Financial Markets Regulatory Wire

REP. EDOLPHUS TOWNS HOLDS A HEARING ON THE TROUBLED ASSET RELIEF PROGRAM

July 21, 2009 Tuesday

EVENT DATE: July 21, 2009

TYPE: COMMITTEE HEARING

LOCATION: WASHINGTON, D.C.

COMMITTEE: HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

SPEAKER: REP. EDOLPHUS TOWNS, CHAIRMAN

WITNESSES:
REP. EDOLPHUS TOWNS, D-N.Y. CHAIRMAN REP. PAUL E. KANJORSKI, D-PA. REP. CAROLYN B. MALONEY, D-N.Y. REP. ELIJAH E. CUMMINGS, D-MD. REP. DENNIS J. KUCINICH, D-OHIO REP. DANNY K. DAVIS, D-ILL. REP. JOHN F. TIERNEY, D-MASS. REP. WILLIAM LACY CLAY, D-MO. REP. DIANE WATSON, D-CALIF. REP. STEPHEN F. LYNCH, D-MASS. REP. CHRIS VAN HOLLEN, D-MD. DEL. ELEANOR HOLMES NORTON, D-D.C. REP. PAUL W. HODES, D-N.H. REP. CHRISTOPHER S. MURPHY, D-CONN. REP. PETER WELCH, D-VT. REP. JIM COOPER, D-TENN. REP. JACKIE SPEIER, D-CALIF. REP. GERRY CONNOLLY, D-VA. REP. PATRICK J. KENNEDY, D-R.I. REP. HENRY CUELLAR, D-TEXAS REP. BILL FOSTER, D-ILL. REP. STEVE DRIEHAUS, D-OHIO REP. MIKE QUIGLEY, D-ILL. REP. MARCY KAPTUR, D-OHIO
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WITNESSES: NEIL BAROFSKY, SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF

PROGRAM

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TEXT:

TOWNS: The meeting will come to order. Good morning and thank you for being here.

The Troubled Asset Relief Program, known as TARP, has evolved into a program of unprecedented scope, scale and complexity. TARP funds are being used in connection with 12 separate programs under which Treasury has already committed $643 billion and spent $441 billion.

Today, we will hear from the special inspector general for TARP, Neil Barofsky. As he presents his quarterly report to Congress, his findings quite frankly are astonishing. According to the I.G., the TARP has become a program in which taxpayers, number one, are not being told what TARP recipients are doing with their money. Number two, have not been told what their investments are worth. And number three, will not be told the full details of how their money is being invested.

We found that even though Treasury received monthly reports on the value of TARP investments, it will not make that information public. Incredibly, the Treasury Department has taken the position that it will not even ask TARP recipients what they are doing with the taxpayers' money. In short, the taxpayers now have a $700 billion spending program that's being run under the philosophy of "Don't ask, don't tell."

Half of the committee has been asking me a lot of questions about last fall's financial meltdown and its consequences. And the key question is this, "Are these programs being run for the benefit of the American taxpayers who are funding them, or for the benefit of Wall Street?" That's the question.

Without more transparency in these programs, we cannot answer that question for sure. But what we have learned from the I.G. is not encouraging. Treasury has hired nine private firms to be asset managers for the public-private investment program. All of these large firms are engaged in explicit private investment activities.

According to the special I.G., this arrangement is vulnerable to conflict of interest, collusion and money laundering. Yet, Treasury will allow these firms to share information between employees who make investment decisions on behalf of the government and those who manage private funds. This arrangement is a further indication that federal financial regulation is a bit too cozy with Wall Street.

Lending to American businesses and consumers remain weak. Some firms claim to have used TARP funds to increase lending. But others have used it to acquire other businesses, or shore up their own balance sheets and then award bonuses to employees. There is no evidence that Treasury has made any attempt to determine whether TARP funding has resulted in increased lending and whether that has had any effect on reducing unemployment.

I also want to address my deep concern over recent news that Treasury has requested a legal opinion from the Department of Justice, challenging the special inspector general's independence. Congress would not have established a special inspector general to oversee the TARP if all we wanted was a yes-man or yes-woman that Treasury could ignore.

It is critical that oversight investigations and auditors of TARP remain unencumbered. Congress may have given Treasury some leeway when it comes to the TARP. But we didn't give them a blank check. The problem is we can't even say whether the TARP programs are working or not. Because information that would allow Congress and the taxpayer to analyze whether they are getting a good return on their investment, has not been made available.

I hope today's hearing and the special I.G.'s report will be a wake-up call to the Treasury and the Fed that our financial system cannot be run behind closed doors. Again, I want to thank Mr. Barofsky for appearing today and I look forward to his testimony.

At this time, I yield time to the ranking member from the great state of California.

Congressman Issa?

ISSA: Thank you, Mr. Chairman and thank you again for this vigorous oversight. As you have said so often, all we ask for is transparency. Today, we'll hear that all we're not getting is transparency.

Mr. Chairman, because I'm going to include them in my opening statement, I'd like to ask unanimous consent that three pieces be put in the record. The first, Mr. Chairman, is your letter to Tim Geithner asking that he specifically include the recommendations of the special I.G. -- something which I'm not sure there's an answer, but it's from February 5th.

The second is yesterday's New York -- I guess today's New York Times, that says, "Big Estimate Worth Little on Bail Out." I suspect that, that will be referred to many times today. And the third, because it is related to TARP and to a case recently settled against the government, I have a letter in response to a letter from myself, which the chairman has been copied, from Maurice "Hank" Greenberg concerning his continued willingness to arbitrate, rather than to litigate, the disputes which so far he's been winning.

TOWNS: Right. Without objection, so ordered.

ISSA: Thank you, Mr. Chairman.

Today, we're going to hear about a $23.7 trillion figure related to the TARP. Additionally, we're going to hear that the full transparency which we asked for, which this president and this administration has promised, is being dropped by the bureaucracy that often seems to say, "Just trust us and we will deliver." Now, "Just trust us and we will deliver," quite frankly -- and I'm not making the comparison except for the purpose of people understanding why we can't trust -- Bernie Madoff said, "Trust us. We have high returns."

The fact is, Treasury is saying "Trust us. You really don't have $23.7 trillion at risk." As a matter of fact, effectively they're saying, "The only thing that's at risk is a fraction of the $700 billion that we've committed." Mr. Chairman, nothing could be further from the truth. With my decades in business, one thing I learned was: Insurance policies cost money, because the amount insured is, in fact, at risk.

Anyone who thinks that we mark-to-market assets to half of their original value with some regularity when they include toxic assets and written down homes. And then believes that there would be no risk in guaranteeing those, particularly Freddie and Fannie and other guarantees that are out there, is simply living in a dream world.

If we underwrite in various forms over $23 trillion, we will in fact have losses. There are no gains for all practical purposes in these assurances, so they're not offset by profits. In the case of the TARP directly and I know we're going to hear from the special I.G. today, there will be some good news. There already has been some return and some profit on monies extended in the TARP. That is not so of many of our guarantees.

Most of our guarantees are, in fact, insurance without cost to both profit and non-profit organizations.

Mr. Chairman, I believe that this administration desperately wants the kind of transparency that will allow us to uncover potential insider trading, cozy relationships between part of a trading organization, which is trading for the government and part which is trading for itself.

And I believe only through our vigorous oversight will this administration be able to create the kind of a sandwich where on one side is the president asking for transparency, on the other side is the Congress demanding it. And in the middle is the I.G. trying to overcome a bureaucracy that has always been able to outlast administrations and chairmanships.

Mr. Chairman, today, we have to make sure that this special I.G. goes back with the clear message: Congress will not be outlasted and our patience is running out for the transparency promised by the administration, promised by the Congress, and not yet delivered by the people who transcend administrations one after another.

So, Chairman, I look forward to the testimony of the special I.G. and I commend you for continuing this vigorous oversight. Yield back the balance of my time.

TOWNS: Thank you, very much. Thank the gentleman for his statement.

We will now turn to our first and only witness, Mr. Neil Barofsky. It is long standing policy that we swear all of our witnesses in. Will you please stand and raise your right hand? Do you solemnly swear to tell the truth and nothing but the truth?

BAROFSKY: I do.

TOWNS: Let the record reflect that the witness answered in the affirmative is the special inspector general for Troubled Asset Relief Program, SIGTARP. Prior to assuming this position on December the 15th, 2008, Mr. Barofsky was a federal prosecutor in the United States Attorney's Office for the Southern District of New York for more than eight years. In that office, Mr. Barofsky was a senior trial counsel and headed the mortgage fraud group which investigated and prosecuted cases of mortgage fraud and also cases of securities fraud with respect to collateralized debt obligations.

Notably, Mr. Barofsky led the broad investigation into the $55 trillion credit default swap market and is a recipient of the Attorney General's John Marshal Award for his work.

We welcome you, Mr. Barofsky. You are allowed as much time as you may consume. We generally give people five minutes. We thought about giving you 10 minutes, but then I thought about the importance of it and I said, "as much time as you may consume," but try to stay within 10 minutes.

BAROFSKY: I will. Thank you, Mr. Chairman.

Mr. Chairman, Ranking Member Issa, members of the committee, it is an honor and privilege to appear before you today and present to you our quarterly report to Congress.

In my testimony, I'd like to outline what is contained in our quarterly report, section by section, going over some of the highlights.

BAROFSKY: In section two of our report, we do, as we do in each of our quarterly reports, summarize what has happened in the last three months in the TARP. This -- and this has been a busy quarter for the TARP.

We've seen the expansion of several programs, the bankruptcy of General Motors and Chrysler and the extraordinary government support to those industries, the expansion of the mortgage modification program with the selection of services, and the authorization of approximately $18 billion in support of that program.

We've seen paybacks of TARP money -- more than $70 billion -- for capital purchase program recipients and the launch of the Public- Private Investment Program with a selection of nine asset managers and a commitment to provide up to $30 billion taxpayer funds to fund that program. And that's all laid out in section two.

In section three, we've attempted to put the TARP program in context. Originally, we started as a $700 billion program to purchase toxic assets from financial institutions. The TARP has expanded to 12 separate programs involving up to $3 trillion. But it doesn't stand alone in the support for financial system from the federal government.

Since 2007, more than 50 different programs from different agencies have been announced, instituted and implemented. And a lot of what we see, when hearing about TARP recipients and their participation, is that it's not a loan. A bank may have an investment from the TARP, but also participate or issue debt with an FDIC guarantee, or borrow money from the Federal Reserve.

And there are so many numbers flying around that we thought to further erode transparency, we wanted to put the TARP in the necessary context of these other programs. And that's what we've done in section three. And for each of the 50 programs, we've put out three different numbers.

One, the amount of money that is currently outstanding in each of those programs, which is about $3 trillion. Two, the high watermark, from their inception until January 30th, 2009, which is about $4.7 trillion. And the third number, which is what the total exposure of each of these programs were, fully subscribed to, each of the insurance contracts were used, all of the different programs were, and all the support in total, and that number totals $22.7 trillion.

Now, since we've issued this report, there has been some harsh criticism coming from Treasury. I've seen some public statements that attacked the numbers in our report as being inflated. One press comments that a Treasury's spokesman describing it as "ridiculous." We take offense at that.

I think that if you look at the report, and in context, it is very clear where these numbers came from. They came from the government, itself. These are all open source, public source information. This is from the Web sites of the Treasury and Federal Reserve, submissions to Congress. If the numbers are inflated, then it was the government itself that inflated them, not us.

Secondly, as far as the suggestion that we are trying to "shock and awe" with this number, again, I think that we've made very clear in this report, in black and white, what this number means.

We explain that this number involves programs that yet have terminated. We explain that there are -- that some of these numbers are collateralized -- that there is collateral. All that is set forth in black and white. But one thing that is very clear: The number is basically just the accumulation of what these 50 separate programs are, and what the total amount of financial support that the government has committed to.

Frankly, what this attack is, is a challenge to the basic transparency that we try to provide in this report so that members of Congress and members of the public understand, in total, what is going on as part of the government support of the financial system in this crisis.

And let me move to our next section, section five of the report, where we talk about our recommendations. And one of our -- our primary recommendations bring us to the same issue of transparency.

We've now been in existence for seven months, my office. And of those seven months we've been pushing -- really from my eighth day in my office when I made the first recommendation to push for greater and greater transparency. That recommendation is one that we continue to make today, which is, the Treasury requiring TARP recipients to report on how they are using the money.

Treasury has repeatedly refused to adopt this recommendation. And as a result, in February, we sent out letters to each and every financial institution to ask them directly to report to us to prove that it is -- that they can provide meaningful information; that there is a purpose to requiring banks to account for their use of funds.

Yesterday, we issued that audit result and the evidence is, as we suspected. Contrary to Treasury's suggestions, banks can and should be required to report on how they're using funds. Banks reported a variety of different uses aside from just lending, as the chairman noted, to acquire financial institutions, to make investments in mortgage bank securities, to pay down debt, all different forms of use of funds that can and should be verified and can be part of the basic transparency of the TARP program.

As we noted in our recommendation, this is not the only recommendation regarding transparency that has not been adopted. We set four different recommendations, including those related to basic concepts so taxpayers can know what the value of the assets that they are the chief investors for. Treasury receives monthly reports on those valuation estimates, but will not share them with the public and we think that, too, is a failure of transparency.

Similarly, the recommendations related to the TALF program and the public-private investment program, basic concept of transparency so, one, the taxpayers can know what's going on with their investments and two, the watchful eyes, as has been famously quoted, "Sunshine is the best disinfectant," and it will discourage and deter bad behavior.

In section one of our report, we talk about what we've been doing for the past three months -- building our audit investigations division. We are concluding six audits this quarter. We've announced, or about to announce, five separate audits -- we talk about that. Our investigations division is continuing with 35 open criminal investigations and we'll continue to strive forward with bringing greater transparency to this program.

Mr. Chairman, Ranking Member Issa, it is again a privilege to be here today to present this report, which we believe is an essential part of continued transparency. We've had more than 12 million hits to our Web site since we started with almost 700,000 downloads of our previous reports. And I think that we acted in deed and in word to bring the necessary transparency. And I thank you for your indulgence on time and I look forward to answering any questions you may have.

TOWNS: Thank you very much. We really appreciate your being here. I understand that the Treasury collects monthly data showing the value of its TARP portfolio. Is there any reason why that should not be made public?

BAROFSKY: In our view, absence -- maybe very, very limited circumstances, we believe it should be made public. The one argument that was -- one of the arguments that was offered against doing this was that it may impinge Treasury's ability to liquidate some of those assets.

But, frankly, we think that just like, you know, any asset manager, any mutual fund, the investors have a right to know what the value of their assets are. Frankly, the one good example of when you don't know is Ranking Member Issa's example of -- of a made-up type hedge fund where investors can't see what's behind the numbers. And we think this is an essential part of transparency.

TOWNS: Well, we are concerned now about conflicts of interest. Treasury had nine private firms to be asset managers for the TARP public-private investment program, including large companies such as BlackRock, G.E. Capital Real Estate, Invesco and others.

All of these large firms are engaged in extensive private investment activities. Yet, Treasury has refused to require these firms to establish firewalls between the employees and who makes investment decisions on behalf of the government (inaudible) who manage private (inaudible).

Why? My question is why does Treasury oppose firewalls at these firms to prevent conflict of interest and collusion?

BAROFSKY: We have been pushing this recommendation over the last couple of months. We have consulted with the Federal Reserve Bank of New York, which operates similar programs. They have asset managers, both buying and selling assets, and even Treasury itself would take a look at some of their programs. And one constant is that when asset managers receive market-moving information, and have the ability to -- or know about information to set market prices, a firewall comes attached to that responsibility in every program other than in the PPIP program.

We've made this recommendation. In our quarterly report, Treasury has detailed at the -- in a lengthy letter their explanation as to why they are not requiring this. In short, they say it's not practical in this program for a variety of different reasons.

We strongly disagree. We think that the taxpayer is entitled to the exact same protection that the Federal Reserve requires in its -- when it hires an asset manager. And we believe the same protections should and must be part of the TARP program.

TOWNS: Is there a downside to this? Is there a downside?

BAROFSKY: Treasury argues that -- they make a number of different arguments. One is that it would be -- it may be more expensive, that there may be a limit as to the firms that are willing to participate, absence of wall, all of these may be valid arguments.

But from our perspective, when tilting the scales are the tremendous dangers that come from not having a wall; from being able to take advantage of conflict of interest, to why we recognize profits in different parts of the firm, to the reputational risk.

People are going to ask the question, "Why does BlackRock operate under a wall when they're managing funds for the Federal Reserve, but not when they are managing for the Treasury"? And if there are incredible profits, there is going to be a lot of explaining that needs to get done.

TOWNS: I find your testimony quite amazing. Do I understand you correctly? Well, let me put it this way. Does Treasury ask top recipients what they are doing with the money? Do they ask them the question?

BAROFSKY: Overall, no. They have asked -- they asked Bank of America, Citigroup and AIG -- are the only capital recipients that are required to report use of funds.

Some of the other extraordinary systems also have reporting requirements, but as far as the rest of the recipients, Treasury says, "no." And they say they won't do it because it won't be meaningful. It won't be reliable information. So, of course, the question we ask is: If it's a meaningless exercise, why are you doing it with respect to Citigroup, Bank of America, and very recently, AIG? And we haven't really got an answer to that question.

TOWNS: You know, I think this is very, very important because, you know, in creating this in discussions early on, you know, it was about job creation. And of course, I think that we need to have the information to determine in terms of what they are doing with it, because when I look at the fact, that in the minority community that the unemployment rate is 15.5 percent -- and of course -- and it's really 9 percent generally. So it appears to me that that's a legitimate kind of question that should be raised because we feel and recognize that job creation is important.

BAROFSKY: Of course, Mr. Chairman, I couldn't agree with you more. And what Treasury does is it puts out lending survey information. So it's already collecting information from each of the financial institution reporting on lending. But as our audit demonstrates, that's only part of the story. It doesn't talk about all the other things that banks are doing with TARP funds: investments, retaining capital cushions against future losses -- all these types of things, which goes right to the heart of the question that you are posing.

TOWNS: Yes. Let me ask you, did the TARP recipients have any trouble telling you what they were doing do with the money?

BAROFSKY: We had a variety of responses -- we had 364 responses. But nearly every single financial institution was able to provide us with meaningful information on this survey. And I have to remind you, this is a voluntary survey. This -- what we are recommending is that Treasury actually require this information. But just -- we just asked, and we still got very meaningful responses.

TOWNS: Is there any reason why the public should not be told what TARP -- what is happening with the TARP money and how it's being used?

BAROFSKY: I can't think of one. The one argument that was presented to us was that it would be a meaningless endeavor. I think our audit report proves that to be false. I think that banks can and should be required to report on the use of funds. I think that this Congress can make better policy decisions. Frankly, I think it will assist the Treasury in making better decisions. If they have a better understanding of what's being done with the funds as they -- as we continue in this -- in the bailouts and the continued administration of the TARP.

TOWNS: Thank you very much, Mr. Barofsky. I yield to the ranking member.

ISSA: Mr. Chairman, before -- before I begin my questioning, I'm not sure that everyone understands that you came here on a day when others probably would have taken the day off.

Mr. Chairman, is it actually true that today is your birthday?

(LAUGHTER)

(APPLAUSE)

TOWNS: Thank you. Thank you very, very much.

(LAUGHTER)

ISSA: That's the power of a chairman if I've ever seen it.

TOWNS: Thank you so much.

ISSA: The coffee will be coming, Mr. Chairman.

TOWNS: Thank you very much, I appreciate that. Thank you.

ISSA: Chairman, just in case anyone thinks this isn't a bipartisan committee, Jimmy Duncan has decided to have his birthday today, just to make sure there was one on each side.

(APPLAUSE)

(UNKNOWN): Do your party.

ISSA: Yes. Yes, do your party. And the chairman blew it off without even showing it. It's much harder as you go down the dais. Thank you, Mr. Chairman, and your coffee is coming.

I'm not sure that I can begin to tell you how pleased we are to have you here today, and we are pleased for a number of reasons. And I'll read from that New York Times article, if I may. Andrew Williams, a spokesman for the Treasury Department, called "the figures distorted because they did not consider the value of collateral posted on these loan programs."

ISSA: I'd like you to put into perspective -- first of all, did you ever say anywhere in your report, or in your findings, that we would lose $23.7 trillion?

BAROFSKY: Of course not. And we explicitly point out in the report the existence of collateral.

ISSA: So when you talk about $23.7 trillion, or about 30 times as much money as you would have if you gave away $1 million a year from the birth of Christ until today -- just for somebody to try to figure out if that's true or not -- that quantity of money, what you're talking about is the amount other than the $700 billion, the amount that is essentially other assurances and insurances. Is that right?

BAROFSKY: If every program is maximized to the greatest extent possible, that's what that number is. And coming from a totally different persuasion, I would say even if you went back to the time that Moses parted the Red Sea, you would still be in the right numbers.

ISSA: I think actually Abraham would be sitting here trying to figure it out, too.

There is a question. This is an amazing amount of money that when you look at millions over thousands of years and not getting to that number, it's hard for the people to understand.

But let's look at it another way. If, in fact, just 5 percent of this $23 trillion, $24 trillion under assurances of various sorts were to go bad, isn't that a dramatic amount more than we ever authorized or appropriated from Congress?

BAROFSKY: It is, of course, a staggeringly large number. The TARP, itself, is -- are staggeringly large numbers, as it's been expanded to other programs, as well.

ISSA: Our previous Neal came before us, Neil Kashkari, and we asked him about how much money the assets were worth, and he said he didn't know, but he did it to us in 30 days. And 30 days later, he said he'd get us another 30 days. He's gone now. So you're the one we have.

Has the Treasury been willing to cooperate and provide the information as to the current value of assets purchased?

BAROFSKY: We have -- this is a recommendation we've made since early February and they've not yet made this information public.

ISSA: So the assurances made by Neil Kashkari, both in the last Congress and in this Congress, that this was forthcoming, in fact, were not truthful in the sense that it doesn't appear as though they are ever forthcoming to actually tell us in a -- if you will, a mark to market, what the assets are worth. Particularly, I'm interested in AIG's assets.

Do you have any idea how much money has evaporated permanently from the $180 billion that AIG has received?

BAROFSKY: I don't have that information at my fingertips. We are doing a couple of audits on AIG where we're going to have a better sense and be able to report on what is going on in those portfolios, particularly in the context of its counterparty transactions. But I don't have that information.

ISSA: Do you think that Congress is overdue to find out how many dollars have gone out in a manner that can never be refunded?

BAROFSKY: I think it's absolutely essential for transparency that Congress and the taxpayers who invested in this program know what Treasury's best estimate is as to what's the value of their investment is -- absolutely.

ISSA: Now, because we own AIG, and because there is litigation against the founder of AIG -- and you're obviously very familiar with the court decision -- and apparently follow-on litigation, do you have any day-to-day contact or any ability to find out why we continue to spend -- my understanding is -- over $200 million in legal fees trying to recover initially $4 billion, which the court has said we're not entitled to get back from C.V. Starr & Company?

As a matter of fact, apparently, they said in a very short time and said that, essentially, the case never had merit. But we've spent over $200 million. Is that something that's on your radar screen?

BAROFSKY: We haven't addressed that situation. We have two ongoing audits of AIG, which is consuming a good chunk of my audit staff. But, of course, we're always going to be continuing to look for follow-up -- follow-up aspects.

We're also, though, maybe included as well, in overall audit that we just recently announced, we're doing on corporate governance as a whole, including the government's role in governing and as part of the 80 percent owner of AIG. So it may come in that context, as well.

ISSA: Is there any way that we can get an independent assessment of whether or not the federal government's pursuit of these lawsuits rather than going to binding arbitration, which was offered repeatedly when Mr. Greenberg was before this committee -- is there any way to second guess this as $1 million a week is being spent on legal fees?

BAROFSKY: I think what we can bring through our audits is an explanation of what the federal government's involvement has been in those decisions. In other words, as an 80 percent owner, how involved is the federal government making those decisions versus AIG's management itself.

ISSA: Now, back to the firewall question that you've been working on, and this committee is very concerned about -- I'm a member of a public board. I own stock. Actually, my foundation owns stock in that. I'm not allowed to trade that during blind periods.

Is it any different to say that a member of Congress, who happens to have a foundation which owns stock, but also sits on the board as an individual, would you say that was unwielding to say, "No, you can't trade on behalf of yourself while, in fact, you have inside information"?

Is that any more hard than what you're dealing with, with various firms who are being given huge underwriting and huge leverage advantages at the federal government's expense in return for trading primarily on our behalf?

BAROFSKY: And I think that's exactly the right difference -- is here, these fund managers can have up to $3 billion of taxpayer money. And the whole design of the program is to encourage them to set prices in an illiquid market. This is a remarkable amount of power.

And once they make that decision, it's a remarkable piece of inside information. I think it would be difficult for any member of Congress to replicate, because actually the design of the program is to set prices.

So I think it's a much -- far more extreme example than in the example of the of the PPIP.

ISSA: Thank you. Thank you, Mr. Chairman.

TOWNS: I yield five minutes to the gentleman from Maryland, a very active member of this committee.

Congressman Cummings?

CUMMINGS: Thank you very much, Mr. Chairman.

Mr. Barofsky, it's good to see you again.

Have you had -- have you had a conversation with Mr. Geithner since you took office?

BAROFSKY: I spoke to him in late January.

CUMMINGS: And that's it?

BAROFSKY: That's it.

CUMMINGS: For how long was that conversation?

BAROFSKY: It was a couple of minutes before a larger meeting with Mr. Garrett and Ms. Warren from the Congressional Oversight Committee.

CUMMINGS: The reason why I asked that question is I listened to the chairman's question and our ranking member's. It seems to me that you all should be on the same team to a degree.

I mean, I know there is a wall there. But I guess, you know, in light of the things that we are -- that are coming up, should concern all of us.

And I want to follow up on some of the chairman's questions. You said a moment ago that you got 12 million hits. That's a lot of hits to your system.

What that means is that apparently the public is very interested in what's going on with regard to this money. And I think the thing that concerns me is that -- something that you have said in a joint economic committee not very long ago -- was your concern about the appearance of some conflicts. Do you still have those concerns?

BAROFSKY: I think my concerns are greater today than they were a couple of months ago when I spoke to you and the members of that joint economic committee.

CUMMINGS: And why do you say that?

BAROFSKY: Because of the absence of laws in this public-private investment program. I think that the danger here of picking -- of the perception of picking winners and losers, of giving these nine economic firms, nine out of the 100 that applied, the ability to set prices and not put the right type of restrictions in place to make sure that they're not going to otherwise profit unfairly at the expense of the market.

If these firms do start having those types of profits in other aspects of their firms, I think the criticism that has previously been leveled at Treasury -- be picking winners and losers, the opaqueness of how decisions are being made -- could be potentially devastating to the program, and potentially devastating to just the way American people view their government. So it's a very serious concern of mine.

CUMMINGS: This morning, one on "Morning Joe," they had a fellow named McDonald, who's written a book, and he used to work for Lehman Brothers. And he alleged that Lehman -- that Mr. Paulson intentionally allowed Lehman to fail.

Now, normally I wouldn't pay too much attention to that. But what we are beginning to see is -- and then he laid out the evidence, and it sounded pretty logical.

And I think that when we start getting into this -- and the reason why much of the 12 million hits is that -- and I really believe this. In order for us to get past this economic situation that we find ourselves in, the public has to believe that we are doing the right thing.

And they have to believe -- and I think one way to make them believe -- is transparency. I agree with you on that.

And so, I'm trying to figure out, you know -- and there's one thing -- and one of the things that I'm concerned about is a lot of times when we see a report that doesn't look too favorable, a lot of times we have a tendency to shoot the messenger and not address the report.

But there's one thing that you said here that's quite telling. As a former prosecutor -- and I guess you're still a prosecutor now -- you said something about 35 open criminal investigations. And I know what it takes to even get to the point to start even investigating. Let's assume only five of them have some legs on them. I mean, are you seeing any kind of a pattern?

And I think what my concern is, is that if there is a pattern, maybe this Congress needs to be doing something. And I'm trying to figure out if there anything that we ought to be doing to give you more power than what you have to accomplish the things that you have to accomplish.

Because one thing is for sure: If we cannot get to a point of the American people, at 12 million hits -- if we can show them that we are doing the right thing with their money, as the chairman has alluded to, we're going to have problems. I don't see how we can get pass this, because the American people are not going to buy it.

BAROFSKY: And I couldn't agree with you more on the importance of transparency for all the reasons that you stated, as well as just the fundamental fact that the taxpayers are the investors.

And I think the reason why we see 12 million hits and more than 700,000 downloads of our reports is because the American people want to know what's going on with their investment. They want to understand these programs.

And we serve a role basically to translate these programs from the very, very complicated description that the Treasury puts out, and we try to translate it into English with tutorials and explanations. So I do agree.

As to your question about the criminal investigations -- they really -- we haven't seen a major pattern. We have a lot of investigations related to the mortgage modification. There's a lot of scams out there, people trying to take advantage of struggling homeowners, so there's a fair number there.

But the rest of the investigations, we would go across the board. We have some incredibly complex securities and accounting fraud investigations of banks that either have attempted to, or actually applied for and received TARP funds. They have lied to the government in order to get that funding.

We have cases of insider trading, trading on inside information that they have learned about the TARP. Really, almost any type of white-collar crime you can think of, we have -- we're touching on in our investigations.

And, really, it's what you would expect when you're putting so much money out in such a short period of time, and many times -- many instances with very few conditions. And that's -- they really do cover the board.

CUMMINGS: Thank you, Mr. Chairman.

TOWNS: Thank you very much.

I yield now to the settlement from Florida.

Congressman Mica?

MICA: Thank you.

Thank you, Mr. Barofsky.

Let me follow up on Mr. Cummings' questions. Actually, you stated that TARP and these programs have grown into more than 50 programs -- 50 different programs?

BAROFSKY: Not within the TARP. Within the TARP, there are 12 programs. You know, at first we talked about approximately an additional 50 programs that are across the United States government, everywhere from the FDIC to the Fed, FHSA...

MICA: Well, then, there are about 12 TARP -- that 50 that you -- are you keeping sort of a watch over, or just the 12 TARP?

BAROFSKY: Thankfully, we just have the 12. The rest are being...

MICA: Well, again, some of this seems to have dramatically expanded, and probably the nature of the responsibility requires some of that.

But to get to the point Mr. Cummings was raising, do you have enough resources to conduct sufficient investigations and oversight?

BAROFSKY: We are building as an office. We currently have 70 personnel onboard. We're building to about 160 with a target date of early next year.

MICA: I read your -- not all of your report, but scanned through it -- and you do have recommendations in here. I noticed only eight of 32 of your major recommendations have been implemented, and then five of 30, too, partially implemented.

Is there any way to enforce the implementation? Or to get us -- do you have any recommendations that we can put some teeth into what you're doing or recommending?

BAROFSKY: Really, we feel like our role -- our statutory role is to make these recommendations, and it's really...

MICA: We have to pick them up -- pick up the responsibility.

But it appears that a number of your recommendations are not implemented, or it appears that some of your recommendations take awhile to get implemented. For example, the executive compensation -- was that -- I guess that was finally adopted on June 15th?

BAROFSKY: That's correct.

MICA: So that's why we've seen, since June 15th, a lot of folks interested in paying back their loans?

BAROFSKY: I think that is an explanation that has been offered.

MICA: OK. But it took -- what -- about six months to get that in place -- that recommendation into the -- is that correct?

BAROFSKY: I think it was about four months from our February report.

MICA: Then I think part of what you said is you are trying to develop and encourage transparency. Many of the things that deal with transparency are recommendations that have not, in fact, been addressed by the various groups that you oversee. That still remains the case?

BAROFSKY: It does.

MICA: That's unfortunate. And then, maybe finally, you could tell me -- first, I didn't vote for it. But we started out with about $700 billion that members of Congress thought that they were going to help bail out financial institutions. And then you had a -- some of the liabilities grew to $3 trillion, maybe you could explain that, then $4.7 trillion.

And then the total exposure is $23 trillion. So how did a little tiny, teeny $700 billion program ballooning into $23 billion worth of exposure? And maybe you could tell us the $3 trillion you say -- the level, how far we are risk at that $4.7 trillion, and $23 trillion is the ultimate?

BAROFSKY: Sure. For the TARP, we start off with $700 billion and we include a chart that gives the precise numbers for each program and where they come from. But then, that number got expanded to, to approximately almost $3 trillion from other related federal government programs.

So, for example, the public-private investment program, which we will be discussing, is seeded with about $100 billion of TARP money. But then the Federal Reserve -- and at one point the FDIC -- were going to issue non-recourse loans from the Federal Reserve -- that is, loans which don't have to be paid back, but of course it was collateral.

MICA: That ballooned it to...

BAROFSKY: Right. And then also guarantees from the FDIC. You have the TALF program, which has been an up-to-a-trillion program seeded by $80 billion or $100 billion of TARP fund. So you have these other federal government entities coming in and supplementing these programs.

You have an asset guarantee of $300 billion from Citigroup, which is done partly by Treasury, partly by the FDIC and partly Federal Reserve. So that's how we get to the $3 trillion.

Those other numbers are actually non-TARP programs or the $3 trillion actually -- in the $23.7 trillion, it does include the $3 trillion from the TARP. But also includes other programs that have nothing to do with the TARP other than the fact that they are also supporting the financial industry, and other than the fact that the same institutions that can take advantage of the TARP also can take advantage of these other institutions, and at times can use one perhaps to pay off another -- something we call -- it's even coined as "bailout arbitrage."

MICA: So the $700 billion seeded the potential of $23.7 trillion?

BAROFSKY: I would say $700 billion seeded the $3 trillion and then the other $20.7 trillion really comes from other federal government programs that are non-TARP related.

MICA: Riding sort of the saddle -- the same saddle.

BAROFSKY: All for the support of the financial system.

(CROSSTALK)

(UNKNOWN): May I just ask, Mr. Chairman? Is that in your report, sir? Is that, what you just stated to Congressman Mica's question -- does that summarize that stair step?

BAROFSKY: Yes, the $3 trillion in what is there is all...

(CROSSTALK)

BAROFSKY: ... in the executive summary.

(UNKNOWN): ... up to the 23?

BAROFSKY: And all that is set forth in section 3 of our report with the explanation of what those numbers really mean.

(UNKNOWN): Thank you both.

TOWNS: Gentleman from Ohio, Mr. Kucinich?

KUCINICH: Thank you very much. Mr. Barofsky. I am reading your report about lending where you talk about how banks have been leveraging TARP funds to support lending activities. And you say on commercial lending 20 percent of respondents reported they used TARP funding for commercial lending activities; 17 percent of respondents deploying TARP funds for other consumer lending; 13 percent for small business. You talk about the capital cushion -- how some banks are basically parking their funds to create a cushion against loan losses.

Now, I looked at your report, and I want to use that report as a backdrop for a news report that came in today. Now, we went back into the TARP history here. We know the first intent that Congress had purchase toxic assets, which were mortgage-backed security -- we were told it would keep people in their homes. Well, the administration threw that out the door -- the last administration.

Then, we were told we were going to switch the TARP funds to help bail out the banks to help direct capital infusion. But I think something else has happened here, and I want to make sure it doesn't escape this committee, and I hope that you can tell me it hasn't escaped your notice.

We are now seeing that we have another switch that's occurred that we actually have the fed paying banks not to use the quote "excess capital" to make loans. I direct your attention to the news report today, which says that, "Banks' excess reserves at the Fed rose to a record $877.1 billion daily average in the two weeks ended May 20th from $2 billion a year earlier." Excess reserves, money available for lending that banks chose to leave with the Fed instead averaged 733 billion in the first two weeks of this month."

Sir, the Fed is paying banks higher interest rates now to keep their funds parked at the Fed instead of loaning the money to the American people, is that not true?

BAROFSKY: Yes, and the reason I opened up the book is that on page 142 of our chart -- of our report, we actually have a chart that depicts exactly what you are saying.

KUCINICH: Tell me about the chart, and tell this committee about the chart?

BAROFSKY: It shows the increase in the amount of money that is being parked at the Federal Reserve over time. If you want to get one of the Fed programs, different program, another program that we do, we do think that there is a connection between the federal programs and the increased reserves that are being held there?

KUCINICH: If the banks would not receive this direct capital injection as a result of the TARP funds, is it conceivable that they would have -- according to this news report -- averaging $743 billion in reserves parked at the Fed, is that possible they are going to have that?

BAROFSKY: It may be, but only because of all the other programs that we detailed in section 3 of the report.

KUCINICH: All the other programs meaning government programs that have helped to sustain the banks, right?

BAROFSKY: It would certainly appeared to be the case.

KUCINICH: See, members of the committee, first we started out, we're being told that money was going to mortgage-backed securities. They put a bait and switch on that. Then we are told it is being used to bail out the banks, so we could have loosening of credit through direct capital infusion. Now, you and I know that there are businesses in our communities who are credit starved. Meanwhile, the Fed is paying banks a premium to keep their money parked with the Fed instead of loosening it up.

This is one fraud after another on the American people. They might use the excuse while they're trying to control inflation.

Check it out -- unemployment is sky rocketing, businesses can't get money, so they are laying off more people. And we are thinking that somehow we've solved the problem here. I want to submit for the record this report out of the Bloomberg News Service and I want to ask Mr. Barofsky.

TOWNS: Without objection.

KUCINICH: I want to ask Mr. Barofsky. This money is fungible, as we know.

BAROFSKY: Yes.

KUCINICH: But, generally speaking, you would agree that there is just no question that a significant part of the money that's been parked of the Fed to right now is government money; that -- that money from the government programs are Congress created.

BAROFSKY: I think we'd have to look at institution by institution. But I think if we did so, I wouldn't disagree with what you are saying.

KUCINICH: Yes, Mr. Chairman, I hope that we can get another hearing on this particular matter, because this goes to the heart of the entire bailout program -- one thing after another, one bait and switch after another.

BAROFSKY: And Congressman Kucinich, if I could finish, in our audit, I think we have described the banks have communicated to us this tension as well that they feel, that's really right along with your comments and that is, that on the one hand, they are getting pressure to increase lending and get this capital out there, but they are also getting pressure from the regulators to maintain the capital and increase the...

KUCINICH: Regulators means Fed?

BAROFSKY: The Fed, then the FDIC, OTC and OTF. Indeed, that's what the -- a portion of the stress tests were. So I think that...

(CROSSTALK)

KUCINICH: Thanks, Mr. Chairman.

TOWNS: Thank you very much. I'll now yield to the gentleman from Tennessee, Mr. Duncan -- and happy birthday.

DUNCAN: Well, thank you, Mr. Chairman and happy birthday to you, too. Mr. Barofsky, thank you very much for your report, and I read with great interest the story in The Washington Post yesterday where the lead paragraph says, "Many of the banks that got federal aid to support increase lending have instead used some of the money to make investments, repay debts or buy other banks." I have read and at one point that, in fact, a few months ago that the Bank of America had taken $7 billion of the first $15 billion they got and increased their...

KUCINICH: Mr. Chairman, we can't hear our colleague...

TOWNS: Do you might turn on to hear the mic on.

DUNCAN: Yes, it's on. Maybe I am not close enough.

TOWNS: OK.

DUNCAN: Does that help?

TOWNS: That helps.

DUNCAN: I read that the Bank of America took $7 billion of the first $15 billion they got and increased their investment in the Construction Bank of China. I don't think any of us ever intended that this money be spent in that way. And I think that part of the problem was that this legislation was rushed through and we weren't given proper hearings on it or chance to offer amendments and things like that.

But I can tell you, all of the business people, all the small business people in Knoxville, East Tennessee have been telling me for months that what's been said at the top is not getting down to that level; that what the president and the secretary of the Treasury have been saying under both administrations. Where they are saying, "lend, lend, lend" that these examiners on the local level are saying, "no, no, no."

And the fact is, there was a cartoon to that effect in the Congress bailing (ph) publication that we get everyday at each of our offices, showing the president and the secretary of the Treasury urging the banks to lend and showing the banks with huge piles of money. And then these examiners on the local levels that are saying "no, no, no" in that. That's -- I have heard that from realtors, home builders, some other small business people, bankers -- from all lines.

But I want to read a portion of the letter I received from Robert S. Talbot, who's one of the -- who has been one of the most successful business people in Knoxville. He wrote to me, he said, "I have never seen anything like this in almost 30 years I have been in the business world."

And listen to this, he said, "Holrob Investment" -- that's his company -- it is the mother company with over 50 partnerships and limited liability companies, all of which are involved in commercial and residential real estate projects -- "we have been in business for many years and currently own interest in 18 shopping centers and numerous other retail and residential properties. Our loan obligations consistently are in excess of $100 million and we have multiple lenders with which we do business, large life insurance companies, regional lenders, banks.

"We are not currently in default with respect to any monetary obligation we have ever been. Our business depends on access to credit and despite public protestations by our government to the contrary, it has been our experience this year that credit is contracting. We have been told by numerous banks that unsecured loans of credit to be frowned upon; that bank regulators and consequently we have been informed by SunTrust, Mountain Commerce Bank and FirstBank, that they would not renew personal lines of credit.

"While Fifth Third (ph) did not technically extinguish our line, it was apparent to us that they did not want our business and consequently we are in the process -- we are in the process of extinguishing our lines of credit with them."

This is what I am hearing, except this is a stronger letter. But is this much you have been finding out in your investigation of all of this? Is this true around the country or my area unusual in this regard, because I am hearing this from many, many people?

BAROFSKY: I think this tension does exist. And I think we have seen it across the board this, you know, on the one hand the desire for banks to do more and more lending. And on the other hand, the regulator's desire for banks to build up capital cushions against future losses and it's a very real tension.

DUNCAN: And I also hear from -- I have heard this from many bankers who say that they can't speak out publicly, because they have received retribution from the examiners and the situation could go even worse.

BAROFSKY: Well, we do see this in response to some of our survey questions -- banks -- I mean our source and information for this is the bank themselves who have come forward and had pointed out this tension.

And it's also, it's frankly, it's just, it's natural. The stress test and part of the results of the stress test shows was to encourage the financial institutions to raise additional $70-something billion . These additions to capital are that -- they're additions to capital. Now, capital can be leveraged in certain instances to increase lending, but there is a tension there and it is one from conflicting policy concerns.

DUNCAN: I have written to the top banking regulators twice to tell them -- and that those two letters were several months apart -- to tell them this situation is occurring in our area and I hope that other members of the committee who are running into this in their areas will also wrap these regulators because this money is not being used -- I don't think -- in the ways in which the Congress really intended for it to be used.

Thank you very much.

TOWNS: Thank you. I'll now yield to the gentleman from Illinois, Congressman Quigley.

QUIGLEY: Thank you, Mr. Chairman. Good morning. You -- sir, you spoke of the extraordinary power placed with the fund managers.

QUIGLEY: Given this extraordinary power -- that almost life and death over so much money and what can happen to other companies -- are firewalls enough? I mean, I guess there are firewalls and then there are firewalls. But is there anything else that can be done to protect the trust that's put in them?

BAROFSKY: A firewall left standing alone would not be enough. There has to be vigorous and strict enforcement and compliance regimes set up over that firewall -- armed by who? It should be both by the company itself within their internal functions and, of course, by Treasury.

Our baseline suggestion -- where we thought the starting point should be -- and just as a starting point -- should be what the Federal Reserve Bank of New York does with BlackRock and its neighboring (ph) facilities and with its full asset managers and its mortgage backed security buying program.

We thought that would be a good starting point, because they do have laws. They do have vigorous compliance set up by FRBNY compliance. And that's a starting point. But it isn't the ultimate goal. We haven't gotten to that starting point. And that's why our recommendations are where they are. But, no, we agree -- a wall standing alone isn't going to do it, if it's not a vigorous compliance regime in place as well.

QUIGLEY: Were you aware of whether these conflicts were discussed when Treasury made these decisions choosing the nine out of the over a hundred?

BAROFSKY: Our involvement -- we were not involved in the formation of this program before it was publicly announced. We learned about it really a couple of days before it came out. We became involved during the selection process of the nine managers. One of the members of my audit team actually sat in on some of the interviews. And we've been engaged in a dialogue with Treasury back and forth on this issue since at least early June.

QUIGLEY: And did the discussions of the conflicts of interest and protections that were needed -- were those discussed after the fact to you?

BAROFSKY: We've been engaged in an ongoing dialogue. There's an amendment. It's one of the housing bills. It's called the Ensign- Boxer Amendment, because of those two sponsors, that actually required Treasury to consult with us in the formation of these rules. And they certainly have abided by that and there has been consultation. Not agreement, but consultation.

QUIGLEY: Do you have the authority and the desire -- I guess, ability to audit Treasury's decision-making process to pick the nine?

BAROFSKY: We certainly are going to be doing an audit on the conflicts issues and many of the issues associated with the PPIP program. We haven't announced to do that, because the program itself hasn't gotten on our...

QUIGLEY: Go ahead and do it now.

(CROSSTALK)

BAROFSKY: ... hasn't been in (inaudible). But we are going to do that. I think, frankly, there would be no way for us to do our job without auditing.

QUIGLEY: Well, given the lack of cooperation that you're facing now, how is that audit process going to work?

BAROFSKY: I would have to say that when it comes to conducting our audits, Treasury has been cooperative. They've provided the documents that we've asked for. They've made their personnel available to us timely for interviews. So I see no reason to worry that we're not going to be able to conduct our audits, as we've conducted our other audits without interference from Treasury.

QUIGLEY: Do you suspect that that could be completed by the time you next -- you do your next quarterly report and repeat all your recommendations again?

BAROFSKY: I think that by our next quarterly report, because of the timing of the PPIP program -- I mean, the final contracts haven't been written. The time the fund managers are being given to raise the funds is up to 12 weeks, which would take us into the next quarter.

I think it's unlikely. We could do it -- we may be able to do something very quickly depending on what the time-frame of the program is. But until sort of all the terms are set and the conditions are set, it's difficult to launch an audit. But we are going to do so.

QUIGLEY: Very good. Thank you, Mr. Chairman. I yield back.

TOWNS: Thank you, very much.

I now yield five minutes to Mr. Chaffetz.

CHAFFETZ: Thank you. And Mr. Chairman, I would ask unanimous consent to insertion of a record -- the letter that was referenced in Congressman Duncan's questioning. He'd like to have this submitted into the record.

TOWNS: Without objection, so ordered.

CHAFFETZ: Thank you.

And thank you for being here. I appreciate your work. This is important work. Taxpayers' money is at hand and we have a role and responsibility in government to make sure that it's dealt with in a responsible manner.

My understanding is that Treasury has formally asked the Office of Legal Counsel in the Department of Justice to opine on whether SIGTARP is subject to the supervision of the secretary of the Treasury. Can you give us an update as to where that's at -- your understanding of that?

BAROFSKY: My understanding is that's where it is. Treasury put in their request. We put in our response, giving our opinion that the intent of this Congress is quite clear that we be a strictly independent agency within Treasury. They've submitted their response to our response. And the issue is still pending.

CHAFFETZ: Other than their trying to maybe away from the obligation that SIGTARP puts upon it, has there been any further instances of Treasury attempting to exert control over your office or investigation?

BAROFSKY: Nothing that even comes to mind. I think that they've been generally cooperative with our investigations and audits.

CHAFFETZ: And what would be the implications if they were to have control over...

BAROFSKY: Well, I think that in the I.G. Act and what Treasury suggests that we sit within that scheme, the secretary of Treasury has the ability to shut down an audit or investigation of the Treasury I.G. And we have a great feel -- we think that would be a great threat to our independence if the secretary had that ability over us.

I mean, by way of an example, obviously the Treasury has very strongly worded about portions of our report that they disagree with, theoretically could they use that type of supervision authority to order us to keep that out of the report and keep that information from the American taxpayer, from members of Congress? I'm not sure. But we think that those are the types of dangers that we see if we're under the supervision of the secretary. If that type of authority was asserted, I think that would be a direct threat to maybe the reason why were created.

CHAFFETZ: Yes. And I concur with that. I would hope that you would let this body know and me in particular if there's any instance or movement towards them trying to exert the control. I think that natural tension of having an independent auditor come in is a healthy one for the process and the viability and the visibility to the American people.

Let me talk real briefly about the personnel and resources that you have in place. And a question is do you need more resources? My understanding is that at the end of June you have 60 personnel with plans to get to 160 people. They have 35 ongoing criminal and civil investigations and over 3,200 tips that have come in through the hot line and whatnot. Help me understand what's happening within your department and the stress and workload with the personnel that you do have.

BAROFSKY: We've been very busy. We have put together a really amazing team of auditors and investigators who are...

(CROSSTALK)

CHAFFETZ: What are you short? What do you need immediately that you don't have at your fingertips?

BAROFSKY: I think right now we're just going through the normal process of hiring and finding the right people.

The one thing we identify in our report is that we're projected to basically run out of money mid-time through fiscal year 2010. We have a budget amendment request to Treasury to get the necessary money that we would need to keep going through the end of fiscal year 2010. We've been working with them to achieve that as well as OMB. Obviously, if that is unsuccessful, we'll have to come back to Congress and ask for a direct appropriation. But basically, the sooner that we get that necessary money, we'll be good for fiscal year 2010.

CHAFFETZ: In my short time that I left, let me still shift gears and talk about the value of the TARP portfolio.

There's very limited exposure to this. Tell me what you're able to see, not see and what is the value to the public in having that information?

BAROFSKY: Well, we think it's essential from a basic transparency point of view for the members of the public, the investors to know what their investment is worth. You know, I think we think of...

(CROSSTALK)

CHAFFETZ: But how hard would that information be to provide?

BAROFSKY: The Treasury is getting monthly estimates right now. So it would just be a matter of making...

(CROSSTALK)

CHAFFETZ: They have the information, but we don't?

BAROFSKY: ... making that information public.

CHAFFETZ: It's just a matter of flipping the switch. I would urge that this committee -- I would hope that we would insist that those valuations be made public so that the taxpayers can understand the valuation of their assets on...

(CROSSTALK)

(UNKNOWN): Could the gentleman yield?

CHAFFETZ: Yes.

(UNKNOWN): Is that something that in fact you believe would be appropriate for us to consider subpoenaing under cover so that we could at least see what they see once and maybe reach the same conclusion you've reached? Thank you.

BAROFSKY: I don't think it's necessarily my position to suggest what the committee should or should not subpoena. But certainly, if the committee wanted that information, the committee should certainly request it and evaluate it and make its own determination.

CHAFFETZ: I see my time is up. Thank you, Mr. Chairman. Thank you.

TOWNS: Let me just say that that's something that we are considering as well.

But I now yield five minutes to the gentleman from Virginia.

CONNOLLY: Thank you, Mr. Chairman. And let me add my voice to happy birthday and good felicitations. And I want to thank you for your leadership of this committee.

Welcome, Mr. Barofsky.

BAROFSKY: Thank you.

CONNOLLY: Let me ask a question. Just to be -- once and all is the TARP program working? Has it in fact achieved the ends for which it was designed?

BAROFSKY: I think that really depends on what your definition of working is. I think that the goals of the TARP have changed over time. Different folks have different definitions of what's working and what's not working.

I think if the goal was to remove $700 billion of toxic assets off the books of financial institutions, that clearly has not happened. If the goal was to increase lending, I think that too unfortunately has not happened. If the goal was to avoid a complete systematic collapse of the financial industry, that may very well have happened.

I think that, you know, it's impossible to look in the crystal ball and know exactly what would have happened absent the TARP. But from what we've seen through the financial institutions have told us, you know, that we're there on the precipice of a potentially -- potential total collapse. And shoring up the capital may have indeed achieved that goal if that was the goal. Yes.

CONNOLLY: I haven't been a big fan of TARP either, but I think you have to give credit where credit is due. I voted against the reliefs of the second tranche, which was the only vote I got to have as a new member of Congress on TARP, because I didn't feel that the accountability and transparency standards were in place.

The House, in fact, had a statutory framework to allot up, but the Senate didn't agree to it. But having said that, we were facing a financial -- systematic financial meltdown last September, were we not?

BAROFSKY: That certainly was -- in conducting of our audits and gathering of information, that is an opinion we've heard many times from the top of the regulators as well as members of the industry.

CONNOLLY: And while the flow of credit may still be impeded, the fact of the matter is stability in the financial system. The stress tests on 19 banks, for example, would seem to suggest that some stability has returned to the system that was lacking as recently as last fall.

BAROFSKY: I think we're certainly in a much different situation over last fall and it may very well be that the TARP is responsible for that, or responsible in part. Again, part of the reason why we do section three and we talk about all these programs is so that you can have in one place all of the different supports that were out there and have been in place, of which the TARP is only a small part.

CONNOLLY: Right.

BAROFSKY: So it's hard to -- I think GAO has pointed this out. It's hard to say specifically whether the affect is from the TARP or from a different program.

CONNOLLY: But it might be fair to say that had we not had some intervention of some magnitude such as TARP, we might have actually faced a much more serious situation.

BAROFSKY: That is certainly the opinion of the people that we've spoken to who were there at the time including Chairman Bernanke and former Secretary Paulson.

CONNOLLY: Let me ask: $300 billion in TARP funding was invested directly in systematically important firms, to the capital purchase program, the target investment program and the systematic significant dealing institutions program. The Bush administration pretty much opposed giving the federal government a voting stake in banks in which the federal government made equity injections.

Do you think oversight and accountability capabilities might have been approved if we had not resisted that?

BAROFSKY: I'm sorry. I just missed the last part of your question.

CONNOLLY: I said the Bush administration, in making those funds available through those programs, opposed giving the federal government a voting stake in banks in which it made equity injections. Did we make a mistake in that respect? Could oversight and accountability have been approved, in fact, if we had a voting stake in those banks?

BAROFSKY: I think oversight and accountability certainly would have been improved if there were more conditions that were in place and if there were oversight triggering mechanisms that accompanied those conditions. There were very, very few conditions put on the initial output of funds.

Whether that particular condition -- I think that's a policy decision that increased transparency as we look and see what's happened. As we report, hopefully, and convince Treasury to give us an accounting on the use of funds. I think we can be in a better position to make that evaluation and by looking at exactly what has happened. That's why you push for a transparency. So that the -- you, the members of Congress, can make those determinations. You have all the information available to look back and say, "Hey, next time that we're in a bail out, what worked, what didn't work, what was the impact of the various decisions?"

CONNOLLY: Well, let me give an example: The Bank of America, which is now attempting to back out of the Federal Reserves, ring fencing arrangement. If we had insisted, as part of the $118 billion we pumped into BOA, that one of the tools would have -- would be to have a voting stake in BOA in return for that, would that be helpful from an oversight and accountability point of view from your perspective today?

BAROFSKY: It certainly would have an impact on the decision- making process in that. I'm not sure voting in particular from our perspective -- from SIGTARP'S perspective -- what difference that would make. Although it certainly make a difference from Treasury's perspective in their ability to control the action for these financial institutions.

CONNOLLY: Thank you. My time is up.

Thank you, Mr. Chairman.

TOWNS: Yes. Thank you, very much.

Now, you owe five minutes to the former chair of this committee, the gentleman from Indiana, Mr. Burton.

BURTON: Thank you, Mr. Chairman.

I don't want to be redundant, cause I got here late. So I apologize if I ask questions that you've already answered. But why do you think the Treasury Department is dismissive of your calculations?

BAROFSKY: Sir, I don't know.

BAROFSKY: I think that it's a -- I hate to try to crawl into the mind of some of the comments that have been made. I think that if they had read the report in total and had read some of the charts and pages, they couldn't be saying some of the things that they're saying -- their dismissiveness, their description of numbers -- what -- inflated, and all the numbers came from them. I'm not sure.

BURTON: You haven't had a chance here. I've been told that you've only been able to spend, maybe, one or two minutes with Mr. Geithner since he took over. Is that right?

ISSA: I had a several minute meeting with him in January. It was followed by a larger meeting. It probably went about 45 minutes that included a number of members of Treasury, GAO and the Congressional Oversight Panel. That was the only one occurrence...

(CROSSTALK)

BURTON: Did he take into consideration your -- your comments and your positions and...

BAROFSKY: We didn't really have that much time in -- in -- in that one meeting.

BURTON: Didn't -- did you make some suggestions to him?

BAROFSKY: We -- we -- we conveyed where we were in January. That meeting we actually announced to -- to the press his adoption of one of our recommendations, which was posting TARP agreements on -- on the Internet. So that was some progress that we saw at that time.

BURTON: Well the -- the SIGTARP report to -- do you think that he wants to keep information from the people? Do you think there's a deliberate attempt to do that?

BAROFSKY: I'm not sure again on what the intent is, the effect is information that the taxpayers and members of Congress, we believe should have as part of transparency, is -- is not being provided.

BURTON: You -- you -- you said here, and you've probably answered this already, but that the total potential federal government support could reach up to 23.7 trillion. Obviously, there's some speculation there but it could -- the liability could reach that amount.

BAROFSKY: I think the speculation is, is if every one of these programs was fully subscribed to -- that is the total commitment in guarantees. But I don't think there's a speculation as to what the numbers are. These are numbers that have been provided to us by the federal government. I mean frankly every one of these numbers, any one, any number of the public could go in. It's all publicly available information.

BURTON: Well if even half of that is correct, we've got a big problem.

BAROFSKY: I think the -- the important caveat which was set forth in the report is that we don't have $23.7 trillion outstanding right now. Right now the number outstanding is closer to 3 trillion. Since the inception of the crisis, again, as we put out in the report, the total max amount is about $4.7 trillion. But when you add up all of the different programs, including programs that have tied -- that have been paid back. Including ones that may have been collateralized programs. The total amount of support, which is what we're trying to capture here, does total $23.7 trillion.

BURTON: You know we're -- we're concerned about the terrorist problem. That's one of the top issues that the American people are concerned about. And I understand SIGTARP has recommended the Treasury requires private fund managers to collect information on whether any of their investors are involved in organized crime, terrorism, or fraud in order to prevent such groups from using PIP -- PPIP to launder money. Currently -- as currently designed are you confident that the Obama administration has taken steps to prevent organized crime syndicates and terrorist groups from using PPIP to launder -- to launder money?

BAROFSKY: I think -- I think they're most of the way there but I think there's a little bit more that needs to be done. They are requiring these fund managers to use the normal procedures, KYC, and different procedures to screen for that information. What we've recommended and what they've not adopted is that Treasury, not only receive all the information about all of the different investors in these programs, but also have unilateral allow the right to kick one out. So using an example, let's say that a fund manage does all the right diligence, but doesn't know that a particular investor may -- if there's a pending FBI investigation into him being involved in drug traffic, or organized crime, or even terrorism. They would accept that -- that person, that individual, that institution, into the program and wouldn't know any better. But we, Treasury, or law enforcement partners, could run those names in a database, kick something out, and then reject that investor. We wouldn't necessarily want to be -- tell the PPIP fund manager and say, "Hey by the way, we have a pending criminal investigation into one of your clients," because it -- it might be pending. But I still think it's important that Treasury have the ability to unilaterally knock those types of folks out of it. That's the recommendation we've made and has not been adopted.

BURTON: Well, let me just end up this question: the TARP funds that have been allocated by Congress does not reach the $3 trillion level. What do you think is going to happen? Do you think they're going to ask for another, bail out?

BAROFSKY: Congressman, I don't have -- I don't have that crystal ball. I...

BURTON: It's going to be needed? Do you think additional funds will be required to meet their obligations or their -- or their requirements?

BAROFSKY: I really -- I really can't answer that question. I don't know. I think there's a lot a question of what -- what's going to happen in the economy in the next three, four, five, six months and the next year. And I'm just not in the position...

BURTON: What would your recommendation be?

BAROFSKY: I think right now Treasury has stated that they -- that they don't need additional funds. So I -- I think at this point I -- I assume that that's where we are.

FRANK: (inaudible) has expired. Now we move to a senior member of Congress, not in age, but in years of service.

Marcy Kaptur?

KAPTUR: Thank you. Thank you, Mr. Chairman, very much and happy birthday. This is just the beginning of your life.

Mr. Barofsky, thank you so very much. You have a really important job on behalf of the American people and your staff and we thank you for that.

BAROFSKY: Thank you.

KAPTUR: First question, what more can we do to help you do your job?

BAROFSKY: Congress has been amazingly supportive of -- of our agency since we've begun. And we really have, I think, all the necessary tools in place right.

KAPTUR: All right. Your report came out today, most members of Congress have not had a chance to digest it and -- and take it apart.

Would you be willing to come back or your staff and help to spirit out some of the information we feel we still need? In this interpretation, would you be willing to do that?

BAROFSKY: Of -- of course, at any time, my staff will be available to brief your staff. And any time this committee or any of the subcommittees want to hear our testimony we'll -- we'll always be available.

We're a creation of Congress and it's part of our job is to inform the American people through its representatives of everything that's going on. So, of course.

KAPTUR: All right, now you have a hotline, 877-SIG-2009. Your report states you've received over 3,000, I think 3,2000 tips from the American people. That hotline is available to the American people if they work for one of these hotshot companies and they were involved in activities, that they've now reflected on might not have been crooked and above board. They can report that to you, can't they?

BAROFSKY: Yes and they can also, and should also go to our Web site, if they don't want to be using -- using the phone, www.SIGTARP.gov. This has been a crucially important aspect of what we do. More than half of your criminal investigations have been initiated by tips from the hotline. So people are using it and we really, strongly, encourage...

KAPTUR: So some of those tips are good.

BAROFSKY: Some of the tips are very good.

KAPTUR: All right. So the American people have to muscle up here as well. And I think that the fact it's, you know, a free phone number 877-SIG- 2009, people ought to -- ought to use it. And this was networked across the country and there is knowledge all across America. And we need to pull it together. I can tell you in my region of northern Ohio, mortgage foreclosures are going up, unemployment is going up. And four businesses told me this weekend they can't get credit and these are excellent businesses. The system is not working at the grassroots level in Ohio.

The -- my major -- and I voted against the TARP, I voted against the bailout, because I thought that it wasn't the right means to resolve a crisis in the mortgage system. We've done that before back in the '80s when used mark-to- market accounting. We actually went into the books of troubled institutions using FDIC examiners and SEC accounting -- accountants. So you had accountants plus bank examiners in there.

And the burden was not put on the American people. This was back when Continental bank failed in Illinois, when all the banks in Texas went down but for one. So when they came up with this concoction of this particular means, vesting all this power in Treasury and ramrodding it through Congress here six weeks before an election, I have to tell you I became very, very suspicious. And I still am.

And one of my questions to you is, you talk about you've had background in your own life in mortgage fraud. Have you ever had a background in control fraud and systemic fraud?

BAROFSKY: I don't know how much control -- systemic fraud, you know, as -- as -- as the as the sort of cases are concerned. I've certainly been involved in securities fraud of some -- some truly you know, systematically, would probably today be considered systematically significant institutions. And -- and looked at some of the accounting frauds and frauds that those -- those companies have committed.

KAPTUR: I would urge you very much to look at, of course, the Enron situation, who was hired. The staff that you're going to be doing. And if people at a high enough level, because this goes to the very -- the highest levels of finance, and institutional structures in our country and ultimately it had international repercussions.

But I would -- I would urge you to look at the Enron situation and to think about the kind of staff that you might hire up in the additional authorities that you have been given.

BAROFSKY: Well it -- it -- it's funny you mention that because we just recently brought on, I -- I prosecuted the Resko matter. And we just recently brought on, as one of our attorney advisers, one of the prosecutors of the WorldCom matter. So we are gearing up with that in mind.

KAPTUR: All right, very good. One of the most insightful people I've read on this is Mr. Bill Black, out of the University, I think it's Missouri, Kansas City. And he's worked for the commodity futures training corporation back in the early '90s. I don't believe he's for hire.

But I'm just saying, his way of thinking about what went on is -- is very, very useful and I wish to share that with you.

I also want to -- I want to put two issues out there. One is warrants and my deep concern about things with Goldman Sachs and their warrants. It's my understanding that the American people have the right to 12.2 million shares of Goldman, according the numbers that I have.

And Goldman actually has the privilege, under the agreement of determining when our taxpayers have to sell those warrants. And exercise their rights.

So they control the price and they control the timing. I think it's really important on the warrants issues, that you examine these warrant potentials, sales prices, and the timing of this for the American people. Because the other day the price was $1.60 a share.

And apparently Goldman was saying, well you know, we'll sell to you for 122.9. That difference yields $450 million, if we were to sell today. What if we held it for nine years?

Nobody's asking those questions, as far as I know, and I'm very concerned that the American people with Goldman and all of these companies get their money back plus.

BAROFSKY: We have an ongoing audit into exactly these issues on the e-warrant repurchase process. So that -- that is something that is pending that we're looking at.

KAPTUR: And all right, and Mr. Chairman, I just wanted to say for the record, I don't have time to ask on the PPIP program.

But what troubles me, Mr. Barofsky, is some of the very individuals forget the company names, like Black

Rock. But the people who were involved in -- in inventing the mortgage sub prime instrument then moving it to market, changing it from a bond to a security and then creating the derivative instruments, changed the companies they were in.

But now they're the same people that have gone to the Fed and they've gotten these contracts. I really think you need to look at people and where they were in the system over the last 20 years. And what impact that has had on our economy and who's in place, in my mind with potential power to cover over some of their own very bad mistakes.

And I would to urge to look at those firms closely. Thank you.

FRANK: Gentlemen, your time has expired.

I know move to the gentleman from North Carolina.

Mr. McHenry?

MCHENRY: Thank you Mr. Chairman.

And the tune of $23 trillion 700 billion dollars worth of taxpayer exposure for the bailouts is quite striking and frightening. And I appreciate your testimony and your frankness.

And I'm grateful that the president has not fired you like he's fired two other inspector generals.

BAROFSKY: Me, too.

MCHENRY: What's that?

BAROFSKY: I said, "me, too."

(LAUGHTER)

MCHENRY: Yes, that's true. But I do think it is a big concern that the administrative is -- is choosing to remove inspectors general because you as well as your -- your colleagues within various inspectors general offices across the government do a yeoman's task of making sure the -- the government's accountable to the taxpayers.

And with that I'd like to yield to the ranking member, the remainder of my time.

BURTON: Thank you, gentleman, in following up in that line, In your current capacity I'll bring your attention that according to the Wall Street Journal some of the private fund managers selected to participate in the PPIP may have consulted informally to the Obama administration in -- in -- in writing the PPIP itself.

In other words, they wrote what they now participate on, which is not surprising. Additionally the New York Times reports that BlackRock CEO Lawrence Fink, who has been chosen as one of the PPIP fund managers is a member of Larry Summer's inner circle.

The program lets him select fund managers that used 75-percent of the taxpayer's money and assets. My question to is, if in fact, this and other activities begin to look like a cordial relationship where information is being passed, positions are being given, because of friendships of people that go in and out of government, are you in a position to investigate that?

BAROFSKY: Well I think that, you know, certainly any type of corruption is squarely within -- within our -- our mandate. But the points that you raise, I think go so -- so importantly to what we were discussing earlier as far as the reputation risk to Treasury.

If in fact, these individuals had a hand in -- in writing these programs, it all becomes all the more important that from a perception area alone, that we have the -- the tightest and -- and most significant ethical barriers and informational barriers involved to prevent from them taking advantage of a program that they may have had a hand in creating.

BURTON: Mr. Barofsky you've been criticized a little bit for this 23.7 trillion, as we entered in the record earlier. Because it partially, it -- these are assurances and partially because it's outside of the TARP itself.

How many I.G.s would have to be at your table if we were to cover all the guarantees, assurances, promises, underwriting, that the government's doing? How many different parts of government would we be dealing with it?
BAROFSKY: If you go through our chart and count the institutions, I don't have the number at hand, but certainly FDIC, Federal Reserve, Pension Guarantee, National Credit Union -- basically, the financial services roundtable of I.G.s.

ISSA: So, if we can't fit them all at the present table, and the chairman has not yet said we're going to increase the size of the witness table, then is it fair for us to consider here the fact that when we created your position, we created a position thinking in terms of $700 billion in TARP.

Today were thinking in terms of the financial recovery and oversight process that now has a dozen or more I.G.s loosely associated, not able to coordinate their activities, at least by design.

Do you believe that either yourself or -- either your position or another position should be created that would be the I.G. for financial oversight that would be able to bridge all these various I.G.s so that in fact our systemic risk, which is $23.7 trillion of risk, could in fact be overseen in a coordinated way?

BAROFSKY: I think the most vital thing that I have as an inspector general, being obviously brand-new to the inspector general system coming here last December...

ISSA: But not to the inspector part of it.

BAROFSKY: No -- is my independence. The independence is the most vital thing for an inspector general.

And it is a problem when you have these coalitions of I.G.s -- it's very important for us to coordinate with one another. In the TARP, I formed the TARP I.G. council so all the different I.G.s that touched on TARP programs would meet monthly and would talk about audits and investigations with subcommittees. And I think that type of coordination is very good.

But I'll tell you, we also have -- in fact, I'll be going on Thursday to a regulatory I.G. -- there is a monthly lunch.

So we are coordinating with each other. And I think putting it on broadly over other inspectors general, I think that almost unbearably will impinge on their independence. I think we are coordinating...

ISSA: OK, but in fairness, since we're seeing you, it is important that you be able to give us, if you will, the results of that coordination so that we're looking at the entire financial oversight as we are here today.

Let me just ask you one closing question. In the case of Chrysler, it has been reported, and I believe this to be true, that we've given up $3.8 billion worth of DIP financing, meaning we gave them the money out of TARP in order to go through a process. We then sold them and took back nothing in return.

Is that something that needs to be investigated as to whether or not it was necessary to write off nearly $4 billion of the last money into Chrysler?

BAROFSKY: Yes. In our report we detailed those numbers of what's been raised both in Chrysler and in General

Motors and what's been received on the other side, including, you know, equity interest.

I think that, sort of, the facts are what they are of that, and are certainly representing the sort of inquiry as to how we got to that situation.

ISSA: OK, so perhaps it's for us to decide whether it's worth investigating now that you have given us the facts?

BAROFSKY: Yes, or it is certainly something that we can look into potentially, or one of our oversight partners, as part of an audit as to what that decision-making process was.

ISSA: Thank you. Thank you, Mr. Chairman.

TOWNS: The gentlemen's amount of time has expired.

I now yield to the gentlewoman from California, Congresswoman Watson.

WATSON: Mr. Chairman, I want to say to you on your birthday that yesterday is the past, tomorrow is the future, but today is a gift from God. That's why it's called the present. Happy birthday, Mr. Chairman.

TOWNS: Thank you very much. I appreciate your kind words.

WATSON: I want to get back to the Bank of America. And thank you so much, Mr. Barofsky, for being here and being so open with us.

According to recent reports, Bank of America is now trying to avoid paying billions of dollars in fees to the U.S. taxpayers in return for the $118 billion in guarantees they received from the federal government.

According to the B-of-A, the agreement was never signed, but I guarantees had been announced as part of the assistance they received to complete the acquisition of Merrill Lynch.

Do you believe that the Bank of America benefited from increased investor confidence; because of the perception that they had federal licensing (ph) their toxic assets?

BAROFSKY: I'm really reluctant to comment on, as Inspector General, on an ongoing negotiation between Treasury and Bank of America. I think that -- I think that the events are what they are on that. But I think it may be crossing the line as an agency if we start publicly commenting on something that's an ongoing negotiation.

So respectfully, I would ask for your permission not to answer that question.

WATSON: Now, we had the former secretary of the Treasury, Mr. Paulson, in here for five hours last week. It was like trying to unscramble rotten eggs, and it's very frustrating to us.

Has the Treasury Department provided an explanation for why they did not require Bank of America to join the Asset Guarantee Program agreement, do you know?

BAROFSKY: We haven't gotten that explanation. We've been monitoring the program since its announcement, and we've got a little bit of information, basically, that there's been an ongoing discussion.

We have an audit coming out, I think, that tracks a lot of the fine work of this committee on the Bank of America and its participation in various TARP programs, which will be presenting in September. And I would be happy at that time to come back to the committee and discuss its findings if the committee would think that would be helpful.

WATSON: Yes. I would ask the chair to hold a follow-up meeting in due time so that we can follow up on some of this, because you lead right into my next question I wanted to ask.

And have you discovered any other large-scale agreements of the federal government, which the federal government has entered into with the financial institutes without valid contracts to enforce the proper repayment of the taxpayers' investment?

So this is a question that you can keep in mind for a follow-up meeting, and I do hope we can set that sometime in the very near future.

Also, let me see. In your April quarterly report, you noticed the risk of conflicts of interests and collusion vulnerabilities inherent in the design of the Public-Private Investment Program, the PPIP.

However, the Treasury Department has declined to adopt your recommendation to impose an informational barrier between the employees who do or do not handle PPIP funds at the time these funds are the PPIP fund managers, at the nine PPIP fund managers.

Can you comment on that, or should we wait for a subsequent meeting?

BAROFSKY: No, no, no, absolutely.

We think that this is a fundamental decision in the current structure of the PPIP program. We think that it is absolutely essential that there be an informational barrier, ethical law, that prevents the fund manager's firms from taking advantage of confidential market-moving information that the fund managers are going to have.

We think it's a problem, and we think it's a deficiency in the program.

WATSON: Thank you.

And why do you believe the Treasury Department has been willing to impose the measure despite having placed similar restrictions on asset managers in comparable federal bailout related programs?

BAROFSKY: Treasury has provided to us, and we've included in our report, a very detailed written description of their justifications and reasoning.

In our report we address each of those that show why we disagree with them, on one of them that it's impractical, that the design of the program does make it susceptible to such roles.

And it may very well be that the program is fundamentally flawed in its design, you know, in such a way that in its current structure, it may be impractical.

Our response is that because this is such an important issue for such a variety of reasons, if it's impractical with the current nine fund managers, well then, before picking these nine fund managers, Treasury should have changed its criteria and done what was necessary to put in the necessary walls to protect the taxpayer.

WATSON: My time is up. And Mr. Chairman, I would hope that in our subsequent hearings with Mr. Barofsky that we can get these recommendations and get some ideas about how you would assess the standard functions of such a department. So, thank you.

And are we going to recess?

TOWNS: No, no. We're going to continue all the way through.

Just to give you an update, the House is in recess, which makes it good for us...

WATSON: Oh, great.

TOWNS: ... and we can continue. We are not in recess. When the House is in recess, that's when we need to do our work.

WATSON: Thank you, Mr. Chairman.

TOWNS: I now yield to the gentlemen from California, Mr. Bilbray.

BILBRAY: Thank you, Mr. Chairman.

I'd like to join the committee in congratulating you on your birthday. And all of us were witnesses to how quickly you blew out the candle, so maybe we can negotiate with Mr. Waxman for a carbon credit for you on that item, OK?

(LAUGHTER)

First of all, I watched this morning, Mr. Barofsky, the way you were attacked for releasing this committee. And I would just like to say to you as one member of this committee, thank you for giving us the hard core facts.

And I just hope you remember that when you get attacked like that, basically because you brought a message that a lot of people didn't want to hear in this town, contrary to public belief, the agent Egyptian tradition was to always send your best people to give bad news, because the guys who were sent to the good news were sacrificed to thank the gods for the good news.

So it should be a credit to you to understand that you are attacked because you are bringing this up. And I want to thank you very much for that, and I'm sure not just this committee about the public at large is going to thank you for your report. The hard core facts do get you into trouble.

The -- speaking of footprints, the whole concept of looking at BlackRock and some of these other -- the nine players here, where the footprint of the federal government in picking winners in this whole game, do you have any idea, or could -- I mean, if you don't and you need to have time, I understand, because you can get back to us in writing, how did these nine major players get chosen as the winners in this game to be blessed not just by the bureaucracy of the federal government, but by all the taxpayers in the federal government?

How did these nine players become the winners in this game as opposed to the other losers that were pointed out by the former mayor of Cleveland, Mr. Kucinich?

BAROFSKY: The Treasury's explanation is that they put out applications. They received about 140 applications.

The next step was to remove applicative applications that were incomplete, and that came down to 102.

They then applied the criteria, which they put out on the Web site, of what they were looking for in the ideal asset managers. And basically those that didn't meet that cut, I think they narrowed the number down to 13. They then did a series of interviews and ended up with the final nine.

I think those are numbers. I think the exact numbers are likely reflected in our report. That is essentially how Treasury has described their process.

BILBRAY: Thank you, Mr. Chairman.

I just think this report really, again, reinforces the fact that we have entered into a very, very scary territory, a brave new world where Washington decides what happens on Wall Street and Main Street. And, hopefully, we can somewhere in the future find a way to have an exit strategy and remove ourselves from imposing our footprint over the rest of American society. And I thank you very much for this report, because I think it's a -- it's a dose of reality to make all of us work together here. And I yield back, Mr. Chairman. TOWNS: Thank you very much. I now yield five minutes to the Chairwoman from California, Ms. Speier.

SPEIER: Thank you, Mr. Chairman.

And thank you, inspector general, it's a pleasure to have you before us. And in your short time you've done an extraordinary job, and we thank you on behalf of the American people.

BAROFSKY: Thank you.

SPEIER: Let me first ask you this question. Does any bank you survey not participate by returning survey?

BAROFSKY: No. We had 100 percent participation.

SPEIER: All right, very good.

Should we pass legislation to require the tracking of TARP funds, since evidently it was not required in the actual providing of the TARP money?

BAROFSKY: We believe that requiring recipients to account for the use of funds is a fundamentally important part of transparency. So we make this recommendation and continue to make this recommendation.

As a policy, we don't just -- we don't -- we tend not to cross into the policy recommendations that, what Congress should do or what Treasury should do -- we do say what Treasury should do, but we don't suggest legislation for Congress just as a policy matter and to maintain our independence.

But we certainly do feel it's our obligation to present to you why we think it's such an important factor of transparency.

SPEIER: Now, do the contracts that the Treasury devised with the banks for the distribution of the TARP funds prohibit the use of the money for any purpose?

BAROFSKY: There are different contracts and different programs. There are some restrictions on stock buybacks in the capital purchase program, on -- certain restrictions on increasing the level of dividends.

So there are some restrictions, although not many.

SPEIER: So the fact that they would use the money to make investments or pay debts or buy other banks was all legal under the granting of the TARP funds?

BAROFSKY: Absolutely.

SPEIER: All right, should we change that?

BAROFSKY: That is a -- as I said, that is a real policy decision that needs to get made. I think in making that decision, we should take a look at both sides of these arguments.

Part of the role of transparency in the special inspector general is that we think that these debates are best informed by bringing transparency so we can see what happened.

BAROFSKY: But I can give you arguments that I've heard on both sides of any one of these issues, including I think one of the more controversial is acquisitions. And I've heard some very powerful, strong arguments that that's actually good for the banking system, and arguments on the other side that it would be an inappropriate use of trust funds.

SPEIER: (inaudible) that acquisitions. Which banks actually took the TARP money and made acquisitions?

BAROFSKY: We're going to be publishing and necessarily in some redacted form each of the responsibilities that we received. And the reason I say redacted is that for some confidential business information that we'd be prohibited by law from making public. We're still in the process of that. I'm reluctant to comment on any specific response that we had. We'll be making that information public, hopefully within the next 30 days.

SPEIER: And in terms of alarms that go off in your head because of what you have been able to ascertain through your surveys, what are those alarms that we should be particularly focused on?

BAROFSKY: I don't think that there's any alarming -- because I think when we did the survey, we're taking very care -- taking great care not to make any judgments for all the reasons that, that I've stated.

The most alarming thing to me is that Treasury continues to refuse to adopt this recommendation, even in light of the proof that we now have in this audit. You know, they continue to tell us that it is a meaningless survey, even though not -- no one from Treasury has taken us up on our offer to come look at these survey responses in unredacted form. We say, "Come over. Take a look at them and see if you think that these are meaningless responses that can provide transparency."

So I think the most alarming to me is this steadfast refusal, this willful refusal to adopt a recommendation that we think is so important to provide transparency.

SPEIER: So you're saying that even though you now have over 360 surveys that provide information on how the TARP funds have been used, no one from the Treasury Department has come over to look at this information.

BAROFSKY: No, their refusal to adopt to adopt our recommendation was made purely off our audit report. They have not come over.

SPEIER: I think that's astonishing. I yield back.

TOWNS: Thank you very much. I now yield to the -- to Congressman Schock from Illinois.

SCHOCK: Thank you, Mr. Chairman. Likewise, happy birthday on your special day. And just noticing your election to office in 1983 and someone who's 28 years in Congress, that's a lifetime.

(LAUGHTER)

So, thank you for your service. I (inaudible) that this Congress and your country, happy birthday.

Mr. Barofsky, I'm specifically interested in the change in purpose that has occurred to the new administration with the use of TARP funds and how that might change your role or add additional responsibilities, or how your responsibility as the special inspector general for TARP interfaces with our federal government's decision to bail out the auto makers. Could you speak to that?

BAROFSKY: Sure. I mean, I think that in the near term, we're addressing that (inaudible) function. We've announced an audit of corporate governance, which of course, oversees the fact that we do have a controlling interest in General Motors now, controlling equity interest and minority interest in terms of financial. My team is going to be heading out to Detroit next week, some of my audit team to start that process.

I'm also going to be sending representatives of our investigative division as well to make the necessary contacts, make sure that the word is out, including word about our hotline if anyone within these companies knows of any misrepresentations. There's a whole bunch of reporting that's required. It's a condition of the federal funds.

So we're going to keep a very close eye and dedicate the necessary resources to prepare our oversight well.

SCHOCK: So you feel you're being given the latitude you need in terms of allowing your personnel into GM and Chrysler to oversee the use of those type funds.

SPEIER: (inaudible) next week.

BAROFSKY: But I don't anticipate that we're going to have a problem.

SCHOCK: OK.

I meant -- the next question is your opinion. You know, when this bill was sold to Congress last fall, it was sold on the -- it was predicated on the idea that this money in words of former Treasury Secretary Paulson would be, "If not all paid back, most of it." And there was a slim likelihood that we might actually make money on the TARP money for the taxpayers. Do you believe that the majority of this money would be paid back?

BAROFSKY: I think if you look at the way the program has evolved, I think it's extremely unlikely that we're going to get $700 billion back. The mortgage modification program alone is $50 billion. There's no anticipation that, that any of that money will come back.

That money is being directly given to mortgage servicers to help convince them to lower mortgage payments, and payments that they'll make on behalf of, of homeowners. So I think it's -- it's very unlikely that TARP will turn a profit significant enough on other activities to generate a profit to cover that $50 billion.

In addition, on some of the other programs, as the ranking member noted, that money has been written off from Chrysler. Still have to see what happens with our equity interest in those companies. So it's certainly possible that more may be retained or earned back over time. It may be evenly (inaudible) right now. But I think the idea of getting a dollar for dollar return would be extremely unlikely.

SCHOCK: And then specifically about your conversation, your statements earlier about asking basically Treasury to detail or basically correct information from TARP recipients and also the use of the taxpayer funds from those TARP recipients, in your view, why is it when Treasury kind of gives this response that, "Well, that would be meaningless, and really is not necessary," what is your view of that?

BAROFSKY: Well, first of all, if it were meaningless, I don't understand why Treasury does this with respect to Bank of America, Citigroup, and AIG. Are they including recently -- with AIG -- are they including conditions in their contracts that they believe are meaningless? I certainly hope not.

My view is that, that sure, money is fungible and that is a true concept. But just to use a simple example from my own life. I get direct deposit of my federal paycheck. And when normally I couldn't tell you whether one week -- whether if I buy some groceries, whether it's from one week or a different week because money is fungible, I'll go into my checking account.

A couple years ago when I won the John Marshall Award for my work on the Refco case, there's a small cash component. And I knew that it was going to be directly deposited into my checking account. And before I got that check, I knew what I was going to do with that money. I was going to pay off a piece of my student loan.

So when I got it, I could -- and sure enough, the money came into my account and then went out to pay off the student loan. So sure, money is fungible. But I could tell you with a great deal of certainty what I did with that bonus money, that extra money that came in.

And what we see at the financial institutions have been able to do the exact same thing. The TARP was an extraordinary amount of money and an extraordinary investment. And (inaudible) banks can tell what they did with that money. They're responsible companies for budgeting for the fact that they're increasing the capital values amount, and the fact this is all money that can be verified and tested.

So much of Treasury's compliance system is based on similar types of self-reporting where financial institutions report their compliance and then Treasury comes back and hopefully we'll be able to test for its compliance function. This is no different. If a bank says, "I used the money to acquire another financial institution, which I wouldn't have been able to do otherwise because I wouldn't have had enough money," that's certainly a (inaudible) fact. If they go buy agency mortgage backed securities and say, "This is what we did with the money," we can look at what their, their total volume securities were before the TARP money and afterwards and pass that money.

So we do believe that this is an important part of transparency. It's important for the members of Congress, for the American people, and it's important for Treasury as well to know what's going on with the taxpayer funds.

SCHOCK: I agree. Thank you very much for your testimony, and I hope you'll continue to press on.

Thank you, Mr. Chairman.

TOWNS: Time has expired.

I now yield five minutes to the gentleman from Massachusetts, Congressman Lynch.

LYNCH: Thank you, Mr. Chairman.

Mr. Barofsky, thank you for your great work. I appreciate the work being done by Mr. Dodaro and Elizabeth Warren as well, the work that you do obviously allows us on the Oversight Committee to do, do a lot of our work. Let me ask you, one of the programs that Treasury has set up was this asset guarantee program where Treasury will guarantee certain toxic assets held by qualifying, financial institutions. They have focused mainly on toxic assets purchased by -- held by -- excuse me -- Bank of America and Citigroup, I think those are the two, big outfits that they focused on.

Have you been able to get information on the specific assets that, that Treasury has acquired from Citibank and Bank of America?

BAROFSKY: We're in the process of putting together an audit that's going to address exactly that question. We've received a letter request from Congress to look into that. And we are, right now, in the process of putting together the added structure that's going to address exactly that issue of what's in there, what the cash flows are, how it came to be. (Inaudible) on the entire process on what's going on in the Citigroup.

For Bank of America, Bank of -- Ken Lewis has indicated, the CEO of Bank of America, that they are withdrawing from that program, that the contract was never signed, and therefore, it's not actually going to be imposed.

So we do have a pending audit that we expect to complete in September that addresses Bank of America and its participation in the TARP program. So we'll touch on that there. We won't be doing a similar study of the assets given the change of the status of that program.

LYNCH: OK. I know this was instituted in November of 2008. I'm just wondering, you know, what, what actually was purchased. And my, my question really focuses on our potential exposure. If we're providing a guarantee behind a credit default swap or some complex derivative of our exposure, maybe greater than what your monetary assessment has been, even as 3 billion -- $3 trillion. And I'm just worried about our exposure there.

Let me just shift. And I certainly anticipate your -- your report in September. That will be great.

Let me ask about your own position here. We originally set up the special inspector general for TARP in connection with the $700 billion that was, was allocated. I did not vote for that, but it went through anyway. A lot of us didn't.

Now, originally, you, were set up to oversee and to safeguard the taxpayers' money. However, recently, I understand that Treasury has challenged your authority as an independent oversight body. Reportedly, Treasury has requested an opinion from the Justice Department Office of Legal Counsel questioning whether your office, in fact, falls under Treasury's authority. And can you comment on Treasury's challenge to your independence, which you talked about earlier as being so important integral to, your operation there.

BAROFSKY: Yes, we do think that this is potentially an initiative that, that could impair our independence. Treasury has sought this legal device from LLC. We submitted our own, our own submission detailing our position that we think it's crystal clear what Congress' intent was, and that was for us to be an independent agency operating within the Treasury Department.

And we're going to wait and see. But we think that there is a danger that Treasury could try to assert, depending what the LLC opinion is, the authority to shut down investigations or audits that we may seek to initiate. And we think that would obviously be contrary to the intent of Congress. And it's something -- certainly, we'll let Congress know if we do get an adverse opinion.

I'm pretty confident, though, that I think the statute is so clear and the intent of Congress is so clear, I'm hopeful that LLC will see it the right way. I think we're the only way that makes sense based on how the statute is written and what the statements of Congress have been, both at the time of enactment and since then. And hopefully, this issue goes away.

I always thought this was an unnecessary thing for Treasury to do. I continue to think so.

LYNCH: Well, obviously, if this challenge is, is diverting the energies of your staff to defend itself, then perhaps, we in this committee can -- I mean, there are some vehicles that are going through Congress right now. We could simply amend one of those, just to clarify that our intent was that you be independent and that you conduct oversight over the operations of Treasury in connection with this TARP program.

Let me ask you, I also heard that Treasury's decision to challenge this came immediately in response to some of your questions regarding the bonus payouts at AIG. Is that correct?

BAROFSKY: Both timing. I wouldn't go so far as to do causal relationship between the two because I don't know for sure. It did come up, the issue, on the eve of an interview that we were going to have with a member of Treasury's general council process who's involved in the executive confrontation issue at AIG. So it certainly was at that time.

LYNCH: Well, I only speak for myself, and I know my time has expired, but I just want to say that I think it would be a terrible miscarriage of what Congress' intent was to have you hamstrung by being put under Treasury. We established your office to oversee and to protect taxpayer money. And we do not expect you to be answering to Treasury. We expect you to be investigating them and conducting your oversight.

Thank you. I yield back, Mr. Chairman, and happy birthday.

TOWNS: No, you can't yield back. You don't have any.

(LAUGHTER)

TOWNS: Congressman Fortenberry?

FORTENBERRY: Thank you, Mr. Chairman.

Mr. Barofsky, welcome. Thank you for your testimony today.

BAROFSKY: Thank you.

FORTENBERRY: You've made the news with $23.7 trillion pronouncement in your report. I'd like to ask you to unpack that further. That clearly, obviously, is the fullness of potential taxpayer liability -- the potential exposure to taxpayer liability.

I have been -- many of us have been operating off a working assumption that that total taxpayer liability was about $12 trillion -- that between the Fed and the FDIC as well as the Treasury Department totaled about $12 trillion.

Now, the other number that I thought was significant that you said was about $4 trillion of that is actual realized expenditures. So to questions and let's just try to break this down into categories that are manageable. Tell the American people where that taxpayer liability is located, to whom it has been gifted basically and then, again, under the $4 billion actual realized expenditures, to whom is that going and in what form, direct expenditures, loans, guarantees, by whom, to whom?

BAROFSKY: Your question actually encapsulates why we put this -- made this an entire section of our report. Cause it's obviously some very complicated issues here. And in section three of this report, we do that breakdown.

We talk about each of the numbers that we're talking about: the $3 trillion that's currently outstanding, the $4.7 trillion that has been expended or guaranteed in total, including money that's been paid back and canceled programs from the initiation of the crisis through June 30th. And then the $23.7 number, which is the maximum number if every one of these programs was subscribed to to the highest amount -- every guarantee was done.

And the purpose of this really wasn't to make the news, or to make a splash. What we did here is, we took the 50 programs, cause we thought it was important to show what the 50 programs were in addition to TARP that address the government's support of the financial system.

And really, this $23.7 trillion, which has generated so much controversy and so much comment from the Treasury Department, it's just adding up the number of what the total highest -- the high water mark is for each of those 50 programs. And that's what's reflected in here. So it isn't that the taxpayer is on the hook right now for $23.7 trillion. We don't say that. We don't suggest it. But that is the maximum if you take all of the programs that have been initiated since the inception of the financial crisis.

(CROSSTALK)

FORTENBERRY: That's (inaudible) call the potential exposure. But again, let's get back. Let's try to frame that a little bit more concisely. This is 250 pages. The particular section you're referring to -- I don't know how many pages is that. I don't know if you have a particular chart that, again, categorizes this in broad terms so that we can all have a working framework that is usable so that we can understand, again, the total liability that exists and actually where it's going.

BAROFSKY: Table 2.4 on page 138. And I would say that any taxpayer or anyone interested, this report is at our Web site -- www.SIGTARP.gov where anyone can download this and see all the facts.

But if you look at page 138, that has a table which is entitled, "Incremental Financial System Support." And what we've done here is we've taken -- there's some existing programs that were increased. So the revenue included the total program, but only the increase that is attributable to the financial crisis.

And what we have here is it lists the different sources of where the guarantees or support are coming from. And lists what the current balance is, the maximum balance from inception and what the total potential support is. And that's the phrase I think is the right one. It's total potential support.

Now, each of these entries in here and we list the Federal Reserve, the FDIC, Treasury TARP, Treasury non-TARP and then others, is supported subsequently in the report by other charts. So for example, if you wanted to see what the Federal Reserve portion of this is, you just turn the next page and on Table 3.5 we list each of the Federal Reserve programs that's described. And again, with this same information: the current balance, the maximum balance, and the total support related to the crisis.

And what you do when you add up each of these charts and the total support, that's where the $23.7 trillion number comes from.

FORTENBERRY: Now, out of this, about $16 trillion is between the Federal Reserve Treasury and the FDIC. Again, the operating assumption that we've been working off of for basically the balance of this year, cause there was no numbers available, easily available with 12. And so that's a very significant increase.

BAROFSKY: And that's one of the reasons why we've done this. And we've come under some criticism for having done this. But every time that we would look at a different article or different newspaper, there would be a different number there. And we thought it was important to put the TARP in context to correct what the major numbers were. And that's what we're trying to do here.

FORTENBERRY: What level of detail does it go into in terms of actual recipients of these various funds between FDIC, Treasury, as well as the Federal Reserve.

BAROFSKY: Well, we had a page limit. And because ultimately, this is TARP in context. And given the number of these programs, what we've done is really a one or two paragraph summary of each program. That further information -- and also, everything that's in here is based on publicly available information. This is all stuff that we got off of the Web sites or Congressional testimony at the different agencies.

Getting into the recipients would be -- I think in a large part would be in many cases beyond what's publicly available. And frankly, beyond all jurisdiction or authority, because these are non-TARP related, or...

TOWNS: The gentleman from the back -- his time has expired.

FORTENBERRY: Thank you.

TOWNS: Thank you.

I now yield five minutes to the gentleman from Massachusetts, Mr. Tierney.

TIERNEY: Thank you, very much, Mr. Chairman.

Thank you, Mr. Barofsky, for the work that you're doing and for being here today.

I just have two lines of question that shouldn't take too long. One concerns the term asset (inaudible) Securities Loan Facility -- the so-called TALF. This is an idea where they need their triple A rating from two of the rating firms and a not less than triple A rating from the third firm. But we continue to have these rating agencies paid by the issuers -- by the people whose product they're rating. You made mention of that in your report.

You said essentially, they are, and I quote "Paid by the issuers of the very securities that they are rating. As a result, the agency has an incentive to issue a high rating to attract future business from that issuer." And that's one of the problems that got us where we are today in this whole financial crises.

It should boggle our minds that we're continuing down that path and then even relying on those as part of this program. So you would agree obviously that we should be concerned about this. But moreover, what do you suggest that we should do as a different methodology for the TARP program and others?

BAROFSKY: Well, this is something we've been pushing through -- for -- since our first initial report to Congress in February. And we have some suggestions in the report. One of our concerns is a race to the bottom. Moody's had actually came out -- one of the three rating agencies and has said basically that they're losing business, because they had been more strict than the other two. And as a result they haven't been getting enough business.

Now, we haven't investigated that. We think that the Federal Reserve and Treasury needs to investigate that further. But it sort of raises the ultimate issue of a potential race to the bottom. And then that was expanded. When the TARP went into commercial mortgage backed securities, they added more rating agencies, but kept the number at two that are required to get approval. That just only exacerbates the issue of more rating agencies for that race to the bottom to occur.

I think what they need to do is -- what the Federal Reserve to their credit had started to do, which is stop relying on rating agencies to do the work, the diligence, the underwriting that stands behind these asset backed securities. So the Federal Reserve has hired a collateral monitor for commercial mortgage backed securities to come up with its own evaluation as to what these things might be worth in a stressed environment.

And we think that it's important to keep pushing in that direction -- away from reliance with the importance of rating agencies in this process to make sure when we're dealing, at least with taxpayer money, that the level of protection is a little bit higher than what as you correctly state, "Got us into this soup in the first place."

TIERNEY: What can Congress do to help you push that point? Because obviously we're not going to have somebody other than the issuer paid and we should do exactly what the Fed is doing with this program?

BAROFSKY: I mean, I don't think that -- yes, it's not really our policy to advise Congress on specific legislation on these policy issues.

TIERNEY: But saying the legislation would be the only thing we could do and one of the things we could do whatever would be helpful (inaudible).

BAROFSKY: I think it also sort of worth noting that in the regulatory reform, if that is what Congress is considering, taking a good hard look at what the reforms are for the rating agencies. And whether the reforms truly and squarely address these conflicts of interest that have such disastrous consequences within the financial crisis.

TIERNEY: Thank you. And my line of question has to deal with the credit derivative contracts that AIG held with third party counter-parties. The financial situation when it occurred obviously created a situation where the counter-parties claimed that the contract terms had been violated. They demanded either payment or additional collateral from AIG. AIG's lack of liquidity obviously made that difficult to come up with. And there was a contest between AIG and those third parties, (inaudible) whether or not there was money owed. If so, how much should it be. And there was a negotiation that was going on on that.

When Mr. Woody (ph) from AIG was before the committee. We asked him why it was they paid they paid a hundred percent on the claim. And he said that he didn't believe they necessarily should have. That, in fact, there was a contention amongst that and he had been somewhat surprised. That he and the people with AIG hadn't done it. That, in fact, it had been the Fed and the New York branch, in particular, that had done it.

Are you looking at that at all and are you able to tell us what happened? That all of a sudden in contested claim they just up and forked over a hundred percent?

BAROFSKY: Yes, we are looking at that. We have a pending audit into that very specific issue in credit party payments and the payment of a hundred percent (inaudible) and who made that decision. I expect that audit would be finalized by September.

TIERNEY: All right. Thank you, very much.

I yield back.

(UNKNOWN): Would the gentleman yield?

TIERNEY: Yes, I will.

(UNKNOWN): I have just one quick follow-up. Are you familiar with the XPRL and are you in a position to help get this kind of transparency database access available to agencies that currently are not reporting in a transparent fashion?

BAROFSKY: We are familiar with the XPRL product. I heard some testimony about it. And actually, my office received a presentation on it. And it does appear to be a -- you know, a useful type of product to track recessive (ph) funds.

(UNKNOWN): Thank you.

TIERNEY: Thank you.

Yield back, Mr. Chairman.

TOWNS: Right.

I yield to the gentleman from Indiana, Mr. Burton.

BURTON: Thank you, very much.

And I want to thank Congressman Issa for the letter that he gave to me. You know, we had Mr. Paulson and Mr. Bernanke before the committee just in the last couple of weeks. And they had an epidemic of memory loss on a number of issues. And Mr. Paulson was working of course, very closely with Mr. Geithner, the now secretary of Treasury on a number of issues as well as Mr. Bernanke.

And you know, this whole pattern really kind of bothers me about how they appear to keep things from the Congress of the United States, because they can't remember who did what on the Merrill Lynch deal with Bank of America and now Geithner's work with Paulson. And now they're in effect threatening you. I mean, I don't see how anybody can get anything out of this letter that we received, other than they were putting the hammer to you to back off.

You say here that, "On April 15th, Mr. Knight (ph) wrote to the OLC with the Justice Department attaching a copy of SIGTARP's April 7th memorandum regarding the presented issues." And they were asking whether or not you should fall under the jurisdiction or the control of the Treasury Department. It's pretty clear I think to everyone on this committee that you should be independent, because that's what your job is.

But then there was some kind of correspondence between you and the Department of Justice and they asked you to redact a portion of the e-mail exchanged from OLC. That was to you, right?

BAROFSKY: I think all of the information that -- our correspondence -- oh, yes. I'm sorry. Yes, the response from OLC to us, which then generated an additional response from Treasury. Yes. Well, that is -- we were asked to redact that.

BURTON: I wonder why they asked you to redact that. Did they give you a reason?

BAROFSKY: The stated reason from OLC is that it was -- the information was indicative of the current thinking on an uncompleted matter. Therefore, that it is privileged information and that until they came to a final resolution, they didn't want...

BURTON: Well, you know, I was chairman of this committee for six years and I worked with the Justice Department on a number of occasions -- a lot of occasions as a matter of fact. And they didn't give any information out or send any correspondence whatsoever that would have to be redacted. And the reason they didn't is, because until they made a final determination, they didn't want any information out there in the hinder lands.

And so when they sent you this information and then they tell you that it has to be redacted, it seems to me that that's once again working with the Treasury Department to kind of hold a -- to keep the hammer on you and hold things in abeyance so that you'll walk the walk. You have any comment on that?

BAROFSKY: I really can't.

BURTON: I didn't think you could. I didn't.

BAROFSKY: Unfortunately, but...

BURTON: You know, I think this such a blatant attempt to intimidate you. And I am so happy that you contacted chairman -- or Ranking Member Issa and Senator Grassley, because what it's done is it's illuminated this issue so that these people that are trying to slow you down and not let this information get out in the public domain, they're going to be threatened by this right now.

The only thing I would admonish you to do is to watch your back, because you, as I understand it, are subject to the president. And the president, you serve at his pleasure. And so I think, you know, there could be some reason they could come up with down the road that would get you replaced.

But in the meantime, I want to congratulate you for having the intestinal fortitude and I'd use some other terminology if I wasn't in public, to stand up for what you believe in.

BURTON: I think it's really great and I'm glad you sent this letter to Mr. Issa. Thank you.

BAROFSKY: Well, thank you very much.

And I can assure you, and I can assure this committee that I will not spend a single moment worrying about my job security or my secure -- I'm just going to continue to do the job that I've been hired to do, which is bring hope that the complete transparency optimal and continue to go out and investigate to the best of my abilities.

BURTON: I have not met you before, but I like you, man.

BAROFSKY: Thank you.

(UNKNOWN): Will the gentlemen yield?

BAROFSKY: I've had a tough couple of days. I appreciate that.

(UNKNOWN): One follow-up question. You know, so much has been said of his $23.7 trillion, plus or minus a trillion here or there, but because, constitutionally, we must authorize and appropriate monies, wouldn't it be fair to say that we need to have the transparency so we can anticipate in each fiscal year the likely outlays of additional money where risk is beginning to become recognized?

Wouldn't that be something that this committee has to be able to access it for going to allow the appropriators to make those funds available, presumably because additional losses may still occur in a number of markets, including the housing market?

BAROFSKY: I actually confess that I don't have an intimate knowledge of the emergency authorities that have been invoked by the Federal Reserve, and to a certain extent by the FDIC in authorizing these maximum amounts, and what Congress's role is for authorizing them.

So I'm not really sure what...

(UNKNOWN): Certainly we believe that currently, do we -- in your opinion, are we getting that information, assuming that we believe that we should appropriate monies in the years in which the loss occurs?

BAROFSKY: I think from a looking-back perspective we've done our best to bring that information to your attention to the best that we can based on public reliable information.

(UNKNOWN): Thank you, Mr. Chairman.

TOWNS: Let me say before I yield the gentleman from Missouri, I like you too. And let me just say that you also serve at the pleasure of the Congress as well.

And I don't think you have a problem, because the president has said that he's for transparency. Every conversation I've ever had with him, he talked about the importance of the transparency. So to me, you should be in good shape.

BAROFSKY: Thank you, Mr. Chairman, and happy birthday.

TOWNS: Thank you very much.

And I yield to the gentleman from Missouri, Congressman Clay.

CLAY: Thank you, Mr. Chairman, and happy birthday, also.

TOWNS: (inaudible)

(LAUGHTER)

CLAY: Mr. Barofsky, thank you for being here, and I look forward to your insight on questions that are asked frequently in Missouri's first congressional district.

I do not agree with the original thrust of TARP, and I'm still troubled by some results that I see. One of the most important reasons for the legislation was to provide liquidity for businesses and homeowners as the ultimate benefit of shoring up the banks and investment houses.

We are seeing large banks and investment houses experiencing exorbitant profits, but no realization of credit, no significant increase in liquidity. Why hasn't liquidity been restored to small businesses and individual consumers as a result of stabilizing these lenders?

And do you find that too much of the monies and profits are invested in Treasury bonds rather than in monies made available for lending.

BAROFSKY: I think that the lack of transparency and failure to adopt our recommendations regarding requiring the recipients to report on their use of funds makes answering that question almost impossible.

Until we know with some degree of precision exactly how the financial institutions are using the money, it's hard to answer the question of why they're not using it to increase lending, because we don't know what they are doing.

In our survey, our audit report, which is just their responses to our survey, we've got a lot of answers that lead to -- could lead to something conclusions. But that survey, of course, was from a certain point in time, basically, March of this year.

The banks have responded to the survey -- 75 percent of them said that they had not yet allocated or spent all of their TARP funds. Since the time of the survey, another 200 institutions received TARP money, including insurance company, which, frankly, I don't think anyone expects is going to be using the money as part of their banking subsidiaries that entitled them to receive TARP funds.

So it's very difficult to answer the question of why they're not increasing lending if we don't know what they are actually doing with the money. And the only way we can get that on a more timely, regular basis is if Treasury adopts our recommendation that commits itself in deed as well as in word to maximum transparency.

CLAY: In your crystal ball, do you suspect that they are perhaps paying out lucrative bonuses or paying off debt? What do you think is happening?

BAROFSKY: Well, based on what we saw from our snapshot back in March, they are certainly using -- certain of them are using it to pay off debt. And different types of debt -- some are paying down lines of credit with the Federal Reserve, with TARP funds.

But one smallest edition reported to us that in substance they were planning on using the TARP money for one purpose. I think it was to increase lending.

But right around the time they got there TARP funds, they got called -- a line of credit that they had with another financial institution called in.

And they ended up using substantially all the TARP funds to make good on this money that they borrowed from another financial institution that they may have had real trouble paying back but for the TARP funds.

So we get glimpses, at least from the basis of our survey, as to what happened.

CLAY: Well, on another subject, how do you see the private program of AIG, the systemically significant failing institution program as having worked to the advantage of the taxpayers? AIG is the only company to receive funds under of this program. We owned 80 percent of the company, yet allow fires ales of the most valuable assets, which are on the insurance side of the company. Why do we do this?

BAROFSKY: That's a question I think is better addressed to Treasury then to myself.

It's hard to calculate what would have -- it's very hard to go back into the way back machine and know exactly what would have happened if we had not bailed out and AIG through the Federal Reserve or through Treasury, and what the implications and ramifications would have been.

Certainly, from some folks' perspective, those who are responsible for the bailout and those at AIG, warn that the consequences would have been disastrous. But, of course, it's hard to really know, to go back and know exactly what would have happened.

What we have to do and we'll continue to do in our audits of AIG is to try to bring transparency to that decision-making process and transparency to what's happening over there. And we're going to continue to do so.

CLAY: Who do you think are the recipients of these below dollar deals?

BAROFSKY: For AIG...

CLAY: For...

BAROFSKY: For AIG assets?

CLAY: Yes.

BAROFSKY: I think AIG has disclosed some of those sale of assets, and to the extent that they have, those are included in our report.

CLAY: Thank you so much for your answers.

BAROFSKY: Thank you.

TOWNS: Thank you very much.

I now yield to Congressman Driehaus.

DRIEHAUS: Thank you very much, Mr. Chairman, and let me echo my colleagues in wishing you a happy birthday, as well.

Mr. Barofsky, thank you very much for your testimony. I share the opinion of many of the members of this committee that you should, in fact, be independent, and that if there are challenges with Treasury, we should certainly be addressing those, because we value your independence, and we certainly value the information that you provided us here today.

I too, like many of my colleagues, am astonished by the potential exposure that you have identified. And I guess I take a little different view. And I go back to how this may have been prevented and am astonished that so few people are willing to look at the inaction and the failure of regulation to work properly to prevent the almost collapse of our financial markets.

I at the time was not serving in Congress last fall when the markets nearly collapsed, but I said at the time that I would have reluctantly supported the TARP if only to stabilize the financial institutions.

I subsequently voted against the second tranche of the TARP because it didn't include many of the conditions on transparency that so many of my colleagues have talked about here today.

But I go back, and I go back to the failure of Congress, the failure of previous administrations to regulate mortgage-backed securities, to regulate CDOs, to regulate CLOs, while at the same time the banking industry was suggesting that they had the most regulated industry in the country and there wasn't any need for us to move forward.

And many of the same folks that are complaining about the exposure are also working against regulatory reform in financial services.

So I'm struck by some of the comments that have been made by some of my colleagues.

But, specifically, I'd like to pursue a line of questioning regarding some of these toxic assets and the valuation of the toxic assets.

There was an article in the "Wall Street Journal" yesterday that I think was very interesting, when they talked about collateralized debt obligations and the fact that, you know, this was related to the mortgage-backed securities, which, of course, allowed the predatory lending to happen.

But trying to pull all of these assets apart and value them in any real way is a Herculean task because there is so little that is actually, in terms of collateral, in terms of capital, that is actually behind them.

How do you, from your perspective, in looking at these toxic assets, how do you believe we can best value them?

BAROFSKY: I think that -- I too read The Wall Street Journal article and the pulling apart of one of these CDO squared (ph), and I think it was a great illustration of the problem of these unbelievably complex securities and the challenge the Congress has in creating the right type of regulatory reform that will assure oversight so that these types of transactions, these types of products don't wreak the damage that they did.

I think the valuation issue is a very challenging one, and I think it's one that, at first instance, has got to be done by the Treasury itself. To the extent that they have these assets on their books, it's through an asset guarantee of Citigroup, whether it's in its own collection of assets.

It's a very comforted a structure that needs a great degree of expertise, and, I think, a great degree of skepticism.

We also have to see what happens with the other programs, whether these complex derivative products start coming across and being in the actual purchase programs or other subsequent TARP programs where I think that issue will come even more to the front.

DRIEHAUS: I realize your function is in evaluating the way in which the TARP monies are being spent. But as you look at it, and as you look at the causes of this financial collapse, can you offer advice as to moving forward, the type of regulation and the type of products that we should be looking to regulate as we move forward?

BAROFSKY: I think that one is a little bit outside of my lane. I think I would be uncomfortable offering an opinion on that, because I think it's -- when we get to the creation of regulatory reform, I think it's fair for us to identify some areas, like the world credit agencies, because we're overseeing that.

But I think when you get into the nuts and bolts of regulatory reform I would be uncomfortable offering my opinion.

DRIEHAUS: Is it fair to say that much of the exposure that you have identified is due to a failure to regulate appropriately certain products?

BAROFSKY: I don't think that, short of an audit product, or short of a more thorough examination of these causes, I would feel comfortable offering my opinion.

DRIEHAUS: Thank you, Mr. Chairman.

TOWNS: Thank you very much.

I now yield to the ranking member from California, Congressman Issa.

ISSA: Thank you, Mr. Chairman.

And I'm just going to close. I realize there's a second round, but on our side, we won't be asking for it. We thank Mr. Barofsky -- we will eliminate that.

The fact is that you've been very generous with your time, and you've given us a lot of food for thought.

I just want to close briefly, first of all by thanking the chairman, secondly by asking the chairman, would he consider bringing the Treasury Secretary here next to help close the loop on a lot of these areas of transparency that I think Treasury deserves an opportunity to tell us from their perspective why they have not yet implemented these?

TOWNS: Member makes a good point, and we will definitely look into it.

ISSA: And finally, in closing, I want to echo your words when you said "in deed as well as in word." President Obama promised us an unparalleled level of transparency, and it's very clear that the bureaucracy that stands between President Obama and what he has told both the chairman and myself and us is in the way.

So in closing, and we look forward to having you back here again in a quarter, but I want to thank you for doing everything you can do to bring that level of transparency.

And for myself, and the chairman has already said for himself, we want to promise that we will be your partners in bridging that bureaucratic nightmare that always exists between a president like President Obama, who has promised us transparency, and the Congress who bakes for transparency, the I.G.'s who, in fact, to produce it, and the bureaucracy that stands in the way.

So you have our support. On a bipartisan basis you will continue to have our support, because we agree with you that transparency, this light is the only form of disinfectant that's going to prevent government waste.

ISSA: So with that, Mr. Chairman, I thank you again for this series of very good oversight hearings. And I thank our witness and look forward to seeing you in about 90 days.

TOWNS: Thank you very much. I now recognize the gentlewoman from Ohio.

KAPTUR: Thank you, Mr. Chairman. I appreciate this and we appreciate your endurance Mr. Barofsky. I wanted to just state for the record that at least this member and many of the people she represents believe that this is the largest transfer of wealth in the American history that we've ever seen. From those whose equity has been moved to Wall Street institutions that now have become even more concentrated as a result of what has occurred with the meltdown in the financial sector. And I just wanted to again share information.

It's interesting to me that some of the companies like BlackRock that are involved in the resolution are headed by individuals, who are heavily involved formerly when they headed other companies in inventing the subprime instrument itself, and we don't know where they did all of their handiwork necessarily, but I find it very interesting that they are now -- the federal government rewards them in very non- transparent processes. And I said to myself because they will all be handling paper that they invented in traffic 10 years ago or 15 years ago. The derivative instrument itself, I understand was heavily influenced by a gentleman who is now the Vice Chair of PNC.

And at our home in Ohio, I just received a notice that our certificate of deposit that has been with National City Bank come this November is going to be transferred to PNC. I don't want PNC owning our major asset. That isn't my choice and yet I see this having an impact. Ohio now is only left with three Money Center Banks, National City is disappearing. And I see this power gravitating elsewhere to the very people who caused this problem in the first place.

One of my questions really has to do with Freddie Mac, and I could concentrate on Fannie Mae and FHA, because basically what's happened is, all the bad paper is being dumped on the tax payer, as you well noted in your report in different ways putting it here, here and every place else in the federal government, so it's not easily traceable.

But if one looks at Freddie Mac, which is central in terms of being a dumpster, as well as an enabler during the 1990s, let me just ask you why, when I looked at your report, I couldn't find the word Freddie Mac. Why has Freddie Mac and Fannie Mae's paper been hidden behind the walls of odds, over at the Federal Reserve? Do you have any role at all in unwinding the role of Freddie Mac in all of this going back into the 90s?

BAROFSKY: We don't have -- we don't have jurisdiction over Freddie Mac in any aspect other than the fact that

Treasury has hired them as a financial agent to help do compliance for the mortgage modification program. But otherwise, because other than that, Freddie Mac is not involved in TARP specifically, we don't have jurisdiction over them.

KAPTUR: I don't know if you are aware of this or if the public is aware of this, but Freddie Mac had over $500 million of fines placed on it already for fraudulent activity. And the fact is that they had during the heyday of their various activities grown up profits over 30 percent on their books. They underestimated risk and they began to pay a heavy price for that. I am very interested in your opinion as an auditor, do you find it rather interesting that we can't just add that paper, even though the American people are the recipient of all the mistakes.

Our mortgages aren't been looked out at the local level. J.P. Morgan Chase is the worst foreclosure in my district, including through one of its affiliates called (inaudible). All right, and yet, they can dump their paper and theoretically a lot of it moved through Freddie and Fannie and yet behind these walls of the Fed, we can't get at that. And so I am saying to myself as I look at the capable individual like yourself and your staff, you are never going to give us the truth, because they divided up the truth in such a way that you can never tell us the whole. How do you respond to that concern of mine? How do we get the whole truth?

BAROFSKY: I mean, I think -- it should be no surprise at this point that I agree wholeheartedly that more transparency is better than less. But the more information that is out there for policy -- policymakers and the American people the better. We -- because it's not related to the TARP program, there is -- it's outside of our scope and our jurisdiction.

KAPTUR: So you're saying it's unrelated, yet the Fed has just hired, I believe BlackRock to help to resolve whatever that means the Freddie Mac and Fannie Mae paper. Let me just quote the Washington Post, Freddie Mac's alleged manipulation and accounting errors caused them to understate profit by 30.5 percent in 2000 and 42.9 percent in 2002 and to overstate profits by 23.9 percent in 2001. These manipulations include transactions that shifted windfall earnings into later periods that might have been hard for the company to meet Wall Street expectations.

My point is, I don't see how we can know the whole truth and it is troublesome, Mr. Chairman, because even we are seeing a report today, TARP (ph) today is so, there are so many agencies, it's like they did adjust this up into a thousand pieces, just like they did with the derivatives, so we can never know the truth. How do we get our arms around the whole? How do we do that? Can you think about that?

BAROFSKY: I think that the question is best addressed to the inspector general for the Federal Reserve as well as the secretary general for HFA, excuse me, at HFA, who oversees the conservatorship of Fannie and Freddie. And (inaudible) these things under their jurisdictions to help you find the answers.

KAPTUR: For me -- from a federal government standpoint, are you disallowed to working together?

BAROFSKY: No, no, we do coordinate together. I -- both those Inspector Generals are both on part of my TARP I.G. counsel, because they do have actions that impact the TARP. And I am part of the Financial Regulatory I.G. counsel and we do talk and do coordinate with one another where our interest intersect. Here, this is sort of apart from the TARP program, so I don't really have an ability to go in and look at that information.

TOWNS: Gentleman, your time has expired. But I think she makes a great case as to why the Inspector General should have and I agree when there is $23.7 trillion at stake, I think that it's important that we make certain that they are independent. Let me thank you, Mr. Barofsky, for your testimony and I appreciate the interests of the members who attended today's hearing.

Earnings at the largest bank and the bank holding companies such as J.P. Morgan, Goldman Sachs are up, yet lending remains down. It is unacceptable that profits go up, while lending goes down. The tax payers have invested very large amounts of money in these banks. But what have we gotten in return? It remains unclear.

The tax payers deserve to know how their tax dollars are being spent. The Treasury department needs to publish full and detailed information on the use of TARP fund and publish the value on the TARP portfolio on a monthly basis. They have that information and they should make it public.

Moreover, Treasury also requires the largest banks to file monthly reports, showing the dollar value of their new lending. That should be made public also. If Treasury does not put this information up on its Web site, this committee will. And if Treasury does not turn over this information voluntarily, Secretary Geithner will be brought before the committee to explain why not.

What we have heard today convinces me that one of the best things Congress did when they created a TARP was to also create a special Inspector General to oversee TARP spending. I can now understand why the Treasury department would like to rain in SIGTARP, but we are not going to let that happen. You heard from the members on this committee today in terms of their commitment.

Again, I thank our witness, Mr. Barofsky. Finally, please let the record demonstrate. (inaudible) permission of a binder with documents relating to this hearing. Without objections, I enter this binder into the committee record. And without objection, the committee stands adjourned.

Thank you, Mr. Barofsky, for your time and information that you shared with us. Thank you. Meeting adjourned.

BAROFSKY: Thank you so much, Mr. Chairman.

END

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