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October 28, 2008

Submitted electronically

Ms. Lindsay Valdeon
Deputy Executive Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

**Re: Request for Public Input on Establishment of
Guaranty Program for Troubled Assets
Docket ID: TREAS-DO-2008-0018**

Dear Ms. Valdeon:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the U.S. Department of Treasury's request for public input on the establishment of a guarantee program for troubled assets.

The Emergency Economic Stabilization Act of 2008 (EESA)² charges the Secretary of the Treasury to develop a program to guarantee the timely payment of principal and interest on troubled assets originated or issued prior to March 14, 2008. The Secretary is authorized to set and collect premiums from participating financial institutions by category or class of asset, taking into consideration the credit risk characteristics of the asset being guaranteed. The premium must be sufficient to cover anticipated claims, be based on actuarial analysis, and ensure that taxpayers are fully protected. If premiums are not sufficient to cover anticipated claims, the amount of funding available to Treasury to purchase troubled assets under TARP would be reduced by the excess of obligations to net premiums under the guarantee program.

¹ The American Bankers Association (ABA) brings together banks of all sizes and charters into one association that works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.3 trillion in assets and employ over two million men and women.

² Section 102 of the Emergency Economic Stabilization Act of 2008 (Pub. L. 110-343). \$125 million in assets – represent over 95 percent of the industry's \$13.3 trillion in assets and employ over two million men and women.

ABA commends the Secretary for soliciting industry input on this important facet of the EESA recovery plan. ABA believes that the program will provide Treasury a valuable third tool under its Troubled Asset Relief Program (TARP), to include with the agency's ability to acquire assets of, or inject capital into, financial institutions. EESA affords Treasury a great deal of flexibility in structuring the guarantee program, which may take a number of forms and may vary by asset class. We believe the concept of using a guarantee and keeping the loans in the bank to be worked out by the bank has great merit and can potentially be implemented faster than the asset acquisition program. We would be pleased to work with Treasury as the program is crafted.

1. What are the key issues Treasury should address in establishing the guarantee program for troubled assets?

The fundamental issues that Treasury must consider in the structuring of a viable guarantee program are the types of troubled assets to be guaranteed, the losses covered by the guarantee, the premiums charged to the participating institution to obtain such coverage, and the relationship between the TARP asset acquisition and guarantee programs. These items are described in more detail in the answers set forth below.

ABA believes that the guarantee program need not be entirely separate from the TARP's other prongs—the capital and asset acquisition plans. We note that all program facets share common issues, such as asset valuation concerns, that may be tackled in unison. The guarantee program premiums, for example, should be set to reflect the auction prices of similar assets purchased under TARP where feasible. Using the TARP troubled asset acquisition auction process to help in setting guarantee premiums would link the two programs in a manner that would increase consistency and integrity.

Finally, although ABA agrees that the Treasury must advance with implementation of the guarantee program expeditiously, it must remain open to adjustments and modifications in the plan's scope and content. The comments ABA offers below are reflective of immediate needs that our members have in light of the present financial environment. The distressed financial situation we face is not, however, static—banks will be faced with evolving needs and challenges. ABA believes that the latitude afforded by Congress under the legislation is sufficiently wide to allow for a program arrangement that can adjust and expand, as needs may require. The assets and categories of assets described in this letter are those that our members have immediately identified as benefiting from a guarantee program. This is not to say, however, that other assets or classes of assets should not be included, as Treasury and participating institutions identify them.

1.1 Should the program offer insurance against losses for both individual whole loans and individual mortgage backed securities (MBS)?

TARP allows Treasury to acquire through auction or direct purchase of any of the following assets:

- residential or commercial mortgages that were originated on or before March 14, 2008, the purchase of which the Secretary determines promotes financial market stability;

- any securities, obligations, or other instruments that are based on or related to such mortgages and were issued on or before March 14, 2008, the purchase of which the Secretary determines promotes financial market stability; and
- other financial instruments where the Secretary has determined after consultation with the Chairman of the Board of Governors of the Federal Reserve that the purchase is necessary to promote financial market stability.

As a first priority, ABA recommends that the guarantee program offer insurance against losses from whole residential or commercial mortgages, but not from mortgage backed securities based on, or related to, such mortgages. Although the program could, in later stages of implementation, incorporate securities and other types of instruments, the Treasury should focus immediate attention and resources on whole loan and whole loan portfolio guarantees. ABA believes that, in the early stages of the program, insuring both the underlying mortgage loans and the MBS would impede development of whole loan guarantees. Also, an initial whole loan focus would postpone or avoid the complications imposed by attempting an actuarial assessment of complicated security tranches that have confounded the understanding of experts and for which there may be scant data for proper risk assessments. Insuring both whole loans, whole loan portfolios and MBS would create a redundancy, potential for overpayment of insured losses, and a resultant risk of fraud. ABA's suggestion of providing guarantees at the whole loan level would be of immediate benefit to all asset holders, even securities supported by the mortgage loan. If the underlying mortgage loans are guaranteed, those payments will flow up to the holders of MBS without the need to also insure the payments under the MBS. These assurances of cash flow that the guarantee program will inject will immediately derive benefit to all lenders and investors in the form of enhancements to asset price, regardless of whether the asset is held in portfolio, or structured as pass-through agreements or collateralized obligations.

Finally, an obvious efficiency that flows from adopting a whole loan and whole loan portfolio guarantee program is that it can be easily replicated from existing private and public market models. Critically important premiums could be based on widely available data from private and public mortgage insurance programs in the conventional and public credit insurance market, and applied to the TARP program's guarantee of whole loans.

There are a number of other issues with respect to guaranteeing MBS which will be more fully stated in our response to Question 1.2.3.

1.2 What is the appropriate structure for such a program? How should the program accommodate various classes of troubled assets? Should the program differ by the degree to which an asset is troubled?

As already noted, the base economic unit that requires attention from the guarantee program is the underlying mortgage loan, both first loans, second liens and HELOCs, as these loans are the primary source of losses, and constitute the types of transactions that have had the greatest ramifications for the economy.

The guarantee program should develop a system of insuring mortgage loans based on the general structure of credit insurance provided in private markets. The credit insurance model will have the advantage of historical information, established procedures, risk-based pricing and a known function in stabilizing lender risk. As more fully outlined in Comment 1.6, ABA recommends that initial premium pricing be affordable and at a rate lower than that which is currently available in the market. ABA urges that the Treasury structure the program to minimize the impact of any initial premium shortfalls on the ability of the Treasury to purchase assets under TARP. Because premiums must be sufficient to cover anticipated claims, the amount of funding available to Treasury to purchase troubled assets under TARP would be reduced by the excess of obligations to net premiums under the guarantee program. The potential impact of this requirement can be reduced by taking a “long-view” of potential premium streams, recognizing that in the later period of the guarantee program payouts will decrease, thereby aligning obligations and net premiums.

1.2.1 What are the key issues to consider with respect to guaranteeing whole first mortgages?

The more important policy issues that will arise in crafting a whole loan guarantee program are as follows—

1. How will the program differentiate between loans based on key and differing underwriting variables, such as loan to value, credit score, debt to income, and documentation of income? A decision needs to be made on methodology for determining differing premium rates and/or determining which loans are eligible for the guarantees.
2. Will the program offer guarantees against prepayment risk?
3. What will be the extent of the guarantee as to particular loans? For example, should there be a top dollar limit as to the amount of a loan that is eligible for the guarantee? Will there be options to limit premiums through co-insurance of first loss obligations? Will the program cover non-borrower occupied homes?
4. When will the lender have a “loss” that triggers payment under the guarantee? For example, is a reimbursable loss incurred upon the default of the underlying loan, or only after the lender has exhausted collection and foreclosure efforts?
5. Upon payment of a guarantee as to a particular loan, will the government have subrogation rights?
6. If the originator of the loan has sold the loan in the secondary market, will the originator be insured against a repurchase demand by the purchaser if the loan goes into default after the sale?

1.2.2 What are the key issues to consider with respect to guaranteeing HELOCs and other junior liens?

HELOCs and other junior liens share the same general risk characteristics as first mortgage loans. The key issues to consider with respect to HELOCs are therefore essentially the same.

1.2.3 What are the key issues to consider with respect to guaranteeing MBS?

As noted in Comment 1.1, insuring both the underlying mortgage loans and the MBS, which may have multiple tranches, would create redundancy and potential for overpayment of insured losses.

A principal difficulty that will affect MBS guarantees is asset valuation. Although ABA believes that the initial phases of the guarantee program should focus on whole loans and whole loan portfolios, we offer the general view that pricing for premiums for any additional guaranteed asset classes should be set to reflect the auction prices of similar assets purchased under the other TARP-related programs. Using the TARP troubled asset acquisition auction process to set prices from which losses would be guaranteed for additional asset classes would be an attractive mechanism to enhance market integrity and to integrate TARP programs.

Other issues include:

1. Presumably, guarantees would only apply to private-label MBS, because GSE MBS guarantees are supported by government policy while the GSEs remain in conservatorship.
2. Lower tranches involve higher risk of non-payment and accordingly demand a higher purchase price. If repayment of the principal and interest is guaranteed, the bond holder has paid a price that no longer reflects risk. The most appropriate guarantee for such securities would be of their purchase price or an assumed purchase price plus accrued interest. Unfortunately, determining such purchase prices or establishing assumed ones would be difficult, as they are not actively traded.
3. If the underlying mortgage is guaranteed, the program should permit the government to become subrogated to the lender's rights against the borrower and mortgaged collateral. However, if a MBS is guaranteed, is there any basis for subrogation to rights that the government may be exercise to recover any portion of the amounts paid on the guarantee? Presumably, the guaranteed payment on a MBS bond would be made to the bond holder who typically would not have any direct rights to collateral supporting the bonds.
4. If the government guarantees both the mortgage loans and MBS, is there a possibility of redundancy if payment is made on the underlying loan as well as on the defaulted MBS? This may be a timing issue, in that before paying on the MBS it would need to be determined if any payments will be made on the underlying loans that would flow up to the bondholders.

5. How would a reasonable premium be set for guarantees of MBS?
6. How will insurance of MBS affect the ability of servicers to work with borrowers who are in trouble instead of foreclosing on them?

1.2.4 What are the key issues associated with guaranteeing financial instruments other than mortgage related assets originated or issued before March 14, 2008 that could be important for promoting financial market stability?

ABA believes that residential and commercial mortgage loans constitute the principal source of risk that must be addressed to alleviate the current financial uncertainties, and also constitutes a particularly insurable asset class. Although the program could, in later stages of implementation, incorporate MBS and other types of mortgage-related securities, ABA believes the Treasury should focus immediate attention and resources on a system that addresses whole loan and whole loan portfolio guarantees only.

1.3 What are the key issues to consider with respect to setting the payout of the guarantee?

A main consideration with respect to payouts entails whether the payout should be a total one-time payment after acceleration of the loan, or whether it should be made in monthly payments of principal and interest. Under a typical credit insurance policy, the covered loss would be up to the full unpaid balance of the note (which includes both principal and interest). ABA believes that payment of principal and interest after default in monthly installments as such payments become due would create an overwhelming administrative and accounting burden for the government. As such, a one-time lump-sum payment would be the preferred approach. In terms of timing, ABA believes that full compliance with EESA requirements (that the program guarantee *timely* payment of principal and interest) mandates that a covered loss should be deemed to occur at the point where the loan is accelerated under the default provisions of the Note.

A second issue pertains to whether provisions should be made to permit partial payment of the insurance to facilitate loan modifications where appropriate. ABA believes that such payments would provide additional encouragement for modifications. In addition, partial payments would likely result in fewer disruptions to secondary markets.

A final consideration is whether the payout should include costs of collection, including attorneys' fees and costs, that are payable under the Note. Although this issue is not specifically addressed in the EESA, ABA believes that a limited payment of such costs could be advantageous to achieving the objectives of EESA, as it would encourage a bank to take reasonable steps towards enforcement of the Note before claiming a loss, which might result in preservation of subrogation rights and/or achieve a work out that allows the loan to be restructured without the need to claim a loss.

1.3.1 Should the payout be equal to principal and interest at the time the asset was originated or to some other value? What should that value be? What would be the impact of offering guarantees of less than 100 percent of original principal and interest?

The statutory language under the EESA legislation delineates that payouts should be equal to principal and interest. Similarly, if the guarantee program were constructed in a manner consistent with standard credit insurance programs, the payout would also be equal to unpaid principal and interest under the note, pursuant the principle that this is not a purchase of a troubled asset, but rather insurance that is funded by premiums paid by participating lenders. Offering guarantees at less than 100% would weaken the program's ability to remove the risk of default at the loan level, which in turn is necessary to support the valuation of the loan portfolios and MBS.

However, insurance should be available to insure against further loss whenever losses have been realized through loan modifications, impairment charges, asset valuations available through the TARP asset purchase program or other acceptable means. Permitting institutions to insure against further losses in re-valued assets would encourage the continued engagement of institutions in the work-out process.

1.3.2 Should payout vary by asset class? If so, please describe using the same asset classes as enumerated under 1.21-1.24.

ABA does not believe that there are any reasons for differentiating payouts on the basis of asset class. To the extent that lenders choose to participate, and elect to pay premiums as established under the program, the payouts should be consistently applied across all asset classes. This reasoning is in agreement with the overall objectives of the EESA legislation, which is meant to establish programs that secure temporary passage through very unstable financial times.

1.4 What event should trigger the payout under the guarantee? Should the holder be able to present the claim at will or should there be a set date? Should this date differ by asset class? Should this date differ by the degree to which the asset is troubled?

The payout under the guarantee program should be triggered by presentation of satisfactory evidence of loss, or a high likelihood of loss. A claim of loss could be made after the default of the borrower and written demand by the bank for payment of the full unpaid balance of the Note (acceleration) or some other evidence that demonstrates default will be highly likely in the absence of loan modification. A claim on an individual loan may be filed at any time after default. Proof of claim forms should be provided so that the evidentiary standards for proof of loss are uniform. Finally, to avoid disincentives to work-outs, voluntary efforts by a lender to negotiate loan arrangements with the borrower should not jeopardize the guarantee of the loan.

1.5 Should the holder be permitted to sell the troubled asset with the program guarantee? If appropriate, should asset sales be restricted to eligible financial institutions or should there be no restrictions to promote liquidity in the market place?

Since the guarantee program is to be funded by participating banks, the guarantee should follow the loan if it is sold by the lender, provided that the purchaser of the loan is also qualified to be insured under the program and pays the appropriate premium. There should be no restriction on the sale of the loan itself, only on whether the guarantee will continue to protect the purchaser. If, however, the loan is sold and the seller is also a participant of the guarantee program, the guarantee should cover the seller in the event of a repurchase demand by the purchaser based upon a default that occurs after the sale.

1.6 What are the key issues the Treasury should consider in determining the possible losses to which the government would be exposed in offering the guarantee? What methodology should be used to determine possible losses? Does it differ by asset class? If so, please describe using the same asset classes as enumerated under 1.21-1.24. Does it differ by the degree to which the asset is troubled?

A first consideration by the Treasury should be the types of assets covered by the guarantee. ABA is proposing to initiate the guarantee program under an uncomplicated system that would cover whole loans and whole loan portfolios. We believe that this approach will allow the Treasury to more accurately estimate the program's exposure to risk. If the guarantee program is established to cover MBS, derivatives (e.g., credit default swaps), or unsecured debt of the bank in addition to the underlying mortgage loans, it would be much more difficult to accurately estimate the potential losses to which the government might be exposed.

In addition, ABA urges that the Treasury consider the costs of the guarantees on the specific institutions that Congress intended be covered by this program. If it is determined that the rate that will ensure that sufficient premiums are collected to cover estimated losses will render the program impractical for most banks, then the program should be allowed to underfund losses at the initial stages; as troubled loans are purged out of the system, losses decrease and the premiums eventually catch up to, and exceed, the losses.

In this sense, ABA urges that the Treasury ensure that the TARP system is constructed with a view towards allocating guarantee assistance for a long-term period. In order to achieve full recovery of the currently disrupted financial markets, the Treasury's efforts will need to be consistent over a multi-year period. Under current circumstances, it is clear that claims and program losses will be heavier at the front end, but will eventually stabilize as property prices reach equilibrium and the most problematic loans are worked out of the system. Gains, or recoupments, to the program should therefore accrue after an initial time period of full program operations. This long-term view is critical, as markets are more likely to respond most favorably to programs that are not subject to untimely termination, unpredictable lapse or excessive front-end costs.

Finally, an appropriate methodology for estimating losses should be based on statistical information concerning the number of mortgage loans in the system, default rates correlated to the types and underwriting standards used in connection with the loans involved, trends of residential real estate values, and other market information.

1.7 What are the key elements the Treasury should consider in setting premiums for this program? Is it feasible or appropriate to set premiums reflecting the prices of similar assets purchased under Section 101 of the EESA?

ABA believes that the Secretary should rely on traditional and customary elements in considering premiums under the guarantee program. Using the credit insurance market as a model, attention should be given to individual institutions that choose to participate in the program, and the loan portfolios that are being guaranteed. The goal is to ascertain the trend of losses for a particular loan portfolio, over a specified period of time during which the guarantee is in place. Factors include: an institution's past claims history; underwriting standards used in the origination of the loans; types of loans held in the institutions' portfolio (i.e., income stated, Alt-A, standard); other market factors; and servicing and loss mitigation efforts and capabilities.

ABA also believes that guarantees against further losses can be effectively established for selected asset classes based on pricing information developed in Section 101 TARP programs. Accurate asset pricing is a predicate to insuring against loss. Troubled assets cannot be guaranteed against further losses without such benchmark pricing, which presumably would be a product of Section 101 TARP programs. Notwithstanding, ABA continues to recommend that the primary focus of the guarantee program be on whole loan portfolios.

1.7.1 If use of prices of similar assets purchased under Section 101 of the EESA are not feasible or appropriate, should premiums be set by use of market mechanisms similar to (but separate from) those contemplated for the troubled assets purchase program? How would this be implemented? If not feasible or appropriate, what methodologies should be used to set premiums?

The methodology for setting premiums should be similar to methodologies used in the private credit insurance market. These methodologies set premium rates based upon an estimate of the number of loans in a portfolio that will migrate to claims for loss over a specified period of time and the estimated loss per claim. As such, the rate may vary based upon the types of loans held in a particular portfolio. However, the actual premium rates initially established may need to be less than necessary to fully fund estimated losses so that the program is effective and affordable. (See Comment to 1.7.)

Under the program advocated by ABA, loan portfolios should be current within acceptable parameters. Alternatively, the loans could be guaranteed against further loss after application of risk mitigation measures, included loan modification, or by other means of distressed loan valuation.

1.7.2 Do these considerations of feasibility or appropriateness vary by asset class? If so, please describe using the same asset classes as enumerated under 1.21-1.24. Should the premiums vary by the degree to which the asset is troubled?

See Comments to 1.7 and 1.7.1.

1.8 How and in what form should payment of premiums be scheduled?

Premiums should be paid monthly, based upon the monthly total loan portfolio principal balance.

2. How should a guarantee program be designed to minimize adverse selection, given that the program must be voluntary? Is there a way to limit adverse selection that avoids individually analyzing assets?

While premium rates under the program may be lower than what is available in the marketplace for comparable credit insurance, the rates should nevertheless have a well-defined relationship to the likelihood of losses arising out of a particular loan portfolio being guaranteed, particularly over the longer run. Therefore, portfolios containing riskier loans should have a higher premium, and the lender may determine whether it would be preferable to sell the loans under the Section 101 asset purchase program rather than participate in the guarantee program. The relationship and relative pricing incentives between these programs should be carefully monitored to help control against adverse selection.

Also, ABA proposes that the whole loan process be applied to the entire portfolio of loans held by and/or originated by participating institutions. Further, participating institutions should be required to remain in the program over a designated horizon. These requirements would prevent “cherry picking” higher risk loans to guarantee, or participating only during the initial periods of the program when higher losses and payouts might be expected.

3. What legal, accounting, or regulatory issues would such a guarantee program raise?

The ABA’s recommended focus on guarantees for whole loans and whole loan portfolios would tend to minimize complications that otherwise would occur if guarantees were attempted for MBS and other mortgage-related securities which are often characterized by complicated legal structures. Similarly, guarantees of loan portfolios that are current within acceptable parameters and/or accurately priced to reflect mitigation efforts or other valuation techniques should minimize potential accounting or regulatory problem.

4. What administrative and/or operational challenges would such a guarantee program create?

ABA believes that establishing an effective and accurate methodology for estimating loss migration for specific loan portfolios would be an initial challenge. However, methodologies already exist in the private market and could be readily adapted to the guarantee program. Once established, the

next challenge would be obtaining accurate loan portfolio data from the participating banks. Again, however, models from the private credit insurance market are available, and banks have extensive experience in developing and maintaining such data for both regulatory and insurance purposes. Finally, identifying situations in which partial payment would also be permitted to facilitate loan modification may also be difficult, but placing some affordability guidelines around a co-insurance requirement should prevent most potential misuses or manipulations of the system.

In addition, the Treasury should consult with sister agencies that specialize in mortgage insurance programs, specifically, the Federal Housing Administration under the Department of Housing and Urban Development. FHA and HUD have insured over 34 million home mortgages and 47,205 multifamily project mortgages. Currently, the FHA has 4.8 million insured single family mortgages and 13,000 insured multifamily projects in its portfolio. HUD's long experience with guarantees on, and performances of, mortgage loans makes HUD a natural resource for insight into possible operational challenges going forward.

4.1. What expertise would Treasury need to operate such a guarantee program? Please describe for all facets of the program.

Insurance underwriting and actuarial, accounting and administrative expertise along with loan underwriting knowledge would be required. These skills and capabilities should be contracted to the private sector, except where such expertise may be available at HUD, the FDIC or other agencies.

5. What are the key issues to be considered in determining the eligibility of a given type of financial institution to participate in this program? Should these eligibility provisions differ from those of the troubled asset purchase program?

We believe that the EESA aims to stabilize the current financial situation, and as such, eligibility should be as widely available as possible, considering resource and management constraints. Some criteria that the Treasury may want to consider include whether the institution is financially viable, and whether the guarantee will result in the institution being in a position to increase its lending to the community and/or facilitate loan modifications for borrowers in danger of default.

6. What are the key issues to be considered in determining the eligibility of a given asset to be guaranteed by this program? Should eligibility provisions of assets to be guaranteed under this program differ from those of the troubled asset purchase program?

If the Treasury follows the ABA recommendation to focus on whole mortgage loans and portfolios of such loans, the eligibility factors should including the following:

1. Originated on or before March 14, 2008.
2. The Note is valid and enforceable against the borrower; contains an acceleration clause upon default; and is payable in monthly installments of principal and interest.
3. The Note is secured by a first or second mortgage or deed of trust on residential or commercial real property.

4. The Note is current, the pool of loans is current within acceptable parameters, loan performance has been secured by adequate risk mitigation measures, or the loan asset or pool has been valued by other acceptable techniques.

7. Assuming the guarantee is priced to cover expected claims, are there situations (perhaps created by regulatory or accounting considerations) in which financial institutions would prefer this program to the troubled asset purchase program? Please describe.

There are situations in which the pricing of the mortgage loans may be uncertain (even when current), due to fluctuations of underlying real estate values and high foreclosure rates, yet most of the mortgages will not go into default and could be held profitably for the full term of the loans. An institution may prefer to hold such loans rather than sell them into dysfunctional markets at values not reflective of their expected longer term returns. Obtaining a guarantee at reasonable rates would allow the institutions to hold the loans at least until the market recovers and more favorable prices may be obtained.

A second factor which should add support for a guarantee program is that most banking is a relationship business. Banks will avoid selling assets if possible in order to maintain customer relationships that cover deposit relationships and other financial services. An effective guarantee program would be a more effective tool to maintain franchise value for many banks than an asset purchase program.

7.1 Does this preference differ by type and condition of the asset? For what troubled assets might financial institutions choose to participate in the guarantee program rather than sell under the troubled asset purchase program? Is accommodating this choice likely to best promote the goals of the EESA? Does it adequately protect the taxpayer? If not, what design feature should be included to assure these goals are met?

ABA recommends that Treasury focus the guarantee program on whole loans and whole loan portfolios, rather than focus on matching TARP purchase and guarantee programs in a structured manner. ABA also recommends permitting a partial guarantee payout to facilitate modifications, which could be a preferred option in certain circumstances, and will help keep more homeowners in their homes. The guarantee program also protects the taxpayer because it will be largely self-funded by the participating banks over the program life. Further, upon payment of a loss, the government should be subrogated to the bank's rights in the collateral, which will allow the government to recover additional sums.

Additionally, ABA believes that affording banks a choice between selling a troubled asset and obtaining a guarantee of the troubled asset, when feasible, will promote the goals of EESA by allowing institutions to decide which course of action will best strengthen its balance sheet and promote the availability of credit in the market place. We note, however, that there must be careful consideration of price or payments differentials across TARP programs established for similar classes to avoid unintended price arbitrage or adverse selection. If the troubled asset purchase program, for example, buys troubled assets at an inflated valuation, more banks will sell the assets

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rather than participate in a guarantee program. Therefore, an important design feature will be a consistent method of valuing the assets for purchase that best reflects a fair market valuation.

We appreciate this opportunity to comment on this proposal. Should you have any questions, please contact Rod Alba at (202) 663-5592 or ralba@aba.com, or the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Robert R. Davis". The signature is written in a cursive, flowing style.

Robert. R. Davis