running a bridge bank to liquidate Silverton’s assets, reasonable efforts to collect these loans have deteriorated whereby the FDIC seems complacent to take a large loss on the loans and not worry about the other banks that have participated in these loans also taking a similar loss. At the same time, and without much notice, Silverton Bridge Bank also has terminated lines of credit and other services to many banks in Tennessee, risking their liquidity and increasing expenses of changing these relationships to other bankers’ banks or other financial institutions.

Another hit is the increased assessment by the FDIC for FDIC insurance. For years, the FDIC insurance fund was significant enough where banks did not need to pay any premiums, but when the first signs of the economic downturn began, new premiums began to be charged. With the tremendous increase in failed banks and the resultant losses to the FDIC insurance fund, the FDIC proposed a special assessment of 20 basis points on all insured deposits, which was later modified to 5 basis points¹⁷ on assets after Congress had to pass additional legislation to give the FDIC more borrowing authority. While the assessment was lowered, it is still very significant for Tennessee community banks, which have been told by their accountants that they must expense the special assessment immediately even though it is payable over the next few quarters.

Finally, a continuing hit to community banks, in particular, is the interest rate margin squeeze that these banks are experiencing. The interest rate margin of a bank generally is defined as the difference between what a bank has to pay for deposits, such as savings accounts and certificates of deposit, and the rate a bank can charge on loans to customers. As interest rates in general have dropped to almost 0%, loan rates have continued to fall, and since deposit rates cannot fall any further, the interest rate margin is squeezed as the Federal Reserve continues to maintain such low interest rates to try to improve the economy. The other source of the interest rate margin squeeze is from competition. Even with higher FDIC insurance coverage, smaller community banks seem to have to pay higher deposit interest rates to attract deposits to fund their loans, while the regional and major banking institutions can continue to pay the lowest deposit interest rates because the government seems to support the larger institutions and deems many of them “too big to fail.” This is an example where the

continuing government legislation and regulatory actions to improve the banking system actually helps large banks and is counter-productive to community banks.

The Thrill is Over

Whether counter-productive or not, EESA, ARRA, and other governmental efforts have not been effective for banks in Tennessee. While a number of banks have taken advantage of the TARP funds, many were forced to do so by their regulators, and they are now suffering the consequences of the continual changing of conditions placed on TARP recipients. Some provisions of these laws were to provide programs¹⁸ or “bad banks” for use by banks in removing bad assets from their balance sheets; but again, these programs, most of which had not yet begun because the government cannot determine an appropriate bureaucratic process in which to operate these programs efficiently and economically, are not providing the outlet for these bad assets, especially, again, because all they do is to encourage vultures to take advantage of the banks. Also, there have been a number of programs to provide assistance to mortgage borrowers, but even the Office of the Comptroller of the Currency, which regulates national banks, has suggested numerous times that those borrowers taking advantage of this assistance end up right back where they started six months later being unable to pay their mortgages.¹⁹ Another example is a new Small Business Administration program which began on June 15 and which is not receiving much participation from large banks or small banks as a result of its bureaucratic terms and potential regulatory retribution against the banks if the program fails.²⁰

There is a general misconception that seems to permeate the media relative to the TARP. Nobody seems to remember that the original TARP provisions,

which were described in EESA, contained a number of restrictions imposed on institutions accepting the funds. These included four different categories of executive compensation standards,²¹ dividend and redemption restrictions regarding other outstanding equity securities of TARP recipients, and even the right of the government to select two members of the board of directors of TARP recipients that did not meet certain conditions of the TARP. Long before the political outcry over Merrill Lynch or AIG bonuses spurred on additional restrictions for TARP recipients, both Treasury and the federal banking regulators were issuing rules and policy statements²² and examining more closely the financial institutions under their wings that had accepted government funds.

Another issue which seems to receive little press is that the original TARP funds were stated as being a means where the government could pump capital (cash) into the banking system in order to spur loan growth and generate economic activity. The funds were supposed to be available to all financial institutions, whether strong or weak financially, as long as the institution was not deemed to be on the verge of failure thereby jeopardizing its ability to repay the government. As both the government and non-banking companies began to view this large amount of money as being a savior for “too big to fail” institutions, the original purpose of TARP became dissipated with the funds being doled out to companies which could not lend money or promote economic activity. At the same time, when real financial institutions which were suffering from economic forces beyond their control and that needed to raise capital in a time when investors were hesitant

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to invest, the government decided to stop approving TARP funds for any weakened financial institutions and only allowed the funds to be made available to the strongest institutions, i.e. the ones that probably did not need the funds at all. This shift in philosophy and purpose has just sunk the problem institutions in Tennessee into a deeper financial quagmire when the TARP funds could have been used to help these financial institutions survive through the downturn in the economic cycle.

The media generally seems to forget that the government also receives warrants to purchase common stock for public companies and warrants to purchase additional preferred stock for private companies. Also, the preferred stock and debentures pay a very nice dividend to the government. At the end of the day, the government should receive a tremendous return²³ on its investment, especially when the warrant prices were set at a time when bank stocks were at their lowest and where the government has ten years to ride the wave of bank prices without any investment in the warrants.

The warrant issue is even more significant for private companies which are considering repaying the TARP funds. For example, a private company that received a \$10 million TARP investment also was required to issue a warrant for an additional 5% (\$500,000) for basically no additional funds from the government. These warrants were exercised by the government immediately, so if the financial institution in this example wanted to repay the TARP funds, it would have to pay \$10.5 million to redeem the preferred stock plus the 5% accrued interest on \$10.5 million, not \$10 million. To calculate the cost to a bank of private TARP funds, most banks assumed they would repay the funds in five years, so with this additional warrant cost, the effective cost actually

increases from 5% to 6.45%. The sooner the TARP funds are repaid, the higher the cost on a percentage basis, and for many private banks, the cost is too high to afford to repay the money too soon.

There are still many more institutions awaiting their approvals from the Treasury than have been closed at this time.²⁴ Many of these institutions are Sub S corporations, that only started receiving their approvals in late Spring. Many others have been calling their attorneys constantly because they have not heard a word from Treasury and are afraid that there is either a problem with their approval or that the money will run out before the Treasury gets to them. While many of these institutions are glad that they have not yet had to make their decision whether to accept the TARP funds, many others have had to consider other alternatives for raising capital, many times requiring the board members to write checks.

The Final Exposure

At a recent meeting of the Tennessee Bankers Association where Tennessee Senator Bob Corker spoke, he indicated that he had been asking bankers to give him specific instances where they felt the regulators, in particular, had been too harsh or unfair. The general response he was receiving from the bankers was that they were fearful of retribution from the regulators if they complained, so they would not give him the examples he sought. As attorneys representing many banks in Tennessee, we also are not in a position to complain about specific instances without the permission of our clients, who also have told us that they would rather suffer the short term consequences of the regulatory actions than the potential long term repercussions of retribution from the examiners who will continue to be examining their banks long after the economy has improved.

While not being able to expose their complaints, the banks in Tennessee continue to expose themselves to the economic cycle, their customers, and their local communities. Tennessee banks would be better served by the government legislatures and regulators if they would stop pounding the banks with more laws, regulations, and enforcement directives and allow these banks the time to use their managerial skills and business judgment to address their local situations.

For all regulators reading this article, I quote my friend, Hall of Fame pitcher Gaylord Perry, from his book *Me and the Spitter*, "This is really a fictional account."

For our bank clients and friends who can relate, somebody had to get all this off their chests. ■

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(Footnotes)

¹ Pub. L. No. 110-343, 122 Stat. 3765 (2008), codified at 12 U.S.C. §§ 5201 *et seq.*

² "As of June 12, 2009, Treasury projected that it had used \$643.1 billion of its almost \$700 billion limit for TARP." United States Government Accountability Office, Report to Congressional Committees, Troubled Asset Relief Program, June 2009 Status of Efforts to Address Transparency and Accountability Issues, June 17, 2009, GAO-09-658, <http://www.gao.gov/new.items/d09658.pdf>.

³ 2008 Annual Report, Tennessee Department of Financial Institutions, Feb. 27, 2009, <http://state.tn.us/tdfi/annualreport/2008/2008finalrpt.html>.

⁴ The Labor Market Report, Tennessee Department of Labor and Workforce Development, (<http://www.state.tn.us/labor-wfd/lmrl/>) reported a seasonally adjusted Tennessee unemployment rate for December 2007 of 5.0%, for December 2008 of 7.9%, and for April 2009 of 9.9%.

⁵ "FDIC Board Approves Proposed Policy Statement on Qualifications for Failed Bank Acquisitions," Press Release of the FDIC, July 2, 2009. See also *FDIC Failed-Bank Bid Plan Blasted by OCC, Investors*, AM. BANKER, July 6, 2009, at 1 ("A Federal Deposit

Insurance Corp. plan to place new restrictions on private-equity firms seeking to buy failed banks is facing strong opposition from fellow bank regulators and could temporarily freeze all private-equity activity in bank acquisitions.... "I commend you for wanting to provide transparency to prospective bidders because I do think there is a real balance that does need to be struck here," [Comptroller of the Currency John] Dugan told FDIC Chairman Sheila Bair at the meeting. "You can also swing the pendulum too far in the other direction. ... I have concerns that it's gone too far in the other direction." [Acting Office of Thrift Supervision Director John] Bowman said the DIF could suffer as a result. "The concern would be that any policy we would finally approve would go too far and choke off that capital, increase the cost to the Deposit Insurance Fund and the ratepayers who are the ones required to keep the fund at its appropriate level," he said.")

⁶ FACTBOX: Major U.S. financial regulation initiatives, June 30, 2009 http://mobile.reuters.com/mobile/m/FullArticle/CPOL/npoliticsNews_uUSTRE55T5OZ20090630?src=RSS-POL ("(Reuters) - The Obama administration on Tuesday sent Congress its proposal for the creation of a Consumer Financial Protection Agency, part of a wide-ranging plan by the administration to tighten U.S. financial regulation to prevent another banking and market crisis.")

⁷ FDIC Office of the Inspector General, July 2009 Audit Report No. AUD-09-014, *Material Loss Review of Franklin Bank, S.S.B., Houston, Texas*, <http://www.fdicigo.gov/reports09/09-014.pdf> ("FDIC has authority to take a wide range of supervisory actions. In the case of Franklin, however, while recommendations were made and certain supervisory actions were taken over a 5-year period, these actions were not always timely and effective in addressing the bank's most significant problems....The FDIC did not always ensure that bank management effectively responded to such recommendations. Also, in the 2006 ROE, in particular, the FDIC could have better recognized and analyzed risk. For example, the FDIC did not clearly identify in the 2006 ROE the risk in Franklin's 1-4 family loan portfolio as a potential concern. The FDIC also did not identify ADC loan underwriting and administration weaknesses on a timely basis.")

⁸ *Reform Target: Infrastructure Diversity*, AM. BANKER, Aug. 5, 2009, at 9.

⁹ Pub. L. No. 111-5, 123 Stat. 115 (2009).

¹⁰ 31 CFR Part 30 and www.treas.gov/press/releases/hp1364.htm.

¹¹ See Title VII (Sections 7000-7002) of ARRA.

¹² See AM. BANKER, Feb. 18, 2009, at 1, available at <http://www.americanbanker.com/article.html?id=20090217J7L30WK0&queryid=757960634&hitnum> (quoting a particular banking lawyer and the American Bankers Association on certain issues with ARRA).

¹³ "OFS officials stated that about 400 financial institutions that received preliminary approval had withdrawn their CPP applications as of June 12, 2009. Many of these institutions withdrew their applications because of the uncertainty surrounding future program requirements." United States Government Accountability Office, Report to Congressional Committees, Troubled Asset Relief Program, June 2009 Status of Efforts to Address Transparency and Accountability Issues, June 17, 2009, GAO-09-658, at 17, <http://www.gao.gov/new.items/d09658.pdf>.

¹⁴ www.financialstability.gov/impact/transactions.htm

¹⁵ "...wide swaths of mortgage-backed securitizations were downgraded. Other structured products, such as Trust Preferred Securities, also were heavily downgraded." *Supervisory Insights* (a quarterly publication of the FDIC), vol. 6, Issue 1, Summer 2009, at 3 (Summer 2009).

¹⁶ FDIC Press Releases, "FDIC Creates Bridge Bank to Take Over Operations of Silverton Bank, National Association, Atlanta, Georgia," May 1, 2009 (PR-061-2009), <http://www.fdic.gov/news/news/press/2009/pr09061.html>: "The Federal Deposit Insurance Corporation (FDIC) created a bridge bank to take over the operations of Silverton Bank, National Association, Atlanta, Georgia, after the bank was closed today by the Office of the Comptroller of the Currency (OCC). The OCC appointed the FDIC as receiver. The newly created bank is Silverton Bridge Bank, National Association...."

¹⁷ Press Releases, "FDIC Adopts Final Rule Imposing a Special Assessment on Insured Depository Institutions, Move Designed to Maintain Public Confidence and Ensure That the Deposit Insurance Fund Remains Positive," May 22, 2009 PR-74-2009, <http://www.fdic.gov/news/news/press/2009/pr09074.html>, "The Board of Directors of the Federal Deposit Insurance Corporation today voted to levy a special assessment on insured institutions as part of the agency's efforts to rebuild the Deposit Insurance Fund (DIF) and help maintain public confidence in the banking system. The final rule establishes a special assessment of five basis points on each FDIC-insured depository institution's assets, minus its Tier 1 capital, as of June 30, 2009. The special assessment will be collected September 30, 2009."

¹⁸ Joint Statement by Secretary of the Treasury Timothy F. Geithner, Chairman of the Board of Governors of the Federal Reserve System Ben S. Bernanke, and Chairman of the Federal Deposit Insurance Corporation Sheila Bair, Legacy Asset Program, July 8, 2009, www.financialstability.gov/latest/tg_07082009.html.

¹⁹ "Consistent with last quarter's report, re-default rates of modified loans were high and rising for loans modified in each of the first three quarters of 2008. In addition, the re-default rate increased for loans modified in each successive quarter, with loans modified in the third quarter having the highest re-default rates." OCC and OTS Mortgage Metrics Report, Apr. 2009, at 5, www.occ.treas.gov/ftp/release/2009-37a.pdf.

²⁰ "A Small Business Administration program that had been expected to generate large demand is off to an unexpectedly slow start amid lender confusion about requirements and potential legal pitfalls." *Lender Fears Force SBA Program into Slow Lane*, AM BANKER, July 2, 2009, at 1.

²¹ See Treasury Interim Rules released October 14, 2008 (HP-1208), www.financialstability.gov/latest/hp1208.html

²² Interagency Statement on Meeting the Needs of Creditworthy Borrowers, FDIC Financial Institution Letter FIL-128-2008, Nov. 12, 2008.

²³ "From TARP's inception through June 12, 2009, Treasury had received approximately \$6.2 billion in dividend payments on shares of preferred stock acquired through CPP, TIP, AIFP, and AGP (table 2). Treasury's agreements under these programs entitled it to receive dividend payments on varying terms and at varying rates." United States Government Accountability Office, Report to Congressional Committees, Troubled Asset Relief Program, June 2009 Status of Efforts to Address Transparency and Accountability Issues, June 17, 2009, GAO-09-658, p. 13, <http://www.gao.gov/new.items/d09658.pdf>

²⁴ As of June 12, 2009, a variety of types of institutions had received CPP capital investments under TARP, including 278 publicly held institutions, 307 privately held institutions, 22 S-corporations, 16 community development financial institutions (CDFI), and no mutual institutions. ... Treasury and the federal regulators continued to review applications for CPP. According to Treasury, it has received over 1,300 CPP applications from the regulators as of June 12, 2009, fewer than 100 were awaiting decision by the Investment Committee. For many applications in this category, Treasury is awaiting updated information from the regulators before taking the application to the Investment Committee for a vote. The bank regulators also reported that they were reviewing applications from more than 220 institutions that had not yet been forwarded to Treasury. United States Government Accountability Office, Report to Congressional Committees, Troubled Asset Relief Program, June 2009 Status of Efforts to Address Transparency and Accountability Issues, June 17, 2009, GAO-09-658, at 17, <http://www.gao.gov/new.items/d09658.pdf>.