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I voted for and support this month's Report and my Additional Views are related more to important matters of emphasis than to specific conclusions. It is critical to remember in our analysis that EESA was enacted and first implemented in the depths of a major crisis, and the TARP was charged with multiple, complex, and enormous responsibilities.

1. TARP Has Significantly Improved the Stability of the Financial System

In my opinion the Report could be stronger in giving credit to TARP for having achieved the primary statutory objective of restoring general financial stability and liquidity in the financial system, including the restoration of functioning credit markets. There are legitimate debates about specific causation (TARP was part of a coordinated set of responses) and about particular transactions (methods of rescue or seizure of one institution or another). However, in comparison to the situation in October 2008, I give Congress, the Administration, and TARP a large share of credit for the achievement of the primary objective under EESA.

The Panel has issued a series of reports that have closely examined TARP programs and transactions and we have been critical of many aspects of implementation, including transparency and accountability. Yet, in this year-end review we should take a step back and be clear and emphatic that a dominant success and objective was in fact achieved.

In hindsight it is difficult to remember how close the system was to imploding and even more difficult to imagine what the consequences to the "real economy" might have been had the global financial system collapsed. It is not possible to adequately construct that scenario. But for all the criticism Treasury has received for assisting in the rescue of Bear Stearns and allowing the failure of Lehman Brothers, I shudder to imagine what might have happened if AIG had been allowed to fail and been followed quickly by a series of major American banks and investment banks during those weeks in early October 2008. They would not have simply "failed" in the traditional sense – the entire global financial system would have seized and ground to a halt. The specter of the United States government not acting in the face of such a crisis would have been devastating to the world economy. The impacts on trade, on the movement of goods, possibly on hunger and dislocation, and certainly on the American people's confidence, can only be imagined.

Therefore I think this is a moment to give some appropriate credit to the Congress, the Treasury, and the Federal Reserve for acting decisively in the face of a potential disaster and to TARP for playing a central role in averting that outcome.

2. Formidable Problems Remain in the General Economy, Particularly with Respect to Mounting Foreclosures

In restoring liquidity and financial stability to the financial system, Treasury was charged with ensuring that TARP funds and its authority under EESA “are used in a manner that ... preserves homeownership and promotes jobs and economic growth.”⁴⁵³ These are very serious issues for the Treasury and for Congress and the country. In some cases TARP results have been better; in other cases worse.

I do not attribute primary responsibility for solving the problems of general economic recovery to TARP programs, but I do think that some TARP programs could have done, and still can do, much better in promoting those goals.

On the positive side, the TARP capital support programs, including the SCAP, have generally been successful in promoting financial condition transparency, bringing private capital investment back to the banking sector, and protecting taxpayer funds. The disagreement among our expert panel of witnesses about the current adequacy of overall banking capital levels is, I believe, more related to their differing views of the future economy and its impact on bank capital than it is to their assessment of TARP’s effectiveness.

As for the asset-related programs, the TALF program has performed reasonably well in reviving functioning asset-backed securities markets for certain consumer credit asset classes. The PPIP program was late in launching but can now be expected to play an important role in creating a liquid market for troubled assets.

The auto companies’ rescue was generally well executed, albeit at a cost, and at this point it has helped to mitigate the degree of job dislocation in the general economy.

On the other hand, as the Report rightly points out in detail, TARP has struggled to help homeowners and small businesses. HAMP has made only limited progress for nine months now, and the residential foreclosure crisis continues to mount. Moreover, credit is not sufficiently available for small businesses and we are entering a period of severe stress on commercial real estate loans. Much more needs to be done.

Looking ahead, TARP needs to close the book on large institution support and focus all of its energies on addressing the problems of foreclosures, small business credit, and commercial real estate.

One proposal I have long called for is for Treasury to expand its foreclosure prevention program to assist borrowers who risk foreclosure due to job loss or other temporary hardship. As the recession lingers, prime borrowers with mortgages that are otherwise affordable are

⁴⁵³ EESA § 2.

increasingly falling into this category. I therefore have been urging the use of TARP funds to support state emergency mortgage assistance programs to help borrowers while they get back on their feet. Innovative programs at the state level have demonstrated that this idea can work.

3. The Risk of Moral Hazard Goes Well Beyond the Implementation of TARP

Moral hazard, which is discussed in the Report, is a far ranging effect that occurs anywhere the government interfaces with any of the financial sector (e.g., bank debt support), private contracts (e.g., mortgages), and the general industrial economy (e.g., auto rescue). TARP's very enactment was a massive instance of government intervention; presumably Congress reached the conclusion that the risks of not acting outweighed the risks of moral hazard that implementing TARP required.

Therefore, while moral hazard is a very real issue I do not believe it is appropriate to assign the lion's share of responsibility for moral hazard risk to the implementation of TARP programs. The statute itself was an emergency act of moral hazard-inducing intervention. So it is not surprising to find moral hazard associated with TARP – it was there from the beginning.

Extraordinary government efforts necessary to avoid system-wide financial collapse last fall in some cases made institutions bigger and more complex and interconnected. This was not a desirable matter of policy but an unfortunate matter of exigency. In a crisis, a larger company may be required to absorb the business of another large company quickly, consolidate management and operations, and provide uninterrupted service to customers and business partners.

The important lesson of moral hazard is that we need to address “too big to fail” not by criticizing or second guessing TARP, but by renewing our efforts to create a systemic regulator and resolution authority. This is the greatest legislative imperative for financial reform and where our energies must be directed.

4. Going Forward – Reform of Financial Institutions Must Be Considered

These outcomes of the crisis have only heightened the need to address systemic risk legislatively and to create an authority to unwind such institutions in an orderly fashion in event of failure.

They also highlight the debate about whether large financial institutions should be allowed to grow so large and complex in the first place. Our national dialogue must include the debate over the social responsibility and utility of banks subject to the federal safety net, and whether in addition to stronger capital requirements we should consider restricting the level of risky activities that these institutions are permitted to conduct (such as proprietary trading and sponsorship of hedge funds). Proposals such as those made by former Federal Reserve Chairman Paul Volcker warrant full consideration and discussion.

5. Conclusion

TARP was instrumental in avoiding a global financial meltdown – a far worse scenario than we experience today – at a much lower cost than was originally expected. Systemic stability and functioning credit markets were a necessary pre-condition to be in a position to tackle the problems relating to foreclosures, credit availability, and economic growth. Going forward these are the most important issues. TARP funds and programs must now focus on them.