

**APPENDIX I: LETTER FROM CHAIR ELIZABETH WARREN TO
FEDERAL RESERVE CHAIRMAN BEN BERNANKE REGARDING THE
CAPITAL ASSISTANCE PROGRAM, DATED MAY 11, 2009**

Congress of the United States
CONGRESSIONAL OVERSIGHT PANEL

May 11, 2009

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Chairman Bernanke:

The announcement of the Capital Assistance Program, on February 25, 2009, described the Program's objectives as "[restoring] . . . confidence in the strength and viability of our financial institutions."¹ The announcement emphasizes a "one-time forward looking supervisory assessment" designed to test the ability of each of the nation's 19 largest bank holding companies to absorb the losses generated by a worse-than-expected decline in economic activity. As the Federal Reserve Board recognizes, the ability of such institutions to maintain adequate capital under current conditions is essential to the efforts to stabilize the financial system.

Because of their importance, the Congressional Oversight Panel (the "Panel") has undertaken a study of the theories underlying and details of the assessment. The Panel is being assisted in conducting its study by Professors Eric Talley and Johan Walden. Professor Talley is a member of the faculty of the UC Berkeley School of Law (where he is co-director of the Berkeley Center for Law, Business, and the Economy), and a visiting member of the faculty of the Harvard Law School. Professor Walden is a member of the faculty of the UC Berkeley Haas School of Business.

I am writing to you, in my capacity as Chair of the Congressional Oversight Panel, to obtain the information specified below (the "Specified Information") and to arrange a series of meetings (the "Meetings") to discuss the Specified Information and related topics. The Specified Information and the Meetings are necessary for the Panel to carry out section 125 of the Emergency Economic Stabilization Act of 2008, and the Panel is seeking the Specified Information and the Meetings pursuant to section 125(e)(3) of that Act.

¹ U.S. Treasury, *The Capital Assistance Program and its role in the Financial Stability Plan*, at 1 (Feb. 25, 2009).

The Specified Information is:

1. all memoranda concerning, and written descriptions of, any risk management, bank capital, economic, regulatory, legal, or statistical model or theory underlying or contributing to the Assessment;
2. all memoranda concerning, and written descriptions of, what the Assessment will attempt to measure or has attempted to measure, including, but not by way of limitation, the manner in which the Program proposes to measure or has measured cataclysmic risk;
3. all memoranda concerning, written descriptions of, and simulations pertaining to, the distributional and any other assumptions on which the Assessment rests, and the theories underlying and content of the projections it will employ or has employed, both in general terms and with respect to specific institutions;
4. all memoranda concerning, written descriptions of, and simulations pertaining to, the theories underlying and content of all economic assumptions that may be or have been incorporated in, or used as part of, the Assessment, both in general terms and with respect to specific institutions;
5. all memoranda concerning, written descriptions of, and simulations pertaining to, the thresholds, terms, and manner in which the Assessment will be or have been applied to specific institutions, including, but not by way of limitation, the ranges of outcomes within which any judgments about capital adequacy or the need for infusion of additional capital will be or have been made, whether in general terms or with respect to any specific institution; and
6. all information obtained during, or contained in notes or recordings of, the Meetings.

The Meetings. The Meetings will be one or more gatherings to discuss all or part of the Specified Information, attended by (i) officials of the Federal Reserve Board, including, but not by way of limitation, the senior officials of the Federal Reserve Banks, who are responsible for the Assessment, (ii) members or staff of the Panel, or both, and (iii) Professor Talley, Professor Walden, or both.

* * * *

Capitalized terms in this letter that are not defined above are defined in a document entitled “Congressional Oversight Panel – Supervisory Assessment Request, Definitions and Protocol for Document Production and Protection, dated May 11, 2009,” enclosed with this letter.

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].

Kindly respond to the requests for information, and for the meetings, described, within seven (7) calendar days from the date of this letter. In that connection, please provide the Panel with the names of one or more individuals who will be responsible for responding to this letter within three (3) days from the date of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "E. Warren", written in a cursive style.

Elizabeth Warren
Chair
Congressional Oversight Panel

Enclosure

Congressional Oversight Panel – Supervisory Assessment Request
Definitions and Protocol for Document Production and Protection,
dated May 11, 2009

Documents defined in the letter, dated May 11, 2009 (the “Letter”), from Elizabeth Warren, Chair of the Congressional Oversight Panel (the “Panel:), to Hon. Ben S. Bernanke, Chairman of the Federal Reserve Board, to which this document relates, shall have the same meaning in this document as they have in the Letter.

Definitions.

As used in the Letter:

1. Any reference to “assessment” means the one-time forward looking supervisory assessment described in the Treasury White Paper entitled “The Capital Assistance Program and its Role in the Financial Stability Plan,” (February 25, 2009), appearing at http://www.ustreas.gov/press/releases/reports/tg40_capwhitepaper.pdf, as such supervisory assessment has been defined, designed, and implemented, and applied both generally and to all relevant bank holding companies and their subsidiaries, by staff of one or more of the Department of the Treasury, the OCC, OTS, the Board of Governors of the Federal Reserve System (including, but not by way of limitation, the Federal Reserve Banks), the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

2. Any reference to “information” means any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, by whomever prepared, whether in “hard copy” (i.e., paper) form or stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form, as well as the identity of any person employed by or serving as an agent or consultant for the Government, or with whom any employee or agent or consultant of the Government may have communicated, who may have knowledge relevant to the requested information and information sufficient for the Panel to contact such person including but not limited to such person’s name, title, telephone number, and electronic mail address.

3. Any reference to the “Federal Reserve Board,” or to any other department, agency, or instrumentality of government, shall include a reference to any bureau, office, or instrumentality thereof, including, but not by way of limitation, the Federal Reserve Banks.

Document Production.

1. The specified information is limited to any and all information described in the nine paragraphs of the Letter that is in the possession of the Federal Reserve Board (directly or subject to physical or electronic storage on behalf of the Federal Reserve Board), or to which the Federal Reserve Board has access, or the right (whether via existing agreement or under the law) to obtain access. Information is subject to the terms of this request regardless of the source of such information, the person or persons by or on behalf of whom such information was prepared or generated, and the person or persons by whom such information is now held.

2. To the extent that the Federal Reserve Board is aware of any information that is not in Federal Reserve Board's possession, custody, or control that would otherwise constitute specified information, please provide information sufficient to identify and locate that information and to request its production to the Panel.

3. In the event that specified information is withheld on any basis, please provide to the Panel a written description of (i) the type of information that is being withheld; (ii) the general subject matter to which the information relates; (iii) the reason such information is being withheld, including, but not by way of limitation, the statute or regulation under which such information is being withheld and the application of such statute or regulation to such information (described with sufficient detail that the Panel can determine the applicability of such statute or regulation to the information); (iv) the date, author, and addressee, if applicable; and (v) the relationship of the author and addressee, if applicable.

4. This request is continuing in nature and applies to any newly discovered information or to information generated or received after the date of the Letter. To the extent that any information is not provided to the Panel because it has not been located or discovered as of the return date or is generated or received after the return date, please produce such information to the Panel as soon as possible after its discovery or, if the information will not be produced for any reason, please provide the Panel with the information requested in the immediately preceding paragraph of this letter.

Document Protection.

1. Any individual hired or retained by the Panel under section 125(d)(2) of the Emergency Economic Stabilization Act of 2008 will execute a confidentiality agreement with the Panel prior to obtaining access to any portion of the specified information provided to the Panel by the Federal Reserve Board. The agreement will provide that such individual is subject to the ethical and non-disclosure obligations of an employee of the United States Senate and of the Panel. Any issues relating to such obligations may be directed to, and will be addressed by, the Panel's Ethics Counsel.

2. The Panel will not provide any of the specified information directly to the public. Instead, it will refer those who request such specified information to the Federal Reserve Board.

3. The Panel will not disclose the text of any of the specified information in any document originated by the Panel, without notifying the Federal Reserve Board and providing a reasonable time for the Federal Reserve Board to state its objections. Notwithstanding the immediately preceding sentence, the Panel may include a general description or descriptions, analysis, or analyses of any such information in any such document. Any draft of any such documents prepared by any consultant to the Panel will be reviewed by senior staff of the Panel to assure that no improper disclosure has occurred.

4. The Panel does not intend to disclose to the public any trade secret and commercial or financial information that is contained within or as part of any specified information and that is privileged or confidential such that it is subject to the terms of 18 U.S.C. § 1905.

5. We believe that the Panel is generally not authorized to withhold information from Congress, see 31 U.S.C. § 716(e)(3), or from a court. Should the Panel receive a congressional request or court order that would require the Panel to produce any portion of the Specified Information, the Panel will notify the Federal Reserve Board of the request prior to disclosure

and provide the Federal Reserve Board with the opportunity to express any concerns it may have about such production to the requester or to the court. In addition, the Panel will notify the recipient of the records of the proprietary nature of the material, including using a legend advising that further release may be prohibited by 18 U.S.C § 1905.

6. To ensure the confidentiality and security of the specified information, the Panel will store such information in locked cabinets in a locked room on the Panel's premises, to which only the Panel's Executive Director, Deputy Director, and Chief Clerk have keys. A log will be kept of any person who is granted access to that room.

Except as provided in the next paragraph, electronic data will be stored on a single computer in encrypted form; such computer will be placed in the locked room described in the preceding paragraph. The computer will be password-protected and will not be connected to any other computer or network; the USB ports that would otherwise permit copying from that computer will be disabled. Logs will be kept of any document printed from the computer and such document will be numbered to permit its identification; any such documents will be subject to the same controls as those described above for documents originally in paper form.

With the approval of the Federal Reserve Board (and, where applicable, any other department, agency, or instrumentality of the government that originated such Specified Information) Specified Information may be stored on a secure computer to which Professors Talley and Walden shall have Internet access on an encrypted basis or on a secure computer located at the Federal Reserve Banks of Boston and San Francisco.

**APPENDIX II: LETTER FROM CHAIR ELIZABETH WARREN TO SECRETARY
TIMOTHY GEITHNER REGARDING THE POSSIBILITY OF THE SECRETARY
APPEARING BEFORE A PANEL HEARING IN JUNE, DATED MAY 12, 2009**

Congress of the United States
CONGRESSIONAL OVERSIGHT PANEL

May 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 Mr. Secretary:

I write in my capacity as Chair of the Congressional Oversight Panel (the Panel) to invite you to testify before the Panel on Wednesday, June 17, 2009. As you are aware, the Panel was established by section 125 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343 (EESA), to conduct oversight of the Troubled Asset Relief Program (TARP). Your appearance on April 21, 2009 greatly assisted the Panel in its TARP oversight duties required by the statute, and we appreciate your cooperation with Panel staff in the weeks since the hearing. Due to recent TARP-related developments, and as part of the Panel's ongoing oversight responsibility, the Panel would appreciate your appearance at a hearing to be held in June.

The pace of new developments in TARP over the past few weeks highlights the significance of regular appearances before the Panel. The unveiling of the results of the Supervisory Capital Assessment Program (SCAP), and the questions it poses concerning methodology, repayment of TARP funds, and next steps for the use of TARP money, are topics the Panel would like to explore with you at an upcoming hearing. The Panel would like to work with your staff to schedule a mutually convenient time and date for an oversight hearing in June.

The Treasury Department and the Panel share a common goal of transparency; we look forward to your prompt attention to these matters.

Sincerely,



Elizabeth Warren
Chair
Congressional Oversight Panel

**APPENDIX III: LETTER FROM CHAIR ELIZABETH WARREN TO
SECRETARY TIMOTHY GEITHNER AND FEDERAL RESERVE CHAIRMAN
BEN BERNANKE REGARDING THE ACQUISITION OF MERRILL LYNCH BY
BANK OF AMERICA, DATED MAY 19, 2009**

Congress of the United States
CONGRESSIONAL OVERSIGHT PANEL

May 19, 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

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Secretary Geithner and Chairman Bernanke:

The New York State Attorney General, Andrew Cuomo, has sent a letter, dated April 23, 2009, to Senator Christopher Dodd, the Chairman of the Senate Committee on Banking, Housing, and Urban Affairs; Congressman Barney Frank, the Chairman of the House Financial Services Committee; Mary Schapiro, the Chairman of the U.S. Securities and Exchange Commission; and me, in my capacity as Chair of the Congressional Oversight Panel. The letter asserts that the Department of the Treasury and the Federal Reserve Board intervened to alter the course of the then-pending acquisition of Merrill Lynch by Bank of America (“BofA”).

The assertions have not been established or even subjected to formal challenge. But they still raise a critical policy issue, namely, the proper role of the Treasury and the Board in dealing with individual financial institutions during the administration of the Troubled Asset Relief Program (the “TARP”).

There appears to be no dispute that intense discussions took place among Treasury, the Board, and Kenneth Lewis, the Chairman and CEO of BofA, in December 2008, after BofA’s shareholders had approved the acquisition of Merrill Lynch. The discussions came when Treasury and the Board learned that BofA had concluded that it could, and should, stop the transaction because of Merrill Lynch’s deteriorating financial condition. Mr. Lewis has indicated in a statement made under oath to the Attorney General’s investigators that he changed his mind about ending the merger after it was strongly suggested that the government would remove BofA’s Board of Directors and

senior management if the transaction were terminated, but that if it completed the transaction, BofA would receive additional federal assistance to provide a financial cushion for its taking on Merrill Lynch's liabilities. Treasury had made a \$25 billion capital infusion into BofA in October 2008, and it made an additional \$20 billion infusion into BofA in January 2009, after the Merrill Lynch acquisition was completed.

The fact and nature of the discussions among the Treasury, the Board, and BofA – whatever their exact content - were disclosed neither to the shareholders of BofA nor to the public, whose tax dollars the TARP spends. But for Attorney General Cuomo, the nondisclosure would continue to this day.

The reaction to these disclosures underscores the importance of clear, timely, communication with the American people, to say nothing of affected investors, about the financial stability package. Unexpected disclosures only increase the perception that the government cannot operate openly in administering the TARP, despite the fact that the country's largest banks are being supported with billions of dollars of public funds.

More important, this interaction among Treasury, the Board, and BofA is a warning of the dangers that can arise when the government acts simultaneously as regulator, lender of last resort, and shareholder. (Treasury had purchased \$15 billion in convertible preferred stock and warrants of BofA on October 28, 2008; as indicated above, it purchased an additional \$20 billion of BofA preferred stock and warrants on January 16, 2009.) The TARP by its very nature creates conflicts of interest for Treasury and the Board. The conflicts can arise not only when the nation's senior financial officials are faced with decisions by a private institution that they believe would adversely affect the stability plan, but also when they are asked to make regulatory decisions that affect the institutions in which the government holds shares. Federal officials can act effectively under these circumstances only if strict controls, transparency, and a disciplined response to situations at all levels, earn the trust of the financial sector, the investment community, and the public.

The Panel is interested in your thoughts on how to manage this inherent conflict and on the controls you have put in place to ensure that your efforts to provide stability to the country's financial system are not undermined by these conflicts.

Very truly yours,

A handwritten signature in black ink, appearing to read "E. Warren", written in a cursive style.

Elizabeth Warren
Chair
Congressional Oversight Panel

**APPENDIX IV: LETTER FROM CHAIR ELIZABETH WARREN TO
SECRETARY TIMOTHY GIETHNER REGARDING THE
TEMPORARY GUARANTEE PROGRAM, DATED MAY 26, 2009**

Congress of the United States

CONGRESSIONAL OVERSIGHT PANEL

May 26, 2009

The Honorable Timothy F. Geithner
Secretary of the Treasury
U.S. Department of the Treasury
Room 3330
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Mr. Secretary:

I am writing to request information about the U.S. Department of the Treasury's Temporary Guarantee Program for Money Market Funds (Treasury Guarantee Program or the Program), which is funded by the Troubled Asset Relief Program (TARP).

In September 2008, Treasury created the Treasury Guarantee Program in the wake of the Reserve Primary Fund "breaking the buck."¹ The Treasury Guarantee Program uses assets of the Exchange Stabilization Fund (ESF) to guarantee the net asset value of shares of participating money market mutual funds. Participation is restricted to publicly offered money market mutual funds regulated under Rule 2a-7 of the Investment Company Act of 1940 and registered with the Securities and Exchange Commission and is contingent on the payment of a participation fee. While Treasury has publicly released accounting of the amount of fees collected under the Program, it does not appear to have released a detailed accounting of the total value of funds guaranteed under the Program.²

Treasury has stated that "[t]he amount of the Guarantee Payment is dependent on the availability of funds in the Exchange Stabilization Fund,"³ and there is a provision in the standard contract between the Treasury Department and Program participants stipulating that "[t]he Guarantee Payment shall in no event exceed the amount available for payment within the ESF on the Payment Date, as determined by the Treasury in its sole and absolute discretion."⁴

¹ U.S. Department of the Treasury, *Treasury Announces Temporary Guarantee Program for Money Market Mutual Funds* (Sept. 29, 2008) (online at www.treas.gov/press/releases/hp1161.htm).

² U.S. Department of the Treasury, *Treasury Announces Extension of Temporary Guarantee Program for Money Market Funds* (Mar. 31, 2009) (online at www.treas.gov/press/releases/tg76.htm) (hereinafter "Treasury Program Extension Announcement") (reporting that the Program "currently covers over \$3 trillion of combined fund assets.").

³ U.S. Department of the Treasury, *Summary of Terms for the Temporary Guaranty for Money Market Funds*, at 2 (accessed May 19, 2009) (online at <https://treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/TermSheet.pdf>).

⁴ See, e.g., U.S. Department of the Treasury, *Guarantee Agreement – Stable Value*, at ¶ 1(j) (accessed May 19, 2009) (online at https://treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Guarantee_Agreement_Stable-Value.pdf).

The ESF currently has approximately \$50 billion of capital of various liquidities.⁵ Section 131 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343 (EESA), which was passed after the Program began, protects the ESF from incurring any losses from the Treasury Guarantee Program by requiring that Treasury reimburse the ESF for any funds used in the exercise of the guarantees under the Program.⁶ While the Program had an initial term of three months, it has been extended numerous times, most recently through September 18, 2009.⁷

As part of its oversight responsibilities, the Congressional Oversight Panel is monitoring all TARP funding commitments and cash flows. In support of this effort, and in light of the complicated financing arrangements utilized in this particular instance, the Panel requests the following information:

- (1) The total current and historical value of money market mutual funds participating in the Treasury Guarantee Program;
- (2) The extent to which the investments in the money market funds that are guaranteed under the Treasury Guarantee Program are also insured or supported by programs initiated by the Federal Reserve in response to the financial crisis and the interplay between these liquidity support and guarantee programs;
- (3) The extent to which the Treasury Department's obligations to exercise the guarantees under the Program are mitigated by its discretion to withhold payment when there are inadequate funds in the ESF given its requirement under EESA to refund the ESF when it is depleted;
- (4) The amount of TARP funds, if any, the Treasury Department has reserved for the possibility of its obligation to pay the guarantees under the Treasury Guarantee Program;
- (5) The Treasury Department's position on its legal responsibility to reimburse Program participants in the event that TARP money has been totally expended;
- (6) Whether the Treasury Department has any plans to extend the program beyond September 18, 2009.

The Panel requests that you provide this information as soon as possible, but not later than Wednesday, June 3, 2009.

⁵ See, e.g., U.S. Department of the Treasury, *Exchange Stabilization Fund State of Financial Position as of March 31, 2009* (accessed May 19, 2009) (online at <https://treas.gov/offices/international-affairs/esf/esf-monthly-statement.pdf>) (reporting \$50,038,405,934 of total Program assets, which include about \$23 billion in foreign currency holding, \$15 billion in U.S. Government Securities, and \$9 billion in International Monetary Fund Special Drawing Rights).

⁶ See section 131 of EESA, codified at 12 U.S.C. § 5236(a).

⁷ See Treasury Program Extension Announcement, *supra* note 2.

Mr. Timothy F. Geithner

May 26, 2009

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If you have any questions or would like additional information, please contact me or have a member of your staff contact Charlie Honig at [REDACTED] or [REDACTED].

Thank you for your attention to this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Warren".

Elizabeth Warren
Chair
Congressional Oversight Panel

cc. Rep. Jeb Hensarling

Mr. Richard H. Neiman

Mr. Damon A. Silvers

Sen. John E. Sununu