

Government Economic Action in 2009:
Legislation and Assistance Programs Available to Individuals

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By

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Mr. Cuda is a former banker and has worked in the finance industry as a banker and banking lawyer for more than 25 years. During that time, Mr. Cuda has advised individuals and businesses on financial matters from simple consumer issues, to business organization structure issues, through structuring and negotiating complex multi-tiered, multi-billion dollar international lending transactions with syndicated lender groups.

As a banker in the 1980's in Texas, Mr. Cuda was involved in regional economic tracking while earning his M.B.A. from St. Edward's University with highest honors. Prior to making the decision to attend law school, Mr. Cuda worked as a liaison between troubled financial institutions and their primary governmental regulator, determining whether such institutions should be closed, merged into another institution, or the survivor in a merger.

While in law school, Mr. Cuda worked for the Texas Attorney General in the Consumer Protection Division. Years later, while working as banking lawyer, Mr. Cuda was selected as a member of the Consumer Council of the State Bar of Texas, the board that oversees the Consumer Law Section of the State Bar of Texas.

Mr. Cuda is a frequent lecturer and writer and has served as an adjunct professor of law in various business related courses at the University of Oklahoma School of Law, Texas Wesleyan School of Law and Texas Tech University School of Law. Mr. Cuda has also participated in the U. S. State Department Emerging Democracies Program, training foreign political leaders and Supreme Court justices on how business laws work in a capitalist system.

After working as a shareholder in the business and credit transactions section of one of the largest law firms in the region, Mr. Cuda now owns Michael D. Cuda, PC, a professional corporation serving the business and personal needs of financial institutions, businesses and individuals. His services range from individual debt restructuring advice to all types of financial institution representation, and include broad areas of business advice and transaction documentation, business general counsel work, as well as connecting businesses with lenders.

Mr. Cuda is a member of Holy Cross Lutheran Church in Arlington, Texas where he serves as an Elder. He also serves on the Board of Directors of Lutheran Outdoors Ministry of Texas, the Dallas-Tarrant Chapter of Thrivent Financial for Lutherans and as an Assistant Scoutmaster of Boy Scout Troop 118 in Arlington, Texas.

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As everyone in this room knows, the United States economy specifically, and the world economy generally, faces the type of decline that we have not seen since the 1970's. While many of the politicians would like to hearken back to the crises of the 1920's and 1930's in order to assert or re-assert government control in many areas of the economy, in reality, the economy is not close, nor headed toward a meltdown of that magnitude, primarily due to fundamental changes in the way the stock market works today, as well as capital reserve requirements for financial institutions and federal deposit insurance. Nevertheless, that does not mean that as a country, we do not face a very serious economic problem.

The purpose of this presentation is not to find fault with actions of the past or present with respect to the economy or legislative actions in response to real or perceived dilemmas in the economy. The actual purpose of the presentation is: 1. to arm the participants in this room with knowledge regarding the legislative actions that have been taken or may be taken in the near future; 2. to identify specific programs that may be helpful to your clients at this time or in the near future; and 3. to identify certain issues as a result of the actions that have been taken to date that may affect your clients and require your assistance to plan for these results.

Troubled Assets Relief Program ("TARP") of 2008

- Part of Emergency Economic Stabilization Act of 2008
- Signed into law on October 3, 2008
- \$700 billion available to purchase troubled assets (residential and commercial mortgages and securities, obligations or other instruments issued before March 14, 2008) from financial institutions
- \$250 billion immediately available (TARP I), \$350 billion available under new administration
- Initial purpose for treasury to purchase troubled assets from financial institutions (not limited to mortgages)
- Increase in federal deposit insurance from \$100,000 to \$250,000
- Homeownership preservation (Hope for Homeowners Program) to assist in refinancing
- Increase in public debt limit by \$1.135 trillion
- Extends tax exempt status for write-down of mortgage debt for qualified mortgages
- Participants must limit executive compensation
- Participants must provide Secretary of Treasury with warrant for nonvoting common stock or voting stock
- SEC authorized to suspend mark-to-market accounting
- Program terminates in December 31, 2009

TARP II

- Plan “announced” on February 10, 2009
- Affects second \$350 billion of TARP
- \$50 billion committed to owner-occupied middle class foreclosure mitigation (no details provided)
- \$500,000 executive compensation limit proposed
- Creates “stress test” for bank capital assistance
- Expands the Term Asset Backed Securities Lending Facility (TALF) to as much as \$1 trillion, using \$100 billion of TARP funding and \$100 billion from other government obligationsⁱ
- TALF was initially announced on November 25, 2009 as a joint program between the Federal Reserve and Treasury to initiate consumer and small business loans at normal interest rate spreads
- Under TALF, Lenders (who in this role also become borrowers) pledge eligible collateral (AAA rated asset backed securities such as commercial bank securities, private label residential mortgages and other asset backed securities (ABS) such as auto loans, student loans, credit card loans and small business loans guaranteed by the SBA, to the Federal Reserve of New York, who fund Investors to purchase the securitized loans
- Lenders sell the assets on a non-recourse basis to the new Investor, using the Federal Reserve/Treasury as their Lender, but anticipating payments from the original lender that loaned the money and pledged the ABS
- The sale price is discounted for a “profit” to the Federal Reserve/Treasury
- If the Lender/Borrower decides not to repay the Federal Reserve/Treasury for the loan, the assets are then sold to a special purpose vehicle established to liquidate such assets, TALF LLC
- The intent is that the Lenders will then be able to take those funds from the loans that they sold and re-lend them into the market – Treasury/Federal Reserve are in effect acting as market makers for these types of loans

TARP Reform and Accountability Act of 2009 (proposed)ⁱⁱ

- Directs President to provide Bridge Loan to Auto Makers that submitted plan as of December 8, 2008
- Allows for draw down of remaining \$350 billion
- Places stricter limits on executive compensation
- At least \$40 billion, but not more than \$100 billion is to be used for foreclosure relief
- Current Status: In Senate Finance Committee

TARP Issues

- TARP Stigma
 - Initially was designed to open credit markets by providing lenders funds to be used for consumer and small business loan
 - Quickly was deemed a sign of financial weakness as a result of troubled institutions using the funds to shore up sagging capital requirements (9 of the largest banks in the country used over half of the initial \$250 billion)
 - Note: In the 1990's during Japan's decade long banking crisis, Japan switched its government subsidiary from troubled asset purchasing to recapitalizing its banks, and it was not until the latter that Japan emerged from its banking crisisⁱⁱⁱ
- Executive Compensation Limits^{iv}
 - "Optics" Committee required to be established, compensation plans required to be put to non-binding shareholder vote
 - TARP limits the compensation of *every* employee of a participant if over \$500 million received
 - Highest amount *any* employee can be paid (salary plus bonus) is no more than 150% of the salary of the 25th highest paid employee
 - Participants receiving under \$500 million may pay total compensation (salary plus bonus) of up to 150% of the *salary* of the highest paid employee
 - Only additional compensation specifically allowed is time vested restricted stock, vesting upon the exit of the participant from TARP
 - Performance based bonuses are prohibited if the performance basis is in any way manipulable, and the performance may affect earnings
 - Compensation restrictions of \$500,000 announced in February 4, 2009 TARP II press release
 - Likely results: Subjective bonuses, immediate significant increase in executive *salaries*, rapid departure of talented executives to institutions or industries not limited by TARP, deleveraging of institutions to get out from under TARP, and rapid expansion of management advisors that are not affected by TARP
- Opting out of TARP^v
 - Once an institution has become a participant under TARP, in order to opt out of the program, it must repay the grant, but other criteria may be required
 - Participant must provide a 30 day notice of intent to repay the funds
 - Government must agree to accept the repayment after reviewing the financial capacity of the institution
 - Institutions have to raise "replacement" capital for some portion of the repayment
 - First institution applied to repay funds as of March 1, 2009, with requested repayment on April 1, 2009 (Minnesota headquartered TCF Bank)

The American Recovery and Reinvestment Act of 2009

- Signed into law February 17, 2009
- “Making Work Pay” Tax Credit allows the withholding rate to be reduced by 6.2% of earned income. NOTE: This is not a tax cut, it is a decrease in the collection rate at lower levels and does not decrease the overall taxable obligation of the individual
- College tax credit of up to \$2500 (100% of the first \$2000 of tuition and expenses and 25% of the next \$2000 of such expenses)
- 2008 First time homebuyer tax credit of 10% of the purchase price of the home up to \$75,000, for homes purchased between April 9, 2008 and July 1, 2009. This must be repaid to the government over the subsequent 15 years, or when the home is sold, if earlier. This bill eliminates the repayment obligation for homes purchased after January 1, 2009, and increases the credit to \$8000. The recapture provision remains in place if the home is sold within 3 years of the original purchase.
- Sales Tax deduction granted for purchase of new vehicles
- Temporary suspension of federal taxation of unemployment benefits
- Alternative Minimum Tax Relief granted through 2009
- Business depreciation schedule accelerated
- Small business expensing expanded to up to \$125,000 through 2010
- Small business NOLs allowed to be carried back 5 years, rather than only 2
- COBRA assistance (see below)
- Making Home Affordable Program provides \$75 billion in funding (see below)
- Debt limit increase of almost \$800 billion

Making Home Affordable Programs

- Home Affordable Refinance to reach 4 to 5 million homeowners – see attached slides
- Home Affordable Modification to reach 3 to 4 million homeowners – see attached slides
 - Loans originated before January 1, 2009
 - Owner occupied
 - Income verified
 - Borrower not required to be past due on payments
 - Incentives for lenders to modify loan if imminent risk of default
 - Lender must apply a NPV test, and must modify loan if the modification scenario has a greater NPV
 - Monthly payment to be reduced to no greater than 31% of gross monthly income
 - Modification first reduces interest rates (2% floor rate), extend term to 40 years, and then if necessary, forbearing principal
 - Monthly payment includes principal, interest, taxes, insurance, flood insurance, homeowner’s association or condominium dues

- \$1000 modification fee paid by government to servicer
- \$1000 per year success incentive payment for up to 3 years paid to servicer
- \$1000 pay for performance fee paid to borrower (directed to servicer for principal reduction) annually for up to 5 years for on time performance on modified loan
- Must enter agreements on or before December 31, 2009

COBRA Modifications^{vi}

- Contained in American Recovery and Reinvestment Act of 2009
- Subsidizes individuals eligible for the Consolidated Omnibus Reconciliation Act (COBRA) healthcare coverage
- Employees involuntarily terminated between September 1, 2008 and December 31, 2009 eligible
- At employers option, employee may change to less expensive plans offered by employer
- Employee pay 35% of COBRA cost, employers pay 65% of cost, reimbursed to the government by a credit to employer's payroll tax
- Program subsidy lasts up to 9 months
- Employers must provide notice of program to employees within 60 days of passage of Act
- Employees terminated in the referenced period must receive notice (and each spouse and dependent) if they are within the standard 90 day window, or failed to elect COBRA during eligibility period, or elected coverage and dropped it due to the cost
- New election period commences February 17, 2009 and extends until 60 days after the required notice is provided to the individual

Credit Cards

- No relief of credit card debt contained in any bills, other than indirectly through the mortgage modification bill
- Credit card companies are anxious to negotiate and will reduce rates and principal
- You must ask
- Real world example: Inability to pay \$13,000 credit card balance with major card issuer due to unemployment. Credit card company offer, without negotiation: Immediate reduction of principal and waiver of all fees, no interest, \$199 per month for 3 years and entire debt forgiven.

Reverse Mortgages

- Reverse mortgage is a home loan that allows conversion of a portion of the home equity into cash

- No repayment is required until the borrower(s) no longer use the home as their principal residence
- No loan payments due as long as you live in the residence
- Fully guaranteed by the FHA
- No income or credit requirements
- Payments are all tax free
- Regardless of the amount of payments made to the borrower, neither the borrower nor the borrower's heirs will ever owe more than the value of the home
- Payments may be lump sum, income stream or a combination
- Must be 62 years of age
- High closing costs (4% to 8%)
- May affect Medicaid eligibility
- You may be required to pay-off an existing loan that has a valuable interest rate
- Interest rates for reverse mortgages are floating
- You are likely to have to pay for mortgage insurance as the loan balance approaches the value of the home
- You have need to do expensive repairs to qualify the home for the program
- Borrower still responsible for taxes, insurance and upkeep of home
- Borrower loses tax interest deduction until the year the loan is paid off
- NEW HOME EQUITY CONVERSION MORTGAGE (HECMs) established January 1, 2009
 - May be used to purchase a primary residence if you can use cash on hand to pay the difference between the HECM proceeds and the sales price plus closing costs
 - Program can allow individual or couple to sell larger home to move into smaller home or condominium using equity from sale of original home

2009 Omnibus Appropriations Bill

- Approved March 10, 2009
- \$410 billion additional funding to complete the 2009 budget
- \$8 billion in “earmarks”

Upcoming Items?

- Judge loan modification authority granted under bankruptcy bill that passed the House of Representatives on March 5, 2009 relating to principal and interest of mortgage loans^{vii}
- Debt Collection Reform being urged by federal regulators, including relaxing provisions related to the definition of “debt collector” which may include the actual lender falling within the provisions of the Act^{viii}

- Second Stimulus Bill already in discussion
- Taxation of healthcare benefits remains in proposed 2010 budget
- “Cap and Trade” tax on CO2 emissions accounts for \$750 billion in new taxes in proposed 2010 budget
- \$634 billion proposed in spending over the next decade in current draft of proposed 2010 budget for universal healthcare
- Citibank 2 month profit?
- Citibank won’t take TARP money (didn’t they already take \$25 billion on October 28, 2008?)
- Rise in Money Supply – See chart

ⁱ *TALF UPDATE – TALF As the Fed’s New Torch: Reigniting the Primary Market for AAA ABS*, Patton Boggs Capital Markets at www.pattonboggs.com, dated February 25, 2009.

ⁱⁱ Summary provided by Patton Boggs LLP at www.pattonboggs.com, dated January 21, 2009.

ⁱⁱⁱ *TARP II (US, 2008) = RRA (Japan, 1998)*, Takeo Hoshi, October 17, 2008, [Asia EconoMonitor](http://AsiaEconoMonitor.com).

^{iv} *Executive Compensation, Politics, Unintended Consequences*, Marc Hodak, February 18, 2009.

^v *TARP Accountability: Use of Federal Assistance by the First TARP Recipients*, Patton Boggs Capital Markets at www.pattonboggs.com, dated February 12, 2009.

^{vi} *United States: COBRA Subsidy Provision of the American Recovery and Reinvestment Act of 2009*, Mona A. Clee, March 10, 2009.

^{vii} *Bankruptcy home loan bill passes House*, Julie Hirschfeld Davis, Associate Press, March 5, 2009.

^{viii} *Debt collection reform owes part of urgency to complaints*, Pamela Yip, [Dallas Morning News](http://DallasMorningNews.com), March 9, 2009.

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Learn About the Making Home Affordable Refinance and Modification Options

The President's plan was created to help millions of homeowners refinance or modify their mortgages.



Refinancing: Many homeowners pay their mortgages on time but are not able to refinance to take advantage of today's lower mortgage rates perhaps due to a decrease in the value of their home. A Home Affordable Refinance will help borrowers whose loans are held by Fannie Mae or Freddie Mac refinance into a more affordable mortgage.

Modification: Many homeowners are struggling to make their monthly mortgage payments either because their interest rate has increased or they have less income. A Home Affordable Modification will provide them with mortgage payments they can afford.

Who is Eligible?

Please use the [self-assessment tools](#) provided on this website to see if you are among the 7 to 9 million homeowners who can benefit from Making Home Affordable. Based on your results, we will provide suggestions about what you can do next.

[FIND OUT IF YOU ARE ELIGIBLE.](#)

[Borrower Q&A](#) 

Beware of Foreclosure Rescue Scams - Help Is Free!

- There is never a fee to get assistance or information about Making Home Affordable from your lender or a [HUD-approved housing counselor](#).
- Beware of any person or organization that asks you to pay a fee in exchange for housing counseling services or modification of a delinquent loan. *Do not pay - walk away!*
- Beware of anyone who says they can "save" your home if you sign or transfer over the deed to your house. Do not sign over the deed to your property to any organization or individual unless you are working directly with your mortgage company to forgive your debt.
- Never make your mortgage payments to anyone other than your mortgage company without their approval.

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If you are a homeowner who is current on your mortgage payments but unable to refinance to a lower interest rate because your home value has decreased, you may be able to refinance.



Do I qualify for a Making Home Affordable refinance? Answer these questions:

1. Is your home your primary residence?
2. Do you have a Fannie Mae or Freddie Mac loan? If you don't know contact:
 - o Fannie Mae,
 - 1-800-7FANNIE (8am to 8pm EST).
 - www.fanniemae.com/homeaffordable
 - o Freddie Mac
 - 1-800-FREDDIE (8am to 8pm EST)
 - www.freddiemac.com/avoidforeclosure/
3. Are you current on your mortgage payments?
 - o "Current" means that you haven't been more than 30-days late on your mortgage payment in the last 12 months.
4. Do you believe that the amount you owe on your first mortgage is about the same or less than the current value of your house?

If you answered **YES** to all of the questions, click here for next steps. 

- OR -

If you answered **NO** to any of the questions, click here to see other options. 

To qualify for refinance, you must answer 'Yes' to all four questions. Otherwise, you may be eligible for a loan modification.

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What do I do next?

If you answered yes to **all** of these questions, you may qualify for a Home Affordable Refinance. The next step is to gather the information you will need to provide to your lender. This includes:



- Information about the monthly gross (before tax) income of your household, including recent pay stubs if you receive them or documentation of income you receive from other sources.
- Your most recent income tax return.
- Information about any second mortgage on the house.
- Account balances and minimum monthly payments due on all of your credit cards.
- Account balances and monthly payments on all your other debts such as student loans and car loans.

After you have this information, you should **call your mortgage servicer or lender** (the organization to whom you make your monthly mortgage payments) and ask about the Home Affordable Refinance application process. The number is on your monthly mortgage bill or coupon book.

Please be patient

Lenders and servicers are just getting the detailed program requirements and it may take time before they are ready to accept applications.

What if I am not eligible for a Home Affordable Refinance?

If you did not answer yes to **all** of the questions above, you may be eligible for a Home Affordable Modification. Go to the [modification self-assessment tool](#) now.

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Making Home Affordable Modifications

If you can no longer afford to make your monthly loan payments, either because your interest rate has increased or you have less income or you are experiencing a hardship that has increased your expenses (like medical bills), you may qualify for a loan modification to make your monthly mortgage payment more affordable. Millions of borrowers who are current, but having difficulty making their payments and borrowers who have already missed one or more payments may be eligible.



Do I qualify for a Home Affordable Modification? Answer these questions:

1. Is your home your primary residence?
2. Is the amount you owe on your first mortgage equal to or less than \$729,750?
3. Are you having trouble paying your mortgage? For example, have you had a significant increase in your mortgage payment **OR** reduction in your income since you got your current loan **OR** have you suffered a hardship that has increased your expenses (like medical bills)?
4. Did you get your current mortgage before January 1, 2009?

If you answered **YES** to all of the questions, click here for next steps. 

- OR -

If you answered **NO** to any of the questions, click here to see other options. 

To qualify for loan modification, you must answer 'Yes' to all four questions. Otherwise, you may be eligible for further options.

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What do I do next?

If you answered yes to **all** of these questions, you may qualify for a Home Affordable Modification. The next step is to gather the information you will need to provide to your lender. This includes:



- Information about the monthly gross (before tax) income of your household, including recent pay stubs if you receive them or documentation of income you receive from other sources.
- Your most recent income tax return.
- Information about your assets
- Information about any second mortgage on the house.
- Account balances and minimum monthly payments due on all of your credit cards.
- Account balances and monthly payments on all your other debts such as student loans and car loans.
- A letter describing the circumstances that caused your income to be reduced or expenses to be increased (job loss, divorce, illness, etc.).

After you have this information, you should call your mortgage servicer and ask to be considered for a Home Affordable Modification. The number is on your monthly mortgage bill or coupon book.

Please be patient

Servicers received the detailed program requirements on March 4, 2009 and it may take some time before they are fully operational. However, Treasury has encouraged servicers to immediately assist delinquent borrowers at the greatest risk of foreclosure.

IN THE MEANTIME, MANY LENDERS HAVE MADE A COMMITMENT TO DELAY FORECLOSURE ON ALL LOANS THAT MEET THE MINIMUM ELIGIBILITY CRITERIA FOR A HOME AFFORDABLE MODIFICATION.

If you have already missed one or more mortgage payments - contact your mortgage lender immediately or call 1-888-995-HOPE (4673) to reach a [HUD-approved housing counselor](#).

HUD-approved housing counselors can help you evaluate your income and expenses and understand your options - and - this counseling is FREE.

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What if I Don't Qualify for a Making Home Affordable Refinance or Modification?

The Making Home Affordable refinance and modification options are designed specifically to allow existing homeowners to keep their homes by making mortgage payments affordable. The plan will not help everyone. For example, it is not designed to reduce mortgage balances for borrowers who have sufficient income to make their mortgage payments but owe more than their homes are worth. It also will not help investor borrowers or borrowers who have no income and cannot make any mortgage payment.



If you do not qualify for a Making Home Affordable refinance or loan modification, your mortgage servicer or [HUD-approved housing counselor](#) may have other options that are available to you. These options may include:

- **Forbearance:** The "forbearance" agreement means that you pay only a portion of your regular payment or no payment at all for a specific period of time based on your current financial status. At the end of the forbearance period, you will begin making regular payments as well as an additional amount to pay off the past-due amount.
- **Repayment Plan:** If you have missed some of your monthly payments, your mortgage servicer may be able to help you catch up by creating a schedule for repaying the past-due amounts.
- **Special mortgage relief assistance for active duty military service members.**

In certain cases, you may need to sell your home and move to more affordable housing. The Homeowner Affordability and Stability Plan includes funding for mortgage servicers to help you make this transition. Call your mortgage servicer or a [HUD-approved housing counselor](#) to discuss:

- **Preforeclosure Sale:** If you cannot sell your home for an amount that will pay off the mortgage loan, talk to your mortgage servicer about a preforeclosure or "short" sale. The mortgage servicer may be willing to accept a payoff amount less than what you owe on the mortgage balance in certain situations.
- **Deed-in-lieu of foreclosure:** If you cannot sell your home in a reasonable amount of time, your mortgage servicer may agree to have you voluntarily transfer the deed to the property to them to help avoid the impact of a foreclosure on your credit rating.

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