

**A REVIEW OF TARP OVERSIGHT,
ACCOUNTABILITY, AND TRANSPARENCY
FOR U.S. TAXPAYERS**

HEARING
BEFORE THE
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS
FIRST SESSION

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A REVIEW OF TARP OVERSIGHT, ACCOUNTABILITY, AND TRANSPARENCY FOR U.S. TAXPAYERS

Tuesday, February 24, 2009

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:41 p.m., in room 2220, Rayburn House Office Building, Hon. Dennis Moore [chairman of the subcommittee] presiding.

Members present: Representatives Moore of Kansas, Lynch, Klein, Speier, Moore of Wisconsin, Kilroy, Driehaus; Biggert, Lee, and Paulsen.

Chairman MOORE OF KANSAS. This hearing of the Subcommittee on Oversight and Investigations of the House Financial Services Committee will come to order. Our hearing this afternoon is entitled, "A Review of TARP Oversight, Accountability, and Transparency for U.S. Taxpayers."

We will begin our first subcommittee of the year with members' opening statements, up to 10 minutes per side, and then we will hear testimony from our 3 witnesses. After that, members will each have up to 5 minutes to question our witnesses. Without objection, all members' opening statements will be made a part of the record. I now recognize myself for up to 5 minutes for an opening statement.

Five months ago, some Members of Congress were told by former Treasury Secretary Paulson that the financial meltdown was accelerating and we may not have an economy on Monday if Congress failed to pass the rescue bill.

On September 29, 2008, the House first considered the Emergency Economic Stabilization Act, but the measure failed by a vote of 205 to 228. The DOW lost 777 points after the vote and we saw a loss of \$1.2 trillion in the stock market. The Senate later added a number of unrelated tax provisions and approved the bill by a vote of 74 to 25 on October 1st. The House approved the Senate version by a vote of 263 to 171 on October 3rd, and it was signed into law by the President the next day.

We are in a deep and painful economic downturn, the likes of which we have not seen in generations. The evidence is all around us and very clear. Just last month, our economy lost nearly 600,000 jobs and that is on top of the 2.6 million jobs we lost in 2008. But

something we should remember, our financial sector must be stabilized and confidence restored before we see any economic recovery.

“Facts are stubborn things,” John Adams once said, and there is no way around this fact. When Congress enacted the Emergency Economic Stabilization Act, the new law not only created a \$700 billion troubled Troubled Assets Relief Program, commonly called TARP, we made sure to include strong oversight protections for U.S. taxpayers. This included the creation of the Financial Stability Oversight Board, the Special Inspector General for TARP, the Congressional Oversight Panel, and new audit and oversight mandates for the Comptroller General of the United States.

I am pleased today to have three representatives of these TARP oversight bodies here to testify. Their work—and the work of their staff—has contributed to a number of reports totaling over 1,700 pages, all of which are available on the Internet. In fact, the Congressional Research Service has written a 21-page paper explaining all the accountability reports required by the Emergency Economic Stabilization Act. In the words of the Project on Government Oversight early this month, “The world would be a better place if all oversights were this aggressive.”

In light of recent announcements by the Obama Administration regarding the use of TARP funds and their comprehensive financial stability plan, it is important that Congress ensure oversight organizations, understand their respective roles in the oversight process, cooperate with each other, and work to avoid repetitive efforts and inefficiencies.

I hope today’s hearing will help us identify any gaps, either in statute or regulation, that may exist with respect to the oversight of TARP and how we can better protect you as taxpayers in this effort.

For example, the Senate has already approved S. 383, the Special Inspector General for the TARP Act. While this bill primarily deals with the Special Inspector General’s office, the question is, would it improve the overall TARP oversight framework? What is the current status of your organization’s hiring efforts and are steps being taken to avoid potential or real conflicts of interest, what oversight work is your organization currently focused on, and finally, does the oversight structure we are putting in place ensure that the use of TARP funds follows the clear principles laid out by Congress?

In Section 2 of the Economic Stabilization Act, the stated purpose of the new law was to restore liquidity and stability to the financial system, as well as to ensure that these efforts: protect home buy use, college funds, retirement accounts, and life savings; reserve ownership; promote jobs and economic growth; maximize overall return to the taxpayer; and provides public accountability for the exercise of such authority.

I look forward to hearing your testimony and discussing these important issues. My constituents are anxious and frustrated and they deserve the strongest oversight and structure that will provide the accountability the law requires. And I think probably every member of this panel feels the same way.

I now recognize for 5 minutes the distinguished ranking member of the subcommittee, my colleague from Illinois, Mrs. Biggert.

Mrs. BIGGERT. Thank you, Chairman Moore, and thank you for holding today's hearing. I look forward to working with you and all the members of this subcommittee during the 111th Congress.

I welcome today's witnesses and thank them for sharing their expertise with us today. I really am disappointed, however, that the Department of the Treasury didn't produce a witness for this hearing. I believe, Mr. Chairman, that we are sending a letter to Secretary Geithner demanding an explanation of why a witness was not produced to testify at this hearing, and we would like our other colleagues to join us.

Treasury has yet to answer critical questions about the trillions of taxpayer dollars being expended through TARP. Showing up with no answers is unacceptable, which has been the case in Treasury's most recent appearances before our committee, but not showing up at all is both disrespectful to the American people and an abandonment of duty.

It is this lack of communication that has most angered the people who pay the bills, the American taxpayers. Granted, there is plenty of communication out there about the alleged misuse of TARP funds, lavish parties and corporate jets and expensive retreats, but what do we hear of TARP funds that have been put to good use. Not enough.

It is no small wonder there is a lack of confidence in the program. American taxpayers trusted Federal leaders who asked them to front trillions of dollars to prop up the financial and auto industries on the verge of collapse and homeowners facing foreclosure, but they have questions that deserve answers. What is the strategy? Where has the money gone and is it working? What benchmarks have been set to determine success or failure? Are we throwing good taxpayer dollars after bad in this TARP program?

It has been 5 months since the enactment of TARP and we are still waiting for answers. We still need evidence that TARP excludes unscrupulous lenders and bad actors. We still need to know that TARP funds aren't being sent to the same folks who are engaged in unsound lending practices that were the source of our problems in the beginning.

I hope that today's witnesses can help us better understand what mechanisms Treasury needs to put in place to weed out bad actors and not reward bad behavior.

My constituents are sick and tired of bailouts. They paid their mortgages on time, they have saved and invested for their future, they worked hard and paid their bills and taxes. Now they continue to see Federal money fly out the door and they want answers.

Granted, we all understand that many people face foreclosures due to traditional reasons: loss of a job; death in the family; or medical issues. Some were the unfortunate victims of loose lending standards and predatory lending, but there are many homeowners who overextended themselves, couldn't afford their home even with Federal assistance, lied about their income on the loan application, flipped properties for profit, or were part of a mortgage fraud ring.

Is it fair to take money from all the other homeowners and taxpayers to help this latter group of homeowners? I don't think so.

It's certainly not fair to all of those Americans who are hard-working and working to make ends meet without a break or a bailout.

I hope that today's witnesses can discuss the ways that the Administration should follow through with its commitment that TARP funds or any taxpayer funds be used solely for responsible homeowners.

And what is the exit strategy? I don't know about everybody else in this room, but my constituents don't want the Federal Government—big brother—owning, operating and footing the bill for banks, auto companies, insurance companies and everything in between. America is not pro-socialism. We are pro-democracy and pro-free market.

Additionally, our national debt is rising at an unprecedented rate and we cannot afford to pass down this burden to future generations of Americans. With that, I conclude and look forward to hearing from our witnesses.

Chairman MOORE OF KANSAS. Thank you, Mrs. Biggert.

I'm pleased to introduce the witnesses we have for today's hearing. First, we have Mr. Neil Barofsky, the Special Inspector General for TARP, whom I had the pleasure to meet a few weeks ago. Prior to assuming his new position, he was a Federal prosecutor in the United States Attorney's Office for the Southern District of New York for more than 8 years and investigated cases of mortgage and securities fraud.

Mr. Barofsky also led the investigation that resulted in the indictment of the top 50 leaders of the Revolutionary Armed Forces of Columbia on narcotics charges, a case described by the then-attorneys general, as the "biggest narcotic indictment filed in United States history."

Next, we will hear from Mr. Gene Dodaro, the acting Comptroller General of the United States. In a GAO career dating back more than 30 years, he has held a number of key positions at GAO. For the last 9 years, Mr. Dodaro has served as the Chief Operating Officer, the number two leadership position in the Agency, assisting the Comptroller General and providing leadership and vision for the GAO's diverse multidisciplinary workforce.

And finally, we are glad to have Professor Elizabeth Warren testifying before our subcommittee. Professor Warren is the chair of the Bipartisan Congressional Oversight Panel. She also serves as a law professor at Harvard University and has written 8 books and more than 100 scholarly articles dealing with credit and economic stress.

Without objection, your written statements will be made part of the record and you will each be recognized for a 5-minute opening statement summarizing your testimony.

We will start, Mr. Barofsky, with you, sir, for 5 minutes.

STATEMENT OF NEIL M. BAROFSKY, SPECIAL INSPECTOR GENERAL, OFFICE OF THE SPECIAL INSPECTOR GENERAL, TROUBLED ASSET RELIEF PROGRAM

Mr. BAROFSKY. Thank you.

Chairman Moore, Ranking Member Biggert, and members of the subcommittee, I am honored to appear before you today as a Spe-

cial Inspector General for the Troubled Asset Relief Program, or as we call it, SIGTARP.

Approximately \$300 billion has already gone out the door and including the recently announced programs, Treasury intends to leverage the total TARP allotment, with the Federal Reserve and others, to fund at least 8 separate programs under the TARP involving more than \$2.8 trillion. These huge investments of taxpayer money will invariably create opportunities for fraud, waste, and abuse and will require strict oversight.

To meet this massive oversight challenge, I have focused SIGTARP on three areas: transparency; coordinated oversight; and enforcement.

Transparency has been an area of focus of my office from day one. The adoption of our early recommendations has resulted in all the TARP agreements, a commitment from Treasury to post all the TARP agreements onto the Internet, and the two largest recipients of TARP funds are being required to report on their use of TARP funds.

We have also initiated four separate audits: First, into TARP's recipients' use of funds; second, into executive compensation; third into the impact of outside influences, such as lobbyists on the TARP application process; and fourth, into the circumstances under which Bank of America received \$45 billion in cash and commitments to a \$100 billion of asset—of guaranty of toxic assets under three separate TARP programs and four separate transactions. We believe that these audits and these initiatives will shed light into some of the darkest areas of the TARP.

As to our second area of focus, coordinated oversight, it is my honor and privilege to appear today with my co-panelists. For the last 2 months, we have closely worked together to coordinate oversight and provide maximum oversight coverage of the vast terrain of the TARP. I have also founded and chair the TARP IG Council where, along with GAO, we coordinate oversight among the other inspectors general who cover TARP and TARP-related programs.

We have also tried to have a positive impact on TARP programs before the money goes out the door. Treasury has adopted several of our recommendations for TARP agreements under the auto finance, targeted investment, and asset guaranty programs and we are actively working with Treasury in making similar recommendations with respect to the newly initiated programs that were recently announced.

Our third area of focus is enforcement. Of the four primary oversight bodies set forth in the Stabilization Act, we alone stand as the TARP oversight body charged with criminal law enforcement, as the cop on the beat. To meet this challenge, we have developed key relationships with other law enforcement agencies. We have already opened several criminal investigations and we have teamed up with the SEC in shutting down a multi-million dollar securities fraud scam in Tennessee.

We are planning to set up regional and program-specific task forces around the country, both to deter criminal activity before it occurs and to make sure we have the right resources in place to investigate and prosecute any and all who try to criminally profit from this national crisis.

Unfortunately, history teaches us that our law enforcement task will not be an easy one. When government offers assistance, whether for hurricane relief, Iraq reconstruction, or the savings and loan meltdown, criminals are drawn like flies to honey. If by percentage terms some of the estimates of fraud in those programs are repeated in the TARP, we are looking at literally hundreds of billions of taxpayer money lost in fraud. We must be vigilant.

And while I believe that SIGTARP is effectively establishing a framework that will permit us to meet our oversight obligations, we face serious challenges, particularly with respect to identifying and recruiting the highly trained and experienced government investigators and auditors that will be necessary to fulfill our mission.

We desperately need more hiring flexibility, the type of which is contained in S. 383. This bipartisan bill, unanimously approved in the Senate on February 4th, would give us a limited version of some of the authorities that other startup inspector generals have told me were absolutely essential in standing up their offices.

The TARP program has changed significantly since the Stabilization Act was passed last October. Originally intended to purchase and manage \$700 billion of toxic assets, that effort now stands as just a portion of one of the 8 programs under the TARP and just 25 percent of the total of \$2.8 trillion that are contemplated to be involved. Quick passage of this important and essential legislation will help me build the necessary core of my office to meet this challenge.

Chairman Moore, Ranking Member Biggert, members of the subcommittee, I commend you for your efforts to ensure proper oversight over the trillions of dollars being expended under the TARP and its related programs and I look forward to answering any questions that you may have.

[The prepared statement of Mr. Barofsky can be found on page 35 of the appendix.]

Chairman MOORE OF KANSAS. Thank you very much, Mr. Barofsky.

And next, Mr. Dodaro, you are recognized for 5 minutes, sir.

**STATEMENT OF GENE L. DODARO, ACTING COMPTROLLER
GENERAL OF THE UNITED STATES, GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. DODARO. Good afternoon Mr. Chairman, Ranking Member Biggert, and members of the subcommittee. I'm very pleased to be here today to assist your efforts to provide oversight over the Troubled Asset Relief Program.

GAO has a number of responsibilities under the legislation, the first of which is to report every 60 days to the Congress on our oversight efforts of Treasury's implementation. Since the Act was passed on October 3rd, we have issued two reports to comply with that mandate.

The first report was issued on December 2nd, and we provided testimony before the full committee on that report back in December. We issued our second report on January 30th. In both of those reports, we focused on a series of recommendations to improve the

accountability and the transparency of the TARP program. Our recommendations fell into three main categories.

First, in our first report, we pointed out that Treasury did not have a process in place to monitor and report on the use of the funds under the Capital Purchase Program. We thought that this needed to be rectified. We made a recommendation. As a result of our recommendation, Treasury issued a monthly survey now to the 20 largest institutions receiving funds under the Capital Purchase Program and the results are starting to come in about their overall lending practices, thereby providing a bit more transparency to the process.

We believe, however, that is not enough. We think that all participating organizations should be reporting on a monthly basis their lending activities and how the funds are being used consistent with the purposes of the legislation. I would note that in Treasury's most recent articulation of their plans going forward, they embodied our recommendation in there to provide and solicit a plan ahead of time from the agencies that would receive money in the future under the Capital Assistance Program and to provide monthly reports back on lending practices. We hope that they implement that effectively for the second half of the TARP program.

The second major area has been communication strategy. Now this program has been plagued with communication problems from the outset. Communications were poor initially in describing the change from the purchase of the toxic assets moving to the Capital Purchase Program. We recommended that Treasury improve its communication strategy with the Congress and other stakeholders. They have taken a number of initiatives to do this.

In our last report in January, we recommended that they articulate a coherent vision for the TARP program going forward. Earlier this month, the Financial Stability Plan was announced and also the homeowners' program was announced in terms of preserving homeownership and stability in that area as well, but there are a lot more details that need to be articulated for people to understand exactly how those programs are going to proceed.

I think the idea of doing the stress test at the banks was a good idea, but there are a lot of details, both on the financial stability plan, as well as the homeownership affordability and stability plan as well. So we plan to continue monitoring Treasury's efforts to continue to articulate the strategy.

The last category of recommendations that we had was in Treasury's management of the program. In hiring, we suggested they expedite their hiring practices to stand up the program and they did provide a good transition between the Administrations, which was one of our earlier recommendations in December, but they still need to hire and standup the type of resources that they need.

And they really don't have a plan yet on the total amount of resources they need, which is in part due to having a vision of how they are going to implement the program. We recommended that once that vision is put in place, they have a comprehensive human capital strategy to support that plan and to actually deliver results going forward.

In the contracting area, we suggested that they have the right skills and people needed, provide training to them, move to fixed

price contracts where they can away from the time and materials contracts that they invariably had to have up-front going forward, and we made a number of recommendations for internal controls and other necessary management tools that they need to have in place.

Along with Mr. Barofsky and Ms. Warren, you know, I would like to compliment both of them publicly for the type of cooperation that has been at play here. GAO was right there at the beginning in October right after the Act was passed carrying out our responsibilities. As they came onboard in November and December, we set up effective coordinating mechanisms and I believe we are doing what we can to make sure we have adequate coverage to fulfill the responsibilities under the legislation.

I would be happy to answer any questions additionally as to GAO's own efforts as well as some limitations on our authority at the Federal Reserve. So thank you very much.

[The prepared statement of Mr. Dodaro can be found on page 40 of the appendix.]

Chairman MOORE OF KANSAS. Thank you, Mr. Dodaro.

Ms. Warren.

STATEMENT OF ELIZABETH WARREN, CHAIR, CONGRESSIONAL OVERSIGHT PANEL, AND LEO GOTTLIEB PROFESSOR OF LAW, HARVARD UNIVERSITY

Ms. WARREN. Thank you, Chairman Moore, Ranking Member Biggert, and members of this subcommittee. It's a pleasure to be here today.

I am the chair of the Congressional Oversight Panel, but because I am not tightly scripted, I should remind everyone I speak, in that sense, on my own behalf and not necessarily the views of the Panel.

I am very pleased to be here because of the important responsibility on this subcommittee and to try to help in any way that we can. I also want to start by echoing the remarks of Mr. Barofsky and Mr. Dodaro, that we are all working together. We are sharing information as much as we can, strategy as much as we can. We think there is plenty of work to go around and we are doing what we can to enhance each other's efforts rather than compete in any way.

I just want to mention about the purpose of the Congressional Oversight Panel. I see our purpose at three levels. We are here to do oversight of the operation of the TARP, but also the direction in which Treasury is aiming TARP funds, and then in a larger sense, the broader efforts to restore stability to the financial system.

The Congressional Oversight Panel is charged, by statute, with responsibility for reporting on Treasury's use of the TARP funds, the impact on financial markets, financial institutions and market transparency, whether foreclosure mitigation efforts are successful, and the long-term costs and benefits to the taxpayer. So far, we have issued three oversight reports and, as required by statute, a report on regulatory reform.

All of these aim toward a central question and that is whether TARP benefits the American family and the economy and if it does

not, why not and what kind of constructive suggestions can we make. This is what we come to you with.

I want to give you one example of the Oversight Panel's approach, and that is with our valuation report. In our December 9th oversight report, we asked, among many other questions, whether or not the public, the taxpayer, is getting a fair deal for the money that is being infused into these financial institutions.

On December 30th, then-Secretary Paulson responded to us by saying yes, these are investments, not subsidies, and they are made at or near par. We could have stopped there, but we thought it was appropriate to do an independent investigation pulling together recognized experts to be able to do a valuation of the transactions.

In our February 6th report, we made that report public and what we discovered is that Treasury had substantially subsidized the banks to that point. They had paid about \$78 billion more than the value of the assets they received at the time of the transaction. This is not about subsequent declines in market, this is about on the day of the transaction. In effect, for every dollar of taxpayer money put into the financial institutions, on that date, we got back about 66 cents in stock and warrants as they were currently valued.

Now I want to be clear. There may be good policy reasons to subsidize the banks. That is an independent inquiry. But there is no good policy reason not to be honest about that, not to be forthcoming with the American people. Misdirection undermines the confidence of both the American people and the worldwide economies. So in this report, as in all of our reports, we return to our central themes of transparency, accountability, and a clearly articulated plan and strategy for executing that plan.

Just to give you a preview of coming events, our March report will be focused on foreclosure mitigation efforts. We were very pleased to hear the President announce the Homeowner Affordability and Stability Plan last week principally because it shows the importance of dealing with the mortgage foreclosure problem as a central element in trying to pull this economy out of the ditch and get it back in an operational mode, but we are going to make, I think, two important points as we go forward in our report.

The first will focus on the inadequacy of the current data, how little we know, in a factual sense, about what is going on in the mortgages themselves and particularly, in the loan modifications. And we want to make the point that if you don't have good data, it is hard both to analyze the problem with any specificity, design a solution that is going to meet that problem, and then evaluate whether or not the execution of that solution is really doing something useful.

The second point we will be making in our report is that we are going to identify where many of the current obstacles are to reaching economically rational mortgage foreclosure mitigation. In other words, why aren't the workouts happening on their own? And to use that as a checklist for evaluating any proposal to deal with these foreclosures. It may help us evaluate whether or not those proposals are likely to be useful by zeroing in on where the problems are.

I just want to say, by way of conclusion, nearly \$350 billion has already been spent in the 5 months since TARP was authorized by Congress. The themes that we have returned to time and time again in the Congressional Oversight Panel have been about transparency, accountability, and a strategy that comes from clearly articulated goals. This is the only way that we can maintain public confidence in this program and in our ability to solve our economic problems.

Thank you again for having me here and I'm here for whatever questions you may want to ask.

[The prepared statement of Professor Warren can be found on page 55 of the appendix.]

Chairman MOORE OF KANSAS. Thank you, Ms. Warren.

As we have discussed before, Mr. Barofsky, I am very pleased your office has sent use of funds letters to every TARP recipient asking them what they have done or plan to do with the taxpayer's funds they have received. What is the status of those requests?

Mr. BAROFSKY. Our requests had basically a 30-day deadline so they are due back in early March. We sent them over a course of 3 days in early February. So far we have actually had, I was told this morning, 17 responses. My audit chief describes them as good responses, meaning they have had substantive information.

We have had a number of inquiries for clarification. We are going to be posting something shortly on our Web site, www.sig tarp.gov, some questions and answers to give guidance and clarification for those requests, for those banks that are in any way confused or seeking such clarifications. The ABA reached out to us and asked us to do that and we will be doing that. And we look forward to getting what we hope to be a 100 percent response rate in early March.

Chairman MOORE OF KANSAS. And how many did you send out? Do you know, sir?

Mr. BAROFSKY. It was the exact number of TARP recipients as of the date. I think it was a little bit over 350.

Chairman MOORE OF KANSAS. Thank you.

Second question to you, Mr. Barofsky. As you know, the Senate recently approved S. 383, a bill expanding your Office's authorities as Special Inspector General for TARP. You expressed your support for the bill in your testimony. Would you explain the importance of timing in your work and why the House should act quickly on this bill. Why is that important?

Mr. BAROFSKY. Our most significant challenge is hiring and the expanded hiring authorities in S. 383 are essential to us as we build our office. We are a temporary agency. We exist as long as the government holds an asset and while that may appear right now to be a long time, to attract government, highly trained government employees. And we need government auditors, we need government-trained investigators, and we need pretty sophisticated ones, at that, who have this type level of experience.

The bottom line is that those who have that experience, particularly mid-career people, it is very difficult to recruit them into a temporary agency. I have had folks say to me, "Neil, what happens in 10 years? If your program is over, what happens to me and my career?" And those are difficult questions to answer.

These hiring authorities help us immediately address those questions. One, the ability to rehire annuitants. Those are, you know, highly experienced auditors, investigators who are retired and drawing a pension. And normally if they come back to government service, they have to have an offset for their pension. What the legislation does is gives us a waiver so they don't have to do so.

This is a method about which I had talked to some start-up special inspectors general, Iraq reconstruction, Director of National Intelligence, and they have told me—they had blanket authority under this provision. And they told me it was absolutely essential of getting people in place and in place quickly. This bill gives us actually a much more modest form of that, only 25 slots.

And then the second part is under part of the U.S. Code 3161. That enables us to hire people, but they retain the right to return back to their Federal agency. So it helps answer those two questions.

We can't hire untrained new entry level people. We don't have the time or luxury of time. We have \$2.85 trillion to oversee and we desperately need to get a core group of investigators and auditors in as quickly as possible.

Chairman MOORE OF KANSAS. Thank you, sir.

Mr. Dodaro or Professor Warren, would you care to make any comments on how the bill might positively or negatively affect the broader TARP oversight effort and do you have any concerns with the bill? We have about 1 minute and 30 seconds left. I'm going to adhere to the time limits we have, so please, if you would—

Ms. WARREN. I'll yield to you, Gene.

Mr. DODARO. Yes. Thank you, Elizabeth.

I think I have no concerns with the bill. I think the provisions, especially the personnel provisions, are essential. I have the authority, as the Comptroller General, to waive the annuity offsets for retired annuitants. I have brought back about 80 people over a period of time, not specifically for TARP, but we have brought back one banking specialist for that purpose, and I think those tools are essential and I think it will help the overall oversight effort.

Ms. WARREN. And I should just add, we have no concerns either. We support the bill and think it is important to move it quickly.

Chairman MOORE OF KANSAS. Thank you, Ms. Warren.

Last question, mine. We have about a minute left here. In your testimony, Mr. Barofsky, you note that with the Administration's new financial stability plan, the TARP program expands to 8 different programs with an exposure of more than \$2.8 trillion.

One concern I have is in the oversight of TARP funds that pass through the Federal Reserve, especially given the independence Congress grants the Fed. For example, the Fed's TALF program will use TARP funds to lend up to \$1 trillion to thaw the consumer lending markets.

Starting with Mr. Dodaro, what oversight power does your organization have over the Federal Reserve and do you have any concerns about tracking TARP funds passing through the Fed?

Mr. DODARO. Actually, at the Federal Reserve, that is one of the very few areas that we are statutorily prohibited to look at as it relates to foreign transactions, open market transactions.

Chairman MOORE OF KANSAS. You said prohibited?

Mr. DODARO. We are prohibited to.

Chairman MOORE OF KANSAS. Okay.

Mr. DODARO. We have the authority, Mr. Chairman, to look at how the Federal Reserve oversees and carries out its supervisory and review functions, but when it comes to monetary policy, particularly the discount window, open market operations, the decisions of the open market committee, and the transactions with foreign banks and foreign governments, GAO is statutorily prohibited from reviewing those activities. Now as to the TARP—

Chairman MOORE OF KANSAS. Excuse me, sir. I'm over my time limit here.

Mr. DODARO. I'm sorry.

Chairman MOORE OF KANSAS. And I'm going to adhere to the time limits. If you would, please, if you have further comments to make, I would certainly appreciate receiving that in writing and I'll circulate your comments to the other members of the committee as well.

Mr. DODARO. I would be happy to.

Chairman MOORE OF KANSAS. Thank you, sir, very much.

I am out of time so I am going to recognize Mrs. Biggert now for her questions.

Mrs. BIGGERT. My microphone didn't seem to be working very well, so I'll use this one. Maybe we have some money in the stimulus for updating this room. It could use a little help, I think. Thank you.

Mr. Barofsky, once your office is fully staffed, and maybe you can tell us about how long that is going to take, do you plan to do an audit of the past recipients of TARP funds or will you focus on future recipients only?

Mr. DODARO. Right now, our current audit of TARP recipients applies. Everyone up until the date that our letters went out. So we are going to be reviewing the use of funds of each and every TARP recipient up through February 4th, 5th, and 6th, I believe it is.

Mrs. BIGGERT. So that will go back to the fall of 2008?

Mr. DODARO. Back to the first disbursement, I think, in late October.

Mrs. BIGGERT. And about how long is it going to take you to be staffed up?

Mr. DODARO. To staff up? Well, hopefully if this bill is quickly passed, that will help us speed our hiring efforts. What I have done basically to date is I focused on the senior executive staff and I have now finally have—we have identified the right people. I'm very proud of the people that I have identified in the senior positions. Now they are going to be building out their different divisions. I'm hopeful with this expanded authority, we will be able to move more quickly than we have.

Mrs. BIGGERT. Thank you. Then, Mr. Dodaro, in response to a critical report that your office issued in January regarding the Treasury's management of TARP, Treasury developed the Financial Stability Plan that you have talked about and conducted a survey of the 20 largest TARP recipients and announced plans to ana-

lyze data each quarter from every institution receiving TARP funds.

And in your written testimony, you mentioned that additional action is still needed from Treasury to ensure accountability. What are your recommendations and have you ever seen the data that they were going to analyze?

Mr. DODARO. Yes. We now have the data from the 20 largest institutions. We are in the process of analyzing that information ourselves and we will be providing our analysis in our next report due next month.

What we had suggested, though, is for the other institutions, which are now up to 416 institutions that have received money, is that rather than have the quarterly call report data, which is what they are planning to do, that they have the same monthly type survey, and maybe even a subset of information, that they can gather each month on the lending activities for those other institutions.

We think it is important to have timely information from those institutions and we are very pleased with what we have seen on the monthly survey for the 20 largest banks, that they are actually collecting some information that is not on the quarterly call report data concerning different types of lending activities. So that is what we recommended.

Mrs. BIGGERT. Okay. Thank you.

Then Professor Warren, in your best estimate, or estimation, why has the Treasury Department either been unwilling or unable to give specific details as to how they manage the TARP program?

Ms. WARREN. Congresswoman, I don't know. I wish I had a better answer. I'm sorry.

Mrs. BIGGERT. Do you think it is understaffing, inexperience, or that they just don't want to do it?

Ms. WARREN. I have no reason to believe that they don't want to. At least we can say now there has been a shift, as we have new leadership in the Treasury, and they have made it clear, at least in their public statements, that accountability and transparency are important. They have made some significant changes on the Web site. They have implemented some of the procedures that the GAO has asked for. So there has been movement. My sense is, it is a very difficult time for them.

Mrs. BIGGERT. You know, in reading the testimony of all three of you, I think there was something that you all talked about—a vision—needing the communication and the vision. It seems like with all of the things that have been done, there is no plan. I mean, it is we will do this and then we are going to do this and then we will do this and then we will go back and do this. Is that a problem or is it maybe due to their sensitivity in the marketplace and they don't want to bring these out?

Ms. WARREN. Congresswoman, I actually think it is worse than you have described it. I think it is worse than just that there has been change. Change can be explained by events unfold and if you discover that moving in this direction is not yielding in what you want, you move in another direction.

What we saw I think with the valuation report, for example, was a description of a plan to go in one direction and a plan that was never designed to go there, an execution that headed in a very dif-

ferent direction. And so this suggests a lack of forthcomingness on the part of Treasury, at least in the early months, that is deeply disturbing. And I have to say, it is critically what oversight is about and we can't execute on oversight if there is not a clear plan to measure against the particular execution. So we are doing our best here, Congresswoman.

Mrs. BIGGERT. Thank you.

I yield back.

Chairman MOORE OF KANSAS. Thank you to the witnesses and Mrs. Biggert, thank you.

And next Mr. Lynch, you have 5 minutes, sir and I will tap at the end of 5 minutes so you wind up, if you would, please, very quickly.

Mr. LYNCH. All right. Thank you, Mr. Chairman.

First of all, I want to thank the witnesses for your work. I know this is not easy. Just for the record, I want to say that I voted against the TARP and I have not had a moment when I have regretted that decision, unfortunately, because of the way it has been run.

I would say that how we handle this going forward is not only important because of the huge sums that are at stake here and the trust of the American people that must be regained, but also I'm hearing rumblings that the financial services industry is going to come back on the Hill, at some point, and look for more help.

I just need to say that—and I have talked to a lot of my colleagues, although I only speak for myself, the risk appetite here on the Hill, given the way we have seen this top handled so far, is very, very low. And, you know, there is a whole lot more oversight that needs to happen and protection of the American people and the taxpayer that needs to happen here, work that you're doing, before that will ever get through Congress. As much as it may be needed, I just think that this has been a disaster.

Before I just ask my question, I do want to say that, Mr. Barofsky and Mr. Dodaro and Ms. Warren, in talking about the employees that might be needed to really do very good oversight, I know that many of our districts, we have Treasury offices closing, IRS offices closing. You have investigators, you have accountants, you have, God forbid, attorneys, you have auditors who are all doing this work and they are experienced, seasoned employees, in many cases, and offices are closing down.

So there is a pool of talent there that I think we could capitalize on. You know, they would be doing the work that they are doing anyway. Some of them may be a few years from retirement and we might be able to tap into those resources so that we don't have to go out and try to hire these folks from the private sector, which would be enormously expensive, I think.

Let me ask you this. Normally, Congress wouldn't need to know, in great detail, the make-up of complex derivatives or exotic derivatives or CDO's or, you know, credit default swaps, but unfortunately, now the taxpayer is a major purchaser of these instruments. They are very complex and I have been trying on my own and with the help of the committee to get behind some of these instruments and see what is actually behind them.

You did wonderful work on the February report and, you know, unfortunately, we had bad news—the taxpayers overpaid, by \$78 billion, for some of these instruments. Are we ever going to get to the point where we are ahead of this process? And I was happy to receive the report, but it was after the fact. We had already overpaid, you know, 66 cents for every dollar, you know, we got back 66 cents for every dollar spent.

Are we ever going to get to the point where we can actually, you know, in real time, understand that, through transparency, that we are paying a fair value for these assets? Is that a possibility because that is something that I'm trying to grapple with and there doesn't seem to be a clear answer out there. Some of this is, you know, because of Treasury's lack of cooperation, but it also is a result of the complexity of some of these instruments.

Ms. WARREN. Congressman, I would say three things, I think, about that. The first one is, although the report that we issued is entirely retrospective, it talks about transactions that had already occurred, surely that report has been read by the Treasury Department and if that doesn't sound a warning, then I don't know what possibly could. And that is, someone will be watching and reporting on every dollar you spend. And I assume that will have a very sobering effect on a going forward basis.

Mr. LYNCH. You would hope so.

Ms. WARREN. I would hope so. The second thing is that this goes to the question of increased transparency, trying to get more of the documents, and so on, to be transparent so that we can move up in terms of—on time on being able to value. We have now created—this is the second thing that came out of our report. We now know how to do it. So if you try those transactions again, we are much more geared up in how to evaluate them in something closer to real time.

And then there is a third point on it, and this goes back to the question of articulating clearly what we are trying to accomplish. If Treasury will be in the business of trying to explain in a clear way what it is trying to accomplish and how this is the strategy to get there, we actually may have a chance to be able to evaluate it in real time.

Mr. LYNCH. All right.

Chairman MOORE OF KANSAS. Thank you very much, Ms. Warren.

Mr. LYNCH. Thank you.

Chairman MOORE OF KANSAS. Mr. Lee.

Mr. LEE. Thank you.

I have a few different questions, but I heard some interesting testimony and I guess we can throw it up for grabs on who wants to answer some of these questions, but I'll start with, actually, one specifically for Mr. Barofsky, because during your testimony, you had talked about the fact that we have a huge investment in taxpayer money done really over a relatively short period of time, and during this period, we are going to see incredible amounts of waste, fraud, and abuse, potentially tens of hundreds of billions of dollars.

And I, for one, I am a new Member of Congress and obviously, I did not vote for the first TARP, but the second tranche. I, again, was against the fact, based on what I had been hearing, that we

were in a position where we knew enough to release the second half. I'm curious. In your mind, do you feel it was a prudent course knowing the fact that we really, in my mind, don't have enough systems set up in place that it was prudent to release another \$350 billion into the marketplace?

Mr. BAROFSKY. Fortunately, making decisions and determinations like that is not among my responsibilities. Our focus, of course, is now that the decision has been made, what can we do to make the right recommendations to avoid the tens or hundreds of billions of dollars of fraud, waste, and abuse. And the way we do that, as I noted, is by trying to work with Treasury, taking a look at the program and making the necessary recommendations so we can avoid repeating the problems, the past problems, of history.

Mr. LEE. Well, then, I'll get to it in another way. My concern, obviously, is making sure we do have the right staff, but I came from the private sector and one of the things that concerns me and alarms me, that the only sector in our economy that has grown over the, really over the last decade, is in the Federal Government and hiring of new Federal employees. And unless we get the private sector growing, this country is in trouble.

So a potential solution, and I would like your thoughts, is you have talked about the challenges of hiring qualified auditors to come in here and immediately have an impact. We have hundreds of billions of dollars at stake. We have four of the leading private firms, be it Deloitte, Ernst & Young, KPMG, or PricewaterhouseCoopers. Does it make sense, because they could be used on a temporary basis, to come in, and then they are not government employees, can go back into the private sector of using them to do some of the auditing for us? I would like your comments on that or anybody in this room.

Mr. BAROFSKY. We have been given the power to contract and we are exploring those opportunities. We anticipate getting some help on our use of funds survey of contracting private auditing firms to help us.

Mr. LEE. You feel you may go in that direction.

Mr. BAROFSKY. We most certainly will go in that direction with respect to being able to get this project done. We have also contracted with Deloitte to help us in our program management.

Mr. LEE. That's good to hear. One last question and whoever wants to, again, tackle this one. The fact that, and I have always found this in its—it doesn't matter if it is a government business or a private business, but we have the bureaucratic overlap with the GAO, the new Office of Financial Stability within the Treasury, the Congressional Oversight Panel, and I believe there are seven other offices of inspectors general in other agencies. How do you guys mesh together to ensure that you are speaking, and in fact doing, what you were designed to do in the first place?

Mr. DODARO. I will take first shot at this. First of all, there is no overlap between the Office of Financial Stability and the entities that are overseeing their activities. So that is not an issue there because that is the Treasury Department administering the program and we are overseeing that program.

Now with regard to coordination, we each have some specialty areas. For example, we are the financial auditor of the Office of Fi-

nancial Stability at the GAO and we have these responsibilities to coordinate. Now we had the luxury of being an already existing oversight entity with staff and we pooled our financial markets experts, our accountants, our lawyers, and our economists together and we have had to do relatively little hiring to get on the case right away, and then we have coordinated with them.

As Neil mentioned—Mr. Barofsky—they are focused on the criminal investigative area. Neither one of our entities is doing that. We overlap in some of the areas on implementation of some of the programs that we are working together on coordinated audits, sharing information and as Ms. Warren mentioned, and I'm sure she will articulate, the Congressional Oversight Panel has some broader policy issues that they are looking at that we at the GAO are not. I have been involved in a lot of this across government and I think it is working very well here.

Mr. LEE. Thank you.

Chairman MOORE OF KANSAS. Thank you to the witnesses and thank you, Mr. Lee.

Next, Mr. Klein, if you have questions, sir.

Mr. KLEIN. Yes, sir.

Chairman MOORE OF KANSAS. Five minutes.

Mr. KLEIN. Thank you, Mr. Chairman.

Thank you all for being here and participating, and for your work in this very important area.

When we passed the bill, the big issues and the big reasons to pass it were expressed as an attempt to head off more failures of major financial institutions and also to free up the credit market. And it is very clear, despite what was said by many of the leaders of the major banks who came before us last week or 2 weeks ago, that despite what they are saying, they are laying out large amounts of money to large Fortune 100's. I went home last week and heard over and over and over again from businesses, small and large; real estate, commercial, and residential, that this is not translating to our local markets.

So one of the biggest things I keep hearing from people is, all right. Well, you're talking about the second \$350 billion and yes, you are probably going to, hopefully, and part of this conversation is, put all the necessary trappings in place, oversight, clear direction of what is supposed to be—what the money is supposed to be used for, but it takes me back to well, we are not prepared just to leave that \$350 billion out there on the table without a further interest in making sure that that money gets spent to help ease the credit market.

And can you share with us, maybe start with Mr. Barofsky, your thinking on what it is that we can do, as it relates in your research and oversight, with the current—and maybe it is a question of our policy, you have to come make some recommendations to us as Congress, and we come back and whether we do it after the fact or we have a lot of interest in these institutions, regulatorily and otherwise, to get them to take necessary steps to ease the credit market.

That is the biggest problem that I heard right now out there. What can you do—these banks that took all this money, what can you do to start lending to reasonably, you know, unwritten bor-

rowers. We are not talking about making bad loans. We are talking about solid, creditworthy people. Can you share with us some of your thinking on what you are seeing?

Mr. BAROFSKY. I think a theme that all of us keep returning to is transparency and whether it is transparency for Treasury or it is transparency for those who have received the funds. The way we are trying to contribute to answer your question is by doing this audit on how are they using the funds. And GAO has recommended and Treasury is implementing its survey on lending and the effect, the impact of TARP on lending. Our survey is a broader one on overall use of funds.

So we hope that by doing that and being able to report back to Congress, how the first, of the first tranche, the first 350 or so entities up to January 31st have spent the money, that we can give you that data and give you that answer and therefore, be able to make recommendations based on that hard data.

Mr. KLEIN. Well, I want to just point out transparency is absolutely essential because we want to understand it, but is there a gap here or is there a lack of standards, a lack of expectations, a lack of teeth that is missing from this original bill that said you take the money—the fact that they are going to end up reporting to us what they did or didn't do with it may not solve the problem of how do we get this money to be put into the market for lending.

Mr. BAROFSKY. I think the question of what conditions are attached is certainly, you know, a policy-based decision that needs to be addressed to meet your concerns. I think that the Administration has indicated, in its announcement of the programs, that there may be more requirements on how the institutions use the funds. We will see as those programs are rolled out.

Mr. DODARO. A couple of points I would add. First of all, there is about \$50 billion of the first amount of money, the \$350 billion figure, that hasn't been allocated yet to the banks. There are still dozens, if not hundreds, of institutions in the pipeline that the regulatory agencies are looking at and making recommendations to Treasury.

A second major point is, you know, we made recommendations that those entities provide monthly reports on their lending activities and Treasury hasn't implemented that recommendation on the first half. They've indicated that they would look at it for the second half. We still think that needs to be put in place.

Mr. KLEIN. And that can be done right now.

Mr. DODARO. They would have to renegotiate the agreements. The ones that they haven't executed yet, they could still do it and it could be done.

Mr. KLEIN. Mr. Chairman, I think that is something we ought to be speaking to Treasury about. I mean, as we want transparency, there is no reason we can't go back on the original money that was allocated and get these institutions to participate with us.

Chairman MOORE OF KANSAS. I agree with you.

Ms. Warren?

Ms. WARREN. I would only add to that, Congressman, that I think you are exactly right about this, but this goes back not only to transparency, but to about clearly delineated goals. If this is about putting money into the hands of small businesses that have

done most of the job creation outside the public sector, then you make that part of the terms of taking the money. And if someone doesn't want to do that with the money, then don't let them have the money. It's that straightforward.

Mr. KLEIN. I know my time is running out, but I think that is a very important point. I know our small business community, which we are all so concerned about, is not getting access to this. Large businesses are, in many cases, but, Mr. Chairman, I think we really need to focus on getting some criteria, if they receive money, small businesses are given high level focus.

Chairman MOORE OF KANSAS. Thank you, Mr. Klein, and thank you to the witnesses for that, the questions and answers.

And the last person who has indicated they have questions to ask is Mr. Paulsen. Sir, if you would.

Mr. PAULSEN. Thank you, Mr. Chairman, and I also want to thank the witnesses for taking the time to testify.

I will just ask a quick question. Mr. Barofsky, I understand your offices are currently held in the Treasury Department, right? And that being the case, you are not technically part of the Treasury Department, obviously. You don't ultimately answer to the Treasury Secretary. You are kind of on your own, but whom exactly do you ultimately answer to just in regard to your findings, your oversight. Is it just reporting back to us? I mean, sort of your authority. Who do you have to go back to and report your findings?

Mr. BAROFSKY. I think you are correct. We answer to you, the Congress.

Mr. PAULSEN. And I just want to follow-up, Mr. Chairman, too, with Ms. Warren.

You had mentioned before and, you know, both Mr. Dodaro and Ms. Warren had mentioned earlier that the oversight and reports that have come out have been very critical of the process in terms of re-reporting the same problem over and over again.

And so, what sort of hope can you give us, I mean, that you are not going to re-report once again the same problem because I think you are hearing this frustration across the aisle here today, but it is—as you mentioned before, it is disturbing, there is no clear plan to measure against as the execution goes forward, but is there hope that we can really buck the trend and do something differently, as these monies go out there, for the confidence of taxpayers?

Mr. DODARO. I think that is a good question to ask the Secretary of the Treasury in the Treasury Department. I mean, our recommendations are advisory. They only have a force of law if Congress requires them, through statute, to be implemented. Treasury has been implementing our recommendations at the GAO, but they have not fully implemented most of the recommendations that we have had. So unfortunately, in these circumstances, unless the agencies fully implement the recommendations, we will be repeating them going forward because we think they are important.

Chairman MOORE OF KANSAS. Thank you. I was wrong. We do have a couple of other members who would like to ask questions.

First, Ms. Speier, please, for 5 minutes.

Ms. SPEIER. Thank you, Mr. Chairman and members.

First of all, let me say to all three of you how important your role is as we move forward on assessing TARP. You are our eyes and

ears and if there is one frustration I think we all have it is that we don't get the word soon enough when there is trouble to be able to change it midstream. So anything you can do to alert us with your red flags, I hope that you will do that, and we will attempt to act more quickly.

Mr. Barofsky, you said that you have received 17 responses and you have made 350 requests. My understanding is that these are voluntary, so they don't have to return these responses.

Mr. BAROFSKY. That's correct.

Ms. SPEIER. Okay. That is enough to send me into orbit and probably every American taxpayer. What do we have to do to make sure that everyone who has received TARP money is required to respond to you?

Mr. BAROFSKY. Well, I think that—I'm hopeful that we are going to have a full compliance. It is a 30-day deadline so I was actually surprised that we got responses this early. We obviously, we do have the power to compel responses if people choose not to and I will talk to my audit staff and depending on what our level of response rate is, we certainly can consider compelling them through a subpoena—

Ms. SPEIER. So you do have the authority to compel them. I, as one Member, would want you to do utilize and exercise that authority if they do not and I would like for you to start posting on your Web site those who have so that we can see who hasn't responded and who has responded as a running total, if you would.

Mr. DODARO. I think we are certainly going to post response rates and that information—

Ms. SPEIER. But I would like to know who hasn't responded as opposed to who has.

Mr. DODARO. I am confident that is part of our audit plan.

Ms. SPEIER. All right. Thank you.

Ms. Warren, I have to tell you, I think you are doing an incredible job with a very small staff. So my first question is, do you need more support to do your job?

Ms. WARREN. Yes, but we are working on it. We are expanding, we are moving from tiny to small. Well, that's good. And we are hiring. I will say, and I say this very tentatively, we would also be delighted to have the opportunity to hire those who are—

Ms. SPEIER. Retired annuitants?

Ms. WARREN. Retired annuitants. I don't want to do anything to slow up the bill that is in progress for the IG, but it would help us, as well, as we are trying to expand and staff out for our oversight procedures. So I mention that, but I do it with trepidation, not wanting to get in the Inspector General's way.

Ms. SPEIER. All right. Well, we will see what vehicle we can use to assist you in that.

Your report that basically made the case that we were short-changed in the original contracts that were made with the banks is pretty astonishing. And when the CEOs of the banks were at a hearing last week, I actually referred to your report and since you have received a subsidy from the taxpayers of \$80—was it \$80—

Ms. WARREN. \$78 billion.

Ms. SPEIER. —\$78 billion—

Ms. WARREN. More or less.

Ms. SPEIER. —what would you give back to the taxpayers. Would you reduce your credit card interest rate? Not one of them said yes. So I guess my question to you is, what should we extract from these TARP recipients who have gotten deals that really are too good to be true?

Ms. WARREN. Well, Congresswoman, I think this is exactly the right question and I will say, as Mr. Dodaro did, the right person to put on the stand for that question is the Treasury Department that has the authority to ask for more, indeed to demand more, not only from those who receive money in the future, but from those who have already received taxpayer dollars.

Ms. SPEIER. So in the contracts, and you have reviewed them, I gather—

Ms. WARREN. Yes, ma'am.

Ms. SPEIER. —is there the opportunity, then, to rewrite them to add more provisions? There is nothing that prevents us from going back and creating more—

Ms. WARREN. Yes, Congresswoman, that's right.

Ms. SPEIER. Now my time has almost expired, but there was a Citigroup contract that was discussed at our hearing that was pretty astonishing—I don't know if you are familiar with it—where we basically are committed to over \$300 billion over the 10-year period of time of \$306 billion of losses. Do you have any insights on that contract? Are there more contracts as bad as that contract that we should be aware of and bring to light?

Ms. WARREN. Congresswoman, I actually want to start by making a point. When we did the analysis of the value of what the American taxpayer got back in return for the money that it had invested into the banks, we deliberately did not count the guarantees, which means that our \$78 billion is small relative to potential exposure. We might also want to take a look at the Bank of America transaction and some others that involve guarantees.

Ms. SPEIER. Thank you.

Chairman MOORE OF KANSAS. Thank you, and I would—before we call on the last member to ask questions, I would like to note that Mr. Lynch had to leave for another committee hearing. There are other hearings going on and members sometimes belong to multiple committees and I know some other members may be not here for that reason as well. So I just wanted to let the witnesses know that.

And Ms. Kilroy, you are the last person to ask questions here today.

Ms. KILROY. Thank you very much, Chairman Moore. Thank you, panel, for being here this afternoon. I appreciate all the work that you have been doing in helping us get a handle on this oversight issue.

You know, it seems to me, in the news reports again today, that some of the TARP recipients still haven't gotten the message that the party is over. And it seems that perhaps the statement that you made, Professor Warren, about making sure that there is a clearly delineated goal, maybe some of the responsibility lies in how things have been drafted in the first place in terms of delivering that message in a much stronger fashion than has certainly been received to date.

So I want to follow-up on what Mr. Klein was asking with respect to, you know, should there be more legislation in TARP? Should that be where we should be coming down harder and making sure that we have the clearly delineated goals. Have we given Treasury, in the granting of substantial discretion, maybe too much discretion in how to fashion the TARP agreements?

Ms. WARREN. I think this is a very tough question, Congresswoman, which obviously it is your job to ask tough questions, but the point here is that I understand why one might design a system with a lot of flexibility, you know, that you don't just stand behind somebody putting out a fire and try to micro-manage how that happens. But I also understand that if you are going to give that much discretion, that it comes with great responsibility to be forthcoming to Congress and to be forthcoming with the American people about every step of the way.

And so I think the real question here is first, does Treasury have the message and second, do you have real alternatives for how you want to think about the management of this economic crisis because if Treasury is heading in a particular direction, whether they articulate it clearly or not, there is only meaningful oversight if you could understand it and say, so what would have our alternatives have been? Should we be doing something different with the financial institutions? Should we be doing something different about mortgage foreclosure mitigation?

If there aren't alternatives on the table that you focus on and clearly study, then there really is no alternative. You are legislating in the dark. In part, I see that as the responsibility of the Congressional Oversight Panel. We are here partly to wave the flag when there is a problem, to try to document that and show you the seriousness of it, but we are also here to try to bring you some ideas about alternatives.

Whether we keep that on an informal basis in the sense that we come, we testify, we meet with you, or a more formalized basis, that this is the direction you want to go with reigning in the Treasury's ability to decide its own fate, as it goes forward, and the fate of the economy, that will ultimately be the decision for Congress.

So I think the answer in part—I hope what I'm trying to say here—is we need a lot more intensive conversation about this and it is a conversation that is informed by the facts of what they have done, by whether or not they are willing right now to articulate the direction they are going in and our ability to evaluate whether that direction makes any sense.

Ms. KILROY. As you know, the House passed some additional teeth for TARP money that was not taken up by the Senate and I do hope that despite the fact that the Senate didn't take it up, that Treasury does take that into account and that we see those standards in any future TARP agreements.

I was also stunned by the testimony about the potential for fraud and want to follow-up with that. You talk about the need for baseline fraud prevention standards. Are these in existence now in the right places to make sure that you have the framework that then you can go and enforce if there are instances that any number of these whistle blowers might bring to your attention?

Mr. BAROFSKY. Well, we are certainly reaching out to whistle blowers. Our Web site is up and running, our hotline is up and running, and a lot of what I have been doing in the first 2 months of our existence is building that framework. And a lot of that is through our relationships.

Given our relatively small size and obviously the vast amount of money that we are responsible for overseeing, I have spent a lot of time working with the Department of Justice, with the FBI, with State attorneys general, and with the SEC. Basically any law enforcement out there that could potentially assist us in monitoring, deterring, and then investigating and prosecuting fraud, we have been out there and we are working on those relationships. And I think we are getting the right structure in place, particularly with these programs that are coming out now.

Ms. KILROY. But if the initial legal framework or TARP documents aren't set up the right way, there would—

Chairman MOORE OF KANSAS. Your time is up.

Ms. KILROY. Thank you, sir.

Chairman MOORE OF KANSAS. Mrs. Biggert and I have discussed the possibility of each member who wants additional time to ask questions, we can do that and I would start—I have a question myself and we will just go through very briefly, if that is okay with the witnesses as well.

The Fed's TALF program will use TARP funds to lend up to \$1 trillion to thaw the consumer lending markets. Starting with Mr. Dodaro, what oversight power does your organization have over the Federal Reserve? Do you have any concerns about tracking TARP funds passing through the Fed?

Mr. DODARO. As I was starting to mention before, to the extent that the Federal Reserve is using monetary policy, discount window operations, and open market decisions, we are prohibited by law from reviewing those activities. Now so as the TARP program and Treasury begin to have these partnerships with the Federal Reserve, there may be some limitations on our ability to provide that type of oversight.

We are studying how best to do that, this activity, the expansion under the TALF program, from the \$20 billion up to \$100 billion of TARP funds to leverage against the trillion, is a new development.

So we are taking a look at that. The program hasn't started yet. We are trying to figure out how best to do it, but it is something I'm concerned about, Mr. Chairman, and I will come back to the committee. I was asked when we testified before the full committee, you know, about this issue.

Chairman MOORE OF KANSAS. Ms. Warren or Mr. Barofsky, any comments?

Ms. WARREN. I'll just point out that because our work is much more a policy and sort of direction, although we are statutorily authorized and required to see what is happening in the expenditure of TARP funds, it is not possible to look at that without looking at what the Fed is doing as well. So we regard that as within the range of the policy questions and issues that we should be looking at.

Chairman MOORE OF KANSAS. Any comments, Mr. Barofsky?

Mr. BAROFSKY. Mr. Chairman, TALF, obviously, was a focus of our recommendations in our initial report to Congress. I continue to be in touch with the Federal Reserve, as well as Treasury, about recommendations we have made regarding the TALF. I anticipate, and we are currently putting together, a group to make sure that we are going to have effective oversight of the TALF, certainly from a criminal perspective, to make sure that we can deter, as well as investigate and prosecute.

Chairman MOORE OF KANSAS. Thank you. And that is all the questions I have.

Mrs. Biggert, do you have additional questions?

Mrs. BIGGERT. Thank you.

And actually something along that line, Mr. Barofsky, you talked about the TALF program in your report on February 6th about using asset-backed securities as collateral. You were concerned about that and you had recommended that there be minimum underwriting standards and/or fraud prevention mechanisms. What were your recommendations as far as those standards?

Mr. BAROFSKY. Well, our initial concern as the TALF program was first described, the basic fraud prevention was reliance on credit rating agencies and the due diligence of investors. And I think history, recent history, has demonstrated that we should not be relying on credit rating agencies and private investors. That is, of course, in a different type of asset-backed security, not what was originally intended for the TALF, but in the mortgage-backed security market, obviously those failed.

So our original recommendations were addressing the program as initially determined and we suggested increased underwriting baseline as one example of a fraud detection or prevention mechanism. Since then, we have had a number of discussions with the Federal Reserve. They presented to us a number of potential areas they may go when the TALF is rolled out, I think likely this week or next week based on what Chairman Bernanke said earlier today, and we are hopeful that there will be vastly improved fraud prevention protections in there.

Mrs. BIGGERT. I have had an amendment to several of the TARP bills and probably will try and have another amendment on this bill, and that would be to have more prosecutors from the Department of Justice and more investigators from the FBI for mortgage fraud. Would you be in favor of that? Is that something that you think we need now or is that—

Mr. BAROFSKY. I recently testified in front of the Senate Judiciary Committee on several bills, one by Chairman Leahy and another one by Senator Schumer, addressing specifically increased resources for the FBI and for the U.S. Attorney's Office and the Department of Justice. I think it is absolutely vital with not just the TARP-related programs, but the shift of Federal law enforcement resources since September 11th, out of white collar criminal prosecution and to terrorism, that there really is a need to restock the FBI.

Mrs. BIGGERT. Can you outline specific fraud protections that you would recommend?

Mr. BAROFSKY. It really depends on the program.

Mrs. BIGGERT. For TALF.

Mr. BAROFSKY. For TALF, I think one of the key areas that we made recommendations is on the front-end, certain requirements and testing of the borrowers and the actual underlying assets. In other words, making sure that the assets, the collateral that backs the asset-backed securities, whether it is an auto loan or a student loan, making sure that they are real, that they are properly underwritten, so we don't get back into the same situation as we did with the mortgage-backed securities.

We have had really difficult troubled assets that back these securities that are not triple A rated and if the Treasury ends up holding these assets and it finds out that they are not what they appear to be. And I think one of the things the Federal Reserve is addressing is exactly that, is testing of the assets that backed the securities to make sure that they are real and they meet the criteria.

Mrs. BIGGERT. Thank you. Then just one more follow-up question, if I might. With the Administration changing course yesterday and announcing that it would allow financial institutions to sell government common stock as opposed to preferred stock, does the riskier nature of common stock concern any of you from an oversight standpoint?

Ms. WARREN. Well, common stock is valued differently because of the riskier nature. It also means, in the case if we are doing—we are taking what had been preferred and moving it to common stock, we are forfeiting certain payments, a stream of revenue that would have come in under the preferred.

It also means we are moving now into a plan that is hard to describe because we are not clear what kind of control is going to come with the common stock. We know how it works in the private market, but when the government is the holder of large portions of the stock, but there are still private holders, this raises a whole new set of questions. We have an animal that will be neither fish nor fowl.

Mrs. BIGGERT. Absolutely. I agree with you and I hope that you will make your concerns known to the powers that be. Thank you.

I yield back.

Chairman MOORE OF KANSAS. Thank you to the witnesses and to Mrs. Biggert.

And next, Ms. Speier, you have an additional 5 minutes of questions.

Ms. SPEIER. Thank you.

What percentage of the TARP funds, in your review, has been loaned out? Do you have a figure?

Ms. WARREN. Well, we know that about \$300 billion has gone out the door and then there are commitments, now, for—

Mr. DODARO. For the remaining \$50 billion.

Ms. WARREN. —\$50 billion of the first \$350 billion.

Ms. SPEIER. No, I—yes. My question is, of the money that has been received—

Ms. WARREN. Oh, I'm sorry.

Ms. SPEIER. —by the banks, do we have any idea what percentage of that money has been loaned out?

Ms. WARREN. No. Congresswoman, if we don't ask, we can't know.

Mr. DODARO. That was the essence of our recommendation. That was our very first recommendation, they need the reporting back. And I think, you know, Mr. Barofsky's effort is a good effort, but that shouldn't substitute for the responsibilities of the Treasury Department to require that monthly reporting of all institutions receiving the money. And that is the recommendation we reiterated last month.

We are glad they moved forward on the 20 largest institutions, but that won't substitute for having information on all the institutions. That is the only way you are going to get timely information on a recurring basis. You can collect point and time information, but in this case, you need it on a continual basis.

Ms. WARREN. And I would only add to that, since we have made the same point in our reports, it may be more than just reporting. If this is really what we want to accomplish, then we have to move to making it a requirement.

Ms. SPEIER. Is there any concern about these no-bid contracts that have been let by the Treasury Department and if so, what would be your concerns?

Mr. DODARO. On the no-bid contracts, we looked at that early on and we found that they had followed the Federal acquisition regulations. They had limited numbers of contracts. I think in our last report we said at the end of last calendar year, they had about \$8 million in contracts that they have obligated, but we have been looking at every contract once it's done.

Now what we did say is that they have been—while they are following the Federal acquisition regulations, they are using time and materials contracts, which are, as you know, are a riskier form of contract, and as their requirements become better known, they should move to fixed price contracts, which are less risky and a better protection for the taxpayer. In the meantime, they need people to oversee the contracts that they had let and we had a recommendation that those people be adequately experienced and trained properly.

Ms. SPEIER. So it is time and materials with no cap.

Mr. DODARO. There are some caps, I believe. We list them in our report. I would be happy to provide that for the record.

Ms. SPEIER. All right. Thank you. How many more tools or what additional tools do you need? Besides the personnel, what kind of authority do you need that you don't have presently that we should be guaranteeing that you get?

Mr. DODARO. I think there are two issues from our perspective. One, we have mentioned here in terms of to the extent to which that the Congress wants oversight from the GAO and the Federal Reserve activities, there would need to be a legislative change. Now historically, the Congress has not done that to protect the independence of the Federal Reserve and I'm not suggesting that it be changed on an ongoing basis, you know, for normal circumstances. We clearly are not in a normal circumstance at this particular point in time.

And so to the extent to which the Congress wants to do that, we would be happy to work on some, you know, specifically tailored authorities to carry out that responsibility. Now we are going to try

to work as best we can under the current framework, but there are clear limitations on our ability that need to be changed in statute.

There is also a bill in the Senate—S. 340—that would provide GAO access to all TARP recipients' funds. And, you know, while it hasn't been a problem so far, particularly since Mr. Barofsky's organization is getting split up, where the government goes in the future with the second \$350 billion, we are not clear about that.

We have been working to try to get our access into agreements and Mr. Barofsky has been very helpful to do that. Say, for example, in the auto makers, and we are now looking at the auto makers plans. But in the future, it is not really clear who all the recipients would be. So that would be an important safeguard if that legislation was enacted as well.

Ms. SPEIER. Ms. Warren?

Ms. WARREN. I would say only two things that you just should be aware of. It has not yet created a problem for us, but our—we are still developing in what we are doing and asking for. The first is I note we do not have subpoena power. We are the only one of the three who can hold hearings, but whether or not someone wants to come is entirely up to them.

The second thing I would note is that we have the authority to ask Treasury for information, but if Treasury has not gathered that information, they can, quite truthfully, say to us, we don't know. We do not have the authority to ask the financial institutions themselves for information. And so these are areas in which we may be able to do more if we had more authority.

Chairman MOORE OF KANSAS. Thank you. And I would like to, again, thank our witnesses for their testimony today.

And to the members who participated in today's hearing, I appreciate that as well. I think this hearing and hearings like this in the future will be very important and I look forward to working with the members on both sides of the aisle. We need to do that.

I think today's hearing gives us a better sense of the oversight that is going on regarding the use of TARP funds and how it can be improved to ensure the program is transparent and closely monitored. I look forward to working with our witnesses and with my Republican and Democratic colleagues to ensure TARP recipients will be held accountable and U.S. taxpayers are protected.

The Chair notes that some members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

And again, I appreciate everybody's participation. This is very important work and we will have more hearings like this. Thank you so much and the hearing is adjourned.

[Whereupon, at 4:00 p.m., the hearing was adjourned.]

A P P E N D I X

February 24, 2009

Subcommittee on Oversight and Investigations
House Financial Services Committee
February 24, 2009

“A Review of TARP Oversight, Accountability and Transparency for U.S. Taxpayers”

Opening Statement from Chairman Dennis Moore [KS-03]

Five months ago, some Members of Congress were told by Federal Reserve Chairman Bernanke that the financial meltdown was accelerating and “we may not have an economy on Monday,” if Congress failed to pass a rescue bill.

On September 29, 2008, the House first considered the Emergency Economic Stabilization Act, but the measure failed by a vote of 205-228. The Dow lost 777 points after the vote, and we saw a loss of \$1.2 trillion in the stock market. The Senate later added a number of unrelated tax provisions and approved the bill by a vote of 74-25 on October 1st. The House approved the Senate version by a vote of 263 – 171 on October 3rd. It was signed into law by the President later that day.

We are in a deep and painful economic downturn, the likes of which we haven’t seen in generations. The evidence is all around us. Just last month, our economy lost nearly 600,000 jobs, and that’s on top of the 2.6 million jobs we lost in 2008. But something we should remember – our financial sector must be stabilized and confidence restored before we see any economic recovery. “Facts are stubborn things,” John Adams once said, and there’s no way around this fact.

When Congress enacted the Emergency Economic Stabilization Act, the new law not only created the \$700 billion Troubled Assets Relief Program, or TARP, we made sure to include strong oversight protections for U.S. taxpayers. This included the creation of the Financial Stability Oversight Board, the Special Inspector General for TARP, the Congressional Oversight Panel, and new audit and oversight mandates for the Comptroller General of the United States.

I am pleased we have three representatives of these TARP oversight bodies to testify today, and their work and the work of their staff has contributed to a number of reports totaling over 1,700 pages, all of which are available on the Internet. In fact, the Congressional Research Service has written a 21-page paper explaining all the accountability reports required by the Emergency Economic Stabilization Act. In the words of the Project on Government Oversight earlier this month, “The world would be a better place if all oversight were this aggressive.”

In light of recent announcements by the Obama Administration regarding the use of TARP funds and their comprehensive Financial Stability Plan, it is important that Congress ensure oversight organizations understand their respective roles in the oversight process, cooperate with each other and work to avoid repetitive efforts and inefficiencies.

I hope today's hearing will help us identify any gaps, either in statute or regulation, that may exist with respect to the oversight of TARP and how we can better protect U.S. taxpayers in this effort. For example, the Senate has already approved S. 383, the Special Inspector General for the TARP Act. While this bill primarily deals with the Special Inspector General's office, the question is how would it improve the overall TARP oversight framework?

What's the current status of your organization's hiring efforts, and are steps being taken to avoid potential or real conflicts of interest? What oversight work is your organization currently focused on?

Finally, does the oversight structure we are putting in place ensure that the use of TARP funds follows the clear principles laid out by Congress?

In section 2 of the Emergency Economic Stabilization Act, the stated purpose of the new law was to "restore liquidity and stability to the financial system," as well as to ensure these efforts "protects home values, college funds, retirement accounts and life savings"; "preserves homeownership and promotes jobs and economic growth"; "maximizes overall returns to the taxpayers"; and "provides public accountability for the exercise of such authority."

I look forward to hearing your testimony and discussing these important issues. My constituents are anxious and frustrated, and they deserve the strongest oversight structure that will provide the accountability the law requires.

Statement by Rep. Michele Bachmann
House Financial Services Subcommittee on Oversight and Investigations
Hearing entitled “A Review of TARP Oversight,
Accountability and Transparency for U.S. Taxpayers”

February 24, 2009

Thank you, Mr. Chairman, for holding this important hearing.

It's been almost five months since the Troubled Asset Relief Program (TARP) was signed into law, setting the most extraordinary precedent of government intervention in the private marketplace in our nation's history. Since then, we've seen \$350 billion in TARP bailout dollars go out the door without adequate oversight or accountability – and billions more are about to be spent.

We are nervously watching the Administration as they announce piecemeal details of their plans to manage the next \$350 billion from the TARP. The President announced last week that another \$75 billion, 2/3 of which will come from the TARP, will be used to refinance high loan-to-value mortgages, pay lenders and servicers to make loan modifications and subsidize homeowners, some of which may have committed mortgage fraud or taken out clearly irresponsible loans, to pay their mortgages. There are a lot of unanswered questions about how this plan will work, whether it can work, and perhaps most importantly, whether it is fair to the 92% of mortgage holders who were prudent, have been paying their mortgages on time and who may not qualify for this government assistance. The question arises, again, where is the oversight?

The watchdog entities before us today – the Government Accountability Office (GAO), the Special Inspector General for TARP (SIGTARP) and the Congressional Oversight Panel (COP) – will try to explain to the American people why certain mistakes have been made in implementing the TARP and how they can be avoided in the future. But I remain unconvinced that the inherent problems within the TARP can be resolved and that the taxpayers will come out on top in the long-run. Only time will tell, but I can't help but recall the ageless adage, “Fool me once, shame on you. Fool me twice, shame on me.”

Mr. Barofsky states in his testimony, “As announced, the total amount of money potentially at risk in these programs, as well as the TARP related programs that are funded in part by the Federal Reserve and FDIC, is approximately \$2.875 trillion. These huge investments of taxpayers' money, made over a relatively short time period, will invariably create opportunities for waste, fraud and abuse for those seeking to profit criminally and thus require strict oversight.” Reports from Bloomberg News and other sources have calculated a much bigger figure to total all the government bailouts, reaching as high as \$9.7 trillion when counting all the lending and guarantee programs enacted over the past year by the Fed and the FDIC. This is a serious amount of money and the task of managing it properly and transparently is daunting at best.

SIGTARP has only just begun to organize its Investigations Division which has the difficult mission of tracking down bad actors and protecting taxpayers from those who intentionally defraud the Treasury and misrepresent themselves when applying for TARP funding. I look forward to hearing more about the SIGTARP initiatives underway that will not just find these perpetrators after the fact, but prevent them from accessing TARP in the first place.

SIGTARP also identified flaws in the Fed's soon to be launched Term Asset-backed Securities Loan Facility (TALF), which will put up \$200 billion to allow participating borrowers to receive loans from the Fed, and thus from the taxpayer, in exchange for certain securities backed by consumer, auto and student loans. These loans are non-recourse, meaning the borrower could walk away from their collateral if they can't pay up on the loan. Right now, SIGTARP's report concludes that it is unclear how this collateral will be assessed to ensure it's not just junk. An excellent question to which the taxpayers deserve an answer.

While the Fed and Treasury say that the TALF looks at the credit ratings of these asset-backed securities and assumes that investors have an incentive to repay the loan or risk taking a "haircut," it is reasonable to worry in today's environment that this collateral could have been overvalued as a result of fraud or poor underwriting standards. Without identifying a more comprehensive, safe method of measuring the risk of this collateral, the taxpayer will once again be exposed to losing billions at an even higher risk.

Finally, under the jurisdiction of its Audit Division, SIGTARP urges Treasury to develop an "overall investment strategy" to determine "how long these securities should be held and when, and under what circumstances, they should be sold into the market." In other words, Treasury needs to develop its plan for an exit strategy from the bailout mentality and help our nation get on the road to economic recovery. The Administration must develop a way forward that gets taxpayers off the hook for hundreds of billions and gets government out of the private banking business.

I thank the witnesses for being here and look forward to hearing from them.

Thanks you, Mr. Chairman, and I yield back the balance of my time.

Congressman Ron Klein

2-24-09 O & I Opening Statement

Thank you, Chairman Moore, for holding this important hearing. My constituents in South Florida are experiencing tough times, and are anxious for Congress to find solutions to get the economy going and credit flowing again. The Emergency Economic Stabilization Act of 2008, which created the TARP, was a necessary step to help stabilize financial markets during the credit crisis in September and October of 2008. Yet it is essential to hold financial institutions who have received taxpayer money accountable.

The Congressional Oversight Panel recently issued a report detailing taxpayer expenditures under the TARP. We now know that the Treasury Department overpaid by some \$78 billion in their investment in the banks receiving TARP money. My constituents are disgusted when they hear that banks that are in distress because of their own mistakes are getting bailed out while well-run small businesses in Florida are not receiving aid. It is absolutely necessary that we prevent taxpayer dollars from being wasted in this fashion again. Congress must establish the proper oversight mechanisms to make certain that taxpayer dollars are being spent in the most efficient and effective manner.

It also appears that many of the large banks that have received TARP money have not yet grasped the credit conditions at the local level. I asked the CEOs about their lending to small businesses several weeks ago when they testified before the full committee, and the response was disappointing. Mr. Lewis, the CEO of Bank of America, responded that the big banks are liquid. He said – “We want to lend money. We've got the capital. And so there's no reason to not make a good loan.” Yet South Florida businesses still struggle to find access to credit. Congress must find solutions to get money to productive, job-creating small businesses that are in desperate need of access to credit on acceptable terms.

For example, Uniweld Products in my district is a family-run manufacturing business that has been operating in Ft. Lauderdale since 1949. It is owned and operated by WWII veteran David S. Pearl and his sons, David and Douglas. Uniweld is an example of a local business fighting to stay afloat in these difficult economic times. The Pearl family employed 275 people Ft. Lauderdale, but because of the recent credit squeeze and related market conditions, they have been forced to reduce their workforce to 190. We have to start using taxpayer money, either under the TARP or some other mechanism, to ensure that businesses such as Mr. Pearl's can continue to operate. If these banks are not going to lend the money they received from taxpayers, then Congress must develop solutions to either make these banks lend to creditworthy small businesses on reasonable terms or to make them give the money back and establish alternative mechanisms to accomplish this goal.

I look forward to the testimony today and hearing how Congress can improve oversight of TARP funds to hold financial institutions accountable for the taxpayer dollars they receive and to ensure that small businesses have access to credit markets.

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SERVICES SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

**STATEMENT OF NEIL BAROFSKY
SPECIAL INSPECTOR GENERAL
TROUBLED ASSET RELIEF PROGRAM**

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

February 24, 2009

Chairman Moore, Ranking Member Biggert, and Members of the Subcommittee, I am honored to appear before you today.

The Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP") was created under the Emergency Economic Stabilization Act of 2008 ("EESA"), Pub. Law No. 110-343. More than \$300 billion has already been expended under TARP, and, recently, Secretary Geithner outlined his plans for how Treasury will spend the balance of the \$700 billion approved by Congress. In addition to the six programs previously announced, Treasury has announced several new programs that will be implemented in the coming weeks, including efforts to deal with rampant foreclosures, to infuse additional capital to struggling banks, and to address the toxic assets that remain on many financial institutions' books. As announced, the total amount of money potentially at risk in these programs, as well as the TARP related programs that are funded in part by the Federal Reserve and FDIC, is approximately \$2.875 trillion. These huge investments of taxpayers' money, made over a relatively short time period, will invariably create opportunities for waste, fraud and abuse for those seeking to profit criminally and thus require strict oversight.

It is SIGTARP's mission to report on the activities of TARP and make recommendations that can facilitate, through effective oversight, the success of the program. I have focused on three areas since our inception, just a little more than two months ago: transparency, coordinated oversight and robust enforcement.

Transparency has been an area of focus for SIGTARP since day one. In late December, I formally recommended that Treasury post all TARP agreements, whether with recipients of TARP funds or with its vendors, on the Treasury website. Shortly after his confirmation, Secretary Geithner adopted this recommendation in full. Similarly, I asked for and obtained oversight language in the Citigroup and Bank of America agreements that require those banks to account for and report on their use of the TARP funds. I was pleased to see that Citigroup recently reported on its use of funds and its announcement that it was using more than \$34 billion in TARP funds for lending.

SIGTARP is also using its audit function to bring increased transparency to the TARP. For example, we have sent letter requests to each of the TARP recipients asking them to report on how they have used TARP funds and how they plan to use the funds that they have received but not yet spent. We have already begun to receive responses to these requests and look forward to providing an interim report to Congress on this audit project after we receive the responses. In that same survey, we also asked TARP fund recipients to provide details on their plans to comply with applicable executive compensation restrictions and whether they have altered their compensation structure in response to these rules. We believe that this important project will shed light on what has been one of the most opaque areas of the TARP.

We have initiated two other audits that will also bring increased transparency to the TARP. First, we are looking into the impact of outside influences on the TARP application process, and we will report back to Congress on our finding as to what impact, if any, that lobbyists or other outside influences have had. Additionally, if necessary, we will make recommendations on dealing with such outside influences going forward. Second, we have begun an audit into the

process under which Bank of America received \$45 billion in capital investment and is to receive a guarantee relating to approximately \$100 billion of toxic assets in four separate TARP transactions under three different TARP programs.

As to coordinated oversight, it has been and will continue to be a privilege and a pleasure to work closely with my co-panelists, Acting Comptroller General Gene Dodaro and Professor Elizabeth Warren, Chair of the Congressional Oversight Panel. Over the past two months, we have worked effectively together coordinating oversight efforts to provide maximum oversight coverage while avoiding unnecessary or duplicative burdens on those charged with managing TARP. I have also founded and chair the TARP-IG Council, which has, as its members, a GAO representative and the Inspectors General of the other agencies involved in aspects of the administration of TARP programs: the Inspectors General of the FDIC, SEC, FHFA, Federal Reserve, HUD, Tax Administration and Treasury. Through all of these coordinating efforts, we are establishing protocols and sharing ideas for comprehensive audits and investigations.

In conducting oversight, one focus of SIGTARP has been to attempt to have a positive impact on TARP programs before the money goes out the door. Because I did not take office until mid-December, I was not able to do so with respect to the early TARP transactions. However, we have been active in providing recommendations concerning the programs and contracts that followed. Among other things, pursuant to our recommendations, the Auto Industry, Targeted Invested Program and Asset Guarantee Program agreements all contain explicit acknowledgement of SIGTARP's oversight authority over the contracts, and require that, for many of the significant conditions imposed by the agreements, the recipient be required to establish an internal control to comply with that condition, that they are required to report on their compliance, and that they certify, under criminal penalty, that the reporting was accurate. Collectively, these agreements – representing approximately \$465 billion of TARP investments and guarantees – are a significant step forward from an oversight perspective as compared to earlier agreements and programs. We have also made a series of recommendations pertaining to the first part of the \$200 billion Term Asset-Backed Securities Lending Facility (“TALF”), and have met extensively with the Federal Reserve and Treasury to discuss those recommendations. I anticipate making similar recommendations and look forward to working with both Treasury and the Federal Reserve to help protect against waste, fraud and abuse of the more than approximately \$2 trillion that is anticipated to be committed in the newly announced TARP programs.

The scope and variety of the announced TARP programs, now involving eight different programs and more than \$2.8 trillion, leads to our third area of focus, enforcement. Of the four primary oversight bodies set forth in EESA, SIGTARP stands alone as the sole TARP oversight body charged with criminal law enforcement authority – as the cop on the beat. This is obviously one of our most important functions, and we have met this unprecedented challenge head on.

We stand on the precipice of the largest infusion of Government funds over the shortest period of time in our Nation's history. History teaches us that an outlay of so much money in such a short period of time will inevitably draw those seeking to profit criminally. Hurricane relief, Iraq

reconstruction, and the savings and loan bailout serve as important and difficult lessons. If, by percentage terms, some of the estimates of fraud in those programs apply to the TARP programs, we are looking at the potential exposure of tens if not hundreds of billions of dollars in taxpayer money lost to fraud. We must be vigilant.

As we build, we have focused on developing relationships with other law enforcement and prosecutorial agencies to leverage those resources and to provide proactive leadership. For example, I have joined the President's Corporate Fraud Task Force and have initiated coordinated planning efforts with the FBI, the Criminal and Civil Divisions of the Department of Justice, the Internal Revenue Service, and U.S. Attorney's offices from coast to coast. We have already opened several criminal investigations involving multiple jurisdictions. We have also teamed up with the SEC, and have provided assistance to them in shutting down a securities fraud scam in Tennessee that had reaped millions by illegally trading on the TARP name. Based on a meeting we had last week with the Chairman, Mary Schapiro, I am confident that our partnership with a reinvigorated SEC will generate important investigations and serve as a powerful deterrent to those contemplating fraud in connections with TARP programs. Finally, we have been coordinating closely with the New York State Attorney General's investigation into executive compensation issues, including issues surrounding the year-end bonuses paid by Merrill Lynch. Through these relationships, we are exploring task force and similar regional relationships throughout the country to deter criminal activity before it occurs, and to investigate and prosecute any and all who attempt to profit criminally from this National crisis.

We have begun our outreach to potential whistleblowers and those who may have tips about ongoing waste, fraud and abuse. The SIGTARP Hotline is operational and can be accessed through the SIGTARP website at www.SIGTARP.gov, and by telephone at (877) SIG-2009. Plans are being formulated to develop a fraud awareness program with the objective of informing potential whistleblowers of the many ways available to them to provide key information to SIGTARP on fraud, waste and abuse involving TARP operations and funds, and explaining how they will be protected. Training programs are being developed to instruct law enforcement at a variety of agencies to assist in the oversight of the TARP, particularly with respect to the recently announced programs.

The proactive cooperation and coordination that is at the heart of our investigative strategy is resource intensive, and while I believe that SIGTARP is effectively establishing a framework that will permit us to meet our oversight obligations with respect to the nearly \$3 trillion at risk in the TARP programs, we face serious challenges. Most significantly, we have had significant difficulties in meeting our hiring needs. Currently, I have nine permanent staff members, nine detailees on loan from other federal agencies and six individuals who have accepted positions but not yet started. In hiring, we face many of the same problems faced by Treasury itself as it hires TARP managers, as outlined by Mr. Dodaro in his recent report to Congress, including the limitations on pay, the difficulties of hiring into a demanding federal agency, and our conflict of interest rules, which, of course, limit our ability to hire employees who have represented or worked for the entities that we investigate and oversee or have a financial interest in them. We also face additional challenges given our need to identify highly trained and experienced government investigators and auditors and to convince them to join what is, by definition, a

temporary agency. With the passage of the recent stimulus bill, which provides more than \$300 million in new funding to other law enforcement agencies and Inspectors General to provide oversight for programs funded by the bill, we are also facing stiff competition for a limited pool of experienced investigators and auditors. We desperately need more hiring flexibility, the type of which is contained in S. 383, the Special Inspector General for the Trouble Asset Relief Program Act of 2009. This bill was unanimously approved in the Senate on February 4, 2009, the same day it was introduced, by a bipartisan group led by Senators McCaskill, Bunning, Dodd, Lieberman, Schumer, Grassley, Snowe, Nelson, Shaheen and Collins. S. 383 would address our most pressing need by permitting SIGTARP to hire up to 25 retired investigators and auditors, without them having to offset their pensions. It would similarly enable us to use temporarily the hiring authority permitted under 5 U.S.C. 3161. These authorities have been given on a blanket basis to the other Special Inspectors General, and have proven to be essential to their efforts to stand up their offices. Similarly, when the Inspector General for the Office of the Director of National Intelligence was stood up several years ago, that office was also given the authority to rehire annuitants. I have spoken to these Inspectors General, and they have informed me that it was absolutely vital to their efforts to build their offices to have this authority, which is also currently available to the entire Department of Defense, FDIC, and even the FBI (in emergency situations).

The TARP program has changed significantly since EESA was passed last October. Originally intended to purchase and manage \$700 billion of toxic assets, that task is now just a portion of one of the eight intended programs, and the total number of programs and dollars to be overseen dwarf the original amounts contemplated when Congress created my office. Quick passage of this important and essential legislation will allow me to hire rapidly the essential personnel to meet the challenge of providing effective oversight.

Because of the great importance of this bill for SIGTARP, I am requesting the Subcommittees' help to move S. 383 to the House floor as quickly as possible. I believe that this bill will help provide the necessary resources for us to meet our obligation to help protect the U.S. taxpayer's investments.

Chairman Moore, Ranking Member Biggert, and Members of the Subcommittee, I commend you for your efforts to insure that the trillions of dollars being expended under TARP-related programs receive close oversight scrutiny. Your support for prompt House approval of S. 383 will be very helpful in allowing my office to meet the aggressive goals set by Congress.

This concludes my statement and I would be happy to answer any questions you may have.

United States Government Accountability Office

GAO

Testimony
Before the Subcommittee on Oversight
and Investigations, Committee on
Financial Services, House of
Representatives

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TROUBLED ASSET RELIEF PROGRAM

Status of Efforts to Address Transparency and Accountability Issues

Statement of Gene L. Dodaro
Acting Comptroller General of the United States



Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our work on the Troubled Asset Relief Program (TARP), under which the Department of the Treasury (Treasury) has the authority to purchase and insure up to \$700 billion in troubled assets held by financial institutions through the Office of Financial Stability (OFS).¹ As you know, Treasury was granted this authority in response to the financial crisis that has threatened the stability of the U.S. banking system and the solvency of numerous financial institutions. The Emergency Economic Stabilization Act (the act) that authorized TARP on October 3, 2008, requires GAO to report at least every 60 days on findings resulting from our oversight of the status of actions taken under the program.² We are also responsible for auditing OFS's annual financial statements and for issuing special reports on any issues that emerge from our oversight. To carry out these oversight responsibilities, we have assembled interdisciplinary teams with a wide range of technical skills, including financial market and public policy analysts, accountants, lawyers, and economists who represent combined resources from across GAO. In addition, we are building on our in-house technical expertise with targeted new hires, re-employed annuitants with related expertise, and outside experts. The act also created additional oversight entities—the Congressional Oversight Panel (COP) and the Special Inspector General for TARP (SIGTARP)—that also have reporting responsibilities. We are coordinating our work with COP and SIGTARP and are meeting with officials from both entities to share information and coordinate our oversight efforts. These meetings help to ensure that we are collaborating as appropriate and not duplicating efforts.

¹GAO, *Troubled Asset Relief Program: Status of Efforts to Address Transparency and Accountability Issues*, GAO-09-206 (Washington D.C.: Jan. 30, 2009) and *Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency*, GAO-09-161 (Washington, D.C.: Dec. 2, 2008).

²The Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (2008). The act requires the U.S. Comptroller General to report at least every 60 days, as appropriate, on findings resulting from oversight of TARP's performance in meeting the act's purposes; the financial condition and internal controls of TARP, its representatives, and agents; the characteristics of asset purchases and the disposition of acquired assets, including any related commitments entered into; TARP's efficiency in using the funds appropriated for its operations; its compliance with applicable laws and regulations; and its efforts to prevent, identify, and minimize conflicts of interest among those involved in its operations.

My statement today is based primarily on our January 30, 2009 report, the second under the act's mandate, which covers the actions taken as part of TARP through January 23, 2009, and follows up on the nine recommendations we made in our December 2, 2008 report.¹ This statement also provides additional information on some recent program developments, including Treasury's new financial stability plan. Our oversight work under the act is ongoing, and our next report is due to be issued by March 31, 2009, as required.

Like the report, this statement focuses on (1) the nature and purpose of activities that have been initiated under TARP; (2) the status of the transition to the new administration at OFS and its hiring efforts, use of contractors, and development of a system of internal control; and (3) preliminary indicators of TARP's performance. To do this work, we reviewed documents related to TARP, including contracts, agreements, guidance, and rules. We also met with OFS, contractors, federal agencies, and officials from all eight of the first large institutions to receive disbursements. We plan to continue to monitor the issues highlighted in the report, as well as future and ongoing capital purchases, other more recent transactions undertaken as part of TARP (for example, guarantees on assets of Citigroup and Bank of America), and the status of other aspects of TARP. We conducted this performance audit between December 2008 and February 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Summary

Treasury has announced a number of new programs to try to stabilize financial markets, but most of its activity during this period has continued to be through its Capital Purchase Program (CPP). As of February 19, Treasury had disbursed about \$300 billion in TARP funds, about \$196 billion of which was for CPP. Treasury has recently announced the Financial Stability Plan, which outlines a set of measures to address the financial crisis and restore confidence in the U.S. financial and housing markets, and a Homeowner Affordability and Stability Plan to mitigate foreclosures and preserve homeownership. Treasury also has taken

¹Information is current as of January 23, 2009, unless otherwise noted in the statement.

important steps since our first report to implement all nine of our recommendations. However, due in part to the short time frame since our first report, we continued to identify a number of areas that warrant Treasury's ongoing attention concerning TARP. Therefore, we recommended in our latest report that Treasury continue to take action to further improve the transparency and accountability of the program and more clearly articulate and communicate a strategic vision. Specifically, we recommended that Treasury

- expand the scope of the monthly CPP surveys for the 20 largest banks to include collecting at least some information from all institutions participating in the program.
- ensure that future CPP agreements include a mechanism that will better enable Treasury to track the use of the capital infusions and seek to obtain similar information from existing CPP participants.
- establish a process to ensure compliance with all CPP requirements, including those associated with limitations on dividends and stock repurchase restrictions.
- communicate a clearly articulated vision for TARP and how all individual programs are intended to work in concert to achieve that vision. This vision should incorporate actions to preserve homeownership. Once this vision is clearly articulated, Treasury should document skills and competencies needed within the department.
- continue to expeditiously hire personnel needed to carry out and oversee TARP.
- expedite efforts to ensure that sufficient personnel are assigned and properly trained to oversee the performance of all contractors, especially for contracts priced on a time-and-materials basis, and move toward fixed-price arrangements whenever possible as program requirements are better defined over time.
- develop a comprehensive system of internal control over TARP, including policies, procedures, and guidance for program activities that are robust enough to ensure that the program's objectives and requirements are met.
- develop and implement a well-defined and disciplined risk-assessment process, as such a process is essential to monitoring program status and identifying any risks of potential inadequate funding of announced programs.

-
- review and renegotiate existing conflict of interest mitigation plans, as necessary, to enhance specificity and conformity with the new interim conflicts of interest regulation, and take continued steps to manage and monitor conflicts of interest and enforce mitigation plans.

Consistent with our recommendations, Treasury's recently announced Financial Stability Plan outlines some steps it is taking to improve the transparency and accountability of new programs going forward, but Treasury still faces several challenges. First, our first report emphasized the lack of monitoring and reporting for CPP investments and recommended stronger measures for ensuring that participating institutions use the funds to meet the program's purpose and comply with CPP requirements on, for example, executive compensation and dividend payments. In response to our recommendation, Treasury completed its initial survey of the 20 largest institutions to monitor lending and other activities and announced plans to analyze quarterly monitoring data (call reports) for all reporting institutions.⁴ While the monthly survey is a step toward greater transparency and accountability for the largest institutions, we continue to believe that additional action is needed to better ensure that all participating institutions are accountable for their use of program funds. Second, Treasury has continued to develop a system to ensure compliance with CPP requirements, including executive compensation, dividend payments, and repurchase of stocks, but it has not yet finalized its plans for detecting noncompliance and taking enforcement actions. Third, we noted that Treasury had made limited progress in articulating and communicating an overall strategic vision for TARP, while continuing to respond to institution- and industry-specific needs. This lack of clarity has complicated Treasury's ability to effectively communicate to Congress, the financial markets, and the public. However, Treasury has announced a plan to address foreclosure mitigation and homeownership preservation, and as Treasury provides more details on its new Financial Stability Plan, its strategic approach to addressing the financial crisis may become clearer.

Treasury has taken proactive steps to help ensure a smooth transition to a new administration by keeping positions filled and using an expedited hiring process. However, it continues to face difficulty providing

⁴Call reports are quarterly reports that collect basic financial data of commercial banks in the form of a balance sheet and income statement (formally known as *Report of Condition and Income*).

competitive salaries to attract skilled employees. Also, given the program's evolving nature and the likelihood of changes under the new administration, Treasury will need to identify OFS's long-term organizational needs. Additionally, consistent with our recommendation about contracting oversight, Treasury has enhanced such oversight by tracking costs, schedules, and performance and addressing the training requirements of personnel who oversee the contracts. However, as we previously recommended, Treasury needs to continue to identify and mitigate conflicts of interest in contracting. Similarly, OFS has adopted a framework for organizing the development and implementation of its system of internal control for TARP activities, which is consistent with our recommendation. However, as of our January report, it had yet to implement a disciplined risk-assessment process.

Finally, given the fact that program actions have only recently occurred and that there are time lags in the reporting of available data, it is too early in the program's implementation to see measurable results in many areas. Even with more time and better data, it will remain difficult to separate the impact of TARP activities from the effects of other economic forces. Credit market indicators we have identified demonstrate that between our December and January reports, the cost of credit declined in interbank, mortgage, and corporate debt markets. Conversely, while perceptions of risk (as measured by premiums over Treasury bonds) have declined in interbank markets, they appear to have changed little in the corporate bond and mortgage markets. However, attributing any of these changes directly to TARP continues to be problematic because of the range of actions that have been and are being taken to address the current crisis. While these indicators may be suggestive of TARP's ongoing impact, no single indicator or set of indicators can provide a definitive determination of the program's impact.

Treasury Has Continued to Focus on CPP, but a Variety of Other Programs Have Been Created or Are in Progress

Treasury has continued to focus on CPP, but a variety of other programs have been created or are in progress, as shown in table 1. As of February 19, 2009, Treasury had disbursed almost 80 percent of the \$250 billion it had allocated for CPP to purchase almost \$196 billion in preferred shares of 416 qualified financial institutions. Treasury has begun to receive dividend payments relating to capital purchases under CPP and other programs. According to Treasury, as of February 17, 2009, it has received about \$2.4 billion.

Table 1: Status of TARP Funds as of February 19, 2009 (dollars in billions)

Program	Disbursed
Capital Purchase Program	\$196.0
Systemically Significant Failing Institutions	40.0
Targeted Investment Program	40.0
Term Asset-backed Securities Loan Facility	0.0
Automotive Industry Financing Program	23.7
Citigroup Asset Guarantee	0.0
Bank of America Asset Guarantee	0.0
Totals	299.7

Source: Treasury OFS, unaudited.

Initially, Treasury approved \$125 billion in capital purchases for nine of the largest public financial institutions that federal banking regulators and Treasury considered to be systemically significant to the operation of the financial system.⁶ At the time, these nine institutions held about 55 percent of U.S. banking assets. Subsequent purchases were made in qualified institutions of various sizes (in terms of total assets) and types. As we noted in our January report, most of the institutions that received CPP capital were publicly held institutions, while a limited number of privately held institutions and community development financial institutions (CDFI) also received funds.⁶

Treasury has taken a number of important steps toward better reporting on and monitoring of CPP, in accordance with our prior recommendations that it bolster its ability to determine whether institutions were using the proceeds consistent with the purposes of the act and that it establish mechanisms to monitor compliance with program requirements. However, more needs to be done. First, Treasury has initially surveyed the largest institutions to monitor their lending and other activities and announced

⁶While Treasury approved \$125 billion to the nine largest institutions, it initially disbursed funds to eight of the nine institutions. The \$10 billion to Merrill Lynch was not disbursed until January 9, 2009, after its merger with Bank of America was completed.

⁶A CDFI is a specialized financial institution that works in market niches that are underserved by traditional financial institutions. CDFIs provide a range of financial products and services such as mortgage financing for low-income and first-time homebuyers and not-for-profit developers; flexible underwriting and risk capital for needed community facilities; and technical assistance, commercial loans and investments to small start-up or expanding businesses in low-income areas.

plans to analyze quarterly monitoring data (call reports) for all reporting institutions. While the monthly survey is a step toward greater transparency and accountability for the largest institutions, we continue to believe that additional actions are needed to better ensure that all participating institutions are accountable for their use of the funds. Without more frequent information on all participants, Treasury will have little timely information about the changing condition of the institutions, which may limit the ability of its newly created team of analysts to understand the institutions' use of the funds and the effectiveness of the program. In addition, without ensuring that future CPP agreements include a mechanism that will enable Treasury to track the use of capital infusions and without seeking to obtain similar information from existing CPP participants, Treasury may have difficulty determining that an institution has used the funds in a manner consistent with the purposes of the program. Therefore, we recommended that Treasury expand the scope of planned monthly CPP surveys to include collecting at least some information from all participating institutions. We also recommended that it ensure that future CPP agreements include a mechanism that will enable Treasury to track the use of capital infusions and seek to obtain similar information from existing CPP participants. We will continue to monitor Treasury's oversight efforts as well as the consistency of the approval process in future work.

Second, Treasury has continued to take steps to increase its planned oversight of compliance with terms of agreements such as limitations on executive compensation, dividends, and stock repurchases. These steps include naming an Interim Chief Compliance Officer. However, Treasury has not finalized its plans for detecting noncompliance with these requirements and taking enforcement actions. Without a more structured mechanism in place to ensure compliance with all CPP requirements—and as more institutions continue to participate in the program—ensuring compliance with these aspects of the program will become increasingly important and challenging. In its recently announced Financial Stability Plan, Treasury called for banks receiving future government funds to be held responsible for appropriate use of those funds through (1) stronger restrictions on lending, dividend payment, and executive compensation and (2) enhanced reporting to the public. In addition, Treasury is in the process of drafting new regulations to implement the executive compensation requirements in the American Recovery and Reinvestment Act of 2009.⁷ We will also continue to monitor the system that Treasury

⁷Pub. L. No. 111-5, 123 Stat. 116 (2009).

develops to ensure compliance with their agreements and the implementation of additional oversight and accountability efforts under its new plan.

Treasury has continued to make some progress in improving the transparency of the program and a few weeks ago announced its plans for the remaining TARP funds. In our December 2008 report, we first raised questions about the effectiveness of Treasury's communication strategy for TARP with Congress, the financial markets, and the public. These questions were further heightened in the COP's January report, which raised similar questions about Treasury's strategy for TARP. In response to our recommendation about its communication strategy, Treasury noted numerous publicly available reports, testimonies, and speeches. However, even after reviewing these items collectively, we found that Treasury's strategic vision for TARP remained unclear. For example, Treasury initially outlined a strategy to purchase whole loans and mortgage-backed securities from financial institutions, but changed direction to make capital investments in qualifying financial institutions as the global community opted to move in this direction. However, once Treasury determined that capital infusions were preferable to purchasing whole mortgages and mortgage-backed securities, Treasury did not clearly articulate how the various programs—such as CPP, the Systemically Significant Failing Institutions Program (SSFI), and the Targeted Investment Program (TIP)—would work collectively to help stabilize financial markets. For instance, Treasury has used similar approaches—capital infusions—to stabilize healthy institutions under CPP as well as SSFI and TIP, albeit with more stringent requirements. Moreover, with the exception of institutions selected for TIP being viewed as able to raise private capital, both SSFI and TIP share similar selection criteria. Treasury also created the Auto Industry Financing Program in December 2008 to prevent a disruption of the domestic automotive industry that would pose systemic risk to the nation's economy and provided loans to two auto companies and two financing companies that, among other business lines, provide consumer automotive loans. Finally, the same institution may be eligible for multiple programs—at least two institutions (Citigroup and Bank of America) currently participate in more than one program—and this has added to confusion about Treasury's strategy and vision for the implementation of TARP. Other actions also have raised additional questions about Treasury's strategy. For example, Treasury announced the first institution under TIP weeks before the program was established. Similarly, the Asset Guarantee Program was established only after Treasury announced that it would guarantee assets under such a program, and many of the details of the program have yet to be worked out.

Since our January report, Treasury has taken two key actions related to our recommendation about the need for a clearly articulated vision for the program. On February 10, Treasury announced the Financial Stability Plan, which outlines a set of measures to address the financial crisis and restore confidence in U.S. financial and housing markets. The plan appears to be an approach designed to resolve the credit crisis by restarting the flow of credit to consumers and businesses, strengthening financial institutions, and providing aid to homeowners and small businesses. On February 18, Treasury unveiled its Homeowner Affordability and Stability Plan, which, in part, is based on the use of TARP funds. Specifically, the plan will use \$75 billion of TARP funds to modify the loans of up to 3-4 million homeowners to avoid potential foreclosure. The plan also includes a number of other components, including an initiative to help an additional 4-5 million homeowners with loans owned or guaranteed by Freddie Mac and Fannie Mae refinance their loans at current market rates.³ We will continue to monitor the development and implementation of Treasury's plan. In addition, we will assess the extent to which the plan addresses the need for a clearly articulated vision for TARP and explains how the individual programs are intended to work in concert to achieve that vision.

Efforts to Establish OFS Are Ongoing

Treasury has made progress in establishing its management infrastructure, which included hiring, contracting oversight, and internal controls. However, hiring for the Office of Financial Stability is still ongoing, Treasury is working to improve its oversight of contractors, and its development of a system of internal control is still evolving.

- In the hiring area, Treasury took steps to help maintain continuity of leadership within OFS during and after the transition to the new administration, one of the areas we highlighted in our first report. Specifically, Treasury ensured that interim chief positions would be filled to ensure a smooth transition and used direct-hire authority and various other appointments to bring a number of career staff on board quickly. OFS has increased its overall staff since our December 2008 report from 48 to 90 employees as of January 26, which includes an increase of permanent staff from 5 to 38. While progress has been made since our last

³As part of its Homeowner Affordability and Stability Plan, Treasury announced that it was increasing its funding commitment to Fannie Mae and Freddie Mac to ensure the strength and security of the mortgage market and to help maintain mortgage affordability. The \$200 billion funding commitment is based on authority granted to Treasury under the Housing and Economic Recovery Act of 2008 Pub. L. No. 110-289, 122 Stat. 2654 (2008).

report, the number of temporary and contract staff who will be needed to serve long-term organizational needs remains unknown. Because TARP has added many new programs since it was first established in October and program activities may expand or change under the new administration, we recognize that Treasury may find it difficult to determine OFS's long-term organizational needs at this time. However, such considerations will be vital to retaining institutional knowledge in the organization.

- Treasury's use of existing contract flexibilities has enabled it to enter into agreements and award contracts quickly in support of TARP. However, Treasury's use of time-and-materials contracts, although authorized when flexibility is needed, can increase the risk of wasted government dollars without adequate oversight of contractor performance. Although Treasury has improved its oversight of contractors, the department itself has identified certification of its Contracting Officer Technical Representatives and the use of time-and-materials pricing to be high-risk issues that still need attention. In addition, while Treasury has taken the important step of recently issuing an interim regulation outlining the process for reviewing and addressing conflicts of interest among new contractors and financial agents, it is still reviewing contracts or agreements that existed prior to issuance to ensure conformity with the new regulation. We believe this is a necessary component of a comprehensive and complete system to ensure that all conflicts are fully identified and appropriately addressed.
- OFS has adopted a framework for organizing the development and implementation of its system of internal control for TARP activities. OFS plans to use this framework to develop specific policies, drive communications on expectations, and measure compliance with internal control standards and policies. However, it has yet to develop comprehensive written policies and procedures governing TARP activities or implement a disciplined risk assessment process.

In each of these areas, we made additional recommendations. Specifically, we recommended that Treasury continue to expeditiously hire personnel needed to carry out and oversee TARP. For contracting oversight, we recommended that Treasury expedite efforts to ensure that sufficient personnel are assigned and properly trained to oversee the performance of all contractors, especially for contracts priced on a time-and-materials basis, and move toward fixed-price arrangements whenever possible as program requirements are better defined over time. We also recommended that Treasury review and renegotiate existing conflict-of-interest mitigation plans, as necessary, to enhance specificity and conformity with

the new interim conflicts of interest regulation, and take continued steps to manage and monitor conflicts of interest and enforce mitigation plans. Finally, we recommended that Treasury, in addition to developing a comprehensive system of internal control, develop and implement a well-defined and disciplined risk assessment process, as such a process is essential to monitoring program status and identifying any risks of potentially inadequate funding of announced programs. We will continue to monitor OFS's hiring and contracting practices as well as its implementation of the internal control framework, which is vital to the effectiveness of the program.

Measuring the Impact of TARP on Credit Markets and the Economy Continues to Be Challenging

Given the fact that program actions have only recently occurred and that there are time lags in the reporting of available data, it continues to be too early in the program's implementation to see measurable results in many areas. Even with more time and better data, it will remain difficult to separate the impact of TARP activities from the effects of other economic forces. Some indicators suggest that the cost of credit has declined in interbank, mortgage, and corporate debt markets since the December report. However, while perceptions of risk (as measured by premiums over Treasury securities) have declined in interbank markets, they have changed very little in corporate bond and mortgage markets. Finally, as noted in December, these indicators may be suggestive of TARP's ongoing impact, but no single indicator or set of indicators can provide a definitive determination of the program's effects because of the range of actions that have been and are being taken to address the current crisis. These include coordinated efforts by U.S. regulators—namely, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Federal Housing Finance Agency—as well as actions by financial institutions to mitigate foreclosures. For example, a large drop in mortgage rates occurred shortly after the Federal Reserve announced it would purchase up to \$500 billion in mortgage-backed securities, highlighting that policies outside of TARP may have important effects on credit markets. We will continue to refine and monitor the indicators. Additionally, we plan to use the Treasury survey data in our efforts to evaluate changes in lending activity resulting from CPP. We recognize that the data has certain limitations—primarily that it is self-reported and difficult to benchmark because it is unique. Nonetheless, we think it will prove valuable in future analyses.

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to discuss this critically important issue and would be happy to answer any questions that you may have. Thank you.

Contact

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Testimony of Professor Elizabeth Warren
Chair, Congressional Oversight Panel
before the
House Financial Services Committee
Subcommittee on Oversight and Investigations
February 24, 2009

Thank you, Chairman Moore, Ranking Member Biggert, and members of the Subcommittee, for inviting me to testify about the work of the Congressional Oversight Panel. My name is Elizabeth Warren, the Panel's Chair. My testimony before you today reflects my own views and not necessarily those of the Panel.

This Subcommittee has an important responsibility for overseeing the operation and regulation of the nation's financial system, and I want to begin by acknowledging your continuing efforts to highlight the critical need for accountability and transparency in our financial markets. I am pleased to assist your efforts in any way that I can.

I am especially happy to be testifying today alongside my colleagues Gene Dodaro, the Acting Comptroller General of the United States, and Neil Barofsky, the Special Inspector General for the Troubled Assets Relief Program, who is already called simply the "SIGTARP." Together we are charged with ensuring that the tax dollars of the American people are used prudently and effectively to ameliorate and ultimately reverse the deepening financial crisis in which our country – and much of the world – now finds itself.

The Oversight Panel was created as part of the TARP in last year's Emergency Economic Stabilization Act. The job of the Panel is to "review the current state of the financial markets and the financial regulatory system" and report to Congress every 30 days. The Panel has submitted reports to Congress on December 10, January 9, and February 6, and it is preparing its

fourth report for submission in early March. The Panel also submitted a special report on regulatory reform to Congress, as required by the legislation, at the end of January.

The Oversight Panel is one of three organizations to which the TARP legislation gives oversight responsibilities. The Special Inspector General for the TARP has a broad responsibility, and matching authority, to audit and investigate any part of the Program. GAO is given an even more detailed set of instructions for “ongoing oversight of the activities and performance of the TARP,” as well as responsibility for an annual audit of the TARP’s financial statements. Between the Oversight Panel’s obligation to report to Congress every 30 days, the GAO’s obligation to report every 60 days, and the obligation of the Special Inspector General to report every 90 days, Congress will receive an average of two TARP oversight reports every month.

The three oversight organizations are working to complement, not duplicate, one another. We have begun regular meetings with the office of the Special Inspector General and with GAO senior staff responsible for TARP oversight, and we have discussed scheduling three-way meetings at appropriate intervals. We have begun sharing ideas and information, and we have discussed sharing, where possible, preliminary work product. If GAO or the SIGTARP identify questions for the Oversight Panel, they will pass them to us and give us access to data that we can synthesize to inform our work; similarly, when our analysis or information indicates a significant instance of non-compliance with the terms or spirit of the TARP legislation, we will inform GAO, the SIGTARP, or both. We all want to make the whole of our work greater than the sum of its parts.

The Oversight Panel is the smallest of the three organizations. We see our contribution as fact-based analysis that will raise issues about the operation and direction of the TARP and about the broader effort to restore stability to the financial system. In the Emergency Economic Stabilization Act, Congress specifically asked that the Oversight Panel conduct oversight on: the use of Treasury authority under the TARP; the Program's effect on the financial markets, financial institutions, and market transparency; the effectiveness of foreclosure mitigation efforts; and the TARP's effectiveness in minimizing long-term costs and maximizing long-term benefits for the nation's taxpayers. Our ultimate question is whether the TARP is operating to benefit the American family and the American economy. If we believe the answer is no, we will ask "why not," and try to suggest alternatives.

I would like to give the Subcommittee two examples of our Panel's approach. The Panel's February 6 report asked whether the public was receiving a "fair deal" when Treasury used TARP funds to make capital infusions into financial institutions last year. We worked with recognized independent experts to assemble multiple valuation models to see if the securities Treasury received had a fair market value equal to the amount of the infusions. With minimal variation, the models all demonstrated that Treasury made its infusions at a discount – it received securities that were worth substantially less than the amounts it had paid in return, given the financial institutions involved. In all, the Panel's report found that Treasury had overpaid by an estimated \$78 billion. Treasury had received back about 66 cents worth of obligations for each dollar it paid. We believe this is an important issue.

Our report does not explore why such discounts may – or may not – have been appropriate as a matter of policy, although it hopes Congress will keep the issue in mind, and the

Panel continues to explore the matter. But Treasury has not given the public an explanation, and the most important lesson we draw from our analysis is that without a clearer explanation from Treasury about its overall plan for each capital infusion, and without more transparency and accountability for how that plan was carried out, it is not possible to exercise meaningful oversight over Treasury's actions. Congress has given Treasury substantial discretion, as befits this fast-moving crisis. But that discretion carries with it an equivalent obligation to explain, in real time, why the discretion is exercised as it is. Congress and the American people need to understand Treasury's conception of the problems in the financial system and its comprehensive strategy to address those problems. Our collective financial security is on the line, and we all have a stake in the outcome.

The Oversight Panel is also focused on another extremely serious policy question: the lack of progress on mortgage foreclosure mitigation. The Panel's next report will focus on this issue, with particular regard to impediments to mitigation efforts. I was very pleased to hear President Obama announce the Administration's Homeowner Affordability and Stability Plan last week, and I hope that the Panel's report will be useful to the federal government and to local and state governments as they develop and implement plans to address the nation's mortgage crisis. I remain concerned, however, about the lack of adequate information on loan performance and loss mitigation. Without accurate data, measuring the success or failure of mitigation efforts is at best a "hit-or-miss" proposition. As part of our report, we plan to focus on a checklist of features that will be critical to developing any successful plan to stem the rising number of mortgage foreclosures.

The TARP legislation is almost five months old, and Treasury has spent or committed nearly \$350 billion under its terms. Both the Oversight Panel and GAO have called on Treasury to articulate a clear strategy for its use of TARP funds; the absence of such a baseline hampers effective oversight. A month ago I sent a letter to Secretary Geithner requesting that the Department complete its responses to a set of questions the Oversight Panel had posed to then-Secretary Paulson in its December Report. The Secretary has not yet responded, but the initiatives he has announced in the last several weeks, including the Financial Stability Plan announced on February 10, 2009, have described his commitment to transparency and accountability in the future administration of the TARP, for which I commend the Secretary. Even so, the Financial Stability Plan lacks crucial details, particularly about the manner in which the Treasury proposes to deal with “toxic assets” on financial institution balance sheets. These general frameworks do not provide an adequate foundation to oversee Treasury’s activities or to measure the success of the TARP or the Stability Plan. I hope the Secretary will provide the necessary details soon.

What have we learned thus far? Even in a crisis such as we are experiencing, transparency, accountability and a strategy with clearly delineated goals are necessary to maintain public confidence and the confidence of the capital markets. Sophisticated metrics to measure the success and failure of program initiatives are also essential. Assuring that the TARP reflects these elements underlies all of our oversight efforts.

Thank you again for the opportunity to appear before you to explain the work of the Oversight Panel. That concludes my testimony, and I will be pleased to answer your questions.