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STATEMENT OF NEIL BAROFSKY
SPECIAL INSPECTOR GENERAL
TROUBLED ASSET RELIEF PROGRAM

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT

March 19, 2009

Chairman Lewis, Ranking Member Boustany, and Members of the Subcommittee, I am honored to appear before you today.

The Office of the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”) was created under the Emergency Economic Stabilization Act of 2008 (“EESA”) to conduct, supervise, and coordinate audits and investigations of the purchase, management, guaranty, and sale of assets under the TARP. More than \$300 billion has already been expended, and Secretary Geithner has now outlined his plans for how Treasury will spend the balance of the \$700 billion approved by Congress under EESA.

In addition to the programs previously announced, Treasury has announced several new programs that will be implemented in the coming weeks, including efforts to deal with rampant foreclosures, to provide additional capital to struggling banks, to facilitate lending to small businesses, and to address the toxic assets that remain on many financial institutions’ books. As announced, the total amount of money potentially at risk in these programs, including those aspects of the programs that are funded in part by the Federal Reserve and FDIC, is in excess of \$2.9 trillion. Moreover, this does not include the \$750 billion that the Administration put aside in the budget that it has noted it may seek later this year.

To accomplish SIGTARP’s mission to oversee this vast amount of money for the American taxpayer, I have focused on three areas: transparency, coordinated oversight and robust criminal and civil law enforcement.

Transparency has been an area of focus for SIGTARP from day one. In late December, within the first two weeks of taking Office, I formally recommended that Treasury post all TARP agreements, whether with recipients of TARP funds or with its vendors, on the Treasury website. That recommendation has been adopted, and Treasury is in the process of posting all agreements to its website. Similarly, I pushed for, and obtained, oversight language in the Citigroup and Bank of America agreements that require those banks to account for and report on their use of the TARP funds.

SIGTARP is also using its audit function to bring increased transparency to the TARP. For example, we sent letter requests to each of the TARP recipients that received TARP funds as of

the end of January asking them to report on how they have used TARP funds and how they plan to use the funds that they have received but not yet spent. As of the drafting of this testimony, on March 18, 2009, all but one bank has provided SIGTARP with a response to our survey, as requested. We expect to start providing initial information concerning the types of responses we have received in the next 30 days. Of course, more complete analysis of the responses will require additional time to complete and likely will require follow-up contact with some recipients before we complete our work. In that same survey, we also asked TARP fund recipients to provide details on their plans to comply with applicable executive compensation restrictions and how they are complying with those requirements. Overall, we believe that this survey data and associated follow-up work will shed light on an area about which very little information has previously been available: what the banks have done with the TARP money.

This is a fundamental issue. If the American taxpayer is to be expected to fund this extraordinary effort to stabilize the financial system, it is not unreasonable that the public be entitled to know how those funds have been used by the recipients. On this issue, SIGTARP has recommended that all future TARP agreements contain provisions mandating that TARP recipients account for what is done with the TARP funds. Treasury has *not* adopted this recommendation across the board, and there have been complaints that SIGTARP's oversight efforts might dissuade participation in TARP programs. We do not view this as a criticism: if a bank or financial institution does not want to participate in a TARP program because it is afraid to inform the American public what it is doing with taxpayer dollars, then they should not be participating.

We have initiated two other audits that will also bring increased transparency to the TARP. First, we are looking into the impact of outside influences on the TARP application process, and we will report back to Congress on our finding as to what impact, if any, that lobbyists or other outside influences have had. Additionally, if necessary, we will make recommendations on dealing with such outside influences going forward. Second, we have begun an audit into the process under which Bank of America received \$45 billion in capital investment and is to receive a guarantee relating to approximately \$100 billion of toxic assets in four separate TARP transactions under three different TARP programs.

As to coordinated oversight, it has been and will continue to be a privilege and a pleasure to work closely with my co-panelist, Gene Dodaro, Acting Comptroller General at GAO. Over the past three plus months, GAO and SIGTARP have worked effectively to coordinate monitoring efforts to provide maximum oversight coverage while avoiding unnecessary or duplicative burdens on those charged with managing TARP. I have also founded and chair the TARP-IG Council, which has, as its members, GAO and the Inspectors General of the other agencies involved in aspects of the administration of TARP programs: the Inspectors General of the FDIC, SEC, FHFA, Federal Reserve, HUD, Tax Administration, Treasury, and our newest member, SBA. Through this and other efforts we are actively coordinating our efforts and sharing ideas for comprehensive audits and investigations.

In conducting oversight, one focus of SIGTARP has been to attempt to have a positive impact on TARP programs to increase oversight effectiveness and fraud protections as the programs are developed – in other words, *before* the money goes out the door. Because I did not take office until mid-December, I was not able to offer advice with respect to the early TARP transactions, including the design of the Capital Purchase Program and the agreement with AIG. However, we have been active in providing recommendations concerning the programs and contracts that followed. Pursuant to our recommendations, the Auto Industry, Targeted Invested Program and Asset Guarantee Program agreements all contain explicit acknowledgement of SIGTARP’s oversight authority to oversee the contracts. Moreover, at my Office’s recommendation, for many of the significant conditions imposed by the agreements, the recipients are required to establish internal controls to ensure that they comply with those conditions; and to report on their compliance, certifying, under criminal penalty, that their report is accurate. Collectively, these agreements – representing approximately \$465 billion of TARP investments and guarantees – are a significant step forward from an oversight perspective as compared to earlier agreements and programs.

We have also made a series of recommendations pertaining to the first part of the \$200 billion Term Asset-Backed Securities Loan Facility (“TALF”) program. Similar to the recommendations made for the TALF, SIGTARP has provided Treasury with several

suggestions as to how to structure the loan modification program to guard against vulnerabilities to fraud.

The scope and variety of the announced TARP programs, now involving nine different programs and nearly \$2.9 trillion, leads to our third area of focus, civil and criminal law enforcement. Of the four primary oversight bodies referenced in EESA, SIGTARP stands as the sole TARP oversight body charged with criminal law enforcement authority: as the cop on the beat. This is one of our most important functions, and we are meeting this unprecedented challenge head on.

We are exploring task force and similar regional relationships throughout the country to deter criminal activity before it occurs, and to investigate and prosecute any and all who attempt to profit criminally from this National crisis. On that front, I am pleased to announce that we have established a multi-agency task force focused on the TALF program, a New York Federal Reserve/Treasury program that has been announced as eventually becoming a trillion dollar program. The TALF Task Force will work collectively to identify fraud vulnerabilities in the TALF program and proactively and aggressively investigate any indications of wrongdoing associated with the program. We believe that this Task Force has already served as a powerful deterrent, and when we detect fraud, rest assured we will promptly investigate the matter and refer it to the relevant and appropriate state or federal prosecutor for quick and effective prosecution. We believe that the TALF Task Force will serve as a model for other multi-agency approaches to TARP programs, and we are already planning a coordinated response to potential fraud in other parts of the TARP, including the recently announced mortgage modification initiative.

I am also very pleased to announce that SIGTARP has developed a partnership with the talented law enforcement analysts working with the New York High Intensity Financial Crime Area (NY HIFCA) program. SIGTARP investigators will work hand-in-hand with HIFCA analysts to identify indicators of fraud associated with TARP prospectively through comprehensive data research and analysis, and HIFCA analysts will provide analytical support with respect to SIGTARP's ongoing investigations.

Additionally, we have begun our outreach to potential whistleblowers and those who may have tips about ongoing waste, fraud and abuse in TARP programs. The SIGTARP Hotline is operational and can be accessed through the SIGTARP website at www.SIGTARP.gov, and by telephone at 1 (877) SIG-2009. The Hotline has already yielded results, and we have opened an investigation based on a whistleblower complaint. Plans are being formulated to develop a fraud awareness program with the objective of informing potential whistleblowers of the many ways available to them to provide key information to SIGTARP on fraud, waste and abuse involving TARP operations and funds, and explaining how they will be protected. Training programs are being developed to instruct law enforcement at a variety of agencies to assist in the oversight of the TARP, particularly with respect to the recently announced programs. Indeed, one of the primary functions of the TALF Task Force will be to sensitize law enforcement and prosecutorial offices to the potential for fraud, and to provide an easy referral source should they encounter any indicators of fraud.

We stand on the precipice of the largest infusion of Government funds over the shortest period of time in our Nation's history. History teaches us that an outlay of so much money in such a short period of time will inevitably attract those seeking to profit criminally. If, by percentage terms, some of the estimates of fraud in recent government programs apply to the TARP programs, we are looking at the potential exposure of hundreds of billions of dollars in taxpayer money lost to fraud. The TARP program is too important, and taxpayer funds are too dear, to allow that to happen.

The proactive cooperation and coordination that is at the heart of our investigative strategy is resource intensive. While I believe that SIGTARP is effectively establishing a framework that will permit us to meet our oversight obligations with respect to the nearly \$3 trillion at risk in the TARP programs, we face serious challenges. Most significantly, we have had significant difficulties in meeting our hiring needs. We face many of the same problems faced by Treasury itself as it hires TARP managers, as outlined by GAO's recent report to Congress, including the limitations on pay, the difficulties of hiring into a demanding federal agency, and our conflict of interest rules, which, of course, limit our ability to hire employees who have represented or worked for the entities that we investigate and oversee or have a financial interest in them. We

also face additional challenges given our need to identify highly trained and experienced government investigators and auditors and to convince them to join what is, by definition, a temporary agency.

With the passage of the recent stimulus bill, which provides more than \$300 million in new funding to other law enforcement agencies and Inspectors General to provide oversight for programs funded by the bill, we are also facing stiff competition for a limited pool of experienced investigators and auditors as many audit organizations are ramping up to deal with new audit requirements included in the recently enacted stimulus legislation. Furthermore, the TARP program has changed significantly since EESA was passed last October. Originally intended to purchase and manage \$700 billion of toxic assets, that task is now contemplated to represent just a portion of one of the nine announced programs totaling almost \$3 trillion – in sum, the total number of programs and dollars to be overseen now dwarf the original scope and amounts contemplated when Congress created my office. To help us deal with these challenges, I ask for swift approval S. 383/H.R. 1341, a bill that unanimously passed the Senate on February 4, 2009, and which addresses some of these hiring hurdles and would provide significant assistance in helping us to meet these challenges.

Finally, I would like to make a couple of comments about the controversy surrounding the bonus payments that AIG has recently made to its executives. First, both in my role as the Special Inspector General, and as an individual taxpayer concerned with stabilizing the financial system in a manner that does not reward those who caused the crisis in the first instance, I too am frustrated with these very substantial bonuses given at a time when AIG would have by now been in bankruptcy proceedings but for huge, repeated infusions of government money.

In this regard, we are working closely with the New York State Attorney General's investigation in this area, and are coordinating with the Department of Justice and its examination of the options available to recover tax payer money. We also plan to launch an audit examining Federal monitoring and enforcement of executive compensation restrictions imposed as a condition of Federal financial assistance to organizations such as AIG. As part of this audit, we will be looking closely to ensure bonuses to AIG employees are not inconsistent with AIG's legal or contractual obligations, and if there are any inconsistencies, we will act aggressively to

recover the taxpayer's money. Preliminary information we have seen indicates that the TARP contract between AIG and Treasury that was entered into back in November specifically contemplated the payment of bonuses and retention payments to AIG employees, including AIG's Senior Partners. SIGTARP will be reviewing the process at Treasury with respect to Treasury's decision to authorize and approve such payments, both at the time it entered into the contract with AIG and since that time.

Chairman Lewis, Ranking Member Boustany, and Members of the Subcommittee, I commend you for your efforts to ensure that the trillions of dollars being expended under TARP-related programs receive close oversight scrutiny. This concludes my statement and I would be happy to answer any questions you may have.

SIGTARP Hotline

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline.

By Online Form: www.SIGTARP.gov

By Phone: Call toll free: (877) SIG-2009

By Fax: (202) 622-4559

By Mail:

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