

Congress of the United States
CONGRESSIONAL OVERSIGHT PANEL

June 12, 2009

The Honorable Timothy F. Geithner
Secretary of the Treasury
United States Department of the Treasury
Room 3330
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Geithner:

On June 9, 2009, the U.S. Treasury announced that “10 of the largest U.S. financial institutions participating in the Capital Purchase Program (CPP) have met the requirements for repayment established by the primary federal banking supervisors ... [and that the institutions] are now eligible to complete the repayment process. If these firms choose to do so, Treasury will receive \$68 billion in repayment proceeds.” The Congressional Oversight Panel is studying issues surrounding repayment of TARP funds, especially the value to be given to warrants for the purchase of common stock of the ten institutions that were issued to Treasury as required by section 113(d) of the Emergency Economic Stabilization Act of 2008 (“EESA”).

In connection with that study, I am writing to you, as Chair of the Oversight Panel, to obtain answers to the following questions and information requests:

1. What is the meaning of the term “fair market value” highlighted in bold – that is, without regard to the procedure specified – in the following excerpt from section 4.9(c)(ii) of the “Securities Purchase Agreement – Standard Terms” executed as part of the TARP process:

“*Fair Market Value*” means, with respect to any security, the **fair market value** of such security as determined by the Board of Directors, acting in good faith in reliance on an opinion of a nationally recognized independent investment banking firm retained by the Company for this purpose and certified in a resolution to the [Treasury].

2. What is the meaning of the phrase “market price” in section 111(g) of EESA, added to EESA by section 403 of the Helping Families Save Their Homes Act of 2009?
3. What is the difference between the terms “fair market value” and “market price” as used in the Securities Purchase Agreement and section 111(g) of EESA, respectively? If the two terms have different meanings, which meaning governs the pricing of the warrants to be repurchased when TARP repayments are made by any institutions?

4. The June 9, 2009 Treasury announcement states that:

Under the CPP investment agreements, firms that repay their preferred stock have the right to repurchase the warrants Treasury holds in their firms at fair market value.

At the same time amended section 111(g) of EESA, as amended as described above, states that:

[W]hen such assistance is repaid, the Secretary, at the market price, **may** liquidate warrants associated with such assistance.

(Emphasis added).

- a. Does section 111(g) of EESA permit Treasury to continue to hold the warrants issued by the financial institutions that repay TARP funds until it can obtain maximum value for those warrants? If not, why not?
 - b. If section 111(g) does permit Treasury to continue to hold those warrants, why has it decided to permit the ten institutions that are the subject of the June 9, 2009 announcement to repurchase their warrants now?
5. Please provide any information relating to Treasury's internal valuations of warrants not yet exercised or repurchased.
6. Please provide detailed information regarding the assumptions and methodologies Treasury has used to value warrants, or on whose basis it accepted the price set for the warrants, repurchased by Old National Bancorp, FirstMerit Corp., Sun Bancorp, IberiaBank Corp., Independent Bancorp, and any other warrants repurchased by the date of the U.S. Treasury's response to this request. Please provide the same information relating to pending negotiations for the repurchase of warrants issued by the ten institutions that have been approved to repay TARP funds and indicate the status of such negotiations, in each case.
7. Have any of the warrants been subject to a reduction due to a qualified equity offering by the institution that issued the warrants? Please specify the name of the institution and the amount of the reduction. Has Treasury calculated the probability of such a reduction for other institutions in which warrants continue to be held by Treasury? If so, what was the methodology used, and on what assumptions did it rely?

The Panel also requests the following data regarding the warrants, both outstanding and repurchased. Although much of this data is available on financialstability.gov in PDF format or through EDGAR, the Panel would like to receive Excel spreadsheets, or some other more easily manageable format. The data that the Panel requests is, for each institution that has received TARP assistance under any of the TARP programs:

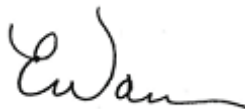
8. The number of warrants received for each transaction;
9. The number of outstanding shares of common stock (in addition to, if available, the number of fully diluted shares);
10. The strike price of the warrants;
11. The expiration date of the warrants; and
12. Whether any of the warrants have been exercised.

The Panel seeks written responses to these questions, as well as a meeting between Panel staff and Treasury staff, about the TARP repayments and the treatment of warrants as part of those repayments. The Panel intends to discuss issues relating to warrant repurchases in its July Oversight Report, which will be issued during the first two weeks of July. Thus the meeting between Panel and Treasury staffs should occur by Thursday, June 18, 2009. The Panel would like to receive the written responses to these questions before the date of the meeting. Given the tight time schedule the Panel faces, we would appreciate receiving responsive information as it becomes available.

The information sought by this letter is necessary for the Congressional Oversight Panel to carry out section 125 of EESA. This information request is made pursuant to section 125(e)(3) of that Act.

I would be happy to answer any questions about this letter that you may have. If you would prefer, a member of your staff can contact the Panel's Executive Director, Naomi Baum, to discuss any such questions. Ms. Baum's telephone number is [REDACTED]

Very truly yours,



Elizabeth Warren
Chair
Congressional Oversight Panel