

Copyright 2011 CQ Transcriptions, LLC
All Rights Reserved
Financial Markets Regulatory Wire

All materials herein are protected by United States copyright law and may not be reproduced, distributed, transmitted, displayed, published or broadcast without the prior written permission of CQ Transcriptions. You may not alter or remove any trademark, copyright or other notice from copies of the content.

REP. DARRELL ISSA HOLDS A HEARING ON THE TROUBLED ASSET RELIEF
PROGRAM

January 26, 2011 Wednesday

EVENT DATE: January 26, 2011

TYPE: COMMITTEE HEARING

LOCATION: WASHINGTON, D.C.

COMMITTEE: HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT
REFORM

SPEAKER: REP. DARRELL ISSA, CHAIRMAN

WITNESSES:

TEXT:

ISSA: Good morning. And welcome to our first hearing of the full committee of the 112th Congress.

Today's hearing is on the bailout and the foreclosure crisis, and the report -- and specifically the report of the special inspector general for the Troubled Asset Relief Program, SIGTARP.

This is the first hearing for both Chairman Issa and Ranking Member Cummings, so I ask all of your indulgence as we go through a number of first-time mistakes -- and undoubtedly I will make.

The chair notes that pursuant to the rules there will not be Opening statements. However, members may have seven days to submit opening statements and extraneous materials for the record.

We will now recognize our panel.

CUMMINGS: Mr. Chairman?

ISSA: Yes.

CUMMINGS: Parliamentary inquiry, Mr. Chairman. I know this is our first meeting, and I just want to make sure we're clear. We had a lengthy discussion...

ISSA: Will the gentleman state his...

CUMMINGS: I'm trying to do that.

We had a lengthy discussion yesterday with regard to opening statements -- and the chairman and -- I thought we had reached a wonderful agreement where the chairman had said that he would provide us notice with regard to opening statements, whether we were giving them or not.

And this is our first hearing, and some of the members and, of course, I am just wondering exactly why we are not having opening statements.

And, two, we were given notice just about a half an hour ago or so that there will not be opening statements. I'm just wondering so that...

(CROSSTALK)

ISSA: I thank the gentleman. The chair is waiving opening statements, including my own. And as I said, all members will have seven days in order to place their opening statements into the record.

ISSA: On a very personal note, I felt that it was most important on this first hearing to start off by listening to the witnesses as though this -- and I know that the special I.G., this is his 20th visit.

However, for the purposes of all of us, including the freshmen, I wanted to start off by listening first.

I recognize that tradition is that we hold the members -- the witnesses here for sometimes an hour through opening statements. That is a tradition that I intend to break.

That doesn't mean that there won't be opening statements in the future, but for this first one, I wanted to make it perfectly clear, if you will, that we're interested in listening to our witnesses first. And I appreciate the gentleman's parliamentary inquiry.

CUMMINGS: Mr. Chairman, for the parliamentary inquiry, pursuant to what you said yesterday, and I have the transcript, will you be giving us more notice with regard to that?

I mean, I thought we were very -- we had a gentleman's wonderful discussion yesterday where you said you would give us proper notice. And I was just wondering what should we expect in the future. That's all.

ISSA: As I said, that we will intend to give notice to all things. In this case, we only organized yesterday, less than 24 hours ago. In the future, I would expect there would be greater notice, and I appreciate the gentleman's question.

(UNKNOWN): Would the chairman yield? Would the chairman yield for questions?

ISSA: At this time, I'm going to introduce the witnesses.

Mr. Timothy...

(UNKNOWN): Mr. Chairman? Mr. Chairman?

ISSA: For what purpose does the gentleman seek recognition?

(UNKNOWN): An inquiry of the chair with respect to procedure.

ISSA: The gentleman will state his parliamentary inquiry.

(UNKNOWN): I've been in -- I've been in the Congress for 14 years and I've never -- it's just unprecedented that the ranking member not be permitted to give an opening statements or for a chair to dispense with the opening statements so that the people have the...

ISSA: Does the gentleman have a parliamentary inquiry?

(UNKNOWN): I asked -- I didn't make a parliamentary inquiry. I asked for recognition.

ISSA: Then the gentleman is no longer recognized. The -- we will now introduce...

(UNKNOWN): Mr. Chairman?

ISSA: We will now introduce...

(UNKNOWN): Mr. Chairman? On a point of order.

ISSA: Yes, point of order.

(UNKNOWN): I certainly understand if the chairman has decided that he has nothing to say. But can you cite one example, any single example in the history of the Congress, if you would, where a minority ranking member has not been given -- not been afforded -- not been given the respect of an opportunity to make a brief opening statement?

ISSA: The chair will respond for the record with an appropriate list of the times in which opening statements have been waived or ranking members have not been able to...

(UNKNOWN): But you can't think of one right now?

ISSA: The gentleman is no longer recognized.

We now turn to our witnesses. Mr. Timothy Massad is the acting assistant secretary of the Treasury Department's Office of Financial Stability and chief, Troubled Asset Relief Program. Mr. Massad assumed the title of assistant secretary on September of 2010 after Herbert Allison stepped down from the position.

Before that, Mr. Massad served as the chief counsel and chief reporting officer for the Office of Financial Stability. Prior to starting his government work, he was -- he worked at the office of -- let's see -- worked -- at the onset of the 2008 financial crisis, Mr. Massad was a partner at Cravath, Swaine and Moore, where he had a diverse international corporate practice with an emphasis on security offerings and bank financing, counseling, underwriting and security issues.

Mr. Massad received a A.B. degree, magna cum laude, from Harvard College in 1978 and his J.D. from Harvard Law School in 1984.

Mr. Neil Barofsky, no stranger to this committee, was sworn into office on December 2008 as the special Treasury Department inspector general to oversee the Troubled Asset Relief Program.

Prior to that, Mr. Barofsky was a federal prosecutor in the United States attorney office for the Southern District of New York for more than eight years. In that office, Mr. Barofsky was the senior trial counsel who headed the mortgage fraud group.

Mr. Barofsky also was -- has extensive experience as a line prosecutor leading white collar prosecutions during his tenure as a member of the Securities and Commodities Fraud Unit.

Mr. Barofsky also led the investigation that resulted in the indictment of the top 50 leaders of the Revolutionary Armed Forces of Colombia, FARC as it's better known, on narcotics charges, a case -- a case described by then attorney general as the largest narcotic indictment filed in U.S. history.

Mr. Barofsky received his B.A. from the Wharton School of Business and is a magna cum laude graduate of the New York University of Law.

Pursuant to the committee rules, all witnesses will be sworn in before testifying.

Please rise. Raise your right hand. This is my first time. Do you solemnly swear that the testimony you will give about -- you are about to give this committee will be the truth

and the whole truth and nothing but the truth?

Thank you. You may please be seated.

As is a custom to this committee, we would ask that your full written statements be placed in the record and that you limit your opening statements as close as possible to five minutes. As was the custom of my predecessor, you will -- you will see three lights. Green means continue to go. Yellow is the warning that you should not run through our intersection. And red in all 50 states means stop.

Thank you, Mr. Chairman.

The normal rule of committee is that we go in order of rank.

Mr. Massad, I believe, you would, by protocol, be first.

MASSAD: Thank you, Mr. Chairman.

Chairman Issa, Ranking Member Cummings, members of the committee, thank you for the opportunity to testify today about the Troubled Asset Relief Program or TARP, as it is commonly known.

I am the acting assistant secretary for financial stability at the Treasury, which means I am responsible for overseeing the program on a day-to-day basis.

I recognize that TARP has not been popular. There is good reason for that. No one likes using taxpayer dollars to rescue financial institutions. Nonetheless, sitting here today, more than two years after a bipartisan Congress passed the legislation that created TARP, it is clear that the program has been remarkably effective by any objective measure.

First and foremost, TARP helped prevent the catastrophic collapse of our financial system and our economy. In the fall of 2008, we were staring into the abyss. Lending by banks had practically stopped. Our credit markets had shut down. And countless financial institutions were under severe stress.

This was a crisis not only for Wall Street, but also for Main Street. Simply put, we were at the risk of going into a second Great Depression.

Today, people no longer fear that our major financial institutions or our financial system is going to fail. Banks are much better capitalized, and the weakest parts of our financial system no longer exist. The credit markets on which small businesses and consumers depend for auto loans, credit cards, student loans and other financing have reopened. Businesses are able to raise capital and mortgage rates are at historic lows.

Of course, the economy is not yet fully recovered and there is still much work to be done. Unemployment is unacceptably high and the housing market remains weak. But the worst

of the storm has passed.

Second, we will not use all the money Congress made available for TARP and we are exiting our investments and the private sector far faster than anyone thought possible.

Let me briefly summarize a few key facts. Congress originally authorized \$700 billion for this program. We will spend no more than \$475 billion. And of the money spent to date, much of it has been repaid, approximately \$270 billion.

We still have about \$166 billion invested in various institutions and I am hopeful that we will recover much of that over the next two years, depending on market conditions.

Finally, the ultimate cost of TARP will be far less than anyone expected. The total cost was initially projected to be approximately \$350 billion. That number, however, has steadily declined over the past two years. According to the most recent estimates from both Treasury and the nonpartisan Congressional Budget Office, the overall cost of TARP will be in the range of \$25 billion to \$50 billion and the direct fiscal cost of TARP as well as all the other interventions to address this crisis is far less as a percentage of GDP than the cost of resolving the S&L crisis in the 1980s.

In addition, the TARP cost will be primarily attributable to what we spend on our housing programs and our efforts to help responsible American families keep their homes. We expect that all the other TARP programs and investments, when considered as a whole, will result in very little or no cost to the American taxpayers and possibly a profit.

In all of these efforts, TARP has been subjected to unprecedented oversight. When Congress created TARP, it also directed four different oversight bodies, including the special inspector general for TARP, Mr. Barofsky, who is sitting with me today, to carefully review all of our programs.

In addition, TARP has been subject to vigorous congressional oversight by this committee and several others. We welcome this oversight. Individually and collectively it has helped us to develop, implement and constantly improve our TARP program.

And we have strived to be transparent by providing a wealth of information about the program to the public.

In particular, I look forward today to discussing Mr. Barofsky's most recent quarterly report. I am pleased that the record concludes that TARP helped, as he put it, head off a catastrophic financial collapse. And that the program's financial prospects are today far better, as he says, than anyone could have dared to hope just two years ago. The other oversight agencies have reached similar conclusions.

The report also raises a number of concerns about the HAMP program and the so-called too-big-to-fail issue, and I'm happy to discuss those, as well.

Mr. Chairman, TARP succeeded in what it was designed to do. It helped stabilize the financial system and lay the foundation for economic recovery. It was not designed to solve all our problems and we recognize that many Americans are still suffering. Nonetheless, thanks to a comprehensive strategy and decisive action, our economy is far stronger today than it was two years ago.

MASSAD: Both political parties deserve credit for these achievements. Congress enacted the program at a time when the financial system was falling apart. In that moment, leaders from both parties stood up, stood together and did what was best for this country.

Thank you again for providing me the opportunity to testify here, and I welcome your questions.

ISSA: Thank you.

Mr. Barofsky?

BAROFSKY: Chairman Issa, Ranking Member Cummings, members of the committee, it is a privilege and an honor to appear before you once again and to once again present to you our most recent quarterly report to Congress.

This past quarter has marked the two-year anniversary of both TARP and SIGTARP. For SIGTARP, we've made great progress in striving to meet our goals of transparency, oversight and enforcement. With this, our ninth quarterly report, along with 13 separate audits, it helped shine a light in some of the darkest areas of the financial crisis and the government's response.

They've also included important recommendations, which when implemented and adopted have resulted in great savings for the taxpayer in preventing waste, fraud and abuse.

Our Investigations Division has been similarly busy. We've been able to secure civil or criminal fraud charges against 45 different individuals, 12 different companies and, to date, 13 criminal convictions.

We've also been able to either recover or prevent from loss of fraud more than \$700 million, thereby assuring that SIGTARP as an agency will more than pay for itself.

And with 142 ongoing criminal investigations, including those into executives at 64 different banks that either applied for or received TARP funds, we still have a lot more work to do.

For Treasury and TARP, the results have been more mixed. While it's certainly good news, as Mr. Massad noted, that the decline -- the estimates of TARP costs have declined, and significantly, it's not the whole story.

And too often Treasury in its statements and in its testimony has too much of tunnel vision focus on the financial costs and the decline of those, obscuring the very significant and very real nonfinancial costs that will arise out of the Troubled Asset Relief Program.

First, it ignores the very significant, wholesale damage to government credibility that has arisen from Treasury's mismanagement of parts of the TARP program. Too often these programs have been marked by loose compliance, failures in transparency and questionable decision-making.

And it is those very avoidable failures, as much as anything else that Treasury may point to, that account for some of the deep unpopularity of TARP.

The second cost is perhaps the most significant of TARP's legacy: the continued existence and the moral hazard associated with institutions that are still deemed too big to fail.

When Secretary Paulson in 2008, and then Secretary Geithner in 2009, spoke to the financial markets and assured that they would not let any of our largest financial institutions fail and would use TARP to backstop them, they did more than just reassure troubled markets. They sent a powerful message that these companies, these banks would not be left to suffer the consequences of their own folly.

And as a result, and notwithstanding the passage of Dodd-Frank last summer, these institutions still enjoy an advantage over their smaller rivals, with enhanced credit ratings and cheaper access to credit and capital as a result of that implicit government guarantee.

Indeed, in many ways TARP has helped mix that same toxic cocktail of implicit guarantees and distorted markets that led to the disasters at Fannie Mae and Freddie Mac.

TARP has also had mixed success in meeting the goals set for it by Congress, goals that were designed to address Main Street as well as Wall Street.

And while I agree with Treasury that they have met the Wall Street goals, financial -- they did help prevent a collapse of the financial markets, and that undoubtedly had a benefit not just for Wall Street, but for Main Street -- TARP has not met the goals set forth for Congress for Main Street, and perhaps the most significant and specific Main Street goal of preserving home ownership. Its failures there have had some of the most devastating consequences.

That effort, the Home Affordable Modification Program, has to date been a failure, with estimates that over the life of this program we're going to see probably well in excess of 10 million foreclosure filings on 10 million different families during the life of HAMP. When compared with the Congressional Oversight Panel's recent estimate that no more than 700,000 or 800,000 permanent sustained modifications, hope is slipping away.

And Treasury's administration of this program gives little cause for optimism. They

continue to refuse to adopt even the most basic metrics and goals and benchmarks to measure success. They appear to be afraid to rein in or impose penalties on the mortgage servicers who everyone can agree's performance on this program has been nothing short of abysmal. And as a result, we continue to see spiralling downward participation quarter after quarter after quarter.

Mr. Chairman, Ranking Member, members of the committee, I thank you for this opportunity, and I do look forward to answering any questions you may have.

ISSA: I thank the gentleman, and I thank him for his pinpoint accuracy of five minutes.

I now recognize myself for five minutes.

Mr. Massad, since you're here on behalf of Treasury as the person most knowledgeable, can you explain to us the secretary's statement on December 2010 on the subject of TARP and related bailouts when he said, "In the future, we may have to do exceptional things again if we face a shock that large. You just don't know what's systemic -- I repeat -- you just don't know what's systemic and what's not until you know the nature of the shock."

Does that mean that the secretary expects that if a housing crisis occurs again or some other shock -- no, we're not talking about an external force, but some other shock to the community -- that we still have systemic risk, too-big-to-fail, and the government will come in and bail out the large and allow the small to fail?

MASSAD: Mr. Chairman, what the statement means, in my view, what I believe the secretary was saying was that we cannot predict what the future issues will be in terms of risks to our system.

ISSA: But isn't that exactly what Dodd-Frank and all these other legislation have done? We were supposed to eliminate too-big-to-fail, systemic risk was supposed to be managed by an analysis, if you will, of vetting of whether entities were robust enough now and in the future, and it's the reason that some companies are still around and some were folded. Isn't that true?

MASSAD: You are correct, Mr. Chairman, that that is Dodd-Frank's purpose, and that is what we're implementing. Dodd-Frank, after all, was passed six months ago, and there's a lot of work to do to implement it. And it gives us the tools...

(CROSSTALK)

ISSA: Right, but the secretary -- the secretary said this well after Dodd-Frank. For example, we've had Bank of America here before us on multiple occasions. We've rolled Countrywide into B of A. We've rolled Merrill Lynch into B of A.

I'm not for breaking up companies or taking a heavy hand, but if Bank of America is too

big to fail, then shouldn't we be insisting that they be -- and I'm not suggesting this -- but shouldn't we be suggesting that they find a way to not be too big to fail in whatever kind of divestitures they need, rather than putting them in that category, as the I.G. said, who enjoy less expensive cost of assets, because in fact they are effectively backstopped by the federal government?

MASSAD: I think Dodd-Frank gives us the tools to regulate any financial institution, regardless of its size, that poses systemic risks, and it gives us the tools to shut down such financial institutions. So I think it gives us precisely the tools you're talking about.

If I can respond more broadly, I think the concerns that Mr. Barofsky raised are obviously those that animated the Congress in passing Dodd-Frank. Those are the very issues that Congress debated in passing Dodd-Frank.

ISSA: Well, as somebody who was on the conference for Dodd-Frank and somebody who has been there all along, Dodd-Frank was not altogether that bipartisan, as you can imagine. And I appreciate the fact that it can shut down entities after the fact, it has a heavy hand to determine who's a financial entity. Perhaps the next time General Motors gets in trouble we'll shut them down as a financial entity rather than save them as somehow a bank.

Moving on to HAMP, as the I.G. report says pretty thoroughly, we cannot score success by simply getting our money back from what -- from what was essentially loans to solvent companies. We have to look at the money we won't get back and the suffering of people who won't get a loan modification if they can't afford a home or a elegant exit that will not destroy the neighborhoods as we seek somebody who can afford it.

I have December 31st, 2010, results and I'd like you to comment on, Mr. Barofsky, the goal of HAMP, 3 million to 4 million loans. Permanent modifications as of that date roughly half a million, 521,000. Modifications canceled, almost 800,000.

Would you please give me your view of HAMP based on those figures and a trend that continues after multiple hearings?

BAROFSKY: It's remarkably dispiriting. This was the program that was supposed to be to help Main Street.

I mean, when TARP was originally enacted, when you, you, the Congress, gave Treasury \$700 billion, the original idea was that Treasury was going to buy toxic assets, which were largely mortgage- related assets. And the idea of including a goal of preserving home ownership in the statute was to address the fact that Treasury was going to own so many of these mortgages that they be able to do these modifications themselves, being able to have that impact on Main Street.

Instead we have a program, in the numbers you just indicated, it's just not working. Out of the \$50 billion originally allocated, now about \$45 billion, only a billion dollars has

been spent.

And I hesitate to use the word "only" and "billion" in the same sentence, but the numbers are -- are -- are -- it's -- we're running out of hope. There's no way we're going to ever get close to the 3 million to 4 million that was the original expectations of this program.

But even more frustrating is that Treasury will not give us its expectations. They must know what their run rate is of what they expect the total number to be. They must have a goal. And if they don't have a goal, well, they need to have one.

We can't fix this program until we have very specific benchmarks as to what the program is trying to accomplish of keeping people in their homes -- not people who get trial modifications that fail, which was one of the benchmarks that have been used, not the number of people who get offers for trial modifications -- how many people are going to get modifications that are truly permanent and keep them in their homes.

ISSA: I thank the gentlemen. My time has expired. I recognize a member of this panel who has a deep interest in those modifications becoming permanent, the ranking member, Mr. Cummings.

CUMMINGS: Thank you very much, Mr. Chairman.

Ms. Massad and Mr. Barofsky, the title of today's hearing is "Bailouts and Foreclosure Crisis." On the first issue we have some encouraging news today on TARP and its outlook for American taxpayers. SIGTARP report issued this morning has increasingly favorable assessment of TARP's financial successes.

Is that right, Mr. Barofsky?

BAROFSKY: That's absolutely correct.

CUMMINGS: And here is what it says, and I quote: "On the financial side, TARP's outlook has never been better. Not only did TARP funds help head off a catastrophic financial collapse, but estimates of TARP's ultimate direct financial costs to the taxpayer have fallen substantially.

"While Treasury's ultimate return on its investment depends on a host of variables that are largely unknowable at this time, TARP's financial prospects are today far better than anyone could have dared hope just two years ago." And that's end of quote.

CUMMINGS: This is great news for the American taxpayer, but the report correctly warns that there is still hard work ahead and it's important that we continue strong oversight. I have long demanded stringent oversight of the TARP program, a program proposed by President Bush in 2008 and enacted after significant improvements by Congress. I previously requested, gentlemen, that SIGTARP audit the hundreds of millions of dollars AIG expended on bonuses. I also led 26 of my colleagues in

requesting that SIGTARP audit the payments made to AIG's counterparties.

That said, I am very concerned about the serious allegations of abuse by the mortgage service industry. Today's SIGTARP report calls their performance "abysmal" and describes nearly daily accounts of errors and more serious misconduct. The SIGTARP report also says this, and I quote, "Anecdotal evidence of their failures has been well chronicled from the repeated loss of borrower paperwork" -- and my constituents tell me about that -- "to the blatant failure to follow program standards, to unnecessary delays that severely harm borrowers while benefiting servicers themselves. Stories of servicer negligence and misconduct are legion," end of quote.

Mr. Chairman, we cannot do a comprehensive examination of the foreclosure crisis without hearing from the industry. That is why I sent a letter on December 21st asking you to hold the committee's first hearing on the widespread utilization of flawed and fraudulent practices throughout the mortgage industry. This -- this has been my number one priority, as you said, and I assumed that -- that we would move forward.

It's the same reason I sent you another letter on Monday asking that you add an industry witness. I understand that you were not prepared to do that at this time, and I understand that. And so, Mr. Chairman, and to our witnesses, let me go to you, Mr. Barofsky, the servicers -- what are you all doing about them? I mean -- I mean, government has a role. The services have roles. And I'm just wondering what's happening with that.

And I -- I ask you the same thing, Mr. Massad, and be brief.

BAROFSKY: Well, we have -- yes, at SIGTARP, we exercise our jurisdiction as we can. And our one area of jurisdiction over the servicers is, one, to investigate them if they do anything -- if there's any criminal conduct. And we do have ongoing investigations in that area.

The second thing we can do is use our audit function to do reviews of the servicers and we have that ongoing as well. We're doing a review of their performance under the net present value test and other aspects of their performance.

What we cannot do is what Treasury can do, which is wield a big stick, as well as the carrots, that it offers the servicers and impose significant, tough financial penalties because that -- that's where we'll hit them where it hurts. And we have to keep this program from being voluntary, not just in participation by the servicers, but in compliance as well.

CUMMINGS: That leads me right to you, Mr. Massad. What are we doing with regard to the servicers, because there have been some horrendous stories about what servicers have been doing.

MASSAD: Congressman Cummings...

CUMMINGS: And what impact do they have on these numbers?

MASSAD: ... Congressman Cummings, I agree that the servicer performance has been abysmal and that's something that we have been trying to fix. Let me first make clear, this is a voluntary program. Congress didn't give us the tools to impose fines, as Mr. Barofsky is suggesting. What we have is the ability to withhold payment when they enter a permanent modification. A lot of the problem was we couldn't get them to get the permanent modifications done. So we worked with them to change their performance.

Now, there are a number of other things that are going on in terms of the performance of the servicers. There's the interagency task force that is looking at all the -- all the things they've done wrong in foreclosures, and there's a lot of talk of having some sort of national servicing standards, which may well be something we need.

We can't through HAMP change the entire industry's behavior. This is a -- this is a model -- this is an industry that's broken. It didn't work.

CUMMINGS: Well, can you tell me this, as my time runs out? Is the Justice Department involved in anything that you're doing?

MASSAD: Yes, they are. They are involved in the interagency task force, as are all the federal bank regulators. And there is a lot of work being done on what types of reforms are needed. There's also work being done by the FHFA in terms of changing the basic economic structure of the business because they simply weren't prepared for this crisis, and aren't able to deal with (inaudible).

Nevertheless, I think we've got to remember that HAMP has achieved over a half-million modifications. These are people that make \$50,000 a year, so to sort of write it off and say, "Well, it's a failure," I think is not really appropriate.

Now, the reason we haven't reached 3 to 4 million is basically we have eligibility standards. And the pool today of the people that are eligible is about 1.5 million. What are those eligibility standards? We don't help people who make enough money that they don't need government help. We don't help people who have million-dollar mansions. We don't help people who have vacation homes.

So when you go through that and you realize that's the eligible population, we've actually reached a lot of them. We're continuing to reach a lot of them. We had 1,000 people turn out for an event in Las Vegas. So while we've tried to incorporate most of Mr. Barofsky's suggestions about the program, other than perhaps the one that he said we should fingerprint people or thumbprint people before they get a mod, which we declined to do because, you know, we didn't feel that was appropriate, I think the program is actually helping a lot of people.

CUMMINGS: Thank you, Mr. Chairman. I see my time is expired. +

ISSA: I thank the gentleman.

The gentleman from Ohio, Mr. Turner, is recognized for five minutes.

TURNER: Thank you, Mr. Chairman.

Gentlemen, thank you for being here, and thank you for addressing these really important issue that we have.

You know, I -- I think both of you get a sense of the anger, really, of the American people, but also of the sadness of the issues that we're dealing with. When we look at the New York Times yesterday reported that the Financial Crisis Inquiry Commission issued its report, and there's a quote in there that I think is important in the context of what we're doing today. And it said, "The greatest tragedy would be to accept the refrain that no one could have seen this coming and that nothing could have been done. If we accept this notion, it will happen again."

What's sad is that as we approach this, and we look at what Treasury was doing as this crisis was unfolding, you know, these things were knowable. I mean, I know I and many other members of Congress were sounding the alarm of the mortgage foreclosure crisis, what was happening in our neighborhoods, what was happening in our communities. And understanding that capital had to be being lost as families were losing their economic future and their homes.

And when you look at TARP and what is happening and how it's progressing, and I -- I do really -- I can't understand how Treasury can -- can claim its successes when it's had so many undefined execution. I voted against TARP and I voted against TARP because, you know, I'm from Ohio, ground zero for the mortgage foreclosure crisis. And when they came and said they were going to buy toxic assets and that these were going to have value, I knew they did not because I've walked these neighborhoods. I've talked to the families who have lost their homes.

And -- and the short TARP bill was not defined, as, you know, as you've said, Mr. Barofsky, and I greatly appreciate what -- that you not only look at what you're trying to unwind, but what they started with. This was a very undefined bill, a very undefined (inaudible), and I think there are billions that have been lost.

I'm very concerned about the HAMP program because if we look to what the commission had said, that this was avoidable, that means that families were taken advantage of, and that means families were taken advantage of and lost their financial future. And HAMP came forward as supposedly a government answer that's going to help them, that's going to say, "We recognize that there was a federal issue here."

And as the banks -- all the people who due to their greed, had -- had perpetrated this, we were going to step in and help them. But it -- it's not helping them. And Mr. Barofsky, I want to thank you for the detail that you provide us.

You know, I -- when you get these final numbers and do the division, we're going to have spent unbelievable amounts for each of the loan modifications that occurred, while doing nothing to stop the record foreclosures that are still occurring.

So, you know, first off, Mr. Barofsky, I think when we look at the ultimate numbers, we're going to want to figure out, you know, what percentage of these people who did ultimately get loan modifications could have gotten them in the market, meaning that there was no subsidy that would have been needed.

Two, how many of these are going to fail anyway, because those are lost dollars -- dollars also. And then, what are the -- what are the per-unit costs in the end?

Could you speak to that for a moment as to how we're going to be able to then actually assess what was spent and the -- we can already tell that it's a failure, and thank you for your words of that, but how are we going to assess the waste?

BAROFSKY: Well, I think one of the good-news aspects of the HAMP program, to the extent that there is good news, and it's reflected in CBO's loss estimate, is that the program won't spend even close to the amount of money that's allocated for it. Money only gets spent when there is -- when there's actual success.

So the remarkably low numbers of modifications means that a remarkably low amount, small amount of money will be spent. And that's why we've only had, and I hesitate to use the word "only," it's only been \$1 billion out of the \$45 billion, that's actually been spent so far.

So to the extent that there is good news, it is that it will not cost the taxpayer anywhere close to the allocated amount. But of course, that distinction really bears that any type of claim of success where the remarkably modest numbers of modification that are coming from the program, you know, don't match up with what was originally intended.

And the advantage of not having any real goals, real meaningful goals or benchmarks is you can claim success wherever you want and say, "Hey, that's the success." And I do not mean in any way to demean or say that this program isn't very important to those people who are enjoying and have the benefit of these important sustainable, permanent modifications in any way. But I also think the idea that the reason why there aren't more is because there's millionaires living in mansions and that's why. There are a lot of people out there who are struggling very, very hard who could benefit from these modifications.

TURNER: Mr. Massad, I believe that -- that the mortgage foreclosure crisis, when it's ultimately analyzed, will turn out to be the largest theft in history, and it occurred while Treasury had oversight of both financial markets and the issues affecting these homeowners. And now we have TARP and Treasury is involved with this, and we have SIGTARP looking at it and saying that you're still managing this without measurable outcomes and are not being very forthcoming in how the program is being (inaudible).

How can we trust what Treasury is doing in this?

MASSAD: I'm happy to respond to that, Congressman.

First of all, Mr. Barofsky...

TURNER: If you could do so briefly.

MASSAD: Sure.

As Mr. Barofsky noted, we only pay money if there is a permanent modification entered into, if we actually help someone enter into a permanent modification, and we only pay for it as long as that modification continues. There is a built-in taxpayer protection element to this.

So your question about unit costs is a very good question, sir. And in fact, it's structured so that it is a unit cost program here. We won't spend all the money if we don't enter into enough modifications, and that money won't be spent for anything else. It will go back to pay down the debt. That's number one.

MASSAD: Number two, as we said, the eligibility criteria here I think are another way that we protect taxpayers because we only pay for people that we think are -- are greatly in need. As to your overall question here on the mortgage -- mortgage crisis, obviously there is a lot of study of this. The FCIC released its report today. And I think it noted that there is blame to go around in a -- in a lot of places.

I think we must remember, TARP was just set up to provide the resources to stabilize the system. It didn't change the regulatory structure. We now have Dodd-Frank, which gives us new tools to regulate the financial industry so as to prevent this type of a problem in the future.

ISSA: Thank you, Mr. Massad.

The chair now recognizes the former chairman of the committee, long-standing member of the committee, Mr. Towns of Brooklyn, New York.

TOWNS: Thank you very much, Mr. Chairman.

Let me first thank both of you for being here. You know, I get the feeling that, you know, we are sort of blaming each other, you know. And that bothers me because people are losing their homes.

I wish you could just come and spend one day in my office and just listen to people who are coming in and the stories that they're telling.

I mean, some of the things they're saying is the fact that they made an application; all of a sudden, the application is lost. They call and they say no, we never received your papers when they actually presented the papers.

And then the other one, which is really one that they're saying that's really becoming a problem is that when they call back the third or fourth time, the person no longer works here, so you need to find out who you're dealing with. And, of course, if the person is no longer there, how can you find anything?

So -- and I noticed you indicated, Mr. Massad, that, you know, the Congress didn't give you the power. And I understand that as well.

But what can we do now to fix the situation that we're in? I mean, this is a crisis. And I'm hoping that -- I want to join you, Ranking Member, in asking for a foreclosure hearing, where we can bring people in and let them tell their stories.

Because I just -- for some reason, I don't think that the message is getting out in terms of the seriousness of this situation.

MASSAD: Congressman, I agree with your concern. I think you're absolutely right.

We've tried to do what we can through HAMP to put in a lot of borrower protections. For example, we required the servicers, if you're evaluating someone for HAMP, you can't foreclose on them. There's a number of other protections we've put in. We've put in call centers, escalation centers. And a lot of the calls we get actually are from people who aren't even eligible for HAMP, but we try to help them.

I think, in terms of the overall industry, a lot of -- a lot of attention needs to be paid to this. And I think a lot of work is going on, and more will be needed. And I'm sure this Congress will need to consider it.

And a lot of people have talked about whether we should have national servicing standards. People have noted that the -- that the basic economic model of servicing doesn't work.

Servicing works when you've got performing mortgages. The institutions -- the servicers collect the payments and pass them on to the -- to the investors. But when it comes to dealing with a crisis like this for foreclosures, they're not equipped to do it.

So I think we've got to look at things like servicing standards. The interagency task force is looking at a number of problems, the regulators are as well. So I think there's a lot of activity here. And we'll -- we'll see it in the coming months.

TOWNS: Mr. Barofsky, what are the penalties that you're talking about? How can we sort of look again at that? Because something needs to be done.

BAROFSKY: Absolutely. And I think that, as Mr. Massad said, there's discussions about national servicing standards. And I think that Chairman Bair of the FDIC has put out some -- some great ideas that would be terrific for all servicers. And I think that a lot of these ideas could be adopted and brought into the HAMP program through supplemental directives.

But financial penalties based on withholding payments to the servicers, Treasury negotiated a deal when it -- when it obligated about \$30 billion to the mortgage servicers for payments, and that includes the ability to withhold payment and impose financial penalties.

To the extent that those penalties are not strong enough or good enough, well, that really falls on Treasury for not negotiating a better deal. This is not the most unpredictable possibility, that when you have a program of this size and scope, that there's going to be problems.

And Treasury has repeatedly cited their ability to impose financial penalties as something that -- as a stick that they have. And we would just encourage them to take the stick out.

MASSAD: If I can reply to that? We are certainly conscious of that. And we may withhold amounts in the future.

But let's remember, we can only withhold the amount that we owe them for permanent modifications. If they haven't entered into very many permanent modifications, there's not that much to withhold. And there weren't very many permanent modifications initially, as this -- as this committee knows.

We -- people testified here in March, and there were only 170,000 permanent modifications. And a lot of people said then the program was a failure.

What we did since that time was we had a number of remedial actions we made the servicers take. We also diversified our programs, and I want to get into that later.

But from that date, from last -- late last March, we have increased the number of permanent modifications substantially now. And, as I say, we're over 500,000. And the redefault rate on those is very, very low.

TOWNS: Right.

Mr. Chairman, I see my time is up.

But I think that if there's something that we need to do, I think you need to say it, because we just can't continue to let people lose their homes and (inaudible).

Thank you very much, Mr. Chairman.

ISSA: I thank the gentleman.

The chair now recognizes the gentleman from North Carolina and the subcommittee chairman of jurisdiction for this, Mr. McHenry.

MCHENRY: Thank you, Mr. Chairman.

And in consultation with the chairman, it's the intent of my subcommittee for us to have field hearings and hear from those that have been affected from the HAMP program.

We'd welcome the Treasury to invite individuals that -- that have been helped. However, in my constituency and the constituents I've talked with, it's easier to find those hurt by HAMP rather than helped.

So my question to you, Mr. Massad, is do you have adequate provision under current law to ensure that HAMP is successful? Yes or no?

MASSAD: Congressman, it depends...

MCHENRY: Yes or no.

MASSAD: Congressman, if I can answer the question...

MCHENRY: I've got five minutes, Mr. Massad. Yes or no.

(CROSSTALK)

MCHENRY: Actually, let me begin by asking, do you think HAMP is successful.

MASSAD: I -- I do. I so believe.

MCHENRY: OK. So do you believe under current provision of law you have adequate authority to ensure that HAMP is successful.

MASSAD: I cannot solve the housing crisis with HAMP alone, if that is the meaning of your question. But I think helping over 500,000 people enter into permanent modification, people who would otherwise be thrown out of their homes, people who make \$50,000, and their neighborhoods would be hurt by that because they're now living next to a home that could be vandalized, it depresses their property values, it's a drag on the economy, I think yes. I think those are dollars well spent.

MCHENRY: Thank you, Mr. Massad.

Mr. Barofsky, in your testimony -- written testimony today, you outlined that there are 2.9 million homes received foreclosure filings in 2010, up from 2.8 million in 2009 and 2.3 million in 2008. Can you discuss your findings on the HAMP program?

BAROFSKY: Yes. I mean, again, not to diminish the positive impact it had on those -- has on those families and those that are able to stay in the program, but you have to look at what the program was expected to do, and you have to look at it in the context of the entire foreclosure crisis.

And what this program was intended to do -- and the advantage of never actually putting out meaningful goals, means you can declare success, even when you have, looking at a total for this entire program of 700,000 to 800,000, when you originally expected to help 3 million to 4 million, even when you've only spent \$1 billion of the \$45 billion that you allocated.

This program, it can help -- if it helps five people, that's great for those five people. But what about all those millions of people who are not getting helped, the millions of people that Treasury and the administration identified at the very beginning of this program of who they were going to try to help -- help keep in their homes by modifying their mortgages to a sustainable level.

And the numbers don't lie. And when I hear them declaring success with these incredibly modest numbers, numbers that are so modest that they can't even have enough money to pay to impose financial penalties, it's heartbreaking to a certain extent. Because it means that they won't recognize and make the changes that are necessary to make this a better program. Because I hear from those people...

MCHENRY: Thank you, Mr. Brasswell (ph) (sic).

And moving on to the small business -- the Small Business Lending Fund. Well, in one of your -- in your report, you request that Treasury remove TARP assets and equity from the entity's balance sheet for purposes of evaluating its application for the Small Business Lending Fund.

The intent of the Small Business Lending Fund, of course, is to increase lending. Has Treasury been open to your proposal?

BAROFSKY: Treasury has rejected that recommendation.

MCHENRY: Mr. Massad, why did you reject that?

MASSAD: Because we wanted to make sure we complied with Congress' directives and the law. Congress provided in the law that existing TARP recipients could refinance their loans into this Small Business Lending Fund. And we believe we're acting in accordance with that.

MCHENRY: Sure, but it doesn't give you -- it's not a provision of law how you measure the removal from TARP into this Small Business Lending Fund, is there?

MASSAD: We did not believe that Congress was instructing us to basically penalize those institutions that had already received TARP funds.

MCHENRY: Mr. Barofsky...

MASSAD: Quite the contrary.

MCHENRY: Mr. Barofsky, under your reading of the law, do they have provision to do this?

BAROFSKY: Absolutely. Congress specifically made a provision in the law that gave the secretary of treasury the ability to fashion certain regulations for TARP banks to enter into SBLF.

There's nothing in the statute that gives you a matter of right by being a TARP recipient that you automatically get to apply for and -- you get to apply for it, but that you automatically get converted into SBLF.

I mean, SBLF offers tremendous advantages to TARP recipients who convert. And the taxpayer loses out on a lot of those.

And our recommendation is a simple one: Let's make sure the banks that you've taken out of TARP and put into SBLF are adequately capitalized to meet the goals of this program.

We're not saying penalize TARP banks and say that none of them can get -- can get brought into the program, not at all. But we do think that it's important for Treasury to be very responsible and make sure that those that are going to get the benefits of being in SBLF at taxpayer expense are well-suited to be able to do the lending -- new lending, new incentivized lending from government capital.

And, frankly, we believe those banks should be treated as other applicants who come into the program. When a bank applies -- for example, when a bank applied for the CPP, it didn't get to take into account government capital of whether they were -- they passed or don't pass. And that should be the same standard here.

The fact that these banks have the benefit of government capital, frankly, we don't believe that that necessarily -- that that capital should count when making that evaluation. And if they're adequately capitalized without the government capital and they can fulfill the goals of this program, great, they should be brought into the program, if they meet the other conditions.

ISSA: Thank the gentleman. The gentleman's...

MCHENRY: Mr. Chairman, I know my time has expired...

ISSA: Yes.

MCHENRY: ... but I'd ask Mr. Massad to respond in writing to this very subject.

MCHENRY: We were interested here in this committee, and if you have concerns that you don't have adequate provisions of the law...

ISSA: The gentleman agreed to respond.

MCHENRY: ... we'd like to change that.

ISSA: The gentleman agreed to respond.

I thank the gentleman.

The chair now recognizes the gentlelady from New York, Mrs. Maloney.

MALONEY: Thank you.

First, I'd like to thank the panelists for their public service and report some good news in that the Dow just crossed 12,000 for the first time since June of 2008. And that shows capital is flowing again and is a very good sign of economic recovery in our great country.

And from your testimony today, TARP played a role in moving us in this good direction. You pointed out that it not only averted a meltdown, but laid the groundwork for economic recovery which we are -- which we are seeing today.

I must say that during the dark days, I was getting phone calls in the middle of the night and all day long from constituents who were afraid of a collapse. There was a run on the money market, on some banks.

And I personally believe that my vote in support of TARP will historically be regarded as the right thing to do and good public policy, although all of us who were on the campaign trail, many of us were attacked relentlessly for having supported this important program.

I would like permission to put in the record one of the best reports that I've seen on the success -- it's bipartisan, from Blinder, a Democratic economist, and Zandi, a Republican one -- on how the great recession was brought to an end.

ISSA: Without objection, so ordered.

MALONEY: Also an article in the American Banker which talks about the home foreclosures and a foundation that is working with HAMP and others to help people stay in their homes.

ISSA: So ordered.

MALONEY: I specifically would like to respond to the two problems that Mr. Barofsky mentioned in his opening. First, the cost of TARP in terms of confidence in our government, transparency, and other management mistakes.

And I'd like to mention that I authored a bill in response to your first criticisms on this that would have computerized TARP in real time so we would know where the finances are. It passed the House, backed by the Chamber of Commerce and labor, one of the few bills, and I truly believe we should do it for the entire financial system.

If we can track where a package is in two seconds, we should be able to track where we are in our exposure in finances. I feel it's an important bill and one that we need to work on and revamp to the current status.

You also mentioned the too-big-to-fail, and the fact that your concerns that we may not have done enough. So I would like Mr. Massad to respond to this, specifically in the Dodd-Frank bill.

And I was likewise on the conference committee with the chairman. We created a Financial Stability Oversight Council to monitor the systemic risk and to set criteria to identify institutions that may be heightened risk.

I'd like you to comment on the status of where that is.

We also, very importantly, established an orderly wind-down, similar to what we have in the FDIC, which was a huge success. We had two choices, we could either bail out an institution or let them fail. Neither was a good solution. We want to be able to wind them down as we were able to do with FDIC banks so successfully. And I want to know, are the rules in shape and where does that stand?

Thirdly, we imposed capital requirements and leverage ratios to ensure that large institutions aren't taking excessive risk. I believe those rules are coming out in July; correct me if I'm wrong. And where does that stand? Where do you think the leverage and capital requirements will come out in your best judgment?

And lastly, we called upon the SEC to come up and we gave them actually new powers and authority and resources to go after bad actors so that we could find the next Bernie Madoff and help protect our system.

So I'd like you to respond to where these initiatives stand? What do you recommend, if anything else, we need to do to protect us from too-big-to-fail, as was pointed out in his testimony?

And if you have enough time, could you respond to TARP as it relates to the taxpayer? We know it was a great deal for our economy. It was a great deal for averting economic risk. I am the daughter of two parents who suffered in the depression. Their stories were

terrible. We averted that in our economy. But was it a good deal for the taxpayer?

Thank you very much for your service.

MASSAD: Certainly, Congresswoman, I'd be happy to respond to all those things. Let me start perhaps with the last point.

I appreciate that people that are still suffering from this crisis, and there are many, may not feel that TARP did anything for them. And Mr. Barofsky also has asked what did it do for Main Street.

I think the study you pointed out, the Zandi study, makes it clear...

ISSA: I'd ask unanimous consent for an additional one minute for the witness to respond. Without objection, so ordered.

MASSAD: Thank you, Mr. Chairman.

Makes it very clear, we would have entered into a second great depression. We could have faced unemployment, in their estimate, above 16 percent. Other people have said 25 percent.

The fact that we averted that is a real benefit to Main Street. The fact that people can now borrow again when they couldn't as a result of this crisis is a benefit to Main Street. The fact that we have an auto industry in this country and we saved a million jobs, not just at the auto companies but at their suppliers, is a benefit to Main Street.

So there are a number of benefits to Main Street. I don't think one has to look very far to realize that.

As to the progress in implementing Dodd-Frank, a lot of work is going on. I am not responsible for that, but I'm happy to tell you what I know and to make sure that the proper officials of Treasury give you additional information.

The Financial Stability Oversight Council has been meeting actively and developing a number of rulemakings to address these issues. And they have, you know, the powers to regulate systemic risk and to look at what are the emerging trends in our -- in our financial system that need to be addressed. So I think you will see a lot of work going on there.

As to capital ratios, they are working on that also. Those will be higher. They are already higher. In other words, our financial system today is much better capitalized than it was in the fall of 2008, and many of the institutions are much better capitalized than their foreign competitors.

The other thing I want to note is, as to...

ISSA: If you can summarize briefly please?

MASSAD: Certainly.

On small banks. We funded over 400 small banks under TARP, and that's another benefit to Main Street, because those banks help local communities, small businesses and families.

And as to Mister -- Congressman McHenry's point, on the SBLF, obviously Treasury supported this new fund. And I think the only issue is a minor one that Mr. Barofsky is raising because actually we do make -- Treasury does make a new credit decision on whether a TARP recipient is eligible. If a TARP recipient hasn't paid its dividends, it's not allowed to get the new -- to refinance.

So there is a new credit decision made. He's just raising a particular point which we felt the statute did not allow us to do.

ISSA: I thank the gentleman.

The chair now recognizes the gentleman from Ohio, Mr. Jordan, for five minutes.

JORDAN: Thank you -- thank you, Mr. Chairman.

I want to thank the gentlemen for being with us today.

And, Mr. Barofsky, you and your staff in particular for the -- for the integrity and professionalism that you -- you bring to your -- your job. We certainly appreciate that.

Your comments earlier were that the HAMP and the making home affordable programs were remarkably -- their performance remarkably dispiriting. In today's Journal there's a quote that the foreclosure efforts at Treasury has been beset by problems from the outset and despite frequent retooling continues to fail dramatically -- or, excuse me, fall dramatically short of any meaningful standard of success.

The article goes on to mention about the FHA short refinance program which started last fall and has helped 15 people.

So I guess my question is, at what point do we say, hey, this just -- this just isn't working, this just isn't getting the job done? Would we be better off just discontinuing the whole program?

After three years, 3 million to 4 million goal, a few hundred thousand have actually been permanently -- in permanent modification have had help. Treasury talks about now the metric they're using is offering people help versus actually providing it.

At what point do we say, hey, this is -- this is just not working, let's just end this program?

BAROFSKY: I continue to be a glass-half-full type of person.

JORDAN: But based on your comments, though, Mr. Barofsky, you wouldn't be a glass half full, you'd be a glass 2 percent full or 1 percent full.

BAROFSKY: That's true.

JORDAN: I mean, I'm an optimistic guy, too, we live in America. But that's -- that's really stretching it.

BAROFSKY: Well, I think that hope is slipping away. And I think that if Treasury doesn't respond to some of these things in a quick manner, you know, your suggestion of ending the program and others' suggestions is just going to become a louder and louder chorus, and understandably so.

And I think the way for Treasury to respond to that is not to keep clinging for these -- these noncredible declarations of success, and be straightforward and honest and say, "This is where we think this program will be at the end of 2012 or at the end of 2017 when the program is done. This is the number of people that we intend to have sustainable permanent modifications. This is how we're going to get to that number."

Then you and this committee and the Congress and the American people can make the evaluation, is it worth it? Is it worth it to continue? I think if they fail to do so, you're -- you're -- you're probably dead on right.

JORDAN: You got -- you got more patience than I have. In fact, yesterday I introduced, with -- with also the co-sponsorship of the chairman and the ranking member on the committee, Congressman McHenry, we introduced legislation to end the HAMP program. We just doesn't think -- we think any objective look at this, it doesn't warrant continued spending of taxpayer dollars.

Now, I want to be clear on a couple things. You have jurisdiction over the \$45 billion in the TARP program that affects the foreclosure programs, HAMP being the biggest one. But there's also \$25 billion that's available to Treasury in the Housing and Economic Development -- or, excuse me, Recovery Act. Is that accurate?

BAROFSKY: That money is money that goes to Fannie and Freddie.

JORDAN: OK. But -- so is any of that money -- and I understand it's not your jurisdiction -- but to the extent you know, has any of that money been applied or used in any way for foreclosure prevention type programs at Treasury?

BAROFSKY: Yes. And in our...

JORDAN: And if so, are the results similar to what we've seen in HAMP?

BAROFSKY: Well, actually, yes. When we're talking about HAMP, we're really talking about both components...

JORDAN: OK.

BAROFSKY: ... the GSE money, which is not funded through the taxpayers, and then...

JORDAN: Right.

BAROFSKY: ... and then the TARP. And, frankly, to date, the GSE part of the program is doing better than the TARP part of the program. Of this 520,000, approximately, or 540,000 of ongoing permanent modifications, more than half of those are attributable to Fannie and Freddie and the GSE. It's only about 220,000, 230,000 modifications that are actually TARP permanent modifications.

So there is activity over there, and we detail in our report, we break all these numbers down, from GSE versus non-GSE, including how much money the GSEs have reported that they've spent on these modifications providing to servicers.

JORDAN: But the bottom line is, there is approximately \$70 billion that has been appropriated for this type of program, the HAMP program, \$70 billion, not \$45 billion, \$70 billion, and \$1 billion is all that's been out -- went out the door for a program that's hurt people it's supposed to help and is -- and in your definition, a remarkably dispiriting program, what I would call a colossal failure. Is that accurate?

BAROFSKY: Yes, and as I said -- as I said, I certainly understand your frustration and I share your frustration. I just hope the Treasury can hear what you're saying and hear the legislative intent and -- and -- and come up and be honest about where this program is going, if it's going anywhere.

JORDAN: And let me just -- I got 15 seconds.

And to put it all in context, \$70 billion appropriated for this at a time -- not helping the people it's designed to help, total failure. The guy who's charged with inspecting it -- understands total failure, at a time we have a \$14 trillion national debt (inaudible). I mean, at some point we got to say, enough is enough, let's end this program.

Mr. Chairman, I yield back.

ISSA: I thank the gentleman. The chair now yields to the gentleman from Ohio, Mr. Kucinich for five minutes.

KUCINICH: Mr. -- Mr. Massad, isn't it true that HAMP's performance is dependent

upon the voluntary willingness of mortgage servicers to give distressed borrowers loan modifications?

MASSAD: Yes, that's correct.

KUCINICH: Mr. Barofsky, isn't it true that private mortgage servicers have found creative ways to frustrate attempts by distressed borrowers to save their homes?

BAROFSKY: There have certainly have been problems with mortgage...

(CROSSTALK)

KUCINICH: Is that a yes or a no?

BAROFSKY: I don't know if it's been created, but it certainly has happened.

KUCINICH: Since it's readily apparent that the party really responsible for HAMP's performance is a private industry that won't give consumers a fair shake, I can't understand why we don't have a representative from the servicing industry to explain that industry today.

The minority requested that JPMorgan Chase, a major servicer, appear today, but the chairman refused. And I don't know how we can have effective oversight for -- for Congress or the American public, how can they can really understand the federal response to the foreclosure crisis, which depends on the private sector, without asking the private industry to explain their actions that are impeding this program.

ISSA: Would the gentleman yield?

KUCINICH: If the chair will let me have my time afterward, I'll...

(CROSSTALK)

ISSA: Of course.

The -- the chair made a decision that today would be fully involved with the government side and the special I.G.'s report. We do intend on having, among others, servicers and a review of the HAMP program. This is but the first of our discovery.

And I appreciate the gentleman's comments, and yield back -- and will add 20 seconds.

KUCINICH: I appreciate that.

Now, SIGTARP's report and other reports of abuses by loan services, Mr. Chairman, raises serious concerns that these mortgage providers may be engaged in a pattern of abuse.

And, Mr. Barofsky, I'd like to request that your office conduct a specific audit on this issue. And I would like to, at this point, ask the chair if you would join with me in this request since you're saying that you're willing to go forward with looking at the mortgage servicers.

ISSA: I'll certainly consider it. Would you give me the request in writing?

KUCINICH: I'll do that, because what I want to point out -- thank you, Mr. Chairman -- is that while the chair certainly has the unilateral privilege to issue subpoenas, the chair also has the privilege not to call certain witnesses. It's comforting to know that you'll consider calling witnesses in the mortgage service industry, especially since it's so relevant to the matter at hand.

The chair also, as we know, has the privilege to deny documents -- the production of documents to other members. And -- for example, in this case -- I'm not saying this happened -- but my concern would be, about that policy, is that if there's any communication with the committee and JPMorgan Chase that, you know, the minority may not know about it.

And I'm also concerned that if -- and this matter of JPMorgan Chase servicers not appearing today, perhaps -- myself certainly wanted to address that in my opening statement. I didn't have that privilege, nor did our ranking member. That's one of the problems in not having opening statements.

So I -- I hope that as we continue down the road -- and this committee will understand the importance of tradition and procedure that respects the rights of all members. Because I think what it really does is it enables us to function more effectively.

Now, Mr. Massad, what is Treasury doing to retool HAMP to require improved servicer performance? And do you need legislative authority to implement an effective retooling?

MASSAD: Thank you, Congressman, for the question. It's a very important question.

Let me talk about some of the things we have done. We've required the servicers to, if they're evaluating someone for HAMP, they cannot foreclose on that person. And if they decide that the person isn't eligible for HAMP, they must still consider other alternatives, short sales, proprietary modifications and so forth.

And it's only after they certify that they've done all those things that you can proceed to a foreclosure.

We've required the servicers to have -- to have a process for appealing the decision. We've also set up our own centers so that people can come to us if they feel they've been wrongly denied. And we will run a calculation to see if -- to give them a view on that.

And we have an escalation center that -- that deals with complaints. So...

KUCINICH: Well -- well, let me ask you this. Would you agree that we'll never get to the bottom of this problem or figure out how to proactively deal with the foreclosure crisis if we don't examine the actions of mortgage servicers...

(CROSSTALK)

KUCINICH: ... who alone make the decision about who (ph) they keep or must leave (inaudible) home?

MASSAD: I would agree, Congressman, that -- that we need to look at how this entire industry is functioning -- or rather, not functioning. And I think...

(CROSSTALK)

MASSAD: ... there is a lot of work going on in that regard.

And, obviously through HAMP, which is, as you've noted, a voluntary program, we cannot force a change on the entire industry. But we have learned a lot, we think, about what...

(CROSSTALK)

KUCINICH: But -- but Mr. Barofsky can examine it.

BAROFSKY (?): Yes, Congressman.

And -- and, by the way, we do have an ongoing audit of the mortgage servicers. And I will make sure that my -- my staff meets with your staff to see if there's any specific concerns that we should incorporate into that review.

KUCINICH: I think (inaudible) also communicate with the chair on that, as well.

Is that -- is my time expiring or do I have 20 seconds more?

ISSA: The gentleman has 20 additional seconds.

KUCINICH: Thank you.

And this is so important to my constituency, because Cleveland, Ohio, has been an epicenter of the subprime meltdown. People have lost everything (inaudible) worked a lifetime for.

And when you get in a situation where they depend on HAMP to try to save their homes and the mortgage servicers try to -- have a subterfuge to defeat that, it's important we call

them to an accounting.

Thank you.

Thank you, Mr. Chairman.

ISSA: The gentleman is most welcome.

The chair now recognizes the gentleman from Florida, Mr. Mack.

MACK: Thank you, Mr. Chairman.

And I want to thank both of the witnesses for being here today, and -- recognizing that we're in difficult times. There are lots of -- I'm sure it's not -- let me just say, I'm sure it's not easy to sit there and -- and take the questions. But there is a lot of frustration.

And, you know, I just -- I wanted to start off by saying this: that my observations so far is that what we're talking about is failed government regulations and programs. And today, what we're talking about is -- or some people are talking about is what other government programs can we add on top of that to try to make the failed ones work, as if though more government regulation, more government programs is going to be the answer.

And I'll tell you -- and I've heard a couple people from Ohio talk about Ohio being the epicenter of foreclosures. I would welcome them to come down to Fort Myers, Florida, to Lehigh, to Cape Coral.

And I'll tell you what my constituents are telling me. They're telling me, "Stop. We don't want more of this government kind of control. We don't want -- we don't want the idea that government is going to solve all of the problems." When a lot of people feel like government is part of the problem.

So if you think about what's happened, government started to push people and -- and mortgage companies into making loans and putting people into homes that maybe weren't fiscally able to do that, either the company or the individual.

Then when we have a crisis, we then turn to more government in regulating. And What you get is, instead of banks being able to lend -- if you talk to community banks, they're afraid to lend. Because exactly what Mr. Massad -- did I say that right?

MASSAD: Yes, you did.

MACK: Just -- you got to think about what you said earlier. You said that we need to incorporate some national standards.

When these -- when these lenders hear that, what they hear is more punishment. What they hear is, "More changes are coming."

"We don't know what the -- what the ground rules are. We're afraid to lend."

When you bail out the big banks, it disadvantages the small banks. So when you talk about the cost of TARP or -- or these other bailout programs, what you're missing is the cost of potential from other sectors.

So you've got the big banks that you want to claim have, you know, done so well -- I don't know that I see it that way. But it's been at the -- at the cost of the small banks.

And now what we're seeing is, lenders do not want to lend because they're afraid of statements like, "Now we need national Standards."

So again, what I'm saying is, is stop.

What I want to hear is not, "What's the next regulation? What's the next program? What's the next acronym that we're going to start talking about that is a failure because government can't do it?"

I want to -- I want to hear from both of you, if you would, very specifically, what should we repeal? What kind of repeals can we do that'll help ignite borrowing and lending that is going to help small businesses or that are going to help families who are trying to put their lives back together, instead of talking about what new programs we're going to pass.

I'd like if both of you and -- Mr. Massad, I'll start with you. If you can tell me, what do you think we ought to repeal?

MASSAD: Thank you, Congressman. I'm happy to do that.

First of all, my responsibility is the TARP program. I'm not a regulator. But what I would say is this: I'm trying to get the government out of the business of owning stakes in private companies, and, you know, telling private companies what to do.

(CROSSTALK)

MACK: Excuse me real quick, but when you say, "Now we need national standards" -- think about what you said and think about what people back home -- think about those small banks, think about the people who are trying to, you know, make it every day. What they've just heard is, the rules of the game are going to change again, and now you are saying we need national standards.

MASSAD: I was referring to national servicing standards for the servicing of mortgages, which -- we already have some. And, you know, this -- this business is mostly dominated by the big banks. The small banks aren't really in it. The big banks represent...

(CROSSTALK)

MACK: Well, yeah, because they can't compete because government has sided with one over the other.

MASSAD: Well, I think the point...

MACK: Again, if you come down to Southwest Florida, the community banks are so important...

(CROSSTALK)

MACK: ... to housing. But They've been pushed out because government has come in and bailed out the big banks. They can't compete.

BAROFSKY: Congressman, I agree small banks are very important. That's why we funded so many of them under TARP. Again, that was something we -- we had to do. I don't think it was a good thing for the government to have to have done that, but we had to do it, and that's why we're trying to get out of it so quickly.

But in terms of, you know, your comment on failed government programs, I think all we're trying to do is say we still are in the midst of a very terrible housing crisis that is a drag on our economic recovery. And the servicers...

MACK: If I could, I'm sorry...

ISSA: The gentleman's time is expired.

MACK: My time is expired.

Mr. Chairman, if I could ask if...

ISSA: I'd ask unanimous consent for one additional minute.

MACK: ... if -- and I'll just say this...

ISSA: So ordered.

MACK: ... to the chairman. If you would submit to this committee for us please in writing, specific things that we can repeal, that's going to help. Instead of submitting to this committee what you -- what other regulations and programs that we ought to be performing, I'd like to hear what you think we ought to repeal.

Thank you, Mr. Chairman.

ISSA: If the gentleman would yield his remaining time.

MACK: Yes.

ISSA: As long as we're doing "asks," Mr. Massad, would you commit before the next quarterly special I.G. report comes out either to produce a revised estimate of how many loan modifications you expect HAMP to produce, along with the source material made available to the special I.G., or in the alternative, make available to Mr. Barofsky the source material so he can bring us an assessment?

MASSAD: Yes, sir. I'd be happy to do that. We've been working on that. And I think a lot of that data is out there, but -- but we're happy to.

ISSA: We sure appreciate it. I know the committee would appreciate that.

The chair now recognizes the gentleman from Massachusetts, Mr. Lynch, for five minutes.

LYNCH: Thank you, Mr. Chairman.

Mr. Barofsky, Mr. Massad, thank you both for your -- your great work and thank you for your service to our country.

Mr. Barofsky, I'm more familiar with your work, so -- especially so, sir, the work that you've been doing.

I -- I do want to take just maybe a half-minute to really correct some of the revisionist history here on TARP. I voted against TARP. And when it came before the Financial Services Committee and before this Congress, the stated legislative goal of TARP was to help Main Street -- to help Main Street, the Troubled Asset Relief Program.

And when we asked Secretary Paulson at the time, just before the vote, we said -- actually I think it was the ranking member on Financial Services said, "Why don't you just take money and stuff it into the banks, this \$700 billion that you want?" And Mr. Paulson said, "No, we're not going to do that. We're not going to do that. We looked at that and that won't work."

Then 10 days after this bill passed, TARP passed, they did exactly that. They injected all that money into the banks. This was the bank shareholder relief program. And for people now to say, "Yeah, this is exactly what we voted for," this is not what we voted for. We voted to -- to increase lending. That was the goal of the Congress when TARP was put on the floor, and many of us saw the failings of that.

And to -- to now say, "Oh, yeah, we supported TARP for all the right reasons," I think you have to accept the fact that TARP stuffed basically \$700 billion worth of taxpayer money into big banks, helping out these shareholders. We paid 100 cents on the dollar to Goldman Sachs because we pumped \$14 billion into AIG. It was a pass-through that went right to Goldman Sachs -- 100 cents on the dollar on -- on credit default swaps that

shouldn't have been worth half that.

We also passed through hundreds of million of dollars to AIG F.P. employees who mis-priced this risk as part of TARP. They got paid off. They got bonuses from taxpayer money. How you can take credit for that and say that that was a good thing -- and it was never a question of -- I know people said, "Well, if we did nothing." Well, we wouldn't have done nothing. We would have done something different.

And I just think there are a lot of weaknesses in this TARP program. I think, Mr. Barofsky, you've -- you've dug down, drilled down and got to many of them. But I want to -- I want to take my last couple of minutes to talk about the servicing industry because so much of the servicing industry is mentioned in this report, and I think it's spot-on.

I want to just talk about -- I'll just list all the investigations that are going on right now with the servicers, and we're not -- we're not going after them in a meaningful way. I don't think Treasury is.

On October 13th, 2010, the attorney general of all 50 states announced a joint investigation as to whether some of the nation's largest financial institutions are using flawed and forged documents to execute wrongful foreclosures. The Federal Reserve and the FDIC and the Office of the Comptroller of the Currency are now investigating whether systemic weaknesses in the industry are leading to improper foreclosures.

On January 7th, 2011, the Supreme Judicial Court in my own home state of Massachusetts voided home seizures because the folks who were foreclosing couldn't actually prove they owned the mortgages. The United States Trustees Program has a similar program. The attorneys general of Arizona and Nevada are doing the same thing; the Justice Department.

What are we doing about the servicers? How are we -- how are we going to clean up this industry and correct these problems if we're not going right after the servicers? That seems to be where the problem lies.

BAROFSKY: I'm happy to respond to that, Congressman.

LYNCH: Please.

MASSAD (?): Thank you for the question.

You -- you've referred to the activity that is going on by a variety of federal agencies, and it's under the auspices of an interagency task force that Treasury co-chairs. So that is very important work, and I think we will see some results of those investigations. And I think it will help us figure out what types of reforms are needed and potentially some of those things will be coming before the Congress.

Let me just also, though, respond. I appreciate the fact that because this program was first

announced as a means to purchase troubled assets and then it became a program where, at least initially, what the -- what Secretary Paulson did under the Bush administration was to invest money in banks, people -- people were critical of that.

And all I would say to that is a couple of things. One, I think under the circumstances we had to make that change. There wasn't time to do the troubled asset purchase as it was originally contemplated. Number two, we didn't do \$700 billion. We actually spent far less than that.

LYNCH: \$434 billion.

MASSAD (?): We...

LYNCH: (inaudible) \$534 billion. If you want a, you know, if you want an exact number that went directly to the banks. It's still a lot of money.

MASSAD (?): Congressman, if I may.

ISSA: If you'd summarize your answer, please.

MASSAD (?): Sure. About -- about \$250 billion went to banks, and most of that has been recovered, and we will make a profit on those investments.

ISSA: I thank the gentleman.

The chair now recognizes the gentleman from Pennsylvania, Mr. Kelly, for five minutes.

KELLY: Thank you, Mr. Chairman.

Mr. Barofsky and Mr. Massad, thank you for being here today.

Mr. Massad, in your opening comments, you made reference to the automobile industry, of which I am a part of. I'm a car dealer and a small business person. So while people talk about small business and their view of it from 40,000 feet, I'm actually on the ground.

I can tell you this: the small business loan fund is not working. And most banks cannot operate out of fear. The regulations that have been imposed on these people makes it impossible to get access to these funds.

Now, why do I say that? Because I go through it every day -- not only myself, but the people that I'm in business with. And while I'm an elected official today, in my real life, I'm a small business owner.

I can tell you, with somebody that has all the skin in the game every day, I would suggest to you that while we go on with these programs, and we live in this wonderful world of acronyms that really make sense inside this Beltway. In real America, it makes absolutely

no sense to anybody. And these loans simply are not available. So what we talk about, this money that's available to help us survive, the reality of it is that it is not available to us.

Now, what's changed? It's the rules. To me, too-big-to-fail means that I'm too small to survive. Most of the banks that I do business with are small banks. They are absolutely frozen with fear. The regulations and the rules have put them in a situation that they cannot operate with us on a day-to-day basis.

Quarterly, the covenants change for me. And as we talk about small business leading the way out of this economic mess we're in, I will tell you it is the uncertainty that all of us face. And I'm not talking about big corporations. I am talking about Main Street America. I am talking about the average person, the guy that gets up every day and worries about it not just during business hours, but seven days a week, 24 hours a day.

My only question to you, sir, is, and I don't know what you can do about it, but there has to be some way that we can free up these funds to make it possible for these people to survive. The people have lost faith in this (inaudible).

MASSAD (?): Congressman, it's a very good question and you raise a lot of important points. Let me say a couple of things.

One is that what we tried to do under TARP was in part re-start the credit markets that help small business -- the securitization markets on which a lot of them actually depend for loans. And I think we have succeeded there. There's still a lot of work to do to help small business. I agree with you 100 percent. Small business has been hurt in this crisis. Small banks have been hurt in this crisis, and -- and they haven't fully recovered.

The small business legislation that was passed last year, which set up -- I don't mean the small business lending fund, but also another program where the states are trying to help small businesses directly, I think goes, you know, provides some help. It may not be enough. So I'm happy to explore with you further things that should be done in that regard because I agree it's -- it's a problem that needs attention, and I think the Treasury and the Obama administration have tried to pay attention to that.

KELLY: And I appreciate your comments, by which time is of the essence, and we really do not have -- we are that close to the ground right now. There's not a lot of free-fall left. So I appreciate you so much for being here, and I yield back my time, Mr. Chairman.

ISSA: And the chair appreciates that.

The chair now recognizes the gentlelady from Washington, D.C., Ms. Norton, for five minutes.

NORTON: Thank you, Mr. Chairman.

As a predicate to my question, I want to note an article from the Abilene Reporter News describing what appears to be the Republican approach to the meltdown of homes, and I ask unanimous consent for it to be placed into the record.

ISSA: Without objection.

NORTON: Mr. Neugebauer is the chairman of the Financial Services Committee. He is a former banker himself and he's pretty frank. He -- he essentially says that the initiatives aimed at cushioning the blow and -- and -- have all failed. And so he says let the market take over. To quote him, "Markets aren't kind, but they're very efficient."

Should we go cold turkey and leave millions of homeowners out there to suffer the consequences? And I'd like a short answer because I have further questions.

NORTON: Mr. Massad and Mr. Barofsky, who seem so throw up his hands often.

Yes, Mr. Massad?

MASSAD: Thank you, Congresswoman.

No, I don't -- I don't think we should just go cold turkey. That's why I would disagree with some of the comments that have been made that because HAMP has not achieved 3 million to 4 million modifications that therefore we should end it. I don't think that makes sense.

I think this program can still help a lot of people. I think it's constructed so that we only use taxpayer funds prudently and wisely, to the extent that we do help people.

I think it's helping the right people, people who need...

NORTON: Let me -- let me go to Mr. Barofsky then.

BAROFSKY: I think it's incredibly important. You know, TARP was designed in part, just as much to help the Wall Street banks as to help struggling homeowners. That was part of the intent of the legislation. And I think Treasury bears an important responsibility to fulfill that goal that Congress set forth of...

(CROSSTALK)

NORTON: So you don't think we should go cold turkey and just leave -- leave millions of borrowers out there...

BAROFSKY: I would like to see...

NORTON: ... to let the markets -- to let the markets do what the market always does? It

does resolve all such as crises, one way or the other.

BAROFSKY: I would like to see a credible revamp of HAMP, so that it can achieve the goals that were...

(CROSSTALK)

NORTON: OK, let's talk about that. Because I'm essentially remedy oriented. And as I've seen in my own district how HAMP has failed so many homeowners, people who worked hard for their homes, got caught up in a crisis not of their making, it does seem that the only way out of this is to take measures that protect both homeowners and investors.

A recent Washington Post article, January 18th, as a matter of fact, suggested that the incentive structure for services is greatly misaligned.

Let me just quote that: "Studies have shown that foreclosure is often more profitable for a company known as a mortgage servicer that collects the monthly payments on mortgages and passes them on to investors who own the mortgages, how it is often not the best path for borrowers who lose their home or investors" -- "or investors who lose money."

Mr. Massad, is it true that mortgage servicers often have a financial incentive to foreclose on distressed borrowers, and at times at that program, your program, actually gives them a financial disincentive to work with borrowers? And what are you doing about it?

MASSAD: Well, what we're -- what we're trying to do is give them an incentive to keep people in their homes. And I think that the structure of the program has worked in that regard. And that's why, also, it has been emulated by the industry.

You know, before this program was started, we had two years of this crisis. Nothing was done.

NORTON: Well, why is it -- why is FHFA considering an entirely new compensation structure if this one is so fine and dandy?

(CROSSTALK)

MASSAD: No, no, let me make sure I'm clear. I agree with what the FHFA is doing. And Treasury has supported that. They are looking at the basic business model of the servicers, because it doesn't work. It is broken. It doesn't create the right incentives.

HAMP was also trying to change those incentives with respect to the loans we could affect. And that is, as I've said, a limited pool. It's not the entire industry. But one thing that has...

(CROSSTALK)

NORTON: Do you think the FHFA measures would have a meaningful impact?

MASSAD: Well, I certainly hope so, Congresswoman. What they're doing is saying, look, we need to re-examine how servicers are compensated. Because what's happened is, they're overcompensated for loans that are performing, but when it comes to the underperforming loans, they're not set up to deal with people, to resolve these issues.

NORTON: Mr. Massad, if this is not a win-win, it's not going to work. If it's a win-lose, and it appears often to be just that, then we're going to be stuck, and that's where the -- where the borrowers and the homeowners are stuck (inaudible).

MASSAD: Well, that's right, Congresswoman, and that's why I've said I think there needs to be a lot of attention paid as to how this industry has failed us in a lot of ways. And we've seen a lot of problems coming out of this crisis and...

NORTON: And how your incentive structure has failed.

MASSAD: Right.

ISSA: The gentlelady's time has expired.

The chair now recognizes the gentleman from Michigan, Mr. Walberg for five minutes.

WALBERG: Thank you, Mr. Chair.

ISSA: Would the gentleman suspend?

The chair would note that we're expecting two votes at approximately 11:10. We'll work for about one more question after the vote is called. We'll leave, we will return. And as soon as there are two people on the dais, we will begin questioning again, as to be respectful of your time.

The gentleman may continue.

WALBERG: Thank you, Mr. Chairman.

And thank you, Mr. Barofsky and Mr. Massad, for being here to appear in front of us.

I had the dubious distinction to vote on TARP, to vote against it, I think for all the right reasons. I had the dubious distinction to be foreclosed upon by my electorate in the next election. And then for the last two years, to hear the response of people who finally awakened to the fact that yes, there was a problem, yes, there was a significant concern, yes, there was a meltdown that was taking place, but frankly, their opinion was that it was the wrong approach to take, and it seems to have borne out.

Mr. Massad, I would ask you, and I hope this hasn't been asked while I was away at another committee meeting, but what are the plans for the obligated TARP funds which have not yet been spent?

MASSAD: The only funds that have not yet been spend are those for the housing programs. And let me just note, it's not \$70 billion for HAMP. Our portion of HAMP, there is a GSE portion, our portion of HAMP is \$29 billion. We've done a number of other housing programs. So there's \$45 billion allocated for a variety of housing programs.

There's still a very small amount that's committed for the public/private investment partnership.

Basically, we're no longer making new commitments. We're no longer doing new programs. Our focus now is getting the money back. And we've gotten, as I say, a lot of it back, and I expect we will get a lot more of it back. And essentially all the programs, leaving aside the housing programs, all the programs, considered as a whole, will result in a very little cost or potentially even a profit, because we will get all the funds back.

WALBERG: Can you make a blanket commitment here today that those unobligated funds will not be spent?

MASSAD: They're -- Congressman, I can make a blanket commitment to you that we will make no further commitments of funds. We do not have that authority. But let me make clear, the -- the there are funds that are obligated that may be spent. There are no -- there are no funds that we will -- that are unobligated. We will not make any further obligation of funds.

WALBERG: But you will not spend them? Unobligated funds?

MASSAD: Unobligated funds we will not spend. But I just want to make sure we're communicating. We no longer have authority to make obligations. I can't make new commitments of funds. I will not, therefore, make new commitments of funds.

We do have -- we do have some funds that have been committed but not spent. And those, you know, we expect at least some of those will be spent. Not necessarily all of them.

WALBERG: Thank you.

Mr. Barofsky, on page six of the SIGTARP report, in referencing, in comparing recipients of the federal assistance to Fannie and Freddie, you make this statement -- in many ways TARP has helped to mix the same toxic cocktail of implicit guarantees and distorted incentives that led to disastrous consequences for the government- sponsored entities.

Based upon that statement, how are big banks who receive TARP money similar to those entities?

BAROFSKY: Well, two of the big characteristics of what happened with the lead-up to this -- the conservatorship of Fannie and Freddie was, one, the implicit guarantee they received that they had a government backstop.

And one of the legacy results of TARP is that the market still believes that the United States government is backstopping the largest too-big-to-fail institutions.

And that causes a whole -- a whole range of problems. It hurts market discipline, counterparties, creditors, investors, they don't do the due diligence that's necessary when evaluating whether to do business with one of these banks or invest in one of these banks, because they believe that they'll be -- that -- that any type of risk they take will be backstopped by Uncle Sam and the taxpayer.

That gives them an advantage. It gives them the opportunity to borrow money more cheaply. S&P recently announced their intent to change the rating system to make it as a permanent aspect that the big, too-big-to-fail banks will have higher ratings based on implicit government guarantee.

And they say this notwithstanding Dodd-Frank and other countries' response to the financial crisis. This is a market distortion. And as a result, the executives of those banks get back into the position where it's, heads I win, tails, the taxpayer bails me out.

WALBERG: What recommendations might you suggest to go away from that -- that moral -- moral hazard?

BAROFSKY: I think that under -- we are where we are. And what we have is Dodd-Frank and the FSOC and the committee that's providing oversight. And it does have a lot of tools.

They need to have both the regulatory will and the political will to rein in the size of these banks. They have to do two things, which are going to be remarkably difficult. And Secretary Geithner, to his credit, was remarkably candid with us about the limitations of what they're going to be able to do.

But, first of all, they have to have a system where they can credibly resolve large financial institutions without bailing out the shareholders, the creditors, the executives.

Second, which is probably just as important, they have to convince the markets that that's actually going to happen. Because if they don't convince the markets, if they don't have the credibility that they will not be bailing out institutions going into the future, it almost won't matter otherwise, because, again, those incentives will still be warped. That discipline will still be gone, and those risks where with the idea that the taxpayer will bail out -- will bail out -- the executives, the shareholders, the counterparties will continue a

perversion of the system.

WALBERG: Thank you. In the parent world, we call that tough love. Thank you.

ISSA: I thank the gentleman.

The chair asks unanimous consent that a statement for the record submitted by the American Bankers Association be inserted at this time, without objection.

The chair now recognizes the gentleman from Missouri, Mr. Clay, for five minutes.

CLAY: Thank you, Mr. Chairman, and thank you for holding this meeting.

Mr. Barofsky, I understand that you have the oversight authority to investigate mortgage service provided. I wanted to discuss one specific example of a horrendous abuse against our active duty service members.

According to an NBC News report of January 17th, JPMorgan Chase and Company admitted that they overcharged thousands of active duty military families millions of dollars on their mortgages.

They also improperly foreclosed on some of these families. They weren't supposed to do that, because we passed the Servicemembers Civil Relief Act specifically to protect military families from higher interest rates and foreclosure action. We recognize the importance of those families' service to our country.

Mr. Massad, have you seen this report?

MASSAD: I have, sir.

CLAY: What can these families do other than seek redress from the company?

MASSAD: Congressman, I'll be happy to look into that. That's really outside of my jurisdiction. But it was a very troubling report, I agree. And I'd be happy to get back to you or get the appropriate officials to get back to you.

CLAY: Well, and I'm glad to learn that JPMorgan has acknowledged its errors and is working with the families to try and make things right, starting by paying them back \$2 million in overcharges, interest.

But this story makes me worry for a different reason. The victims in this case complain that the industry servicer in this case harassed them endlessly, refused to acknowledge legitimate documentation when they presented it, and essentially made their lives miserable, all without any basis to do so.

Now I assume that banks don't have one collection agency just for military service

members and another one for everyone else.

Mr. Barofsky, have you seen similar abuses of this kind, where the banks and their collection agencies harass people without any justification?

BAROFSKY: We have. You know, we operate the SIGTARP hotline, where we've collected more than 24,000 contacts since -- since our inception. And a lot of them are complaints from homeowners dealing with mortgage servicers, absolutely.

And when we see those, we try to direct them to the right place. If there's an allegation of criminal activity and it relates to the HAMP program, we'll take it. If it's criminal activity that's outside of our law enforcement jurisdiction, we'll refer it out. We'll refer it to Treasury, if it's appropriate, if there's some -- some degree of -- something that they can do. And we also collect them for our review and our audit function.

CLAY: How about the -- the real abuse of servicers? Can they be removed from the program?

MASSAD: I'm sorry? Can they be removed from -- from...

(CROSSTALK)

CLAY: Yeah, can they be...

MASSAD: ... from our program?

CLAY: Yeah.

MASSAD: From the HAMP program?

They could be. Again, you know, because there are some servicers that cover a lot of the market, and if we were simply to kick them out of the program then we wouldn't be able to reach the people we'd like to reach. So that's why our focus has been to try to, you know, improve the practices as much as we can.

Let me just say, you know, we will -- we will continue to be aggressive in this. We're in the large servicer shops, you know, all the time, and we'll continue to work with SIGTARP on practical constructions -- practical suggestions as to how to get the servicers to do a better job, because, you know, we agree that they need to do a better job.

CLAY: Well, but if they are totally ignoring the homeowner and ignoring the documentation, then...

MASSAD: Sure. I wouldn't say they're -- if I may, Congressman, I wouldn't say they're totally ignoring the homeowner, at least with respect to our program. I think with respect to our program we've gotten them to pay attention. They've come a long way.

When we started this, they said, you know, "We can't do this. We're not -- we're not ready." And we said, "You got to get ready." And while we may -- we haven't achieved as many modifications as we'd like, I will admit that, I have always admitted that, but nevertheless we're making some progress. We're still getting about 30,000 new families helped a month.

That's important. It may -- it's not enough, but it's important.

CLAY: Could either one of the witnesses supply us with the breakdown of state by state of modifications? Would that be possible?

MASSAD: Yes, we can certainly do that. We can do that for our program, Congressman. We do produce a lot of statistics and metrics on our program. But that only covers our program. There, frankly, aren't a lot of statistics on the rest of the industry in that regard.

CLAY: OK. And of special interest to me would, of course, be on Missouri.

MASSAD: Certainly.

CLAY: OK. Thank you. Thank the witnesses. I yield back.

ISSA: I thank the gentleman.

Our last for this round, before we go to votes, will be the gentleman from Arizona, Mr. Gosar.

GOSAR: Thank you.

Being from Arizona and hearing of the discussion in regards to Florida and Ohio, I have to say that Arizona, which we thought was a leveling of -- of our problems with housing, is now all of a sudden showing some signs of double dipping. So this is very troubling.

And being from a very poor community, from the district, we see homeowners on the very verge of -- or very brink of catastrophe.

My question to you first, Mr. Massad, is doesn't the lower cost of borrowing that results from the implicit government guarantee partially explain the banks' abilities to pay back TARP?

MASSAD: Yes. It's -- it's -- it's probably a factor. But I think a more important factor was the process that we implemented of the stress test. Because what we did was we put the largest banks through a very intensive stress test, because the market didn't have confidence as to which institutions might fail and how much capital they needed.

So in the spring of 2009, we implemented the stress test process. That -- and we made the

results and the whole process very transparent. And as a result of that, they were able to raise private capital and we were able to get the government out.

GOSAR: So in a follow-up question, so the success depends upon that implicit guarantee?

MASSAD: No, I don't think I said that. What I'm saying is that we got out of the banks' investments, we got the money back through this stress test and recapitalization process.

I think, if I -- if I may, I think the thrust of your question, it really relates to some of the concerns Mr. Barofsky has raised on too-big-to-fail and moral hazard. And those are very legitimate concerns, and this Congress obviously debated them at length when it passed the Dodd-Frank legislation.

We're still implementing that. I think Mr. Barofsky is raising his views on that. But, in effect, it sounds like what he's saying is Dodd-Frank may not have been strong enough or may not be strong enough. Maybe we should break up some of these banks. Maybe we should take more aggressive action. That's certainly an opinion, you know, and others have voiced that opinion.

My own view is, let's give Dodd-Frank some time to work, because now we do have some -- a lot of tools that we didn't have. So I think it's premature to say -- to pass judgment on Dodd-Frank. It was really the first overhaul of our financial system in many years, and it was, you know, it was necessary -- or, rather, TARP was necessary because we didn't have the tools that Dodd-Frank provided.

GOSAR: Mr. Barofsky, how would you feel or would you differ in that opinion?

BAROFSKY: I don't think that Mr. Massad has correctly characterized my position, to put it mildly.

The answer to your question, though, is, yes, the implicit guarantee absolutely enabled those banks to get out of -- out of TARP on the terms that they did. Because though banks enjoy enhanced credit ratings from the credit rating agencies, part of the -- one of the conditions that the Federal Reserve and Treasury put for those banks to get out of TARP was to go out on the markets and raise capital. And larger banks can raise capital more efficiently and cheaply because of this implicit guarantee, because of the benefits they have.

So, in short, the answer to your question is yes.

GOSAR: Thank you.

I yield back the balance of my time.

ACTING CHAIRMAN: Thank you, Mr. Gosar. Thank you, Mr. Gosar.

And I am instructed that we are about to be called to some votes. So I'm very, very grateful, both Mr. Massad and Mr. Barofsky, for your -- for your attendance to this point. I know there are, if you can give us the indulgence, as soon as we conclude the votes, I know there are some members who -- who would like to continue with -- with some questioning.

ACTING CHAIRMAN: So the committee stands in recess. Thank you.

(RECESS)

ISSA: OK, we're back on the record now.

So, just to make you aware of that. And our staff can provide you notes and then at an appropriate time ask the question. I didn't want anyone to be blindsided, because this is something we began looking at just recently.

OK, I -- the committee will come to order.

The chair now recognizes the gentleman from Pennsylvania, Mr. Meehan, for five minutes.

MEEHAN: Thank you, Mr. Chairman.

And thanks to the witnesses for -- for continuing to -- to be with us here today.

Mr. Massad, I looked at something which is a little bit different than what's been talked about so far today but I noticed in my review of the most recent report, the issue of the extent where recapitalization isn't just for the big banks, but a lot of times you're looking at another, you know, groups of other banks, in communities all across the country of various size.

Some of them are looking at difficult issues as well and coming to you for recapitalization, so they're making applications to you for recapitalization.

What's your policy with respect to when you get that notification, sharing it with others?

MASSAD: Congressman, thank you for the -- for the question. You've raised an important issue.

First of all, we don't ever provide additional funds. I want to make that very clear.

Secondly, our job now, with respect to those bank investments is to get as much money -- as much of the money back as we can.

We still have investments in about 560 banks. And there are a few of those situations

where banks have had trouble and have come to us because they're trying to attract private capital. And they ask us to modify our investment, and we have agreed in a small handful of situations.

The biggest is obviously Citigroup, where we agreed to convert from preferred stock to common stock. That one, obviously, turned out very well, since we will realize a \$12 billion profit on our overall investment.

Most of the others have been very, very small. But we do try to work with the banks. We -- we have a whole process of monitoring our investment and monitoring these banks. And, you know, occasionally, because the bank is troubled, the choice for us is if we don't do anything, we might lose our entire investment, because the bank might be seized.

So the question is always can we agree to some terms that help them attract new capital and therefore realize as much as we can?

MEEHAN: And there's one of the issues, though, that struck my interest, because part of your participation with them is creating an awareness on others. In many ways, to some extent, it may be a sign of good approval that's enticing other private investors to make capital investments to help with that bank.

Now, one of the things that concerned me in the report was the suggestion that simultaneously some of these banks may be having trouble for a variety of reasons, including the potential that they may be looking at for fraudulent activities.

So to what extent, and what timing has been your policy to report that to the I.G., who made, as you saw, 24,000 reports from people?

As a prosecutor I used to see the whistleblowers being some of the key things to us. They have information.

What are you doing to assure that there are not activities in which you're enticing people to invest that simultaneously they're under investigation for potential fraudulent activity?

MASSAD: Right. It's a very good question. We, first of all, cooperate fully with SIGTARP in terms of when they tell us they're investigating someone and they want information, we give them all that information that they want.

I know that in the SIGTARP's quarterly report, Mr. Barofsky has raised the question of -- of whether Treasury should notify SIGTARP when -- at some point in that process. And that's a recommendation that we're looking at. We have, from time to time, done that, and that's a recommendation that we're looking at...

(CROSSTALK)

MEEHAN: Let me ask: Are you asking that SIGTARP say to you when they begin to

have somebody under investigation?

MASSAD: No, I'm not asking that.

MEEHAN: That's what I'm trying to understand. And I'm not being -- I'm not being hostile (inaudible).

MASSAD: Right.

MEEHAN: I'm just trying to understand the timing here.

MASSAD: Sure.

MEEHAN: Because the concern I have is -- is that they may be sitting on information, investigative information, in which simply the fact that that would be leaked would create -- that would be contrary to your interest.

MASSAD: Absolutely.

MEEHAN: I know my time's going to run out, so I'm going to ask you this.

And, Mr. Barofsky, if you could jump in at the conclusion of this, after Mr. Massad tells me, what do you need? What is your policy with respect to the ability to have timely notification that you may have a matter under investigation while simultaneously Treasury is encouraging people to invest in that bank?

MASSAD: Yes, so, Congressman, if I may, it's a very sensitive question, a lot of complexities to it, actually. And you've touched on many of them.

And we've thought about this in connection with, well, what if the SEC is investigating a bank? What if the Justice Department is investigating a bank? Should that knowledge be knowledge that we have? If we have that knowledge, then what do we do?

So there are some complexities to this that we're looking at. We're talking with Mr. Barofsky's staff as well as the DOJ about this. And I'll be happy to get back to you further on it.

MASSAD: Thank you.

BAROFSKY: I don't think there is a great deal of complexity with this issue as with respect to SIGTARP. We're a Treasury entity, within the Treasury Department. They used to give us a heads-up before they would do one of these recapitalizations before they'd be publicly announced, which would give us an opportunity to review our caseload and communicate whether there's an issue, and we've now made a formal recommendation that that process be implemented.

And also that with respect to giving money in the SBLF program, when TARP banks have an opportunity to recapitalize into the small- business lending program, that Treasury check with us. The last thing they want to do is pour more money into an ongoing fraud.

One of our biggest successes was with Colonial Bank, which had received conditional approval to receive \$550 million in TARP money. And Treasury and Mr. Massad and OFS did a remarkably great job working with us to make sure that money didn't go out the door. And we want to have the opportunity to be able to repeat that success.

MEEHAN: Mr. Chairman, one -- just a one...

ISSA: Unanimous consent for one more question.

MEEHAN: ... just -- if there was a policy where in the past they were, and they're not now, what's different? Why has that changed midstream?

MASSAD: Congressman, there wasn't a formal policy. We -- we had -- we had very few of these before. We did notify SIGTARP and we're looking at what should the formal policy be. Because we also have to be sensitive to the fact that if they -- if a law enforcement official shares information with us, we have to protect the confidentiality of that information. What -- what position does that put us in?

So, as I say, I think there are some complexities to this. I'd be happy to meet with you and your staff to discuss it further. We are giving it very serious attention.

MEEHAN: Thank you, Mr. Massad.

ISSA: I thank the gentleman.

We now recognize the gentleman from Virginia, Mr. Connolly, for five minutes.

CONNOLLY: Thank you, Mr. Chairman.

Talk about good timing.

Thank you, gentlemen, for appearing before the committee today.

Mr. Massad, did the Bush administration make a mistake in creating the TARP program?

MASSAD: No, I don't think so, Congressman. Again, I -- I think it was unfortunate that we had to create TARP. It was unfortunate that we didn't have the tools to otherwise deal with this crisis.

But I think they were right to take the actions that they took. I am proud of those members of Congress from both sides of the aisle who stood up and supported it. I think

we needed this. And again, it's unfortunate that we had to do it, but I don't think we had much choice.

CONNOLLY: At -- at the time, Mr. Massad, that TARP was created by the Bush secretary of the treasury, Mr. Paulson, were there not calls then and subsequently for the nationalization of the banking system in the United States?

MASSAD: Yes, there were, Congressman.

CONNOLLY: And -- and did TARP offer a market-driven private sector alternative to those calls?

MASSAD: Yes, I believe it did.

CONNOLLY: So despite heated rhetoric about big government takeover, actually would it be fair to say, Mr. Massad, that TARP represented precisely the opposite?

MASSAD: I agree, Congressman, yes.

CONNOLLY: And again, there were lots of concerns, and maybe, Mr. Barofsky, you want to comment -- feel free to -- that TARP was going to be this endless sucking sound that was going to, of course, suck up tax dollars and inflate the federal deficit enormously. Is that what happened in the TARP program?

BAROFSKY: I'd be happy to answer that. No, I think that one of -- one of the areas where TARP has succeeded has been in the declining estimates of the financial costs of the program, absolutely.

CONNOLLY: And what is the net cost currently of the \$700 billion that was originally allocated for TARP?

BAROFSKY: It depends on -- on who you ask. CBO did an estimate. We -- we have all three estimates in the most recent quarterly report. CBO's most recent estimate is in the area of about \$25 billion. Treasury's most recent estimate is in the area of about \$50 billion. OMB has a much significantly higher estimate, but it's dated back of May of 2010 and hasn't been updated yet. I anticipate that that number will come down as well.

CONNOLLY: But the nonpartisan Congressional Budget Office on which this institution has historically relied, except recently when we apparently don't like their numbers, says \$25 billion in that cost?

BAROFSKY: \$25 billion, and I think the reason for the big difference between their and Treasury's number is that CBO has looked at the HAMP program and basically doesn't believe that Treasury will pay them, you know, even a fraction of the amount that it is allocated...

CONNOLLY: Are there still warrants and stocks to be sold that could yet improve that net estimate of \$25 billion negative?

BAROFSKY: I'm assuming that when CBO does its estimate, it considers those factors in fashioning its estimates.

CONNOLLY: But I mean, of course, everything's about timing when you sell the warrants and stocks.

BAROFSKY: Oh, of course. The markets could improve, which would be losses would go down, or the markets could get worse, in which case the projected losses would...

CONNOLLY: Aha, OK. You mention the HAMP program. I seem to recall this committee having a hearing I think last year, and at that time, my friends on the other side of the aisle criticized the program, which they opposed, but they nonetheless criticized it because it only helped 167,000 Americans. Do I now understand that number is a half-million?

(CROSSTALK)

MASSAD: Yes, that's correct, Congressman. That's the direct, permanent modification. Of course...

CONNOLLY: OK, so -- yes, so this failing program nonetheless has managed to help more American people.

MASSAD: Sometimes I think of it as the little train that could. It keeps chugging along and helping people, yes.

CONNOLLY: Now, at that hearing, we had testimony from banks, and maybe, Mr. Massad, you are aware of this testimony, in which those bankers said that even the number at that time, which was 167,000, understated the reach of the program positively because a lot of banks were in fact helping homeowners because HAMP existed and had created a standard they could follow.

Would you comment?

MASSAD: That -- that's absolutely right, Congressman. Before we started HAMP, the servicers really weren't doing modifications. They weren't addressing this crisis. To the extent modifications were done, they often raised people's payment. And when HAMP came in, it -- it provided some standards that the servicers have now emulated in their -- in their proprietary programs. Fannie Mae and Freddie Mac also adopted some of our standards for their mortgages.

So the indirect effect has been quite great. And, you know, sometimes people talk about numbers of foreclosures and so forth. If you look at the total number of modifications

entered into since April of 2009, either under HAMP or under other programs, it does outpace foreclosure sales, completions, if you will, by two to one.

Again, it's not enough. I'm always the first to say we haven't done enough, but, you know, I think we are making this crisis better, at least for...

CONNOLLY: I thank the gentleman. My time is up, and I thank the chair.

ISSA: You're very welcome.

The chair now recognizes the gentleman from Oklahoma, Mr. Lankford, for five minutes.

LANKFORD: Thank you. I have a few questions.

I wondered if you'd just be able to give some clarifications, and thank you, gentlemen, for allowing us to be able to step out and vote and be able to step back in as well.

Mr. Massad, I'm aware of some of the limitations that Dodd-Frank has placed on TARP and the boundaries of the new programs and such on it. Is Treasury willing to be able to assure us today that there is no plan, no intention that any TARP funds will be used for state pension bailouts or for state government bailouts, based on the limitations of what can be used in TARP?

MASSAD: Yes, sir.

LANKFORD: Terrific. Just wanted to be able to get clarification on that.

On page one of your report, in paragraph four, it details out some of the numbers on it. Of the \$410 billion disbursed to date, we've received back \$270 billion, representing \$235 billion, \$35 billion additional income. Approximately \$166 billion remains outstanding.

If I'm running those numbers correctly, we're missing about \$9 billion in that figure on that. So I didn't know if you'd be willing to resubmit to us just a written update on that, where that other \$9 billion and how that fits in there on that.

MASSAD: I would be happy to do that, sir. I don't -- I don't believe it's \$9 billion, but I'd be happy to do that.

LANKFORD: Terrific. Yes, those numbers, when you add them together, the quick detail up there, and I know that's just a very quick detail on it.

Third thing is on the auto industry financing program, what is the plan at this point? You gave us a great statement on that. What is the plan for exiting out? We've gone from 61 percent ownership and stock to now 33 percent. That's terrific. That's making great progress, and thank you for that.

What is the plan to take us down to zero percent?

MASSAD: We are actively working on that. I want to be careful because of the securities laws, and can't be too definitive about a timetable. But now that we have completed the initial public offering of G.M., we do have a pathway to sell the rest of our shares. And I would expect that we would sell all those, you know, hopefully within the next two years, market conditions permitting.

With respect to our other investments in Chrysler and Allied Financial, we're also working toward initial public offerings of those institutions.

LANKFORD: Has Treasury set up a timetable on what they're looking for, to say by this date certain we're going to be out regardless. Or is this -- I don't want to -- this is going to sound pejorative -- playing the market with it to try to work it out. But is there some plan to say by this date certain, we're going to be out?

MASSAD: No, we haven't done that because I think we do have to be sensitive to a couple of things. One is market conditions and also in the case of the companies that aren't yet public, they really have to be ready to go public. We can't force them, really, to do that.

But I can assure you that we're trying to get out of all these investments as quickly as possible. I firmly believe that our purpose, which is to promote financial stability, is best served today by getting the government out of the business of owning interests in private companies.

LANKFORD: I would definitely concur on that one as well. Is Treasury -- with that in mind -- is Treasury still day-to-day in the operational business at G.M., Chrysler and Allied? Is there still someone that's on board there with their stockholders and such that's helping advise?

MASSAD: We monitor those investments, but we have never participated in the day-to-day management, and we've made it very clear that we will not do so and we do not think that is an appropriate role for the U.S. government.

LANKFORD: Terrific. I would -- I would agree on that one as well.

Mr. Barofsky's report details \$59.7 billion that's available, that's sitting out there. And I'm sure that -- that number may move around some based on day-to-day operations on it. When, in your opinion, does TARP sunset? When do we not have hearings on TARP because TARP doesn't exist anymore? All available funds have now been returned and that there is no more TARP? What is the plan for that?

MASSAD (?): I would say on the investment side, again, we're trying to get out as quickly as possible. I, again, can't give you a timetable, but I think with respect to the remaining investment, which, if I recall, roughly \$170 billion, I think we will get most of

that back in the next two years. There will be some portion that, you know, we can't get back within that timeframe, but we will certainly -- and we are winding down the operation and, you know, trying to get out as fast as we can.

LANKFORD: Would it help at all to have a legislative solution on this to set a timetable to say the American people need some assurances that 20 years from now we're still not TARP-ing, that we're out there and we have a time certain?

MASSAD (?): I don't think a legislative solution would be helpful because that could depress the value that we could get for the investments that we have. But believe me, I don't intend to be here 20 years from now.

LANKFORD: Great.

Let me give you one last quick question as well. In Mr. Barofsky's report as well, it details out that the five largest banks now control about 60 percent of gross domestic product. They're all 20 percent larger than what they were before the crisis (inaudible).

Obviously, we have a heavy emphasis (ph) going in the largest of banks. I know you were talking about how the small- and medium-sized banks you're assisting, as well. But the end result has been that the biggest banks have grown bigger and they seem to be even more of a systemic risk.

MASSAD: There has been increased concentration in our financial system as a result of this crisis. I think, probably without TARP that would have been even greater because we wouldn't have helped a lot of institutions that have been able to weather the storm.

But the question as to whether it's too concentrated, you know, is certainly one that this Congress can take up. And -- and as, you know, Mr. Barofsky has -- has properly noted, that that is an issue that the Congress may wish to consider.

I think, what we have right now under Dodd-Frank are tools to try to regulate that. As the comment was made, some people have suggested nationalizing banks. Some people have suggested breaking them up. That's obviously policy options that the Congress can consider.

LANKFORD: Sure.

It just seems to be that we have a preference for the largest of banks in this -- in this (inaudible).

And I understand that my time has expired. Thank you very much.

MASSAD (?): Thank you.

ISSA: And I thank the gentleman.

The chair now recognizes the gentleman from Illinois, Mr. Walsh, for five minutes.

WALSH: Thank you, Mr. Chairman.

Thank you both for coming in. It's been a long morning.

Let me -- let me be very brief and ask two broad macro level questions --try to get an answer from each of you.

Like a lot of my colleagues, I hear from community banks every day who are struggling. Like a lot of my colleagues, I hear from community and small banks every day who resent the fact that it seems like TARP -- the government sided with the big banks.

Broad question: Why are these community banks struggling? What -- what's your biggest concern that you've got right now for community banks?

MASSAD: That's -- that's a very good question.

A lot of the -- the smaller banks do have loan portfolios that are more heavily weighted to the real estate sector, and therefore they've been hurt by that. Number two, they don't have access to capital as easily as the big banks.

So those are very real concerns. And we've tried with the TARP program to address some of that.

You know, essentially when you look at the money invested in banks -- about \$250 billion overall under TARP was invested -- about -- most of that, \$234 billion or so -- well, around that amount was done under the Bush administration.

I agree with the actions that they took, but I'm just pointing out that they did that -- \$125 billion of it went to the largest institutions in the country.

When Obama came in -- we have only invested an additional \$11 billion -- \$11 billion, excuse me, in banks. And a lot of that went to a lot of the smaller institutions. And we set up special programs to help them.

But many of them are still struggling, and we're trying to do our best to get the economy back and get an economic recovery, get a housing -- get the housing market stabilized, because I think those are the best things we can do for those banks.

WALSH: And, Mr. Barofsky, why still this persisting struggle with community banks?

BAROFSKY: Part of it is, as Mr. Massad -- Massad pointed out, the structure of their loan portfolio. But a large part of it is also the continuing existence of too big to fail. It gives an inherent advantage to the larger banks.

There's a reason why the smaller banks don't have the same access to capital as the larger banks. They don't have the access to the virtually free money from the Federal Reserve that the larger banks have.

Larger banks -- a lot of what has been the result of TARP and the related program is it's given the opportunity to the largest banks to essentially earn their way out of trouble, and those are the opportunities that are not available for the smaller and community bank.

WALSH: So maybe this leads, then, to my second brief macro level question: Give me -- each of you offer -- offer one broad -- broad level critique of TARP, either with its implementation, with its design. If you were to each offer one broad critique of TARP, what would it be?

MASSAD: You know, if -- if we had to do this all over again -- and, obviously, I'm assuming we will not have to, there are a lot of things we -- we could change, or would change, Congressman. It's hard to be specific.

There are certain things in the housing program that we'd (ph) done later that we might have done earlier. I agree with the comment that was made earlier that -- that it was proposed as a purchase of troubled assets and then we -- you know, I think the Bush administration wisely changed course, because I think they had to. But that, obviously, contributed to -- to some of the criticism.

So things like that -- there are many others -- I'm sure that we would do over. But I think key thing is, you know, hopefully, now under Dodd-Frank we have the tools that will make this sort of thing unnecessary in the future.

WALSH: One overall critique, Mr. Barofsky?

BAROFSKY: I think one of the things that could have been done better within -- within the realm of possible, within the realm of what the TARP was, was better transparency for the Treasury (ph) Department.

From -- from day one, this has been a recurring theme of our criticism, and we've been none -- very bipartisan in our criticism for both, the -- the Paulson Treasury Department as well as the Secretary Geithner Treasury Department.

But there -- explaining this better to the American people, being more upfront and honest about these programs, whether it was saying that the first nine institutions were all healthy and viable when they knew full well that some of them were not, to some of the more recent statements -- cheerleading statements about the program, which under a little further examination certain things were left out.

I think that having a more transparent program -- and it's not too late -- and I would encourage Treasury to renew its efforts for (ph) transparency -- will help address some of

the real negative views of this program.

Because I think if people understand it and feel like that they're being -- that everyone's being upfront with them, it can be a more informed conversation, be a more informed debate.

Right now, the Treasury -- Treasury's running of this program has been viewed of one, I've heard (inaudible) picking winners and losers, or back room deals. And those criticisms really come out of these transparency failures.

WALSH: Yeah.

MASSAD: If I may respond to that, I -- I am fully committed to transparency. And -- and the -- most of -- the particular suggestions that SIGTARP has made in this regard, we've - - we've implemented.

I would just like to note -- because I think often people aren't aware of it. We publish annual financial statements which are audited. And we receive clean opinions on these financial statements for two years without any material weaknesses. That's actually a very rare thing for a start-up entity. It's a relatively rare thing in government.

We've published a monthly report to Congress that lays out exactly where the money is, how much of it has come back, what is the status of the program. We've published a transaction report on each transaction within two business days of completing it. We publish a dividend and interest report quarterly which shows how much dividends and interest payments we've gotten.

We've put all of our contracts and agreements on our website. That means not only any contract entered into with a financial institution, but also all the procurement contracts, all the documents related to HAMP, and any program we have, as well as program guidelines and other materials.

We've testified before Congress, you know, numerous times. We meet. We have three oversight agencies, and we fully cooperate with them and give them all the information that they need. They've produced a total of 75 reports.

So we can always strive to do more, but I think, actually, there is a lot of information about this program available.

WALSH: Thank you both.

Thank you, Mr. Chairman.

ISSA: Very welcome.

If anyone else arrives who's not had a first round we will take them if they arrive before

we finish. Otherwise, with your indulgence, we'd like to have a brief second round for a couple of people.

(inaudible) at this time I would go to the ranking -- or the chairman of the subcommittee of jurisdiction, Mr. McHenry, for his question.

MCHENRY: Thank you, Mr. Chairman.

And I would begin by -- this has not been discussed greatly, but the moral hazard posed by -- created by TARP is mentioned, Mr. Barofsky, in your report. You've mentioned it before. It's certainly a big concern.

Mr. Massad, S&P considers the likelihood of government support explicitly in their credit rating. Are you aware of that?

OK.

Do you think that is a direct result of TARP?

MASSAD: I would say it this way, Congressman: I think because we didn't have the tools to deal with this rescue, we had to do TARP. And that does raise the moral hazard, too big to fail concerns that -- that Mr. Barofsky has mentioned. But I think now Congress has addressed those through Dodd-Frank.

We haven't implemented Dodd-Frank yet, but those are the tools we now have.

So I don't think it's appropriate to blame it on TARP, but rather blame it on the fact that we didn't have an adequate regulatory system, and that's what we're trying to improve now.

(CROSSTALK)

MCHENRY: I'd like to call up the -- the Geithner slide, if I could.

Secretary Geithner and -- Mr. Barofsky, in -- in your report on Citi, it outlines very clearly, "In the future, we may have to do exceptional things again if we face a shock that large. We just don't know what's systemic and what's not until you know the nature of the shock."

Now, Mr. Barofsky, was this interview post signing of the Dodd- Frank law?

BAROFSKY: Yes, this interview occurred in December of 2010 (inaudible).

MCHENRY: Mr. Massad, it seems that your testimony is counter to your boss' testimony. How do you reconcile that?

MASSAD: No, I don't think it is. I think what Secretary Geithner was referring to -- and, you know, neither I nor -- nor Mr. Barofsky were actually in the room. But my understanding...

(CROSSTALK)

MCHENRY: But we have his words.

(CROSSTALK)

MASSAD: Yes, we do. And I -- and I've also spoken to him about this.

What he was referring to was the ability to use the tools under Dodd-Frank to address this, and the fact that we don't know exactly what the issue will be...

MCHENRY: (inaudible)

(CROSSTALK)

MASSAD: ... tools under Dodd-Frank are flexible. We're not going to have just a set of immutable quantitative criteria that say, you know, "If you're above this amount of assets you're too big to fail."

MCHENRY: OK.

MASSAD: We've got qualitative (inaudible).

MCHENRY: OK.

My -- my next slide is of President Obama -- said last night in the State of the Union, "Because of this law there'll be new rules to make clear that no firm is somehow protected again" -- I'm sorry, the Dodd-Frank signing in July of last year.

He said, they'll -- "These new rules will make clear that no firm is somehow protected because it is too big to fail, so we don't have another AIG."

Mr. Barofsky, it seems that Secretary Geithner's words run counter to that. And it's hard to -- after the fact, for his staff to say, "He didn't really mean it."

Can you give us context for this?

BAROFSKY: Sure.

And a couple things I want to make very clear: I was not in the room. I had six members of SIGTARP, including my deputy, were in the room.

And after we -- we received this quote, we documented it. And as (ph) is the normal practice of our report, we provided the quote in a draft copy of the report to Treasury, both the quote itself and the context in which it was presented.

And we had a number of conversations. They made some suggestions. We incorporated those suggestions. And at the end of that process Treasury had assured us that they did not contest the language that was used -- the quote itself -- and did not think that we had presented (inaudible) in any type of misleading or -- or wrong context.

So the quote is the quote. We stand by it. So (ph) there's no question in my mind -- and based on our interactions with Treasury before the report was released, that it is an accurate quote.

I think that -- that Secretary Geithner -- and it was the impression of the six people in the room -- was being transparent, was being candid -- and -- and I commend him for that -- by recognizing the reality that the market is today -- that banks are still too big to fail.

BAROFSKY: Now, the hope is, is that if Dodd-Frank -- and certainly Dodd-Frank has given the regulators many, many potential tools, and if those tools are implemented correctly -- and that is a very, very big "if," it would require actions by the regulators that, frankly, they did not seem capable of doing in the run-up to this crisis, as far as seeing around corners and understanding.

But let's assume that they can. Hopefully we can get to a day or a point where the government -- where the market will believe that the government doesn't need and will not bail out these companies, but we're not there.

MCHENRY: So we know that S&P has made the idea of a bailout, or TARP -- a TARP-like program -- or Dodd-Frank -- it's hard to really judge based on S&P making permanent their analysis of really a federal backstop to bail out the biggest firms.

So we also know that there is explicit guarantees, signed through contracts in '08 and '09, to these financial institutions of, whether it's the Fed, FDIC or TARP, of a backstop to get -- well, government guarantees of assets. We know the explicit number, right?

So the question to both of you is, can you tell this committee what you believe the net present value of implicit government guarantees are going forward to these financial institutions?

BAROFSKY: There's been some studies, and I think we include one as a footnote reference in our report. We don't -- we don't have -- we don't do that type of economic analysis.

But I think I saw one that was -- that suggested that it was -- and please don't quote me on this -- I think a \$34 billion a year advantage that the larger institutions have because of their ability to raise debt more cheaper than their smaller rivals. That is one number, I

believe, from one academic study that may be helpful.

MCHENRY: Mr. Massad?

MASSAD: Certainly, Congressman, I don't -- I don't have an ability to quantify that on the spot, but let me just try to respond to your question.

In terms of explicit guarantees, I think you're referring to the Citigroup asset guarantee program, which has now been terminated at a profit to the U.S. government, so there's no...

(CROSSTALK)

MCHENRY: No, actually that's not what I'm referring to. There are actually -- at the time of the economic crisis, as has been well documented, FDIC, the Fed...

MASSAD: Yes.

MCHENRY: ... TARP, Treasury has explicit guarantees through contracts that are publicly available. I'm asking about the implicit -- and those are well known, well documented, we don't have to rehash them here -- I'm asking about the implicit guarantees. And, Mr. Barofsky, as he mentions in his report...

ISSA: If the gentleman could conclude.

MCHENRY: So if you could...

MASSAD: Well, yeah. Well, but it -- but really I think the thrust of your concern is have we addressed the too-big-to-fail issue sufficiently.

And I guess my response to that is the Congress passed the Dodd- Frank law to address that. If there is a view of some that that wasn't sufficient, that's a judgment for Congress to make.

But I think where we are now, where Treasury is, is that we're actively trying to implement that law so that we can use the tools it gave us to make sure that no institution is too big to fail. And I think it's premature to conclude that it hasn't worked and that we need some tougher legislation to address that.

ISSA: I thank the gentleman. The chair now recognizes the ranking member.

CUMMINGS: Yes.

Mr. Massad, the Dodd-Frank legislation includes a number of provisions intended to eliminate the concept of too-big-to-fail. For example, the legislation is clear that taxpayers will not cover the cost of saving failing institutions and will not cover the costs

of liquidating such an institution.

Further, the legislation alters the Federal Reserve's 13.3 emergency lending authority to prohibit bailing out an individual company.

Finally, the legislation creates the Financial Stability Oversight Council to monitor systemic risk and to require non-bank financial companies that pose a risk to the financial stability of the United States to submit to supervision by the Federal Reserve.

Can you describe briefly how implementation of these measures will address the too-big-to-fail problem and what is the time line for implementing the measures?

MASSAD: Congressman, I can -- I can describe that very generally, because actually it's not my responsibility to implement it.

CUMMINGS: OK.

MASSAD: But I'm happy to get the appropriate officials of Treasury to brief you.

But my understanding where we are is the law was passed in July, there's a number of rulemaking procedures and studies that are being conducted. The FSOC holds regular meetings, and it always has a part of that which is public, and they are -- they are busy working on these.

They're also busy creating the Office of Financial Research, which is -- which is designed to monitor conditions in the financial industry and help us determine what risks need to be addressed.

But I'd be happy to get you...

CUMMINGS: Please do.

MASSAD: ... a more detailed briefing on the status.

CUMMINGS: And we'll up -- we'll follow up with you with some detailed questions, all right? And if you can answer this, how will criteria be established to allow us to identify firms that pose systemic risks and are therefore systemically significant? I take it that you will do that in writing also?

MASSAD: I can do that. I will say very generally that it's going to be, as has been announced, quantitative as well as qualitative judgment. And the criteria aren't simply about size. They're about riskiness of activities, interconnectedness, extent of leverage, extent of supervision.

So I think these matters are being given a lot of thought. They're obviously very complex issues. But I'd be happy to get you a more detailed summary of where we are on that.

CUMMINGS: Thank you.

Let me -- let me say this. I mean, I think that you all here, both sides of the aisle, we're all very concerned about HAMP, Mr. Massad, and we also are concerned about servicer behavior.

And I understand that you and SIGTARP disagree about your authorities, but based on your understanding of your authorities, can you and will you take -- take more aggressive steps to require improved servicer performance?

MASSAD: Certainly, Congressman. I don't -- I don't think actually we disagree with the extent of our authorities, but maybe there's just a difference in how we can best improve the program in terms of using those authorities. But...

CUMMINGS: Do you all talk?

MASSAD: Yes. We talk regularly.

CUMMINGS: OK. I just want to make sure.

MASSAD: But let me just say, you know, this -- I want to make very clear, while we think the benefits of these housing programs are very real and very important, we're still trying to improve them, still trying to reach as many people as possible.

And it's not just HAMP.

CUMMINGS: I understand that.

MASSAD: I mean, obviously statements have been made about HAMP. Most -- a lot of the money goes to some of the other programs as well.

But I think the key thing is, the statement was made that, well, because this hasn't gone as well as you'd hoped, or because there are these problems, we should simply turn it all back over to the servicers and let them -- let them deal with it. And I think that would absolutely be the wrong thing to do.

That's what got us here. It's been clear, not just from our HAMP experience, but from the foreclosure irregularities issues and from a number of other standpoints, that the servicers -- that turning it back over to the servicers would not be constructive at this time.

CUMMINGS: There's two things. You -- you had talked a little bit earlier about retooling. I take it that there are things that you're doing now, you're in the process of doing, trying to improve the program to make it more effective and efficient. Is that right?

MASSAD: That's correct. We've done a number of things...

CUMMINGS: And so -- so -- and I want you to give us a list of those things, and when do you expect them to be complete. I mean, I'm running out of time, unfortunately.

MASSAD: Well, it's an ongoing process. As we see problems, we respond to them. But, for example, some of the things we've recently done is we've addressed the fact that servicers might have been considering someone for HAMP at the same time as they were foreclosing.

We've addressed the fact that initially, you know, we started this program by trying to get a lot of people into trials, and we didn't make the servicers verify the income. That obviously led to the fact that a lot of people then didn't get into permanent trials. We've addressed that, and we've worked through the backlog.

So it's an ongoing process. I'll be happy to give you a list.

CUMMINGS: Let me ask you this. One of the things that I said to the chairman, and I -- and I really want to thank him for this -- we talked about how do we make our agencies more accountable.

And if you are doing things that are going to improve this program, Mr. Chairman, I would ask that we bring Mr. Massad or somebody from his agency back, on that level of authority, at a certain date to give us a report as to exactly where they stand. Because I think we -- we are -- you've said it and I've said and we all agree that we do want accountability.

I don't want to see the program ended, but, I mean, if you're telling us that you're doing things to improve the program, I don't -- you know, I want to know. I want you to tell us when you can come back to us and give us some more information so that we can have some confidence, because both sides on the aisle are quite frustrated, to be frank with you.

MASSAD: Certainly, Congressman. Happy to do that.

ISSA: And in response, if you'll commit to give us monthly update, next month and the following month, we'll commit to have you back in your next quarterly report, if that works for both of you.

(UNKNOWN): That's fine.

CUMMINGS: Mr. Chairman, I really appreciate that.

ISSA: Thank you.

CUMMINGS: With that, I'll yield back.

ISSA: I thank the gentleman.

In closing, I have just a couple of questions, and these can be answered for the record, because they tend to be perhaps a little complex.

Today we've talked specifically about TARP. That was the subject. We got into HAMP. My understanding is that HAMP, of course, is shared with another piece of legislation, HERA. It has joint funds. We got into -- we did not get into the \$30 billion of obligated and how that's scored and all of that.

If you would -- and I know Mr. Barofsky has a very thorough quarterly report -- but you would try to create before this next 30- day update a good analysis so the members can have your interpretation of outstanding funds.

Meaning -- and this is a question for Treasury in consultation with the Fed -- obligated funds remaining at the Fed, which is we're not the Financial Services Committee so you'll have to give us a little primer from time to time -- looking at the funds committed under other programs, including HERA.

Because I think that will help us understand where is the money still remaining out that is either obligated or literally out. And that will help us 30, 60 and 90 days from now.

It's very clear that we do still have major credible agencies that believe too-big-to-fail is leading them to having more success in loaning money at a lower amount. That's a challenge for small banks, and we certainly would like to work as a committee to ensure that as Dodd-Frank is put into action, that that leads to a fading away of that, as the president had promised at the time of its signing.

We also didn't talk about -- and I'd like this included in your report or briefing sheet -- the approximately \$145 billion that I believe is gone forever to the GSEs, the actual failure rate, which often is, as we're talking about the success of TARP, we're forgetting about Freddie and Fannie's actual losses that we have backstopped as a nation.

ISSA: One thing that I would appreciate, which is uniquely to Treasury, most of us here in Washington who have been in business have tried to convert from GAAP over to understanding the federal government's, sort of, pay-as-you-go accounting.

Now, at Treasury, you're a little different. You're a hybrid (ph). And so as I look through a report which I believe our people have furnished you with -- just a report, internal, that we developed -- if not, we will -- I began seeing the cruel system of reserves come into play in a way that, as a public company officer, I always question.

OK, you had reserves -- or you had a stated value, a mark-to- market value; you went back and stated them -- restated them in this year for the previous year, and they got worse.

However, in this year, they got so much better that there's this \$154 billion to \$110 billion swing. And we'll give you our source material, because it may very well be that you can clarify it to where we understand it simpler, not more complex.

But I think it's important because, as I understand it, those numbers reflect a -- really reflect on the anticipated deficit and other figures that we -- we looked at. And I think all of us want to know the true deficit in '09, the true deficit in '10 and so on.

Actually, we don't want to know it. We'd like it not to exist. But we'd at least like to have the accurate numbers for them.

The -- lastly, a request: Today we've been talking in net dollars. Before we talk again, I'd like the committee to have source material that you -- preferably, you two very much agree on, in the way that a normal business would do it, meaning you represent a profit from investments you made, loans you made, warrants, et cetera, that have been realized.

Those do not go as an offset against other bad deals. We're not looking for your net profit. What we would, I believe, like to see is where you put the money in and what you lost; where you put the money in and what you gained.

And so effectively, what we're saying is scrape off the profits and put them in a pile from the good deals, but any time a particular basket, meaning a company or an entity, had a loss, we'd like to see those losses. Because I think, when we're evaluating what worked and didn't work in this program that never did what we anticipated but did something very different, it's important, I think, for all of us to see, OK, loans to solvent entities in certain forms work; other things, not so much.

And, obviously, some of these you can't answer because General Motors and Chrysler are projected but not yet final, but we'll take the projection.

Lastly, I'd like to take the liberty, quickly, in closing, of reading what is a draft but we believe will be the final mission statement. Because, as a private-sector guy, I figure, at some point, when you take over as CEO, the first thing you have to do is make sure your mission statement to your people matches what you'd like to -- to see.

And because this is our first hearing, I'd like to read it.

"Americans deserve to know that money Washington takes from them is well spent. Americans deserve an efficient, effective government that works for them. Our job on the Oversight and Government Reform Committee is to help Americans secure these rights.

"Our task is to hold government accountable to taxpayers. Because taxpayers have a right to know what they get from government.

"We will work tirelessly in partnership with citizens, watchdogs to -- with citizen-

watchdogs -- to deliver facts to the American people that bring reform to the federal bureaucracy."

This is our mission statement. Hopefully, we began today by asking you, as you have done, to help us in that effort.

I thank you, and we stand adjourned.

END

SUBJECT: TROUBLED ASSET RELIEF PROGRAM (91%); CREDIT CRISIS (90%); BANKING & FINANCE (79%); CONSUMER LENDING (59%); BUSINESS EDUCATION (59%); FRAUD & FINANCIAL CRIME (59%); FORECLOSURE (59%); BAILOUTS (59%); 2010 WALL STREET & BANKING REFORM (59%); TREASURY DEPARTMENTS (59%); INDICTMENTS (59%); INVESTIGATIONS (59%); TESTIMONY (59%); WITNESSES (59%); TOXIC ASSETS (59%); MORTGAGE BANKING & FINANCE (59%)

LOAD-DATE: January 26, 2011