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SENATE FINANCE COMMITTEE

**STATEMENT OF NEIL BAROFSKY**  
**SPECIAL INSPECTOR GENERAL**  
**TROUBLED ASSET RELIEF PROGRAM**

BEFORE THE  
UNITED STATES SENATE  
FINANCE COMMITTEE

March 31, 2009

Chairman Baucus, Ranking Member Grassley, and Members of the Committee, 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, guarantee, and sale of assets under the TARP. More than \$300 billion has already been expended, and Secretary Geithner has recently provided more details about Treasury’s plans for how Treasury will spend - and leverage - the bulk of the full \$700 billion approved by Congress under EESA.

In our second report to Congress due on April 20, 2009, SIGTARP will discuss several of the new programs recently announced by Treasury and our work concerning the original programs. Some of these new programs include 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 under our oversight, including those aspects of the programs that are funded in part by the Federal Reserve and FDIC, is as much as \$2.97676 trillion. I have included as an attachment to my testimony a chart that lists the different amounts that Treasury has stated it will dedicate to each program, and the amounts that Treasury has indicated will come from the TARP to support these programs. These figures do not reflect additional funding that may be related to the revised auto program announced yesterday, nor does it include the \$750 billion that the Administration put aside in its budget request that it has noted it may seek later this year, any leverage it may apply to those additional funds, or the leverage that it may seek to apply to the remaining TARP funds (or those that may be returned by recipients).

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 days 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. We continue to press for increased transparency as Treasury rolls out the new TARP programs.

SIGTARP is also using its audit function to bring increased transparency to the TARP. Our first two audit efforts were launched with a survey of TARP recipients on their use of TARP funds and their compliance with TARP executive compensation requirements. These audits were related to two of the most frequently asked questions by the Congress and the public regarding the TARP program. As a part of the audit, SIGTARP issued a survey of recipients of TARP funds, which asked: (1) what had recipients done with the money they had received from Treasury, and (2) whether they were complying with executive compensation requirements imposed as a condition of receiving the funds. Beginning on February 5, 2009, SIGTARP sent letters to the 364 TARP recipients who had received assistance through January 2009. Most of the recipients were financial institutions receiving assistance under the TARP Capital Purchase Program. Recipients were asked to provide their responses within 30 days of the date of the request, and to include copies of pertinent documentation to support their responses. Attached to my testimony is a copy of the letter that we sent out.

As indicated in Table 1 below, the firms surveyed varied in the amount of funding received, but the majority of funding went to a small number of recipients, with 26 firms receiving approximately 93 percent of the funding through January 30, 2009.

**Table 1: Number of TARP Recipients Surveyed by Funding Received**

<b>Funding category</b>	<b>Number of firms</b>	<b>Funding received (in billions)</b>	<b>Percentage of funding</b>
\$10 billion or more	8	\$219.3	73.4
\$1 billion to \$9.9 billion	18	58.3	19.5
\$100 million to \$999.9 million	54	14.6	4.9

Less than \$100 million	284	6.6	2.2
<b>Total</b>	<b>364</b>	<b>\$298.8</b>	<b>100</b>

Source: SIGTARP analysis of Treasury data.

Note: The total funding associated with the survey recipients included \$190.5 billion under the Capital Purchase Program, \$40 billion under the Targeted Investment Program, \$40 billion under the Systemically Significantly Failed Institutions Program, \$23.3 billion under the Automotive Industry Financing Program, and \$5 billion under the Asset Guarantee Program.

As of March 23, 2009, SIGTARP had received responses from all 364 TARP recipients—a remarkable 100 percent response rate—with additional supporting information arriving beyond that date. Analysis of that information is ongoing and any conclusions are tentative; however, SIGTARP’s initial look at some of the responses indicates that those responding to the request for information provided a broad range of answers to the two sets of questions. One thing, however, was apparent from the responses – complaints that it was impractical or impossible for banks to detail how they used TARP funds were unfounded. While some banks indicated that they had procedures for monitoring their use of TARP money, others did not but were still able to give information on their use of funds. I believe this makes an even stronger case for a recommendation we made back in December and which up until now has not been adopted – Treasury should require TARP recipients to monitor their use of funds and be required to provide certified reports to Treasury on how they are using taxpayer money.

While some banks may have provided general responses, others identified detailed and specific uses of the funds, in some cases with granular detail. For example, some banks provided information about specific loans that they could not have made absent TARP funds, others specifically detailed debt that were able to pay down, and some gave the precise amount of investments that they made with TARP funds. Respondents also provided varying degrees of documentation to augment and support their narrative responses, with some noting that additional documentation had been segregated at their office and were available for review as needed.

As indicated, while time will be required to fully and thoroughly assess the responses received, SIGTARP can report that, based on an initial review of the responses that we received:

1. Respondents provided diverse answers to how funds received have been used such as to strengthen the capital base of individual banks providing a foundation for lending activities; retiring debt, purchasing mortgage backed securities, increasing credit lines, making loans, etc.
2. Some respondents spoke to new lending activities in relationship to actual TARP funds received, whereas others spoke of leveraging the funds to achieve greater lending than that related to the face value of TARP funds received. Some, however, noted that while they were committed to making prudent commercial and consumer loans, growth of new loans had slowed as a result of the economy and the decrease in demand.
3. Some respondents indicated that the Treasury's equity investment was separately recorded as a discrete component of the bank's capital, but the actual funds associated with the investment were not physically segregated from other cash funds; others cited efforts to physically segregate the funds or to manage them separately, at least for a time, such as the funds being held at the holding company level, later to be "down-streamed" to individual banks.
4. Responses to questions regarding compliance with executive compensation restrictions varied from simple statements of compliance based on the size of their banks and compensation, to detailed answers regarding extensive efforts to assess compensation practices relative to restrictions associated with their funding agreements, including having retained expert consultants to help with the assessments.
5. Some responses related to executive compensation took note of the changing guidance and legislation related to executive compensation requirements which limited their ability to give a complete answer at this time; nonetheless, others noted actions they were taking at this time based on their known requirements, recognizing that final guidelines have not yet been issued.

Given the diversity of the responses and the fact SIGTARP asked for and received the information from the banks in narrative form, it will require some time to (1) fully sort through the data, (2) identify areas where follow-up contact with respondents is needed, and (3) identify the degree of commonality of responses in selected areas that may be aggregated for reporting purposes.

To further assess and complete its analysis of the responses during a period when it is still in the process of staffing its audit division, SIGTARP has awarded a contract to Concentrance Consulting Group, a Section 8(a) women-owned small business to help analyze the data. Importantly, it is a firm with proven experience with organizations dealing with business sensitive data such as kind included in our responses. The contract with Concentrance calls for completion of their analysis of the survey responses by June 2009. SIGTARP expects to issue a

report on the survey results as quickly as possible, subject to completion of any needed follow-up work, but hopefully within a few months.

Finally, there have been some complaints to the media that SIGTARP's oversight efforts might dissuade participation in TARP programs. Some might take this as a criticism; we do not. If a bank or financial institution does not want to participate in a TARP program because it is unwilling to disclose what it is doing with taxpayer dollars, or because it is afraid of SIGTARP's vigorous fraud detection programs, keeping those participants out of the TARP will only benefit the American taxpayer.

We have initiated three other audits that will also bring increased transparency to the TARP. First, we are looking into efforts to guard against any inappropriate external influences over the TARP application process, and we will report back to Congress on our findings. We will make such recommendations as needed based on our findings. 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 involving multiple TARP programs.. Third, we have begun an audit into federal oversight of executive compensation requirements including bonus payments to American International Group (AIG). Finally, in response to a letter that I received last week from 27 members of Congress, we are in the process of preparing an audit into AIG's payments to counterparties and other related issues raised in that letter.

As to coordinated oversight, it has been and will continue to be a privilege and a pleasure to work closely with my co-panelists, Gene Dodaro, Acting Comptroller General at GAO, and Professor Elizabeth Warren, Chair of the Congressional Oversight Panel (COP). Over the past three plus months, GAO and SIGTARP have worked effectively to coordinate audit efforts to provide maximum oversight coverage while avoiding unnecessary or duplicative burdens on those charged with managing TARP. We also have periodic meetings with the COP to discuss areas of interest, coordinate oversight and suggest areas to pursue in future reports. 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 and GAO's 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 3 programs and associated agreements – representing approximately \$484 billion in funds<sup>1</sup> subject to SIGTARP oversight – are a significant step forward from an oversight perspective as compared to earlier agreements and programs. In our April report, we will detail additional recommendations to Treasury to avoid waste, fraud and abuse in the recently announced TARP programs, and provide Congress with a status report on the extent that Treasury has implemented our previous recommendations.

The scope and variety of the announced TARP programs, now involving eleven different programs and up to \$2.976 trillion, in funds subject to some degree of SIGTARP oversight, leads to our third area of focus, criminal and civil 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.

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<sup>1</sup> This includes \$25 billion under the Auto Program, \$40 billion under the Targeted Investment Program, \$419 and billion under the Asset Guarantee Program.

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 up to a trillion dollar program and will now serve two tasks: to reinvigorate the “shadow” financial system by returning liquidity to the securitization market, and to help move toxic assets off of financial institutions books. The TALF Task Force includes many major law enforcement entities each bringing a unique level of expertise and capability to assist the greater effort. The TALF Task Force will work collectively to identify fraud vulnerabilities in the TALF program and proactively and aggressively investigate any indications of wrongdoing. 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. The TALF Task Force had its first formal meeting last week, and we intend for it to redefine the policing of federal government programs: proactively setting up a law enforcement response through training and the leveraging of resources *before* fraud occurs. This structure recognizes the inevitability of fraud in large government programs and will give us the ability to make better recommendations so that the emerging programs will be better designed to avoid fraud; to identify possible fraud related activities and appropriately share them among participating agencies to augment limited resources and improve fraud detection; to educate and sensitize law enforcement so that we may quickly detect fraud and any emerging criminal patterns; and to establish a framework in place to receive and investigate criminal referrals relating to these extremely complex programs. We believe that the TALF Task Force will serve as a model for other multi-agency approaches to TARP programs, and we are considering expansion of the TALF Task Force to include investigations relating to the recently announced Public Private Investment Program. We are also 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](http://www.SIGTARP.gov), and by telephone at 1 (877) SIG-2009. The Hotline has been contacted approximately 180 times during its short existence and has already yielded results, and we have already opened investigations based on whistleblower complaints. 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. In this regard, existing capabilities at several other agencies that routinely receive fraud complaints, have been sensitized to the SIGTARP mission and the various TARP programs, and mechanisms have been established to share TARP related complaints as they are received.

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.

I would like to take this opportunity to express my gratitude to both houses of Congress for their bipartisan support in unanimously passing S.383, and to the several members of this Committee who cosponsored it. This bill will provide some additional flexibility to hire the kind of experienced staff required to oversee the massive infusion of government funds into the private market.

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 have been coordinating with the Department of Justice and its examination of the options available to recover tax payer money. As already noted, we have an audit underway 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 that the bonuses to AIG employees are not inconsistent with AIG's legal or contractual obligations, to report to Congress the sequence of events which led to the approval of these payments by government officials (including the general approval of retention payments in AIG's agreement with Treasury in November 2008), and to the extent that we find that there were miscommunications among AIG, Treasury and Federal Reserve officials regarding these payments, we will make recommendations to ensure that all parties involved in TARP related programs effectively communicate with one another.

Chairman Baucus, Ranking Member Grassley, and Members of the Committee, 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](http://www.SIGTARP.gov)

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

By *Fax*: (202) 622-4559

By *Mail*:

**Hotline: Office of the Special Inspector General  
For The Troubled Asset Relief Program**  
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