Members of the Congressional Oversight Panel, thank you for the opportunity to testify. On behalf of the Department of the Treasury (Treasury), this testimony is provided by Gary Grippo, Deputy Assistant Secretary for Fiscal Operations and Policy, and Ron Backes, Director of Procurement Services.

Since joining Treasury’s Office of the Fiscal Assistant Secretary in 2007, Mr. Grippo has been responsible for developing government-wide policies on financial management, and for overseeing the operations of Treasury’s fiscal bureaus. In this role, he also oversees the financial agents designated to support the Troubled Asset Relief Program (TARP). Prior to this position, Mr. Grippo served at Treasury’s Financial Management Service, where he managed the agents that process financial transactions across the Federal government.

Since joining Treasury in February 2009, Mr. Backes has been responsible for implementing and overseeing contract planning and administration for TARP, and most recently for overseeing procurement operations for Treasury’s Departmental Offices. Prior to joining Treasury, he served for 15 years as a Federal acquisition professional for the Department of the Army and the National Aeronautics and Space Administration.

As you know, the Emergency Economic Stabilization Act of 2008 (EESA) created the Office of Financial Stability (OFS) to manage the Troubled Asset Relief Program, in response to the financial crisis. Over time, OFS has engaged contractors and financial agents to support Treasury in purchasing troubled assets from financial institutions and in managing those assets. That role has been part of Treasury’s broader efforts to stabilize and strengthen the economy while protecting the interests of taxpayers.

After EESA was passed, Treasury began building the infrastructure to effectively manage these agents and contractors. OFS has installed procedures and controls to ensure that Treasury draws from the full spectrum of large and small businesses, selects the most qualified providers, and secures fair value for the funds expended.

OFS uses two separate approaches, contractors and financial agents, for acquiring external services to support Treasury’s financial stability programs. Treasury’s legal authority for each approach derives from a different source, reflecting the diverse needs Treasury has had when engaging external agents. In addressing the Panel’s questions, therefore, it is important to first distinguish between the two approaches:

**Federal Acquisition Regulation:** Similar to all Federal agencies, OFS acquires contractor services by and for its use through the traditional procurement process contained in the
Federal Acquisition Regulation (FAR). OFS conducts FAR procurements to acquire document management, legal support and information technology, among other services.

Financial Agency Authority: OFS engages the services of financial institutions through the Secretary’s authority to designate financial agents of the United States. An additional source of authority for this approach is found in EESA section 103(c), which states that the Secretary may: “Designat[e] financial institutions as financial agents of the Federal Government….” Unlike an arm’s length contractor selling goods and services, financial agents are governed by the principal-agent relationship, under which a financial institution is empowered to act for and on behalf of Treasury, as principal, to carry out the authorities in EESA, based on a defined scope of agency. Financial agents have a fiduciary obligation to Treasury, including the requirement to act in the best interests of Treasury and not the company’s own interests. Accordingly, only financial agents, and not contractors, have been authorized to perform certain duties under EESA. This approach is consistent with Treasury’s long-standing policy of allowing only financial agents, and not contractors, to hold and manage public monies.

These two methods are complementary but not interchangeable. FAR procurements are used for the acquisition of goods and/or services from the commercial marketplace. Financial agents serve as an extension of Treasury to act on behalf of the Government in order to address the unique and often urgent needs of TARP and OFS. For this reason, the procedures relating to each of the approaches will be described separately in certain sections of this testimony.

**Acquisition Strategy**

OFS has centralized strategic decisions with regard to acquisition strategy in a Contact Agreement and Review Board (CARB). One of the central purposes of the CARB is to think proactively—that is, to develop and review long-term needs for OFS that can be addressed through contracts or financial agency agreements. The CARB provides a forum for high-level review of these needs and helps to tailor specific acquisition plans based on that information.

The decision to acquire services through a contract begins with the consideration of the following questions:

1. Are the required goods and/or services other than something that is inherently governmental?
2. Can the services be obtained at a competitive price from the private sector?
3. Can the services be acquired without creating an immitigable conflict of interest?
4. Will it be more cost-effective, for duration or other reasons, to outsource the work?

The decision to use a financial agent, on the other hand, begins with the consideration of two different questions:

1. Does the work entail the direct management of public assets, such as the purchase, valuation, custody, or disposition of investments or cash? (Financial agent authority is used to obtain the infrastructure, inherent capabilities, or special expertise of a financial institution.)
2. Does the work entail close collaboration between Treasury and a provider such that a fiduciary relationship is required? Simply put, does OFS require the services of an agent who can act as an extension of Treasury?

These two sets of questions highlight the different purposes of the two approaches. The first approach described is used for the acquisition of goods and/or services pursuant to a statement of work. The second is used to engage eligible financial institutions to execute transactions and manage financial assets pursuant to a scope of agency.

**Selection Process**

Although the legal authority underlying procurement and financial agency authority is different, and the threshold questions prior to utilizing each authority are different, in the end, Treasury’s goal is to engage the private entity who is best qualified to perform the function at a price that represents fair value for the taxpayer. As such, both approaches follow similar steps of solicitation, evaluation and selection, as follows:

For FAR-based acquisitions, a solicitation is posted on the Federal Business Opportunity website or other Government-wide point of entry, or otherwise transmitted to potential offerors. The solicitation describes the service(s) requested and outlines, in detail, the information to be included in the offeror’s proposal and the criteria that will be used to evaluate the proposals submitted. Treasury then convenes a technical evaluation panel to identify the proposal or proposals that represent the best value to Treasury, considering cost and other factors identified in the solicitation. In the case of most contracts awarded in the first year in support of the TARP, Treasury either fully competed the work requirement using the GSA Schedule or held limited competitions pursuant to the “unusual and compelling urgency” authority of the FAR, the latter method utilizing a streamlined process to solicit and evaluate proposals that represented the best value. Nonetheless, the streamlined process followed the same basic process for traditional procurements, including the conduct of market research to identify the best qualified firms to whom Treasury released the solicitation, as well as a competitive evaluation to include a consideration of conflicts of interest, if any, prior to selection.

The process for selecting a financial agent is described in the procedure “Financial Agent Selection and Designation”. When appropriate, it begins with the issuance of a public notice, posted on a Treasury website, describing the service and requesting that interested financial institutions respond with written proposals. In the case of special requirements or urgent needs, Treasury may send a solicitation to only those financial institutions that Treasury believes are qualified to meet the requirements. The proposals are evaluated by the selection committee in terms of their responsiveness to the business need, a consideration of potential conflict-of-interest, and the price. Once the preferred firm is identified, the Office of Financial Agents prepares a “Recommendation and Decision Memorandum” that documents the basis of the selection for the Fiscal Assistant Secretary who is authorized to designate the agent. The financial agency agreement and related exhibits are then drafted and executed.

**Encouraging Participation of Small Businesses**

With FAR procurements, Treasury actively encourages the participation of small businesses and strives to provide meaningful opportunities for their participation. Treasury staff researches
corporate capabilities prior to soliciting offers for goods and services. This research is supported by Treasury’s Office of Small and Disadvantaged Business Utilization (OSDBU) and the Small Business Administration (SBA).

Even for those services procured under an unusual and compelling urgency, Treasury has requested proposals from as many sources as practicable under the circumstances. Treasury has also performed outreach efforts to encourage the participation of small businesses, including minority, veteran, and women-owned small businesses. In addition, Treasury establishes goals for dollars obligated to various socioeconomic categories of small businesses. Treasury’s publicly available fiscal year 2010 and 2011 goals are (categories in italics are subsets of the initial category):

<table>
<thead>
<tr>
<th>Category</th>
<th>Goal %</th>
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<tbody>
<tr>
<td><strong>Prime Contracts</strong></td>
<td></td>
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<tr>
<td>Small Business</td>
<td>28.5%</td>
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<tr>
<td>Small Disadvantaged Business</td>
<td>5%</td>
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<tr>
<td>Women-Owned Small Business</td>
<td>5%</td>
</tr>
<tr>
<td>Service-Disabled Veteran-Owned Small Business</td>
<td>3%</td>
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<tr>
<td>HUBZone Small Business</td>
<td>3%</td>
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<tr>
<td><strong>Subcontracts</strong></td>
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<tr>
<td>Small Business</td>
<td>44.7%</td>
</tr>
<tr>
<td>Small Disadvantaged Business</td>
<td>5%</td>
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<tr>
<td>Women-Owned Small Business</td>
<td>5%</td>
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<tr>
<td>Service-Disabled Veteran-Owned Small Business</td>
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<td>3%</td>
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The table is published on the OSDBU website: [http://www.treas.gov/osdbu](http://www.treas.gov/osdbu)

All of the financial agent arrangements are designed to encourage and facilitate the involvement of small financial institutions. The notices soliciting financial agents and the agreements designating financial agents contain evaluation criteria related to small financial institutions. Indeed, a majority of the current financial institutions designated as financial agents to help implement EESA (8 of 15) are small institutions, including six minority- or women-owned financial institutions. In addition, the directly designated financial agents have themselves engaged 26 small and minority- and women-owned firms as sub-providers, as well as 23 small and minority-, women-, and veteran-owned financial institutions to serve as co-managers for the auctions of warrants and the sale of common stock.

**Preventing Conflicts of Interest**

Treasury works diligently to identify and prevent any potential conflicts of interest related to its use of financial agents and contractors within OFS. In enforcing the TARP conflicts of interest interim final rule (31 C.F.R. Part 31), Treasury works with its contractors and financial agents, as well as independently, to identify and mitigate potential organizational and personal conflicts of
interest that may arise during the retention of financial agents, the awarding of procurement contracts and blanket purchase agreements, and during the performance periods of such agreements and contracts.

At the inception of a procurement contract, blanket purchase agreement, or task order issued under a procurement contract, Treasury reviews the scope of work to be provided under the arrangement and the type of organization that may be selected to perform the services. Treasury identifies circumstances that might give rise to an organizational or personal conflict of interest, and includes conflicts provisions in the procurement contract, blanket purchase agreement, or task order; these are standard provisions that are based on the scope of work and type of organization.

Every bidder seeking a procurement contract or blanket purchase agreement is required to provide a conflict of interest mitigation plan and identify actual, potential, or apparent organizational and personal conflicts of interest as part of its proposal. The mitigation plan is reviewed by Treasury and, if necessary and appropriate, the bidder is required to provide additional information and/or a revised conflicts of interest mitigation plan. Contract and task orders are not awarded unless the associated proposed mitigation plan is determined to be acceptable. The mitigation plan is revisited and, if necessary, revised if warranted by the circumstances (such as when the business structure of the contractor changes, or when additional work is ordered under the contract). ¹

Similarly, financial agents are required to identify actual, potential, and apparent organizational and personal conflicts of interest. Treasury discusses the conflicts of interest with the financial agent and ensures the development of a conflict of interest mitigation plan that is tailored to the scope of work to be performed by the financial agent and the financial agent’s business structure. The mitigation plan is revisited and, if necessary, revised if the circumstances warrant it (such as if the business structure of the financial agent changes, or if the financial agent begins to perform work under the FAA for the first time).

During the term of all financial agency agreements and contracts, Treasury remains engaged with all parties (OFA, financial agents, PSD and contractors) to raise awareness of the conflicts of interest requirements to help ensure conflicts of interest are appropriately identified and mitigated. The financial agents and contractors are required by the TARP conflicts interim final rule to continually assess for conflicts, identify and disclose to Treasury any actual, potential, or apparent conflicts of interest that may arise, and to develop changes to their mitigation plans as appropriate. Treasury addresses conflicts of interest identified by contractors or financial agents, and ensures that measures taken to mitigate any such conflicts of interest are sufficient.

Monitoring Performance and Enforcing Compliance

¹ Pursuant to 31 C.F.R. § 31.200(b), administrative services identified by the TARP Chief Compliance Officer under the TARP (e.g. lease, furniture, newspaper subscription, etc.) are not subject to the TARP conflict of interest regulation.
The process for monitoring the performance and compliance of a contractor or financial agent is contained in the respective procurement contract or agreement. In both cases, this monitoring involves routine assessments, self-reporting, and third-party verification.

Treasury employs several layers of internal controls associated with contract performance, including Contracting Officer oversight and monitoring, delegation of day-to-day monitoring to certified Contracting Officer Technical Representatives (FAC-COTRs), and internal management reviews. In addition, OFS chartered the CARB to review and monitor the administration of all OFS contracts and financial agent agreements to ensure consistent and effective performance management. The review board, comprised of OFS and other Treasury personnel, regularly reviews performance data across all OFS procurement contracts and agreements and detailed information regarding individual contract performance. Performance issues are addressed as appropriate by rejecting or withholding payment, issuing cure notices for sub-par performance, stopping work, and considering the performance as an element in future award decisions.

Because financial agents serve as an extension of Treasury, OFS has installed especially rigorous processes to measure performance and ensure compliance:

- Treasury collects quantitative measures on a quarterly or monthly basis to monitor the performance of all 15 agents. This process is administered by the Office of Financial Agents but involves OFS stakeholders in a structured and systematic way. It balances objective measurements (e.g., quantitative counts of work products) and subjective measurements (e.g., survey responses) to create a balanced scorecard of the agent performance. In some cases, the scorecard results are linked to a modest performance incentive paid to the agent.

- To ensure compliance, every agreement requires that the agent self-certify annually that they are complying with 10-to-15 selected terms of the agreement. OFS has instituted a program of site visits where Treasury staff annually review the processes and controls of each agent at their office location. In addition, the agreement requires that the agent annually review the effectiveness of their internal controls. Many agents engage an outside contractor to perform a SAS70 audit – or conduct an in-house audit of comparable scope and method.

We agree with the Panel that contracting and engaging financial agents is an extremely important issue in the administration of EESA, and we appreciate the opportunity to discuss the comprehensive regime we have put in place to closely monitor the external agents utilized by Treasury.

Thank you again for the opportunity to discuss these important issues today.