



## TARP Capital Purchase Program for Subchapter S Financial Institutions

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The term sheet has been issued for banks and bank/financial holding companies who have elected tax status under Subchapter S of the Internal Revenue Code. The filing deadline is February 13, 2009.

To accomplish the purpose of the CPP and taking into account the tax law requirements and restrictions of Sub S entities, Treasury will be taking senior subordinated debt ("Senior Securities") instead of preferred stock. (A Sub S entity may have only one class of stock.) The annual interest rate on the debt is pegged at 7.7% for the first five years, and 13.8% thereafter. This is a higher interest rate than that charged under the prior CPP plans. The rate was increased to reflect the tax deductibility of the interest being paid on the debt as opposed to the non-deductible nature of the dividends paid on the preferred stock. The debt will have a maturity of 30 years. Treasury is being careful to treat all the TARP recipients equally.

The Senior Securities will qualify as Tier 1 capital for holding companies, and Tier 2 capital for stand-alone banks and savings & loan companies. There is also a provision that allows for a deferral of the interest payments for up to twenty quarters. However, the interest cumulates and compounds during the deferral period. No dividends may be paid on equity or trust preferred securities during the deferral period.

Warrant Securities, additional debt - up to 5% of the Senior Securities purchased - are also part of the Treasury's package. The Warrant Securities will accrue interest at the rate of 13.8% per annum. They will have a term of 10 years, but a maturity of 30 years.

The other terms and conditions mirror closely the terms of the prior CPP plans. Please contact us with any questions you have or assistance you desire.

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**AUTHORS/ CONTRIBUTORS**

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**PRACTICE AREAS**

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