

Congress Should Not Pass the Proposed Financial Crisis Responsibility Fee

MBA RECOMMENDS

Congress should not pass the proposed Financial Crisis Responsibility Fee because it will reduce the availability and increase the costs of real estate loans to consumers and small businesses by discouraging large financial institutions from entering into new, private label commercial mortgage backed securities (CMBS) and residential mortgage backed securities (RMBS) transactions and significantly reducing the profitability of non-agency servicing.

BACKGROUND

On January 14, 2010, the President announced his intention to propose a Financial Crisis Responsibility Fee (FCRF) that would require the largest banks and Wall Street firms to pay back taxpayers for the assistance provided so that the TARP program does not add to the deficit. The fee would be in place for ten years and would provide the U.S. Government up to \$117 billion from financial institutions with greater than \$50 billion in consolidated assets. The fee would be assessed at 0.15 percent (15 bps) of covered liabilities defined as:

Covered Liabilities = Assets minus Tier 1 capital minus FDIC-assessed deposits (and/or insurance policy reserves, as appropriate)

The fee paid would be tax deductible and would also apply to foreign financial institutions doing business in the United States. Covered liabilities would be reported by regulators, but the fee would be collected by the IRS and revenues would be contributed to the Treasury general fund to reduce the deficit.

Affected Segments of Mortgage Market

There are many households that cannot qualify for single family conventional mortgage loans eligible for delivery into securities issued by Federal National Mortgage Corporation (Fannie Mae) or Federal Home Mortgage Corporation (Freddie Mac) or for FHA or VA loans eligible for MBS guaranteed by the Government National Mortgage Association (Ginnie Mae). These households include but are not limited to foreign national

residents and households requiring loan amounts higher than the Fannie Mae, Freddie Mac or Ginnie Mae maximum levels. They also include families with prior credit history resulting from past unemployment or large medical bills needed to fight life-threatening illness or injury. In the past, these individuals were served by financial institutions who securitized these loans into private label MBS.

Likewise, many multifamily housing projects cannot be financed through the Fannie Mae, Freddie Mac, or Ginnie Mae multifamily programs. Further, much of the financing for warehouses, office buildings, retail, and other commercial properties have traditionally been financed using private label commercial MBS.

ANALYSIS OF FCRF

The following are MBA's principal observations and concerns with respect to the proposed FCRF:

- There already is a corporate income tax to which a bank's earnings are subject. If a bank's profits increase, its taxes increase. The proposed FCRF is designed as an industry-specific penalty fee for being profitable. Regulatory changes, such as improved regulatory capital standards, are a better means of influencing inappropriate risk taking than ad hoc tax penalties.
- The fee imposes a tax primarily on non-depository liabilities of banks. These liabilities would include the hundreds of

billions of dollars of liabilities coming back on the books as a result of the recent implementation of Statement of Financial Accounting Standards No. 166, Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140 (FAS 166) and Statement of Financial Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R) (FAS 167). These pronouncements require financial institutions to include in their consolidated balance sheets assets that they do not own and liabilities that they do not owe. As a result of the interaction of the proposed FCRF and FAS 166 and FAS 167, large financial institutions may be discouraged from entering into new CMBS and RMBS transactions — especially transactions that would require consolidation of a securitization’s assets and liabilities on-balance sheet. It would also impose a stiff tax on liabilities not owed by the bank. MBA believes that assets and liabilities, like RMBS and CMBS transactions, that are linked should be excluded from the proposed FCRF.

- It would dramatically reduce the profitability of private label MBS servicing. For example, if a bank is required to capitalize under FAS 167 a securitization liability because of its role as servicer, it would put the mortgage principal in its consolidated assets and the outstanding MBS in its liabilities. The primary revenue from these additional assets and liabilities is the servicing fee. Assuming a normal servicing fee of 25 bps, the proposed tax would reduce that fee by 60 percent.
- If the proposed FCRF is not passed on to consumers, every dollar impact the FCRF has on bank capital reduces the bank’s lending capacity tenfold. Thus, a \$90 billion FCRF impact could reduce loans to consumers and small businesses by \$900 billion.
- The tax is likely to reduce new loans available to consumers and businesses as regional banks fight to keep assets below the \$50 billion threshold.
- A significant portion of the potential losses to the Troubled Asset Relief Program (TARP) fund relate to TARP funds advanced to the automotive industry. Yet there is no fee on liabilities proposed to recover those losses. Most banks have paid back the TARP funds with interest, and the U.S. government has earned a profit on that segment of the TARP. The tax is punitive in nature to large financial institutions. This comes at a time when economic recovery is dependent on the health of these industries.
- When banks signed up for TARP, the upside to the U.S. Government was in the form of stock warrants. TARP recipients did not sign up for the added burden of the proposed FCRF.
- The imposition of the tax on foreign financial institutions could lead to U.S. financial firms facing similar taxes around the world, compounding the above impacts.

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