

# WebMemo



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## TARP: Now a Slush Fund for Detroit?

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With the Senate's rejection of a bailout for Detroit's ailing automakers, there comes word that President Bush is actively considering using funds allocated by Congress for the Troubled Asset Relief Program (TARP) to prop up the automakers for the time being.<sup>1</sup> Such action would be legally wrong, economically wrong, and counterproductive to turning around these troubled businesses. By opening the door to virtually unlimited uses of this money, a unilateral decision to employ TARP funds would be an outrage to taxpayers.

Until now, the Bush Administration has resisted repurposing TARP funds for industrial policy, though this morning comes word that the Treasury may have reversed course. TARP, Administration officials have said, was intended to shore up the stability of the financial markets and stave off economic collapse, not to inject capital into failing non-financial businesses. Moreover, only \$15 billion remains of the initial \$350 billion in TARP funds disbursed by Congress.

More problematic, however, is Treasury's lack of statutory authority to direct TARP dollars to the automakers. While the statute,<sup>2</sup> passed by Congress in October, grants the Secretary extremely broad discretion to decide how to employ the funds, it clearly limits the recipients to "financial institutions." The definition of that term is quite clear:

**FINANCIAL INSTITUTION** - The term 'financial institution' means any institution, including, but not limited to, any bank, savings association, credit union, security broker or

dealer, or insurance company, established and regulated under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government.

This definition does not leave much room for interpretation.

In this case, due to the enumeration of included institutions in the statute, the term "any institution" is defined, in part, by the list that follows it: "bank, savings association, credit union, security broker or dealer, or insurance company." An automaker is unlike any of these things, being a manufacturer of goods, not a financial intermediary.

It is a closer, but still not close enough, question as to whether the automakers' financing arms, such as GMAC, qualify. GMAC is not a bank, having failed so far to qualify for such status. It and other such financing arms are, to be sure, more like banks than the divisions responsible for stamping sheets of

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steel into auto bodies. But providing customer financing is a function that many non-financial institutions, from department stores to bars and taverns, engage in regularly. If merely offering loans or other financing to customers would transform a manufacturer, wholesaler, or retailer into a “financial institution,” then any business in the nation would qualify for TARP funding. This is an absurd result, one that would render Congress’s attempt to limit the pool of “financial institutions” a nullity, mere surplusage without meaning. This interpretation, then, must be rejected.

Even if the Administration were inclined to do so, it simply lacks the power under the statute passed by Congress to tap TARP funds to prop up auto manufacturers. This limitation makes sense: Why else would have Congress spent the past month taking testimony from auto executives and

then crafting politically contentious bailout legislation if the whole thing was unnecessary due to the bailout back in October?

The Administration must reject calls for it to trample the law, and accomplish an end-run around our representative democracy, by moving forward with an automaker bailout. Giving in would be both unprincipled and, ultimately, illegal.

Worst of all, such a bailout would be counterproductive. Reorganization in bankruptcy continues to represent the best chance for General Motors and Chrysler to survive and prosper.<sup>3</sup>

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1. Press Release, “Statement by Press Secretary Dana Perino,” Office of the Press Secretary, The White House, December 12, 2008, at <http://www.whitehouse.gov/news/releases/2008/12/20081212.html> (December 12, 2008).
2. Emergency Economic Stabilization Act of 2008, Public Law 110-343.
3. Andrew M. Grossman, “Automakers Need Bankruptcy, Not Bailout,” Heritage Foundation *Legal Memorandum* No. 33, November 15, 2008, at <http://www.heritage.org/Research/Economy/lm33.cfm>.