Statement by Congressman Steven C. LaTourette (R-OH)
House Committee on Financial Services
November 18, 2008

Mr. Chairman, I thank you for holding this important hearing today on Oversight of Implementation of the Emergency Economic Stabilization Act of 2008. This is an especially important hearing for the employees and shareholders of National City Bank in Cleveland, OH, who I believe have been horribly damaged by this Act.

Mr. Chairman, there is only one bank among the nation's 25 largest that was denied bailout money – National City Bank. This Civil War-era bank was one of the few that survived the Great Depression in Cleveland, yet it couldn't weather a few weeks of Treasury Secretary Paulson and his great bailout scheme. National City Bank – a Fortune 500 company and the nation's seventh largest bank for deposits – was forced into a merger at a fire-sale price by Comptroller of the Currency John Dugan, a rogue regulator with a $700 billion checkbook and no accountability.

National City was not only denied bailout funding, but its share was directed to its buyer – PNC of Pittsburgh. Mr. Chairman, this Act gives authority to the Secretary of the Treasury, not the Comptroller of the Currency or the various regulators. They should not be calling the shots and picking winners and losers, that is the sole authority of Secretary Paulson. The law specifically states under Necessary Actions: "The *Secretary* is authorized to take such actions as the *Secretary* deems necessary to carry out the authorities in this Act."

The bill never states or even implies that it is the job of Comptroller of the Currency, John Dugan. In fact, I find it interesting that the Comptroller of the Currency is mentioned just once – one time – in a more than 300-page law! The only reference is that "the Secretary shall consult with the Board, the Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairman of the National Credit Union Administration Board, and the Secretary of Housing and Urban Development."

Mr. Chairman, I had a conversation with Neel Kashkari shortly after the acquisition of National City by PNC was announced. He was hand-picked by Secretary Paulson to administer the TARP or troubled assets program. He's from my district and grew up in the great city of Stow, OH. He's bright and a Browns fan, so I'm inclined to like him. Mr. Kashkari walked me through the process. I appreciated his candor, but I also found what he told me alarming. He made it abundantly clear that he is basing TARP decisions and awards solely on the recommendations of regulators like John Dugan. I don't know if that was the truth, buck-passing or he was hiding behind the Comptroller's skirt, but it's wrong. This isn't the "Secretary" consulting with the Comptroller of Currency; it's the Secretary carrying out the Comptroller's wishes -- lock, stock and barrel.

Congress didn't pass a $700 billion bailout bill that gave Comptroller of the Currency John Dugan any real authority, much less the authority to play God and pick winners and losers. The Comptroller has no authority to steer a "losing" bank's TARP share to a winning bank. This bill was sold as one to purchase troubled assets, not banks.

As recently as last week, Secretary Paulson stressed that TARP money is to be used for lending. How can National City expand lending when more than $3 billion in TARP money it's eligible for is given to another institution, PNC? Does anyone think more lending will be the outcome in the Cleveland area when a bank that's been around since 1845 is gobbled up with government money and ceases to exist?

This bailout bill, which I opposed, has already morphed from a troubled assets or TARP program to a Capital Purchase Program. Secretary Paulson said last week that on the day the bill was signed into law, he knew that buying up troubled assets wasn't going to work and he'd have to go to Plan B, whenever he happened to arrive at a Plan B.

This bill was supposed to calm the markets, ease the credit crisis and restore confidence. It has failed miserably on all counts. Let's end the pretense that this is a rescue bill or there's even a TARP program. In the eight weeks since Secretary Paulson first mentioned a bailout, on September 19, the DOW has dropped about 25 percent. Ask any American how their 401k is doing. Are you or the economy better off now than eight weeks ago? The answer is NO.

I am asked often by constituents if Treasury is just winging this and making it up as they go along, and how can anyone dispel that? There is not a single provision in this law that outlines the creation of a Capital Purchase Program. Today, it is not merely a part of TARP, but seems to have replaced it.

Mr. Chairman, imagine if Congress passed legislation that gave the Secretary of Health and Human Services the authority to immediately spend $700 billion to provide health care to families and the Secretary, without consulting Congress, decided he wouldn't provide health care to anyone and instead would give billions of dollars to private insurers with few strings attached. This isn't just a bait and switch; it's a wholesale disregard for law.

In addition, the bailout law REQUIRES the Secretary of Treasury to publish program guidelines within 45 days of enactment of the bill or within 45 days of the first purchase of troubled assets. Guess what? Today is the 46th calendar day since the bill was enacted. Not a single troubled asset has been bought, and it appears that not a single program guideline has been published. Now, we find out that no troubled assets will be purchased. Does that mean we move forward with essentially no rules or guidelines?

We were also promised transparency, and that perhaps is an even greater bait and switch than the promise that the money would buy up troubled assets. Treasury is not even identifying most of the institutions getting TARP money, and is leaving the announcing duties up to the recipients. I had counsel on this committee help draft a sweeping and inclusive public records request to Treasury and OCC on Oct. 30. They were given until Nov. 3 to indicate if they intended to comply and until November 10 to provide ALL records pertaining to the use of TARP money as it related to the acquisition of National City by PNC. Yesterday, Treasury sent me a letter saying it does not intend to provide a single record, and cannot compel Currency to do so. Even worse, Treasury wrote that after nearly three weeks of searching they were "unable to locate records reflecting an application by National City Bank for funding under Treasury's Capital Purchase Program." That explanation is about as plausible as "the dog ate my homework."

I would like to remind the Chairman that when I raised the possibility that Comptroller Dugan may have steered $7.7 billion in bailout money to his former client, PNC, it took less than 24 hours for him to issue a very curt, 'How dare you impugn my integrity?' response. He also was able to immediately submit a letter to the editor of the *Cleveland Plain Dealer*. Yet, when Treasury/OCC were given weeks to provide records that might shed light on how the National City-PNC unfolded, officials had little to say and no records to share. The *Wall Street Journal* reported that on Sunday, Oct. 19, Comptroller Dugan sent "a carefully worded email to National City's angry directors, saying he couldn't assure them that the company would have access to any of the government programs."

What's in that email and others that the Comptroller and Treasury refuse to release? When Mr. Dugan replied to my letter (a response he immediately released to the national media), he claimed he was "astonished" that I would make accusations about his role in the National City-PNC deal. Well, I'm astonished if Mr. Dugan and the Secretary think they can do this deal in secret when $7.7 billion of taxpayer money is in play. The American public and National City's shareholders deserve to know how winners and losers are picked, and why.

The New York Times reported November 4: "Industry sources said that banks, after filing a two-page application, are assigned a ranking from 1 to 5 — with 1 or 2 essentially guaranteeing that they are eligible, and 5 insuring they are not — by their regulator. The five officials then make what can be a life-or-death decision, with a thumbs-down generally interpreted to mean that a bank was not healthy enough to survive on its own."

My guess is that Mr. Dugan will assert that National City never received TARP money because it never technically applied for it, but it is abundantly clear that National City wanted help and was shot down every step of the way by the Comptroller's office. I am reluctant to use a Titanic reference, but Mr. Dugan has apparently decided it's his role to stand on the deck and decide who gets a life raft. Goldman Sachs, Secretary Paulson's former employer, was a bank holding company a matter of weeks; it received $10 billion from Treasury. Most of the regional banks eventually got help, too. But National City, which almost every analyst agreed had turned the corner and had weathered the sub-prime mess, was completely shut out of the process.

Mr. Chairman, I have pored through thousands of pages of SEC reports, media reports and analyst accounts of this deal. I remain deeply troubled that National City was bullied and taunted by this regulator into a quick sale. National City had a gun to its head to be sure – and that gun was the omnipresent threat from John Dugan and his office that National City should not expect any funding or help, and the clock was ticking. There was a deadline National City didn't dare cross, and that deadline was going to be an announcement on Friday, October 24, that another round of 22 banks would get bailout money and National City would not be on that list. The message was clear to National City and its board members: If you don't play along, your stock will crash and your bank will be taken over by the Feds and will cease to exist.

I wish I could tell you how National City or PNC were ranked on the bailout meter. But I cannot because Treasury has decided this must be done in a cloud of secrecy, which is a far cry from what Anthony Ryan, Acting Under Secretary for Domestic Finance, said at an October 28th conference in New York. "We are… moving with great transparency, communicating with Congress and the oversight authorities at every step." I'm not sure how he said that with a straight face, but another comment from him at the same event rings eerily true: "A program this large and complex would normally take months or years to establish. We don't have months or years and so we are moving quickly, and methodically, to facilitate the necessary results."

Was the wholesale demise of National City Bank a necessary result? Why does Citigroup, which has lost 70 percent of its stock in the past year, get $25 billion in bailout funding? Was it so they could turn around weeks later and cut 53,000 jobs? Remember, just weeks ago Citigroup was allegedly so financially robust that it planned to acquire Wachovia. Why does US Bank, whose stock has tumbled 60 percent in the year, get $15 billion? Why does PNC, whose Tier 1 Capital Ratio was 8.2 percent, get $7.7 billion? Why does National City, with Tier 1 capital at 11 percent and among the highest of the nation's largest banks, get shunned, treated like a financial leper and forced into a sale by a handful of regulators?

Mr. Chairman, I do not fault PNC in this endeavor. It seems they played by rules, but let's be clear that the rules were very advantageous to them. They will benefit tremendously from a stealth tax break that Treasury/IRS implemented on September 30 that could almost equal the purchase price of National City. They are, in effect, getting a bank with $100 billion dollars in deposits and $150 billion assets for free.

PNC will benefit tremendously from TARP money, and submitted an application for their fair share. It is not PNC's fault that regulators urged them to modify their application to also ask for National City's share. I have to imagine the folks at PNC were downright giddy when Treasury told them not to settle for $3.5 billion in TARP money when they could get $7.7 billion, including National City's share.

PNC was able to buy National City at $2.23 a share on Friday, Oct. 24th, a 19 percent discount from its $2.75 close just one day earlier. Most analysts feel National City's stock was actually worth between $4 and $5 a share.

On October 24, PNC Chair Jim Rohr held a conference call and was asked by Deutsche Bank analyst Mike Mayo if the sale of National City was "forced by the government." Rohr responded: "I don't know if it was forced by the government. You would have to ask them. It was a competitive bid last night."

Just two days before the sale, bank analyst Mike Mayo released a report on National Bank (NCC) and suggested that NCC might use the TARP program "which we will feel will benefit NCC as much as any bank." He also wrote that "National City maintained a peer leading Tier 1 ratio (11%) and a …tangible equity ratio of 8.93%. Avg. deposits were down 3% annl. and period end balances were down slightly more, but the number of new accounts in the retail bank increases across most products and it seems deposits have increased during October."

The head of PNC has indicated he intends to keep a number of jobs in Cleveland, and I have no doubt that PNC will be a good corporate citizen. Still, the way this deal came together raises questions. PNC has indicated it had been in discussions to buy National City for nine months, yet they never did – not when National City's stock was valued at $15, $8 or even $2 a share. SEC records indicate that PNC signed a confidentiality agreement with National City on Oct. 3, the very day the bailout became law, and began formal negotiations on Oct. 5, when National City was trading at $3.51 a share.

The *Wall Street Journal* reports that PNC passed on buying National City on Oct. 12, even though National City's stock had closed the previous Friday at $2 a share. In the Friday, Oct. 17th edition of the *Pittsburgh Tribune-Review*, PNC Chair Jim Rohr is quoted as saying that PNC was "evaluating" whether to take TARP funding. In that same article, Mr. Rohr declined to discuss National City merger rumors, and said PNC would be "wary of any acquisition today." He further states that "In this environment, you have to be very careful because the economy is headed south, and you don't want to catch a falling knife." National City's stock closed at $3 on Oct. 17.

As we all know, just one week later, a merger agreement was finalized and PNC had agreed to buy National City at $2.23 a share, with the federal government gifting PNC $7.7 billion in TARP funding and up to $5.5 billion in a tax break. I guess National City was no longer considered a falling knife. It was a gift. The deal, as they say, was too good to pass up.

Mr. Chairman, I do not know whether we can un-ring this bell, or if the consequences of un-ringing it are far worse for the employees and shareholders of National City Bank, and the Northeast Ohio. What I do know is that this bailout is not working as intended, and that our government, and particularly the Comptroller of the Currency, has irreparably injured National City Bank, its employees and its shareholders, apparently just because it can.

Mr. Chairman, if you read the bill you will see that the purposes of the Act are:
(1) to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States; and

(2) to ensure that such authority and such facilities are used in a manner that--
- (A) protects home values, college funds, retirement accounts, and life savings;
- (B) preserves homeownership and promotes jobs and economic growth;
- (C) maximizes overall returns to the taxpayers of the United States; and
- (D) provides public accountability for the exercise of such authority.

What do you say to the guy in Lexington, KY, who invested in National City and lost $109,000 from this deal – a good chunk of his retirement? Is that protecting life savings? What do you say to the National City employee who spent his career there and his 401(k) is now worth $21,000? Is that protecting retirement accounts?

The Act is intended to promote jobs and economic growth, yet Treasury wants to vaporize one of Cleveland's largest employers; 29,000 jobs in nine states are at risk, including 8,000 jobs in Ohio. Also, are we truly maximizing returns to taxpayers by giving one bank $7.7 billion in taxpayer money to force another one off a cliff? And as for public accountability, that is simply a sham.

Congress can insist that no future bailout money be used for mergers and acquisitions, but that does nothing to help the one merger on the table – National City and PNC. The clock is ticking. There are other banks out there – perhaps in your district – that might be strong-armed and intimidated by the Comptroller of the Currency. Mr. Chairman, any bank that is passed over for TARP money or simply fears being passed over will watch closely to what happened to National City Bank. They will also watch to see what action – if any – we take to ensure this doesn't happen again. The Treasury must give National City its share of bailout money and squash this punitive merger. We have to decide if a handful of bureaucrats led by John Dugan and other regulators -- who have no real authority under this law -- are going to be allowed to run the show and use taxpayer money to drive banks like National City out of business.

It is not what Congress intended, nor what Congress should stand for.