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SEN. MAX BAUCUS HOLDS A HEARING ON TARP OVERSIGHT

March 31, 2009 Tuesday

EVENT DATE: March 31, 2009

TYPE: COMMITTEE HEARING

LOCATION: WASHINGTON, D.C.

COMMITTEE: SENATE FINANCE COMMITTEE

SPEAKER: SEN. MAX BAUCUS, CHAIRMAN

WITNESSES:

SEN. MAX BAUCUS, D-MONT. CHAIRMAN SEN. JOHN D. ROCKEFELLER IV, D-W.VA. SEN. KENT CONRAD, D-N.D. SEN. JEFF BINGAMAN, D-N.M. SEN. JOHN KERRY, D-MASS. SEN. BLANCHE LINCOLN, D-ARK. SEN. RON WYDEN, D-ORE. SEN. CHARLES E. SCHUMER, D-N.Y. SEN. DEBBIE STABENOW, D-MICH. SEN. MARIA CANTWELL, D-WASH. SEN. BILL NELSON, D-FLA. SEN. ROBERT MENENDEZ, D-N.J. SEN. THOMAS R. CARPER, D-DEL.

SEN. CHARLES E. GRASSLEY, R-IOWA RANKING MEMBER SEN. ORRIN G. HATCH, R-UTAH SEN. OLYMPIA J. SNOWE, R-MAINE SEN. JON KYL, R-ARIZ. SEN. JIM BUNNING, R-KY. SEN. MICHAEL D. CRAPO, R-IDAHO SEN. PAT ROBERTS, R-KAN. SEN. JOHN ENSIGN, R-NEV. SEN. MICHAEL B. ENZI, R-WYO. SEN. JOHN CORNYN, R-TEXAS

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WITNESSES: NEIL BAROFSKY, SPECIAL INSPECTOR GENERAL FOR THE TARP PROGRAM

ELIZABETH WARREN, CHAIRWOMAN, CONGRESSIONAL TARP OVERSIGHT PANEL

ACTING U.S. COMPTROLLER GENERAL GENE DODARO

SEN. MAX BAUCUS, D-MONT. CHAIRMAN SEN. JOHN D. ROCKEFELLER IV, D-W.VA. SEN. KENT CONRAD, D-N.D. SEN. JEFF BINGAMAN, D-N.M. SEN. JOHN KERRY, D-MASS. SEN. BLANCHE LINCOLN, D-ARK. SEN. RON WYDEN, D-ORE. SEN. CHARLES E. SCHUMER, D-N.Y. SEN. DEBBIE STABENOW, D-MICH. SEN. MARIA CANTWELL, D-WASH. SEN. BILL NELSON, D-FLA. SEN. ROBERT MENENDEZ, D-N.J. SEN. THOMAS R. CARPER, D-DEL.

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TEXT:

BAUCUS: The hearing will come to order. I recognize the senator from Iowa, Senator Grassley.

GRASSLEY: Would you give me the privilege of making an announcement before we proceed to the hearing?

BAUCUS: It depends what it is.

GRASSLEY: Well, I think you're going to be happy with what it is.

BAUCUS: OK. (inaudible).

GRASSLEY: Today we celebrate a very significant milestone in the career of our distinguished chairman, Senator Max Baucus of Montana. The senator from Montana has now served three decades on the Senate Finance Committee.

(APPLAUSE)

BAUCUS: Thank you.

GRASSLEY: He began his service January 23, 1979. These days senators have to lobby for years to gain a seat on this very powerful committee. However, Senator Baucus gained a seat only a few weeks after being sworn in. You know, I was lucky enough to become a member of this committee the first year that I came to the Senate.

Today, Mr. Chairman, you know, we're going to honor those who have served 30 years of service. I have served with you most of those 30 years. These past eight years we've worked as a team passing most legislation in a bipartisan manner. When members do attain a seat on the committee, we often give them the history of their seat on the committee. In fact, I recently received a letter from you stating about Iowans who have served on this committee.

You give it with complete details about those who have gone before them. Today we would like to educate you on a bit of the history of the committee introducing or reintroducing you to the seven other senators on the Finance Committee who have served for 30 years. You have now joined this elite group of Finance Committee titans, and we're proud to be serving with you as you make your mark on this committee's history and your legacy.

So sit back and listen a few moments as your colleagues introduce you to other members who have served on the committee. I'm going to do it for William Allison. I'm going to ask Senator Hatch to do it for Russell Long. I'm going to ask for Senator Rockefeller to do it for Nelson Aldrich. Senator Snowe is going to do it for Justin Morrill.

Senator Wyden will introduce you to John Sherman. Senator Lincoln will introduce you to Walter George. Senator Kerry will do it for Harry Byrd. And I'm doing this ahead of time so we don't take a lot of time away from our hearing. So when I finish with Senator Long, then another senator was going to -- well, if they aren't here, we'll do it in whatever order they're here.

I want to refer to William Allison of Iowa, the only senator with 30 years of tenure on the committee to never serve as chairman of this committee. He has the third highest seniority, 31 years and 10 months. While he never served as chairman of the Finance Committee, he had the distinctive honor to serve as chairman of the Committee on Appropriations while at the same time doing something you can't do now, at least in the Republican Party, serve on the Finance Committee at the same time.

Senator Allison served on the committee during a tumultuous time in American economic history, at the time the committee maintained jurisdiction over banking policy and in the last quarter of the 19th century saw a fight between those who favored silver currency versus those who favored the gold standard. In addition, the committee continued to support ever-higher tariffs on goods coming into America, raising the rates on the mongrel tariff of 1883, the McKinley tariff of 1890 and finally the Dingley tariff of 1897.

Senator Allison died in office on August the 4th, 1908. I had the privilege of having one of his biographers, Leland Sage of the University of Northern Iowa, who was my history professor at the time. And in those days, you

didn't get time off to do research. So Senator Leland Sage would drive 100 miles to Des Moines, Iowa on Saturdays and Sundays to work at the state library going over the papers of Senator Allison and writing a very thick book on William Allison, the senator from Iowa.

Now, let's see. Who's next here? I kind of forgot the order here.

BAUCUS: How many years have you been on the committee?

GRASSLEY: Well, I've been off four years because we didn't have enough Republicans at one time. You know, I'm probably lucky to get back on.

Go ahead, Senator Kerry.

Senator Rockefeller has got to go ahead. He's got to go to another meeting here.

ROCKEFELLER: No, I've got to chair another hearing. And it's actually an important one, not as important as this. Not as important as anything in here, but it's important to me.

And I want to congratulate you. There (ph) he is (ph). I want to congratulate you, Chairman Baucus, for replacing that man.

I am related to him. He is my father's mother's father.

Does that make sense, John Kerry?

KERRY: Yes, yes.

ROCKEFELLER: Yes, it does. OK. And there isn't a single Rockefeller at any -- in any generation, including my own children and sisters, et cetera, who doesn't bear the name Aldrich. Obviously, Nelson Aldrich, who I think was governor of New York and kept running for president -- was that the same guy? Well, anyway, he had a little different philosophy than I did, Nelson Aldrich.

But now that you've removed him from the annals of history in this committee, it doesn't matter. It doesn't matter. And I think there was no income tax when he was chairman of this committee. And he made a -- I think he made a tactical mistake, if Russ gave me the right history, which he always would. And that is that he said I think there should be an income tax graduated, by which I assume he probably meant 1 and 2 percent.

But he said in return I want all kinds of things for my home state of Rhode Island. And the problem was that he didn't get much for Rhode Island, and he did get the income tax. So his skills don't rival that of our present chairman, who never avoids paying taxes, but who has a much more -- it's a very different era.

I will say this though, that he had a magnificent daughter, Abby Aldrich Rockefeller, who was my grandmother, who my mother absolutely adored, modeled herself after using the modern art and all kinds of things and who my wife, Sharon, models herself after, that is, my mother, therefore, the grandmother. And he was extraordinary.

I had never been to Rhode Island, to Newport. And Rhode Island is not a very, very rich state in all of its parts. Parts of Providence are not. All of Newport is wealthy. And Nelson Aldrich, Senator Nelson Aldrich made it a point of saying publicly the bigger the forum, the more clearly he announced it.

He said I represent my people in Newport. Now, was that an exclusionary statement? Or was that just sort of a random thought? I'm not sure. In any event, he certainly did.

He also built the Russell building. I'm not sure if he was building it as his home or as an office building. But

I'm not for (ph) him.

Max Baucus is a treasure. And I have sat at his side for 22 years now and am proud to do so. I have seen him evolve enormously. And one thing I keep going back to is something which most people have forgotten, was the tax bill that we did a number of years ago in which he was -- I was presiding, and I had had a two-hour presiding privilege. And I watched him do this thing. It was just extraordinary. It was so complex. He did it so easily. And this was a long time ago. He did it brilliantly and correctly and strongly.

And now that he's been chairman, he believes in bipartisanship. He and I don't necessarily agree on every single matter, but then who does? I have enormous affection for him, actually a very deep feeling for him. We know each other very well as people and as friends. I'm extraordinarily proud that he's chairman of this committee. And I hope to be the second senator who serves 30 years on the Finance Committee without ever having been chair.

(APPLAUSE)

GRASSLEY: The next person was going to be Hatch. So then the next person is Snowe.

SNOWE: Thank you.

GRASSLEY: And Hatch isn't here.

SNOWE: Thank you, Senator Grassley. And like all members of the committee and beyond and everyone that's here today, I want to congratulate you, Mr. Chairman, on your 30 years of truly outstanding service on this committee and in the United States Senate and also for achieving this historic milestone as the eighth longest serving member of this committee, but also, you know, based on the fact that 350 members have served on this committee in the history of the current Finance Committee since it was created in 1815.

In your honor, I would like to speak to one of your predecessors, Senator Justin Morrill. And, no, I'm not related to him. He's not from Maine, so you might wonder why I am speaking about him. But there is a Maine connection that I'll get to in a moment. Aside from the fact that he is a Republican, so it is an indication that Republicans do go that far back in New England, just in case anybody wants to take note.

SNOWE: But he honed his financial talents before he even arrived to Congress because he worked as bookkeeper in a dry goods store in Portland, Maine. So he obviously learned those skills exceptionally well, because he ultimately garnered the title of the long list noncontinuous chairman of the Senate Finance Committee for 18 years. His tenure on the committee was between 1867 and 1898.

He also was the last person out of five and our entire nation's history, who ever chaired the Ways and Means Committee as well as the Senate Finance Committee, although we're not recommending that, Mr. Chairman.

(LAUGHTER)

Now, Sam Morrill authored the Morrill Land Grant Act, which created the land grant system that ultimately resulted in educating millions of Americans for generations.

He also was very deferential, Mr. Chairman, to the members of the committee. He allowed them to manage committee bills on the floor. Now, that's something Senator Grassley would like.

(LAUGHTER)

But how fitting it is that this attribute and milestone coincides at a time in which you are chairing this committee and guiding it through one of our most parallel and challenging economic times in our nation's history in the way that -- in which you have undertaken that responsibility, as well as we prepare on this committee to assume the

overhaul of our nation's health care system.

One thing I do know, Mr. Chairman, is that Senator Morrill, nor any of the other predecessors of yours, ever completed the 50-mile ultra marathon.

(LAUGHTER)

At least we couldn't find that to be the case. But I just want to say, Mr. Chairman, from my perspective and serving on this committee, that your intellect, your collegiality, your good humor, your emphasis on inclusion and -- and your also and embodying civility and deft management approach I think are timeless values that are consistent with and effective and skilled leader, as you have demonstrated time and time again in your partnership with Senator Grassley.

I couldn't certainly be more appreciative of the way in which you have worked time and again, and when Senator Grassley was chair of this committee as well. It really is well appreciated, and I think it's a model, frankly, in the United States Congress.

So I want to congratulate you, and I think this legacy is deservedly enriched here today by rightly being included in the remarkable pantheon of these leaders on the Senate Finance Committee.

So again, congratulations, Mr. Chairman.

GRASSLEY: Thank you.

Senator Wyden?

(APPLAUSE)

WYDEN: Thank you very much, Senator Grassley.

And this -- this is a -- a really wonderful day, and I'm -- I'm sure somebody listening may think that this is somehow a kind of a bouquet tossing contest. But I think that this is really a chance to reflect a little bit on the history of the Senate Finance Committee and -- and particularly, Chairman Baucus, to see you in the elite eight, as I guess one...

(LAUGHTER)

... should call this.

And I have a chance to talk about Senator Sherman, Senator Sherman of Ohio.

Like Chairman Baucus, he was a member of the House. Like Chairman Baucus, he had two tours as chairman of the committee.

And he is famous for a variety of legislative efforts, but particularly the legendary Sherman Act, which of course is sort of synonymous with what we think about here in our country as promoting competition and -- and trying to hold down restraint of trade and a number of practices that you have felt very strongly about in your tenure.

And so the Sherman Act has almost become part of our vernacular, and I'm of the view that the Baucus Act on health care reform is going to be even more legendary than the Sherman Act.

(APPLAUSE)

It is going to be extraordinarily important for our country, just as the Sherman Act was at its time. And I just want people to know that when we start that effort in June, it's my understanding that once again Chairman Baucus is

going to leave Senator Sherman even further in the dust, and that is by pulling off and -- get this, folks -- running 100-mile race.

Mr. Chairman, congratulations on all of these accomplishments, legislative and physical, and we look forward to serving with you in the days ahead.

(APPLAUSE)

LINCOLN: Well, Mr. Chairman, I am very proud and honored to join Senator Grassley and all of my colleagues here on the Senate Finance Committee in honoring you today, as Senator Wyden said, in -- in this newfound fraternity of the elite eight, which is pretty incredible.

But we all do want to express our -- our gratitude for your tremendous leadership. As Senator Snowe mentioned, the way that you and Senator Grassley work together and bring this committee together in a bipartisan way is tremendous, and I think it makes us all feel very accomplished in being able to move forward and get results.

And so we are grateful -- very grateful for your leadership.

I'm here today to -- to speak about Walter George, who happens to be -- well, I guess Virginia's on there, but the only southerner, so I figured -- I figured that you didn't need an interpreter, if I could...

(LAUGHTER)

... think of Walter George of Georgia, Senator Walter George of Georgia, who served for 31 years on the Senate Finance Committee, slightly over nine of those years as chairman.

And like every Senator with such legendary service, Senator George championed a number of issues during his public service. And one that caught my eye in particular was his work to improve benefits and services for our men and women in uniform.

Chairman George shepherded the G.I. Bill of Rights through the Senate passage with the assistance of the subcommittee chairman, Senator Clark.

He also fought and defeated an attempt to strip the committee of its jurisdiction over veterans' affairs and Social Security in the Legislative Reorganization Act of 1946.

And I have certainly noticed that Chairman Baucus has continued that tradition on the Finance Committee as a champion for our brave men and women, our servicemembers, who put their lives on the line to defend the freedoms that we cherish so much as Americans.

And most recently, Chairman Baucus demonstrated incredible leadership and determination in working to pass the Hero's Earnings Assistance and Relief Tax Act, the HEART Act.

A lot of members from both the House and the Senate contributed to that bill, but it was Chairman Baucus who worked hard to bring everyone together and to move the bill through the Congress and ultimately to the president's desk for his signature.

There are so many other issues that come to mind in which Chairman Baucus has distinguished himself through his legislative achievements and the hard work, which time constraints obviously prevent us all from mentioning individually.

But suffice it to say that -- that Chairman Baucus has proven time and time again that he knows how to work effectively within the committee and certainly in the full Senate to achieve results.

And as I've often said, it's the people of Arkansas, and I'm sure Montana, that appreciate getting results.

And we appreciate you, Mr. Chairman, for all the hard work that you do. It's certainly my privilege to take a few moments this morning to honor our Chairman and colleagues for such outstanding service and many achievements and certainly the positive impact that he has had on his state, our states and the entire nation.

We are grateful to you, again, not just for your service on the Finance Committee, but as others have said, certainly your great friendship and your great working relationship.

You bring a tremendous amount of -- of personality and, again, collegiality to this job, and we're very grateful. He also brings a little bit of fun. Isaac, Chairman Baucus' dog...

(LAUGHTER)

(UNKNOWN): The what?

LINCOLN: Isaac, his -- his dog, we noticed in front of our office the other day. He'd made his way down from the fifth floor of Hart to the third floor of Dirksen. And we were proud to be able to recognize him and make sure he was OK.

(LAUGHTER)

And so far he hasn't growled at me yet in a meeting.

(LAUGHTER)

So that makes me feel good.

But we want to thank you, Mr. Chairman. And best wishes for many, many more years of service to come. Thank you.

(APPLAUSE)

GRASSLEY: Senator Kerry?

KERRY: Thank you, Senator Grassley.

Congratulations, Max. Isaac generally growls at Senator Rockefeller.

(LAUGHTER)

You should know that, which we all appreciate very, very much.

(LAUGHTER)

It's one of the few things that can keep him in his place.

(LAUGHTER)

Anyway, I -- I was not aware that Senator Walter George had served on this committee, because he was chairman of the Foreign Relations Committee at one point also, and my dad actually worked for him as -- as an executive assistant on the Foreign Relations Committee in the 1950s.

So if any of you on the staff ever get angry at me for growling at you, it's just me getting back at my dad. I

figured -- I finally figured that out.

Anyway, Max, Harry Flood Byrd served for 32 years and eight months on this committee, and he was nearly 11 years as chairman. And the service began with Franklin Roosevelt's New Deal, and it ended with Lyndon Johnson's Great Society.

And I think your service is also going to span some really historical presidencies, from Reagan and the enormous changes that came with that, to this moment in history, where have the most significant financial crisis since the Great Depression.

One of the last things that Harry Byrd did before he retired from the Senate was to significantly complicate your life without your knowing it -- more complicating than being a Democrat representing all those Republicans in Montana.

You didn't know it at the time, or you -- you might have chosen a different path. It was 1965, a very important year. Bob Dylan went electric.

(LAUGHTER)

Sandy Koufax pitched a perfect game, and you were a law student at Stanford University. I should say welcome to This Is Your Life.

(LAUGHTER)

But you had no idea what was going on in the Finance Committee, I suspect, at that moment in time. But one of the committee's final acts with Byrd as chairman was the passage of the Medicare Act.

And it's more than 40 years later, and all of us know that there's not a day that doesn't go by that you're not sitting there thinking about what are we going to do with Medicare.

It was also during Byrd's service on the committee that Social Security was created, another subject that this committee under your leadership has had to deal with and will have to.

And if that's not enough history, consider the fact that during Byrd's tenure, this committee and acted the revenue raising measures that financed the Allied victory of World War II. And we are now in the midst of several wars and enormous complications.

So one thing that you can also thank Senator Byrd for it is this hearing room. He was chairman during the Finance Committee's final move here, and that was before even this building was named the Dirksen Office Building.

Now, we all know that you are not moving the committee soon, but I think every one of us would join together in thanking you for moving the committee in the right direction.

And particularly, you stood up against privatizing Social Security when the high-flying stock market lowered a lot of people to believe that was tempting.

And this year you are undertaking what will undoubtedly be one of the most historic efforts of the committee ever, and that's the effort to overhaul health care.

You have been the senior Democrat on the committee since 2000, and a number of people here referred to your prowess in running 50 and 100-mile marathons. This is its own kind of marathon.

Ron said you are in the elite eight. I think every single one of us who are here are not just betting you're going

to get to the final four, but you're going to be probably the number one chairman in length of time and of quality of service to this committee, and we congratulate you for it.

(APPLAUSE)

GRASSLEY: Senator Hatch will finish with the last member of the committee, serving more than 30 years.

HATCH: Well, thank you.

Mr. Chairman, it's an honor to be with you today as we celebrate this milestone -- 30 years on this great committee. I don't know how you've done it, to be honest with you.

Let me first just say congratulations.

I've been asked to speak very briefly about another great member of the committee, Senator Russell Long, who was one of my great favorites, along with you.

Senator Long's tenure on the Finance Committee is distinctive for two reasons. He is the longest serving member to serve on the committee, having served for 34 years. He also holds the record for the most consecutive years served as chairman, at 15.

Among the major pieces of legislation that Senator Long influenced while a member of the committee were the Internal Revenue Code of 1954, the Medicare Act of 1965, the Tax Reform Act of 1969, and the Tax Reform Act of 1986.

In addition, he left to further legacies, the first being the presidential campaign fund and, secondly, his insistence that the legislation governing the AFL-NFL merger be added to tax legislation. The passage of the merger enabled the creation of the modern National Football League...

(LAUGHTER)

... and the Super Bowl. Now, what could be more important than that?

(LAUGHTER)

HATCH: His service on the committee concluded when he retired from the Senate in 1996, and of course is one of the all-time greats here, and somebody I greatly respected. Well, like Senator Long, Max, we are all counting on you to, once and for all, reform the Medicare system, a little assignment that we think you can do.

I think we're supposed to do that as part of the health reform, and I'm telling you, you better not screw that up.

(LAUGHTER)

I look forward to working with you to make that happen.

Now, if I've done my math correctly and you serve out your current term, you're on track to eclipse Senator Long as the longest serving member on this committee. I have to say that, as great as you are, I don't think you can talk 4,000 words a minute like he could.

(LAUGHTER)

I can remember him going on and on. Nobody understood one word he was saying, but he just kept going.

So I want to say congratulations, on 30 years, Mr. Chairman. We're proud of you, and we appreciate you and

respect you.

(APPLAUSE)

GRASSLEY (?): Before we give you a chance to respond, Mr. Chairman, there's two things I'd like to finish this meeting up -- three things, actually -- once again, to congratulate you for joining these legends that have just been described to you, preceding you on this committee for that length of time of more than 30 years.

We have two gifts that we want to present to you. We first have a gift of the biographies that you just heard about of the members that have served 30 years, the eight longest serving members of the Finance Committee, that you're a member of the Elite Eight. And secondly, I want you to hold this, but I want to describe it to you. It's a nameplate saying, "Mr. Baucus, Chairman," and on the back it says, "Honoring 30 years of service, US Senate Committee on Finance."

But I want to tell you something about the wood that's involved there. This is made of wood from the last best place, Montana, the juniper wood used in creating this commemoration of Senator Baucus's historic service to the United States Senate Committee on Finance comes from the foothills outside of Townsend, Montana in Broadwater County.

Also known as Mountain Red Cedar, or Rocky Mountain Cedar, this wood survives 250 to 300 years and thrives in climates of extreme temperature changes. This piece was crafted by Mike Dyger (ph), I believe I'd pronounce it, a lifelong resident of Townsend, Montana. So congratulations, Max, on your historic service.

BAUCUS: Thank you very much.

(APPLAUSE)

Well, first, I want to say I'm ...

(LAUGHTER)

... Totally flabbergasted. Literally, I had no idea. When I walked down here and I looked forward to meeting and speaking with Neil Barofsky, who's our first witness in the hearing today, and I first walked in the back room, said, "What the hell? There's doughnuts back there. Think I'll grab a doughnut before coming in."

Then I came here, then -- and I just can't thank all of you enough. And my good friend, Chuck Grassley, just thank you for organizing this. It really means an awful lot to me.

And thank you, all my good friends, on this committee.

I just wish that American people knew how hard all of you work and how well you represent your states and the country. Your service in this committee exemplifies, I think, the best in America.

Describing the service of prior chairmen on this committee I think helps us as a people better understand, helps us connect back with great people who've done so much in their time in American history, and it helps remind us of the challenges we have, the burdens we have, but the opportunities we have to move forward and serve our people. We all hired out for these jobs to do our very best to represent our people, and it's good to go back and learn a bit about some of the people who preceded us to help us put all that into perspective.

I can't thank you all enough for putting on this little program here. Obviously, deeply appreciate it. I can't tell you how much I appreciate this. I'm stunned. I'm just surprised.

But in a deeper sense, it's humbling. It helps remind us just how much we have to do and the great joys and

rewards of great accomplishments and of public service. And you're wonderful people as professionals, as friends, and I especially want to thank my best friend on this committee sitting next to me, Senator Chuck Grassley.

GRASSLEY: Thank you.

(APPLAUSE)

BAUCUS: Thank you. Thank you.

And all of you out there are wonderful, but there's many of you out there who are even more special to me, and that's those who serve on my personal staff currently, those who serve on the Finance Committee staff currently, those who previously served, personal staff and Finance Committee as well, and you're the ones that make all of this happen for all of us.

And the Finance Committee staff works for all of us, but I want to just -- all of us to thank the staff. They've worked so hard for all of us. They really do (inaudible).

(APPLAUSE)

OK. Thirty years. Let's get to work

(LAUGHTER)

Thanks, everybody. Thank you very, very, very much, all of you.

(RECESS)

BAUCUS: Meeting will come to order.

In 1989, in an interview, our former colleague, Congressman Jim Leach, said, "The banks use rather surreal accounting practices." Since then, the world of banking and financial oversight has become, if anything, yet more surreal.

One of our witnesses today, the special inspector general for the Troubled Assets Relief Program, has calculated that, in the TARP and associated program, taxpayers are potentially at risk for as much as \$2.9 trillion. \$2.9 trillion is just short of what the entire federal government spent in fiscal year 2008. It's like having a second United States government budget dedicated solely to saving the financial system, and that is truly surreal.

The chart behind me outlines what makes up the \$2.9 trillion. That \$2.9 trillion does not include the \$400 billion that the Treasury Department has pledged in support of Fannie Mae and Freddie Mac. That \$2.9 trillion does not include the resources that the Federal Reserve is dedicating to shoring up the financial system in addition to the programs with the TARP. Those additional accounts, we come up to about \$3 trillion, and that \$2.9 trillion does not include this second TARP. That request for 750 billion in the president's budget.

If all these additional amounts materialize, taxpayers could be on the hook for a total of more than \$7 trillion. This is a huge, unprecedented financial commitment. It strains the comprehension of taxpayers and policy-makers alike. It has been nearly six months since Congress created the TARP program. almost all of that 700 billion have been committed, so it's time for the Finance Committee to survey the many oversight issues related to this new Treasury Department program.

I worked hard to create the office of the special inspector general for the TARP. It's something I wanted. I pushed for it strongly. Some resistance in the former administration, but we finally got the provision in there, and I'm very proud that we do have the office of special inspector general for the TARP.

I am very pleased to welcome Mr. Barofsky to the committee today, and so far, this special IG, in my judgment, has done a good job.

The latest controversy involving the TARP program centers on the AIG bonuses paid from taxpayer money. Senator Grassley and I introduced legislation to reclaim those bonuses for the taxpayers, and we are looking forward to bringing that legislation to the Senate floor. I am pleased that the special IG is conducting his own full investigation of how those bonuses got out the door.

But the AIG fiasco is just the tip of the iceberg. There are many, many tough oversight issues connected with this new program. Today, we will look at 12 major areas of TARP involvement and hope to get an update on each area from our oversight teams.

The 12 areas are: one, capital investment program for large banks; two, the capital investment program for small banks; three, Citigroup; four, Bank of America; five, AIG; six, the Term Asset-backed securities Loan Facility, otherwise known as TALF, General Motors, GMAC; nine Chrysler; 10, the mortgage relief program; 11, the small business program; and 12 the bad assets program announced just last week. I hope at least one of our witnesses can comment on each of these 12 program areas.

BAUCUS: We'll also survey some other key issues on which our oversight experts have been focusing during the past six months. For one, I am pleased that improving transparency has been a priority for the special IG. It's very important. Mr. Barofsky recommended that the TARP post all TARP agreements, whether they're with recipients or with its vendors, on the Treasury Web site, and the Treasury Department has agreed.

The special I.G. also successfully pushed for oversight language in the Citigroup and the Bank of America agreements. It requires those banks to account for and report on their use of TARP funds.

In the -- late January, Mr. Barofsky sent each bank participating in the Capital Investment Program a letter asking how they have used TARP dollars. This was a much-needed exercise. It had not been done before. I'm so glad that Mr. Barofsky sent that request. Americans want to know how their tax dollars are being spent. That's very much on the minds of American taxpayers. I understand that all of the 360 banks involved have responded. That's commendable. I look forward to hearing the special IG's preliminary analysis of the banks' reports, what did they say in their response.

I'm also pleased that the special I.G. has made progress on civil and criminal law enforcement. I'm heartened that he has reached out to the FBI, to U.S. attorneys around the country to coordinate fraud investigations related to TARP funds. My concern here is, with such a massive amount of dollars dedicated so quickly, there's bound to be considerable fraud and misuse of funds, just so many dollars allocated in such a short period of time.

As Mr. Barofsky has said, as the primary oversight body has referenced in the TARP bill, the special I.G. stands as the sole TARP oversight body charged with criminal law enforcement authority. The special I.G. is literally the cop on the beat.

Following the new program announced last week by the administration and Fed Chairman Bernanke represents another huge challenge to our oversight teams. The plan to purchase so-called bad assets will involve up to \$100 billion of TARP funds. It will involve backing from the FDIC and the Federal Reserve. The total commitment for this new program could reach \$1 trillion. The new program presents another very tough task for our three oversight teams. It will have to oversee pricing the assets, what entities are managing the assets, and taxpayers' exposure for each group of bad assets.

I want to thank our witnesses and their teams for their hard work. This is an enormously complicated program. The money involved is mindboggling -- totally mindboggling. Indeed, the money involved is surreal. I look forward to our witnesses' efforts to help explain their task in ways that will make it just a little more real. I have many questions to

ask. Americans have many questions to ask.

I now turn to Senator Grassley.

GRASSLEY: Thank you, Mr. Chairman, for calling this critically important committee meeting and the hearing that's involved on this very important subject.

And, first of all, so I don't forget it, to each of the three of you, I want to thank you very much for bringing transparency to this issue, bringing out all the facts that need to be brought out to make sure law is abided by, laws are faithfully executed, money's spent according to the intent of Congress, and I mean that for all three of you.

But I want to especially mention Professor Warren because so many times over the last decade and a half, you and I have been on an opposite side of a very important issue, and we're probably still on the opposite sides of that issue, but you're really boring in on this, and I want you to know that I really appreciate your work, and I'll probably appreciate your opposition on that other issue more because of the hard work you're doing on this.

It's been a year since the collapse of Bear Stearns and about six months since the \$700 billion Troubled Asset Relief Program was created. According to its purpose clause, the Act was supposed to help Treasury restore liquidity and stability in the financial system and to do it in a manner that protects home values, college funds, retirement accounts, and life savings; preserves home ownership; promote jobs, economic growth; maximum returns to the taxpayers; provide public accountability for the exercise of this authority. And we're concentrating on that public accountability.

I had my doubts about the creation of TARP and the way it was raced through Congress. Congressional leaders paired the bill with hard-fought tax legislation for Midwest flood relief and equity for Midwest flood victims compared to what Washington did for Katrina victims.

I voted against the second round, even though I voted for that first one because of interest in my own state being connected with it, but I voted against the second round because my initial concerns about the rest of the bill were justified, including my concerns that limits on executive compensation were too weak.

As soon as Treasury received the funds, it decided to bail out big banks instead of buying up toxic assets, as they told us. Millions continued to lose jobs and homes, which makes me wonder about the program's effectiveness, but you can't measure effectiveness when you don't know what the goals and objectives of the program are or how the program is being run.

I'm disappointed and frustrated that the administration refused the committee's request for Mr. Kashkari to testify today. It would have been nice to hear how he is gauging the success of the program. And so I ask that our -- unanimous consent to enter my letter to Secretary Paulson dated November the 12th, 2008. During his confirmation process, I asked Secretary Geithner for his commitment to respond to all my inquiries, including that letter. There are certain answers that only the administration can provide, and I'm going to continue to push until we get those answers.

BAUCUS: Without objection, it will be entered.

GRASSLEY: While the operation of TARP is troubling, it is a small relief to know that the program's watchdogs, you folks, are doing your job.

I'm proud to have worked with you, Mr. Chairman, to create the special inspector general who will be testifying today, along with the heads of these other agencies and the Congressional Oversight Panel. These watchdog agencies are vital in helping Congress and the American people keep track of multiple TARP and TARP-related programs that Treasury Department is initiating.

Treasury has announced several new programs just in the last two weeks, some of its own and some in partnership with the Federal Reserve. With so many -- so much happening so fast and so much taxpayers' money at stake, the need for quality oversight and transparency has never been greater.

Unfortunately, despite saying all the right things about open government, the new administration has not made any major changes aimed at making TARP more transparent. Moreover, I have heard about potential problems with access to information from all three of the oversight bodies testifying.

The Treasury Department told the inspector general that it didn't want to ask big banks what they did with the taxpayers' money provided through the Capital Purchase Program. So the inspector general said that he would ask the banks themselves. At first, he faced a few bureaucratic hurdles, but he has now received responses, as the president -- or as the chairman has indicated.

Contrary to the claims by some that it was impossible to know how the money was used, I understand that many of the responses provide a very clear understanding of where the money went. I guess the money was not as fungible as we thought, and, in fact, if we want to know where the money went, with a little ingenuity, you can get a pretty good idea.

The Treasury's recently announced initiatives demonstrate an increasing reliance and partnership with the Federal Reserve. However, these moves threaten the ability of the General -- or the Government Accountability Office to monitor the program effectively. That's because the GAO is limited by statute from examining Federal Reserve activities.

That limitation is aimed at ensuring the Fed's independence in monetary policy. However, its unprecedented actions in the last year have taken it far beyond traditional monetary possible -- policy. From the standpoint of the efforts to ease credit freeze, the Fed is no longer independent. It is an appendage of the -- appendage, I should say, of the Treasury Department and, therefore, more political than the independence it traditionally has. Chairman Baucus and I have already introduced legislation to expand GAO's ability to obtain records from TARP recipients because the bill that failed -- created the program failed to grant GAO the authority that it needs.

Congressional Oversight Panel has also had problems getting answers from Treasury. According to the panel's most recent monthly report, Secretary Geithner has failed to respond to key questions that have been pending since even before his time at Treasury.

And I've already complimented Professor Warren.

If these oversight efforts are to be successful, Congress must be willing to provide the necessary attention and support. Today's hearing is an attempt to do just that. We want to know whether the Treasury is taking these recommendations seriously and making meaningful changes. If not, then we need to help follow up and make sure that the problems identified through the process are fixed.

It's not about assigning blame. It's about making sure that government works. It's about making sure that the government is accountable to the taxpayers who are footing the bill. With everything that is at stake, we can't afford to have it any other way.

BAUCUS: Thank you, Mr. Chairman -- or -- good day, Mr. Chairman.

GRASSLEY: Once chair.

BAUCUS: Thank you very much, Senator.

I'd now like to introduce the panel.

Our first witness is Neil Barofsky as special inspector general for the TARP. The second witness is Elizabeth Warren, chair of the Congressional Oversight Panel.

Welcome, Ms. Warren.

The third witness is Gene Dodaro, acting comptroller general.

Our regular practice, as you know, is to have all your statements introduced in the record, which we'll do, and ask each of you to speak for about five minutes for your opening statements, and then we'll get to questions.

We'll begin with you, Mr. Barofsky.

BAROFSKY: Thank you, Mr. Chairman.

Chairman Baucus, Ranking Member Grassley, members of the committee, I'm honored to appear before you today and particularly honored to appear on the celebration of the chairman's 30th anniversary on -- on the committee.

More than \$300 billion has already gone out the door, and including the recent -- recently announced programs, as you noted, Mr. Chairman, we will soon be responsible for overseeing up to \$3 trillion in 12 different TARP programs. Today, I'd like -- like to talk a little bit about two of the areas we've been focused on: the TARP recipients' use of funds and our proactive law enforcement efforts.

Back in December as part of our drive to bring increased transparency to the TARP, we began asking Treasury to require TARP recipients to report on how they're using TARP funds. Other than for Citigroup and Bank of America, Treasury rebuffed our efforts.

In late January, we, therefore, decided to do it ourselves by conducting a survey of each of the 364 TARP recipients who had received funds by the end of January 2009. As you noted, we received responses from all of them, and although it will take us a couple of months to conduct a thorough analysis of that information, one thing is clear: Complaints that it was impractical, impossible, or a waste of time to require banks to detail how they used TARP funds were unfounded.

While certainly not uniform, a number of banks were able to give us detailed, as times even granular, descriptions of how they used taxpayer money. For example, some banks described specific loans or lending programs that they could not have done without TARP money. A frequent response was that TARP funds allowed the bank to become or remain adequately capitalized so they could maintain and not reduce the level of lending in a down economy. Others reported using TARP money to pay off existing debt, while one had to change its original plans when another bank called in a loan requiring the first bank to take substantially all of its TARP funds to meet that obligation. Still others detailed investments that they made with TARP funds, some talked about acquisitions, and others kept the money as a cushion against future losses.

The results show a diversity of how banks monitor their use of TARP funds. Some reported comingling the TARP funds with other capital and making no efforts to keep track. Others attempted to segregate the funds and taking steps such as one bank reported that it assigned a special TARP manager to keep track of the money. I believe, ultimately, the survey strongly supports my earlier recommendation to Treasury: Banks can and should be required to report on their use of taxpayer money to provide maximum transparency and not simply be asked to report on the possible impact of the funds, such as giving only lending activity.

The second area I'd like to cover this morning has been our most recent effort to fulfill our role, as was mentioned, as one of the -- the only of the four primary oversight bodies of law enforcement authority, as I've recently been described, the TARP cop. To that end, we recently announced our TALF task force. TALF has been described as a trillion-dollar Federal Reserve program that will be seeded with about \$80 billion in TARP money. It's intended to

lend government money on a non-recourse basis, meaning that the borrower doesn't have to pay the money back, to investors to buy both newly issued asset-backed securities as well as now toxic assets off of banks' balance sheets.

We have been warning of the vulnerability of this program to fraud for several months, and we converted those warnings into action by putting together a team of eight different federal law enforcement and regulatory investigative agencies, including the FBI, the IRS, the SEC FinCEN, ICE, Postal Service, and the Fed's IG, all to address potential fraud.

Our task force had its first formal meeting last week, and our goal for it is not modest. We intend for it to redefine the policing of federal government programs by proactively setting up a law enforcement response before fraud occurs. We recognize the inevitability of fraud in large government programs, especially those as complex as the TALF. The task force will give us an ability to capitalize on the vast experience of its members, to make better recommendations to prevent fraud before it occurs, and to establish a framework of trained experts who will be able to rapidly investigate fraud when it does occur. And we're currently discussing standing the task force for the newly announced programs also dealing with toxic assets.

BAROFSKY: Finally, I'd like to note that there had been some complaints in the media recently that my office's oversight efforts may dissuade participation in TARP programs. Some might take this as a criticism. I do not.

If a bank or financial institution doesn't want to participate in the TARP program because it's unwilling to disclose how it's using taxpayer money or because it's afraid of the vigorous detection programs that we are establishing for fraud, it means we're doing our job. Keeping such participants out of the TARP will only benefit the American taxpayer.

Chairman Baucus, Ranking Member Grassley and members of the committee, that concludes my testimony. And I'll be happy to answer any questions that you may have.

BAUCUS: Thank you, Mr. Barofsky.

Ms. Warren, you're next.

WARREN: Thank you. Thank you, Chairman Baucus. It's a delight to be here on this celebratory day.

Thank you, Senator Grassley, particularly for the very gracious remarks. We have certainly differed in our approach to some issues, but I assure you on the issues before us now with the oversight of the \$700 billion and what's happening with the fed and the FDIC, there are no differences between us. And I appreciate your support, and I look forward to working with you.

Thank you, committee, for having us here today. I should start by saying I am not reading from a typed script, and therefore, my views are my own and do not necessarily reflect those of my panel members. I just want to remind you which one of the three we are with congressional oversight.

Our duty, according to the statute, is to review the current state of the financial markets and regulatory system and to report to Congress every 30 days. We are the policy and strategic folks for you. We are the smallest. I'd like to think so. But that does not make us the weakest. We're a fairly tough group.

We've done four hearings so far. We've done four monthly reports. And we have a done a report on regulatory reform. Our fifth report will be out next week.

We work closely with the GAO and with SIGTARP. We coordinate frequently. We try to be very careful to support each other's work and advance each other's work, not to overlap or to duplicate in any way.

I want to start this by raising the central issue that we keep raising. And that's the one of what is the strategy

that Treasury is pursuing. Since our very first report, indeed, the first sentences of our first report, we have asked this question over and over.

What's the essential plan here? What's the idea that Treasury is trying to pursue, with the notion that if we cannot have a clearly articulated plan and some clearly articulated metrics to see if we are accomplishing those goals, we can't really engage in serious oversight? So we start at the front end of this process, how it's conceived, what it is that we're trying to accomplish.

We have asked first Secretary Paulson and then Secretary Geithner for information, particularly including these strategic questions. And so far, we have come up short.

In our April report, which will be released next month, we focus on the strategic question. We look particularly at what we can learn from the financial crisis in Japan, in Sweden, from the Great Depression and from our own experiences with the RTC in the late 1980s, all of which, we think, can help inform us as we face the crisis in front of us now.

I just want to briefly mention our earlier reports so you have some idea of the content that we've covered. We had a valuation report that we issued in early February. This is a report that started when we did the capital infusion into the financial institutions, effectively the first \$350 billion of TARP assets. At that time, at the very first report from congressional oversight, we asked the secretary of Treasury what were the terms, were the taxpayers being fully protected in these investments into the financial institutions.

I received a letter from then Secretary Paulson who said these transactions occurred at or near par, which means in effect, for every \$100 put in, there's \$100 in stock and warrants that were given back to the U.S. Treasury. We decided to do our own independent evaluation of that, lots of number crunching, brought in some academic specialists for our evaluation. And we found, in effect, that for every \$100 of taxpayer dollars put in, we got back about \$66 on that day of stocks and warrants. This does not account for the decline since that time.

Overall, you do that enough times, and in \$350 billion, we believe that we overpaid or subsidized to the tune of an estimated \$78 billion in the first go-round. That was our February report.

I just mention a couple of our other reports. I'm glad to go through any of these in detail. We did a foreclosure report last month, our most recent report, our March report in which we developed a series of ways to evaluate whether or not any foreclosure mitigation efforts are likely to be effective, trying to highlight what the elements are that they need to cover.

We discussed the administration's plan, which we believe covers some of those metrics, but not all of those metrics and how this may be deeply problematic. We also point out the need for better data, that we cannot evaluate these programs simply by making big announcements. We've really got to have data to track to see if they're effective in the ways we hoped and if they're not, to make appropriate mid-course adjustment.

We currently have underway an inquiry about TALF. We are very concerned about the big downside risks to the taxpayer and, frankly, the substantial upside values to a small group of financial insiders.

We are also concerned that this continues to subsidize the very kind of financial instruments and arrangements that helped create this mess to begin with. And we're concerned about oversight of that process.

We're concerned about contradictory information on implementation. And we have requested information from Treasury. We are told we will get more information tomorrow on this.

We also have inquiries underway about AIG. We have a number of questions about the justification, the costs, the terms, the ultimate beneficiaries. We are particularly concerned about the opaque nature of counterparties that has

thus far hampered oversight efforts.

We have requested information on many points, including the decision making process and the risks involved here. We are awaiting a response.

Our bottom line is that in a crisis, the country needs a coherent plan with clearly delineated goals necessary to maintain public confidence and the confidence of capital markets. We believe it is critical to have sophisticated metrics to measure the success or failure of program initiatives. We also believe that transparency and accountability, which we have called for repeatedly from our first report and every subsequent report, are absolutely critical to having a system that's going to work, that's going to help us pull this economy out of the ditch.

We are doing our best to press Treasury to provide a clearer strategy, more transparency and more accountability. We are here as your oversight committee to learn from you more about what we should be doing and to try to explain the work that we have done thus far and the work in progress.

I'm here to answer any questions. Thank you.

BAUCUS: Thank you, Ms. Warren, very much. That was very helpful.

Mr. Dodaro?

DODARO: Good morning, Mr. Chairman. Let me add my congratulations to you on your 30 years of service to this committee.

BAUCUS: Thank you.

DODARO: Senator Grassley, good morning. Members of the committee, good morning to you.

GAO's role under the Troubled Asset Relief Program is really two- fold. We have responsibilities under the law to review Treasury's implementation of the program, report to the Congress every 60 days. And we also have the role of the financial auditor of the TARP program in terms of tracking the money and making sure it's properly accounted for. We have thus reported three times during the six months, once in December, once in January. And our third report is being issued today.

Now, in those three reports, we've made a series of recommendations that are designed to improve the transparency and accountability of the Troubled Asset Relief Program. Among those series of recommendations are our three main themes that I'd want to tough on this morning.

First is the need for better monitoring and reporting on the uses of the funds under the capital purchase program. Now, we focused on the capital purchase program because so far as of March 27th, \$199 billion of the \$303 billion that's been distributed under the TARP program has been through the capital purchase program. So that's been about two-thirds of the money distributed so far.

Our recommendation back in December was that Treasury needed a process to collect information from the financial institutions on how those funds were being used and what their -- how it's changed their total lending activities. After initially balking at implementing the recommendation, Treasury then began collecting monthly lending activity information from the 20 largest organizations, financial institutions receiving the money.

We said that wasn't enough. In our January report we said every institution receiving money should be required to report back. And recently Treasury has agreed with that. And now every institution receiving the funds will be required to provide monthly reports on their lending activities.

We also think that this recommendation had an additional benefit in that the announcement for the new capital

assistance program, which will emanate after the stress tests are done on the banks going forward, Treasury will require more information up-front about plan uses of the TARP funds and require better reporting going forward. So we are pleased that our recommendations have had good affect in this area. And it's very important to have this type of information on a regular basis to adequately assess whether the program's achieving its objectives.

Secondly, our theme of our recommendations has touched on communications strategy. This program from the outset has been plagued by poor communications. I'm pleased that it's getting better, but there's still a ways to go.

As you pointed out, Mr. Chairman, there are 12 different components to this program. They've evolved. They've changed. The initial intent to purchase toxic assets was changed to the capital injections. The program has continued to evolve. I think that the financial stability plan that was announced in February was a good step forward to try to provide some clarity. More details coming forward on the public/private partnership effort have been encouraging as well.

And some of the details of these programs still need to be worked out. But the mere fact that there are 12 different programs that they are leveraging activities with the Federal Reserve, the FDIC and other organizations really places a premium on effective communications with the Congress and with the public and other stakeholders about the details of these programs. And so, in our report being released today we recommend a more effective communications strategy on the part of the Treasury Department is appropriate and needed in the coming months.

The third main theme has to do with the management structure of Treasury. Now, Treasury's office of financial stability is responsible for managing all these programs. And from the beginning we've been concerned that they needed to hire up with appropriate numbers of staff and people. They've made some progress in that area, but they still need to continue to bring on the proper numbers of people with the right skills.

We made recommendations in the contracting area to strengthen their controls in contracting and internal control mechanisms that are needed to properly track and account for the money, manage conflicts of interest as well.

Now, in closing, I'd like to thank Senator Grassley, you, Senator Baucus, Senator Snowe for co-sponsoring the S. 340 bill, which would give GAO additional authority to examine the books and records and talk to recipients of TARP funds. While we have not had a problem to date, given the evolutionary nature of this program, we think this legislation is an important safeguard and needed. And we would encourage the Congress to adopt it.

There are also, as Senator Grassley mentioned, some important limitations on our ability at the GAO to look at activities that are managed under the Federal Reserve's monetary policy and discount window operations that are very important. I am very concerned that as the TARP program has been leveraged to work with the Federal Reserve in these activities that this is going to limit our ability to provide the Congress with much-needed oversight.

That concludes my opening statement. I'd be happy to answer questions.

BAUCUS: Thank you very much, Mr. Dodaro.

I guess the basic question that the American taxpayers have and I think everybody in this committee has is basically what are the banks doing with the money. I want to make sure the money is spent wisely, fairly, appropriately and efficiently.

And as I understand it from listening to you, you have some sense of how the dollars are spent.

But you, Ms. Warren, basically felt that the subsidy basically to the effect of \$70 some billion, 66 cents on the dollar basically was paid back, the balance, I guess, from the subsidy. So my basic question is also how are they spending the money. Basically you've said -- given us some indication about that.

BAUCUS: And listening to you, Mr. Barofsky, banks did respond to your inquiries, but the responses are all over the lot. I mean, they spent the money lots of different ways. Some responses were very generalized. Some were very detailed.

And so, I guess first I'll ask you, then, just your general sense thus far as to how they spend the money. My second question's going to be, of each of you, what additional powers do you think you need? You talked about more data, talk about more access. You talk about transparency, all of you. What additional authority do you need? Because I believe the American public wants to know how these dollars are spent, and they want the three of you to help answer that question.

At the outset, though, I'm very pleased, frankly, with what you're doing thus far, and I'm also very pleased that we did create the office of the special inspector general. I thought of this office because we got a special I.G. to look at all the waste in Iraq with this, and all the defense contracting where tens of billions of dollars were discovered as wasteful.

So my thought was, let's get this office set up in the front end rather than the back end, beginning of these programs rather than the end of the programs. And I think it's having a bit of a salutatory effect in that regard, but clearly there are a lot of questions that are answered.

My sense is a lot of dollars are not being appropriately spent, but if you could just briefly, Mr. Barofsky, again say -- your general impression, how they're being spent. And I'll ask each of the three of you what additional powers do you think are appropriate so you can even more appropriately get the answer to those questions.

Mr. Barofsky?

BAROFSKY: Thank you, Mr. Chairman.

We're going to give you a much better answer once we have had the opportunity to stratify and analyze all the data. But anecdotally, I have reviewed a good chunk of the responses.

And I think we are seeing is that it really depends on the financial institution how they use the money. Some, a good deal of the numbers that I reviewed, would not have been adequately capitalized but for the receipt of TARP funds. Some of them weren't necessarily where they needed to be at the time they received the funds. Others, because of losses and the downturn in the economy, wouldn't have maintained their levels of capital.

And as a result, what they've told us is they're able to maintain the same level of lending.

BAUCUS: Gets a little bit to the question, though, that Ms. Warren posed, what's the purpose of all this. And I think one has to know the answer to that question sundry (ph) before they can answer the question, "Was it properly spent."

What guidelines were the banks given as to how to spend their money? What conditions?

BAROFSKY: Banks were given almost no guidelines. There were some restrictions on dividend payments. There were some restrictions on stock repurchase, and some restrictions on executive compensation.

But for the most part, it was left up to the banks what to do with the money. And I think the responses indicate that that lack of freedom of what they had to do with the money, it really covers almost anything that you would expect a financial institution to do, whether -- some did use the money to increase lending, according to the responses.

Some went to such detail as actually listing the specific loans that they wouldn't have been able to make but for the TARP money. Others invested the money and are keeping it either in liquid assets, like mortgage-backed securities, guaranteed assets from the government, waiting to see what happens with the economy, using it as a capital buffer to be

able to withstand any downturn in the economy. We'll be able to give you a good analysis.

But anecdotally, it really does cover across the board. As I mentioned, two banks had plans to increase lending, but then other banks called in their debt, so they had to take the TARP money and use it to pay back other TARP banks. So there was a variety.

BAUCUS: Now, what's the sense on this -- the issue that's been in the press a lot, the AIG issue, where a lot of TARP money that AIG received went to counter-parties, and even though there's no assessment whether those counter-parties really needed to be paid.

One of mine (ph), Goldman Sachs, they took \$100 billion. Now they say they want to give a billion dollars back to Uncle Sam. And so, are you yet in a position to know who decided that those payments should be made to those counter-parties, and on what basis those decisions were made?

BAROFSKY: Mr. Chairman, we're announcing an audit this week that answers directly that question. We received a letter from 27 members of Congress last week asking us to look into that issue. Right now, my audit team is preparing the guidelines for that audit, and we're going to announce it this week. And we hope to quickly bring an answer to that question of what the decision-making process was.

BAUCUS: Well, my time has, of course, expired, and I want to ask other (inaudible). But Senator Grassley, you're next. Go ahead.

GRASSLEY: I start with the premise that the public's business ought to be public, and the expenditure of this money I've put in the category of public. Maybe a few things like military secrets and intelligence, privacy and a very narrow definition of executive privilege, outside of that, everything we're talking about. And Congress ought to have access to it under our constitutional responsibility of oversight. That's where I'm coming from.

So in order to get this information, I need to ask three of you the same question but a little bit different, so I'll ask them one at a time. I'm going to start with Mr. Dodaro.

You know about the bill that Senator Baucus and I introduced to have access to book (ph) and the records of anybody that receives TARP funds. Our bill has been referred to the Banking Committee. Unfortunately, no hearing is set on that. You said that, in your testimony, that you supported that legislation. That would have been my first question.

The second question, then, could you explain why GAO needs this additional authority and how it limits your ability to report to us without it? And let me ask a second question right along with that.

In your statement, you mentioned that GAO is statutorily prohibited from auditing the Federal Reserve's monetary policy activities. Given the significant emergency authority exercised by Fed in this crisis, how does this limitation affect your ability to oversee TARP money?

DODARO: First, on S.340, I mean, the reason that we have limitation, and that legislation would help, is, under the Banking Auditing Act and associated guidelines, we have access to GAO to all the information that the financial regulatory agencies have, but we do not have the ability to go directly to financial institutions to get the information from them. Your legislation that you and Senator Baucus and Senator Snowe have sponsored would enable us to do that for all TARP recipients.

We think that's an important safeguard, particularly given how the program has evolved. Initially, if it was just purchasing the toxic assets, we would have had all the authorities that we needed. Now it's shifted, and it may shift again as things go forward.

So this is an important safeguard. We're getting cooperation when we do ask, but, as an auditor, I'd rather have the authority to go behind and be able to get the information.

GRASSLEY: Right.

Now, with regard to the Federal Reserve, that's a very important issue. I am very, very concerned that the limitation that we have -- that's one of the very few areas in government that we're statutorily prohibited from addressing.

Now, I understand why it's in the legislation to protect the independence of the Federal Reserve, but that's in normal circumstances, and we are not in normal circumstances right now. and as more and more TARP money is partnered with funding and activities of the Federal Reserve, we have no ability to be able to get any information from the Federal Reserve other than publicly available information. That is not satisfactory. If the Congress wants us to basically have this additional oversight role, we need a legislative remedy. We understand it needs to be carefully crafted, and we're willing to work with the Congress in doing that.

GRASSLEY: OK.

Mr. Barofsky, I'm not going to go through a paragraph or two explaining the problems that you had getting around the Paperwork Reduction Act, but I do want to point out that a spokesman for inspectors generally have supported your efforts, and that you shouldn't have to go through that red tape.

If you had been required to go through the normal Paperwork Reduction Act procedures, how much longer would it have taken you to gather the information from the banks on how they used the taxpayer's money?

Could the Treasury have required -- two, could the Treasury have required that banks provide the same sort of information that you gathered on how they would use the taxpayer's money as a condition of receiving it in the first place? And why didn't they require banks to provide the information? Those three questions.

BAROFSKY: Senator Grassley, I want to thank you personally for helping us cut through that red tape, but the answer is it would have taken us at least three to four months to get through the Paperwork Reduction Act by a normal procedure had we not gotten the emergency exception.

To answer your second question, yes. Treasury could, can and should require the banks to report on their use of funds.

GRASSLEY: And then, can you tell me why the Treasury didn't do that?

BAROFSKY: I think that that question would be best posed to Treasury itself. I think Mr. Kashkari said in testimony that, due to the fungibility of money, that they may have questioned the usefulness of that exercise. I don't want to speak for him.

But I think our response to our survey indicates that not only is it useful, I think it's important.

GRASSLEY: Ms. Warren, has the Congressional Oversight Panel had sufficient access to all the information it needs in order to do its part of overseeing TARP? And what do you need that you haven't been provided?

WARREN: Senator, we are your Congressional Oversight Panel. Our concern right now is that we do not seem to be a priority for the Treasury Department. We have sent letters. We have requested that there be someone named so that we can get technical information. And so far, we have not been a first priority.

We use what you give us, and we will exercise the leverage given to us by Congress. In part, that's why I'm here today. I'm here to talk to you about what's happened so far, what we have discovered so far, the inquiries that we

have in mid-stream and for which we continue to await responses. That's where we are, Senator.

GRASSLEY: Thank you.

BAUCUS: Senator Snowe?

SNOWE: Thank you, Mr. Chairman.

I want to thank all of you, as well, for your very substantive and crucial testimony.

What I find absurd, frankly, is the fact that you all really seemingly had to struggle to get and ascertain information in order to fulfill your responsibility in oversight of this critical program that ultimately would yield confidence for the American people if they had transparency and could definitively point to results that have been accomplished as a result of the \$3 trillion that has already been issued.

And my concern is, as I looked on my perspective of the people I represent in the state of Maine, they don't see the program working as is. What they've heard about the bonuses, not only AIG. Senator Wyden and I attempted to address that early on through the stimulus package, to address all bonuses committed and issued in 2008 through January of 2009 of \$18.4 billion, including Merrill Lynch that issued about \$2.5 billion in December, three days before they were acquired by Bank of America.

Well, the list goes on, but the fact is do not see any definitive evidence that suggests that it's working. The credit markets are very, very tight, and based on the Federal Reserve's survey recently, indicates that the markets have tightened considerably, and most especially for small business that are job generated.

And what I hear is the common theme among all three of you, is that there are no consistent standards for oversight, that you really have to struggle to get information from the Treasury Department, and that there's no clearly articulated goals, as you said, Ms. Warren.

What do we need to do? Besides in the powers issue, what standard should we set in place for TARP recipients, for example, to have to disclose and to document how they're using their funds? And also whether or not they're lending, because that is the other crucial concern, the money is not being used to lend appropriately. Even those healthy banks are not lending, which is also freezing the ability on Main Street to open the doors or avert closures that has led to, as we know, historic unemployment rates.

So, Mr. Barofsky, Ms. Warren, Mr. Dodaro, can you answer that question? We need to do something quickly, I believe, because in every testimony that you have given, all three of you in your perspectives, it is abundantly clear that we have to do something to not only give the enforcement powers, but the standards that essentially have to be agreed to and adhered to by the Treasury Department implementing this \$3 trillion.

BAROFSKY: I mean, I would say to begin with, to support us and to continue to press for greater, greater transparency. It's very difficult to make the policy determination without having all of the information. That's one of the things that we've fought to do, is to bring that level of transparency so we can see where the money is going.

And I think indeed, Senator, pressing on what is success, what is the measure of success, is an important question that has to be clarified.

SNOWE: Well, I would hope that we could get a list from you of exactly what should be required (inaudible) in each of you, because I really think that we should incorporate that into law so that there are consistent standards.

Ms. Warren?

WARREN: Yes.

Senator, I think you've put your finger on the central problem here. I want to say, this problem starts with Treasury in the following sense. There's not a bank in this country that would lend money under the terms of take the money and do what you want with it.

If they're lending to businesses, they ask businesses what you plan to do and, most importantly, not just what you plan to do, not saying afterwards, although I'm very glad that Mr. Barofsky has asked, but in advance, what will be the metrics? How will we know that's what you did?

SNOWE: Yes. I agree.

WARREN: Accountability doesn't just -- I used it for all the good things that I used my money for all the bad things -- it's -- it's that you make it clear up front this is what my books look like now, and this is what they look like after I get the money, and this will be the difference between the two. And this is how you can see how American taxpayer dollars were used.

So I'm talking about accountability in a very real sense of this word. As I see it, you really have two options here. Either you get Treasury to get some religion on this point -- and put their own standards in place, or Congress is forced to step in.

We will do everything we can on your behalf, as your congressional oversight panel, but what we can best do for you now is to identify and pinpoint that this is precisely where the problem starts.

And then the problem has roll down effects all the way through the system of lack of accountability, complexity that no one can figure out what's going on, so that we never identify the place where we need to start the solution.

SNOWE: Mr. Dodaro, I couldn't agree with you more on the metrics issue, absolutely to measure in advance instead of reacting, but being proactive and having out front so everybody is on the same page about it.

Mr. Dodaro?

DODARO: Our philosophy on this has been threefold. Number one, it's Treasury's responsibility as the disburser of the money, as the manager of the program, to collect this data and to report it publicly and to the Congress.

And to do that, we recommend that they build upon an already existing mechanism that the regulators use with quarterly call report data from the financial institutions. They get information every quarter. It's audited. Regulators review it.

We suggested, though, that it needed to be collected more frequently. And that's why we suggested monthly information.

Now, they've moved to do that to the 20 largest institutions for the last couple of months. That's good. They've reported that. That's good. They've now extended it to all institutions. Right now there are over 500 and I think 32 institutions that have received money.

There is another 1,190 that are with Treasury for decisions, and another 750 that are still with the regulators to recommend to Treasury. So you're going to have hundreds of institutions.

If they use the -- implement our recommendations successfully, this should greatly increase the transparency over this program, and then the call report data that's audited could be used to verify the reporting of the monthly survey information.

Thirdly, we've also collected -- and started to develop a set of indicators about specific interest rates and also the spread between the interest rates and treasuries, which are used to measure credit risk.

And these market basket of indicators can measure whether or not in totality the TARP program and other activities are improving the situation. So far the record's been mixed, which is...

SNOWE: Thank you.

BAUCUS: Ms. Stabenow?

STABENOW: Thank you very much, Mr. Chairman.

And thank you to each of you for the work that you are doing. We desperately need it.

There is no question that the public has a right to distrust the government recovery process that's going on here because of, as you've described, lack of transparency, lack of accountability, people who -- institutions have taken the funds and hoarded them or used them for excessive bonuses to reward failed business models, or -- and otherwise use them for purposes outside the original intent.

So this administration has a huge task in front of it yet. And we -- we urge them all to be moving with full speed. And I know they're focused on it, but there's so much that needs to be done.

I want to ask you specifically about one piece of the program and -- and how it compares to others. Yesterday the president announced further sacrifices that are going to be made by people in my state, as well as across the country, in order to create a revitalized auto industry that the president has talked about.

These were part of conditions that were placed on GM and Chrysler in order for them to receive the TARP funds. GM has been given 60 days to present a new viability plan. And this will bring it to five months since GM became eligible for the TARP funds.

So here we are today, six months after funds had begun to be given to do oversight, and yet we've not asked the same requirements of the financial institutions that have been asked of the auto industry.

Not only have these institutions not come under the same scrutiny, but they've not provided the information to prove that when the crisis is over, these companies will be viable, will be able to survive future downturns.

And so my question is what should be done to ensure that at the end of the program we will have revitalized financial institutions that will be able to make it on their own?

And what lessons can we learn from the rigorous oversight of the -- of the auto industry to learn from that and place it on the financial institutions that have been receiving TARP funds?

WARREN: Senator?

STABENOW: Yes. Ms. Warren?

WARREN: Thank you.

I -- I think that this starts at the beginning with the question of policy and approach. With the financial institutions, we could take effectively one of two approaches.

We could say we're going to subsidize them, and subsidize them for however long we decide to subsidize them. That gives us no guarantees other than however we may decide as they go along to -- to put some new strings in place.

The alternative is to say we're going to reorganize them. We are actually going to. And -- and reorganization typically means that the senior management may be taken away. It may mean that a lot of stakeholders have to share in

the pain, that bondholders are -- are written down and had to bear much of the loss.

Of course, in a financial institution, depositors we must protect. We have our insurance guarantees that we've made with FDIC and other institutions.

But this very real difference starts right at the beginning, and it then -- it colors everything that happens after that.

We had a hearing this last week at the Congressional Oversight Panel, talking about what it happened during the RTC, for example, the crisis in the late 1980s.

Ended the late 1980s the position with financial institutions was very straightforward. The financial institutions that were in trouble were liquidated. The people in charge lost their jobs. Debt holders took substantial losses. The equity was wiped out. At the depositors were fully protected.

That is one approach. It is an approach that was also used in Sweden. There was real confidence in the system about those that remained. Indeed, those that remained were able to pick up the business of those who were failures and were ultimately able to fly.

Taking a different approach, and that is continuous subsidization without rigorous oversight, is precisely what has led to the difference now that we're seeing between the approach with the auto industry, which is much more modeled on a reorganization approach, and the approach that is being used throughout the financial services industry. And that is a straightforward subsidization.

So I see this as an issue that starts right back at the beginning -- which of the two plans that Treasury is putting in place, which of the two strategies it is following.

And this is the debate we need to have quite frankly, Congress with Treasury. We're part of this debate as well.

STABENOW: Right.

WARREN: Just like this is the real question. Do we think that subsidies lead us to the right place, or do we think reorganization does that?

STABENOW: Well, if I might just say that on the one hand I mean you -- you missed, and just to add to the group of people being hurt, the main people being hurt, are the people who are losing their jobs...

WARREN: Of course.

STABENOW: ... and the communities where the plants are being closed. And reorganization in my state means job loss and means plant closings, and so there's a very real efforts and very real sacrifice going on.

What I see on the other side are banks that have been given money and aren't giving the loans, as Senator Snowe was talking about. I mean small businesses are losing their lines of credit.

In Michigan people who have paid on time forever you know can't get a loan. Suppliers can't get a loan to be able to do business with the auto companies that they normally would do -- and so huge discrepancies.

And, Mr. Chairman, I look forward to working with you further to look at the -- the two models being used here in terms of accountability on one side and total lack of accountability on the other side. Thank you.

BAUCUS: I have to make a point, Senator. I do think part of it is a cultural difference. New York establishment, the financial establishment is a bit thick generally with the financial establishment in Washington, D.C.

It's a totally different culture from the manufacturing other economy establishment. And I do think that's one reason why the -- each is being treated differently. And I think that's an issue.

STABENOW: And if I might, just one more editorial comment. If we don't make things in this country, we won't have an economy. Thank you.

BAUCUS: Senator Lincoln?

LINCOLN: Thank you, Mr. Chairman.

And I certainly want to align myself with comments from Senator Stabenow and Snowe about the importance in terms of where these resources are going and who's actually benefiting.

I know that the multiple small businesses that call me by saying the same thing. We are long-time customers. We have good accounts. We can't -- you know these -- these financial institutions are not loaning the kind of resources that we need for operating budgets and other things like that.

And it's just not reaching down. And I agree wholeheartedly with the chairman. It is cultural difference. There's no doubt about it.

If you look at how this -- this country was established in business, the success of business 60 years ago was determined by whether the businesses creating jobs and whether it was reinvesting in its company and whether it was reinvesting in its community.

Right now, obviously, the problems we see from Wall Street are not the fact that nobody appears to be investing in themselves. They're just leveraging and leveraging, and that's become a real issue.

So we appreciate the chairman bringing us together on this hearing, and we certainly appreciate all of you all and hope you won't go far, because we'll need you as we continue.

I think the other thing is that building confidence and trust, which is a huge part of this equation, among investors and among working families across this country, I mean that's a task that humanity has dealt with for eons.

And it's going to be something we're going to have to work from the economic side, but also in terms of the humanities side of -- of whether people are willing and ready to be more confident and trusting of -- of the system that we put together. And that's going to be a critical part of it.

I just want -- Professor Warren, I just wanted to highlight a point that you made in your testimony. And you said Congress has given Treasury substantial discretion as befits this fast-moving crisis.

And -- and that happened to a lot of us when you know last fall we were approached by the secretary of the treasury and others that said the sky was falling, and this crisis is going to happen tonight, if you all don't do something.

But you continue in your -- in your testimony that that discretion carries with it an equipment obligation to explain in real time why that discretion is exercised as it is.

I couldn't agree more. And one of the things we continued even before we voted for the first TARP and even after -- many of us have continued to -- is -- is to talk about how important it is to have accountability and transparency and to understand what the plan is.

If there's not a plan, and we can't describe it to our constituencies, we can't defend government playing a role in it. But you know the stakes are high, and people need a better understanding of how and why they are taxpayer dollars are being used.

And we can't expect confidence to return, if people can't understand the steps that are being taken to combat the crisis. And that's a real issue, and I hope Secretary Geithner will take that to heart and do more to explain on a real-time basis what he and his people are doing and why.

I think they have a responsibility to the American people. I know he's a technical person, and he's extremely bright and smart, and I think can be very helpful, but without a doubt conversation and communication are going to be critical in terms of building that trust and that confidence.

Professor Warren, you -- you've mentioned AIG, and from the sound of your testimony, you still have a lot of questions about that assistance.

When do you anticipate that you will receive the information that you sought from Treasury and the Fed regarding AIG? And are they being forthcoming? And if not, so what do you need us to do to you know to -- to compel that information to be forthcoming?

WARREN: Well, Senator, I -- I don't want to over promise you. We have been told that we will see this information shortly, but we are a panel that has lived on "you will receive this information shortly."

And so I am -- I am not without hope, and I am hopeful that our conversation may find its way to people who are responsible for getting back to us on this.

But we have some substantial questions about AIG. We have substantial questions -- I just -- I just want to be clear here...

LINCOLN: Yes.

WARREN: ... about the TALF, about the TARP 2.0, the -- the CAP. How many acronyms can we do here in that...

LINCOLN: Which most average Americans don't understand.

WARREN: Well, but -- but that's the point. I mean I -- I really want to stop here for a second on exactly that point. We have enough complex programs that have you know lots of wires and bells and whistles, with no articulation of what it's supposed to accomplish and how we're measuring whether or not it accomplishes that, with no underlying discussion about, hey, this is a subsidy.

WARREN: You know Secretary Paulson wrote me a letter that said, as flatly as you can, this is not a subsidy. When we scratched the surface, it was absolutely clear that one out of three dollars was a subsidy. So when that's the case, that means there is no transparency. Indeed, it means Congress and the American people have been cut out of the conversation.

So transparency is partly about Web sites and being able to track exactly who got what. And this is the incredibly important part of it. The transparency is about articulating up-front what you're trying to accomplish, why you chose one path instead of another, why one group of people are asked to bear enormous pain and why others are not. That is the heart. That is the start of this entire process. And until we clearly have Treasury's attention -- we have been focused on these questions for purposes of a public conversation -- I'm afraid we will not go forward.

BAUCUS: Senator Schumer?

LINCOLN: Thank you, Mr. Chairman.

Thank you.

BAUCUS: Thank you.

SCHUMER: Thank you, Mr. Chairman. And just let me add my congratulations to your 30 years as chairman.

BAUCUS: Not quite.

SCHUMER: Not quite as chairman -- that's coming -- but as member of this committee. When you became a member of the Finance Committee, I was probably within the month of two within the speaker of the New York State Assembly's office asking him if he could please put me on the New York State Assembly Ways and Means Committee. So I very much appreciate what you've accomplished.

And my question -- my first question is for Mr. Barofsky.

But I did want to welcome Ms. Warren here because of the great work she has done. I have used your studies on the fact that median income in America has declined from 2001 to 2007. That's before the recession. But the average family was hurting even before the recession. I think if you add in buying power, you told me, it would go down to 43,000.

And we've never had a period of prosperity -- so-called prosperity where median incomes declined. If you do average incomes, of course it raises it way up because if someone goes from \$30 million to \$50, that raises the average up. But it doesn't raise the median up a jot. And I think your study is groundbreaking. And I hope you'll continue to work at that.

Mr. Barofsky, and welcome, and thank you for the job you're doing. I'm concerned with the estimate of the money that remains in the TARP. Secretary Geithner has said that's \$135 billion. I notice you have a slightly lower figure of \$109 billion.

There are outside experts who believe it's considerably lower than that. Some have said it's three times lower, you know, in the \$30 billion amount. How do you account for the differences? Which number should we believe? Can you give us some feel for this because obviously it's a very important number?

BAROFSKY: Sure, the primary difference between our number and Treasury's number is that they calculate an anticipated return of \$25 billion of money that's already been out, that's been invested that banks -- they expect banks to return.

SCHUMER: Because they want to be out of the TARP?

BAROFSKY: Because they want to get out of the program.

SCHUMER: And is this a lot of banks returning a little, a few banks returning a lot? Do you know?

BAROFSKY: Treasury hasn't given us the backup for this estimate. This is something that we just learned about over the weekend. Certainly, a number of banks have publicly stated that they intend to give the money back. But when the rubber hits the road, they have to get regulatory approval before doing so to make sure that they'll still be well-capitalized.

SCHUMER: Yes.

BAROFSKY: But a large number of banks have said it.

SCHUMER: OK.

BAROFSKY: So I think that's the difference between us and this (ph). As to the other number that you mentioned, the as little as a third, our number, too, before this weekend was significantly lower than the \$109 billion. Treasury has changed some of its estimates. They originally had \$250 billion for the capital purchase program. That's

come down to \$218 billion. And there are some other areas where the originally announced numbers have been scaled back a bit, which is why that bottom number on the chart, which is what's left over, \$109.5 billion, is where it is.

SCHUMER: Yes. And just explain that, the scaling back of the capital purchase program.

BAROFSKY: Sure, I think they initially estimated that there would be \$250 billion that would go out the door on that program.

SCHUMER: Yes.

BAROFSKY: They have now said based on the number of applications they've received and the timing, they're now estimating it's only \$218 billion.

SCHUMER: Just, Professor Warren, in your oversight function, do you agree that this is about the right number?

WARREN: We think it's about the right number, yes.

SCHUMER: Yes.

You agree with that, Mr. Dodaro?

DODARO: Well, I think at the current moment it is. But one of the things that we want to look at are some of these new programs that haven't started as to the assumptions. For example, in the making home affordable program, there's some assumptions underlying how many people will participate, at what levels. And I think, you know, we're going to take a closer look at some of those assumptions.

So I would expect that the figures are going to change a bit, given the evolving nature of some of these programs. And our main point has been the Treasury -- that they need good internal controls to track all this. There's also, you know, dividend payments that are being made. Now, those don't go back into the program as a principle does get repaid. But all these things need to be tracked. And they need to have good assumptions.

SCHUMER: Great.

Finally, last question -- and I don't have much time. Conflicts of interest in the public/private partnership -- have you been focusing on that, Mr. Barofsky? Are there guidelines? Are they adequate? How do we deal with that issue, which is a very significant issue?

BAROFSKY: There are no guidelines yet. I think it's going to be an incredibly significant issue. The way that -- there's three different public/private programs. And it would take me a while to go through all three of them.

But I think one thing that they have is in many of them, you have those that are setting the price who could benefit in other areas of their business by that price increasing. And that creates a very, very significant conflict of interest. We've raised this issue already with Treasury, are meeting tomorrow with the Federal Reserve to discuss this issue.

SCHUMER: And they're taking it seriously?

BAROFSKY: So far they are taking it seriously. But it is a significant concern.

SCHUMER: Any comment on that, Ms. Warren? Then my time's up.

WARREN: We're also looking at the structural conflict of interest, that is the way these are set up in order to potentially reward people on both sides, the same person on both sides of the transaction.

SCHUMER: Right. OK.

Thank you, Mr. Chairman.

BAUCUS: Thank you, Senator.

SCHUMER: Congratulations again.

BAUCUS: Thank you.

Senator Carper, you're next.

CARPER: First, a question for our acting head of GAO. I've heard a lot of people testify over the years. In fact, we all have. And it's rare that anyone ever testifies without notes. I've seen you testify any number of times. You've never used notes. How do you do it?

DODARO: I study our reports, and I listen to my staff.

CARPER: There are a number of your staff sitting behind you whose lips move when you speak. Is that what's going on?

DODARO: No, no, no, I stay close to the work. And that enables me to do it.

CARPER: I've kidded him about this before. It's pretty amazing. All right.

Our thanks to each of you for being here today and for your stewardship.

Mr. Barofsky, I understand from your testimony that you sent out some 364 letters to each TARP recipient asking how they've utilized the funds to date. And your response rate's been about 100 percent. That's not bad. I appreciate the summary in your testimony as well as to the substance of the responses and that your staff have analyzed to date.

There is some concern -- we've heard it, and I don't know if others on the committee have heard it. But we've heard some concern from a lot of the banking folks in the banking community that those participants in the capital purchase program not lumped together -- not be lumped together with those who have needed TARP funding because they were too big to fail. And many of those in the capital purchase program are just satisfied.

By the way, we in the government, they think, have been moving the goalposts on them and changing the rules of the game. In some cases -- I'll give you an example.

Here it is some of these folks didn't want to take TARP money. They didn't want to take the money, the capital purchase program money. And we said we need for you to, and we need for you to take it because -- not because we think you're going down, but because we want to take the stigma away so the others who really need the money will be inclined to accept it.

But let me just ask if you could give us some sense as to whether you're hearing this concern, a similar concern in responses you've received from recipients of the TARP money and the CPP money. And are the responses from the recipients of the CPP overwhelmingly positive, or are they overwhelmingly negative? Are they somewhere in between?

BAROFSKY: We have heard those concerns in our correspondence. Part of our survey is not just for use of funds, but also how financial institutions are dealing with and preparing to comply with the executive compensation restrictions. And I have seen in a number of those letters frustration from these banks in what they perceive to be a changing of the rules and an indication that they're looking to pay back the money because executive compensation

rules have become more strict. So I think that is something we have seen in the correspondence.

CARPER: And if you were sitting in our shoes and people were saying look, we took this money under duress, we really didn't want to. And now that we've done it at your encouragement to take away the stigma, now you're changing the rules on us. That troubles my sense of equity. I don't know. Does it yours?

BAROFSKY: Well, I would say that when the rules became more strict in the Recovery Act, Congress also put in the carve-out that made it much easier for banks to repay the money. Before they would have had to have matching private equity equal to the amount of the stake of the TARP investment in order to get out. Now if they want to pay back the money, they can pay back the money as long as they maintain their capital as adequate as according to the regulators. So I think that concern has been lessened by the Recovery Act.

CARPER: All right. One last question -- it was reported a couple of weeks ago, I think March 20th, that at least 13 companies receiving billions of dollars in bailout money owe a total of more than \$220 million in unpaid federal taxes. And as I understand it, banks and other companies receiving federal monies were required to sign contracts stating that they had no unpaid federal taxes but were not required to produce their tax records. Do you know if this error has been corrected? Do you know where this investigation stands?

BAROFSKY: My investigation division is coordinating with the Department of Justice, and it's under review.

CARPER: All right. Thanks very much. And again, we appreciate your being here and your good work.

BAROFSKY: Thank you.

BAUCUS: Senator Menendez?

MENENDEZ: Mr. Chairman, let me take a moment of my time since I was both in a banking and energy markup to congratulate you on three decades of service to, not only your great state, but to the country.

BAUCUS: Thank you.

MENENDEZ: And particularly in your leadership of this committee. You've steered through some of the most challenging and difficult issues that the nation has faced. And you've done it with extraordinary intellect and ability. And as we look at some of the major challenges we're facing now, I can't think of a better person at the helm, particularly as we try to tackle health care reform. So I want to salute you as well.

BAUCUS: Thank you, Senator.

MENENDEZ: Mr. Barofsky, you know, when you came before the Banking Committee for your nomination, I asked you a bunch of questions. And I want to follow-up on them now. One of the things is you have the power to pursue waste, fraud and abuse in the system as you review this. And I'm wondering whether anything that you have done to date has given you cause to pursue any of those elements are you are reviewing the documentation from the survey and other information flows that you have.

BAROFSKY: I think that in particular with respect to fraud we are very concerned by the design of some of these programs and in particular the ones that have recently been announced. I think that there is --any time you push out trillions of dollars, even millions of dollars, but certainly trillions of dollars in a very short period of time, you run the risk and almost a certainty of a large percentage of fraud.

FBI estimates that I've seen is that 10 percent of any government program is going to be vulnerable to fraud. That would be \$300 billion. So that is a keen issue for us and one that we're trying to be proactive about.

We're doing something that I think has not been done before with a government program, is that --is setting up a

task force of different experts in law enforcement community and training them now so that they'll be ready if and when the fraud hits. And this does two things. One, because the programs are so complicated, law enforcement isn't necessarily comfortable with a lot of the concepts, with a lot of the mechanisms of the program. So it gets -- it sensitizes law enforcement to be able to react quickly and rapidly to any fraud.

But second and I think even more importantly, we're going to have a forum of ideas to make recommendations. S. 383, which was supported by this committee and which passed both Houses unanimously, you know, gives us --strengthens our already good, strong power of making recommendations.

MENENDEZ: So if I may, so you have the wherewithal, you have some concerns, but at this point, you haven't had any reason to pursue any of the waste, fraud and abuse because it hasn't come to your attention?

BAROFSKY: No, we actually have.

MENENDEZ: You are?

BAROFSKY: We actually have probably more than a dozen ongoing criminal investigations based on fraud related to the TARP program. So...

MENENDEZ: OK. That's what I wanted to know.

BAROFSKY: ... unfortunately...

MENENDEZ: I don't expect you to talk about those.

BAROFSKY: Yes.

MENENDEZ: But I just wanted to know that you're pursuing them.

BAROFSKY: No, absolutely, Senator.

MENENDEZ: OK.

BAROFSKY: That's one of our primary mandates.

MENENDEZ: OK. Secondly -- and this may be a hybrid question for both you and Professor Warren. You know, when we also had your nomination, we talked about what the purposes of the act was.

And, you know, I read specifically from the act, which talked about restoring liquidity and stability to ensure that such authority is used in a manner that, a, protects home values, college funds, retirement accounts, life savings, preserves homeownership and promotes jobs and economic growth, maximizes overall returns to the taxpayers of the United States and provides public accountability for the exercise of such authority. The question in my mind is have we met those goals as we can envision what has happened today.

MENENDEZ: I'm concerned, Professor Warren, when I read from your testimony, both this time and in past, I'm one of those who was a big believer in conditionality up-front so that we could have benchmarks and easier ascertainable ways in which we could determine whether we're making success. And on page four of your testimony where you say, "The most important lesson we draw from our analysis is that, without a clearer explanation from Treasury about its overall plan for each capital infusion and without more transparency and accountability for how that plan was carried out, it is not possible to exercise meaningful oversight over Treasury's actions." Could you just talk about that?

And, Mr. Barofsky, could you respond to that as well?

WARREN: I -- thank you, Senator. I -- I would make two points here.

The first one is the good news point. I want to say there's a little bit of water in the glass, and the little bit of water in the glass is we are not going to let these goals be forgotten. This is not going to be a statute that you put a lot of good language into it and then everyone went off and just spent the money and forgot what it was there for. So I see our job is to come back to you, to go back to Treasury, to go to the public and keep reminding them of these goals and reminding Treasury why it is they need to articulate what the plan is, why they have made the choices they have.

That said, it's only a small amount of water in the glass because, at this point, we clearly are not there, and, frankly, I think American people understand that we're not there, that we have not yet had a statement of what we're trying to accomplish, why it is that some have to take losses and others don't have to take losses, why there are no metrics put in place in advance both to condition how the money is spent and to test whether or not it's achieving any goals on the other end.

So we're -- we're not there. We're just simply not there. It is not yet happening with Treasury.

MENENDEZ: Mr. Barofsky? Mr. Chairman, if -- would you care to comment on that?

BAROFSKY: Yes, I -- I think, Senator, you hit the nail right on the head, and that is putting the right conditions on up front. The -- the initial TARP programs were rolled out before we -- before we got there. Since then, one of the things that we've been doing with every program and every contract is making the recommendations just like the type that -- that you mentioned: requiring internal controls and reporting of conditions, getting that up front so we can keep close track of what's happening. I think that's -- that's vital to what we do.

MENENDEZ: Thank you, Mr. Chairman.

BAUCUS: Thank you, Senator.

And, again, how well are -- is Treasury complying with those upfront conditions before it's sending the money out? That -- that is studying (ph) them.

BAROFSKY: Well, with this administration, we're really going to -- going to find out in the very near future with the Mortgage Modification Program and the recent programs we have, and we'll continue to make recommendations on a rolling basis. And now with S. 383 having passed both Houses, the secretary will be required -- assuming the president signs it into law, the secretary will be required to either adopt our recommendations or -- or explain to you, to Congress, why -- why he hasn't. So I think we'll have a very good mechanism being able to keep track of...

BAUCUS: All right. I also -- earlier, I said I was going to each of you what additional powers you think you should appropriately have. Let's go down the table. Go down the list.

We'll start with Mr. Barofsky. What additional powers do you think you should appropriately have in order to protect the taxpayers' interest?

BAROFSKY: I think...

(CROSSTALK)

BAUCUS: Go ahead.

BAROFSKY: I'm sorry.

BAUCUS: Go ahead.

BAROFSKY: I think to the extent there was any ambiguity in our powers, they were clarified by S. 383. So, for now, I don't -- I don't see any -- any issues. We will certainly -- as I promised during my confirmation hearing before you, we will certainly let you know if we see any other additional need, but, for now, I think -- I think we're good.

BAUCUS: Feel free to come back.

Ms. Warren?

WARREN: Senator, I would describe it this way: We need to find a way to make these policy issues and the articulation of these plans higher on Treasury's priority list. I'm not here to ask for more power from Congress. I'm here to say that's ultimately what we need. We will use whatever you give us.

BAUCUS: I appreciate that, but you're -- you're a United States citizen. You're a -- you know, a red-blooded American. You know, what -- what additional power do you think someone in your position should have to protect American taxpayers?

WARREN: Well, Senator, the -- the question that would be appropriate for Congress is whether or not Congress wants to move to the next step, which would be having Treasury required to consult with us on these issues and make public statements. I mean, I'm just trying to find ways to step in that you can respond.

What we're asking for is not rocket science here. We're not asking for something extraordinary. Unlike Mr. Barofsky, who actually, you know, really has to get down at the papers, he has a badge for a reason. We're asking for the much broader articulation of what the plan is, transparency in the goals, transparency in the execution, in the strategy.

What we need is we need Treasury's commitment, and if that commitment is better done by statute, then that would be -- that would be Congress's decision.

BAUCUS: OK. Do you ask -- can you get the answer to that question, Mr. Barofsky, what questions you ask of Treasury, you know, in talking about conditions? That's going to give you some clue as to what they're -- what the goals are.

BAROFSKY: No, absolutely, Senator, and -- and part of our reporting requirement is to -- is to set that information out. We ask Treasury with our -- with each of our -- our data calls on a quarterly basis to give an explanation for each of the programs. On our last report, they just referred us to the Web site, but we're always hopeful that they'll provide more detailed information each time.

(LAUGHTER)

BAUCUS: Yeah. I won't -- I won't go there.

Mr. Dodaro, what -- what more powers should GAO have to get -- do the job?

DODARO: I need two bits of help.

Number one, passage of S. 340 would be an important safeguard for us going forward. I, again, appreciate your and Senator Grassley's sponsorship of that legislation. That would be a big help.

Even beyond that is the Federal Reserve issue. You know, based on your chart here, most of the money in the \$2.9 trillion is being spent under the tutelage of the Federal Reserve activities, and that's an area where we're statutorily prohibited. As long as they're operating on their monetary policy and the discount window operations in an open market committee, you know, we just can't do that.

BAUCUS: Well, you -- you make a good point. The role of the Fed has changed dramatically, so the usual defense of, well, we shouldn't intrude in the integrity and independence of the Fed, I think, no longer applies. We're talking about, you know, a role, an involvement, which is beyond just regulating the money supply.

DODARO: Yeah.

BAUCUS: There's -- now it's direct involvement in trillions of dollars which have very significant effects on inflation, potential inflationary effects, real management effects, related to what the Treasury, does or does not do. I mean, clearly, the Fed is working in concert with the Treasury. They're -- they're hand in hand here, and so I think it's only appropriate that we find some way to find out how the Fed's operate, where -- how it spends its money, and how recipients are -- are using that money, too.

I don't know -- you also said -- appreciate addressing this in a constructive way, and I agree with you, but, clearly, the role of the Fed has changed...

DODARO: Well...

BAUCUS: ... and, therefore, I think we have to look more closely at -- at -- and encourage the Fed to act much more transparently than it has.

DODARO: Yeah, and I think, you know, in -- in the short term, Mr. Chairman, there could be some carefully crafted legislation to give us authority either piggybacking off of when they used their emergency authority or not, but I -- I would make this point, also: You know, we said that there's a need to modernize the financial regulatory system more broadly speaking, that the current system's outdated, fragmented, and...

(CROSSTALK)

DODARO: ... this whole issue -- as that system is modernized, the question of proper oversight, proper accountability, and proper transparency will need to be -- to be revisited in that broader...

BAUCUS: How about resources? Do you have the -- Mr. Barofsky, the adequate resources to do your job because you -- you've got a lot of responsibility here?

BAROFSKY: We do, Senator. Part of S. 383 released the full \$50 million that you had -- you had fought for us to receive under the Stabilization Act, and -- and that will certainly take us -- take care of us for the time being. We will be coming back more when the time is -- the time is right to seek more financial...

BAUCUS: Well, I -- I thank you all for the job you're doing. Clearly, this hearing indicates there's immense uncertainty as to how the money's being spent, and I think you're all doing a very good job in trying to answer that question.

But I also think that, you know, you need a little help from this committee and from the Congress. You mentioned legislation which is helpful, but we encourage you to keep up -- keep the job up, do what you're doing, be very aggressive. Be very aggressive. And if you run into any problems at all, you -- you let us know because we want to work with you, help you do your job because you're -- you're in a much better position to ask these questions than we are, that we want to give you the full authority to go ahead and proceed.

So this is -- this is very -- this is very worrisome. The potential exposure, as I mentioned in my opening statement, is close to \$6, \$7 trillion. We spent \$2.9 trillion on the TARP there, as I said in the statement. You know, that's -- that's the size of the whole United States government last year. So we have two governments here. One's the -- one's the second government just (inaudible) financial institutions. There's a lot of transparency and accountability in the first government, you know. The next one is the issue here, and this -- that we're trying to grapple with, and thanks

for what you're doing.

Senator Grassley?

And I have to leave, so you can finish up.

GRASSLEY: OK. Thank you.

I only have a couple questions, so, obviously, I won't keep you long.

So the chairman can hear this, Ms. Warren, maybe if you're having trouble getting Treasury to give you information, if they'd like to sit down -- have some senators sit down with you when you're asking Treasury those questions, I'd like to hear them say why we aren't entitled to this information because the same people telling you no come before this committee and tell us they'll answer our questions, and they don't do it! So, you know, I -- I don't think they're lying, but there's a culture in -- in -- not just in Treasury. There's a culture in too much of the bureaucracy that, you know, we're going to drag our feet as long as we can get away with it.

Let me -- Senator Lincoln touched on this a little bit, to you Ms. Warren, about small business. Your panel has a different job than IG's or the GAO when it comes to oversight. Your panel's focused on policy. I'd like to know how you think that the TARP is helping small business. I consider them the engines of growth and job creation, et cetera -- I think 70, 80 percent of the new jobs.

The overwhelming majority of TARP money has, however, gone to large national and even multinational institutions, yet these institutions are the ones that seem to be doing less lending after getting the TARP money which means less money for small businesses. Thank God our community banks have stepped in and kept up their responsibilities.

Two questions: One's a short one, and one's a long one. I want to ask them both at the same time. Do you have any suggestions on how to hold these large banks accountable, and, number two, also since the federal government, through SBA, already guarantees small business loans, can you tell me how Treasury's purchase of these loans through Term Asset Loan Facility -- TALF, I suppose, is the acronym -- will improve small business owners' access to credit?

WARREN: Yes, Senator. I share your view that small businesses are probably our best engine for being able to get this economy back on track in job creation and other -- every other kind of innovative economic activity, but I have to go back to where I start this about laying out what your plan is and what you're trying to accomplish.

If the plan had been announced from the beginning that what we want to do is make sure that small businesses have enough money to continue to operate, then I don't think we would have designed the initial infusion of capital into the financial institutions in the same way. It would have gone to financial institutions who did small business lending as a substantial part of their operations, and then it would have gone on terms that said, "Show us what you have done in the past, and show us what you are doing after you receive the money."

So this program was not designed from the beginning, in my view, to -- to focus efforts on small business lending. We raised this question in our December report. We came back to it again in our January report. And now the place we're in is we're now rolling forward. This will be a significant focus not of the report that will be out in a few days, our April report, but our May report. We're deep into investigations about small business lending.

I will say for your question about the TALF, Senator, I am deeply puzzled about the underlying theory that when the portion of the loans that are already 100 percent guaranteed can't be sold in the marketplace and somehow we need to pay hedge funds in order to get involved in the sale of those loans, I -- this is a -- I'm struggling to understand the premise behind this portion of the program and, therefore, struggling to understand how it is that it will increase small business lending.

This is something -- I hope I will have a better answer in another month. We are working. We are investigating this right now. We are looking for more answers on it. But I can only say at this point this is a top priority for the Congressional Oversight Panel and an area where we are deeply troubled by the direction the Treasury has gone.

GRASSLEY: Yeah. So I think what you're saying is we weren't explicit enough when we wrote the legislation, and I don't know whether -- maybe this is too transparent on my part, but, you know, I think that maybe Congress was awed by a person that comes off of Wall Street making tens and tens of millions of dollars salary before he comes into the Cabinet, awed that you think he's got all the answers, and then you find out, when it's all said and done, he doesn't know a whole lot more about it than we in Congress do that are very generalist, and I think that's why this legislation was so poorly written in the first place. At least based upon what you just told me, it's -- it's -- you know, if we wanted to do small business, we should have said so more.

GRASSLEY: My last question, this is to Mr. Barcheski (sic). I've reviewed AIG's retention bonus plans. What bothers me is that the so-called (inaudible) really performance bonuses based on 2007 performance. From the design of the plan, it looks like that they knew that the 2008 performance was going to be bad. So because AIG knew it wasn't (ph) going to be paying performance bonuses in 2008, in a wink and a nod, AIG simply paid its employees their 2007 performance bonuses a second time, and they'll do it in 2009 unless -- regardless of the company's performance.

However, AIG's disclosure of the plan to investors in its May 2008 filing with SEC did not make that clear. It just describes a retention plan, in vague terms, without mentioning that it was calculated on 2007 performance.

I've got three questions, and I'll ask you to answer them separately. Is it possible to find out whether people at AIG wrote the bonus plan based on the 2007 performance because they knew AIG was facing massive losses in 2008?

BAROFSKY: Yes, that'll be part of an ongoing audit that we have. We'll capture that information.

GRASSLEY: If it is true that management rigged the bonus plan for that reason and failed to properly disclose that to investors, would that be a potential violation of securities law?

BAROFSKY: An intentional misrepresentation of material fact, if it met that criteria, would certainly potentially be a violation of the criminal law.

GRASSLEY: Do you happen to know whether SEC is examining whether the disclosure of the bonus plan was adequate?

BAROFSKY: We coordinate with the SEC on a regular basis, but I'd be reluctant to comment on any pending or existing matter.

GRASSLEY: OK.

You can't comment on it, but do you think you know?

BAROFSKY: Senator, I'm sorry. I don't mean to be overly cautious here, but we generally don't comment on other agency's activities unless they're public.

GRASSLEY: OK. Well, I shouldn't push you to do something you can't do, unless you're trying to get around me, and I don't think you are.

BAROFSKY: Never, Senator. Never. I know better.

GRASSLEY: OK.

Since the AIG is a major recipient of TARP funds, are you able to investigate whether disclosure of the bonus

plan was adequate?

BAROFSKY: We can and we will.

GRASSLEY: OK.

Now, for the chairman and all the other members, thank you for this fine testimony, and we're obviously going to have to be in touch with you on a regular basis. I hope the chairman will call you back frequently.

Thank you very much.

BAROFSKY: Thank you very ...

GRASSLEY: Meeting adjourned.

DODARO: Thank you, Senator.

GRASSLEY: You bet.

END

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