C. Paul Atkins.

The October Report of the Panel regarding mortgage foreclosure mitigation marks yet another commendable effort by the staff and the Panel to treat a complex area of the economy in a short amount of time. The October Report analyzes great deal of information and helpfully cites a wealth of resources and studies. I salute the staff and my colleagues for the hard work represented by the report. Unfortunately, I cannot join in supporting the October Report because of its extraneous discussions and opinions unrelated to TARP.

Congress has charged this Panel with overseeing a $700 billion program that was enacted in a hurry with much discretion placed in the Executive. Congress understandably was sensitive to the opportunity of departure from legislative intent and potential for improper activity that this situation presents. Thus, Congress formed not only this Panel but also an office of a special inspector general, independent of Treasury, to oversee the program, provide transparency, and ensure accountability to Congress and to the taxpayers. That unusual level of oversight reflects the concern of Members of Congress regarding the unusual nature of the program itself and its political sensitivity.

The October Report contains some commentary and recommendations that depart from the oversight role of this Panel and, I believe, detract from the overall effectiveness of the report's message. Congress empowered this Panel to watch over the Treasury Department's use of the authority granted under the Emergency Economic Stabilization Act. If the Treasury's efforts at implementing TARP in general or in particular areas are inchoate, unavailing, wasteful, illegal, or corrupt, it is our job to report on those problems and seek their correction.

On the other hand, it is not our role gratuitously to offer advice or comment on additional legislation, matters of behavioral economics, or academic studies. Consequently, it is entirely appropriate for our report to analyze the HAMP and HARP programs and judge them against the Administration's rhetoric regarding them. I applaud the staff's seeking input regarding costs and benefits. I view this research as a good basis for further public debate. From our observations and research, we are well positioned to offer advice as to needed adjustments to increase efficiency and responsiveness from what we have learned in the field or from public comment. We do not need to deal extensively with speculation as to the effects of negative equity, the desirability of a program of principal reduction, or legislative empowerment of bankruptcy judges to "cramdown" changes to mortgages. We might point out areas for additional academic research that we or policymakers might find helpful in the future, but we should not use the report as a means to challenge legitimate studies, such as a Federal Reserve Bank of Boston Working Paper discussed in the report, where we do not have sufficient time or expertise to do so.

Moreover, sweeping conclusions regarding the proper allocation of taxpayer resources are not within our purview. We are not policymakers and do not have the benefit of budget studies, knowledge of budgeting history, or advantage of debate regarding budgetary alternatives and priorities to make value judgments as between programs. Since government resources ultimately come from the taxpayers, government must be sensitive to prudent and moral use of taxpayer funds. In our role, we see only the matter and program before us. Thus, the report's venturing into speculation regarding the purpose of foreclosure mitigation and making value judgments regarding spending taxpayer money, including the statement that "[d]evoting attention and resources to moral sorting [as between "deserving" mortgagors and deadbeats or speculators] is at odds with the goal of maximizing the macroeconomic impact of foreclosure prevention," is inappropriate. Moral sorting is inherent in a legislator's consideration of support or opposition to legislation. To ignore it invites citizen cynicism and taxpayer outrage, which inevitably will be registered at the ballot box. Despite the report's casual treatment of this subject, I have confidence that Members of Congress will be extremely wary of adopting this report's view thereof.

My concern with the "market stability" argument to "prevent" foreclosures is that the policies are aimed at essentially seeking to support prices at an artificially high level. We have had a very large economic bubble in the housing sector, and a bubble's consequences are the misallocation of resources. The market – meaning people – needs to find the true level of prices according to supply and demand. This is easily seen in the residential housing market, where deals are closed or fall apart, often on the basis of relatively small amounts of money. Government intervention only prolongs the uncertainty and the eventual day of reckoning. But, there is also the forgotten person in the attempt to support prices. When the government uses taxpayer resources, with various justifications, to try to influence supply, the selling homeowner gets the artificially high price. However, what happens to the buyer who unwittingly pays a higher price than he otherwise might have paid in a more transparent marketplace? When the prices ultimately find equilibrium, and they settle lower despite the government's efforts, has the government helped to perpetrate a deception on the unwitting buyer who paid the artificially high price?

The report makes the assertion that there was no moral sorting as between good and bad financial institutions in the Treasury's use of TARP funds under the Capital Purchase Program and other programs and, thus, that there should be no need to judge between homeowners in providing direct assistance. The difference, however, is that the taxpayer has lent money to the various financial institutions with an expectation that the money will be returned. The propriety of that can be debated, but Congress at least had the expectation that TARP funds would be repaid with dividends, interest, and proceeds from sale of warrants and stock. As Congressman Hensarling points out in his accompanying statement, the Congressional Budget Office views funds spent for foreclosure mitigation as a subsidy, with no expectation of being repaid. For these efforts that entail millions of individual cases, it is best left to private parties and judges to sort out the issues to ensure some sort of accountability, not another grand entitlement program funded by the taxpayer that discounts legitimate concerns of propriety of subsidies and moral hazard.

In this vein, Judge Annette M. Rizzo of the Pennsylvania Court of Common Pleas, featured in our hearing on September 24th in Philadelphia, seems to have forged a positive atmosphere of mediation and dialogue that enhances communication between mortgagors and mortgagees. In many cases, the process has helped to forestall foreclosures, for the benefit of both parties. Sometimes, as Judge Rizzo forthrightly stated, foreclosure is unavoidable and contracts must be enforced. In this sense, the report also disappoints in its seeming approbation of "innovative" measures taken by various states that in some cases are arbitrary interference with contracts in the name of foreclosure "prevention" rather than "mitigation." The government should not be in the business of preventing parties to a contract from enforcing that contract, barring cases of fraud or other illegitimate factors.

With respect to mortgage foreclosure mitigation, it is relatively easy to focus on only one side of the relationship as between mortgagor and mortgagee, because the former is currently the party in the weaker position and seeks assistance. However, ours is a legal system of transparency, due process, respect of private property rights, and enforceability of contract. This rule of law separates the United States from banana republics and has created a favorable investment climate that has attracted capital from around the world to be invested here. That has created jobs and built our economy.

The best policy to minimize foreclosures is for the U.S. government to create an environment conducive to saving and investment, including tax and regulatory policy, that encourages entrepreneurs to start businesses (the sector of business activity that creates the most jobs) and existing businesses to expand. The best mitigation of mortgage foreclosures is a job. Subsidies are inherently unfair, inefficient, expensive, and complicated. With soaring unemployment in the United States, focusing on creating a good environment for saving and investment becomes the most important action that the Administration can take.