Section Two: Additional Views

Rep. Jeb Hensarling

The subject of the May report by the Congressional Oversight Panel for TARP was reviving lending to small businesses and families. Although this topic poses great interest for Panel members and the public at large, I remain concerned that this subject matter extends beyond the scope of TARP and the proper role of this Panel. This concern over potential Panel mission creep is one that I, and other Panel members, have discussed before and agreed that we must exercise proper diligence in our work to ensure that we remain faithful to our charge. Unfortunately, in this instance, I believe that the Panel did not. At a time when the SIGTARP has reported that it has launched almost 20 preliminary and full criminal investigations regarding TARP,[215] and when there remains a continuing lack of transparency from the Treasury Department on certain TARP efforts like assistance to the domestic automobile manufacturers, it is more important than ever that the Panel focus its attention on the administration and mechanics of this massive program without deviation to ancillary topics.

Instead, in the May report, the Panel strayed too far from its rightful TARP oversight role and waded into a public policy advocacy role on the question of placing new restrictions on credit providers. As Panel colleagues Richard H. Neiman and Senator John E. Sununu pointed out in their "Additional View" to the Panel's April report: "*First and foremost, the Panel is charged with evaluating the effectiveness of Treasury's use of the new authority granted it under the Emergency Economic Stabilization Act. It is not our role to design or approve Treasury's strategy, nor should the Panel's mission be expanded to encroach on that authority.*"[216] Moreover, this controversial language was added at the eleventh hour after the lion's share of the work on the report had been completed, and sadly it overshadowed some otherwise laudable portions of the May COP report, notably the observation on page 15 that: "*While additional lending can potentially benefit the economy and help restore economic growth, weak underwriting standards and excessive high-risk lending contributed to the current crisis by increasing default rates.*"

The heart of the conflict regarding this controversial language in this month's report was whether or not the government should impose operating restrictions and requirements on the providers of credit (especially credit card issuers) who have, in some form, accepted TARP assistance and dictate the terms on which they can make that credit available to consumers. One could argue that the imposition of such restrictions is certainly an issue for the Treasury Department to consider. Likewise, it is certainly an issue for Congress to consider. It is not,

[215] SIGTARP Quarterly Report, *supra* note 162, at 4.

[216] COP April Report, *supra* note 105, at 88 (additional view of Richard H. Neiman and John E. Sununu).

however, an issue this Panel should consider because every moment we dedicate to issues unrelated to our charge is a moment that is spent neglecting our charge. By pursuing these extraneous issues, I fear now, more than ever, that the Panel is morphing into something more akin to a congressional advisory panel rather than a true oversight panel.

In this month's report, the language adopted by the majority at the end of *Section F. Household Lending and the TALF* was purported to be neutral on the subject of whether or not such requirements should be added. In fact, the report even states that the Panel has reached no consensus on the resolution of the policy question regarding to what extent should the favorable terms of public assistance to financial institutions be reflected in the terms of loans to consumers and small businesses.

However, such a conclusion belies the fallacious assumption concealed within that statement, namely that the only consideration is *to what extent* such conditionality should be applied, and not *whether or not* such conditionality is appropriate. In an attempt to accommodate the differing views of Panel members on that subject, earlier draft versions of the language made reference to the belief of some Panel members that TARP was not the place to initiate changes in lending policy. That language was omitted from the final version of the report.

Additionally, beyond the question of whether or not policymakers ought to consider such restrictions, there remains the question that if such restrictions were added, would that be a good thing? Clearly, the majority of the Panel held that such restrictions were an inherent benefit to consumers, as reflected by the term "consumer protection standards." However, such a declaration ignores the most essential question in that debate – would such requirements help or harm the consumers that TARP and TALF were ultimately designed to benefit? As I have suggested elsewhere, I believe the answer to that question is that it does not.

From the perspective of borrowers, the evidence that I have seen leads me to believe that leveraging TARP funds to impose new conditions on lenders is likely to end up harming, not benefitting, consumers. Imposing price controls on the providers of credit is undesirable in the best of times, and could be particularly injurious in our weakened economy. A study by the Congressional Research Service has found that efforts to eliminate unpopular credit re-pricing practices, no matter how well intended, may result in making credit more expensive for both good and delinquent borrowers alike.[217] Comparable attempts elsewhere to force lenders to adopt government-mandated rate limits have shown that to have occurred. For example, in 2006, the United Kingdom ordered credit card issuers to cut their default fees or face legal action. As a result, card issuers complied by imposing higher interest rates on all borrowers including those in

[217] Darryl E. Getter, *The Credit Card Market: Recent Trends, Funding Cost Issues, and Repricing Practices,* Congressional Research Service (Feb. 27, 2008).

good standing, instituting annual fees on accounts, and denying credit to scores of new applicants.

Further, in its consideration of why credit providers might be re-pricing their loans, the report also ignores the current impact that recent changes by the government to the rules dictating the provision of secured or open-ended credit to consumers might be having on the availability of credit. For example, on December 18, 2008, the Federal Reserve Board announced a set of sweeping rule changes for the credit card industry designed, it stated, to prohibit certain credit card practices. However, at the press conference announcing those new rules, Federal Reserve Board Governor Randall Kroszner admitted that while "*consumers might see some costs decline as new business models emerge, consumer[s] might see other costs increase.*"[218] Similarly, as Vice Chairman of the Federal Reserve Board Dr. Donald Kohn stated in an interview on the Fed's new credit card rules: "*I do think there will be some reduction in available credit to some people.*"[219]

As I have stated in the past, the Panel has a unique role to play in the accountability of EESA. Time will tell whether or not the Panel will prove effective in that role. When I agreed to serve on the Panel, my top three goals were to ensure that the TARP program works, to ensure that decisions made are based on merit and not political considerations, and most importantly, to ensure that taxpayers are protected. Those goals have not changed. Thus, with those goals in mind and for the reasons stated above, and others, I regretfully had no choice but to dissent from the majority's report.

[218] Board of Governors of the Federal Reserve System, *Statement by Governor Randall S. Kroszner* (Dec. 18, 2008) (online at www.federalreserve.gov/newsevents/press/bcreg/kroszner20081218a.htm).

[219] Emily Flitter, *Card Rules Done, Now for the Makeover*, American Banker (Dec. 19, 2008).