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U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

November 12, 2008

The Honorable Henry M. Paulson, Jr.
Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Paulson:

We write to inquire about your implementation of the Emergency Economic Stabilization Act (EESA). In unsettled times, taxpayers have a right to expect that government actions will have real, measurable and positive effects on the economy without subjecting the nation to a spate of runaway spending. The worst possible outcome would find Americans left on the hook to fund economic experiments which do not lift us out of the financial quagmire, but actually levy an even heavier cost in money, lost jobs and missing progress. As you know, many of us were opposed to the legislation and its unprecedented grant of authority to the Secretary of the Treasury. The legislation provided some accounting controls and the promise of Congressional oversight, but it contained no mechanism to chart economic progress, or lack of it, and it made analyzing the impact on the budget and national debt a difficult business with dubious results.

We commend you for your decision to use the authority provided by EESA to direct that the funds be made available to financial institutions as direct capital infusions exchanged for preferred, non-voting, stock. This is a step toward ensuring taxpayers are adequately protected while improving bank capital and liquidity. However, we still have questions about the nature of this bailout and the difficulties of effective implementation.

As the Treasury executes EESA, there are a number of questions to which we would appreciate your response before November 19.

1. You recently issued guidelines for the criteria for selecting asset managers. How did you determine the criteria to be used in selecting asset managers?

2. Will contractors, or asset managers acting as agents, be compensated through a flat rate contract fee or performance-based arrangements? If compensation is

performance based, what are the criteria that will be used to measure performance and how will compensation be structured?

3. You indicated that asset managers would be chosen quickly, and yet no selections have been announced. Can you explain the delay? Is some of this delay due to questions over pay for asset managers? Does the Treasury have the personnel and resources necessary to select and oversee these managers?

4. Federal contracts are notorious for cost overruns. How will you ensure contractors to the Treasury avoid cost overruns?

5. Even in prosperous times, the market for the equity tranches of mortgage-backed securities is illiquid, and there is only a limited market for mezzanine tranches. Will the Troubled Asset Relief Program (TARP) be purchasing equity or mezzanine level tranches? If so, how will such asset values be determined?

6. It is vital that Treasury manage conflicts of interest for both contractors and past and future Treasury employees, including those who have worked for financial institutions that have been issued, invested, or otherwise managed portfolios that included mortgage-backed securities (MBS).

   a. EESA requires you establish interim guidelines for conflicts of interest (COI) that you issued on October 6, 2008. Please explain how you developed the interim guidelines and how the final regulations will differ from the interim guidelines. When will final guidelines be issued?

   b. How will you develop and institutionalize a system for conflict prevention and mitigation?

   c. What are the key components you will use to evaluate contractors' conflict mitigation plans regarding your guidelines and to enforce compliance with these guidelines?

   d. What are the relevant responses to potential conflicts of interest? Will contracts be terminated for violations of the COI provisions since they will be legally binding as incorporated in the contract? If not, what is the remedy? Given the interconnected nature of the financial system, what is the likelihood that you will not face substantial and ongoing COI issues?

   e. The interim guidelines state you "may" require certain non-disclosure agreements of contractors to prevent disclosure of sensitive information. Please explain why it would be appropriate not to require non-disclosure agreements for all contractors.

f. The interim guidelines state you or your designee may waive a COI. Under what circumstances do you foresee the need and public policy benefit of granting a waiver of a COI?

7. Smaller firms have been directed to partner with larger firms that are awarded contracts with Treasury. Many of the larger firms that have incurred substantial losses as a result of their involvement in the MBS and collateralized debt obligation markets will likely bid on contracts. Is there any minimum percentage of business the contracting firm must dedicate to subcontractors and smaller partnering firms? Is there any penalty for the contract holder if it chooses not to partner with smaller firms?

8. You have chosen not to release a list of banks which will be receiving funding. Is this level of secrecy appropriate in Federal dealings? Will you make the names of institutions and amounts invested available at a future time? If so, when?

9. Treasury appears to have set itself up as a matchmaker for banks – PNC Financial Services acquisition of National City Corporation was backed by Federal funds. How strong a role are you taking in such deals? Do you plan to foster additional mergers? Are you selecting takeover targets for the financial sector? Is this an appropriate function for the Federal government?

10. As noted above, Treasury has purchased preferred stock in nine money-center banks. What restrictions, if any, were placed on the ability of these banks to pay dividends on common stock during the pendency of the Federal investment? If no restrictions were placed on the ability of these banks to pay dividends on common stock, please justify why taxpayer money should be used by banks to pay dividends they could not otherwise afford to pay to shareholders in a junior position to the taxpayers.

11. Recent press reports, as well as public statements by Wall Street professionals, have indicated that firms in which the Federal government has made direct investment may pay bonuses to employees well into the billions of dollars for performances in 2008. What restrictions, if any, were placed on the ability of banks in which the Treasury has made direct investment to pay bonuses to employees in calendar year 2008 and during the pendency of the Treasury investment? Given the financial performance of these firms in 2008, what possible justification is there for taxpayer money to be used to pay bonuses to employees of firms that may have been insolvent before unprecedented financial intervention by the Treasury and Federal Reserve?

In addition to answering these questions, we would like the Treasury Department to provide a briefing for Members of Congress during the week of November 17. Please have your staff contact the Republican office of the Committee on Energy and Commerce to arrange for this briefing. Congressional oversight is necessary to balance the extremely broad authority which EESA granted to the Administration, and we are committed to exercising this oversight to safeguard the interests of the American people.

Sincerely,

Joe Barton
Ranking Member
Committee on Energy and Commerce

Cliff Stearns
Ranking Member
Subcommittee on Telecommunications and the Internet

Ed Whitfield
Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

Ralph Hall

Mike Ferguson

Mike Rogers

Sue Myrick

John Sullivan

Michael C. Burgess, M.D.