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TARP OVERSIGHT: WARRANT REPURCHASES AND PROTECTING TAXPAYERS

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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TARP OVERSIGHT: WARRANT REPURCHASES AND PROTECTING TAXPAYERS

Wednesday, July 22, 2009

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

The subcommittee met, pursuant to notice, at 2 p.m., in room 2128, Rayburn House Office Building, Hon. Dennis Moore [chairman of the subcommittee] presiding.

Members present: Representatives Moore of Kansas, Klein, Speier, Kilroy, Grayson; Biggert, McHenry, Bachmann, Lee, and Paulsen.

Ex officio present: Representatives Frank and Bachus.

Also present: Representatives Sherman and Marchant.

Chairman MOORE OF KANSAS. This hearing of the Subcommittee on Oversight and Investigations of the House Financial Services Committee will come to order. Our hearing this afternoon is entitled, "TARP Oversight: Warrant Repurchases and Protecting Taxpayers." We will begin this hearing with members opening statements up to 10 minutes per side, then we will hear testimony from our first witness. After that, members will each have up to 5 minutes to question our witness. I will then excuse our witness and invite the second panel of witnesses to give their testimony and we will continue with members' questions.

The Chair advises members that given the busy afternoon schedule, I will be keeping everyone, including myself, to 5 minutes. Any unanswered questions can always be followed-up in writing for the record. Without objection, all members' opening statements will be made a part of the record. I now recognize myself for up to 5 minutes for an opening statement.

The past month or 2, it has been nice to see some good news regarding the TARP. After some upbeat results of the stress tests on the largest financial firms, 10 of the largest banks holding companies were authorized to pay back $68.2 billion of TARP funds. If you include smaller banks, they totaled over $70 billion that has been repaid to U.S. taxpayers. And this news coming after the Treasury Department used more than $200 billion for more than 600 banks to stabilize the financial sector. When Congress enacted TARP last year, we authorized the Treasury Department to request that firms receiving TARP funds issue warrants. This provides an opportunity for taxpayers to share in the upside for their investments. These warrants give us the right to buy shares of a com-

pany at a set price at some point in the future, much like an employee stock option. But as you might imagine, whenever the government is the key actor in executing these warrants, unlike an employee stock option, there are a number of other policy issues and concerns that we have to deal with and that have to be weighed.

Even so, I am firmly committed to doing all we can to ensure taxpayers are fully repaid. On May 8th, Old National Bancorp became the first TARP recipient bank to repay its TARP funding and repurchase their warrants held by Treasury. The bank paid $1.2 million to buy back these warrants. But what concerned me was a professor from the University of Louisiana in Lafayette, Professor Linus Wilson, analyzed this transaction very closely, and he determined that the warrants were worth, at a minimum, $1.5 million, and as much as $6.9 million. So at the low end, Treasury was off by $300,000 and in the worst case, Treasury missed a return of an additional $5.4 million.

$5 million might not sound like a lot of money when we are talking about billions of trillions of dollars in financial rescue aid, but if you consider the 600 other banks that will eventually need to repurchase their warrants, this money quickly adds up to a big potential return for U.S. taxpayers. I wrote a letter to Secretary Geithner on June 2nd urging him in no uncertain terms that he act to protect the taxpayers' investments in these firms by maximizing returns in these warrants. I carbon copied SIGTARP, COP, and GAO, and 2 weeks later, I received a joint letter from Special Inspector General Barofsky and Professor Warren expressing their commitment to transparency. They noted a coordinated effort between COP and SIGTARP to review, "whether those warrant repurchasing procedures provided fair value to the American taxpayers."

Earlier this month, I was glad to see COP issue a report entirely focused on TARP repayments, including the repurchase of stock warrants. Similar to the analysis done by Professor Linus, COP found in the first 11 banks that repurchased their warrants, Treasury was receiving only 66 percent of what they could have received for taxpayers. COP knows that these small banks represent only a fraction of 1 percent of all warrants issued, but if this trend continues, taxpayers could miss out on an additional $2.7 billion worth of returns on their investment.

But on the same day the COP report was released, we received some good news when The Wall Street Journal reported that JPMorgan Chase had decided to pursue repurchasing its warrants through a public option. They were frustrated with the Treasury Department for demanding too high a price for their warrants. I am very glad the Treasury Department is holding a tough line, especially against the largest of the TARP recipients. And today Goldman Sachs announced they will pay $1.1 billion to redeem their warrants, representing a return of 23 percent for U.S. taxpayers. That sounds pretty good, but is it enough? I will keep pushing to make sure that every single TARP dollar that helped stabilize our financial sector is fully repaid so that our children and grandchildren are not left with the tab.

I look forward to hearing from our witnesses today, especially the new TARP Administrator and the Assistant Secretary for Financial Stability, Mr. Herb Allison. He has one of the toughest jobs in the country, and I look forward to Treasury's viewpoint on how they weigh these difficult decisions to stabilize the financial sector while protecting taxpayers. And the strong oversight Congress put in place when we created TARP continues to publish what amounts to thousands of pages of oversight reports all free and available online examining every angle and aspect of TARP.

Just this week, SIGTARP published their third quarterly report. I look forward to hearing Mr. Barofsky, Professor Warren, and Mr. McCool's testimony today. I now recognize for 5 minutes the ranking member of the subcommittee, my colleague and friend from Illinois, Ranking Member Judy Biggert.

Mrs. BIGGERT. Thank you, Mr. Chairman, for holding this hearing today, the hearing which is intended to focus on a specific aspect of the TARP program, warrant repurchases and protecting taxpayers. It is in the taxpayers' best interest that as soon as possible, the Federal Government gets out of the trillion dollar bailout business and out of the practice of owning and running private businesses. This is something the Administration also supports. How soon can we withdraw taxpayer money and end the practice of taxpayers propping up industries. Treasury, the Fed, and the FDIC must communicate to the markets and taxpayers the exit strategy and the timeline for it. We need to put an end to the Federal Government picking winners and losers in the marketplace which has facilitated unfair competition, competitive advantages for some businesses, and completely abandoned others.

It is also in the taxpayers' interest that Treasury secure the best possible return on its investment. I think we will hear some criticism from some of our witnesses today that Treasury is shorting taxpayers on the investment. From what I understand, this may or may not be true. The accusation may be more for headlines than true and is based on differences of opinion as to what is the best modeling methodology to value warrants. Whatever the case, taxpayers must be assured that Treasury is using the best means to recapture taxpayers' money. I hope that Mr. Allison will provide us with those assurances today. And I agree with many of our witnesses today that taxpayers deserve transparency with regard to warrants and with regard to what TARP recipients are doing with taxpayer money. At the same time, I want assurances from today's witnesses that as they work to improve TARP transparency, and while TARP is still active, they will not jeopardize Treasury and taxpayers' negotiating position to secure the best return on their investment.

It is also vital that we prevent any individual, Federal entity or business involved in TARP from making a profit based on insider information especially when it is at the expense of the taxpayer. That is unacceptable and I want to know what is being done to prevent this.

Finally, I am disappointed with legislation that would siphon off TARP returns when we still don't have a guarantee that TARP will ultimately produce a return or loss for taxpayers. At a time of record deficits and unemployment reaching 10 percent nationwide,

any profit on this tremendous risk should first and foremost go toward paying down the deficit. With that, I would like to yield the balance of my time to the ranking member of the Financial Services Committee, Mr. Bachus.

Mr. BACHUS. Thank you. And thank you, Mr. Moore, for convening today's important subcommittee hearing on oversight of the TARP program. I would also like to recognize Ranking Member Biggert's fine service. She has been particularly, I think, helpful on the issues involving the SEC and the CFTC. I thank you. Last fall, Congress required recipients of assistance under the Capital Purchase Program to issue warrants to the Treasury. I have a particular interest in this program because I first proposed it or something like it on September 18th, and felt like by setting a dividend or at least the repayment at a certain percent, I felt like we would be best assured of receiving a fair return as opposed to a more fluid definition.

For instance, when you buy toxic assets, and I said that in the very first meeting with Secretary Paulson and Chairman Bernanke, you know, what do we price these at? If you price them too low, it doesn't help the banks with their capital. If you pay too much for them, it is a bad deal for the taxpayers. So I have always thought that this was our best opportunity of safeguarding the taxpayers and yet coming to the aid of the banks. And I think time has shown that to be correct.

Chairman Frank and I and others worked in a bipartisan way on this along with Representative Roy Blunt. And this was done so that the American taxpayer would have the opportunity to benefit from the warrants, particularly from any upside as these companies return to financial health. And although we were hoping that was the case now, some of them had a spectacular return. And you saw today with Goldman Sachs paying back the money, there was a 23 percent annualized return. Now, that is going to be unusual I think, but it certainly was good news to the taxpayers.

However, many questions do remain about how to properly value these warrants to ensure that taxpayers receive a proper return on their investment. And I know, Ms. Warren, Professor Warren or Dr. Warren, you had proposed that they be placed on the open market for sale to the highest bid. And certainly, that is one option that has some appeal. Particularly if the Treasury and the party cannot come to some agreement, I think that is probably the only valid option. And normally I would be in favor of letting the market decide asset values in all cases. I do think that the Oversight Panel's formula for setting the option price could result in the government having to hold the warrants for an extended period of time, and then you have the risk of another economic downturn.

So if you knew that the economy was going to continue to recover, or the companies' prospects, I would say yes. But you look at the commercial mortgage market and others and it is really a—it is a somewhat speculation. And I have advocated trying to, particularly if the Treasury sets a price and it is accepted, let the taxpayers get their money back, go ahead and get that money back in the Treasury where it can be used to pay down the deficit.

In the July report on additional views, my colleague, Mr. Hensarling, explained that the valuation of the warrants is a highly

complex analysis. And that a one-size-fits-all approach may not yield the best results for the American taxpayer. You know, I agree that is true. While the July report seems to paint a picture that some money may be left on the table if its valuation formula is not used, I believe that a far better result for the American taxpayer, as I said, is to go ahead, and as soon as possible, get the Federal Government out of the business of holding stocks and warrants. The financial institutions and Treasury have indicated that is also their policy. So to get the government's investment back as soon as possible.

Let me conclude by saying, Mr. Chairman, as institutions begin to pay back their TARP assistance, and really Capital Purchase Program monies, we need to end bailouts, return the money to the taxpayers, not recycle the funds back into more bailouts. Part of that will be regulatory reform to ensure that we don't have any more bailouts. And I think protection of consumers is a part of that. Although my approach differs from Chairman Frank, I believe that what we ought to be doing is saying to the regulatory agencies which have the skill and the means and the resources to enforce consumer protection, that we give them the charge to do it, and tell us how they are going to do it. And if over the period of 6 months to a year, we see that is not working, then we could address it in a more novel way.

But let's be clear about another fact. Although the Capital Purchase Program may earn a profit, the TARP program overall will not. So for that reason, I believe that all these dividend payments ought to be given back to the Treasury as soon as possible. Mr. Chairman, thank you for your indulgence and my opening statement.

Chairman MOORE OF KANSAS. Thank you as well. I now recognize Mr. Klein for 2 minutes.

Mr. KLEIN. Thank you, Mr. Chairman, for holding this important hearing. This is one of those hearings where we should have a lot more press coverage and a lot more attention to the fact that we are having a pleasant discussion about the TARP and the scenario where not only there are large banks that were probably put in a more solid position after what happened in September, but the consideration now is not only paying back the initial capital, but what is going to happen with the bonus, that is the warrants. And for those people who aren't familiar with warrants, that is obviously the upside that we have been talking about all along.

So there is a very positive discussion going on here today. And I am glad that members on both sides of the aisle can recognize that. That doesn't mean that things are good for everyone, but this is a little bit of a silver lining to the fact that the taxpayers of the United States who put all this money on the table are going to get not only the money paid back, but will share in the upside.

Now that being said, I want to, in my opinion, and I appreciate the witnesses today and I had a chance to meet with many of you and talk to you about some of the specifics. And I thank you for your service. It is a very important part of the oversight here, is making sure that the taxpayers receive the maximum return for the risk that they took. Not everybody wanted to go along with this, but we did what we had to do. And those people who said we

didn't need to do this, that is a matter for history to judge. But at the present time, we want to wish all of our businesses and banks in the United States success; we want them to succeed; we want them to lend more. And a strong message I would like to deliver to the banks that are top recipients is to start lending, start moving along here.

I mean, we have a liquidity issue in the United States that still is out there. And whether or not you are paying back the money, or the warrants are going to be exchanged in some form or fashion, we need you to be a part of our recovery. That being said, the fairness part of this is making sure that we get the maximum bang for the buck. And whether it is on an auction or whether there is a wait or not a wait, again, I will leave that to some of the professionals who can help us realize that we get the maximum bit of value back from the banks that end up taking this money. Some of them are now recording historic profits. And again, we wish them all well. We want that success to filter out to others as well. But we want to make sure that the taxpayers in this country who literally went on the line to make sure the recovery was going to begin, and it seems to be beginning now, that we can put some of this money back in the till. And those banks that may need some additional help and others around the United States may get that help, but other than that we get the maximum dollars back. Thank you, Mr. Chairman.

Chairman MOORE OF KANSAS. Thank you, Mr. Klein. The Chair now recognizes Ms. Mary Jo Kilroy for 2 minutes.

Ms. KILROY. Thank you, Mr. Chairman. Thank you for conducting this hearing. Although I was not part of the 110th Congress, and I voted "no" on the House plan to release more money from the Troubled Assets Relief Program, I understand that the American taxpayers took on some risk when we worked to bail out the banks, many of whom made decisions that have hurt Ohio's families and hurt Ohio's economy. In fact, they hurt our country's economy.

Now, as Main Street still awaits the economic recovery and the jobs that it deserves, some banks are back to making record profits again after receiving our help. And I think that it is appropriate that the American public receives a return on the investment that they made with the TARP money. I find it unacceptable that the downturn hurt Main Street hardest, yet the recovery seems to be benefiting corporate America first. This issue, the repayment of the taxpayers and the upside of warrants, is one situation where the taxpayers deserve to reap the full benefits in an open and transparent process.

According to the reports that we have received from Dr. Warren, and from Mr. Barofsky, the banks and Treasury are negotiating the repayment of this debt, the purchase and sale of these warrants behind closed doors instead of allowing the transfer and the trading to happen on the open market and allowing the market to set the price. We do not know if the current process is producing the benefits we are owed, however, Dr. Warren has found that we are getting about $0.66 on the dollar for our investment and that the total shortfall to our constituents could be as much as $2.7 billion.

A market-based approach would remove the secrecy and special interest and maximize the return on taxpayers' investment. That is why I introduced with six of my colleagues what we call the Profit Act. This logical and commonsense bill would maximize profits for our taxpayers and ensure transparency by requiring an open process, eliminating the loophole that allows banks to negotiate behind closed doors with Treasury. The public auction would be such a transparent open market.

And I think that one of our witnesses, Assistant Secretary Allison, stated earlier this year in his testimony that in relation to toxic assets on bank balance sheets, "We have our theories, but in the last analysis that is why you have financial markets, you have to have liquid interchanges and then the truths will come out as to what assets are actually worth."

I look forward to today's testimony. And I suggest to the panel and to my colleagues that now is the time to act to close this loophole. According to the Congressional Oversight Panel, which Dr. Warren heads, less than 1 percent of the warrants, those stock options for the American people have been sold. This is the time to push Treasury to open the process with transparency and to make sure Americans get the deal that they deserve. Thank you. I yield back.

Chairman MOORE OF KANSAS. Thank you, Ms. Kilroy, for your opening statement. And it is now my pleasure to introduce our first witness, Mr. Herbert M. Allison, Jr., the newly confirmed Assistant Secretary for Financial Stability at the U.S. Department of the Treasury. As Assistant Secretary for Financial Stability, Mr. Allison is responsible for developing and coordinating Treasury's policies on legislative and regulatory issues affecting financial stability, including administering TARP. Mr. Allison most recently served as President and CEO of Fannie Mae as well as the Chairman, President, and CEO of TIAA–CREF. He has held senior positions at Merrill Lynch, Time Warner, and the New York Stock Exchange. Mr. Allison also spent 4 years as an officer in the United States Navy, including a year in Vietnam. Without objection, your written statement will be made a part of the record. Mr. Assistant Secretary, you are recognized for 5 minutes to provide a brief summary of your statement.

STATEMENT OF HERBERT M. ALLISON, JR., ASSISTANT SECRETARY FOR FINANCIAL STABILITY, U.S. DEPARTMENT OF THE TREASURY

Mr. ALLISON. Chairman Moore, Ranking Member Biggert, and members of the subcommittee, thank you for the opportunity to discuss Treasury's efforts to stabilize and repair the Nation's financial system. In response to the major crisis in our Nation's financial system and housing markets, Congress passed the Emergency Economic Stabilization Act, or EESA, last October establishing the Troubled Assets Relief Program, or TARP, and giving Treasury the necessary tools and flexibility to stabilize the financial system and restore the flow of credit to consumers and business. Our mandate in EESA is two-fold; to stabilize the financial system while protecting the taxpayers. Today I want to update you on our progress. In just 10 months, Treasury has invested more than $200 billion

in 657 financial institutions of all sizes in 48 States, including over 300 small and community banks through the Capital Purchase Program, or CPP. We reopened the Capital Purchase Program recently for small and community banks recognizing the critical role these banks play in our communities. We provided support to three systemically significant institutions.

We launched an unprecedented housing program to help millions of homeowners. We assisted with restructuring of both General Motors and Chrysler through the bankruptcy process, and as a result, both companies are better able to compete today. We helped to restart the securitization markets, a key source of credit to consumers and businesses. We launched a public and private investment program to help remove legacy assets from the balance sheets of financial institutions so they can redeploy their capital to support lending. And we issued regulations guiding executive compensation at all firms receiving TARP funds. We have allocated about $643 billion to our EESA programs. We have actually invested $362.6 billion of that amount to date. We have also received over $70 billion in CPP payments from 34 institutions and $6 billion in dividend repayments from participants in all the TARP programs.

Finally, we are beginning to receive proceeds from the sale of warrants through the CPP. And as was noted today, we received $1.1 billion from Goldman Sachs, representing a return of 23.15 percent on the taxpayers' money. As you can see, Treasury has accomplished a great deal, all while building a new Office of Financial Stability. However, we have much more to do as described later in my testimony. I would like to briefly discuss Treasury's process for selling the warrants it has received through the CPP.

I have attached our policy statement and our frequently asked questions on this subject with my testimony for the record. Treasury has communicated its consistent and clear process for valuing warrants in a manner that protects taxpayers. We apply the same process consistently for all banks large and small. Treasury is committed to getting fair value for the taxpayers for these warrants and we made that process public on our Web site. When a publicly-traded institution repays Treasury's investment under the CPP, it has the contractual right to repurchase its warrants at fair market value through an independent valuation process directly from Treasury. One source of complexity in valuing warrants is that the warrants do not trade on any market so they don't have observable market prices. Models by themselves cannot give us reliable estimates of the realizable price in the marketplace.

So we are using a comprehensive approach to estimating these values, which involves a variety of inputs, including a set of well-known financial models. In developing our valuation and repurchase process, we counsel with numerous experts, market makers, and industry participants. Treasury also consults with third-party market participants as to what they would be willing to pay for the warrants and we obtain full independent valuations from outside investment managers. Treasury decided to sell the warrants within several months after they are eligible for sale rather than hold them for a substantial period. Our guiding principle is the President's belief that the extraordinary government interventions ne-

cessitated by the crisis should be unwound as quickly as is consistent with Treasury's mandate under EESA to restore liquidity and stability to the financial system while protecting the interests of taxpayers.

As with all aspects of our financial stability programs, Treasury welcomes the recommendations and comments of others as we continually strive for improvement, transparency, and accountability in all of our programs. Earlier this month, Treasury announced its selection of nine asset managers for the legacy securities public-private investment program, also known as PPIP, to remove legacy assets from the balance sheets of financial institutions. The PPIP is a critical element of Treasury's financial stability plan and is designed to support market functioning and facilitate price discovery in the important asset-backed securities markets allowing banks and other financial institutions to redeploy capital and extend new credit to households and businesses.

Treasury took a number of comprehensive measures to enhance the potential of this program and to protect the taxpayer. We consulted closely with the SIGTARP as we developed a robust framework for compliance, governance, and controlling conflicts of interest. Treasury also ensured that the PPIP includes a spectrum of minority-, women-, and veteran-owned businesses that represent our communities. The TARP has been key to stabilizing the financial system and preventing greater deterioration in the availability of credit to households, businesses, and communities.

Amid signs of recovery in the financial markets in the first half, we have seen improvement in spreads, that is the measure of risk in the financial system, and we have also seen the issuance of corporate debt has increased sharply. There are also some signs that the economy is beginning to mend. Consumer confidence has increased significantly, housing starts have moved higher, and house purchases have begun to pick up in some parts of the economy. Nevertheless, our financial system and our economy remain vulnerable. Even with the modest improvement in conditions, unemployment and the level of home foreclosures remains high. Strains in the commercial real estate market continue to build. This is why Treasury must remain vigilant and press ahead with our financial stabilization efforts.

Upon taking office, President Obama committed to increased transparency, accountability, and oversight in our government's approach to stabilizing the financial system. Secretary Geithner further underscored Treasury's commitment to transparency in all our programs. One of Secretary Geithner's and my priorities is to ensure that we enhance and provide transparency as our activities evolve. I will regularly update Congress on our progress. We have productive working relationships with our four oversight bodies: the Special Inspector General of the TARP, or SIGTARP; the Government Accountability Office, or GAO; the Congressional Oversight Panel, or COP; and the Financial Stability Oversight Board, or FSOB. Treasury has accepted a great majority of the recommendations of those bodies. Where we conclude that a recommendation is impractical, we find other means to achieve the same goal. Treasury shares the concerns of Congress and/or oversight bodies that we see an increase in lending by banks. And we

have required banks receiving a Treasury investment to report their lending activities regularly.

In January, Treasury launched an important initiative to help the public easily assess the lending activities of banks participating in the CPP starting with the top 21 banks, since they account for over 50 percent of lending in our communities. Then in March we expanded the survey to include all banks in the CPP and have now published 3 lending reports with data from over 500 banks. Because we believe these reports are critical to helping the public understand the lending environment during this crisis, we have asked 10 large banks that have repaid Treasury's CPP investment to continue participating in the survey through the end of this year and they have agreed, and we appreciate their voluntary cooperation. Treasury is working urgently to maximize the impact of our programs on financial stability but we must allow some time for these programs to have their full effect.

We recognize that we have much work ahead to restore the flow of credit to consumers and businesses and alleviate the real hardships that Americans face every day. As my colleagues and I work on this important financial stability effort, we will strive to be prudent investors on behalf of the American people and to protect the taxpayers who have entrusted us with so much of their money. Here are the top priorities of the Office of Financial Stability:

First, we will carefully review the controls over taxpayers' money, giving special attention to compliance with laws and directives governing risk and internal audits. In this regard, we will work closely with Congress and the oversight bodies. Second, we will strive to maximize the effectiveness of financial stability programs restoring soundness to financial institutions and liquidity to our markets. And finally, we will emphasize transparency and interaction with Congress so that the American people will know what we are doing with their money, why we are doing it, and how it is helping the financial system, the economy, and their lives. Thank you very much, and I look forward to answering your questions.

[The prepared statement of Assistant Secretary Allison can be found on page 50 of the appendix.]

Chairman MOORE OF KANSAS. Thank you for your testimony, Mr. Allison.

I now recognize myself for 5 minutes for questioning. Mr. Allison, as you know, Goldman Sachs announced they are buying back their warrants for $1.1 billion directly from the Treasury, and JPMorgan Chase is going to a public auction because according to news reports, there is a feeling you are driving too hard a bargain, which I am frankly glad to hear. Is $1.1 billion enough for Goldman's warrants? Would taxpayers have received more if they went to a public auction.

Mr. ALLISON. Thank you, Chairman Moore, for your question. It is a question that we ask ourselves all the time. We have, even though we are contractually obligated to go through this process of independent valuation with a bank if it chooses to do so, if the bank decides it would rather auction the warrants, we are willing to go that route. We have modeled both approaches. Of course, as I mentioned in my earlier testimony a month or so ago, we can't

tell for sure how the market will end up valuing warrants. We try our best if the process is going to be the independent valuation approach mandated by contracts, to get market-based information nonetheless.

And so that is why we go out and we ask market participants to give us quotes on these warrants. We are satisfied based on those quotes, based on analysis by independent asset managers, and based upon our own use of valuation models similar to that used by the COP, that this is a very fair price for taxpayers. We are comfortable with that. Although I still can't tell you that we would do better or worse out in the open market. Nonetheless, based on a system we use for every bank and have since the beginning, we are very pleased with this outcome.

Chairman MOORE OF KANSAS. Thank you. Mr. Allison, what is your response to the paper from Professor Linus on Old National as well as COP's report saying that Treasury could miss out on a potential $2.7 billion worth of returns for taxpayers? What policy issues does Treasury consider when reviewing these warrant repurchases? And also, I have heard some say auctions should be held shortly after earning season, say early August, providing transparency to all potential buyers. When will Treasury hold these auctions?

Mr. ALLISON. In response to our view of the process of the COP, first of all, we use a similar model to the COP. We respect their approach. We have had discussions with the COP about ours and about theirs. There are, as the COP report pointed out, small differences in the assumptions that go into a model, especially when you are valuing warrants as long as 10 years, can have a major impact on the result of the valuation.

And in this case, one of the assumptions has to do with whether there should be a discount to the price baked into the model because small banks have much smaller warrant positions that we hold, and when they are sold, there is likely to be less demand, less liquidity in the market, and therefore a lower price. We factor in for small banks a discount for the lack of liquidity of those warrants. So that is one reason why there could be a difference between the model outcome of the COP and ours. I would also ask that you look at the comments of various COP members appended to the COP report where they point out some of these issues. I think we have to be—while we are all trying to do our best to value these warrants, we all have to respect the uncertainty of a model and that is why we use alternative approaches such as going into the market and asking real market participants what they think the warrants are worth.

Chairman MOORE OF KANSAS. And my final question, Mr. Allison. I know you have only been on the job for a month, but have you given any thought to a TARP exit strategy? Do you have any sense of how long we should expect TARP to be up and running? The law creating TARP requires that after 5 years, the President must submit a legislative proposal to Congress of how the financial services industry will pay for any remaining outstanding losses on the program. Since we are nearing the one-year anniversary of the law, do you expect that we will have losses on the program in 4 years?

Mr. ALLISON. The EESA legislation provides that at the end of the year, we might end up making investments in companies. However, the Secretary of the Treasury can make a determination as to whether the program should be extended, that is for making investments, until October of next year. The Secretary will be deliberating that matter in the Fall and will reach a decision. I should point out that the features of these investments either contain expiring dates for our investments, or increasing costs to the bank in which we are investing. So there are incentives built into the program for banks to repay Treasury as rapidly as their financial condition allows.

Chairman MOORE OF KANSAS. Thank you, sir. My time is up. At this time, I recognize Mrs. Biggert for any questions she may have for you, sir.

Mrs. BIGGERT. Thank you, Mr. Chairman. This is sort of similar, but Mr. Allison, you know the Treasury is being criticized for not securing the best possible return on its investment. In fact, I think in the Congressional Oversight Panel's, the COP's recent report they accused the Treasury of reselling the warrants back to the banks at two-thirds of their actual value. Is this true?

Mr. ALLISON. Thank you for your question, Congresswoman Biggert. This is a question many people are asking as a result of that report. We have, as I said, taken various approaches to valuing these warrants. They are the exact same approaches that we took in valuing Goldman Sachs' warrants. And we determined, based on this approach, that we were receiving a very fair value from those smaller banks, and that is why we accepted those bids. And we will eventually be disclosing more information that lay behind those bids and our decision. And we look forward to making that information available down the road.

Mrs. BIGGERT. Is there a difference because the small banks have probably less liquidity than the larger banks?

Mr. ALLISON. Yes, that is true. In fact, we did, as I mentioned, apply a liquidity discount in the model. That was also, by the way, reflected in the market indications that we received. We did not apply a liquidity discount in the case of Goldman Sachs, and we would not in the case of other larger banks, because given the value of those warrants, they are more likely to enjoy a liquid market if they were auctioned.

Mrs. BIGGERT. Can you give the American taxpayers assurances that Treasury is using the very best means to recapture the taxpayers' money?

Mr. ALLISON. I can assure you that we are making every effort, and this is our obligation to the American public, to receive an appropriate and ample return for the taxpayer. We know they are the ones who put their money at risk and we feel a great obligation as responsible stewards of their money.

Mrs. BIGGERT. Well, you received a fair value, but is there a difference with the best value?

Mr. ALLISON. We believe that in each of these cases, these were ample values and we have applied the same standards to all. So we examine each method and the results that it produces, and then we determine what is an appropriate price that we should demand from each bank and we stick to that price.

Mrs. BIGGERT. As I mentioned in my opening statement, it is vital that we prevent any individual or fiduciary entity or business involved in TARP from making a profit based on insider information, especially when it is at the expense of the taxpayer. What is the Treasury doing to prevent and track this?

Mr. ALLISON. Well, we have had many close consultations with the SIGTARP. We have also invited the SIGTARP's staff to meet with us and the candidates to be asset managers on the PPIP program, for example. I think we have had a robust dialogue with Inspector General Barofsky and his team about this. We are charged with promoting financial stability while protecting the taxpayers. Our mandate and the reason for the law is to build and implement programs that are going to eventually help the American public and the financial system. And so with that in mind, we have decided on an approach where we and the SIGTARP will have the access to trading data across each of the fund managers that we are hiring daily so we and the SIGTARP can check trading in the various funds of each of these fund managers to see whether in fact there are any questionable trades that might cause us to wonder whether we are getting full value for the taxpayers' money, whether a manager is trying to take advantage of our investments at the benefit of one of their other investments. So we have almost real-time ability to intervene. We are also getting certifications from the managements of these funds. We are prohibiting fund complexes from having one fund trade with our fund as another control. So we have we think very robust controls to protect the taxpayer.

Mrs. BIGGERT. In Mr. Barofsky's quarterly report which was released yesterday, he highlights the fact that Treasury has declined to institute barriers to prevent the conflicts of interest with the management of the PPIP program. Maybe this was before you worked something out with him. But thinks that this could have serious consequences related to money laundering or could lead to increases in government's exposure to losses with no corresponding increase in potential profits. Is this accurate?

Mr. ALLISON. Well, we carefully considered SIGTARP's recommendation. We welcome SIGTARP's ideas. I may say that the SIGTARP has suggested dozens of ideas to us. And we look back and we have accepted or in a way very similar accepted the SIGTARP's recommendations about three-fourths of the time. There are some cases where we have determined that in the interest of financial stability and because we can find other ways of protecting the taxpayer that we declined to implement, and one of these cases has been the creation of a wall. Now, in many cases, and here I draw upon 35 years experience in the financial services industry, in many cases, it makes great sense to have a wall to separate asset managers in one area from asset managers in another.

In the case of the asset managers, we are hiring on behalf of the taxpayer, and we want to have their best talents working for the American taxpayer in the PPIP fund. But these managers in these fund complexes are already committed to other funds that they manage. The fund cannot take them away from those in order to focus on ourselves.

Conversely, if we allowed the best managers to stay with the other funds, we would have to have them hire other managers

without the track records that are the reason why we hired those fund complexes. So instead of having a wall, we provide transparency, the ultimate test. And I have worked with walls. A wall can be defeated by people determined to collude. They can leave the workplace, they can go out in the street and talk to each other, they can use cell phones to talk to each other. Even if you have a wall, you have to make sure the wall is working. That is why we are insisting on these managers making available their trades across the whole fund complex every day so we have the ability to get total transparency on what they are doing, pin them down right then and there if we see suspicious trading activity in order to protect the taxpayer.

Mrs. BIGGERT. Thank you.

Chairman MOORE OF KANSAS. Thank you. With all due respect, I am going have to advise the members and the witnesses that we have just been advised that we have votes being called in the next 15 to 30 minutes. There are six votes which I anticipate will take about an hour, so I would like to move along here. And I would advise members and the witness too that they will have an opportunity to submit additional information for the record if they would, please.

Ms. Kilroy, you are recognized for 5 minutes.

Ms. KILROY. Thank you, Mr. Chairman. Mr. Allison, thank you for being here this afternoon. It is my understanding that the TARP statutes initially permitted Treasury to convert a warrant into cash or to exercise that when Treasury decided that doing so would allow the public reasonable gain and that the market was optimal for such assets and that the goal of that was to maximize the value for taxpayers, is that correct, is that your understanding?

Mr. ALLISON. Yes, Congresswoman. In fact, the law has changed several times since the EESA law was enacted. And recently we have been given the ability, again the flexibility, to sell the warrants at a time of our choosing when we think it is in the best interest of the taxpayers.

Ms. KILROY. And do you believe that it is still, despite the changes in the law, the goal to maximize return for the taxpayer?

Mr. ALLISON. We believe that selling the warrants relatively soon after we are repaid by the bank for its preferred stock investment, that it is appropriate for us to sell the warrants in a way that will benefit the taxpayers. And the reason for this, one of the reasons is that a warrant value is based on a stock value that incorporates the market's expectations regarding the future performance of the stock.

So even if we sell the warrants over the near term, we are not forfeiting the upside potential of the warrant. We also find if we hold a warrant for a longer period of time, and here it gets a little bit technical, the option value of that warrant declines. We also would engage in market timing if we hold the warrant for a long period of time. And we are not in the business of being long-term investors conducting market time and trying to find the right time to sell the stock, and frankly there never will be any agreement on what is the right time to sell.

Ms. KILROY. Separate and apart from the timing issue, is there an issue in terms of protecting the taxpayer and protecting tax-

payer confidence in the process of the methodology by which the warrants are sold or converted to cash?

Mr. ALLISON. Well, again, where we are going to be disposing of the warrants, we first have to follow a contractual process where the bank that issued the warrants has the ability to bid to buy back its warrants. We don't have to accept their bid. In fact, in most cases, we have not. We will let them rebid if they wish. If they decide to no longer bid, then we have the ability to go out and auction those warrants in the open market.

Ms. KILROY. The contractual process, would you agree, is more one-sided, and gives the banks more authority in setting the methodology for the sale of the warrants?

Mr. ALLISON. Actually, Congresswoman, I think it puts the Treasury in a very good position to represent the taxpayers. We do not communicate what to us is the price that we require in order to sell in that process. The bank has to bid. We will not accept until there is a bid that reaches our considered price. And at that point, if they reach that price, and some don't, we will sell, and we think at that point we are capturing ample value for the taxpayer.

Let me also add that I know there is concern, and you voiced it, about whether we are doing this in a closed room. We are going to be disclosing information about the methodology and the actual calculations that we used in arriving at the appropriate warrant price. I mentioned at the appropriate time. Right now we are engaged in discussions with a number of large banks. We think it is in the taxpayers' interest that we defer that disclosure until a later date.

Ms. KILROY. Would it be your understanding that the Treasury would have no authority to enter into contracts with the banks regarding the TARP money other than that flowed from the statute that set up that program in the first place?

Mr. ALLISON. I am aware that all of our actions on behalf of financial stability in the Office of Financial Stability are carrying out the law, the EESA law.

Ms. KILROY. And that would include the obligation to protect the taxpayers' interest first and to, to use the phrase from EESA, to maximum the return for the taxpayer?

Mr. ALLISON. Absolutely.

Ms. KILROY. Thank you, Mr. Chairman. I yield back.

Chairman MOORE OF KANSAS. The ranking member is recognized.

Mrs. BIGGERT. Thank you, Mr. Chairman. I just have a unanimous consent to allow two members of the general Financial Services Committee, but not of the subcommittee, to participate today, Mr. Brad Sherman of California and Mr. Kenny Marchant of Texas.

Chairman MOORE OF KANSAS. Without objection, it is so ordered. Mr. Bachus, Congressman Bachus, excuse me, you are recognized next.

Mr. BACHUS. I have been called a lot worse than that. Mr. Allison, the Act we passed back on October 1st, the EESA that includes the TARP and the Capital Purchase Plan, it states exclusively that proceeds from the sale of troubled assets and revenues from dividends and the surrender of warrants shall be paid into

the general fund of the Treasury for reduction of the public debt. And of course, that was part of the bargain in passing that Act.

Mr. ALLISON. Yes, sir.

Mr. BACHUS. The Treasury has interpreted that, and this is according to Mr. Barofsky's most recent report, you interpret that the maximum amount of funding is $299 billion. So as long as you don't have that much funding out, you can replenish the fund as opposed to returning it to the general fund, is that correct?

Mr. ALLISON. The limit that was set on the amount of investments outstanding at any one time is $700 billion. As I mentioned, currently that number is a little over $360 billion. We have budgeted to spend about $643 billion to date. However, we have also received repayments, as you know, of over $70 billion so far. And that together creates headroom under the $700 billion outstanding at any one time of about $128 billion to date.

Mr. BACHUS. So you have interpreted that as, when you get these dividend payments, that you don't have to—they don't have to be returned to the general fund?

Mr. ALLISON. All the monies that we receive are returned to the general fund. And then under the EESA law—

Mr. BACHUS. Then you draw back out.

Mr. ALLISON. Under the EESA law, we may make additional investments so as long as we do not exceed $700 billion outstanding at any one point.

Mr. BACHUS. So it is deposited in the fund and then it is drawn out.

Mr. ALLISON. It is deposited. And then there is a new decision and a new allocation.

Mr. BACHUS. I am sure you are aware that Chairman Frank has introduced TARP for Main Street—

Mr. ALLISON. Yes, sir.

Mr. BACHUS. —which is legislation to use the dividend payments, and I guess the warrant payments too, I am not sure about that, to fund several public housing initiatives instead of the money being returned to the Treasury. Was this type of use of TARP in your opinion ever envisioned by the Treasury Department?

Mr. ALLISON. Let me first say that the Treasury is carefully looking at Chairman Frank's proposals. And we also, however, believe that it is important to maintain the headroom that we have today, keeping in mind that while conditions have improved a great deal there are still strains in the financial system. Banks are still facing pressures. But let me go back and say that we are carefully analyzing Chairman Frank's proposals and we will be coming back to Chairman Frank with our thoughts.

Mr. BACHUS. Do you have any initial concerns with legislation that draws out of that fund for purposes other than what was authorized in the EESA?

Mr. ALLISON. I think we have to have more conversations about exactly what form that would take before I could draw a conclusion.

Mr. BACHUS. It really sounds to me like you all have not taken any hard approach, that you are not going to reach into that fund for all sorts of new ideas.

Mr. ALLISON. I would not presume at this point to speak on whether we might or might not be funding some of those initiatives out of the TARP funds, but we are considering it consider carefully.

Mr. BACHUS. Would you have conversations with the Minority as you move forward?

Mr. ALLISON. Let me say, Congressman, that I look forward to meeting with each member of the committee. And I would be glad to discuss and respond to any questions or suggestions that you may have for us.

Mr. BACHUS. I have one last quick question. Rahm Emanuel has said that the Obama Administration has rescued the economy. Do you agree with that assessment?

Mr. ALLISON. I would say that the EESA law has played a very important role in improving the financial markets and the soundness of the financial industry in the United States, which has already had measurable benefits for the American public.

Mr. BACHUS. And I do agree that the Act that was passed last September has had benefits. I am not sure that we can pronounce victory. A former President did that in a foreign policy matter and it came back to bite him.

Mr. ALLISON. As this President has said, it is going to take time to heal this economy and to heal the financial system.

Mr. BACHUS. Thank you.

Mr. ALLISON. Thank you.

Chairman MOORE OF KANSAS. Ms. Speier, you are recognized for 5 minutes.

Ms. SPEIER. Thank you, Mr. Chairman. And thank you, Mr. Allison, for joining us this afternoon.

I have been listening to the discussion, although I haven't been present in the room. But I do have a couple of questions for you.

The Inspector General for SIGTARP was before another committee yesterday, and he was very clear that no one in Treasury has come over to review the surveys that he has received from every one of the banks in terms of how they are using TARP money. I find that absolutely unbelievable and irresponsible that one agency of government has been able to access information, has the information, and nobody from Treasury has looked at it, no one from your shop has looked at it. And I want to know, why not?

Mr. ALLISON. Well, thank you for your question, Congresswoman.

First let me compliment Inspector General Barofsky for his initiative. I look forward to seeing the information, as do my colleagues, and we will be happy to meet with him about this.

Ms. SPEIER. So you are committing to this committee now that you are going to meet with the Inspector General and review the material that he has developed in the survey of 360 banks.

Mr. ALLISON. I will be very pleased to meet with him.

Ms. SPEIER. Great. In his report that he issued yesterday, he said, "Although Treasury has taken some steps towards improving transparency in TARP programs, it has repeatedly failed to adopt recommendations that SIGTARP believes are essential to providing basic transparency and fulfill Treasury's stated commitment to implement TARP with the highest degree of accountability and transparency possible."

Now, one of the recommendations is that the Treasury should require all TARP recipients to report on the actual use of TARP funds. Treasury has declined, saying that reporting would be meaningless. And I have to tell you that my constituents probably don't think it is meaningless to know precisely where their taxpayer dollars are going.

So my question to you is, will you actually adopt that particular recommendation?

Mr. ALLISON. Well, first of all, we welcome the recommendations of the SIGTARP and the other oversight bodies. As I mentioned earlier in my testimony, we have adopted—or come very close, with a few minor details to adopting—about three-fourths of the recommendations that we have received.

Ms. SPEIER. Well, there are only four recommendations here, and he says you haven't adopted any of them. I just want to get a clear answer, will you or will you not make public how the money that has been received by these banks in TARP have been spent?

Mr. ALLISON. Let me, first of all, point out that every month we provide comprehensive information on our Web site, financialstability.gov, about the actual lending activities of all the banks in which we have invested.

Ms. SPEIER. Mr. Allison, with all due respect, I am asking a very simple question, and I just want a simple answer. Either you are willing to do it or you are not willing to do it.

Mr. ALLISON. Well, we think that the most important information—

Ms. SPEIER. Either yes or no. Will you do it?

Mr. ALLISON. We have looked at that possibility. Our concern, which we have mentioned, is that—let me give you some examples. This is a Capital Purchase Program. Its intent is to provide capital to banks. We disclose all those activities. Every capital transaction, whether we invest or whether we receive monies back, is posted on our Web site within 48 hours. There is voluminous information about that.

Once the money has been invested, on a daily basis the banks may be shifting the use of the funds. They are dynamic institutions. If they report one day the money has been used for this, another day it can be changing.

Furthermore, because the money is all placed in a cash account as it is received and money is fungible, while the bank may say that they have, let's say, put $50 million—

Ms. SPEIER. Mr. Allison, I hate to interrupt you, but my time is very limited and you have just used up another 2 minutes.

This is my request to you. Mr. Barofsky believes that you can put this on a public place for public distribution. I am asking you to work with him and find a way by which the taxpayers of this country are going to be able to access this information and know how the banks are spending their money. I want to know—and I am really getting tired of many of the people in the Administration and, frankly, some of my colleagues in Congress, protecting the banks. We should be protecting the taxpayers, and the taxpayers have every right to know how their TARP money is being spent.

Chairman MOORE OF KANSAS. The gentlelady's time has expired.

The next person we recognize is Congressman McHenry for 5 minutes.

Mr. MCHENRY. Thank you, Mr. Chairman. And thank you for your testimony, Mr. Allison.

I think, to my colleague's point here, you know, money is obviously fungible, right? So it would be very difficult for you to say that it is the $100 billion or $1 billion that this institution got that they lent here the whole deal. That is fair to say; is that correct?

Mr. ALLISON. Yes, sir.

Mr. MCHENRY. Now, the point that I think many of us have is we are concerned about what is happening on Main Street, how that money is actually being lent. So to get more precisely at my colleague's question, are you able to track lending standards for these various institutions?

Mr. ALLISON. While we post the actual information on lending by all those banks—which we think is very important for the public to know—we are not the regulator for those banks. We don't oversee the bank's lending standards. Our role has been, under the EESA law, to provide capital to promote the stability of those banks, not to manage the banks and not to regulate the banks. The regulation is handled by other regulatory agencies.

Mr. MCHENRY. Obviously. But in terms of disclosure and tracking those lending standards, are you doing that?

Mr. ALLISON. We are not tracking the individual lending standards of each bank. I assume that the regulators are very much involved in monitoring the lending standards.

Mr. MCHENRY. Yes. But we have you before the Congress about TARP funds, and TARP funds which are then being lent out or not being lent out. And the SIGTARP report says obviously this can be done to track lending standards, so we will get to that in the next panel.

With that, I would like to yield the balance of my time to my colleague from New York, Mr. Lee.

Mr. LEE. That is very kind of you, sir. Thank you.

Just a quick question. And it gets back to—and I have to tell you, the taxpayers in my district are very frustrated with what we are doing in Washington and the concern over the debt that we have in this country. Now, at the end of this year, the projections are close to $2 trillion. And I think it is very positive news in the fact that we have—I believe you mentioned somewhere in the neighborhood of $70 billion being paid back. But overwhelmingly I hear from my constituents that we need to start paying down this debt rather than—it sounds like what I heard from you today is that we just plan on keeping this program going on in perpetuity, or at least over the next 5 years. So dollars coming back are being potentially reinjected into the market and potentially going to places outside what their original purposes were stated, or the potential to do so. Is that a fair statement?

Mr. ALLISON. Let me make clear, Congressman—and thank you for that, it gives me an opportunity to clarify that concern—under the EESA law the Treasury would no longer make investments in institutions after the end of this year unless the Treasury Secretary makes the determination that it is in the interest of the economy and of the Nation to extend this program until October of

2010. This is not an open-ended, unending investment program. And in the investments themselves there are built-in incentives to pay back the money.

The cost of the funds in many of these programs rises over time. In some, the program itself expires over a period of time. So we are very mindful of the need to protect the taxpayers' interest, to get the highest possible return we can, to be careful stewards of the money, and we also understand that this program, in terms of making investments, will terminate at some point in the not too distant future.

Nonetheless, the government may still hold investments for a longer period of time, and we are preparing for that eventuality to make sure we continue to have the procedures, the policies, and the personnel to be responsibly overseeing those investments.

Mr. LEE. Thank you. I yield back my time.

Mr. MCHENRY. Thank you.

Chairman MOORE OF KANSAS. The Chair now recognizes Mr. Grayson for 5 minutes. But I will remind everybody in the room that votes are about to be called, so we will probably go another 5 to 7 minutes after votes are called and then recess the hearing and come back after votes are concluded.

You are recognized, sir.

Mr. GRAYSON. Thank you.

On page 3 of your statement, Mr. Allison, you say, "We have provided capital to 657 institutions across 48 States, including over 300 small and community banks, enabling banks to absorb losses from bad assets. While continuing to loan to consumers and businesses, we continue to invest in banks every week."

In terms of that statement, Mr. Allison, I think of this myself as a distinction between good banks and bad banks. Good banks are banks that have been profitable and remain profitable through the economic disaster that we have experienced the past year and a half, are well managed, can assess risk properly, and they are fundamentally different from the bad banks. The bad banks have basically taken bets, often with taxpayer-provided money, government-provided money, they have made bad decisions, and unfortunately for all of us, many of the people at those banks are still in charge of those banks, making more bad decisions every day.

Now, it seems to me that if you provide a dollar's worth of capital to a good bank, that bank might be able to make $10 worth of loans. That is the fractional reserve system we live under. If you provide $1 worth of capital to a bad bank, that bank certainly is not going to be able to do any more than provide $10 worth of loans. It also will try to cover its losses, maybe pay out more money to its bad management, maybe pay out money to its shareholders, and not do what we are trying to do through this program.

So why is it that we do something like enable banks to absorb losses from bad assets in this program? Why don't we invest in the good banks, not the bad banks?

Mr. ALLISON. Congressman, thank you for the question.

We are investing in banks that are deemed to be viable by the regulators. And banks voluntarily come to us, but they must be deemed to be viable banks. Now, some viable banks have bad assets, but those viable banks are still very important to their com-

munities. And so as part of the financial stability effort, we are helping banks to recover and stabilize so that they can continue lending in their communities to businesses, large and small, and to individuals to keep the economy going.

Mr. GRAYSON. Well, following this line of questions, wouldn't we be better off if we gave the same amount of money to good banks, banks that were functioning well, so that they could expand their operations and make more loans rather than propping up bad banks that have made mistakes that have cost all of us?

Mr. ALLISON. Congressman, these are viewed as good banks with some bad assets, and as banks that can be viable and ongoing and continue to serve their communities.

Mr. GRAYSON. How do we get to a point where a good bank has a bad asset? I mean, seriously, doesn't that reflect some really bad choices on the part of the management of that bank whenever they have a bad asset?

Mr. ALLISON. Well, I think that virtually every bank has some bad loans on its books. And what we have seen is, because prices of real estate have declined so much, commercial as well as residential, a number of companies have had to go out of business because of declining economic activity. Loans that seemed to be quite good when they were granted turn out to be not so good in an extreme environment like today.

Mr. GRAYSON. And yet we have had banks that make the right decision. Are you familiar with the concept of "moral hazard?"

Mr. ALLISON. Yes, sir.

Mr. GRAYSON. Aren't we inviting serious moral hazard by continuing in this way to prop up bad banks rather than helping good banks expand their operations and letting capitalism work?

Mr. ALLISON. Well, sir, we have to keep in mind that these banks have to pay us back—and we have been well paid back just today by one of them. And we are working and making every effort to make sure that the taxpayers who made these investments obtain an appropriate return. That is our responsibility, to work on their behalf.

At the same time, these funds are going to help stabilize not just the banking system, but the economy, which benefits all Americans. And we have seen that the banking condition has improved. We have seen that home sales are starting to stabilize in many parts of the country. The risk of the financial system has declined, which is good for everybody. And we are hopeful that by continuing to provide the support, as the banks need it, that we are going to have a strong underpinning to begin this recovery that we are all so anxious to see.

Mr. GRAYSON. But resources are always limited, even for the Federal Government. Wouldn't we be able to accomplish all of that and more if we directed our support to good banks rather than to propping up bad banks?

Mr. ALLISON. Well, again, I believe that many of these were good banks that were active in lending in their communities, and we are now seeing a financial situation that this country hasn't experienced since at least the 1930's. This has been an extremely serious decline in asset values that has affected every American.

We have to keep the economy going. The whole purpose of this program, as enacted by Congress last year, was to inject capital into the banking system so it could not only survive, but stabilize as soon as possible.

Mr. GRAYSON. I see my time is up. But I would urge you, Mr. Allison, to give some thought to this subject. If you are continuing to invest in banks every week, give some thought to investing in the good banks, not the bad ones.

Mr. ALLISON. Thank you for your advice. I appreciate it.

Chairman MOORE OF KANSAS. Thank you.

Mr. Paulsen, you are recognized for 5 minutes.

Mr. PAULSEN. Mr. Allison, you mentioned in your testimony that you could not comment on some of the existing discussions and negotiations you are having with some of the banks given that they are trying to buy back some of the warrants that they have that are outstanding.

I have had some questions come back from some of these folks that I have interacted with about other different set of rules, etc., that apply to them, but you also mention in your testimony that if Treasury and these firms or these banks cannot agree on a fair market value for these warrants, that the warrants would be sold then by Treasury in a public auction, correct?

Mr. ALLISON. Yes, sir.

Mr. PAULSEN. Is there a timeline on that public auction of when that would be? Is there a timeframe that would be put in place when the auction would actually take place? Are there guidelines or stipulations that you can share a little bit more about?

Mr. ALLISON. Yes, sir. Thank you for the question.

We are actually working hard on those guidelines now. They are not yet completed. When they are, we will provide more information. We want this to be as transparent a process as possible, but we have had to give very careful thought since this amendment to the Act was put into place on how we might best do this in a way that protects the interests of taxpayers.

Mr. PAULSEN. And just knowing that it is in the interest of protecting taxpayers, as you said, and repaying and kind of unwinding all this that has taken place, you don't foresee this is going to be like another year or—

Mr. ALLISON. No, sir.

Mr. PAULSEN. Okay. I was just kind of curious on that.

I also want to mention, too, from your estimation, all the work that you have done on this issue, do you think that the TARP funds have been equitably reaching the smaller financial institutions?

Mr. ALLISON. Well, most of the institutions that have received TARP funds are small. And we have at least 300 quite small community banks and other small institutions who have received these funds. Nonetheless, we are concerned about making sure that small banks—which are so vital to their local communities and account for an outsized portion of small business lending—are able to continue lending. So that is why we reopened the CPP program in May, I think it was, to make it possible for these banks to, if they need it, tap into the CPP facility. And we have had a number,

we have a number every week who are coming to us for that funding and giving us their preferred stock.

We are also looking at other ways of assisting small business, and we may have some announcements to make about that before long.

Mr. PAULSEN. And this was a question I was going to ask also of the next panel, but it seems at least I am hearing differently from some of the smaller financial institutions about their inaccessibility of some of the opportunities for these funds. And I am just curious as to if you have a perspective on why I might be hearing that perspective.

Mr. ALLISON. Well, first of all, I would like to know the names of those banks, Congressman. If you can provide them to us, we will get in touch with those banks as soon as possible. They also should be talking with their regulator.

We make investments on the recommendation of the bank's regulator. So their first stop should be the regulator, and then we will consider the investment.

Mr. PAULSEN. Thank you. I yield back.

Chairman MOORE OF KANSAS. Mr. Marchant of Texas, you are recognized for 5 minutes, sir.

Mr. MARCHANT. Thank you, sir.

Could you just really quickly discuss the concept of headroom that you were talking about earlier? You have a $700 million, basically, cap on the amount of money that you can put out at any given time.

Mr. ALLISON. Yes, sir.

Mr. MARCHANT. So now that we are pretty far into this program, you also have an inflow of money, so you have kind of a revolving fund. So is it public how much the Goldman Sachs transaction was worth today?

Mr. ALLISON. Let me make clear that when money is repaid to us, it is put in the general account of the U.S. Treasury. So the headroom is the difference between the amount that we have budgeted and the amount of the total limit, which is $700 billion, plus the amount that has been repaid. So we have budgeted totally about $643 billion, but we have also repaid money. And when you add the repayments to the difference between the $643 billion and the $700 billion, you end up with about $128 billion of what we call headroom, which we think is important to have at this point in this economic crisis in case banks find that they need additional funding in order to maintain their activities and preserve their financial strength.

Mr. MARCHANT. But when you define budget, you mean that those are funds that you have already committed that have not been disbursed?

Mr. ALLISON. These are funds that we have allocated and we may use for certain purposes. But we point out that at this moment we have invested about $360 billion. So it is the difference between the $360 billion and the $643 billion, I believe it is, is what we have more or less earmarked for additional uses.

Mr. MARCHANT. So when you say allocated, it may be an asset-type allocation, but not a specific obligation to fund a bank?

Mr. ALLISON. As far as the CPP program goes, that is correct, yes, sir.

Mr. MARCHANT. So if Congress reauthorizes the extension to—October 2010; is that correct?

Mr. ALLISON. Well, it will be the Treasury Secretary who has the authority to extend the program until October 2010.

Mr. MARCHANT. So if the Treasury Secretary authorizes the extension to 2010, then this whole dynamic process of headroom and inflow and outflow remains the same. I mean, you have that pretty well fixed in the way you are going to do that?

Mr. ALLISON. Yes, sir.

Mr. MARCHANT. Then in 2010, is there a possibility to extend beyond that on the part of the Secretary, or would that be a congressional act?

Mr. ALLISON. I believe that the Treasury's authority—the Secretary of the Treasury's authority extends through 2010 to extend that.

Mr. MARCHANT. And that is to disburse. And then the repayment follows that.

Mr. ALLISON. The repayments could continue for some time.

Mr. MARCHANT. But then there is no longer any outflow; it is all inflow at that point.

Mr. ALLISON. That is my understanding of how it works, yes, sir.

Mr. MARCHANT. And what if you ended up with a situation where you had in excess of the $700 billion because of the repayment of the TARP and the sale of the warrants and the redemption of the preferred and the interest paid?

Mr. ALLISON. Do you mean—we would not be above $700 billion, we would be well below it.

Mr. MARCHANT. You have already forecasted that you—

Mr. ALLISON. There is a limit on the amount we can have outstanding at any one time invested on behalf of the public; that limit is $700 billion. We may not exceed that number.

Mr. MARCHANT. So it goes into the Treasury in the general fund.

Mr. ALLISON. Yes, sir.

Mr. MARCHANT. But we have already raised the debt ceiling to include that appropriation, correct?

Mr. ALLISON. Sir, you are getting beyond my expertise.

Mr. MARCHANT. Well, I mean, is there a snap-back provision in the bill that says that as the money comes back into the Treasury then the money is paid down on the debt? Or did we not already have through the—by raising the budget, isn't the money really captured in the Federal Government coffers?

Mr. ALLISON. I will get back to you on that, but it is my understanding that as the money comes in, that reduces the national debt as it comes in. But let me give you a more definitive answer on that as soon as possible.

Mr. MARCHANT. Thank you.

Chairman MOORE OF KANSAS. I thank the gentleman. And I would, at this time, thank you, Mr. Allison, for your testimony. You are excused.

I invite the second panel to sit down. We have just a very few minutes, I think, before votes are called, and we will go as long as we can. We will go for 5 or 7 minutes.

Mr. BACHUS. Mr. Chairman, I would just like to introduce into the record the Special Inspector General's report on the banks' use of money, which does show that 83 percent of them tell the SIG that they had used it for lending, even the 4 percent that said they—

Chairman MOORE OF KANSAS. They had or had not used today?

Mr. BACHUS. Had. So, I mean, it does, I think, indicate at least some evidence that the U.S. banks are using the TARP funds to increase lending. Some of them did it to maintain their capital levels and stay in business to keep the doors open.

Chairman MOORE OF KANSAS. Without objection, it will be received into the record.

Mr. BACHUS. Thank you.

Chairman MOORE OF KANSAS. And thank you, Mr. Allison.

At this time, the Chair would invite the second panel to be seated.

I am pleased to introduce the second panel of witnesses for this hearing. First, Mr. Barofsky, the Special Inspector General of the Troubled Asset Relief Program, better known as SIGTARP.

And next, we are glad to have with us again Professor Elizabeth Warren, Chair of the Congressional Oversight Panel.

And finally, we will hear testimony from Mr. Tom McCool, Director of the Center for Economics at the Government Accountability Office.

Thank you all for being here. And without objection, your written statements will be made a part of the record.

You will each be recognized, and I think votes are just now being called. I think we can take the first witness. You will each be recognized for 5-minute statements summarizing your written testimony.

Inspector General Barofsky, you are recognized for 5 minutes, sir.

STATEMENT OF NEIL BAROFSKY, SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM

Mr. BAROFSKY. Thank you, Mr. Chairman. It is an honor to be back before this committee.

It is also an honor to be sitting next to two of our most important oversight partners, of course Professor Warren from the Congressional Oversight Panel and Mr. McCool from GAO.

This week we have introduced and presented our most recent quarterly report and the oversight that we have been conducting over the past quarter. So much of that oversight is a result of the coordination that we have had with our oversight partners. And one of the things we strive for of course is to coordinate the oversight.

The TARP has gone from a $700 billion program, which is large enough in its own right, to now being expanded with activity at the Federal Reserve and the FDIC into an almost $3 trillion program. This is more than any one of the three of us in our organizations could ever cover alone. And we strive to coordinate that oversight, working with GAO, our important audit partner, trying to cover as much of this terrain as possible. We are putting forward a joint audit project, our first on corporate governance, utilizing the expe-

rience and activity of both of our agencies. And we recently, this month, did a coordinated project with Professor Warren and the Congressional Oversight Panel. The first part was, I thought, their excellent valuation report in their July report and the conclusions there. We are going to be using that as context for an audit that we have launched into the warrant repurchase process.

Basically, in our report that we have just delivered this week, I will very briefly describe what is contained in there.

In section 2 of our report, we do a brief overview of what has happened in the last 3 months in the TARP. And there has been a lot of activity, from the bankruptcy of the auto companies, from repurchase of more than $70 billion in the Capital Purchase Program, from the selection of the nonasset managers and the commitment of approximately $30 billion of taxpayer money in the Public-Private Investment Program.

In section 3 or our report, we attempt to put that in context by giving detail surrounding the approximately 50 other programs. So often a particular TARP recipient not only accesses the TARP, but will access other parts of the financial bailout from the government, whether it is a loan guarantee from the FDIC or borrowing money from the Federal Reserve. And what we have attempted to do in our report is bring transparency to that by setting out approximately 50 of the most significant programs that have been implemented or discussed and described since the onset of this crisis.

In section 5 of our report, we give our recommendations. We go over our past recommendations and have issued several new recommendations. One of them, which was discussed with Mr. Allison, was our continued recommendation that Treasury require TARP recipients to provide information on their use of funds.

As was also discussed, we recently finished our audit, which was completed and made public this Monday. And we have demonstrated that, notwithstanding the inherent fungibility of money, banks can and should be required to report on the use of funds. Contrary to Mr. Allison's suggestions, we have demonstrated that this is a meaningful task. And when we asked the banks what they did with the money, they were able to tell us, and they were able to tell us some of the things that, Ranking Member Bachus, you described just moments ago. They were able to explain how they were able to increase lending, or at least stop the hemorrhaging, avoid further reduction of lending. Banks told us that they would have come to a standstill if not for these funds.

But they were also able to explain other uses of funds, how they invest in money, how they are able to maintain capital cushions so they can withstand future losses. This is vitally important data from our perspective and vitally important transparency. I understand the orthodoxy in the concept of capital accounts, and I understand that perhaps that is why Treasury initially was so reluctant to adopt our recommendation. But now that we have the proof, now that banks, when asked, the banks themselves have said we can report on how we are using the funds, we believe that these excuses and explanations for lack of transparency should no longer be countenanced, and we believe that Treasury should, and, in order to meet its promised goals of bringing transparency to this program, must adopt this recommendation.

We also make other recommendations in the report relating to other aspects of transparency, including the Public-Private Investment Program, as well as some other transparency recommendations that have been kicking around for some months, including the basic one that Treasury report to the American people what the value is of their investment. Treasury receives monthly reports from its asset managers with estimates of what the value of the TARP portfolio is, and we believe basic transparency would require Treasury to make that information public.

Thank you, Mr. Chairman.

[The prepared statement of Special Inspector General Barofsky can be found on page 60 of the appendix.]

Chairman MOORE OF KANSAS. Thank you, Mr. Barofsky. Votes have been called. There are 10 minutes left for votes. We can hear one more witness.

Professor Warren, I will ask you to do a 5-minute presentation, or less, so we can get over and vote. And then we will reconvene and hear from Mr. McCool and then have questions for the witnesses afterwards.

Mr. BACHUS. Actually, Mr. Chairman, if she takes even 6 minutes, I think we are in good shape.

Chairman MOORE OF KANSAS. Very good.

Mr. BACHUS. Thank you.

STATEMENT OF PROFESSOR ELIZABETH WARREN, CHAIR, CONGRESSIONAL OVERSIGHT PANEL

Ms. WARREN. Thank you very much. Thank you, Chairman Moore. Thank you, Ranking Member Bachus. It is an honor to be here again today in front of this committee. I appreciate your inviting us.

I want to say, as I always do, unlike the gentlemen to my left and right, I am part of a panel, and so when I am here, I am not scripted, which means I speak for myself. I will do my best to represent my panel, but I represent only my views when I open my mouth.

Our job is to review the current state of financial markets in the financial regulatory system and to report to Congress every 30 days. So far, we have delivered to you eight oversight reports and two special reports on regulatory reform and on farm credit, both of which were also required by law. We have also had nine hearings. We have been out in the field on your behalf. We will have our tenth hearing next Monday in Detroit.

Our contribution, again, our statutory mandate is a fact-based analysis designed to raise issues about the operation and direction of TARP and about the broader effort to restore stability to the economic system. We call that asking whether or not TARP is operating to benefit the American family and the American economy.

We hit three repeating themes, and that is the need for transparency, the need for accountability, and the need for clearly articulated programs by Treasury. We coordinate closely with the GAO. And the Special Inspector General, Mr. Barofsky, just identified our coordinated effort which we are very pleased to participate in, and that is an important part of the report we just issued on warrant valuation.

Ranking Member Bachus identified the key to what the warrants are about. We understood what the risks were when Congress allocated the potential $700 billion to TARP. This is the American taxpayers' one opportunity to participate in the upside.

Our statutory mandate is to look at the choices Treasury is making, and that really involves not just our July report, but also our June report. Our June report was on stress tests, the question about repayment in the first instance and whether the stress tests were stressful enough. We then moved to our July report. Once the decision is made to take money back from these financial institutions, what should be the pricing on the warrants.

In order to do the warrant valuation, we thought it would be helpful, in terms of oversight, to do an independent valuation, to ask how it is that others might value this, our own expertise within the panel, but also, we were aided by Nobel Laureate Robert Merton, Professor Daniel Bergstresser, and Professor Victoria Ivashina. All are from the Harvard Business School; all advised us independently without consulting with each other. They helped us review our model, and they helped us review our inputs. Ultimately, we did all of the calculations internally to the panel. And that is how we came up with the numbers we came up with.

Now, our finding was that the price paid in the first warrants that were sold were about 66 percent of what our valuation would show was the current market value. If Treasury got only 66 percent of current valuation as it went forward, that would be a loss to the American taxpayer of about $2.7 billion.

Now, we are very careful in this report to point out some key features. The first is, only a tiny proportion of these warrants have been sold, and they are in very small banks in the first sales. We acknowledge there may be differences about what are the appropriate liquidity discounts to put into the valuation. We also acknowledge that there may be considerations other than maximizing the return to the taxpayer, for example, trying to get out of this business of holding warrants as quickly as possible, and those could affect the valuation.

I will say, however, that since we issued our report 12 days ago, Chase has decided it wants to go to auction, and Goldman Sachs has just struck a deal today which adjusted for the rise in the value of their stock prices over the last 12 days. It is almost precisely at our estimated valuation. And I heard Treasury announce in this hearing that they will be revealing more information about their negotiations over stock price warrants. I think that means oversight works.

So I am pleased to be here today to give you our report, to answer your questions in any way that we can, and to talk about alternative approaches to valuing these warrants.

I, again, appreciate the invitation to be here, and I am glad to take your questions.

[The prepared statement of Professor Warren can be found on page 86 of the appendix.]

Chairman MOORE OF KANSAS. Thank you for your testimony, Professor Warren.

We are going to stand in recess until after votes, and I would ask members to come back immediately after votes so we can reconvene

this hearing. We will finish up with the testimony of Mr. McCool and then have questions by the members.

Thank you. And I apologize for this interruption of our hearing, but we do have to vote. Thank you very much. We will see you all in a bit.

[recess]

Chairman MOORE OF KANSAS. The hearing will reconvene. I thank the witnesses for staying around for the hearing, and we got back here just as quickly as we could.

Mr. McCool, you are recognized, sir, for 5 minutes.

STATEMENT OF THOMAS J. McCOOL, DIRECTOR, CENTER FOR ECONOMICS, APPLIED RESEARCH AND METHODS, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. MCCOOL. Thank you, Mr. Chairman. Chairman Moore, Ranking Member Biggert, and members of the subcommittee, I am pleased to be here today to discuss our work on the Troubled Asset Relief Program.

The Emergency Economic Stabilization Act that authorized TARP requires GAO to report at least every 60 days on findings resulting from our oversight of the status of actions taken under the program. My statement today is based on our fifth mandated report issued on June 17th, which follows up on our previous recommendations and covers the actions taken as part of TARP through June 12, 2009.

Our oversight work under the Act is ongoing, and our next report will be issued in the next few days and will focus on TARP's Loan Modification Program. Specifically, my statement today focuses on the nature and purposes of activities that have been initiated under TARP, including repurchases of preferred shares and warrants and Treasury's efforts to establish a management structure for TARP.

As of July 10, 2009, Treasury had disbursed about $361 billion of the roughly $700 billion in TARP funds. Most of the funds, $204 billion, went to purchase preferred shares and subordinated debentures of over 650 financial institutions under the Capital Purchase Program. This Program continues to be the Office of Financial Stability's primary vehicle for stabilizing financial markets. At the same time that Treasury continues to purchase preferred shares in institutions, other institutions have paid over $70 billion to repurchase shares. As of July 10th, 12 of the 33 financial institutions that repurchased their preferred shares from Treasury had also repurchased their warrants and three others had repurchased their warrant preferred stock from Treasury at an aggregate return of about $80 million.

Although the Office of Financial Stability and its regulators have established criteria for accepting and approving CPP applications, the regulator's criteria for determining when institutions can repurchase preferred stock from Treasury lack adequate transparency. This is an area in which we made a recommendation in our report for the Treasury in coordination with the primary regulators to ensure consistent criteria in the consideration of repurchases.

While Treasury has provided some limited information about the warrant valuation process, it has yet to provide a level of transparency at the transaction level that would address questions about whether the Department is getting the best price for taxpayers. This is another area in which we recommend that Treasury provide such transparency in the process by publicly disclosing more detailed information about warrant prices. I was pleased to hear Mr. Allison suggest earlier Treasury seems to be moving forward in that effort.

Although it is unclear whether any institutions will choose to participate in the Capital Assistance Plan, the Federal Reserve did conduct stress tests of the largest 19 bank holding companies to see how well they would withstand more arduous than expected economic conditions. While the Federal Reserve disclosed the stress test results, it had no plans to disclose information about the institutions going forward. What information, if any, is disclosed will be left to the discretion of the affected institutions raising a number of concerns, including that the institutions could disclose inconsistent or only selected information.

Moreover, the Federal Reserve had not developed a mechanism to share information with the Office of Financial Stability about the ongoing condition of the bank holding companies that continue to participate in TARP programs. For this reason we made a recommendation to the Federal Reserve to disclose to the public information on the companies against the more adverse scenario on a going forward basis.

While the Office of Financial Stability has made progress in establishing its management infrastructure, continued attention to hiring remains important, especially within the Office of the Chief Risk and Compliance Officer and the Home Ownership Group. Those are areas where their hiring has not been up to what they themselves say are their requirements. They still have a number of vacancies and they need to fill them as rapidly as they can.

Treasury has also continued to build a network of contractors and financial agents to support TARP administration and operations that have been key to OFS's efforts to develop and administer the TARP programs. Treasury has provided information to the public on procurement contracts and financial agency agreements, but has not included a breakdown of cost data by each entity. As a result, Treasury has missed an opportunity to provide additional transparency to its TARP operations. This is another area in which we made a recommendation to Treasury to improve transparency.

Mr. Chairman, Ranking Member Biggert, that concludes my statement. I am happy to answer any questions.

[The prepared statement of Mr. McCool can be found on page 70 of the appendix.]

Chairman MOORE OF KANSAS. Thank you, Mr. McCool. At this time, I will recognize myself for 5 minutes for questions.

Professor Warren, once people have had a chance to analyze the transaction, do you have any sense that $1.1 billion paid by Goldman Sachs will be enough for taxpayers? Do you think we could have received more if Goldman went through a public auction? Are there other policy issues that should be considered?

Ms. WARREN. I think that—thank you, Mr. Chairman. I think it is a good question. Using the valuation metrics that we laid out in our report, the Goldman price comes in almost precisely at what we had recommended. I believe the Goldman price is $1.1 billion, and using our valuation, it would have been $1.08 billion. So we are within rounding error on that. And that certainly increases our confidence that Treasury is using a strong valuation approach here.

I do want to say, though, that there are these other issues that lurk in the sales process, and it is hard to find a substitute for the benefit of a public sale. A public sale reassures everyone that this is the market price. But I certainly understand Congressman Bachus' point. There are times when we decide that we don't want to delay, that we want to be able to move faster. These are costs and benefits and ultimately policy choices not just for Treasury but for Congress to weigh in on. We think as your Oversight Panel, the best we can do is outline it. We can give you this independent valuation, as we have done, and put the factors in front of you, which we have tried to do.

Chairman MOORE OF KANSAS. Thank you.

Mr. Barofsky, do you have any different thoughts about that or do you agree with what Professor Warren said?

Mr. BAROFSKY. I definitely defer to Professor Warren. Her report and her study I think was comprehensive. I thought it was very instructive. We haven't done a similar effort. We do have an ongoing audit that will address different issues, but I would certainly defer to Professor Warren and the panel on this.

Chairman MOORE OF KANSAS. Mr. Barofsky, another question. I notice that in addition to your quarterly reports you issued this week, you also concluded the "use of funds" audit that you conducted. What did you learn from that audit and what steps should Treasury take to increase accountability in the TARP program? And I want to ask you that, sir.

Mr. BAROFSKY. I think the most important thing we have learned is I think we have definitively proved that despite the apparent fungibility of money banks can, when asked, report on how they are using their funds and that they can provide a great degree of transparency and answer that question. We saw that banks did—although Treasury, as Mr. Allison noted, does provide lending snapshots of each month, that is not the only thing that banks do with their TARP funds. According to the banks themselves, they use it to maintain capital cushions, insurance for a rainy day for future losses, they use it to acquire other financial institutions, they use it to invest in securities. All sorts of different things that our survey helped provide a necessary level of transparency, but it is only part of—you know, our survey was a snapshot as of February. We don't have the resources to do this on a regular basis, and our survey was voluntary.

So my recommendation is that Treasury finally adopt our recommendation and require financial institutions who are receiving TARP funds to report on a periodic basis on how they are using the money.

Chairman MOORE OF KANSAS. Thank you.

Professor Warren, did you find any connections or parallels with the SIGTARP's use of funds audit and what COP learned when re-

viewing the lending practices and how it affects American families and small businesses?

Ms. WARREN. Yes, Mr. Chairman, we did. In our field hearings and our earlier reports we have documented the constriction in small business lending and the inadequacy of the tools that have been used thus far by Treasury to try to stimulate small business lending. We think this is entirely consistent, what we have found and reported on, with what it is that Mr. Barofsky has found and reported on through a different mechanism.

Chairman MOORE OF KANSAS. My time is up. And at this time, I will yield to questions from Mrs. Biggert, please, the ranking member.

Mrs. BIGGERT. Thank you, Mr. Chairman. Mr. Barofsky, in talking about the audit of the warrants and valuation and sales, when can we expect to see this audit?

Mr. BAROFSKY. We are basically valuating the timing. When we first launched the audit, it was unclear when sort of the larger institutions were going to be either repurchasing or going through the auction process. Now that we are seeing some of these repurchases, I think we want to take a look and see the auction process. For it to be the most useful audit I think we would like to see that process be used before we project an end date.

Mrs. BIGGERT. Can you ensure that the audit will not compromise the Treasury Department to negotiate the best possible price for taxpayers? Do you think there is any chance of that happening if the audit is out and they are negotiating?

Mr. BAROFSKY. With everything that we do, including this and any of our audits and really with our recommendations, I think it is very important for us to take into consideration the point that you just raised. And we would never make a disclosure midway through a negotiation, anything that could possibly impact in a negative way on the taxpayers' return. Our job is to protect the taxpayers' interest, and we are very, very sensitive to these types of issues and protecting confidential information to the extent it may impact or be a detriment to the taxpayer.

Mrs. BIGGERT. Thank you.

And Professor Warren, the July report issued by COP states that the best manner to sell these warrants is on the open market, however—and as my colleague Mr. Hensarling stated in his additional views to that report—choosing a one-size-fits-all method does not seem to be the most appropriate method to value these warrants given that each repurchase negotiation will have different circumstances. Don't we need flexibility in the process to help determine the best value while getting the taxpayers out of the business of owning bank stocks or warrants?

Ms. WARREN. Congresswoman, I actually think the report says exactly that, that there should be flexibility. We talk about the advantages to an open market process, but we acknowledge that there are circumstances that may differ. And I assume that is part of the reason that Congressman Hensarling voted for that report. We had a 5–0 vote on the valuation report.

Mrs. BIGGERT. There are always additional views.

Ms. WARREN. In which I think he cited the report extensively.

Mrs. BIGGERT. Right. In determining like fair market value do you use financial models or is it just a one-size-fits-all? I mean like Black-Scholes, do you take that into consideration?

Ms. WARREN. Of course. Actually our financial models are laid out in many, many pages in our report. And as I said in my testimony, they were independently reviewed, the models were independently reviewed by three highly renowned specialists in modeling, all from the Harvard Business School.

Mrs. BIGGERT. Three members of the panel, Representative Hensarling and, I think, Senator Sununu and Richard Nieman, voiced their support for the Administration's and Treasury's stated objective to exit warrant holdings as soon as practical after banks repay the preferred stock. It didn't seem like this point was stressed at all in the July report.

Ms. WARREN. Well, I think that it is like so many things, it depends on the cost. There is always a judgment to be made. And exiting in the fastest possible way in return for getting the lowest cost for the taxpayer may not be ultimately beneficial. On the other hand, I certainly understand the point about not hanging on to the warrants for 10 years and the political as well as economic implications of that.

So I think the main point in the report was that there are advantages and disadvantages to speed and to going to the market in order to try to sell these warrants. Ultimately, though, we did emphasize the point that when there is a market-based auction, no taxpayer needs to wonder what happened behind closed doors or whether the appropriate price was reached.

Mrs. BIGGERT. I guess my point is that it seemed like that was the majority and it wasn't really stressed in the report what they said. And next, the panel's press release for the July report contained the headline, "So Far Treasury Has Sold Warrants Back at 66 percent of Panel's Best Estimate of Fair Market Value." And I think that the headline kind of seemed misleading since the banks that have redeemed their warrants represent less than 1 percent of the value of all the warrants outstanding. It sounded like there were 66 percent.

Ms. WARREN. Actually, I think the press release makes exactly that point. But let's keep in mind that when that press release was issued, the immediate response was that Chase said, we will go to a public auction, Goldman 11 days later said, we will sell at the panel's recommended price, and Treasury said, we will release more information about our sales process. If the consequence of this report is to encourage those sorts of responses, then I am very happy about that report.

Mrs. BIGGERT. I yield back.

Chairman MOORE OF KANSAS. Thank you. And the Chair will next recognize Congresswoman Jackie Speier, please.

Ms. SPEIER. Thank you, Mr. Chairman. I want to thank each of you for being true public servants and incredible guardians of the American taxpayers. Having said that, I find this discussion very interesting because on the one hand some of my colleagues often call upon us to think about small businesses and lending to small businesses and the fact that we haven't had enough lending to small businesses. And yet we can't seem to get access to informa-

tion from the banks as to whether or not they are lending to small businesses, and wouldn't we want to know that? And isn't that what our job is really all about?

Now, I think we have to be very practical here. This is an arm's-length transaction that goes on between these financial institutions and the U.S. Government, and these warrants have value. Now, I think timing has everything to do with our success at maximizing the amount of money we get back for the taxpayers. And it is very clear to me that there are some of these arrangements that aren't going to be profitable. AIG comes to mind as one in particular.

So it is important to us I think to maximize profits to compensate for the ones that are clearly going to be underwater forever. And I am hoping that as you continue to evaluate, if you believe that we should be holding these assets, these warrants, that we should hold those. It is an arm's-length transaction. If the banks are coming to us now saying, we want you to exercise the option on the warrant or to redeem the warrant, they are saying that because they know that they are on the road to recovery and it is only going to increase in value. So it behooves us to be smart investors right now.

And I would like your opinions on whether or not there is something to be gained by holding onto them. Just because they say they want them redeemed doesn't mean we have to act and redeem them. Our first and only goal should be maximizing the profits for the taxpayers. Your comments.

Ms. WARREN. Congresswoman, I think you have put your finger right on the ultimate policy question here. If that is the only goal and that is what Treasury should be doing, then Treasury should act like any other investor. And you are exactly right that they should take these to market when it is appropriate to take them to market. When they make the judgment that they would be better off to hold, then they should hold.

There are those who believe there are alternative considerations. There are those who are deeply concerned about the notion that the Federal Government holds warrants. We ultimately believe that is a policy choice. There is a difference of opinion on which is the right way to go with these warrants. And my strong view on this is that we laid this out in our report and ultimately Congress should advise Treasury about what it thinks is the right way to go here.

I think we do this through this hearing process. We want to say that if what they are trying to do is maximize value we can point out ways that we think that is best accomplished. If they have other considerations then—let me be blunt—then they should articulate what those alternative considerations are and evaluate how much money is left on the table in order to accommodate them.

Ms. SPEIER. Thank you.

Mr. Barofsky?

Mr. BAROFSKY. I could not agree with Professor Warren more. I think that is precisely right. I think the report brought transparency to the issue, a decision needs to be made. And I think the really strong point that Professor Warren makes that I can't agree with more is that you need to be up front in articulating what the

policy decision is, be up front with the American taxpayer that we think there is good reasons to liquidate these warrants now because for whatever the reasons are, for the benefits of the banks, let the financial institutions off the hook, whatever the justification is, but be up front and honest about what is happening. So I agree with Professor Warren on this.

Ms. SPEIER. Mr. McCool?

Mr. MCCOOL. Again, I would agree as well. I mean there are tradeoffs here, and I think that as long as you are transparent about the tradeoffs and everybody who should be involved in thinking about those tradeoffs is in the decision-making process, then I think that is the way it should work.

Ms. SPEIER. Mr. Chairman, I would just like to point out that there are people who want to see the TARP fail, they want to be able to say I told you so. So there are people I believe who are going to make us try and take action that are not necessarily in the best interests of the public because they want to be able to say at the end of the process that we should never have done it in the first place.

So I hope that we keep our eye on what is most important here, and that is the American taxpayer. I yield back.

Chairman MOORE OF KANSAS. I thank the gentlelady for her questions and the witnesses for their responses.

Next, I recognize the distinguished ranking member of the full committee, Mr. Bachus.

Mr. BACHUS. Thank you. I think the theme here could be that oversight worked. I mean it worked very well. And I think that is always true of accountability or transparency. It normally has a very positive approach. And I think that one of the confirmations we got today that the panel can be proud of is the Goldman price. It was exactly as you say. It was actually $20 million more than you said, and so that maybe can pay for the panel. This is a panel that actually is going to end up making the taxpayer some money. Often the consumer, the taxpayer, is not at the table, and I think they were through this panel. It is interesting the history is that this was originally a three-page bill without any accountability. Then I think the Congress can take a bow because we put that in there, we put that accountability in there, which was the board. I think it worked very well.

One thing that we always have to—if we could look in the future and see where the markets and the economy are going it would be pretty easy to make a call on whether we ought to hold it. Although I personally don't think that the United States ought to be sort of investing or speculating in the market, which to a certain extent if you can get a good fair price you take it. Now, if the market dropped 600 points tomorrow and 300 the next day, I would say hold on to them probably. And that is a policy decision that I think the Administration probably will have to make. And it will be within 10 years, we can probably tell what we should have done.

One thing that did strike me, and I heard 4 or 5 months ago from a banker in Alabama that he went to a seminar in Georgia and there was a bank there in Georgia wanting to buy, saying if you are for sale we are going to buy you, and they were going to do it with their TARP money. So you did have 4 percent that made

acquisitions. You know, it would be kind of interesting to maybe go back and take a closer look at that. Mr. Barofsky, I think they are probably going to tell you the truth because you have a right to prosecute them, and you have that reputation that you are a very good prosecutor. So I think that—now, there will be some I am sure in that number that actually were—you know, the FDIC or other people said this is a failing bank and they probably—I wouldn't assume that that 4 percent was a bad thing in and of itself. I think the Treasury has to understand what we have to understand as a Member of Congress, and that is that this is the peoples' money, so there needs to be accountability. This wasn't—you know, this isn't just a private business where you are wanting to know about some proprietary thing, this was money that was taxpayer money. So I think that—sometimes I think you can't justify, you know, some sorts of getting information, but I think you can here. And I think you have done a great job.

Let me change gears, Professor Warren. I wrote a letter to you on June 24th. I have looked at some of those questions. Some of them I am not sure. They are a little harder to interpret. Sometime maybe in August, if you could kind of respond to some of those, I would appreciate it. But I am not even going to ask you about them now.

But the other thing I just thought I would show you—

Ms. WARREN. Would you accept my apology that you don't have a response yet?

Mr. BACHUS. Well, I wouldn't expect it. There is too much going on.

Ms. WARREN. Nonetheless, Congressman, please accept my apology. We are doing our best.

Mr. BACHUS. Actually, I don't even think they are due, because I don't think it is sufficient time for you to have responded, because the questions are really, you know they are going to take a little time. But I just wanted to direct—one thing I want to show you, and kind of at some point you might give me an answer. We are talking about one-page disclosures, and this is actually 15 pages on a card agreement. Now, some of these aren't—you know they are just part of the page, but that is what the law requires right now. So you have quite a job, because you are going to have to almost say, you know, well, we are not going to require this anymore, or maybe some of this you are going to decide to put in small print. But it does show you the challenges you face if you get your agency through. So I thank you.

Ms. WARREN. Thank you.

Chairman MOORE OF KANSAS. Thank you, sir. Next, the Chair recognizes—

Mr. BACHUS. I usually ask questions. That is very rare for me not to do that, but there were no questions because I thought the questions were answered.

Chairman MOORE OF KANSAS. Thank you.

The Chair next recognizes Congresswoman Kilroy for 5 minutes.

Ms. KILROY. Thank you, Mr. Chairman. I appreciate it. And thanks all of you for your work on helping to look out for the taxpayers' issue and to make sure that the values of transparency and accountability are the values that we don't forget as we move fur-

ther away from the initial infusions of the TARP money. And each one of you have in your testimony emphasized the importance of transparency. And I will certainly agree with you, certainly sunshine is a great, great thing to have in the public sector.

But I also think that in this instance that transparency can assist the taxpayers in getting maximum value, maximum return on the investment that they made. And I think the Congressional Oversight Panel report backs it up. It says, "Treasury would be more likely to maximize taxpayer returns if it sold the warrants through auction. The reason is straightforward. An auction would cause the warrants to be allocated to the buyers willing to pay the highest price, and competitive pressures in the bidding process may push bids up."

Do you agree with that statement, Professor Warren?

Ms. WARREN. I do, Congresswoman.

Ms. KILROY. Well, I certainly do as well. And I think that the markets and public auctions are certainly a very valid way for setting a price. We have heard today a lot of talk about Goldman and the value that was received through the negotiation process with Goldman, but not to be too pessimistic or too cynical, there are reports today that the initial offer from Goldman was made several weeks ago and the initial offer was $650 million. And that was followed up by a counteroffer by Treasury of some $900 million and then followed up sometime after that by the release of Goldman's statements indicating how much money they had made, certainly in part because of the infusion of money the taxpayers gave them. And as Goldman stock prices go up, would you agree that the value of those warrants that the taxpayers were holding would also be going up?

Ms. WARREN. Yes.

Ms. KILROY. So then it is certainly maybe not surprising that Goldman increased its offer to the taxpayers and offered to pay $1.1 billion for the warrants. Do you agree with that?

Ms. WARREN. Yes.

Ms. KILROY. But would you also agree that perhaps if we allowed it to go to market that others who might see the same reports about Goldman's recent earnings might think that holding Goldman's warrants which could be used by them to purchase stock over a pretty lengthy period of time might be to them worth more than $1.1 billion and they might make a higher offer than that at public auction?

Ms. WARREN. That is certainly possible, Congresswoman.

Ms. KILROY. So would you agree that the market has a great deal of experience in this issue of setting prices and that Treasury has also experience in terms of conducting public auction?

Ms. WARREN. Yes, Congresswoman.

Ms. KILROY. And again going back to all three of you, in your statements with respect to maximizing value to the taxpayer and being transparent, would you agree that a public auction would be an excellent way to combine and achieve those two goals, maximizing profits and being transparent?

Ms. WARREN. Yes, Congresswoman.

Ms. KILROY. Does anybody on the panel have a different view or disagree?

Mr. BAROFSKY. I think in particular it addresses a lot of the transparency concerns and a lot of the allegations that may be made when it is a closed door process.

Ms. KILROY. And the goal of restoring public confidence in the markets and having public confidence in our government officials is an important and worthwhile goal as well, I would think.

Ms. WARREN. Yes.

Ms. KILROY. Thank you. I yield back.

Chairman MOORE OF KANSAS. I thank the gentlelady.

The Chair now recognizes Mr. McHenry, Congressman McHenry, for 5 minutes.

Mr. MCHENRY. Thank you, Mr. Chairman. Thank you all for testifying and sorry for the length of the day. It is long for all of us.

Obviously, Mr. Barofsky, I heard from you yesterday in front of the Oversight and Government Reform Committee, of which I am a member. Ms. Warren, in terms of your panel, the Congressional Oversight Panel, what is your budget?

Ms. WARREN. I can tell you how much we have spent, but we actually don't have an allocation.

Mr. MCHENRY. Is there an allocation?

Ms. WARREN. No, we don't have a budget allocation.

Mr. MCHENRY. How much have you spent?

Ms. WARREN. We have spent $2.7 million.

Mr. MCHENRY. $2.7 million. Where did that money come from? Is it out of TARP or is it out of Treasury?

Ms. WARREN. It comes from the Senate and from the House; it comes from you.

Mr. MCHENRY. How is that allocated?

Ms. WARREN. I am sorry, Congressman.

Mr. MCHENRY. Basically you just spend whatever you want and send the bill to Congress. I mean, how is that allocated?

Ms. WARREN. Well, we go through the process, for example, of hiring and getting your approval.

Mr. MCHENRY. How many people can you hire, are you authorized to hire?

Ms. WARREN. We can hire as many as we need.

Mr. MCHENRY. Okay. That is enough. I think it just shows that there isn't a clear budget.

Ms. WARREN. No.

Mr. MCHENRY. Mr. McCool, is that a fair assessment, that there has not been an appropriations for this committee?

Mr. MCCOOL. I don't really know, Congressman.

Mr. MCHENRY. This is quite a challenge.

Mr. Barofsky?

Mr. BAROFSKY. Congressman, we have the TARP to look after. We haven't looked into the funding for the Congressional Oversight Panel. Our funding I certainly could speak on if you would like.

Mr. MCHENRY. The Inspector General's Office is an appropriation, yes. Ms. McCool, in terms of your panel meetings—I am sorry, Ms. Warren.

Ms. WARREN. I am sorry, I thought you said Ms. McCool, so I lost who you were talking to. I am sorry.

Mr. MCHENRY. It is late in the day. I don't have much time.

Ms. Warren, is it true you have regular panel meetings?

Ms. WARREN. Yes, we do, Congressman.

Mr. MCHENRY. Are those publicly disclosed?

Ms. WARREN. The fact that we have the meetings, yes, Congressman.

Mr. MCHENRY. No, actually the panel meetings.

Ms. WARREN. We have business working meetings that are not public meetings.

Mr. MCHENRY. So you have a panel of how many members?

Ms. WARREN. We have a five-member panel. Since Senator Sununu will be stepping down, we will have a four-member panel. I presume it will be five again soon.

Mr. MCHENRY. When you meet in session for the purposes of transacting business, is that open to the public?

Ms. WARREN. We have working meetings that are not open to the public.

Mr. MCHENRY. Do you have a transcript or minutes of that meeting?

Ms. WARREN. I don't have a transcript or minutes of that meeting. It is recorded by the Senate Conference Services. But no, Congressman, I have not seen a transcript.

Mr. MCHENRY. Is a transcript available of your meetings?

Ms. WARREN. Publicly?

Mr. MCHENRY. For Members of Congress, is that available for your meetings?

Ms. WARREN. It is not available publicly, no, Congressman.

Mr. MCHENRY. I am a Member of Congress.

Ms. WARREN. Oh, I am sorry.

Mr. MCHENRY. Am I able to get a copy of the transcript of your meetings?

Ms. WARREN. I believe our transcripts are held in our office. And if you wanted to send someone over to read them, I believe you would be able to read them.

Mr. MCHENRY. Would that be available?

Ms. WARREN. I believe you would be able to read them if you wish to do that, Congressman.

Mr. MCHENRY. So you will make that available for Members?

Ms. WARREN. If you wish to come to our offices to read it.

Mr. MCHENRY. Why are the transcripts not available to the public?

Ms. WARREN. These are working meetings of the panel and we discuss a great deal of confidential information. And so they were never public from the beginning. We do hold, I should remind you, Congressman, we do hold public hearings.

Mr. MCHENRY. Is this an executive session? This is what is interesting to me. You are an oversight panel.

Ms. WARREN. Yes.

Mr. MCHENRY. Yet you don't disclose your meetings. And what happens and what transpires in these meetings and the decisions you make, the votes you take, are there votes taken at these meetings?

Ms. WARREN. There are sometimes votes.

Mr. MCHENRY. So we don't even know what the votes are much less how this report was created with this Panel. So there is no dis-

closure from the Oversight Panel. Do you think that is perplexing or strange?

Ms. WARREN. Well, we have working meetings where we discuss confidential information. We issue a public report every 30 days. And the report on that vote is made public every 30 days. And each of the members is entitled as part of that process to add additional views if they wish to do so.

Mr. MCHENRY. I think it is quite perplexing that an oversight panel wouldn't disclose their meetings. Even you can redact confidential information. That is certainly in your capacity, which is done throughout government. But it seems like this is very removed from the public and pretty nontransparent for a board that is demanding transparency from TARP funds and the Treasury in general. Do you find that problematic?

Ms. WARREN. Well, what I would find—

Mr. MCHENRY. If she would be able to finish.

Ms. WARREN. I would find it quite problematic if we discussed sensitive information about TARP recipients, about the inquiries and the lines of inquiry that we were pursuing and that were a matter of public speculation as soon as we finished saying it.

My sense is we need an opportunity to work together, and that is what we try to do. But we issue public reports every 30 days and hold public hearings at least once a month.

Chairman MOORE OF KANSAS. The gentleman's time has expired. Thank you for the questions, Mr. McHenry.

And next, the Chair will recognize Mr. Paulsen for 5 minutes.

Mr. PAULSEN. Thank you, Mr. Chairman.

Mr. Barofsky, I would just like to ask a question. I am going to yield some of my time, but just to follow up, in some of the discussion we had in the first panel with Mr. Allison it had been mentioned that some companies have been getting mixed signals, mixed answers in terms of what is coming out of Treasury on the requirements for paying back the payments or purchasing the warrants, I guess, what the regulations or stipulations might be for that. There is some frustration.

In the work that your office has done or seen have you found that the government or Treasury has been very clear in terms of what it has actually demanded for repayment of those funds? Has it been foggy? I am just curious what your perspective might be on that.

Mr. BAROFSKY. With respect to the warrants, our audit is pending and ongoing. So I am not really prepared at this time to give sort of a conclusion that would come out of that audit. So it is a little bit premature for me to answer that question.

Mr. PAULSEN. Okay. And I also have heard from some in the small business community about the way the stimulus or the TARP funds have been distributed or handled. The committee had a hearing yesterday on the whole issue of too-big-to-fail, the full committee. And one of the things that we think we have missed is the whole too-small-to-save or the concept of with small community banks or small business, what the impact has been on them, where the majority of those funds have gone to the larger institutions. But after about 6 months now, we have seen the Administration has started now finally to talk about actually looking at the small

business angle and focusing more in that direction, which I think is smart and prudent. And as you know, I think at the first time go around, earlier this year we had an amendment that was before this committee that would have added authorizing legislation that would have required you to report on small business activity as well as a part of the Special Inspector General's obligations on the next report.

Is that something you think you could look at including in your next report, just kind of including some measures on small business participation in the TARP or small financial institutions?

Mr. BAROFSKY. I think it would be—what we could do is with the information that we already have perhaps from the survey on what banks are doing with respect to small lending and what they are saying. We don't really have the resources or mechanism to do exactly what you are saying. That really falls on Treasury. I mean that is a basic part of Treasury's, I think, obligations. Under the concept of transparency they should be doing that assessment and making that information available. It really goes to the heart of our transparency recommendation about use of funds, how are the institutions using the funds with respect to small businesses, and reporting on in their transaction report what steps they are taking for small businesses.

I will be happy to work with you and your staff and have my staff talk to you. If we could think out some other ways where we could contribute to that transparency, we are always open to suggestions and we look forward to following up with you on that.

Mr. PAULSEN. I appreciate it. I do want to commend you for your work, and you have been very helpful to members on this committee.

I just would like to yield the balance of my time, Mr. Chairman, if I could, to Mr. McHenry.

Mr. MCHENRY. Thank you. I thank my colleague for yielding. Ms. Warren, just to follow up on this again. The fact that there is an unknown budget that hasn't been allocated, and to my knowledge from the Legislative Branch Appropriations, there wasn't a line item for that. And I would ask the GAO and I would ask the SIGTARP if you all could take a look at that and perhaps answer how that actually works if the Chair doesn't know.

Additionally—

Mr. BAROFSKY. Congressman—

Mr. MCHENRY. I know you don't have purview. My apologies.

Mr. BAROFSKY. I am actually prohibited by statute from doing that.

Mr. MCHENRY. Well, it is late in the day, so obviously I am missing a few things here.

Ms. Warren, you testified before this committee about the Consumer Financial Protection Agency last month, right?

Ms. WARREN. Yes, Congressman.

Mr. MCHENRY. And I also saw a YouTube video, and I think a few thousand others saw it as well, and your advocacy for CFPA, right?

Ms. WARREN. Yes, Congressman.

Mr. MCHENRY. Is that part of your official role as head of the Congressional Oversight Panel?

Ms. WARREN. No, it is part of my role as professor at Harvard Law School.

Mr. MCHENRY. So that is done through your official resources at Harvard?

Ms. WARREN. Yes, it is, and through my personal resources, I should say. I wrote a check for it.

Mr. MCHENRY. Well, YouTube is actually pretty cheap.

Ms. WARREN. A personal check. No, I wrote a check for the out-of-pocket expenses to be able to produce the video.

Mr. MCHENRY. Okay. You got a producer, that is good. No, I understand. It is YouTube. I understand.

Ms. WARREN. Well, a person who held the camera.

Mr. MCHENRY. But there is a lot of conjecture that you would be the head of the CFPA if Congress does pass that. But no official resources under the Congressional Oversight Panel has been used or staff has been used in your advocacy?

Ms. WARREN. No.

Mr. MCHENRY. Good to know. Thank you, and I yield back.

Chairman MOORE OF KANSAS. Thank you. Next, the Chair recognizes Mr. Lee for 5 minutes.

Mr. LEE. Thank you. Before I start, I do want to thank all three of you for your support and what you try to do to protect the taxpayers and the oversight. It is very commendable. And I will start off with Mr. Barofsky. We have had a chance to meet in the past, and again he has been very accessible and I appreciate what you have been doing. Again, one thing that does scare me, however, is the fact that over—or under your oversight at risk I heard numbers anywhere between $2.3 trillion to $2.8 trillion and that the total potential support governmentwide in response to the crisis since 2007 could reach close to $24 trillion. Are those numbers fairly accurate?

Mr. BAROFSKY. Yes. To explain the $24 trillion though, to put it in context, what we did in our report is in Section 3 we gave a summary of about 50 different support programs outside of the TARP. And for each of those programs we calculated how much is currently outstanding, what the high water mark was since the inception and then what the maximum amount that the government has said it would commit to each of those programs. So the amount outstanding is about $3 trillion, the high water mark was about $4.7 trillion, and the $23.7 trillion, that represents that if everything was maxed out at once. It is not likely that that would ever occur, but I just want to put that caveat there.

Mr. LEE. Not likely but a scary number altogether.

Mr. BAROFSKY. But it is absolutely an accurate number of what the government is committed to do to support the financial system.

Mr. LEE. In June, the Congressional Budget Office scored the TARP at a loss to taxpayers of roughly $160 billion. We are writing off billions in loans to GM and Chrysler. Yet it is unclear to me what we are doing with the funds being repaid by the TARP recipients. In letters to the Secretary of the Treasury and to the President, which to my knowledge have to this point gone unanswered, many of us on this panel, led by my colleague Mr. McCarthy from California, have advocated for those repayments to be used specifically to reduce the national debt. Yet others want to recycle these

funds and use them for other programs, some of which are brand new.

I am curious, from your perspective do you believe it is in the best interest of the taxpayer to take TARP repayments to pay down the debt?

Mr. BAROFSKY. Our perspective is really a legal one. And I think legally, Treasury's treatment of taking any interest or dividends and/or profits and direct them to reduction of the national debt, that is very clearly what is compelled by law under EESA. The principal repayments of the Treasury does have its position, and we think that it is consistent with the law, is they have the option to relet that money out up to a maximum of $700 billion as long as TARP is in existence—I am sorry, as long as EESA permits them to do so, which is right now through the end of the year.

Mr. LEE. The part that I keep hearing from people, taxpayers, is take the money back and then we throw it out there and keep adding more risk and eventually the debt obligation that we have is staggered.

I am just curious, Ms. Warren, from your point you have also been an advocate on behalf of consumers, i.e., the taxpayers. I am curious whether you think a taxpayer is better served by paying down the debt or spending TARP for other purposes.

Ms. WARREN. Well, I think, Congressman, this is really the policy choice that Congress should be making, and the legislation is ambiguous on this point. And Treasury has made its position clear that it is going to use the headroom analogy that Mr. Allison talked about. So if Congress wants something different, then Congress is going to have to pass legislation, I think, to change that.

Mr. LEE. With that, I am going to yield back. Thank you.

Chairman MOORE OF KANSAS. Thank you, sir.

And Mrs. Bachmann, you were up for questions, please.

Mrs. BACHMANN. Mr. Chairman, thank you. And I agree—thank you all for being here. I agree it is a long day, but you have all been very responsive and we appreciate the great information that you have made available to us.

I was curious, I was listening to the previous line of questioning on meetings, and help me, did I understand correctly, and I guess this would be Ms. Warren, you had mentioned if a Member of Congress requested a transcript of one of these meetings of the panel we could get it. Was that true or maybe I didn't understand?

Ms. WARREN. Congresswoman, I was surprised by the question. So let me articulate more clearly. We don't have official transcripts. Unlike your circumstances where there are published transcripts, Members go back and they correct the language, we identify who spoke and who did not speak, we have no verified transcripts, we have no official transcripts. We have typing that comes back from someone who listened to our tapes who is not part of our panel, not part of this process, and no one has verified the accuracy of any part of it.

Mrs. BACHMANN. So then the meetings that you had that are not the field hearings, where it is the four, I guess it is four members now, was five members, when the five members meet or when the four members meet, are those meetings recorded?

Ms. WARREN. We have working meetings that have been recorded.

Mrs. BACHMANN. So those meetings are recorded. So are they transcribed or they are just in recorded form?

Ms. WARREN. They are in recorded form. And as I understand, there is a transcription service.

Mrs. BACHMANN. So we can get those transcribed? It is possible for us to have the transcription of those meetings?

Ms. WARREN. Actually, I have not considered this question because no one had asked. And I am a little hesitant to commit my co-panelists to a process when these are unverified transcripts; that is, something may be attributed to someone that has never been verified.

Mrs. BACHMANN. That is something that I would want to know as a Member of Congress. If the panel is meeting as a panel, whether it is the five or the four, and if the meetings are recorded, it seems to me that they could be transcribed. And I don't know what the verification process is. The reason why I am asking is because I learned yesterday that two requests were made to access those transcriptions and that those requests were not honored. And I have no reason to doubt the cause for transparency. And the Treasury Department wants to be transparent, I have no reason to doubt that at all. But it seems to me that is in conflict. If on the one hand, the Treasury Department is saying they want to be transparent, on the other hand, why can't we as Members of Congress at least receive transcribed copies? Or even if we as Members of Congress can't receive the copies, couldn't the members of the panel receive the copies of the transcribed—of the recorded meetings?

Ms. WARREN. Congresswoman, you may be aware this is a matter of some discussion within the panel, and the panelists themselves have different views on this. And those views are currently under discussion. We have been trying to work out something that is congenial to all of the panelists. But I have to emphasize these are working meetings where we discuss lines of inquiry that we are taking in oversight.

Mrs. BACHMANN. I understand that. And I understand Congressman McHenry said it is possible to redact material. One thing I had wondered—and I guess this is a little off point, but does the Congressional Oversight Panel have a phone number?

Ms. WARREN. I believe we do.

Mrs. BACHMANN. You do, okay. Very good. And can we get it?

Ms. WARREN. Certainly.

Mrs. BACHMANN. So then we would be able to call and make that request for the recording or the transcriptions potentially?

Ms. WARREN. As I said to Congressman McHenry, I believe it would be the case. And I really must add the qualification, as I said before, I am not the entire panel.

Mrs. BACHMANN. So no decision has been made about the transparency of those hearings. We know that they aren't put up on the public for record, but no decision has been made. It just seems to me odd that if the commitment is transparency that we wouldn't be able to actually receive those hearings because votes are made in those meetings.

Ms. WARREN. As I have said, Congresswoman, these are working meetings. I think perhaps the correct analogy would be a congressional committee holding a working or planning meeting.

Mrs. BACHMANN. Well, what is the difference between working meetings and any other meeting?

Ms. WARREN. Well, then there are public meetings where we do not discuss matters that should not be in the public domain.

Mrs. BACHMANN. But aren't these public meetings?

Ms. WARREN. No, they are not, Congresswoman.

Mrs. BACHMANN. They are meetings of the committee, they are formal meetings of the committee members, right?

Ms. WARREN. These are working meetings. I don't know what formal meetings. These are working meetings.

Chairman MOORE OF KANSAS. The gentlewoman's time has expired. And I will advise the members that if they have additional questions or other questions or would like to pursue this, you certainly have a right to submit that in writing.

Without objection, the hearing record will remain open for 30 days for members to submit written questions to the witnesses and to place their responses in the record.

Mr. MCHENRY. Mr. Chairman, if I may, I just wanted to clarify what the witness said in answer to my question versus Congresswoman Bachmann, and I want to make sure I have the correct understanding.

Chairman MOORE OF KANSAS. Sir, we have another meeting scheduled for this room at 5:30, so I am going to deny the gentleman's request.

Mr. MCHENRY. Well, parliamentary inquiry.

Chairman MOORE OF KANSAS. You have a right to submit written questions and they will be answered within 30 days.

Mr. MCHENRY. Parliamentary inquiry.

Chairman MOORE OF KANSAS. Yes, sir.

Mr. MCHENRY. At what point will a transcript of this meeting be available?

Chairman MOORE OF KANSAS. I don't know that we have a transcript of this meeting.

The CHAIRMAN. There will be one. I don't know how long. If the gentleman would yield to me?

Chairman MOORE OF KANSAS. Certainly.

The CHAIRMAN. We have a pretty hardworking staff here since we have had a lot of hearings. But I will say this: Rather than wait for a whole transcript if there is a particular piece that the gentleman is concerned about we could have the stenographers prepare that piece for him.

Mr. MCHENRY. Thank you.

The CHAIRMAN. A whole transcript may take a while, but a particular piece we could break it out. So if you would designate to the staff what you want to look at so you could formulate your question based on that you can get it tomorrow.

Mr. MCHENRY. Thank you, Mr. Chairman. And thank you, Mr. Chairman.

Chairman MOORE OF KANSAS. And again I just want to thank all of the witnesses for their testimony this afternoon. I think this gives us a better understanding of how the TARP process works.

We need to continue to keep pressing for taxpayer protections throughout TARP.

And I look forward to working with Republicans and Democrats. These issues should not be partisan at all. We are all in this together, as well as the Treasury Department and TARP oversight organizations to finish this. And I again thank the witnesses.

The hearing is concluded.

[Whereupon, at 5:48 p.m., the hearing was adjourned.]

A P P E N D I X

July 22, 2009

"TARP Oversight: Warrant Repurchases and Protecting Taxpayers"
Subcommittee on Oversight and Investigations
House Financial Services Committee
July 22, 2009

Opening Statement from Chairman Dennis Moore [KS-03]

The past month or two, it has been nice to see some good news regarding TARP. After some upbeat results from the stress tests on the largest financial firms, ten of the largest bank holding companies were authorized to pay back $68.2 billion of TARP funds.

If you include smaller banks, a total of over $70 billion has been repaid to U.S. taxpayers. And this news coming after the Treasury Department injected more than $200 billion to more than 600 banks to stabilize the financial sector.

When Congress enacted TARP last year, we authorized the Treasury Department to request that firms receiving TARP funds issue warrants. This provides an opportunity for taxpayers to share in the upside for their investments. These warrants give us the right to buy shares of a company at a set price at some point in the future, much like an employee stock options.

But as you might imagine, whenever the government is the key actor in executing these warrants, unlike an employee stock option, there are a number of other policy issues and concerns that have to be weighed and dealt with. Even still, I am firmly committed to doing all we can to ensure taxpayers are fully repaid.

On May 8th, Old National Bancorp became the first TARP recipient bank to repay its TARP funding and repurchase their warrants held by Treasury. The bank paid $1.2 million to buy back these warrants. But what concerned me was a professor from the University of Louisiana at Lafayette, Professor Linus Wilson, analyzed this transaction very closely.

He determined that the warrants were worth at a minimum $1.5 million and as much as $6.9 million. So at the low end, Treasury was off by $300,000, and in the worst case, Treasury missed a return of an additional $5.4 million. $5 million might not sound like a lot of money when we are talking about billions and trillions of dollars in financial rescue aid, but if you consider the 600 other banks that will eventually need to repurchase their warrants, this money quickly adds up to a big potential return for U.S. taxpayers.

I wrote a letter to Secretary Geithner on June 2nd, urging him in no uncertain terms that he act to "protect the taxpayers' investments in these firms by maximizing returns on these warrants." I carbon copied SIGTARP, COP and GAO, and two weeks later, I received a joint letter from Special Inspector General Barofsky and Professor Warren expressing their commitment to transparency.

They noted a coordinated effort between COP and SIGTARP to review "whether those [warrant repurchasing] procedures provide fair value to American taxpayers."

Earlier this month, I was glad to see COP issue a report entirely focused on TARP repayments, including the repurchase of stock warrants. Similar to the analysis done by Professor Linus, COP found in the first eleven banks that repurchased their warrants, Treasury was receiving only 66 percent of what they could have received for taxpayers. COP notes that these small banks represent only a fraction of one percent of all warrants issued, but if this trend continues, taxpayers could miss out on an additional $2.7 billion worth of returns on their investment.

But on the same day the COP report was released, we received some good news when the *Wall Street Journal* reported that JPMorgan Chase has decided to pursue repurchasing its warrants through a public auction. They were frustrated with the Treasury Department for demanding too high a price for their warrants. I am very glad the Treasury Department is holding a tough line, especially against the largest of the TARP recipients.

And today, Goldman Sachs announced they will pay $1.1 billion to redeem their warrants, representing an annualized return of 23 percent for U.S. taxpayers. That sounds pretty good, but is it enough? I will keep pushing to make sure every single TARP dollar that helped stabilize our financial sector is fully repaid so that our children and grandchildren are not left with the tab.

I look forward to hearing from our witnesses today, especially the new TARP administrator and Assistant Secretary for Financial Stability, Mr. Herb Allison. He has one of the toughest jobs in the country, and I look forward to Treasury's viewpoint on how they weigh these difficult decisions to stabilize the financial sector while protecting taxpayers.

And the strong oversight Congress put in place when we created TARP continues to publish what amounts to thousands of pages of oversight reports, all free and available online, examining every angle and aspect of TARP. Just this week, SIGTARP published their third quarterly report, and I look forward to hearing Mr. Barofsky, Professor Warren, and Mr. McCool's testimony today.

Assistant Secretary for Financial Stability Herbert M. Allison, Jr.
Written Testimony on TARP
House Committee on Financial Services
Subcommittee on Oversight and Investigations
July 22, 2009

Chairman Moore, Ranking Member Biggert and members of the Subcommittee on Oversight and Investigations, thank you for the opportunity to introduce myself and to discuss Treasury's efforts to stabilize and repair the nation's financial system. Today, I will provide you with an update on our efforts to stabilize the financial system through a comprehensive range of programs under the both Troubled Assets Relief Program (TARP) and the Financial Stability Plan (FSP). I will also update you on our our efforts to work with our four oversight bodies and discuss some of our challenges and priorities going forward.

Introduction

First, I would like to describe my own background and offer a few thoughts that are guiding me in my new assignment as the Assistant Secretary for Financial Stability.

I began my career as an officer in the U.S. Navy, spending four years on active duty, including one year in Vietnam.

After business school, I spent 28 years 28 years with Merrill Lynch, leaving as president in 1999. This was a time when Merrill was noted for its commitment to strong corporate values. I learned from my experiences at Merrill that the long-term success of financial institutions depends on sound corporate governance, including independent checks and balances, tight control over risk, and executive compensation geared to long-term performance on behalf of clients, as well as shareholders. I believe that I contributed to strengthening Merrill's governance practices in the 1990s.

Since leaving the firm a decade ago, I've led two other major financial institutions through transitions necessary for their long-term success. In 2002, I became chairman and C.E.O. of TIAA-CREF, a leading provider of retirement and asset management services. We adapted the company to changing markets, created independent risk management and doubled the company's capital so we could withstand a harsh investment climate.

As a result, TIAA-CREF is now one of very few financial companies that carry a triple-A ratings. And during my tenure, TIAA-CREF became the first company in the Fortune 100 to allow its stakeholders an advisory role on executive compensation.

Last September, I was named C.E.O. of the Federal National Mortgage Association as that company was placed into government conservatorship. I joined Treasury in April.

Update on the TARP

Over the past 18 moths, the downward spiral in our financial system and escalating housing crisis was causing tremendous harm, not only to financial firms of all sizes, but also to ordinary families and businesses across the country.

In response, Congress passed the Emergency Economic Stabilization Act (EESA) last October establishing the Troubled Assets Relief Program (TARP) and giving Treasury the necessary tools and flexibility to stabilize the financial system and restore the flow of credit to consumers and business.

Our mandate under EESA is two-fold: to stabilize the financial system while protecting the taxpayer. Let me be clear that Treasury has designed each and every one of our financial stability programs with these two objectives in mind. The American people have benefited from the financial rescue package. The financial crisis, and the ensuing economic downturn, would have been far worse without this legislation and our implementation of it through the TARP.

Today, I want to update you on our progress.

In just 10 months since the passage of the EESA and only six months under the new Administration, Treasury moved aggressively to confront the worse financial crisis in decades.

Treasury has created 10 programs under the TARP and the Financial Stability Plan.[1] Together, these programs provide much needed capital to the financial system, help struggling homeowners stay in their homes, initiated recovery of the markets for consumer and business lending and provided a mechanism for removing legacy toxic assets from the balance sheets of financial institutions. More specifically:

- We have invested more than $200 billion in 657 financial institutions of all sizes through the Capital Purchase Program
- We have provided support to three systemically significant institutions
- Treasury launched an unprecedented housing program to help millions of homeowners
- We have assisted with the restructuring of both General Motors and Chrysler through the bankruptcy process, accomplished with speed previously considered impossible; as a result, both companies are leaner and better able to compete today;
- Together with the Federal Reserve, we have helped to restart the securitization markets, a key source of credit to consumers and businesses; and
- Earlier this month, Treasury launched the Public-Private Investment Program to help remove legacy assets from the balance sheets of financial institutions so they can redeploy capital to support new lending;
- Treasury issued regulations guiding executive compensation at firms receiving TARP funds

[1] Asset Guarantee Program (AGP), Automotive Industry Financing Program (AIFP), Capital Purchase Program (CPP), Systemically Significant Failing Institutions (SSFI) Program, Targeted Investment Program (TIP), Capital Assistance Program (CAP), Term Asset-Backed Securities Loan Facility (TALF), Making Home Affordable (MHA) Program, Public-Private Investment Program (PPIP) and Unlocking Credit for Small Businesses

To date, we have allocated about $643 billion to our EESA programs. We have actually spent $$362.6 billion of that amount. We have also received over $70 billion in CPP repayments from 34 institutions and $6.6 billion in dividend payments from participants in all TARP programs. Finally, we are beginning to receive proceeds from the sale of warrants by Treasury through the CPP.

As you can see from that summary, Treasury has accomplished a great deal in just 10 months, all while building a new office of financial stability. However, we have much more to do, as described later in my testimony.

Update on the Capital Purchase Program (CPP)

In the brief time that I have, I will give you some additional details on our key programs:

First of all, I am pleased to report on progress we have made in the Capital Purchase Program. Treasury established this program in October 2008 to stabilize the financial system by building the capital base of viable U.S. financial institutions, enabling them to continue to lend to businesses and consumers during this unprecedented and prolonged financial crisis. We designed the CPP to support the broad range of institutions that compose our financial system, including small, community, regional, national banks, Community Development Financial Institutions and insurance companies. The amount of investment has ranged from as small as $301,000 to $25 billion. In May, Secretary Geithner announced the re-opening of the CPP for small and community banks across the country, recognizing the critical role these banks play in our communities.

The CPP has been a success in achieving its goals and I want briefly highlight this success:

- We have provided capital to 657 institutions across 48 states, including over 300 small and community banks, enabling banks to absorb losses from bad assets while continuing to lend to consumers and businesses. We continue to invest in banks every week.
- We have ensured that the CPP benefits banking communities of all types by issuing 7 terms sheets to include publically-held intuitions, private institutions, S-corporations, and mutual institutions.
- As illustrated by Treasury's Lending and Intermediation Survey, the 21 largest CPP participants have been able to sustain their lending activities during this crisis, despite the significant headwinds posed by this recession.
- At least in part as a result of the CPP, we have seen important signs of stabilization in the financial markets. One key metric we use to measure the impact of the CPP is the three month LIBOR-OIS spread, a key measure of risk in the financial system. This spread has fallen from a high of 364 basis points in October 2008 to 31 basis points today.

While the CPP's primary objective was stabilizing the financial system, it was also designed it to protect the taxpayer by requiring firms to pay Treasury a dividend and provide Treasury warrants. To date, Treasury has received an estimated $5.2 billion in dividend payments on these CPP investments. We have also just begun to dispose of the warrants received in connection with these capital infusions, which provide an opportunity for the taxpayers to realize the upside on

the investments. Although we have sold only the warrants of a few banks, we have received over $200 million from such sales.

Warrants Process

This Committee and many others have expressed an interest in Treasury's warrant disposition program. Treasury has laid out a consistent and clear process for valuing warrants in a manner that protects taxpayers. We apply the same process consistently across all banks, large and small. Treasury is committed to getting fair value for the taxpayers for these warrants and we have made that process public on our website. I have also attached our policy statement and FAQs on this subject with my testimony for the record. Let me briefly outline this process.

When a publicly-traded institution repays Treasury's investment under the CPP, it has the contractual right to repurchase its warrants at fair market value through an independent valuation process directly from the Treasury. As part of this process, the firm will submit its valuation of the warrants and then Treasury, using a robust set of procedures, will determine whether the offer reflects fair market value and then will accept or decline that offer. If Treasury and the firm cannot agree on fair market value for the warrants, the warrants will be sold by Treasury using an auction process.

One source of complexity in valuing the warrants held by Treasury is that these financial instruments do not trade on any market and therefore do not have observable market prices. Simple models cannot give us price. Their values can only be estimated. As such, we established and are following a comprehensive approach to estimating these values, which involves using a variety of inputs including a set of well-known financial models. These models include, but are not limited to, binomial and Black-Scholes option-pricing models, which are widely used in financial markets. Treasury also consults with third-party market participants as to what they would be willing to pay for the warrants. We obtain quotes from at least three separate market participants that regularly invest in, or trade, similar securities. In addition, we have retained outside investment managers to provide full, independent valuations. Together, these various methods constitute a robust and consistent process for estimating value and protecting the taxpayers' interests. The significant differences in the modeled valuations that Treasury and outside observers arrived at are due to differences in modeled assumptions as well as variations in stock prices as of the dates the valuations were made.

Treasury has decided to sell the warrants within several months after they are eligible for sale, rather than hold them for a substantial period. In reaching that decision, Treasury carefully considered its obligations under EESA and weighed a number of policy and financial considerations.

- First, the President has clearly stated that his objective is to dispose of the government's investments in individual companies as quickly as is practicable. Accordingly, Treasury has decided that the extraordinary government interventions that were necessitated by the crisis should be unwound as quickly as is consistent with Treasury's mandate under EESA to restore liquidity and stability to the financial system, while protecting the interests of taxpayers.

- Second, the potential upside inherent in the warrants is reflected in their current valuation, which takes into account the possibility that the underlying stock could rise in the future. Therefore, selling the warrants in the near term, as opposed to holding them, does not give away the potential upside inherent in the warrants.
- Third, the standard valuation models take into account an option's remaining life. The option value of the warrant decays on an accelerating basis as its remaining term decreases.

As you know, there has been intense interest in this process from Congress and our oversight bodies. As with all aspects of the TARP program, Treasury welcomes the recommendations and comments of others as we constantly strive for improvement, transparency and accountability in all our programs. In developing our valuation and repurchase process, we consulted with numerous experts, market makers, and industry participants. As we move forward, it is important to note that less than one-quarter of one-percent of the warrants that Treasury holds have been disposed. We will continue to refine our process with the aim of protecting the taxpayer's investment.

Making Home Affordable Modification Program

Next, I will describe the Administration's effort to keep Americans in their homes. Within a month of taking office, on February 18th, President Obama and Secretary Geithner announced the Making Home Affordable (MHA) Program, a critical element of Treasury's Financial Stability Plan. This program was broadly designed to stabilize the U.S. housing market and offer assistance to millions of homeowners by reducing mortgage payments and preventing avoidable foreclosures.

This program has three key initiatives: the Home Affordable Refinance Program, the Home Affordable Modification Program, and support for the Government-Sponsored Enterprises (GSEs)- Fannie Mae and Freddie Mac. In addition, we have announced a number of new measures, such as the Second Lien Program and the Foreclosure Alternatives Program. We are working closely with servicers to expand nationwide capacity to accommodate the number of eligible borrowers who can receive assistance through the program. In addition, we are taking a number of steps to expedite implementation, including more standardization of documentation and disclosure of the NPV evaluation.

An initiative of this scale has never been previously attempted. Already our progress has been substantial and momentum continues to build. Among the markers of our success to date:

- We have signed contracts with 31 servicers, including the five largest. Between loans covered by these servicers and loans owned or guaranteed by the GSEs, more than 85 percent of all mortgage loans in the country are now covered by the program.
- Over 180,000 trail modifications are underway and 354,000 trial modifications have been offered under the program.

At this early date, MHA has been successful in modifying mortgages for at risk borrowers to sustainably affordable levels, and helping to avoid preventable foreclosures. We are on pace to meet the program's stated goals of helping millions of Americans avoid foreclosure.

Yet, we recognize that much more has to be done to help homeowners and adapt to changing economic forces. Challenges remain in implementing and scaling up the program, and we are committed to rapidly overcoming those challenges, reaching reach as many homeowners as possible and keep them in their homes.

Term Asset-Backed Securities Loan Facility (TALF)

Another successful program is the Term Asset-Backed Securities Loan Facility (TALF), which Treasury and the New York Fed established to re-start the critical non-bank securitization market. Treasury and the Federal Reserve significantly expanded the TALF to include as eligible collateral both newly-issued and legacy commercial mortgage-backed securities ("CMBS"), as well as securities backed by insurance premium finance loans.

We are already seeing the positive impact of TALF on facilitating the flow of credit to consumers and small businesses. Since TALF was launched in March, the cost of financing of TALF-eligible collateral has fallen by 40-60 percent from its December 2008 peak. In the aggregate, TALF has supported $53 billion of newly issued consumer asset backed securities. The market for new issuance of ABS had shut down at the end of 2008 and remained effectively closed until TALF became operational. Importantly, we have seen renewed participation in the securitization market from a range of institutional investors, such as pension funds. This re-starting of the market translates into increased consumer and small business lending and, in some cases, lower loan rates for consumers.

Public Private Investment Program (PPIP)

Earlier this month, Treasury announced its selection of nine asset managers for the Legacy Securities Public Private Investment Program (PPIP) to remove legacy assets from the balance sheets of financial institutions. The PPIP is a critical element of Treasury's Financial Stability Plan and is designed to support market functioning and facilitate price discovery in the important asset-backed securities markets, allowing banks and other financial institutions to re-deploy capital and extend new credit to households and businesses

Under the PPIP, Treasury will provide up to $30 billion of equity and debt to funds established with private sector fund managers and investors to purchase legacy securities. The PPIP allows the Treasury to partner with leading investment management firms in a way that increases the flow of private capital into these markets while maintaining an "upside" for US taxpayers.

Treasury took a number of comprehensive measures to enhance the potential of this program and to protect the taxpayer. We consulted closely with the SIGTARP as we developed a robust framework for compliance, governance and controlling conflicts of interest. Treasury also ensured that the PPIP includes a spectrum of minority, women and veteran owned businesses that represent our communities. The pre-qualified Legacy Securities PPIP fund managers

selected by Treasury have established meaningful partnerships with these types of businesses in roles that include asset management, capital raising, broker-dealer, investment sourcing, research, advisory, cash management and fund administration services. Collectively, the nine pre-qualified PPIP fund managers have established 10 such unique relationships in five states.

The selected fund managers will begin raising private capital in the next month and we hope to have our first purchases under the program within a few months.

Automotive Industry Financing Program

In December of last year, Treasury began to institute measures to prevent a significant disruption of the American automotive industry, which would pose a systemic risk to financial market stability and have immeasurably harmful on the U.S. economy. Our auto program required the participating institutions to implement plans to submit achieve long-term viability.

In only a few months, both General Motors and Chrysler – working with their stakeholders and the President's Auto Task Force – have achieved remarkable progress. After moving at unprecedented speed through fair and open bankruptcy processes, both the New Chrysler and the New GM have emerged from a fair and open bankruptcy protection as stronger global companies. While these transformations have required exceedingly difficult sacrifices from all stakeholders, they have given the two great American companies a new lease on life and has kept hundreds of thousands of Americans working. For more details, I invite you to read the testimony of my colleague, Ron Bloom, head of the auto task force, who testified yesterday.

Market Impact

The TARP has been a key to stabilizing the financial system and preventing greater deterioration in the availability of credit to households, businesses, and communities. Treasury's actions through the TARP and the Financial Stability Plan have provided significant support to institutions and core financial markets and had a positive effects on bank and nonbank lending activity, reinforced by other actions Treasury and the regulators have taken since the onset of the crisis in 2007.

In particular, the May release of the results of the Supervisory Capital Assessment Program, or the Stress Tests, for the nation's 19 largest bank holding companies has provided greater transparency with respect to capital levels for these large institutions and has helped to increase investors' confidence in banks and financial markets more generally. The 19 participating banks have been raising funds to meet their capital buffer requirements, announcing fund-raising measures totaling approximately $120 billion, including $32 billion in non-FDIC guaranteed bonds. Ten of these 19 banks have already re-paid Treasury's CPP investment.

Amid signs of recovery in the financial markets in the first half of 2009:

- Credit spreads for AAA investment grade corporate bonds have fallen 110 basis points since their peak in October.
- High yield corporate issuance in the first half of 2009 was about $62 billion, up 26% from the same period last year.

- Issuance of asset-backed securities has also recently improved in response to the TALF, with $53 billion in consumer securitizations this year.

There are also some signs that the economy is beginning to mend:

- Consumer confidence has increased significantly after sliding in the early part of the year.
- Housing starts have moved higher – starts of single-family units were up 32 percent through June since their low in February.
- House purchases have begun to pick up in some parts of the country

Nevertheless, our financial system and our economy remain vulnerable. Even with the modest improvement in conditions many forecasters expect in the second half of this year, unemployment is still rising and house prices continue to fall. The level of home foreclosures remains high and strains in commercial real estate continue to build. This is why Treasury must remain vigilant. We must press ahead with our financial stabilization efforts to alleviate strains in the financial sector and, at the same time, ensure that the broader economy will be supported by comprehensive economic recovery programs.

Transparency and Accountability in all EESA Programs

Upon taking office, President Obama committed to increased transparency, accountability and oversight in our government's approach to stabilizing the financial system. Secretary Geithner further underscored Treasury's commitment to transparency in all our programs.

Today, I want to update you on the many steps we have taken since the creation of TARP and over the past seven months to fulfill that commitment. One of the Secretary and my priorities is to ensure that we enhance and provide transparency as our activities evolve. I will regularly update Congress on our progress.

Oversight Bodies
We have productive working relationships with our four oversight bodies: the Special Inspector General of the TARP (SIGTARP), the Government Accountability Office (GAO), the Congressional Oversight Panel (COP) and the Financial Stability Oversight Board (FINSOB).

We believe that communication is essential, so we regularly interact with the oversight entities regarding all TARP programs and keep them apprised of our progress on their recommendations Our respective staffs interact several times a week and I personally meet with the SIGTARP weekly.

Treasury has given careful consideration to each of their recommendations, many of which track initiatives that Treasury either has already taken or is in the process of implementing. The GAO has consistently noted the progress that Treasury has made in meeting its recommendations.

In the rare cases where we have declined to implement a recommendation, we have sought to reach the recommendation's objectives by other means that we consider to be more practical or

effective and have explained our approach to the oversight bodies. In those rare situations, we have explained our reasons to the oversight body and to Congress in detail.

Reporting
Treasury has met each of its Congressionally-mandated TARP reporting requirements on time and we will continue to do so. We publish all of these reports on our website, in addition to sending them to the respective Congressional Committees of oversight.

As of July 20, 2009, Treasury has published:

- **64 Transaction Reports:** in accordance with section 114 of the EESA: these include details on each investment in every institution under every program, as well as repayments of TARP investments. That includes dates and amounts invested.
- **8 Section 105 Monthly Congressional Reports:** these provide qualitative program updates and detailed financial statements on all our programs
- **7 Tranche Reports:** in accordance with section 105 of the EESA, these reports outline the details of the transactions related to each $50 billion incremental TARP investment

Treasury is often asked about lending activities by banks participating in the CPP. So, in January, we launched an important initiative to help the public easily assess the lending and intermediation activities of banks participating in the CPP, starting with the top 21 banks since they account for over 50% of lending in our communities. Treasury has now published 6 monthly Lending Surveys. Then, in March, we expanded the survey to include all banks in the CPP, and have now published 3 Lending Reports with data from over 500 banks.

Treasury, Congress, our oversight bodies and many banks agree that these reports are of critical importance in helping the public understand the lending environment during this crisis. That is why, as the largest banks have repaid Treasury's CPP investment, we have asked and they have agreed to continued participation in the "top 21" Lending Survey until the end of the year. That includes 10 of the largest banks that repaid Treasury last month and account for 22% of banking system assets and 15% of loans. Treasury commends this decision by the 10 banks and we are grateful for their work in helping us to provide such useful information to taxpayers.

Website
In addition to publishing monthly and weekly reports, Treasury has launched a public communications initiative designed to more directly communicate how our policies will stabilize the financial system and restore the flow of credit to consumers and businesses. A key element to this enhanced public outreach effort is providing user-friendly resources online. Earlier this year, Treasury launched a new website- *www.FinancialStability.gov* that details financial stability programs in a simplified and straightforward manner. We continue to improve this site every month.

Specifically, *FinancialStability.gov* provides all of our TARP reports, lists the institutions participating in Treasury's programs, and makes available all of the detailed contracts defining those investments. As of today, Treasury has posted more than 500 investment contracts, in addition to terms and program guidelines for all programs under the EESA.

Challenges Ahead and Priorities

Financial stability is a necessary precondition to the resumption of economic growth. Treasury and other institutions of government have accomplished a great deal in a short amount of time to achieve this goal. However, we recognize that we have more work ahead of us. The work of Treasury's Office of Financial Stability, which I direct, is essential to President Obama's and Secretary Geithner's plans for financial stability and economic recovery.

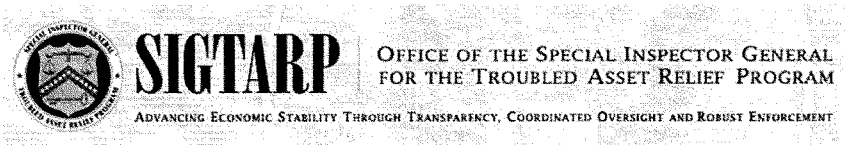
Ending the financial crisis is not primarily about helping banks, but about restoring the flow of credit to consumers and businesses and alleviating the real hardships that Americans face every day. Healthy and vibrant financial institutions are critical for this, as they are they key sources of a range of financial services that we depend on every day. Without healthy banks, consumers cannot access the credit they need to buy homes, manage their everyday expenses and make other financial commitments. Small businesses cannot buy the new equipment, raw materials and inventory that they need to expand. Larger businesses cannot make the continuous adjustments required to function in a changing global marketplace.

It is with thee goals in mind that we have created the programs under the TARP and the Financial Stability Plan. As I work with my dedicated colleagues in Treasury on these programs, I will strive to be a prudent investor on behalf of the American people and to protect the taxpayers who have entrusted us with so much of their money.

My top priorities will be the following:

- First, I will carefully review the controls over taxpayers' money, giving special attention to compliance with laws and directives, managing risks and internal audits. In this regard, I will work closely with Congress and all oversight bodies.
- Second, I will strive to maximize the effectiveness of financial stability programs, restoring soundness to financial institutions and liquidity to our markets.
- Finally, I will emphasize transparency and interaction with Congress so that the American people will know:
    - What we are doing with their money
    - Why we are doing it and
    - How it is helping the financial system, the economy and their lives.

Thank you and I look forward to answering your questions.



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HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

STATEMENT OF NEIL BAROFSKY

SPECIAL INSPECTOR GENERAL
TROUBLED ASSET RELIEF PROGRAM

BEFORE THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

July 22, 2009

Chairman Moore, Ranking Member Biggert and Members of the Committee, I am honored to appear before you today to deliver to this Committee my quarterly report to Congress.

In the nine months since the Emergency Economic Stabilization Act of 2008 ("EESA") authorized creation of the Troubled Asset Relief Program ("TARP"), the U.S. Department of the Treasury ("Treasury") has created 12 separate programs involving Government and private funds of up to almost $3 trillion. From programs involving large capital infusions into hundreds of banks and other financial institutions, to a mortgage modification program designed to modify millions of mortgages, to public-private partnerships using tens of billions of taxpayer dollars to purchase "toxic" assets from banks, TARP has evolved into a program of unprecedented scope, scale, and complexity. Moreover, TARP does not function in a vacuum but is rather part of the broader Government efforts to stabilize the financial system, an effort that includes dozens of inter-related programs operated by multiple Federal agencies.

WARRANTS

Pursuant to one of the initial TARP programs, the Capital Purchase Program ("CPP"), Treasury allocated $250 billion to provide funds to qualified financial institutions to build capital, increase the flow of financing, and support the economy. As of March 2009, Treasury forecast spending only $218 billion in this program.

The economic terms of the CPP transactions were that, in exchange for the TARP infusions, Treasury received senior preferred stock of the banks that pays a 5% dividend for five years and 9% thereafter. Consistent with the terms of EESA, Treasury also received warrants – option to purchase additional stock. For publicly traded banks, Treasury received warrants of common stock; for privately held banks, Treasury received warrants for additional preferred shares, which were immediately exercised. As banks repurchase their CPP investments, they have the option to purchase the warrants. How those warrants are valued is an important matter that greatly affects the taxpayers' return on these investments.

As a part of SIGTARP's oversight efforts, we have been coordinating our efforts with other agencies to avoid duplication, and it has been my pleasure to work with my co-panelist from the Government Accountability Office ("GAO"), Thomas McCool, and with the Congressional Oversight Panel ("the Panel"), chaired by co-panelist, Professor Elizabeth Warren. As a part of this coordination, on June 10, 2009, SIGTARP entered into a special coordinated effort with the Panel to examine the pricing of warrants in the context of the return of CPP funds by TARP-recipients. The Panel issued a July 10, 2009, report valuing the warrants that Treasury had bought to date. SIGTARP plans to conduct an audit of the warrant repurchase/sale process and will have the benefit of the Panel valuations as context. SIGTARP's audit will examine several key questions, including exanimation of the process Treasury has established to value the warrants for re-purchase, whether Treasury follows a clear and consistent process in considering potentially differing valuations of warrants, and the extent to which Treasury has established an objective basis for its ultimate valuation decisions. SIGTARP, if appropriate, will issue recommendations with the report of this audit.

OTHER AREAS OF INTEREST

SIGTARP has made a variety or recommendations concerning the TARP program and has worked hard to advance the general understanding of the TARP. With respect to recommendations, one of SIGTARP's most important oversight responsibilities is to provide recommendations to Treasury so that TARP programs can be designed or modified to facilitate effective oversight and transparency and to prevent fraud, waste, and abuse. SIGTARP's reports detail these recommendations and provide updates on their implementation. Two categories of recommendations, however, are worth highlighting in particular:

Transparency in TARP Programs

Although Treasury has taken some steps towards improving transparency in TARP programs, it has repeatedly failed to adopt recommendations that SIGTARP believes are essential to providing basic transparency and fulfill Treasury's stated commitment to implement TARP "with the highest degree of accountability and transparency possible." SIGTARP's July 21, 2009, Quarterly Report includes one new recommendation and there are several other additional unadopted recommendations from prior quarterly reports:

- **Use of Funds Generally:** One of SIGTARP's first recommendations was that Treasury require all TARP recipients to report on the actual use of TARP funds. Other than in a few agreements (with Citigroup, Bank of America, and AIG), Treasury has declined to adopt this recommendation, calling any such reporting "meaningless" in light of the inherent fungibility of money. SIGTARP continues to believe that banks can provide meaningful information about what they are doing with TARP funds — in particular what activities they would not have been able to do but for the infusion of TARP funds. That belief has been supported by SIGTARP's first audit, in which nearly all banks were able to provide such information.

- **Valuation of the TARP Portfolio:** SIGTARP has recommended that Treasury begin reporting on the values of its TARP portfolio so that taxpayers can get regular updates on the financial performance of their TARP investments. Notwithstanding that Treasury has now retained asset managers and is receiving such valuation data on a monthly basis, Treasury has not committed to providing such information except on the statutorily required annual basis.

- **Disclosure of TALF Borrowers Upon Surrender of Collateral:** In TALF, the loans are non-recourse, that is, the lender (Federal Reserve Bank of New York) will have no recourse against the borrower beyond taking possession of the posted collateral (consisting of asset-backed securities ("ABS")). Under the program, should such a collateral surrender occur, TARP funds will be used to purchase the surrendered collateral. In light of this use of TARP funds, SIGTARP has recommended that Treasury and the Federal Reserve disclose the identity of any TALF borrowers that fail to repay the TALF loan and must surrender the ABS collateral.

- **Regular Disclosure of PPIF Activity, Holdings, and Valuation:** In the PPIP Legacy Securities Program, the taxpayer will be providing a substantial portion of the funds (contributing both equity and lending) that will be used to purchase toxic assets in the Public-

> Private Investment Funds ("PPIFs"). SIGTARP is recommending that all trading activity, holdings, and valuations of assets of the PPIFs be disclosed on a timely basis. Not only should this disclosure be required as a matter of basic transparency in light of the billions of taxpayer dollars at stake, but such disclosure would also serve well one of Treasury's stated reasons for the program in the first instance: the promotion of "price discovery" in the illiquid market for MBS. Treasury has indicated that it will not require such disclosure.

Although SIGTARP understands Treasury's need to balance the public's transparency interests, on one hand, with the interests of the participants and the desire to have wide participation in the programs, on the other, Treasury's default position should always be to require more disclosure rather than less and to provide the investors in TARP — the American taxpayers — as much information about what is being done with their money as possible. Unfortunately, in rejecting SIGTARP's basic transparency recommendations, TARP has become a program in which taxpayers (i) are not being told what most of the TARP recipients are doing with their money, (ii) have still not been told how much their substantial investments are worth, and (iii) will not be told the full details of how their money is being invested. In SIGTARP's view, the very credibility of TARP (and thus in large measure its chance of success) depends on whether Treasury will commit, in deed as in word, to operate TARP with the highest degree of transparency possible.

Imposition of Information Barriers, or "Walls," in PPIP

In the April 21, 2009, Quarterly Report, SIGTARP noted that conflicts of interest and collusion vulnerabilities were inherent in the design of PPIP stemming from the fact that the PPIF managers will have significant power to set prices in a largely illiquid market. These vulnerabilities could result in PPIF managers having an incentive to overpay significantly for assets or otherwise using the valuable, proprietary PPIF trading information to benefit not the PPIF, but rather the manager's non-PPIF business interests. As a result, SIGTARP made a series of recommendations in the April Quarterly Report, including that Treasury should impose strict conflicts of interest rules.

Since the April Quarterly Report, Treasury has worked with SIGTARP to address the vulnerabilities in PPIP, and SIGTARP made a series of specific recommendations, suggestions, and comments concerning the design of the program. Treasury adopted many of SIGTARP's suggestions and has developed numerous provisions that make PPIP far better from a compliance and anti-fraud standpoint than when the program was initially announced.

However, Treasury has declined to adopt one of SIGTARP's most fundamental recommendations — that Treasury should require imposition of an informational barrier or "wall" between the PPIF fund managers making investment decisions on behalf of the PPIF and those employees of the fund management company who manage non-PPIF funds. Treasury has decided not to impose such a wall in this instance, despite the fact that such walls have been imposed upon asset managers in similar contexts in other Government bailout-related programs, including by Treasury itself in other TARP-related activities, and despite the fact that three of the nine PPIF managers already must abide by similar walls in their work for those other programs.

If nothing else, the reputational risk that Treasury and the program could face if a PPIF manager should generate massive profits in its non-PPIF funds as a result of an unfair advantage, even if that

advantage is not strictly against the rules, justifies the imposition of a wall. Failure to impose a wall, on the other hand, will leave Treasury vulnerable to an accusation that has already been leveled against it — that Treasury is using TARP to pick winners and losers and that, by granting certain firms the PPIF manager status, it is benefitting a chosen few at the expense of the dozens of firms that were rejected, of the market as a whole, and of the American taxpayer. This reputational risk is not one that can be readily measured in dollars and cents, but is rather a risk that could put in jeopardy the fragile trust the American people have in TARP and, by extension, their Government.

TARP in Context

During the last 36 hours there has been considerable media coverage and interest in section 3 of SIGTARP's July Quarterly Report, which attempts to place the TARP into context in terms of how it has evolved and of the greater government-wide effort. TARP, as originally envisioned in the fall of 2008, would have involved the purchase, management, and sale of up to $700 billion of "toxic" assets, primarily troubled mortgages and mortgage-backed securities ("MBS"). That framework was soon shelved, however, and TARP funds are being used, or have been announced to be used, in connection with 12 separate programs that, as set forth in Table 1 below, involve a total (including TARP funds, loans and guarantees from other agencies, and private money) that could reach nearly $3 trillion. Through June 30, 2009, Treasury has announced the parameters of how $643.1 billion of the $700 billion would be spent through the 12 programs. Of the $643.1 billion that Treasury has committed, $441 billion has actually been spent.

TOTAL POTENTIAL FUNDS SUBJECT TO SIGTARP OVERSIGHT, AS OF 6/30/2009 ($ BILLIONS)			
Program	**Brief Description or Participant**	**Total Projected Funding at Risk ($)**	**Projected TARP Funding ($)**
Capital Purchase Program ("CPP")	Investments in 649 banks to date; 8 institutions total $134 billion; received $70.1 billion in capital repayments	$218.0 ($70.1)	$218.0 ($70.1)
Automotive Industry Financing Program ("AIFP")	GM, Chrysler, GMAC, Chrysler Financial; received $130.8 million in loan repayments (Chrysler Financial)	79.3	79.3
Auto Supplier Support Program ("ASSP")	Government-backed protection for auto parts suppliers	5.0	5.0
Auto Warranty Commitment Program ("AWCP")	Government-backed protection for warranties of cars sold during the GM and Chrysler bankruptcy restructuring periods	0.6	0.6
Unlocking Credit for Small Businesses ("UCSB")	Purchase of securities backed by SBA loans	15.0	15.0
Systemically Significant Failing Institutions ("SSFI")	AIG investment	69.8	69.8
Targeted Investment Program ("TIP")	Citigroup, Bank of America investments	40.0	40.0
Asset Guarantee Program ("AGP")	Citigroup, ring-fence asset guarantee	301.0	5.0
Term Asset-Backed Securities Loan Facility ("TALF")	FRBNY non-recourse loans for purchase of asset-backed securities	1,000.0	80.0
Making Home Affordable ("MHA") Program	Modification of mortgage loans	75.0	50.0
Public-Private Investment Program ("PPIP")	Disposition of legacy assets; Legacy Loans Program, Legacy Securities Program (expansion of TALF)	500.0 – 1,000.0	75.0
Capital Assistance Program ("CAP")	Capital to qualified financial institutions; includes stress test	TBD	TBD
New Programs, or Funds Remaining for Existing Programs	Potential additional funding related to CAP; other programs	131.4	131.4
Total		**$2,365.0 – $2,865.0**	**$699.0**

Note: See Table 2.1 in Section 2 for notes and sources related to the information contained in this table.

As massive and as important as TARP is on its own, it is just one part of a much broader Federal Government effort to stabilize and support the financial system. Since the onset of the financial crisis in 2007, the Federal Government, through many agencies, has implemented dozens of programs that are broadly designed to support the economy and financial system. In our most recent quarterly report, we summarize these programs and the total potential support to the financial system as of 6/30/09, there is approximately $3.0 trillion outstanding, $4.7 trillion is the total support to date, including money that has been paid pack and programs that have ended. In total, the potential federal support through all of these programs is approximately $23.7 trillion, as indicted below:

INCREMENTAL FINANCIAL SYSTEM SUPPORT, BY FEDERAL AGENCY SINCE 2007 ($ TRILLIONS) Maximum Total Potential

	Current Balance	Balance as of 6/30/2009	Support Related to Crisis
Federal Reserve	$1.4	$3.1	$6.8
FDIC	0.3	0.3	2.3
Treasury — TARP (including Federal Reserve, FDIC components)	0.6	0.6	3.0
Treasury — Non-TARP	0.3	0.3	4.4
Other: FHFA, NCUA, GNMA, FHA, VA	0.3	0.3	7.2
Total	**$3.0**	**$4.7**	**$23.7**

Notes: Numbers affected by rounding. Amounts may include overlapping agency liabilities, "implied" guarantees, and unfunded initiatives. Total Potential Support does not account for collateral pledged. See the "Methodology for Estimating Government Financial Exposure" discussion in this section for details on the methodology of this chart. Other agencies include: FHFA, National Credit Union Administration ("NCUA"), Government National Mortgage Association ("GNMA"), Federal Housing Administration ("FHA"), and U.S. Department of Veterans Affairs ("VA").

For a full description of the backup for these numbers and the methodology for calculating them see Section 3 of our July Quarterly report.

Oversight Activities of SIGTARP

The oversight activities discussed above and all other SIGTARP efforts to date are detailed in SIGTARP's reports dated February 6, 2009,[1] April 21, 2009,[2] and July 21, 2009. Additionally, on July, 20, 2009, SIGTARP issued an audit report concerning how recipients of CPP funds reported their use of such funds.[3] In February 2009, SIGTARP sent survey letters to more than 360 financial

[1] See http://www.sigtarp.gov/reports/congress/2009/SIGTARP_Initial_Report_to_the_Congress.pdf.

[2] See http://www.sigtarp.gov/reports/congress/2009/April2009_Quarterly_Report_to_Congress.pdf.

[3] See http://www.sigtarp.gov/reports/audit/2009/SIGTARP_Survey_Demonstrates_That_Banks_Can_Provide_Meaningfu_%20Information_On_Their_Use_Of_TARP_Funds.pdf.

and other institutions that had completed TARP funding agreements through January 30, 2009. The audit report finds that, although most banks reported they did not segregate or track TARP fund usage on a dollar-for-dollar basis, they were able to provide insights into their actual or planned future use of TARP funds. For some respondents the infusion of TARP funds helped to avoid a "managed" reduction of their activities; others reported that their lending activities would have come to a standstill without TARP funds; and others explained that they used TARP funds to acquire other institutions, invest in securities, pay off debts, or that they retained the funds to serve as a cushion against future losses. In light of the audit findings, SIGTARP renews its recommendation that the Secretary of the Treasury require all TARP recipients to submit periodic reports to Treasury on their use of TARP funds.

SIGTARP's Investigations Division has developed rapidly and is quickly becoming a sophisticated white-collar investigative agency. Through June 30, 2009, SIGTARP has 35 ongoing criminal and civil investigations. These investigations include complex issues concerning suspected accounting fraud, securities fraud, insider trading, mortgage servicer misconduct, mortgage fraud, public corruption, false statements, and tax investigations. Two of SIGTARP's investigations have recently become public:

- **Federal Felony Charges Against Gordon Grigg:** On April 23, 2009, Federal felony charges were filed against Gordon B. Grigg in the U.S. District Court for the Middle District of Tennessee, charging him with four counts of mail fraud and four counts of wire fraud. The charges are based on Grigg's role in embezzling approximately $11 million in client investment funds that he garnered through false claims, including that he had invested $5 million in pooled client funds toward the purchase of the TARP-guaranteed debt. Grigg pleaded guilty to all charges and is scheduled for sentencing on August 6, 2009.
- **FTC Action Against Misleading Use of "MakingHomeAffordable.gov":** On May 15, 2009, based upon an action brought by the Federal Trade Commission ("FTC"), a Federal district court issued an order to stop an Internet-based operation that pretended to operate "MakingHomeAffordable.gov," the official website of the Federal Making Home Affordable program. According to the FTC's complaint, the defendants purchased sponsored links as advertising on the results pages of Internet search engines, and, when consumers searched for "making home affordable" or similar search terms, the defendants' ads prominently and conspicuously displayed "MakingHomeAffordable.gov." Consumers who clicked on this link were not directed to the official website, but were diverted to sites that solicit applicants for paid loan modification services. The operators of these websites either purport to offer loan modification services themselves or sold the victims' personally identifying information to others. SIGTARP is providing assistance to FTC during the investigation.

More than 50% of SIGTARP's ongoing investigations were developed in whole or in part through tips or leads provided on SIGTARP's Hotline (877-SIG-2009 or accessible at www.SIGTARP.gov). Over the past quarter, the SIGTARP Hotline received and analyzed more than 3,200 tips, running the gamut from expressions of concern over the economy to serious allegations of fraud.

Further, SIGTARP is in the process of completing audit reports concerning executive compensation restriction compliance, controls over external influences on the CPP application process, selection of the first nine participants for funds under CPP (with a particular emphasis on Bank of America), AIG

bonuses, and AIG counterparty payments. In addition, SIGTARP is undertaking a series of new audits, as follows:

- **Follow-up Assessment of Use of Funds by TARP Recipients:** This audit will examine use of funds by recipients receiving extraordinary assistance under the Systemically Significant Failing Institutions program, the Automotive Industry Financing Program, as well as insurance companies receiving assistance under CPP.

- **Governance Issues Where U.S. Holds Large Ownership Interests:** The audit, being conducted at the request of Senator Max Baucus, will examine governance issues when the U.S. Government has obtained a large ownership interest in a particular institution, including: (i) What is the extent of Government involvement in management of companies in which it has made sizeable investments, including direction and control over such elements as governance, compensation, spending, and other corporate decision making? (ii) To what extent are effective risk management, internal controls, and monitoring in place to protect and balance the Government's interests and corporate needs? (iii) Are there performance measures in place that can be used to track progress against long-term goals and timeframes affecting the Government's ability to wind down its investments and disengage from these companies? (iv) Is there adequate transparency to support decision making and to provide full disclosure to the Congress and the public?

- **Status of the Government's Asset Guarantee Program with Citigroup:** The audit examining the Government's Asset Guarantee Program ("AGP") with Citigroup, based upon a request by Representative Alan Grayson, will address a series of questions about the Government's guarantee of certain Citigroup assets through the AGP such as: (i) How was the program for Citigroup developed? (ii) What are the current cash flows from the affected assets? and (iii) What are the potential for losses to Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve under the program?

- **Making Home Affordable Mortgage Modification Program:** This audit will examine the Making Home Affordable mortgage modification program to assess the status of the program, the effectiveness of outreach efforts, capabilities of loan servicers to provide services to eligible recipients, and challenges confronting the program as it goes forward.

Operational Status

Regarding SIGTARP's operational status, we continue to filling out our ranks. As of July 20, 2009, we have hired 70 personnel, and have several new hires to begin over the coming weeks. Currently, SIGTARP's senior and upper-level management ranks are for the most part in place, and, thus, we anticipate that hiring will proceed rapidly. SIGTARP's efforts have been assisted by dual compensation and direct hire authorities that it has been provided via statute and regulation. We are very pleased with our progress, and we are confident that SIGTARP will achieve its current goal of approximately 160 full-time employees by the second quarter of FY 2010. Nonetheless, section 121(j) of EESA, as amended, provided $50 million for SIGTARP, but this figure will not be sufficient to fund SIGTARP's activities through FY 2010.

SIGTARP had not been established when Treasury submitted its initial FY 2010 budget request to the Office of Management and Budget ("OMB"), during the summer of 2008. Additionally, SIGTARP was not in a position to definitively project its FY 2010 needs when OMB reopened the FY 2010 budget in the early spring of 2009 (i.e., SIGTARP's key management and budget personnel either had not yet been hired or had just arrived). Thus, SIGTARP was effectively precluded from submitting a substantive request for additional funds when the budget was reopened. SIGTARP, accordingly, submitted to Treasury a request for an amendment of the FY2010 budget request in the amount of $23,300,000.

Cooperation

In spite of accounts in the media, to date, Treasury has cooperated with SIGTARP's information requests. Moreover, although SIGTARP and Treasury have disagreed, sometimes vociferously, over the design and implementation of TARP programs, SIGTARP believes that Treasury has engaged actively in consulting with SIGTARP about its concerns.

Chairman Moore, Ranking Member Biggert and Members of the Committee, I want to thank you again for this opportunity to appear before you, and I would be pleased to respond to any questions that you may have.

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the troubled asset relief program, please contact the SIGTARP Hotline.

Via Online: WWW.SIGTARP.GOV
Via Toll Free Phone: 877-SIG-2009
Via Fax: 202-622-4559

Via Mail: Hotline, Office of the SIGTARP
1500 Pennsylvania Ave., N.W. Suite 1064
Washington, D.C., 20220

United States Government Accountability Office

GAO

Testimony

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

For Release on Delivery
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TROUBLED ASSET RELIEF PROGRAM

Status of Efforts to Address Transparency and Accountability Issues

Statement of Thomas J. McCool, Director
Center for Economics, Applied Research and Methods

GAO
Accountability * Integrity * Reliability

GAO-09-920T

Chairman Moore, Ranking Member Biggert, and Members of the Subcommittee:

I am pleased to be here today to discuss our work on the Troubled Asset Relief Program (TARP), under which the Department of the Treasury (Treasury), through the Office of Financial Stability (OFS), has the authority to purchase and insure almost $700 billion in troubled assets held by financial institutions. [1] As you know, Treasury was granted this authority in response to the financial crisis that has threatened the stability of the U.S. banking system and the solvency of numerous financial institutions. The Emergency Economic Stabilization Act (the act) that authorized TARP on October 3, 2008, requires GAO to report at least every 60 days on findings resulting from our oversight of the status of actions taken under the program.[2] My statement today is based on our fifth mandated report, issued on June 17, 2009, which follows up on the previous recommendations and covers the actions taken as part of TARP through June 12, 2009.[3] Our oversight work under the act is ongoing, and our next report will be issued later this month, and will focus on TARP's loan modification program.

Specifically, this statement focuses on (1) the nature and purpose of activities that have been initiated under TARP, including repurchases of preferred shares and warrants; (2) Treasury's efforts to establish a management structure for TARP; and (3) outcomes measured by indicators of TARP's performance. To do this work, we reviewed

[1]The Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (2008) originally authorized Treasury to buy or guarantee up to $700 billion in troubled assets. The Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, Div. A,123 Stat. 1632 (2009), amended the act and reduced the maximum allowable amount of outstanding troubled assets under the act by almost $1.3 billion, from $700 billion to $698.741 billion.

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

[3]GAO, *Troubled Asset Relief Program: June 2009 Status of Efforts to Address Transparency and Accountability Issues*, GAO-09-658 (Washington, D.C.: June 17, 2009).

documents provided by OFS and conducted interviews with OFS officials. In addition, we have updated the disbursements and repurchases through July 10, 2009. We plan to continue to monitor the issues highlighted in the report, as well as future and ongoing capital purchases and ongoing repurchases.

We conducted this performance audit between April 2009 and June 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Summary

As of July 10, 2009, Treasury had disbursed about $361 billion of the roughly $700 billion in TARP funds (see table 1). Most of the funds (about $204 billion) went to purchase preferred shares and subordinated debentures of 651 financial institutions under the Capital Purchase Program (CPP), which continues to be OFS's primary vehicle for stabilizing financial markets. At the same time that Treasury continues to purchase preferred shares in institutions, other institutions have paid over $70 billion to repurchase shares. As of July 10, 2009, 12 of the 33 financial institutions that repurchased their preferred shares from Treasury had repurchased their warrants and 3 others had repurchased their warrant preferred stock from Treasury at an aggregate cost of about $80.3 million. Although OFS and the regulators have established criteria for accepting and approving CPP applications, the regulator's criteria for determining when institutions can repurchase preferred stock from Treasury lack adequate transparency. While Treasury has provided some limited information about the warrant valuation process, it has yet to provide the level of transparency at the transaction level that would address questions about whether the department is getting the best price for taxpayers. Treasury continued to operationalize its more recent programs, including the Capital Assistance Program (CAP). As part of this program, the Federal Reserve led the stress tests of the largest 19 U.S. bank holding companies, which revealed that 10 needed to raise additional capital to keep them strongly capitalized and lending even if economic conditions worsen. Whether any of the institutions will choose to participate in CAP has yet to be determined. While the Federal Reserve disclosed the stress test results, it had no plans to disclose information about the 19 institutions going forward. What information, if any, is disclosed will be left to the discretion of the affected institutions raising a number of

concerns, including that the institutions could disclose inconsistent or only selected information. Moreover, the Federal Reserve had not developed a mechanism to share information with OFS about the ongoing condition of the 19 bank holding companies that continue to participate in TARP programs. According to Treasury, its Financial Stability Plan has provided a basis for its communication strategy and Treasury plans to more regularly communicate with congressional committees of jurisdiction about TARP. However, this strategy is not fully implemented and all congressional stakeholders are not receiving information in a consistent or timely manner. A key component of the communication strategy is the new www.financialstability.gov Web site, which is designed to provide the public with a more user friendly format for accessing information about TARP. But, Treasury has not yet measured the public's satisfaction with the site.

While, OFS has made progress in establishing its management infrastructure, continued attention to hiring remains important, however, because some offices within OFS, including the Office of the Chief Risk and Compliance Officer, still have a number of vacancies that will need to be filled as TARP programs are fully implemented. Treasury has also continued to build the network of contractors and financial agents to support TARP administration and operations that have been key to OFS's efforts to develop and administer its TARP programs. Treasury has provided information to the public on procurement contracts and financial agency agreements, but has not included a breakdown of cost data by each entity. As a result, Treasury has missed an opportunity to provide additional transparency to its TARP operations.

GAO again notes the difficulty of measuring the effect of TARP's activities. As shown in table 3, credit market indicators suggest general improvements in various markets since October 2008. Specifically, the cost of credit and perceptions of risk in credit markets (as measured by premiums over Treasury securities) have decreased in interbank, mortgage, and corporate bond markets. Empirical analysis of the interbank market, which showed signs of significant stress in 2008, suggests that the CPP and programs outside of the TARP announced in October of 2008 resulted in a statistically significant improvement in risk spreads even when other important factors were considered. In addition, although Federal Reserve survey data suggest that lending standards remained tight, collectively the largest CPP recipients extended roughly $260 billion on average each month in new loans to consumers and businesses in the first quarter of 2009, up from $240 billion a month during the fourth quarter of 2008, according to the Treasury's loan survey.

Similarly, total mortgage originations have increased from the third quarter of 2008, although foreclosures have increased to unprecedented highs. However, attributing any of these changes directly to TARP continues to be problematic because of the range of actions that have been and are being taken to address the current crisis. While these indicators may be suggestive of TARP's ongoing impact, no single indicator or set of indicators can provide a definitive determination of the program's impact.

We have continued to identify areas that warrant ongoing attention and focus in our most recent reports. Specifically, we recommended in our June report that Treasury take the following five actions as it continues to improve TARP and make it more accountable and transparent:

- Ensure that the warrant valuation process maximizes benefits to taxpayers and consider publicly disclosing additional details regarding the warrant repurchase process, such as the initial price offered by the issuing entity and Treasury's independent valuations, to demonstrate Treasury's attempts to maximize the benefit received for the warrants on behalf of the taxpayer.
- In consultation with the Chairmen of the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve, the Comptroller of the Currency, and the Acting Director of the Office of Thrift Supervision, ensure consideration of generally consistent criteria by the primary federal regulators when considering repurchase decisions under TARP.
- Fully implement a communication strategy that ensures that all key congressional stakeholders are adequately informed and kept up to date about TARP.
- Expedite efforts to conduct usability testing to measure the quality of users' experiences with the financial stability Web site and measure customer satisfaction with the site, using appropriate tools such as online surveys, focus groups, and e-mail feedback forms.
- Explore options for providing to the public more detailed information on the costs of TARP contracts and agreements, such as a dollar breakdown of each vendor's obligations, expenses, or both.

Finally, to help improve the transparency of CAP—in particular the stress tests results—we recommended that the Director of Supervision and Regulation of the Federal Reserve consider periodically disclosing to the

public information on the aggregate performance of the 19 bank holding companies against the more adverse scenario forecast numbers for the duration of the 2-year forecast period and whether or not the scenario needs to be revised. At a minimum, we recommended that the Federal Reserve provide the aggregate performance data to OFS program staff for any of the 19 institutions participating in CAP or CPP.

Treasury Has Established Its Core Programs under TARP but Continues to Finalize Some Details

Table 1 highlights disbursements under the various TARP programs, as of July 10, 2009.

Table 1: TARP Disbursements as of July 10, 2009

Dollars in billions

Program	Disbursed
Capital Purchase Program	$204.2
Targeted Investment Program	40.0
Capital Assistance Program	TBD
Systemically Significant Failing Institutions	41.2
Asset Guarantee Program	0.0
Automotive Industry Financing Program	75.9
Making Home Affordable	0.0
Consumer and Business Lending Initiative[a]	0.1
Public Private Investment Program	0.0
Total	**$361.3**

Source: Treasury OFS, unaudited.

Note: Numbers do not add due to rounding.

[a]The Consumer and Business Lending Initiative now includes the Term Asset-Backed Securities Loan Facility and the Small Business and Community Lending Initiative.

Key activities include

- CPP continues to be one of OFS's most active programs with OFS continuing to deploy funds and other participants beginning to repay investments. As of July 10, 2009, Treasury had disbursed 94 percent of the $218 billion (revised from the original $250 billion) it had allocated to this program and had purchased almost $204.2 billion in preferred shares and subordinated debt from 651 qualified financial institutions. These purchases ranged from $301,000 to $25 billion. While OFS has hired asset managers, it has yet to clearly identify what role the asset managers will have in monitoring compliance with program requirements. According to Treasury officials, the asset managers' primary role will be to provide Treasury with market advice about its portfolio of investments in financial institutions and corporations participating in various TARP programs. The managers will also help OFS monitor compliance with limitations on compensation, dividend payments, and stock repurchases.

- As permitted by the act—as amended by the American Recovery and Reinvestment Act of 2009 (ARRA)—participants may repurchase or buy back their preferred stock and warrants issued to Treasury under CPP at any time, subject to consultation with the primary federal banking regulator.[4] According to Treasury documentation, as of July 10, 2009, 33 institutions (including 10 of the largest bank holding companies participating in CPP) had repurchased their preferred stock from Treasury for a total of about $70.2 billion (table 2). After repurchasing all of their preferred stock, financial institutions may repurchase all or part of the warrants held by Treasury. As of July 10, 2009, 12 of the 33 financial institutions that had repurchased their preferred shares from Treasury had also repurchased their warrants and 3 others had repurchased their warrant preferred stock from Treasury at an aggregate cost of about $80.3 million. One of the 10 largest bank holding companies that repurchased their preferred stock had repurchased its warrants at a cost of $60 million. In addition, certain financial institutions told Treasury that they did not plan to repurchase their warrants and Treasury may attempt to sell those

[4]Pub. L. No. 111-5, 123 Stat. 115 (2009). Section 7001 provides, in part, that "Subject to consultation with the appropriate Federal banking agency, if any,....Treasury *shall* permit a TARP recipient to repay any assistance previously provided under the TARP to such financial institution, without regard to whether the financial institution has replaced the funds from any other source or to any waiting period." (Emphasis added.) ARRA also required that Treasury liquidate the warrants when the assistance was repaid. This requirement was amended by the Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, which removed the requirement that Treasury liquidate the warrants when the assistance was repaid.

warrants in the financial markets. According to a Treasury official, as of July 17, 2009, Treasury has not yet liquidated any CPP warrants in the financial markets.

Table 2: Capital Purchase Program Repurchases, as of July 10, 2009

Dollars in thousands

Institution Type	Repurchase amount for preferred stock initially issued to Treasury	Repurchase amount for preferred stock issued through exercise of warrants	Repurchase amount for warrants
Private Institutions	$31,900	$1,595	N/A
Public Institutions	70,134,189	N/A	78,690
Total	**$70,166,189**	**$1,595**	**$78,690**

Source: Treasury, OFS, unaudited.

Although institutions have repurchased their preferred stock, the regulators' repurchase approval criteria have lacked adequate transparency. Clearly articulated and consistently applied criteria are indicative of a robust decision-making process, and without them, Treasury will face an increased risk that institutions requesting repurchase of their stock may not be treated equitably. The Federal Reserve has provided criteria for the largest 19 bank holding companies, but the other regulators have not consistently provided details about how they will make future determinations. In this regard, we recommended in our June 17, 2009 report that Treasury, in consultation with the banking regulators, ensure consideration of generally consistent criteria by the primary federal regulators when considering repurchase decisions under TARP. We have begun to receive the criteria from the federal banking regulators and will evaluate their consistency as part of our ongoing TARP work.

As we noted in our June 17, 2009 report, while Treasury has provided some limited information about the warrant repurchase process, it had yet to provide the level of transparency at the transaction level that would begin to address questions about the warrant valuation process and whether the resulting prices paid by the institutions reflect the taxpayers' best interests. We recommended that Treasury consider publicly disclosing additional details regarding the warrant repurchase process, such as the initial price offered by the issuing entity and Treasury's independent valuations, to demonstrate Treasury's attempts to maximize the benefit received for the warrants on behalf of the taxpayer. On June 26, 2009, Treasury issued a press release indicating that Treasury plans to begin publishing additional information on each warrant that is repurchased, including a bank's initial and subsequent determinations of fair market value, if applicable. Following the completion of each

repurchase, Treasury plans to publish the independent valuation inputs used to assess the bank's determination of fair market value.
We will evaluate Treasury's disclosure of warrant information as part of our ongoing TARP work.

- The Federal Reserve announced the results of the Supervisory Capital Assessment Program (SCAP) or stress test under CAP, for which Treasury extended the deadline for applications through November 9, 2009. As of July 17, 2009, no applications had been submitted to Treasury. SCAP encompassed the 19 largest U.S. bank holding companies (those with risk-weighted assets of at least $100 billion). The federal banking regulators designed it as a forward-looking exercise to help them gauge the extent of the additional capital buffer necessary to keep the institutions strongly capitalized and lending even if economic conditions are worse than had been expected between December 2008 and December 2010. SCAP results showed that 10 of the institutions needed to raise additional capital.

- Treasury and other agencies have continued to take actions under other TARP programs. The Federal Reserve announced modifications to the Term Asset-Backed Securities Loan Facility (TALF) and has completed a number of fundings since March 2009. As of July 16, 2009, the total amount of loans requested on TALF-eligible collateral since the program's first activity was nearly $35 billion. OFS took additional steps to implement the Public-Private Investment Program's (PPIP) Legacy Securities Program. On July 8, 2009, Treasury, FDIC and the Federal Reserve jointly announced the selection of fund managers for the program and the selection of 10 small-, veteran-, and women-owned business partnerships that will work with the fund managers. Treasury, in conjunction with the Federal Reserve and the Small Business Administration, announced additional efforts to provide more accessible and affordable credit to small businesses. Citigroup, Inc. (Citigroup) expanded its request to Treasury to convert preferred securities and trust preferred securities for common stock from $27.5 billion to $33 billion and finalized the exchange agreement on June 9, 2009, but the conversion had not been completed as of July 20, 2009. In addition, OFS finalized an equity facility of almost $30 billion with AIG under Systemically Significant Failing Institutions (SSFI) and restructured AIG's existing preferred stock from cumulative to noncumulative shares but did not require additional concessions from AIG counterparties. Treasury has committed to providing $81.1 billion to the auto industry under Automotive Industry Financing Program (AIFP). Of this amount, Treasury has provided Chrysler and GM $12.5 billion and $49.5 billion, respectively, to support the companies before, during, and after their reorganizations under Chapter 11 of the U.S. Bankruptcy Code.

Finally, consistent with our recommendations, Treasury has continued to take steps to develop an integrated communication strategy for TARP, but we continue to identify areas that warrant ongoing attention and consideration.

Treasury Has Made Progress in Developing OFS's Management Infrastructure

Treasury has continued to make progress in establishing its management infrastructure and internal controls and has responded to our two most recent contracting recommendations and continued to respond to the others.

- In the hiring area, Treasury has continued to establish its management infrastructure, including hiring more staff. In accordance with our prior recommendation that it expeditiously hire personnel to OFS, Treasury continued to use direct-hire and various other appointments to bring a number of career staff on board quickly. Since our March 2009 report, Treasury has continued to increase the total number of OFS staff overall, including the number of permanent staff. However, continued attention to hiring remains important because some offices within OFS, such as the offices of Homeownership and Risk and Compliance, continue to have a number of vacancies that need to be filled as TARP programs are fully implemented.

- In the internal controls area, consistent with our previous report recommendation that Treasury update the guidance that is available to the public on determining warrant exercise prices so that it is consistent with OFS's actual practices, Treasury updated its frequently asked questions on its Web site to clarify the process it follows for determining the prices. However, the guidance available on the Web site remains inconsistent. Treasury told us that any new CPP applicants would most likely be non-public institutions to which these guidance documents would not apply. Thus, Treasury does not believe the inconsistent guidance is a significant issue and does not plan on addressing it further. If some of the guidance on warrant exercise pricing is no longer needed, then we believe that Treasury should remove these guidance documents from its Web site to alleviate any inconsistencies. If Treasury chooses to leave the documents on its Web site, then, as we previously recommended, Treasury should make all the documents pertaining to warrant exercise price calculations consistent.

- Treasury has continued to build a network of contractors and financial agents to support TARP administration and operations and has an opportunity to enhance transparency through its existing reporting mechanisms. Treasury issues a number of reports and uses other

mechanisms, such as public announcements and its Web site, to provide information to the public. Useful details are still lacking, however, on the costs of procurement contracts and financial agency agreements, such as a breakdown of obligations and expenses for each entity. These contracts and agreements are key tools OFS has used to help develop and administer its TARP programs. By not providing this information, Treasury is missing an opportunity to provide additional transparency about the cost of TARP operations.

Indicators Generally Suggest Positive Developments in Credit Markets, but Isolating TARP's Impact Continues to Present Challenges

While isolating and estimating the effect of TARP programs continues to present a number of challenges, indicators of the cost of credit and perceptions of risk in credit markets suggest broad improvement since the announcement of CPP in October 2008. As we have noted in prior reports, if TARP is having its intended effect, a number of developments might be observed in credit and other markets over time, such as reduced risk spreads, declining borrowing costs, and more lending activity than there would have been in the absence of TARP. However, a slow recovery does not necessarily mean that TARP is failing, because it is not clear what would have happened without the programs. In particular, several market factors helping to explain slow growth in lending include weaknesses in securitization markets and the balance sheets of financial intermediaries, a decline in the demand for credit, and the reduced creditworthiness among borrowers. Nevertheless, credit market indicators we have been monitoring suggest there has been broad improvement in interbank, mortgage, and corporate debt markets in terms of the cost of credit and perceptions of risk (as measured by premiums over Treasury securities). In addition, empirical analysis of the interbank market, which showed signs of significant stress in 2008, suggests that CPP and other programs outside TARP that were announced in October of 2008 have resulted in a statistically significant improvement in risk spreads even when other important factors were considered. Although foreclosures continue to highlight the challenges facing the U.S. economy, total mortgage originations in the first quarter of 2009 rose roughly 46 percent since the third quarter of 2008. Similarly, while the Federal Reserve data show that lending standards remain tight, our analysis of Treasury's new loan survey indicate that the largest 21 CPP recipients extended roughly $240 and $260 billion, on average, each month in new loans to consumers and businesses in the fourth quarter of 2008 and first quarter of 2009 respectively.

Table 3: Select Market Indicators, as of July 16, 2009

Credit market rates and spreads		
Indicator	**Description**	**Basis point change since October 13, 2008**
LIBOR	3-month London interbank offered rate (an average of interest rates offered on dollar-denominated loans)	Down 424
TED spread	Spread between 3-month LIBOR and 3-month Treasury yield	Down 418
Aaa bond rate	Rate on highest quality corporate bonds	Down 98
Aaa bond spread	Spread between Aaa bond rate and 10-year Treasury yield	Down 68
Baa bond rate	Rate on corporate bonds subject to moderate credit risk	Down 156
Baa bond spread	Spread between Baa bond rate and 10-year Treasury yield	Down 126
Mortgage rates	30-year conforming loans rate	Down 126
Mortgage spread	Spread between 30-year conforming loans rate and 10-year Treasury yield	Down 66
Quarterly mortgage volume and defaults		
Indicator	**Description**	**Change from September 30, 2008 to March 31, 2009 (latest available date)**
Mortgage originations	New mortgage loans	Up 140 billion to $445 billion
Foreclosure rate	Percentage of homes in foreclosure	Up 88 basis points to 3.85 percent

Sources: GAO analysis of data from Global Insight, Inside Mortgage Finance, and Thomson Reuters Datastream.

Note: Rates and yields are daily, except for mortgage rates, which are weekly. Higher spreads (measured as premiums over Treasury securities of comparable maturity) represent higher perceived risk in lending to certain borrowers. Higher rates represent increases in the cost of borrowing for relevant borrowers. As a result "down" suggests improvement in market conditions for credit market rates and spreads. Foreclosure rate and mortgage origination data are quarterly. See previous TARP reports for a more detailed discussion (GAO-09-161 and GAO-09-296).

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

Contact

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Related GAO Products

Troubled Asset Relief Program: June 2009 Status of Efforts to Address Transparency and Accountability Issues. GAO-09-658. Washington, D.C.: June 17, 2009.

Auto Industry: Summary of Government Efforts and Automakers' Restructuring to Date. GAO-09-553. Washington, D.C.: April 23, 2009.

Small Business Administration's Implementation of Administrative Provisions in the American Recovery and Reinvesment Act. GAO-09-507R. Washington, D.C.: April 16, 2009.

Troubled Asset Relief Program: March 2009 Status of Efforts to Address Transparency and Accountability Issues. GAO-09-504. Washington, D.C.: *March 31, 2009.*

Troubled Asset Relief Program: Capital Purchase Program Transactions for the Period October 28, 2008 through March 20, 2009 and Information on Financial Agency Agreements, Contracts, and Blanket Purchase Agreements Awarded as of March 13, 2009. GAO-09-522SP. Washington, D.C.: March 31, 2009.

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Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency. GAO-09-266T. Washington, D.C.: December 10, 2008.

Auto Industry: A Framework for Considering Federal Financial Assistance. GAO-09-247T. Washington, D.C.: December, 5, 2008.

Auto Industry: A Framework for Considering Federal Financial Assistance. GAO-09-242T. Washington, D.C.: December 4, 2008.

Troubled Asset Relief Program: Status of Efforts to Address Defaults and Foreclosures on Home Mortgages. GAO-09-231T. Washington, D.C.: December 4, 2008.

Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency. GAO-09-161. Washington, D.C.: December 2, 2008.

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Testimony of Professor Elizabeth Warren

Chair, Congressional Oversight Panel

before the

House Committee on Financial Services

Subcommittee on Oversight and Investigations

July 22, 2009

Thank you Chairman Moore, Ranking Member Biggert, and members of the Subcommittee for inviting me to testify regarding Troubled Asset Relief Program (TARP) warrant repurchases and the work of the Congressional Oversight Panel. I would like to begin by emphasizing that – although I am the Chair of the Panel – the views I express today are my own and do not necessarily reflect those of the other Panel members.

The Congressional Oversight Panel was created in last year's Emergency Economic Stabilization Act (EESA). The job of the Panel is to "review the current state of the financial markets and the financial regulatory system" and report to Congress every 30 days. We have released eight oversight reports, as well as a special report on regulatory reform required by the legislation and a special report on farm credit, also required by law, which we released yesterday.

The Oversight Panel is one of three organizations to which the TARP legislation gives oversight responsibilities. We work closely with GAO and the Special Inspector General to ensure that all our oversight efforts complement, not duplicate, one another. We all want to make the whole of our work greater than the sum of its parts. Today's topic of warrant repurchases is one example of how coordination between oversight bodies can allow us to build upon one another's work. Through our regular, ongoing meetings, we were able to coordinate our work on warrants and repurchase issues with SIGTARP, allowing their audit to pick up on our report.

The Oversight Panel is the smallest of the three organizations. Although the EESA did not limit our budget, we established and have run the Panel thus far on $2.7 million and approximately twenty employees. Congress gave us the authority to engage experts and contractors and through that we have expanded our reach. We are also the only one of the three authorized to hold hearings. We have held nine hearings around the country and in Washington D.C., and our tenth will be next week in Detroit on issues relating to TARP and the auto industry.

We may be the smallest organization, but we are lean and focused. We see our contribution as fact-based analysis designed to raise issues about the operation and direction of the TARP and about the broader effort to restore stability to the economic system. In the

Emergency Economic Stabilization Act, Congress specifically asked that the Oversight Panel conduct oversight on: the use of Treasury's authority under TARP; the Program's effect on the financial markets, financial institutions, and market transparency; the effectiveness of foreclosure mitigation efforts; and the TARP's effectiveness in minimizing long-term costs and maximizing long-term benefits for the nation's taxpayers. Our ultimate question is whether the TARP is operating to benefit the American family and the American economy. If we believe the answer is no, we will ask "why not," and try to suggest alternatives.

The focus of my testimony today reinforces the need for accountability and transparency in the management of the TARP. I would like to commend the Subcommittee for its continuing work in ensuring effective oversight of the nation's financial system. I am pleased to assist your efforts in any way that I can.

In late 2008, our economy faced an exceptional crisis. The stock market had plummeted. Credit markets had frozen. Our most important financial institutions were teetering on the brink of collapse, threatening to bring the whole economy down. In this challenging moment Congress created the TARP. Under this program Treasury pumped billions of dollars into banks, an emergency action meant to stabilize the financial system.

These actions imposed an enormous risk on taxpayers. If the TARP failed to stabilize the financial system, the entire economy could collapse. Even if the system stabilized after huge infusions of taxpayer funds, if some institutions were unable to recover, taxpayers could be saddled with debt for generations. While these risks were looming, then-Treasury Secretary Henry Paulson argued that TARP assistance could be used to rescue the economy as well as generate a profit for taxpayers. When Congress authorized the commitment of $700 billion to rescue the financial system, it decided that taxpayers should have the opportunity to share in a potential upside if the banks returned to profitability.

The opportunity to profit from TARP investments comes through special securities called warrants, which represent the right to buy shares of a company at a set price at some point in the future. Banks that received financial assistance under the TARP were required to give the government warrants for the future purchase of some of their common shares. Now that the markets have begun to show signs of recovery and many banks want to repay their TARP money, repurchase their warrants, and free themselves from the stigma and stipulations that accompany government bailouts, it is timely to consider the issues involved in the repayment of TARP assistance and the repurchase of warrants.

The Panel's mandate is to examine Treasury's choices, and in our July report we consider whether it makes sense to allow repayment now, and determine if taxpayers are receiving the maximum benefit possible from the TARP. (http://cop.senate.gov/reports/library/report-071009-cop.cfm) Treasury recently chose to allow 10 of the nation's largest banks, holding a third of the nation's banking assets, to exit the TARP. These banks have repaid their government capital infusions, but Treasury still has the warrants that accompanied the TARP assistance. Because these warrants represent the only opportunity for the taxpayer to participate directly in the increase in the share prices of these banks, made possible by public money, the price at which Treasury sells these warrants is critical. We do not know what value Treasury has placed

on the warrants it still holds, but the Panel's July report presents an independent valuation to generate a baseline for comparison for when Treasury does sell its warrants, to help determine whether Treasury is in fact maximizing the return on taxpayers' investments in these financial institutions.

The Panel's July report presents a detailed technical valuation of Treasury's warrants using the most widely-accepted mathematical model for warrant valuation. The assumptions employed in the use of any model are crucial, and the report offers a range of estimates based on high, low and best estimate assumptions for certain key variables, particularly the volatility of the underlying stock of the bank in question The Panel's estimates for the value of the warrants Treasury held on July 6, 2009 range from $4.7 billion to $12.3 billion, with its best estimate being $8.1 billion.

The Panel was aided in its valuation efforts by three renowned finance experts, Professor Robert Merton, Professor Daniel Bergstresser, and Professor Victoria Ivashina, all of the Harvard Business School. The professors reviewed both the technical valuation model and the assumptions that were built into the model; they concluded that the approaches reported here were reasonable and that they produced reliable estimates. However, the actual calculations contained in the Panel's July report are solely the work of the Panel and the Panel takes complete responsibility for them.

As of the date of our report (July 10th) eleven small banks had repurchased their warrants from Treasury for a total amount of only 66 percent of the Panel's best estimate of their value. If the warrants had been sold for the Panel's estimation of market value, taxpayers would have recovered $10 million more. In these sales, liquidity discounts – applied to reflect the difficulty in trading securities of small institutions – have been a major factor in a way not likely to apply to the warrants of large, publicly-traded institutions. However, if Treasury continues to accept only 66 percent of the Panel's estimated market value for the rest of warrants it holds, the shortfall to taxpayers could be as much as $2.7 billion.

It should be noted that Treasury is just beginning its warrant repurchase program. It is possible that policymakers may conclude that other objectives should override the goal of maximizing taxpayer returns. For example, Treasury has said that it wants to allow banks to operate again without TARP assistance as soon as they are strong enough to do so. The determination of whether they are in fact financially sound and able to repay their assistance remains critical, especially in light of ongoing concerns about the macroeconomic environment and the possibility of further credit losses down the road. As discussed in the Panel's June report, the stress tests provide some comfort in this regard but the fact that the key economic assumptions used in those tests continue to deteriorate remains a cause for concern.

Banks have bought back only a fraction of one percent of all warrants issued, and the prices paid thus far may not be representative of what is to come. In fact, in the weeks since our report was published, Treasury seems to have begun conducting its warrant negotiations more aggressively. U.S. Bancorp, which recently paid back its $6.9 billion in TARP assistance, repurchased its warrants from Treasury for $139 million dollars. This figure was actually higher than that given by the Panel's best estimate model – which would be good news for taxpayers if it is indicative of how future warrant negotiations with large institutions will play out. Additionally, as has been widely reported, banks like JPMorgan Chase and Goldman Sachs have

thus far been unable to reach agreement with Treasury on a price for their warrants. Reports in the media also indicate that these two banks believe Treasury is asking too much for their warrants and that JPM Chase is urging Treasury to conduct an auction for them.

Treasury is obligated under the terms of the contracts it initially signed as part of the Capital Purchase Program to enter into negotiations with the banks to repurchase warrants once they have repaid their CPP investments. Only if the price ultimately negotiated is rejected by the bank in question can Treasury then move to an auction procedure to dispose of its warrants.

Nevertheless, because warrant valuation is a difficult task, the Panel explores the possibility that Treasury should leave it to the markets by selling the warrants in an open, public auction. This has the benefit of stopping any speculation about whether Treasury has been too tough or too easy on the banks that want to repurchase their own warrants. It also permits the banks to bid for their own warrants – in direct competition with outsiders.

As always, it is critical that Treasury make the process – the reason for its decisions, the way it arrives at its figures, and the exit strategy from or future use of the TARP – absolutely transparent. If it fails to do so, the credibility of the decisions it makes and its stewardship of the TARP will be in jeopardy.

I would like to briefly mention the Panel's other reports, which cover a wide range of important topics.

In December, we issued our very first report, identifying a series of ten primary questions regarding Treasury's goals and methods. (http://cop.senate.gov/reports/library/report-121008-cop.cfm) These questions must be answered in order for Treasury to be successful:

- What is Treasury's strategy?
- Is the strategy working to stabilize markets?
- Is the strategy helping to reduce foreclosures?
- What have the financial institutions done with the taxpayers' money received so far?
- Is the public receiving a fair deal?
- What is Treasury doing to help the American family?
- Is Treasury imposing reforms on financial institutions that are taking taxpayer money?
- How is Treasury deciding which institutions receive the money?
- What is the scope of Treasury's authority?
- Is Treasury looking ahead?

These questions were posed to then-Treasury Secretary Paulson in a letter. They were further expanded with subsidiary questions seeking additional information.

In January, the Secretary's response provided the basis for our report. (http://cop.senate.gov/reports/library/report-010909-cop.cfm) An analysis of the response revealed that many answers were non-responsive or incomplete. It was disappointing that the answers were, and in some cases continue to be, elusive, given that the questions are basic and should have been answered when initially framing the program. It was disconcerting, to say the

least, having hundreds of billions of dollars spent seemingly without a plan. The report found that, in particular, Treasury needed to provide additional information on bank accountability, transparency, asset valuation, foreclosures, and strategy.

The special report on regulatory reform found that financial crises occur on a regular basis, and it is necessary to study the lessons of the past in order to restore a proper balance between free markets and the regulatory framework necessary to ensure the operation of those markets to protect the economy, honest market participants, and the public. (http://cop.senate.gov/reports/library/report-012909-cop.cfm) The present regulatory system has failed to effectively manage risk, require sufficient transparency, and ensure fair dealings, three areas that, had they been given adequate attention by regulators, could have averted the worst aspects of the current crisis. The Panel identified eight specific areas most urgently in need of reform:

- Identify and regulate financial institutions that pose systemic risk
- Limit excessive leverage in American financial institutions
- Increase supervision of the shadow financial system
- Create a new system for federal and state regulation of mortgages and other consumer credit products
- Create executive pay structures that discourage excessive risk taking
- Reform the credit rating system
- Make establishing a global financial regulatory floor a U.S. diplomatic priority
- Plan for the next crisis

In February, the Panel returned to the central question of whether the public was receiving a "fair deal" when Treasury used TARP funds to make capital infusions into financial institutions. (http://cop.senate.gov/reports/library/report-020609-cop.cfm) We worked with recognized independent experts to develop multiple valuation models to determine whether the securities Treasury received had a fair market value equal to the dollar amount of the infusions. With minimal variation, the models all demonstrated that Treasury made its infusions at a substantial discount. Treasury received securities that were worth substantially less than the amounts it had paid in return. In all, Treasury overpaid by an estimated $78 billion. For each $100 Treasury invested in these financial institutions, it received on average stock and warrants worth only about $66 at the time of the transaction.

While there may have been good reasons to subsidize the banks last fall, it is critical that Treasury be clear in explaining its goals in these transactions, a finding echoed in the call for transparency in Treasury's valuation of the warrants.

In March, the Panel examined the foreclosure crisis, as directed in the statute. (http://cop.senate.gov/reports/library/report-030609-cop.cfm) In considering mortgage

foreclosure mitigation, we gave particular consideration to impediments to mitigation efforts. We offered a checklist of items to evaluate the likely effectiveness of any proposal to halt the cascade of mortgage foreclosures.

- Will the plan result in modifications that create affordable monthly payments?
- Does the plan deal with negative equity?
- Does the plan address junior mortgages?
- Does the plan overcome obstacles in existing pooling and servicing agreements that may prevent modifications?
- Does the plan counteract mortgage servicer incentives not to engage in modifications?
- Does the plan provide adequate outreach to homeowners?
- Can the plan be scaled up quickly to deal with millions of mortgages?
- Will the plan have widespread participation by servicers and lenders?

We were pleased to see that the Administration's Homeowner Affordability and Stability Plan addressed many of these issues, although the Panel noted serious concern with areas left unaddressed in the original plan, including lack of a safe harbor for mortgage servicers that results in impediments to restructuring mortgages, incomplete consideration of second mortgages, unclear enforcement, and a failure to address seriously underwater mortgages. It is encouraging to see that the initiative is evolving to deal with some of these concerns. The Panel plans follow up work over the coming months to measure progress in foreclosure mitigation.

In April the Panel further analyzed the evolving strategy of Treasury. (http://cop.senate.gov/reports/library/report-040709-cop.cfm) We focused on lessons from the previous financial crises, both foreign and domestic, to help inform our analysis of the current situation. The report examined four case studies of particular relevance: the Japanese "Lost Decade" of the 1990s; the Swedish experience with bank nationalization in the 1990s; the establishment of the Resolution trust Corporation (RTC) in response to the American Savings and Loan collapse in the late 1980s; and the actions taken to stabilize the financial and housing sectors during the Great Depression. The report highlighted the benefits and problems of several basic approaches to dealing with failing banks- liquidation, reorganization, or subsidization- based on these historic examples. The review highlighted that each successful resolution of a financial crisis involved four key elements: transparency, assertiveness, accountability, and clarity.

In May the Panel considered the state of small business and consumer lending and provided an assessment of the Term Asset-Backed Securities Loan Facility (TALF). (http://cop.senate.gov/reports/library/report-050709-cop.cfm) The TALF is intended to support more lending by financing credit through asset-backed securities. These are securities that represent interests in pools of loans made to small businesses and households. Our primary question was whether the TALF program is well-designed to attract new capital. The program allows the investors to reap a substantial portion of the potential profits, but leaves taxpayers to

absorb a large portion of potential losses. Even with this asymmetry, there was a slow initial uptake to the program. More recent subscriptions have shown greater participation. Unfortunately, other factors may mean that even a well-designed program could have difficulties helping market participants meet the credit needs of small businesses and households. Families are awash in debt and in the process of deleveraging. Stagnant wages and rising unemployment further constrain the ability of households to manage ever-larger debt loads, suggesting that strategies to increase consumer lending may be counterproductive for American families—and ultimately for the economy. TALF is unlikely to have a meaningful impact on small businesses, as asset-backed securities have never been a significant source of small business funding. The report raises questions about whether taxpayer support for small business lending should be concentrated elsewhere, such as increased availability of SBA loans.

In June the Panel examined the stress tests conducted on the 19 largest bank holding companies to ensure their continued ability to lend to creditworthy borrowers in the event of a weaker-than-expected economic environment and larger-than-estimated losses. (http://cop.senate.gov/reports/library/report-060909-cop.cfm) The stress tests were conducted using two scenarios: one test based on a consensus set of economic projections and one based on more adverse economic conditions. Under the announced results, nine of the nineteen banks were found to already hold sufficient capital to operate under the adverse scenario through 2010; however, ten of the nineteen banks were found to need additional capital totaling nearly $75 billion. Only the results from the adverse scenario have been released, leaving many unanswered questions about the test methodology. While the Federal Reserve is to be commended for releasing an unprecedented amount of bank supervisory information, they should release additional information that would allow the tests to be replicated by others. Moving forward, the Panel recommended that the stress tests should be repeated should the economy exceed the assumptions built into the models, the stress tests should be repeated so long as banks continue to hold large amounts of toxic assets on their books, banks should be required to run internal stress tests and share the results with regulators, and regulators should have the ability to use stress tests when they believe it necessary.

Just yesterday, the Panel released a special report on farm credit and farm loan restructuring, as mandated by the Helping Families Save Their Homes Act of 2009. (http://cop.senate.gov/reports/library/report-072109-cop.cfm) Farmers entered the recession in a historically strong position, and for many, balance sheets are in fairly good shape. But prosperity is not evenly spread across America. Today, more farmers are struggling. Net farm income is expected to fall 20 percent this year, and some sectors – especially dairy – are doing worse. Congress asked the Panel to consider whether three existing loan restructuring models – the USDA's Farm Service Agency, the Farm Credit System, and the Making Home Affordable program for residential mortgages – could be used as a model for a farm loan restructuring mandate for TARP recipient banks. The Panel found that a foreclosure plan that only works

through a mandate on TARP recipient banks, no matter which model it followed, would have limited effect. Right now TARP recipient banks only hold about ten percent of farm real estate debt. Treasury and Congress could consider other alternatives, such as setting aside a portion of remaining TARP funding for a farm mortgage foreclosure mitigation program, patterned on the incentive based program developed to protect homes, but focusing on bank participation beyond current TARP recipients. Another option would be to create within TARP a loan guarantee program for restructured farm loans. Both commercial banks and other lenders, like the Farm Credit System, report using government guaranteed loans to restructure trouble loans, but the availability of such loan guarantees is insufficient to meet the need. Finally, Congress has options outside of TARP to assist struggling farmers, such as commodity and price support programs. Such programs could allow assistance to be targeted to the specific sectors in need, like the dairy industry.

For August the Panel will turn to the topic of toxic assets. The precipitous drop in value of classes of assets linked (primarily) to residential real estate loans, produced the most serious financial crisis of the last 75 years. But government policy has not focused on those assets. Instead it has aimed to stabilize the financial institutions that hold them. What are the consequences, and more important, the risks of this approach to putting the financial sector into a position where the crisis cannot reignite?

The Panel will hold a field hearing next week in Detroit to look into the questions surrounding the automotive transactions. We also continue a number of oversight initiatives on residential mortgage foreclosure.

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

Thank you again for the opportunity to explain the work of the Congressional Oversight Panel. I look forward to answering your questions.

COMMITTEE ON THE BUDGET

COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE AND GOVERNMENT SPONSORED ENTERPRISES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
SUBCOMMITTEE ON DOMESTIC AND INTERNATIONAL MONETARY POLICY, TRADE AND TECHNOLOGY

COMMITTEE ON SMALL BUSINESS
(on leave of absence, 110th Congress)

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1-800-766-3777

June 2, 2009

The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Geithner:

I am writing to express my concern with recent reports that financial institutions that have received TARP funds are lobbying to buy back warrants the U.S. government received for providing taxpayer assistance at a reduced or minimal value. I strongly urge you to utilize your authority to maximize the best deal for taxpayers.

As you know, when Congress enacted the Emergency Economic Stabilization Act of 2008, one of the clear intents expressed in the legislation was that TARP be: "used in a manner that maximizes overall returns to the taxpayers of the United States" [Section 2, EESA, P.L. 110-343]. Additionally, the law states that: "In exercising the authorities granted in this Act, the Secretary shall take into consideration protecting the interests of taxpayers by maximizing overall returns and minimizing the impact on the national debt" [Section 103]. Congress authorized the government to request that firms receiving TARP funds issue warrants, providing the government the opportunity to recoup the initial investment to protect taxpayers [Section 113]. Furthermore, if there is a shortfall in repayment of TARP funds after five years, the President is required to: "submit a legislative proposal that recoups from the financial industry an amount equal to the shortfall in order to ensure the Troubled Asset Relief Program does not add to the deficit or national debt" [Section 134].

As you are also aware, Congress recently enacted the Helping Families Save Their Homes Act that included a provision eliminating the requirement that the Treasury Secretary liquidate warrants after a TARP recipient repays the government [Section 403, P.L. 111-22]. This provides you with the flexibility to sell or exercise these warrants in a manner that will maximize returns for taxpayers.

Finally, I was troubled to review a recent paper written by Professor Linus Wilson of the University of Louisiana at Lafayette entitled: "Valuing the First Negotiated Repurchase of the TARP Warrants." In the paper, Professor Wilson notes that Old

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National Bancorp recently repurchased their warrants from the Treasury Department at a price of $1.2 million when those warrants are worth between $1.5 million and $6.9 million. Even on the low end of the spectrum, a few hundred thousand dollars may seem trivial and small when we are speaking of billions and trillions of dollars in financial rescue aid. But it is quite clear that the law requires maximum returns for every single dollar of TARP aid to fully protect taxpayers for rescuing these financial institutions.

I will note that the Congressional Oversight Panel [COP] chaired by Professor Elizabeth Warren issued a study on February 6, 2009, reviewing the valuation of the Treasury Department's acquisitions, and I expect that in addition to Congress, COP, the Special Inspector General for TARP [SIGTARP] and the Government Accountability Office [GAO] will be coordinating proper oversight and closely monitoring these warrant transactions to ensure taxpayers are being protected.

Again, I strongly urge you to protect the taxpayers' investments in these firms by maximizing returns on these warrants. I look forward to working with you to ensure you have the necessary tools and authority to do just that.

Very truly yours,

DENNIS MOORE
Chairman, House Financial Services
Oversight and Investigations Subcommittee

CC: Professor Elizabeth Warren, Chair, COP
Mr. Neil Barofsky, SIGTARP
Mr. Gene Dodaro, Acting Comptroller General, GAO

OFFICE OF THE SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM
1801 L STREET, NW, 6TH FLOOR
WASHINGTON, D.C. 20220

Congress of the United States
CONGRESSIONAL OVERSIGHT PANEL

June 16, 2009

The Honorable Dennis Moore
Chairman
Oversight and Investigations Subcommittee
House Financial Services Committee
1727 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

We write to thank you for your leadership on the topic of the valuation of warrants issued by financial institutions receiving Troubled Asset Relief Program ("TARP") funds. As you know, as firms decide to repay TARP investments, the issue of what will happen to the warrants that the Treasury received remains – and this issue is critically important to ensuring that the taxpayer receives appropriate consideration as outlined by the Emergency Economic Stabilization Act.

The Special Inspector General for the TARP ("SIGTARP") and the Congressional Oversight Panel ("the Panel") share many of the concerns that you have raised about warrants. Therefore, as described in the enclosed letter, which was sent to the Chairmen and Ranking Members of the Senate Banking and House Financial Services Committees, SIGTARP and the Panel have begun coordinated efforts to examine the process by which banks that are repaying their Capital Purchase Program investments are being permitted by Treasury to repurchase the warrants associated with such investments and whether those procedures provide fair value to American taxpayers.

Thank you again for your commitment to transparency and for your continued interest and support with regard to this important issue. As always, please do not hesitate to contact us if you have any questions or comments.

Sincerely,

NEIL M. BAROFSKY
Special Inspector General
Troubled Asset Relief Program

ELIZABETH WARREN
Chair
Congressional Oversight Panel

OFFICE OF THE SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM
1801 L STREET, NW, 6TH FLOOR
WASHINGTON, D.C. 20220

Congress of the United States
CONGRESSIONAL OVERSIGHT PANEL

June 10, 2009

The Honorable Christopher Dodd
Chairman
Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Shelby
Ranking Member
Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Barney Frank
Chairman
House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member
House Financial Services Committee
B371a Rayburn House Office Building
Washington, DC 20515

Dear Chairmen and Ranking Members:

We are writing to update you on our oversight of Treasury's use of the authority granted to it under the Emergency Economic Stabilization Act ("EESA") and, in particular, to make you aware of a special coordinated effort between the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP") and the Congressional Oversight Panel ("the Panel") to examine the pricing of warrants in the context of the return of Troubled Asset Relief Program ("TARP") funds by TARP-recipient institutions.

The EESA established SIGTARP and the Panel to oversee the development and implementation of economic stabilization efforts undertaken as part of the TARP. In accordance with our respective mandates, we have endeavored to bring transparency to the TARP and to ensure that the interests of American taxpayers are protected. To date, SIGTARP has released two quarterly reports to update Congress on its oversight and investigative efforts, and the Panel has issued six regular monthly reports on various aspects of the TARP, in addition to a special report on regulatory reform.

In the weeks and months ahead, as some financial institutions seek to return the TARP funding they have received, SIGTARP and the Panel believe that the pricing of the warrants held by Treasury in conjunction with the Capital Purchase Program ("CPP") will be critical to ensuring an appropriate return on investment for the government and, consequently, American taxpayers. We have also identified this as an area in which coordination between SIGTARP and the Panel could be particularly beneficial. To that end, our complementary efforts include the following:

June 10, 2009
Page 2

- The Panel has begun a project to estimate a reasonable range of values for the remaining warrants which Treasury holds in relation to its CPP investments. This analysis will highlight the policy choices and degree of discretion that Treasury has as it negotiates the sale of these warrants. The Panel anticipates that the results will be released in connection with its July monthly report.

- SIGTARP plans to conduct an audit of the warrant repurchase/sale process. That audit, which will have the benefit of the Panel valuations as context, will examine several key questions, including examination of the process Treasury has established to value the warrants for re-purchase, whether Treasury follows a clear and consistent process in considering potentially differing valuations of warrants, and the extent to which Treasury has established an objective basis for its ultimate valuation decisions.

While SIGTARP and the Panel regularly coordinate our oversight efforts, our organizations are working even more closely on this important issue. We hope that our oversight and analysis may prove useful to Congress and to the American people. Please do not hesitate to contact us if you have any questions or if you would like additional information.

Sincerely,

NEIL M. BAROFSKY
Special Inspector General
Troubled Asset Relief Program

ELIZABETH WARREN
Chair
Congressional Oversight Panel

SIGTARP | Office of the Special Inspector General for the Troubled Asset Relief Program
Advancing Economic Stability Through Transparency, Coordinated Oversight, and Robust Enforcement

SIGTARP Survey Demonstrates that Banks Can Provide Meaningful Information on Their Use of TARP Funds

SIGTARP-09-001
July 20, 2009

SIGTARP

Office of the Special Inspector General for the Troubled Asset Relief Program

Summary of Report: SIGTARP-09-001

Why SIGTARP Did This Study

The Troubled Asset Relief Program ("TARP") was created by the Emergency Economic Stabilization Act ("EESA") of 2008, which was enacted on October 3, 2008. TARP provided the Secretary of the Treasury with various authorities to restore the liquidity and stability of the United States financial system and stimulate lending. As of June 15, 2009, the Department of Treasury ("Treasury") has provided about $330 billion of TARP funds to more than 600 financial institutions.

The Congress and the public frequently ask questions about how TARP funds have been used. Accordingly, the objective of this report was to address how TARP recipients have used the funds received.

In February 2009, SIGTARP sent survey letters to more than 360 financial and other institutions that had completed TARP funding agreements through January 2009. The survey instrument provided for open-ended responses. The goal was to elicit as much information as possible while allowing for different conditions at each bank. This report is limited to survey recipients that participated in the Capital Purchase Program. The review and analysis were confined to the survey responses which included supporting documentation as provided, reported, and certified by the TARP recipients. SIGTARP plans additional work to further assess the actual use of funds. SIGTARP's work was performed in accordance with generally accepted government auditing standards.

What SIGTARP Recommends

SIGTARP is renewing and expanding on a recommendation previously made that Treasury require TARP recipients to submit periodic reports to Treasury on the uses of TARP funds, including what actions they were able to take that they would not have taken otherwise. The full text of the recommendation is included in the body of the report.

In commenting on a draft of this report, Treasury did not agree with the recommendation. SIGTARP's response to Treasury's position is included in the management comments section of this report.

July 20, 2009

Survey Demonstrates that Banks Can Provide Meaningful Information on Their Use of TARP Funds

What SIGTARP Found

Although most banks reported that they did not segregate or track TARP fund usage on a dollar-for-dollar basis, most banks were able to provide insights into their actual or planned use of TARP funds. Over 98% of survey recipients reported their actual uses of TARP funds.

Many banks reported that TARP funds allowed them to increase lending for residential and commercial loans, small business loans, credit card loans, and other types of lending. Most firms reported multiple and sometimes interrelated uses; a majority of respondents' reported that they used the funds primarily for lending, building capital reserves and investing, as highlighted below.

- **More than 80 percent of the respondents cited the use of funds for lending or how it helped them avoid reduced lending. Many banks reported that lending would have been lower without TARP funds or would have come to a standstill.**
- **More than 40 percent of the respondents reported that they used some TARP funds to help maintain the capital cushions and reserves required by their banking regulators to be able to absorb unanticipated losses.**
- **Nearly a third of the respondents reported that they used some TARP funds to invest in agency-mortgage backed securities. These actions provided immediate support of the lending and borrowing activities of other banks and positioned the banks for increased lending later.**
- **A smaller number reported using some TARP funds to repay outstanding loans–some because the TARP funds were a more cost-effective source of funds than their outstanding debt, and some because of pressure from a creditor to use the funds for that purpose.**
- **Several banks reported using some TARP funds to buy other banks. One reported that this was a cost-effective way to acquire additional deposits that, in turn, would facilitate an even greater amount of lending.**
- **Some banks reported that they had not yet allocated funds for lending and other activities due to the short time elapsed since the receipt of funds, the weak demand for credit, and the uncertain economic environment.**

Although the respondents reported that lending was an important use of funds, their responses generally did not quantify the amount of new lending or the incremental difference in lending based on use of TARP funds. Moreover, their responses represented their use or planned use at a single point in time and could be subject to change depending on economic conditions.

OFFICE OF THE SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM
1801 L STREET, NW
WASHINGTON, D.C. 20220

July 20, 2009

MEMORANDUM FOR: The Honorable Timothy Geithner, Secretary of the Treasury

SUBJECT: Survey Demonstrates that Banks Can Provide Meaningful Information on Their Use of TARP Funds (SIGTARP-09-001)

We are providing this audit report for your use and information. It discusses information on the use of TARP funds by 360 financial institutions participating in Treasury's Capital Purchase Program. The Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) conducted this audit, under the authority of Public Law 110-343, as amended. This also incorporates the duties and responsibilities of inspectors general pursuant to the Inspector General Act of 1978, as amended.

We considered comments from the Assistant Secretary of Financial Stability when preparing the final report. The comments are addressed in the report, where applicable, and a copy is included in the Management Comments section of this report.

We appreciate the courtesies extended to the SIGTARP staff. For additional information on this report, please contact Mr. Barry W. Holman at (202-622-4633/barry.holman@do.treas.gov).

Neil M. Barofsky
Special Inspector General
for the Troubled Asset Relief Program

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Introduction

The Emergency Economic Stabilization Act of 2008 ("EESA")[1] was enacted on October 3, 2008, authorizing the Secretary of the Treasury to establish the Troubled Asset Relief Program ("TARP") to purchase non-performing or troubled assets from financial institutions. However, given the rapid deterioration of the financial markets in the fall of 2008, Treasury believed it needed to move more swiftly. The result was the decision to inject equity capital into financial institutions under its Capital Purchase Program ("CPP") as it sought to stabilize financial institutions and markets and to stimulate lending. Subsequently, a number of other initiatives were undertaken. As of June 15, 2009, the Department of Treasury has provided about $330 billion to more than 600 financial institutions using funds authorized under EESA. Nearly $200 billion has been devoted to the CPP.

The Congress and the public frequently ask two questions regarding the investments made by the Department of Treasury:

- What have program recipients done with the money they received from Treasury?
- Have the recipients complied with the executive compensation requirements as a condition of receiving the funds?

To address these questions, beginning on February 5, 2009, SIGTARP sent survey letters to 364 financial institutions that had completed TARP funding agreements through January 31, 2009. This report addresses the responses of CPP recipients on the use of funds portion of the survey. SIGTARP will issue a separate report on executive compensation compliance.

Background

The dramatic correction in the U.S. housing market in recent years precipitated a decline in the price of financial assets that were associated with housing, in particular mortgage-backed securities based on subprime loans.[2] As 2008 progressed, this led to an escalating crisis in the financial markets. Some institutions found themselves so exposed that they were threatened with failure—and some failed—because they were unable to raise needed capital as the value of their portfolios declined. Other financial institutions– ranging from government-sponsored enterprises to the largest of the Wall Street firms–were left holding "toxic" mortgages and/or securities that became increasingly difficult to value, were illiquid, and potentially had little worth. Moreover, investors stopped buying securities backed by mortgages and became reluctant to buy securities backed by many other types of assets. Because of the uncertainty about the financial condition

[1] P.L. 110-343, October 3, 2008.

[2] Subprime loans are designed for borrowers who do not qualify for prime interest rates, such as borrowers who have one or more of the following characteristics: weakened credit histories typically characterized by payment delinquencies, previous charge-offs, judgments, or bankruptcies; low credit scores; high debt-burden ratios; or high loan-to-value ratios. These loans were often not supported by documentation and carried less favorable terms to the borrower such as higher interest rates. Many of these loans were often bundled into residential mortgage-backed securities ("RMBS") that were sold to investors including banks, hedge funds, insurance companies and retirement fund systems.

and the solvency of financial entities, the fees banks charge each other to borrow money rose dramatically, and inter-bank lending effectively came to a halt.[3] By late Summer 2008, the potential ramifications of the financial crisis included failure of systemically significant financial institutions; increased losses of individual savings; diminished corporate investments; and further tightening of credit that would exacerbate the emerging global economic slowdown.

In response to the financial crisis, ESSA was enacted on October 3, 2008. EESA authorizes Treasury to purchase and insure certain types of troubled assets to provide stability and prevent disruptions in the economy and financial system, and to protect taxpayers. The purpose of EESA was to give Treasury authority and facilities to restore liquidity and stability to the U.S. financial system and to ensure that these activities were consistent with protecting home values, college funds, retirement accounts, and life savings; preserving homeownership and promoting jobs and economic growth; maximizing overall returns to U.S. taxpayers; and providing public accountability for the exercise of authority under the act.

EESA gave the Secretary of the Treasury considerable discretion in determining both the type of financial instrument purchased and the institution from which it would be bought. Accordingly, within two weeks of EESA's enactment, as the financial markets and credit markets continued to deteriorate rapidly, Treasury's initial strategy quickly evolved from purchasing troubled assets to injecting capital into financial institutions to encourage them to build capital, increasing the flow of financing to businesses and consumers and supporting the economy. Accordingly, Treasury created the Capital Purchase Program ("CPP") and subsequently expanded the scope of its efforts under EESA to include a number of other program initiatives, such as support to Systemically Significant Failing Institutions, the Targeted Investment Program, and the Automotive Industry Financing Program. This audit report focuses on participants in Treasury's CPP.

The CPP funds were a primary source of new Tier 1 capital available to financial institutions when credit losses were rapidly eating away at the existing capital of many firms and the ability to raise private capital was severely constrained. Given the nationwide decline in real estate values, many banks faced losing the stream of income they had enjoyed from homeowner payments on mortgages. Moreover, they also faced being forced to recognize losses as they foreclosed on properties and found that the resale value of the properties was often dramatically lower than the amount of the loan. Similarly, the market for the mortgage-related securities had also declined, and many of the securities the banks held could no longer be sold in the open market for more than a fraction of what the banks had paid for them.[4]

Banks use their capital funds for multiple purposes. With respect to lending and investing, capital can also have a multiplier effect; one dollar in capital may generate multiple dollars in loans and investments. It can seed lending and investments by combining with and leveraging other sources of funds, such as relatively inexpensive bank deposits. One added dollar of Tier 1 capital can generate the potential for the bank to then issue an additional $10 in loans, because, based on regulatory rules, a healthy bank that receives $1 million in TARP funds can then

[3] Without the ability to readily borrow funds, banks were more concerned about retaining cash and somewhat reluctant to lend out funds.
[4] SIGTARP, "Quarterly Report to Congress," April 21, 2009.

borrow up to $10 million to make new loans to consumers or businesses and still be deemed to be adequately capitalized, as long as the regulator finds that overall capital is sufficient and that the bank is able to absorb losses such as loan defaults. The bank could also leverage capital by using the new capital to buy deposits from other banks, further increasing their ability to issue new loans. For a more complete discussion regarding how banks use capital, see Appendix B.

Objectives

The audit and survey of TARP recipients was intended to obtain information from the recipients regarding their use of TARP funds. Thus, our specific objective was to determine how TARP recipients have used the funds received.

Scope

SIGTARP sent the survey to 364 financial institutions that had completed TARP funding agreements through January 31, 2009. The recipients had been approved for funding through the CPP, the Targeted Investment Program ("TIP"), the Systemically Significant Failing Institutions ("SSFI") program, and the Auto Industry Financing Program ("AIFP"). Over 73 percent of the funding went to eight institutions, as is reflected below in Table 1.

Table 1: Recipients of SIGTARP Survey by Funding Received

Amount of TARP Funds Received	Number of Firms	Funding Amount (billions)	Percentage of funding
Greater than $10 billion	8	$219.3	73
$1 billion to $9.9 billion	19	$58.3	20
$100 million to $999 million	54	$14.6	5
Less than $100 million	283	$6.6	2
Total	**364**	**$298.8**	**100**

Source: SIGTARP "Quarterly Report to Congress," April 21, 2009.

Of the 364 firms surveyed, 360 (99 percent) were under the CPP program and directly concentrated on banking; the other four included AIFP or SSFI recipients.[5] Accordingly, for ease of presentation, this report focuses on the 360 CPP recipients. For a list of the 360 banks that SIGTARP surveyed, see Appendix D.

We confined our review and analysis to the survey responses and supporting documentation as provided, reported, and certified by the TARP recipients. Because of the goal to provide insights into the use of funds as quickly as possible, SIGTARP generally did not review information or

[5] The other four firms were AIG, GM, GMAC, and Chrysler. These firms used TARP funds in various ways, such as repaying loans, funding ongoing operations, improving capital ratios to acceptable regulatory levels and continued lending. These firms will be the subject of a future SIGTARP report on the use of funds.

documentation beyond that provided by the respondents.[6] We did not attempt to verify independently the accuracy of the statements made by the banks. Information on lending was provided, but most of the responses did not quantify, on a dollar basis, the amount of lending or the incremental difference in lending resulting from the TARP investment. This report does not encompass or inquire about funds received from other government or non-government sources or the extent to which such funding may have influenced the use of TARP funding.

The survey instrument primarily provided for open-ended responses to elicit in-depth data. This was necessary because the institutions are widely diverse in terms of asset size, geography, institution type, and institution-specific economic factors. As such, this approach permitted a wide range of responses and flexibility with regard to the specific information and supporting documentation provided. This data is not sufficient for statistical inferences; it should be interpreted as more reflective of directional insights rather than statistically valid characterizations of the TARP recipient's use of funds. Because the objective of this report is broad, the open-ended survey elicited differing levels of detail.

Many banks were concerned about business-sensitive information and requested confidentiality of individual survey responses. Accordingly, pursuant to our legal obligations, SIGTARP is unable in this report to attribute any results or comments to a specific institution. However, SIGTARP is in the process of evaluating recipients' claims of confidentiality and will provide copies of the individual responses that will include information provided by the banks to the maximum permitted by law. SIGTARP plans to post the responses, redacted as necessary, on its website within 30 days.

For a more complete discussion of the audit scope and methodology, see Appendix A. For a discussion of how banks use capital, see Appendix B. For a copy of the letter sent to recipients of TARP funds through January 31, 2009, see Appendix C. For a list of TARP CPP recipients, see Appendix D. For tables on reported use of funds by month of disbursement, asset sizes, and amount of funding, see Appendix E. For reported broad benefits of receiving CPP funds, see Appendix F. For the audit team members, see Appendix G. For a copy of comments from the Department of Treasury, see Appendix H.

[6] SIGTARP plans additional work in this area.

Banks Were Able To Provide Meaningful Information on Their Use of TARP Funds

Although most banks reported that they did not segregate or track TARP fund usage on a dollar-for-dollar basis, most banks were able to provide insights into their actual or planned use of TARP funds. Over 98 percent of survey recipients reported their actual uses of TARP funds.[7] The banks reported that TARP funds were primarily used for lending, capital reserves, and investments, often citing multiple benefits. However, some banks reported that they had not yet allocated funds for lending or other activities due to the short time that elapsed since the receipt of funds, weakened demand for credit, and the uncertain economic environment. Other firms reported more broadly on the overall benefits of the TARP funding, including actions they were able to undertake or avoid, such as freezing or reducing lending. Nearly 30 percent of respondents reported that their lending levels would have been lower without TARP funds. Table 2 highlights the major uses of funds as reported by the recipients.

Table 2: Reported Use of CPP Funds

Category of Use	Number of Institutions	Percentage of Institutions
Lending	300	83
Capital Cushion, other reserves	156	43
Investments	110	31
Debt Repayments	52	14
Acquisitions	15	4

Source: SIGTARP analysis of 360 survey responses.
Note: Numbers and percentages do not total because respondents reported multiple uses of funds.

The responses reflect the multiple uses of funds cited by individual TARP recipients. It is important to note, however, that the numbers shown in Table 2 represent only the uses specifically reported by banks; others may have made similar uses without specifically reporting it. Respondents reported investment activities across all bank asset sizes and amounts of funding received, as outlined in more detail in Appendix E.

Most Recipients Did Not Segregate TARP Funds from Other Bank Capital

Under the terms of CPP, banks receiving TARP funds were not required to segregate TARP funds or report on their use of such funds. Forty-four respondents, nonetheless, reported that they segregated TARP funds from other bank funds. Approximately half of those respondents recorded the TARP investment on the balance sheet as a discrete component of each bank's

[7] Only six institutions did not report actual uses of TARP funds. Five of those six received TARP funds in January 2009 and reported expected future uses of TARP funds. One intends to return the funds but has not yet done so as of June 15, 2009.

capital. Others cited efforts to segregate physically the funds in a separate account and to manage them separately. One bank stated:

- "[A] separate checking account was established at [the Bank] in to which the TARP funds were deposited. This account is tracked individually on the parent's books via a specific general ledger account. Thus, all activity is isolated and tracked for dispersals. On a monthly basis, the general ledger balance is reconciled to the account statement."

More than half of the banks that reported physical segregation of funds, however, stated that segregation was only a temporary measure pending future deployment of the funds.

The majority of recipients reported that they did not segregate TARP funds. They noted that, in accordance with typical banking industry practices, they commingled the TARP funds with their other capital and leveraged the funds to increase lending and/or make investments. Several banks focused on what they perceived to be the impracticality of segregation. However, this did not preclude respondents from providing information on the use of TARP funds. With regard to segregation, one bank stated that it deposited the TARP funds into its Federal Reserve Bank account, which it used to meet general funding needs. The bank noted that from a capital perspective, the TARP preferred shares and related common warrants were clearly visible as discrete components of their overall capital. At the same time, it also noted that, once received, the cash associated with the TARP funding became indistinguishable from any other cash sources. The following quotes provide context on the reasons that some banks did not segregate TARP funds from other bank capital.

- "The capital we received from the U.S. Treasury was not segregated from other funds. We manage from a total balance sheet perspective, and capital investments are typically not segregated. We do not believe that such segregation is common practice in the industry, nor was it required pursuant to the agreements governing the Treasury's capital purchase."

- "Upon receipt of the TARP proceeds, [the Bank] did not segregate those funds from other capital funds. We did not and do not believe that earmarking the specific funds is in the best interest of our shareholders and/or borrowing customer. Instead, by adding the TARP funds to our existing, already strong capital base, [the Bank] could effectively deliver on its mission of growing its balance sheet by providing retail and commercial depositors and borrowers in our market competitive financial products and services that foster appropriate, rational growth."

The majority of recipients did not report any specific actions taken to track use of TARP funds. They reported bank activities that were supported by TARP funds, but did not specify the portion that represented TARP fund investment. Nearly 90 percent of banks reported some activities in this manner. Some banks that reported in this regard were quite general in their responses, such as the following bank comment: "...our actual use of TARP funds to date has been...to make loans to credit worthy customers, and to facilitate resolution of problem assets on our books." Others provided more details about company activities, but did not give a dollar amount of TARP funds spent or specify the portion of the activity that represented TARP fund investment.

A few respondents, however, tracked actual lending figures as such. However, one bank, in a far more typical response, described the difficulty in tracking lending as follows:

- "Although banks do use capital to lend, it is more precise to say that banks use capital to *support* their lending…it is a cushion against losses, and it is there to support and enable other borrowing in the form of deposit gathering and capital markets borrowing. In this regard,…banks actually lend *more* than just the amount of their total capital and their TARP capital investment amounts…it is also important to understand that because TARP CPP funds are commingled with other capital, deposits and funds from other sources, it is difficult to state categorically what specific funds are actually being used for, except to say…that they are being used for and in support of lending."

Generally speaking, although there were exceptions, the information provided by the survey respondents regarding the use of funds did not vary significantly among those who reported that they segregated TARP funds from other funding sources and those who reported that they did not segregate TARP funds.

Lending

Most recipients reported leveraging the TARP funds to support lending activities by continuing lending or renewing and/or modifying existing loans. Some institutions reported that, without TARP funds, lending activities would have come to a standstill or would have been curtailed. For example, one respondent stated that "had we not received the TARP funds, we may not have been able to fund as many residential loans or our liquidity would have been strained which would have hampered our ability to make future loans." Although some firms reported general lending efforts and the preservation of lending levels, many institutions further subcategorized their lending initiatives by residential lending, small business loans, credit cards, and other categories, as shown in Table 3. However, the survey and responses did not result in sufficient information to develop an overall aggregate amount of actual lending.

Table 3: Reported Lending Activities Supported by TARP Funds

Lending Activity	Number of Institutions	Percentage of Institutions
Residential Mortgage Activities	103	29
Commercial Mortgages	66	18
Other Consumer Lending	61	17
Small Business Loans	45	13
Other Business Loans	48	13
Loan Modification	34	9
Credit Cards	8	2
Student Loans	6	2

Source: SIGTARP analysis of 360 survey responses.
Note: Numbers and percentages do not total because respondents reported multiple uses of funds.

The respondents most frequently cited using TARP funds to support origination of residential mortgages, commercial mortgages, and small business loans. About 29 percent of the respondents reported a focus on using TARP funds to support residential mortgages. Additionally, another 9 percent stated that they have used TARP funds for mortgage loan modification initiatives. Various responses cited using TARP funds for commercial mortgage lending (18 percent) and small business lending (13 percent). These are some of SIGTARP's observations related to the categories of lending activities listed in Table 3:

- **Residential lending**: The incidence of residential mortgage lending was even greater when combined with reported loan modifications. Some institutions reported direct use of TARP funds for residential mortgage activities and for bolstering mortgage modification programs. For example, one bank commented that "since receiving TARP in December 2008, the bank has modified about $3 million of its existing loans to a structure that is sustainable and affordable for troubled borrowers." Another bank reported that it was going to implement a home equity loan program designed to help customers remain in their homes and avoid foreclosure.

- **Commercial lending**: Nearly 20 percent of respondents reported that they used TARP funding for commercial lending activities. Commercial lending, the second most frequently cited category of lending, was broadly distributed across institutions of various sizes. Most often, firms provided general information related to commercial real estate. A few however, provided exact figures; for example, one firm reported funding two loans from TARP proceeds, including a commercial real estate loan for $820,000.

- **Other consumer lending**: Almost 17 percent of respondents reported deploying TARP funds for other consumer lending activities. When these consumer lending activities were reported more descriptively, the loans were often reported as auto loans, personal loans, or other lines of credit. One recipient reported a renewed focus on consumer lending, stating that they have "reentered the [state] market to expand our consumer automobile lending...and have increased our budgeted 2009 automobile loan production [by $90 million]. We expect to use the remaining TARP funds to continue to increase our automobile loan production...".

- **Small business lending**: About 13 percent of the institutions–of various sizes and types–reported using some TARP funds to support small business lending. One smaller firm reported that it had used all the CPP funds for various lending activities, including $500,000 related to small business loans. A larger institution reported lending over $20 billion in new credit extensions, including commitments and renewals to 8,000 small and mid-sized businesses, governments, and non-profits. Another institution responded more generally, that it is using the TARP capital funds to renew and originate quality SBA loans, in addition to other lending.

Capital Cushion or Other Reserves

Regulators require banks to maintain certain capital cushion levels to be able to absorb unanticipated losses and to protect against the risk of insolvency. Beyond that, banks may leverage excess capital to engage in lending and investing to serve their customers and generate more income. Many survey responses highlighted the importance of the TARP funds to the bank's capital base, and, by extension, the impact of the funds on lending.

As noted earlier in Table 2, more than 40 percent of banks reported using some TARP funds to generate capital reserves to help the institution remain well-capitalized from a regulatory capital perspective. In citing the use for capital purposes, various recipients emphasized the need to retain capital as a buffer or cushion against loan losses or other unforeseen events in light of the economic instability facing U.S. and international markets. For example, one institution reported that "while some policymakers are encouraging banks to lend more, regulators have announced that they expect banks to maintain significantly higher capital ratios as a buffer against a potentially severe and prolonged recession."

In addition, the respondents also disclosed a variety of other reasons for focusing on strengthening capital. These reasons included concerns about the recessionary economic environment, the anticipation of potential increases in regulatory capital requirements, the need to better position themselves to absorb future credit losses, and preparing for the possibility of continued capital availability constraints in the future. The following responses provide some insights into the importance of having TARP funds to bolster capital reserves:

- **Retain strong capital ratios**: "During the second half of 2008, management became concerned about being able to retain its well capitalized risk based ratios because of the dramatic reduction in expected repayments."

- **Cushion against future losses**: "[I]t was in the best interest of [the Bank's] shareholders for the company to gain additional liquidity and a further capital cushion against the economic uncertainties that lay ahead."

- **Raise new capital otherwise not available in the market**: "Absent an infusion of capital [the Bank] was unable to continue to meet the needs of its retail and commercial customer base. Opportunities to raise capital through private sources are virtually non-existent. Consequently, participating in the TARP enabled [the Bank] to continue to meet its customer needs." Another bank noted that "none of this new lending would have been possible without the additional TARP capital, which helped us maintain our well capitalized rating while continuing our important lending programs."

Some institutions listed measurable impacts of TARP funds on their capital ratios, while others reported in general terms on how the direct infusion of TARP funds bolstered their reserve positions.

Investments

Some recipients chose to support lending by investing in relatively safe and liquid securities or debt, primarily Government Sponsored Enterprises (GSE), mortgage-backed securities (MBS), agency debt, and municipal securities, as seen in Table 4. According to the banks, these investments provided immediate support of the lending and borrowing activities of other institutions, as described below.

Table 4: Reported Investment Activities Supported by TARP Funds

Investment Activity	Number of Institutions	Percentage of Institutions
Mortgage-backed Securities (Agency) [8]	88	24
Municipal Securities	19	5
Agency Debt	10	3
Mortgage-backed Securities (Non-agency)	8	2
Corporate Debt	6	2

Source: SIGTARP analysis of 360 survey responses.
Note: Numbers and percentages do not total because respondents reported multiple uses of funds.

Those that invested TARP funds in MBS tended to invest in the so-called "agency" securities– those backed by Ginnie Mae, Fannie Mae, and Freddie Mac; only a few invested in private-label MBS or corporate debt. Many characterized these investments in "agency" MBS and debt as short-term. The recipient rationale for investing in these instruments included:

- the consideration of safety and liquidity
- the reasonableness of the return on the investment
- the favorable regulatory capital treatment of those assets
- the flexibility to use the securities as collateral to secure future loans
- the opportunity to redeploy the cash flows generated from these investments over time to support direct lending and other investment opportunities

One large entity reported that its multi-billion dollar investment in Fannie Mae MBS "helped to provide liquidity to the secondary [mortgage] market[9] when Fannie Mae's funding costs had

[8] In some cases, the respondent did not report which types of mortgage-backed securities were purchased. In these cases, we captured the response as an agency MBS because those were the most common, and the market for non-agency MBS was virtually frozen during the time period covered by the survey.

increased significantly." Another recipient that purchased more than $2 billion of MBS expressed the belief that these purchases assisted in the recovery and stabilization of the MBS market. Many other recipients who expressed similar sentiments stated that investments in MBS help to replenish funds to other lenders so that those lenders, in theory, could continue to originate additional mortgage loans. Others sought to use the cash flows from these investments to support lending. For example, one regional bank that used TARP funds to purchase more than $80 million in MBS stated that "the intention of this initial use of funds was to invest in high quality, low risk securities issued by [GSEs] to assure a reasonable return on these funds and to establish a series of cash flows that could quickly and easily be redeployed into customer-based commercial, mortgage and consumer loans as local economic conditions warrant."

Although most recipients that reported investments deployed the TARP funds into mortgage–related investments, a few reported investments in municipal securities with the intent of helping local communities. One recipient strongly emphasized municipal bonds by investing around 14 percent of the TARP funds received in this manner, explaining that investing in municipal bonds will provide much-needed funding for municipalities currently strained by the recession.

Debt Repayment

About 14 percent of TARP recipients reported using some of the funds to repay outstanding debt obligations. More specifically, the respondents used the funds to reduce short-term borrowing, repay loans to other financial institutions, retire or reduce letters of credit, and/or as replacement financing for higher cost loans. Banks noted these reasons for repaying outstanding debt:

- improving the balance sheet while mitigating their liquidity risk
- external pressure to retire their outstanding debt obligations
- instructed by their creditors to use the TARP funds to pay off their loans
- lack of demand for lending
- to replace their outstanding debt with new, cheaper debt

Many banks were able to provide specific dollar amounts of TARP funds used for this purpose. One bank reported using $75 million of TARP funds to reduce its short-term borrowings; another used $55 million to pay down a revolving credit facility.

Acquisitions

Only 4 percent of institutions reported that they used TARP funds to complete acquisitions. The most common theme emerging from responses related to acquisitions was that they were often completed at FDIC's encouragement or that the assets were acquired from FDIC. The majority of the responding institutions shared perspectives similar to these:

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[9] A secondary market is created when a bank sells a portion of their loans to a dealer, who pools the loans together and sells portions of the loan pools as securities to investors. The secondary market serves as a source of cash for banks, providing them money to make new loans.

- "We have also cooperated with the FDIC who asked us to commit resources to take on another failed bank…and continue to provide uninterrupted service to 6,400 customers."

- "Included in the deposit growth is our…purchase of approximately $180 million of deposits from the FDIC."

- "Without TARP funds, it is unlikely that the Bank could have assisted the FDIC with the transaction while still meeting credit needs of existing customers."

Only two institutions reported that their capital levels would have been sufficient to support acquisitions without the TARP injection. One of them planned to acquire a number of bank branches and was specific as to the investment costs and the benefit. Although noting that the acquisitions would have occurred without the TARP funds, this institution expressed the view that the acquisitions were an excellent use of the TARP funds because the additional deposits acquired with the branches would (through leveraging) allow the bank to increase future lending many times over the expected acquisition cost.

Reported Future Uses of TARP Funds

Nearly 78 percent of recipients reported future plans for deployment of TARP funds. They most frequently cited lending and capital accumulation activities. Recipients that reported plans for future deployment of TARP funds typically expected that lending activity would increase; almost all of those institutions stated that they deployed or intend to deploy a portion of TARP funds to support lending. Banks also indicated that they were less likely to use TARP funds for investment in securities, debt repayments, and capital reserves in the future. Furthermore, more respondents reported that they were actually considering using TARP funds to acquire another bank than those who reported they already have done so.

Other banks reported that they had not yet allocated funds for lending and other activities because of the short time elapsed since the receipt of funds, the demand for credit, and the uncertain economic environment. In January 2009, 147 survey recipients received TARP funds, sometimes only weeks before receiving the survey request. Accordingly, many of these recipients had only a limited amount of time to deploy TARP funds fully. Some recipients provided responses with perspectives on the timing of the survey and the time passed since the receipt of funds, including a firm that made this request:

- "Because this transaction closed only three weeks ago, we would respectfully ask that in reviewing our response, you do so in light of the very limited period of time that has passed between January 30, 2009 and the date of this letter."

Other institutions provided insight into their initial limited ability to deploy TARP funds due to the weakened demand for credit and the broader economy. One such bank stated that "our liquid assets created by the capital injection are being invested nightly with the Federal Reserve until such time as the economy and demand for loans within our markets returns and the capital can be effectively employed."

Overall Benefits

Beyond specific details on their use of funds, banks also provided insights into the overall benefit of the TARP funding, some of which were previously noted. Importantly, many recipients addressed these questions:

- What actions were they were able to take that they could not have taken without receiving the TARP funds?
- Conversely, what actions were they able to avoid because of the infusion of TARP funds?

For example, approximately two-thirds of those who addressed this question reported that, without TARP funds, their lending levels would have been lower than levels they were able to achieve with TARP funds.[10] A more complete summary of the broad impact of receiving TARP funds—the actions that were possible to be taken, as well as the actions avoided—is provided in Appendix F.

The importance of each of the benefits in terms of actions that could be taken or avoided in return for receiving TARP funds is well summarized by the comments of one respondent:

> "At the outset TARP capital was viewed as providing three core elements. First, it would enhance the liquidity position as a source of long-term committed funding. Second, it would strengthen the balance sheet by bolstering the capital position, thus giving all key stakeholders (regulators, investors, debt investors, customers, employees) confidence in [the bank's] ability to weather the current 'economic storm.' The final element is achieved only through satisfying the first two, and that is the ability to continue executing our strategic business model through serving customers and growing our core lending business."

[10] 106 respondents indicated at least one of the following categories reflected in Appendix F: Grow Lending, Enhance Lending Activity, Reduce Loan Terms, Reduce Lending, Freezing Lending, or Exiting the Banking Business.

Conclusions and Recommendations

Although most banks reported that they did not segregate or track TARP fund usage on a dollar-for-dollar basis, they were able to report on actual or planned activities that were supported by TARP funds as well as macro benefits associated with having the funds. These responses demonstrate that banks can provide useful information to improve transparency over how they use the TARP funds. The uses of funds identified in this report are as of a particular point in time and that use could vary somewhat over time depending on changing economic circumstances. Because of time constraints, many of the survey respondents had not yet allocated all of their TARP funds as of the March 2009 response date. Furthermore, more than 250 institutions have received TARP funds since the survey was issued, including a $3.4 billion dollar investment in insurance company through the Capital Purchase Program.

Treasury has engaged in ongoing efforts to obtain lending data from each TARP recipient, but this tells only a small part of the story. It fails to recognize that TARP recipients do far more with their TARP funds than simply originating loans: they have also used these funds in a broader array of interrelated activities, as demonstrated in this audit, such as making investments, acquiring other financial institutions, and simply maintaining the capital as a cushion against future losses. SIGTARP has previously recommended that Treasury require all TARP recipients to report on their use of TARP funds, but, with limited exceptions, Treasury has not done so. Based on the survey responses, SIGTARP believes that this recommendation continues to be essential to meet Treasury's stated goal of bringing transparency to the TARP program and informing the American people and their representatives in Congress on what is being done with their investment.

To improve transparency over the use of funds, SIGTARP recommends that the Secretary of the Treasury require TARP recipients to submit periodic reports to the Department of Treasury on their uses of TARP funds, such as lending, investments, acquisitions and other activities, including a description of what actions they were able to take that they would not have taken without TARP funding.

SIGTARP also recommends that the Secretary of the Treasury require TARP recipients to retain all supporting documentation in conjunction with any reporting requirement that Treasury may impose.

Management Comments and Audit Response

In written comments on a draft of this report, Treasury's Assistant Secretary for Financial Stability did not express concurrence with the report's recommendation but raised questions regarding the information provided; this response was consistent with the Department's previous opposition to this recommendation as noted in SIGTARP's Quarterly reports to the Congress. For a copy of Treasury comments on a draft of this report, see Appendix H.

In commenting on this report, the Assistant Secretary recognized that the report illustrated the broad range of uses to which capital may be put, including building capital reserves and supporting lending and making investments. Yet, at the same time, the Secretary suggested caution in drawing conclusions from this data noting that "although it might be tempting to do so, it is not possible to say that investment of TARP dollars resulted in particular loans, investments or other activities by the recipient. " He went on to use selectively a quote in the report that most TARP recipients did not segregate TARP funds and that, once received, the cash associated with the TARP funding became indistinguishable from any other case sources. He further stated that "even if TARP investments could be traced to particular uses, those uses cannot be said to be attributable to the TARP investment if the same expenditures would have been made from other sources even in the absence of TARP funding."

SIGTARP's report clearly points out the diverse views of respondents regarding the fungibility of TARP funds received and the difficulty of saying precisely which dollar was used for which purpose. Nonetheless, SIGTARP's report provides significant information on the use of funds and notes that, with limited exceptions, the information provided by the survey respondents on their use of funds did not vary significantly between those banks that reported they segregated TARP funds from other funding sources and those that did not segregate TARP funds. Both groups provided meaningful responses indicating their actual and planned use of funds. SIGTARP finds it compelling that it received a 100 percent response rate to its survey and 98 percent of the respondents were able to describe wide ranging uses of their funds, typical of the range of actions that banks would be expected to take in having received the funds at a time of financial crisis in the country where the need to stabilize financial institutions and foster lending was paramount. Moreover, they were able to speak broadly about the benefits of having received the funds—both actions they were able to take as a result of receiving the funds as well as actions avoided.

For Treasury to discount wholly SIGTARP's results because a particular bank may not be able to say which dollar was used for a specific purpose substantially underestimates a bank's capacity — on a practical level — to know how its resources are being utilized. Take the example of an American family with a checking account. Because all of the family income goes into the same account, the family cannot say with any precision which paycheck paid for which particular bill. That does not mean, however, that the family cannot give meaningful information about what it did with the sizeable bonus that the wife received at the end of the year. Such infusions of money can be budgeted; such infusions can be used to do things that would not have been possible without such infusion. Banks are no different, and indeed should be in a better position to plan, and to track, how it will use a sizeable capital infusion. Stated another way, if a bank is receiving an infusion of tens of millions, if not billions, of TARP dollars, that bank is very likely to budget how it will be put to work and can likely give at least a general indication of what the bank was able to do that it would not have but for that sizeable infusion. Treasury's decision to reject this information just because the bank may not be able to trace the exact dollars ignores this common sense view.

It also ignores the data that was collected in this audit. Many of the banks' responses revealed uses to which the banks put the TARP funds that can be readily tested. If a bank reports that it was able to repay a specific loan with TARP funds that it would not have been able to repay but

for TARP funds, that is a use that can be tested. If a bank reports that it took the TARP funds and purchased agency MBS, that, too can be verified. If a bank states that it put the TARP funds into its account at the Federal Reserve to save for future potential losses that too can be checked.
In sum, the fact that there may be some limitations on the precision of the data that could be collected by requiring use of funds reporting does not mean that such reporting could not generate meaningful information, including meaningful information that will not be captured by Treasury's lending snapshots.

Appendix A—Scope and Methodology

SIGTARP performed this audit under the authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended. This audit reports on the use of TARP funds by 360 institutions that participated in TARP's Capital Purchase Program. Our specific objective was to determine how TARP recipients have used the funds received.

We conducted this audit from February to June 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Within the limitations noted below, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We contracted with Concentrance Consulting Group, Inc. (Concentrance) to help us review and analyze the responses we received. We interacted and worked with the Concentrance team at least weekly from April through June 2009 to help develop the analysis and produce the report.

We developed a narrative survey letter that provided for open-ended responses to elicit in-depth information. We chose this approach because the institutions are so wide in diversity in terms of asset size, institution type, and institution-specific economic factors. Regarding the use of funds, we asked each recipient to provide a narrative response that outlined:

- whether they segregated TARP funds from other institutional funds
- their actual use of TARP funds to date
- their expected future use of unspent TARP funds

We also asked recipients to consider their anticipated use of TARP funds when they applied for such funds, as well as any actions they have taken that they could not have taken without the infusion of TARP funds. Furthermore, we encouraged recipients to make reference to any statements to the media, shareholders, or others concerning their intended or actual use of TARP funds, as well as any internal email, budgets, or memoranda describing anticipated use of funds. Additionally, we asked recipients to segregate and preserve all documents referencing the use or anticipated use of TARP funds–such as any internal email, budgets, or memoranda regarding anticipated or actual use of TARP funds–and to provide copies of pertinent supporting documentation (financial or otherwise) to support their response. We also asked each institution to sign a statement attesting to the accuracy of the data. To determine the extent to which firms segregated and tracked TARP funds, we analyzed the survey responses to determine the extent to which the respondents reported that they segregated the TARP funds from other bank capital and established a process for tracking specific uses of funds.

To determine how recipients reported their use or plans to use TARP funds, we identified a number of common response categories and analyzed the various actions associated with the use

of TARP funds, including general activities (such as general lending) and associated subcategories (such as residential lending and small business lending). Similarly, we identified investment categories, such as agency MBS, agency debt, and corporate debt. We took a number of steps to ensure the consistency of our analysis. We developed a checklist for analysts to review each survey response. If an analyst had questions related to a survey response, another analyst reviewed the response; then they discussed these cases collectively until they reached consensus agreement in interpreting the response relative to other responses. In addition, a quality control team that was not involved in the analytical process reviewed all of the data entries.

Limitations on Data

SIGTARP's review and analysis was confined to the survey responses and supporting documentation, as provided, reported, and certified by the TARP recipients. These data are not sufficient for statistical inferences. They should be interpreted only as directional insights, not as definitive characterizations of the TARP recipients' use of funds. The survey did not encompass or inquire about funds received from other government or non-government sources and the extent to which such funding influenced the use of TARP funding.

Appendix B—How Banks Use Capital

Capital is an essential component of a bank's financial capacity to sustain itself, grow, and serve its customers.[11] Regulators and market participants recognize the critical role that capital plays in supporting confidence in the health of banks and of the financial system.[12] Capital generally provides at least three broad benefits:

- enabling the banks to absorb current and future losses while further protecting the interests of the bank's creditors
- strengthening the bank's capacity and willingness to lend
- providing added liquidity by injecting cash into the firm, thereby making funds available to address a variety of corporate funding needs, such as repayment of maturing debt

Federal banking regulators[13] have established minimum capital adequacy ratios to ensure that banks can absorb a reasonable level of losses before becoming insolvent.[14] Therefore, maintaining acceptable capital ratios protects depositors and other senior creditors while enhancing the stability and efficiency of the U.S. financial system, especially during recessionary times.

Federal banking regulators have traditionally focused upon "Tier 1" capital. Tier 1 capital includes common stock, disclosed retained earnings, and qualifying perpetual preferred stock. Additionally, Treasury and the banking regulators determined that qualifying U.S.-controlled banks, savings associations, and certain savings and loan holding companies that issued senior preferred stock to the Treasury under the CPP could include such capital instruments in meeting their Tier 1 capital requirements.[15] Banks must consider a number of key factors in prudently allocating Tier 1 capital. When considering deploying excess capital above the minimum regulatory capital adequacy levels, a bank must balance two critical factors:

1. Prior to issuing any dividend distributions or stock repurchases, the bank needs to maintain a capital cushion that can absorb unanticipated losses and protect against the risk of insolvency.

2. The bank needs to leverage the excess capital to provide more lending and investing, potentially generating more income.

With respect to lending and investing, capital can have a multiplier effect; one dollar in capital can generate multiple dollars in loans and investments. It can seed lending and investments by combining with and leveraging other sources of funds, such as relatively inexpensive bank

[11] A bank's capital is also referred to as equity.
[12] Treasury, White Paper, "The Capital Assistance Program and Its Role in the Financial Stability Plan"
[13] The federal banking regulators are the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve Board, and the Federal Deposit Insurance Corporation.
[14] Capital adequacy ratios are a quantification of the amount of a bank's capital presented as a percentage of its risk-weighted credit exposures and are key measures of a bank's financial strength.
[15] Treasury Announces TARP Capital Purchase Program Description, October 14, 2008- HP-1207.

deposits. One added dollar of Tier 1 capital might generate the potential for the bank to then issue an additional $10 in loans. That is because based on regulatory rules, a healthy bank that receives $1 million in TARP funds can then borrow up to $10 million to make new loans to consumers or businesses and still be deemed to be adequately capitalized, as long as the regulator finds that overall capital is sufficient and that the bank is able to absorb losses such as loan defaults. The bank could also leverage capital by using new capital to buy deposits from other banks further increasing their ability to issue new loans.

The CPP funds were a primary source of new Tier 1 capital available to financial institutions when credit losses were rapidly eroding the existing capital of many firms and the ability to raise private capital was severely constrained. Given the nationwide decline in real estate values, many banks faced losing the stream of income they had enjoyed from homeowner payments on mortgages. Moreover, as they foreclosed on properties, they found that resale value of the properties was often dramatically lower than the amount of the loan. Similarly, the market for the mortgage-related securities had also declined, and many of the securities the banks held could no longer be sold in the open market for more than a fraction of what the bank had paid for them.[16]

The injection of new funding can strengthen the capital base of the recipient banks and provide for added liquidity. Generally, a bank has sufficient liquidity if it can easily meet its needs for funds by having readily available cash, loans, and securities that can be easily sold, or if it has the ability to otherwise raise or borrow funds. Prior to the current recession, banks generally were able to raise cash easily by borrowing and selling a wide array of assets without government support. Banks used short-term and long-term secured (collateralized) loans and unsecured debt funding, as well as securitization,[17] to generate and maintain liquidity, and thus had more funds available for lending.

Securitization entails packaging loans into asset-backed securities, and the sale of these securities provided a source of funds to banks. In the past, the ability to sell these loans as securities freed up capital and funds for more lending. The failure of securitized assets, which include consumer and business loans, has played a prominent role in the current credit crisis. The weakness in the securitized asset market substantially can be traced back to the individual subprime borrowers whose loans had been securitized. As the subprime borrowers began to miss their monthly loan payments, the value of the securities backed by the borrowers' loans began to lose value. Throughout 2008, investors were losing confidence in these securities and therefore stopped buying them. Many banks were dependent on the cash they received from selling their loans to securities issuers or investors; when this market essentially disappeared, they were unable to generate enough money to continue making new loans.[18]

Consequently, the onset of the current credit contraction was also accompanied by a general weakening of balance sheets of U.S. banks. A balance sheet provides a summary of a firm's financial position reflecting its assets, liabilities, and equity at a specific date. A number of key factors contributed to balance sheet weaknesses, including

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[16] SIGTARP, "Quarterly Report to Congress," 4/21/2009.
[17] The process by which new securities are created by combining or bundling other financial assets together, including loans, and selling the resulting financial instrument, usually in pieces, to investors.
[18] SIGTARP, "Quarterly Report to Congress," 4/21/2009.

- the erosion of capital levels because of losses
- the inability of banks to sell many of the securities they held in the open market for more than a fraction of what they had paid [19]

Accordingly, these securities remained on the balance sheets as investments, thereby tying up precious capital and liquidity.

Under normal market conditions, bank capital fuels lending, and strong earnings give the firm the opportunity to distribute dividends and repurchase shares. Dividend distribution and share repurchases return capital to shareholders. However, the current recessionary environment, future macroeconomic uncertainties, and continued credit losses made the distribution of capital to shareholders and allocation to lending activities more challenging. To conserve capital, banks may curtail dividends distribution to their common shareholders and stop repurchasing their common shares. Additionally, firms were likely to reduce lending and investments.

[19] SIGTARP, "Quarterly Report to Congress," 4/21/2009.

Appendix C—Survey Letter

OFFICE OF THE SPECIAL INSPECTOR GENERAL
TROUBLED ASSET RELIEF PROGRAM
1500 Pennsylvania Ave., N.W., Suite 1064
Washington, D.C. 20220

February 5, 2009

(Addressee)

The Emergency Economic Stabilization Act of 2008 ("EESA") that established the Troubled Asset Relief Program (TARP) also created the Office of the Special Inspector General Troubled Asset Relief Program (SIGTARP). SIGTARP is responsible for coordinating and conducting audits and investigations of any program established by the Secretary of the Treasury under the act. As part of an audit into TARP recipients' use of funds and their compliance with EESA's executive compensation requirements,

I am requesting that you provide my office, within 30 days of this request, the following information:

(1) A narrative response specifically outlining (a) your anticipated use of TARP funds; (b) whether the TARP funds were segregated from other institutional funds; (c) your actual use of TARP funds to date; and (d) your expected use of unspent TARP funds. In your response, please take into consideration your anticipated use of TARP funds at the time that you applied for such funds, or any actions that you have taken that you would not have been able to take absent the infusion of TARP funds.

(2) Your specific plans, and the status of implementation of those plans, for addressing executive compensation requirements associated with the funding. Information provided regarding executive compensation should also include any assessments made of loan risks and their relationship to executive compensation; how limitations on executive compensation will be implemented in line with Department of Treasury guidelines; and whether any such limitations may be offset by other changes to other, longer-term or deferred forms of executive compensation.

February 5, 2009
Page 2

In connection with this request:

(1) We anticipate that responses might well be quantitative as well as qualitative in nature regarding the impact of having the funds, and we encourage you to make reference to such sources as statements to the media, shareholders, or others concerning your intended or actual use of TARP funds, as well as any internal email, budgets, or memoranda describing your anticipated use of funds. We ask that you segregate and preserve all documents referencing your use or anticipated use of TARP funds such as any internal email, budgets, or memoranda regarding your anticipated or actual use of TARP funds.

(2) Your response should include copies of pertinent supporting documentation (financial or otherwise) to support your response.

(3) Further, I request that, your response be signed by a duly authorized senior executive officer of your company, including a statement certifying the accuracy of all statements, representations, and supporting information provided, subject to the requirements and penalties set forth in Title 18, United States Code, Section 1001.

(4) Responses should be provided electronically within 30 days to SIGTARP at SIGTARP.response@do.treas.gov with an original signed certification and any other supporting documentation mailed to: Special Inspector General – TARP; 1500 Pennsylvania Avenue, NW; Suite 1064; Washington, D.C. 20220.

We think this initiative is vital to providing transparency of the TARP program, and to the ability of SIGTARP and others to assess the effectiveness of TARP programs over time. If you have any questions regarding this initiative, please feel free to contact Mr. Barry W. Holman, my Deputy Inspector General for Audit at [redacted].

Very truly yours,

Neil M. Barofsky
Special Inspector General

OMB Control No. 1505-0212
(Expires August 2009)

An agency is not authorized to conduct, and persons are not required to respond to, an information collection request unless it displays a valid control number. Response is mandatory for all selected participants in the TARP program.

Appendix D—CPP Survey Recipients

Table 5 provides information on the 360 CPP recipients that responded to the survey.

Table 5: CPP Recipient Respondents, Funds Received and Date

Institution Name	Funding (millions)	TARP Agreement Date
1st Constitution Bancorp	$12.00	12/23/2008
1st FS Corporation/ Mountain 1st Bank & Trust	$16.00	11/14/2008
Alliance Financial Corporation[20]	$27.00	12/19/2008
American Express Company[21]	$3,389.00	1/9/2009
American State Bancshares	$6.00	1/9/2009
Ameris Bancorp/ Ameris Bank	$52.00	11/21/2008
AmeriServ Financial, Inc	$21.00	12/19/2008
Associated Banc-Corp	$525.00	11/21/2008
Bancorp Rhode Island, Inc./Bank Rhode Island	$30.00	12/19/2008
BancTrust Financial Group, Inc./Bank Trust	$50.00	12/19/2008
Bank of America[22]	$25,000.00	10/28/2008
Bank of Commerce	$3.00	1/16/2009
Bank of Commerce Holdings	$17.00	11/14/2008
Bank of Marin Bancorp[23]	$28.00	12/5/2008
Bank of New York Mellon Corp[24]	$3,000.00	10/28/2008
BNC Bancorp/Bank of North Carolina	$31.00	12/5/2008
Bank of the Ozarks, Inc.	$75.00	12/12/2008
Banner Corporation/Banner Bank	$124.00	11/21/2008
Bar Harbor Bankshares/Bar Harbor Bank & Trust	$19.00	1/16/2009
BB&T Corp.[25]	$3,134.00	11/14/2008
BCSB Bancorp, Inc.	$11.00	12/23/2008
Berkshire Hills Bancorp, Inc.[26]	$40.00	12/19/2008
Blue Valley Ban Corp	$22.00	12/5/2008
BNCCORP, Inc.	$20.00	1/16/2009
Boston Private Financial Holdings Inc.	$154.00	11/21/2008
Bridge Capital Holdings	$24.00	12/23/2008
Bridgeview Bancorp, Inc./ Bridgeview Bank Group	$38.00	12/19/2008
Broadway Financial Corporation/ Broadway Federal Bank	$9.00	11/14/2008
C&F Financial Corporation	$20.00	1/9/2009
Cache Valley Banking Company	$5.00	12/23/2008

[20] Repaid Treasury on May13, 2009.
[21] Repaid Treasury on June 17, 2009.
[22] Bank of America received $15 billion on October 28, 2008, and $10 billion on January 9, 2009.
[23] Repaid Treasury on March 31, 2009.
[24] Repaid Treasury on June 17, 2009.
[25] Repaid Treasury on June 17, 2009.
[26] Repaid Treasury on May 27, 2009.
Note: Funding numbers provided reflect some rounding.

Institution Name	Funding (millions)	TARP Agreement Date
Cadence Financial Corporation	$44.00	1/9/2009
Capital Bancorp, Inc.	$5.00	12/23/2008
Capital Bank	$41.00	12/12/2008
Capital One Financial Corporation[27]	$3,555.00	11/14/2008
Capital Pacific Bancorp	$4.00	12/23/2008
Carolina Bank Holdings, Inc.	$16.00	1/9/2009
Carver Bancorp, Inc.	$19.00	1/16/2009
Cascade Financial Corporation	$39.00	11/21/2008
Cathay General Bancorp/ Cathay Bank	$258.00	12/5/2008
Cecil Bancorp, Inc.	$12.00	12/23/2008
Center Bancorp, Inc.	$10.00	1/9/2009
Center Financial Corporation/Center Bank	$55.00	12/12/2008
Centerstate Banks of Florida Inc.	$28.00	11/21/2008
Centra Financial Holdings, Inc./Centra Bank, Inc.[28]	$15.00	1/16/2009
Central Bancorp, Inc./Central Co-operative Bank	$10.00	12/5/2008
Central Federal Corporation	$7.00	12/5/2008
Central Jersey Bancorp	$11.00	12/23/2008
Central Pacific Financial Corp.	$135.00	1/9/2009
Centrue Financial Corporation	$33.00	1/9/2009
CIT Group Inc.	$2,330.00	12/31/2008
Citigroup Inc./Citibank National Association	$25,000.00	10/28/2008
Citizens & Northern Corporation	$26.00	1/16/2009
Citizens Bancorp	$10.00	12/23/2008
Citizens Community Bank	$3.00	12/23/2008
Citizens First Corporation	$9.00	12/19/2008
Citizens Republic Bancorp, Inc.	$300.00	12/12/2008
Citizens South Bank	$21.00	12/12/2008
City National Corporation	$400.00	11/21/2008
Coastal Banking Company, Inc.	$10.00	12/5/2008
CoBiz Financial Inc.	$64.00	12/19/2008
Codorus Valley Bancorp, Inc.	$17.00	1/9/2009
Colony Bankcorp, Inc./Colony Bank	$28.00	1/9/2009
Columbia Banking System Inc.	$77.00	11/21/2008
Comerica Inc.	$2,250.00	11/14/2008
Commerce National Bank	$5.00	1/9/2009
Community 1st Bank	$3.00	1/16/2009
Community Bank of the Bay	$2.00	1/16/2009
Community Bankers Trust Corporation	$18.00	12/19/2008
Community Financial Corporation/Community Bank	$12.64	12/19/2008
Community Investors Bancorp, Inc.	$3.00	12/23/2008
Community Trust Financial Corporation	$24.00	1/9/2009
Community West Bancshares	$16.00	12/19/2008
Congaree Bancshares, Inc.	$3.00	1/9/2009

[27] Repaid Treasury on June 17, 2009.
[28] Repaid Treasury on March 31, 2009.

Institution Name	Funding (millions)	TARP Agreement Date
Crescent Financial Corporation	$25.00	1/9/2009
Crossroads Bank (FFW Corporation)	$7.29	12/19/2008
CVB Financial Corp	$130.00	12/5/2008
Dickinson Financial Corporation II	$146.00	1/16/2009
Eagle Bancorp, Inc.	$38.00	12/5/2008
East West Bancorp	$307.00	12/5/2008
Eastern Virginia Bankshares, Inc.	$24.00	1/9/2009
ECB Bancorp, Inc./East Carolina Bank	$18.00	1/16/2009
Emclaire Financial Corp./The Farmers National Bank of Emlenton	$8.00	12/23/2008
Encore Bancshares Inc.	$34.00	12/5/2008
Enterprise Financial Services Corp./ Enterprise Bank & Trust	$35.00	12/19/2008
Exchange Bank	$43.00	12/19/2008
F.N.B. Corporation	$100.00	1/9/2009
Farmers Capital Bank Corporation	$30.00	1/9/2009
FCB Bancorp, Inc.	$9.00	12/19/2008
Fidelity Bancorp, Inc.	$7.00	12/12/2008
Fidelity Financial Corporation	$36.00	12/19/2008
Fidelity Southern Corporation	$48.00	12/19/2008
Fifth Third Bancorp	$3,408.00	12/31/2008
Financial Institutions, Inc.	$38.00	12/23/2008
First Bancorp, North Carolina	$65.00	1/9/2009
First BanCorp, Puerto Rico	$400.00	1/16/2009
First Bankers Trustshares, Inc.	$10.00	1/16/2009
First Banks, Inc.	$295.00	12/31/2008
First California Financial Group, Inc	$25.00	12/19/2008
First Community Bancshares Inc.	$42.00	11/21/2008
First Community Bank Corporation	$11.00	12/23/2008
First Community Corporation	$11.00	11/21/2008
First Defiance Financial Corp.	$37.00	12/5/2008
First Financial Bancorp	$80.00	12/23/2008
First Financial Holdings Inc.	$65.00	12/5/2008
First Financial Service Corporation	$20.00	1/9/2009
First Horizon National Corporation	$867.00	11/14/2008
First Litchfield Financial Corporation	$10.00	12/12/2008
First Manitowoc Bancorp, Inc.[29]	$12.00	1/16/2009
First Midwest Bancorp, Inc.	$193.00	12/5/2008
First Niagara Financial Group[30]	$184.00	11/21/2008
First PacTrust Bancorp, Inc.	$19.00	11/21/2008
First Security Group, Inc.	$33.00	1/9/2009
First Sound Bank	$7.00	12/23/2008
Firstmerit Corporation[31]	$125.00	1/9/2009

[29] Repaid Treasury on May 27, 2009.
[30] Repaid Treasury on May 27, 2009.
[31] Repaid Treasury on April 22, 2009.

Institution Name	Funding (millions)	TARP Agreement Date
Flushing Financial Corporation	$70.00	12/19/2008
FPB Bancorp, Inc.	$6.00	12/5/2008
Fulton Financial Corporation	$377.00	12/23/2008
Goldman Sachs & Co.[32]	$10,000.00	10/28/2008
GrandSouth Bancorporation	$9.00	1/9/2009
Great Southern Bancorp/ Great Southern Bank	$58.00	12/5/2008
Green Bankshares, Inc.	$72.00	12/23/2008
Hampton Roads Bankshares, Inc.	$80.00	12/31/2008
Hawthorn Bancshares, Inc.	$30.00	12/19/2008
Heartland Financial USA, Inc.	$82.00	12/19/2008
Heritage Commerce Corp.	$40.00	11/21/2008
Heritage Financial Corporation	$24.00	11/21/2008
HF Financial Corp[33]	$25.00	11/21/2008
HMN Financial, Inc.	$26.00	12/23/2008
Home Bancshares, Inc.	$50.00	1/16/2009
HopFed Bancorp	$18.00	12/12/2008
Horizon Bancorp	$25.00	12/19/2008
Huntington Bancshares	$1,398.00	11/14/2008
Iberiabank Corporation[34]	$90.00	12/5/2008
Idaho Bancorp	$7.00	1/16/2009
Independence Bank	$1.00	1/9/2009
Independent Bank Corp.[35]	$78.00	1/9/2009
Independent Bank Corporation	$72.00	12/12/2008
Indiana Community Bancorp	$22.00	12/12/2008
Intermountain Community Bancorp/Panhandle State Bank	$27.00	12/19/2008
International Bancshares Corporation/ International Bank of Commerce	$216.00	12/23/2008
Intervest Bancshares Corporation	$25.00	12/23/2008
JP Morgan Chase & Co.[36]	$25,000.00	10/28/2008
KeyCorp/Keybank National Association	$2,500.00	11/14/2008
LCNB Corp.	$13.00	1/9/2009
Leader Bancorp, Inc./Leader Bank, National Association	$6.00	12/23/2008
LNB Bancorp Inc.	$25.00	12/12/2008
LSB Corporation	$15.00	12/12/2008
M&T Bank Corporation	$600.00	12/23/2008
Magna Bank	$14.00	12/23/2008
MainSource Financial Group, Inc.	$57.00	1/16/2009
Manhattan Bancorp	$2.00	12/5/2008
Marquette National Corporation	$36.00	12/19/2008
Marshall & Ilsley Corporation	$1,715.00	11/14/2008

[32] Repaid Treasury on June 17, 2009.
[33] Repaid Treasury on June 3, 2009.
[34] Repaid Treasury on March 31, 2009.
[35] Repaid Treasury on April 22, 2009.
[36] Repaid Treasury on June 17, 2009.

Institution Name	Funding (millions)	TARP Agreement Date
MB Financial Inc.	$196.00	12/5/2008
MetroCorp Bancshares, Inc.	$45.00	1/16/2009
Mid Penn Bancorp, Inc.	$10.00	12/19/2008
MidSouth Bancorp, Inc.	$20.00	1/9/2009
Midwest Banc Holdings, Inc.	$85.00	12/5/2008
Mission Community Bancorp/Mission Community Bank	$5.00	1/9/2009
Mission Valley Bancorp/ Mission Valley Bank	$6.00	12/23/2008
Monadnock Bancorp, Inc.	$2.00	12/19/2008
Monarch Financial Holdings, Inc.	$15.00	12/19/2008
Morgan Stanley[37]	$10,000.00	10/28/2008
Morrill Bancshares, Inc.	$13.00	1/16/2009
MutualFirst Financial, Inc.	$32.00	12/23/2008
Nara Bancorp, Inc.	$67.00	11/21/2008
National Penn Bancshares, Inc.	$150.00	12/12/2008
NCAL Bancorp	$10.00	12/19/2008
New Hampshire Thrift Bancshares, Inc.	$10.00	1/16/2009
New York Private Bank & Trust Corp. / Emigrant Bank	$267.00	1/9/2009
NewBridge Bancorp/New Bridge Bank	$52.00	12/12/2008
Nicolet Bankshares, Inc./Nicolet National Bank	$15.00	12/23/2008
North Central Bancshares, Inc.	$10.00	1/9/2009
Northeast Bancorp	$4.00	12/12/2008
Northern Trust Corporation[38]	$1,576.00	11/14/2008
Oak Valley Bancorp	$14.00	12/5/2008
OceanFirst Financial Corporation	$38.00	1/16/2009
Old Line Bancshares, Inc.	$7.00	12/5/2008
Old National Bancorp[39]	$100.00	12/12/2008
Old Second Bancorp, Inc.	$73.00	1/16/2009
One United Bank	$12.00	12/19/2008
Pacific Capital Bancorp	$181.00	11/21/2008
Pacific City Financial Corporation/ Pacific City Bank	$16.00	12/19/2008
Pacific Coast Bankers' Bancshares	$12.00	12/23/2008
Pacific Coast National Bancorp	$4.00	1/16/2009
Pacific Commerce Bank	$4.00	12/23/2008
Pacific International Bancorp	$7.00	12/12/2008
Park National Corporation	$100.00	12/23/2008
Parkvale Financial Corporation	$32.00	12/23/2008
Patapsco Bancorp, Inc.	$6.00	12/19/2008
Patriot Bancshares, Inc./ Patriot Bank	$26.00	12/19/2008
Peapack-Gladstone Financial Corporation	$29.00	1/9/2009
Peoples Bancorp of North Carolina, Inc.	$25.00	12/23/2008
Pinnacle Financial Partners, Inc.	$95.00	12/12/2008
Plains Capital Corporation	$88.00	12/19/2008

[37] Repaid Treasury on June 17, 2009.
[38] Repaid Treasury on June 17, 2009.
[39] Repaid Treasury on March 31, 2009.

Institution Name	Funding (millions)	TARP Agreement Date
PNC Financial Services Group Inc.	$7,579.00	12/31/2008
Popular, Inc.	$935.00	12/5/2008
Porter Bancorp, Inc.(PBI) Louisville, KY	$35.00	11/21/2008
Provident Banshares Corp.	$152.00	11/14/2008
Puget Sound Bank	$5.00	1/16/2009
Pulaski Financial Corp	$33.00	1/16/2009
Queensborough Company, The	$12.00	1/9/2009
Redwood Capital Bancorp	$4.00	1/16/2009
Redwood Financial, Inc.	$3.00	1/9/2009
Regions Financial Corp./ Regions Bank	$3,500.00	11/14/2008
Rising Sun Bancorp	$6.00	1/9/2009
S&T Bancorp	$109.00	1/16/2009
Saigon National Bank	$2.00	12/23/2008
Sandy Spring Bancorp, Inc.	$83.00	12/5/2008
Santa Lucia Bancorp	$4.00	12/19/2008
SCBT Financial Corporation[40]	$65.00	1/16/2009
Seacoast Banking Corporation of Florida/Seacoast National Bank	$50.00	12/19/2008
Seacoast Commerce Bank	$2.00	12/23/2008
Security Business Bancorp/Security Business Bank of San Diego	$6.00	1/9/2009
Security California Bancorp/ Security Bank of California	$7.00	1/9/2009
Security Federal Corporation	$18.00	12/19/2008
Severn Bancorp, Inc.	$23.00	11/21/2008
Shore Bancshares, Inc.[41]	$25.00	1/9/2009
Signature Bank[42]	$120.00	12/12/2008
Somerset Hills Bancorp[43]	$7.00	1/16/2009
Sound Banking Company	$3.00	1/9/2009
South Financial Group, Inc./ Carolina First Bank	$347.00	12/5/2008
Southern Bancorp, Inc.	$11.00	1/16/2009
Southern Community Financial Corp./ Southern Community Bank & Trust	$43.00	12/5/2008
Southern Missouri Bancorp, Inc./ Southern Missouri Bank & Trust Co.	$10.00	12/5/2008
Southwest Bancorp, Inc.	$70.00	12/5/2008
State Bancorp, Inc./State Bank of Long Island	$37.00	12/5/2008
State Bank & Trust/State Bankshares, Inc.	$50.00	1/16/2009
State Street[44]	$2,000.00	10/28/2008
StellarOne Corporation	$30.00	12/19/2008
Sterling Bancorp	$42.00	12/23/2008
Sterling Bancshares, Inc./Sterling Bank[45]	$125.00	12/12/2008

[40] Repaid Treasury on May 20, 2009.
[41] Repaid Treasury on April 15, 2009.
[42] Repaid Treasury on March 31, 2009.
[43] Repaid Treasury on May 20, 2009.
[44] Repaid Treasury on June 17, 2009.

Institution Name	Funding (millions)	TARP Agreement Date
Sterling Financial Corporation/Sterling Savings Bank	$303.00	12/5/2008
Summit State Bank	$9.00	12/19/2008
Sun Bancorp, Inc[46]	$89.00	1/9/2009
SunTrust Banks, Inc.	$4,850.00	12/31/2008
Superior Bancorp Inc.	$69.00	12/5/2008
Surrey Bancorp/Surrey Bank & Trust	$2.00	1/9/2009
Susquehanna Bancshares, Inc	$300.00	12/12/2008
SVB Financial Group	$235.00	12/12/2008
Synovus Financial Corp./ Columbus Bank & Trust Co.	$968.00	12/19/2008
Syringa Bancorp	$8.00	1/16/2009
Taylor Capital Group	$105.00	11/21/2008
TCB Holding Company, Texas Community Bank	$12.00	1/16/2009
TCF Financial Corporation[47]	$361.00	11/14/2008
TCNB Financial Corp/The Citizens National Bank of Southwestern Ohio	$2.00	12/23/2008
Tennessee Commerce Bancorp, Inc./ Tennessee Commerce Bank	$30.00	12/19/2008
Tennessee Valley Financial Holdings, Inc.	$3.00	12/23/2008
Texas Capital Bancshares, Inc.[48]	$75.00	1/16/2009
Texas National Bancorporation	$4.00	1/9/2009
The Bancorp, Inc./The Bancorp Bank	$45.00	12/12/2008
The Baraboo Bancorporation	$21.00	1/16/2009
The Connecticut Bank and Trust Company	$5.00	12/19/2008
The Elmira Savings Bank, FSB	$9.00	12/19/2008
The First Bancorp, Inc.	$25.00	1/9/2009
The Little Bank, Incorporated	$8.00	12/23/2008
TIB Financial Corp/TIB Bank	$37.00	12/5/2008
Tidelands Bancshares, Inc	$14.00	12/19/2008
Timberland Bancorp, Inc.	$17.00	12/23/2008
TowneBank	$76.00	12/12/2008
Treaty Oak Bankcorp, Inc	$3.27	1/16/2009
Tri-County Financial Corporation	$16.00	12/19/2008
Trustmark Corporation	$215.00	11/21/2008
U.S. Bancorp[49]	$6,599.00	11/14/2008
UCBH Holdings, Inc.	$299.00	11/14/2008
Umpqua Holdings Corp.	$214.00	11/14/2008
Union Bankshares Corporation	$59.00	12/19/2008
United Bancorp, Inc.	$21.00	1/16/2009
United Bancorporation of Alabama, Inc.	$10.00	12/23/2008
United Community Banks, Inc.	$180.00	12/5/2008

[45] Repaid Treasury on May 5, 2009.
[46] Repaid Treasury on April 8, 2009.
[47] Repaid Treasury on April 22, 2009.
[48] Repaid Treasury on May 13, 2009.
[49] Repaid Treasury on June 17, 2009.

Institution Name	Funding (millions)	TARP Agreement Date
United Financial Banking Companies, Inc.	$6.00	1/16/2009
Unity Bancorp, Inc./Unity Bank	$21.00	12/5/2008
Uwharrie Capital Corp/Bank of Stanly	$10.00	12/23/2008
Valley Community Bank	$6.00	1/9/2009
Valley Financial Corporation	$16.00	12/12/2008
Valley National Bancorp[50]	$300.00	11/14/2008
Virginia Commerce Bancorp	$71.00	12/12/2008
VIST Financial Corp./VIST Bank	$25.00	12/19/2008
Wainwright Bank & Trust Company	$22.00	12/19/2008
Washington Banking Company/ Whidbey Island Bank	$26.00	1/16/2009
Washington Federal Inc./ Washington Federal Savings & Loan Association[51]	$200.00	11/14/2008
Webster Financial Corporation	$400.00	11/21/2008
Wells Fargo Bank	$25,000.00	10/28/2008
Wesbanco Bank Inc.	$75.00	12/5/2008
West Bancorporation, Inc.	$36.00	12/31/2008
Western Alliance Bancorporation/Bank of Nevada	$140.00	11/21/2008
Western Community Bancshares, Inc.	$7.00	12/23/2008
Western Illinois Bancshares Inc.	$7.00	12/23/2008
Whitney Holding Corporation	$300.00	12/19/2008
Wilmington Trust Corporation	$330.00	12/12/2008
Wilshire Bancorp, Inc.	$62.00	12/12/2008
Wintrust Financial Corporation	$250.00	12/19/2008
Yadkin Valley Financial Corporation	$36.00	1/16/2009
Zions Bancorporation	$1,400.00	11/14/2008
1st Source Corporation	$111.00	1/23/2009
AB&T Financial Corporation/Alliance Bank & Trust Company	$4.00	1/23/2009
Adbanc, Inc	$12.70	1/29/2009
Alarion Financial Services, Inc.	$7.00	1/23/2009
AMB Financial Corporation	$3.67	1/30/2009
Anchor BanCorp Wisconsin, Inc.	$110.00	1/30/2009
Annapolis Bancorp, Inc.	$81.50	1/30/2009
Bankers' Bank of the West Bancorp, Inc.	$12.64	1/30/2009
BankFirst Capital Corporation	$16.00	1/23/2009
Beach Business Bank	$6.00	1/30/2009
California Oaks State Bank	$3.30	1/23/2009
Calvert Financial Corporation	$1.00	1/23/2009
Calwest Bancorp/South County Bank	$5.00	1/23/2009
Central Bancshares, Inc	$5.80	1/30/2009
Central Valley Community Bancorp	$7.00	1/30/2009
Central Virginia Bankshares, Inc.	$11.39	1/30/2009
Commonwealth Business Bank	$8.00	1/23/2009
Community Partners Bancorp	$9.00	1/30/2009

[50] Repaid Treasury on June 3, 2009.
[51] Repaid Treasury on May 27, 2009.

Institution Name	Funding (millions)	TARP Agreement Date
Country Bank Shares, Inc./Farmers&Merchants Bank	$7.53	1/30/2009
Crosstown Holding Company/21st Century Bank	$11.00	1/23/2009
DNB Financial Corporation	$11.75	1/30/2009
Equity Bancshares	$8.75	1/30/2009
Farmer's and Merchants/F & M Bancshares, Inc.	$4.61	1/30/2009
Farmers Bank	$9.00	1/23/2009
First Citizens Banc Corp	$23.00	1/23/2009
First Resource Bank	$2.60	1/30/2009
First Southern Bancorp, Inc.	$10.90	1/30/2009
First ULB Corp.[52]	$5.00	1/23/2009
First United Corporation	$30.00	1/30/2009
Firstbank Corporation	$33.00	1/30/2009
Flagstar Bancorp, Inc.	$266.66	1/30/2009
FPB Financial Corp	$3.00	1/23/2009
Fresno First Bank	$2.00	1/23/2009
Goldwater Bank, NA	$2.57	1/30/2009
Greer Bancshares Incorporated	$9.99	1/30/2009
Guaranty Federal Bancshares, Inc.	$17.00	1/30/2009
HillTop Community Bancorp,Inc.	$4.00	1/30/2009
Katahdin Bankshares Corp.	$10.45	1/30/2009
Legacy Bancorp, Inc.	$5.50	1/30/2009
Liberty Bancshares, Inc.	$58.00	1/23/2009
Metro City Bank	$7.70	1/30/2009
Middleburg Financial Corporation	$22.00	1/30/2009
Midland States Bancorp, Inc.	$10.00	1/23/2009
Monument Bank	$4.73	1/30/2009
Moscow Bancshares, Inc.	$6.00	1/23/2009
Northway Financial,Inc.	$10.00	1/30/2009
Oak Ridge Financial Services, Inc.	$7.70	1/30/2009
Ojai Community Bank	$2.08	1/30/2009
Parke Bancorp, Inc.	$16.29	1/30/2009
The Private Bank of The Peninsula/Peninsula Bank Holding Co.	$6.00	1/30/2009
Peoples Bancorp, Inc.	$39.00	1/30/2009
Pierce County Bancorp	$7.00	1/23/2009
Plumas Bancorp	$11.95	1/30/2009
Princeton National Bancorp, Inc.	$25.00	1/23/2009
Private Bancorp, Inc.	$243.82	1/30/2009
Metropolitan National Bank/Rogers Bancshares	$25.00	1/30/2009
Seaside National Bank & Trust	$6.00	1/23/2009
Southern Illinois Bancorp, Inc.	$5.00	1/23/2009
Stewardship Financial Corporation	$10.00	1/30/2009
Stone Bridge Financial Corp	$11.00	1/23/2009
The Freeport State Bank[53]	$0.30	2/6/2009

[52] Repaid Treasury on April 22, 2009.

Institution Name	Funding (millions)	TARP Agreement Date
UBT Bancshares, Inc.	$8.95	1/30/2009
Valley Business Bank (Valley Commerce Bancorp)	$7.70	1/30/2009
W. T. B. Financial Corp/Washington Trust Bank	$110.00	1/30/2009
Washington First Bank	$6.63	1/30/2009
WSFS Financial Corporation	$53.00	1/23/2009

[53] The Freeport State Bank was included in our survey, however, their closing date on the TARP funds was delayed until February 6, 2009.

Appendix E—Reported Actual Uses by Month of Disbursement, Asset Size, and Amount of Funding

Table 6 shows the number of banks that reported actual uses of CPP funds for each major category of use, segmented by the month when funds were disbursed.

Table 6: Actual Uses of CPP Funds by Disbursement Month

Month Funds Disbursed	OCT	NOV	DEC	JAN[54]	TOTAL
Number of Banks	8	43	162	147	360
Banks Reporting Uses for:					
Lending	8	38	145	109	300
Investment	5	20	54	31	110
Debt Repayment	0	8	21	23	52
Acquisition	0	5	7	3	15
Capital Cushion or Other Reserves	1	17	69	69	156

Source: SIGTARP analysis of survey responses.
Note: Some percentages may have been rounded beyond 0.5 percentage points in order to add up to 100 percent.

Table 7 shows the number of banks that reported actual uses of CPP funds for each major category of use, segmented by the asset size of the recipient.

Table 7: Actual Uses of CPP Funds by Asset Size

Asset Size	>$100B	$100B - 10B	$10B - $1B	$1B - 100M	<$100M	TOTAL
Number of Banks	14	37	131	110	68	360
Banks Reporting Uses for:						
Lending	14	32	113	87	54	300
Investment	10	17	40	31	12	110
Debt Payoff	0	5	26	10	11	52
Acquisition	3	2	8	1	1	15
Capital Cushion or Other Reserves	2	19	55	48	32	156

Source: SIGTARP analysis of survey responses.
Note: Some percentages may have been rounded more than 0.5 percentage points in order to add up to 100 percent.

[54] One bank that was included in our survey was delayed in closing on its TARP funds until February 6, 2009.

Table 8 shows the number of banks that reported actual uses of CPP funds for each major category of use, segmented by the amount of funds received.

Table 8: Actual Uses of CPP Funds by Amount of Funds Received

Amount of TARP Funds Received	>$10B	$1B - 10B	$100M - 1B	<$100M	TOTAL
Number of Banks	6	17	54	283	360
Banks Reporting Uses for:					
Lending	6	16	46	232	300
Investment	3	10	24	73	110
Debt Repayment	0	2	7	43	52
Acquisition	0	5	1	9	15
Capital Cushion or Other Reserves	1	5	25	125	156

Source: SIGTARP analysis of survey responses.
Note: Some percentages may have been rounded beyond 0.5 percentage points in order to add up to 100 percent.

Appendix F—Broad Impact of Receiving TARP Funds

To illustrate the broad impact of receiving TARP funds, Table 9 shows the reported actions that recipients would not have been able to achieve without TARP funding, and actions that recipients were able to avoid due to TARP funding. The distribution of firms that addressed these actions (in regards to the date of funding, the amount of funding received, and asset size) was comparable to the distribution of all recipients.

Table 9: Broad Impact of Receiving TARP Funds Summary

Activity	Number of Institutions	Percentage of Institutions[55]
Without TARP funds institutions would not have been able to:		
Grow Lending	34	21
Enhance Lending Activity	21	13
Improve Capital Position	16	10
Conduct Loan Modifications	8	5
Grow Deposits	6	4
Purchase Investments	6	4
Reduce Loan Terms	4	2
Pay Debt	3	2
Complete an Acquisition	3	2
Because of TARP funds institutions were able to avoid:		
Reducing Lending	46	28
Reducing their Loan Portfolio	17	10
Shrinking their Balance Sheet	14	9
Freezing Lending	11	7
Falling Below Well Capitalized Level	5	3
Job Reductions	2	1
Exiting the Banking Business	1	1

Source: SIGTARP analysis of survey responses.
Note: Numbers and percentages do not total since respondents reported multiple uses of funds.

[55] Percentages are based on 163 recipients that responded to this question.

Appendix G—Audit Team Members

This report was prepared and the review was conducted under the direction of Barry W. Holman, Audit Director, Office of the Special Inspector General for the Troubled Asset Relief Program. Other key SIGTARP staff included Michael Kennedy, James Shafer, Anne Blank, Trevor Rudolph, and Kamruz Zaman. The Concentrance staff members who supported SIGTARP in the audit and report development included Karmen Carr, Alex Kangelaris, Darius Grayson, Patricia Taylor, Christopher Laughlin, Matthew Herman, Yusuf Makhkamov, and Mandy Ho.

Appendix H—Management Comments

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

July 15, 2009

Neil M. Barofsky, Esq.
Special Inspector General
for the Troubled Assets Relief Program
United States Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Re: SIGTARP Use of Funds Report

Dear Mr. Barofsky:

Thank you for giving us the opportunity to review and comment on your draft report regarding the use of Troubled Assets Relief Program (TARP) funds by Capital Purchase Program (CPP) recipients. We share your desire to know whether expenditures of funds under the Emergency Economic Stabilization Act of 2008 (EESA) are helping to promote financial stability and liquidity, and ultimately helping consumers and businesses by enabling financial institutions to provide credit and other financial services. It is a responsibility of the Department of the Treasury (Treasury) to determine what types of reporting by TARP recipients are most useful in making that assessment.

In discussing use of TARP funds, it is important to distinguish between Treasury's capital-enhancement programs and its other programs. The CPP, Capital Assistance Program and the programs under which exceptional assistance has been provided to AIG, Citigroup and Bank of America are designed to provide capital to cushion against losses and allow financial institutions to continue operating in the ordinary course of business, including lending to consumers and businesses. In order to serve its purpose, capital must be available for general business purposes. By contrast, Treasury's home ownership preservation programs, Small Business Lending Initiative, Public-Private Investment Program, and Term Asset Backed Securities Loan Facility program impose specific restrictions on the use of TARP funds, and require controls and periodic reports to ensure that those restrictions are respected.

The responses of CPP participants described in your report illustrate the broad range of uses to which capital may be put, including building capital reserves, supporting lending and making investments. While those responses suggest the goals of EESA are being met, we think caution should be exercised in drawing conclusions from this data. Although it might be tempting to do so, it is not possible to say that investment of TARP dollars resulted in particular loans, investments or other activities by the recipient.

This is a function of basic accounting principles. Banks' double-entry bookkeeping systems do not trace the paths from creating liabilities (receiving capital) to investing in assets

(such as making loans). As the report notes at page 6, "the majority of recipients reported that they did not segregate TARP funds," and "[m]ore than half of the banks that reported physical segregation of funds . . . stated that segregation was only a temporary measure pending future deployment of the funds." Furthermore, "once received, the cash associated with the TARP funding became indistinguishable from any other cash sources . . . ." In addition, money is fungible, and paying an expense from one source frees up cash to be used for other purposes. Even if TARP investments could be traced to particular uses, those uses cannot be said to be attributable to the TARP investment if the same expenditures would have been made from other sources even in the absence of TARP funding.

Treasury wants to see the investments it has made translate as quickly as possible into additional lending to creditworthy borrowers and increases in other services and benefits to consumers and businesses. We recognize that banks must rebuild their capital in light of the losses they have experienced and may yet experience. They must also maintain appropriate standards for lending and other activities. Treasury does not intend to tell banks how to run their businesses, but we will seek to collect and provide useful information that can help determine if we are making progress toward restoring financial stability. For example, Treasury believes that collecting and publishing data on aggregate lending levels addresses the issue that taxpayers are most concerned about. Accordingly, Treasury has been producing a Monthly Lending and Intermediation Survey and Snapshot, which contains quantitative information on three major categories of lending by the nation's largest CPP banks. We are also producing an expanded CPP Lending Report, which reports on monthly average outstanding balances of consumer loans, commercial loans and total loans of all CPP recipients. Banks that seek capital under the Capital Assistance Program must submit a plan as to how they intend to use the assistance to strengthen lending capacity and must submit monthly reports on lending levels. The Treasury and Federal regulators also collect and publish other types of data on the condition of our financial institutions and the activity in particular financial markets that can contribute to assessing the health of our financial system.

We welcome any additional suggestions you have as to the types of data that Treasury should collect. Thank you again for giving us the opportunity to comment on your survey and please contact us if you have any questions.

Sincerely,

Herbert M. Allison, Jr.
Assistant Secretary for Financial Stability

SIGTARP Hotline

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline.

By Online Form: www.SIGTARP.gov *By Phone:* Call toll free: (877) SIG-2009

By Fax: (202) 622-4559

By Mail: **Hotline: Office of the Special Inspector General**
For The Troubled Asset Relief Program
1801 L Street
Washington, D.C. 20220

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To obtain copies of testimony and reports please log on to our website at www.sigtarp.gov

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WASHINGTON, DC 20401

Congress of the United States

CONGRESSIONAL OVERSIGHT PANEL

August 4, 2009

The Honorable Dennis Moore
House of Representatives
1727 Longworth House Office Building
Washington, DC 20515

The Honorable Judy Biggert
House of Representatives
1034 Longworth House Office Building
Washington, DC 20515

Dear Chairman Moore and Ranking Member Biggert:

Attached is a memorandum to provide you with more information on questions that were asked at the House Financial Services Oversight and Investigations Hearing. I hope the information concerning the Panel's budget and expenses is helpful.

If you have any further questions, please do not hesitate to contact me or have a member of your staff contact Naomi Baum at (202) 224-9925 or naomi_baum@cop.senate.gov.

Sincerely,

Elizabeth Warren
Chair
Congressional Oversight Panel

Status of Payment of Congressional Oversight Panel Expenses

The *Emergency Economic Stabilization Act of 2008* (PL 110-343) established the Troubled Assets Relief Program (TARP) as part of Congress's efforts to encourage economic recovery. The Act created the five-member Congressional Oversight Panel as part of the legislative branch. At this time, four of the Panel members are "special government employees" compensated on a *per diem* basis for their service on the Panel. One Panelist is a Member of the United States House of Representatives.

Congress instructed the Panel to review the state of the financial markets and the regulatory system and to submit monthly and special reports to Congress on the use by Treasury of the authority provided under the Act. Since its creation, Congress has expanded the Panel's mandate by directing it to review and report to Congress on the availability of credit in the agricultural sector. It is possible that Congress may direct the Panel to review and report on other matters as well.

The broad scope of the Panel's directive may have caused Congress to believe that a specific budget cap could interfere with the Panel's ability to execute its oversight responsibilities if it did not have adequate resources. In establishing the Panel, Congress chose not to set a specific limit on the amount of funds authorized for the Panel's use in fulfilling its statutory responsibilities. In place of a specific limit, the Panel has implemented an organizational structure and established an oversight and reporting process which enables it both to effectively achieve the goals established by Congress and to make the most efficient use of public funds.

For example, the Act authorizes the Panel to appoint and fix the pay of personnel it considers appropriate, procure the services of experts and consultants and request the detailing, on a reimbursable basis, of the employees of Federal departments and agencies. In furtherance of this authorization, the Panel has assembled a small full-time staff, selected not only because of their substantive expertise in subject areas within the Panel's jurisdiction but also because of their ability to work efficiently and collaboratively in a time sensitive environment and in a bipartisan manner to fulfill the Panel's responsibilities to the Congress and the American people. Also pursuant to the Act, the Panel has limited expenses and simultaneously maximized the value of its monthly and special reports to Congress by retaining, only on a temporary and as needed basis, subject matter experts who have enabled the Panel to analyze the complicated and sophisticated data presented in its reports. In addition, the Panel and the taxpayer have both benefitted from the Panel's decision and ability to leverage the capabilities of its staff by attracting outstanding, highly-qualified and motivated graduate and undergraduate student interns committed to public service.

The Panel has also employed cost saving measures by renting office space in the Government Printing Office building – a non-professional office building with minimal amenities. To save more, the Panel procured surplus office furniture through GSA.

Further, in order to track and control spending, based on anticipated staffing needs, hearing costs – including travel for field hearings, costs of printing hearing records and reports – necessary office supplies and equipment, office space rental, and use of contractors, Panel staff has developed a budget projection of $8,812,000 covering the period from the start-up of the Panel in November 2008 through June 30, 2010. The breakdown of the categories is as follows:

Category	Budget
Salaries and Benefits*	$5,728,000
Hearings and Travel	$239,000
Printing Costs for Hearing Records and Reports	$301,000
Office Expenses and Equipment	$365,000
Contractors and Consultants	$695,000
TOTAL	**$8,812,000**

* Includes Panel members' compensation

By comparison, the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) has a budget of $50 million. The Senate Banking Committee over the same time period has a budget of $11,674,277. Unlike the Congressional Oversight Panel budget which includes the cost of compensation of Panel members and office rent, the Banking Committee budget does not include Senators' salaries or any amount for office space.

Congress provided pursuant to Sec. 125 (g) (2) of the Act, that Panel expenses be paid equally from the contingent fund of the Senate and an "applicable" fund of the House of Representatives. Such expenses are then to be reimbursed to the House and Senate by the Treasury Department from funds made available to the Secretary of the Treasury pursuant to the Act. The Senate Committee on Rules and Administration approves payment of all vouchers that are more than $100 and all Panel expenses have been paid by the Senate Disbursing Office. To date the Panel has incurred expenses of $2,717,407.