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Testimony

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TROUBLED ASSET RELIEF PROGRAM

Status of Efforts to Address Transparency and Accountability Issues

Statement of Gene L. Dodaro
Acting Comptroller General of the United States



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Accountability * Integrity * Reliability

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our work on the Troubled Asset Relief Program (TARP), under which the Department of the Treasury (Treasury) has the authority to purchase and insure up to \$700 billion in troubled assets held by financial institutions through the Office of Financial Stability (OFS).¹ As you know, Treasury was granted this authority in response to the financial crisis that has threatened the stability of the U.S. banking system and the solvency of numerous financial institutions. The Emergency Economic Stabilization Act (the act) that authorized TARP on October 3, 2008, requires GAO to report at least every 60 days on findings resulting from our oversight of the status of actions taken under the program.² We are also responsible for auditing OFS's annual financial statements and for issuing special reports on any issues that emerge from our oversight. To carry out these oversight responsibilities, we have assembled interdisciplinary teams with a wide range of technical skills, including financial market and public policy analysts, accountants, lawyers, and economists who represent combined resources from across GAO. In addition, we are building on our in-house technical expertise with targeted new hires, re-employed annuitants with related expertise, and outside experts. The act also created additional oversight entities—the Congressional Oversight Panel (COP) and the Special Inspector General for TARP (SIGTARP)—that also have reporting responsibilities. We are coordinating our work with COP and SIGTARP and are meeting with officials from both entities to share information and coordinate our oversight efforts. These meetings help to ensure that we are collaborating as appropriate and not duplicating efforts.

¹GAO, *Troubled Asset Relief Program: Status of Efforts to Address Transparency and Accountability Issues*, GAO-09-296 (Washington D.C.: Jan. 30, 2009) and *Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency*, GAO-09-161 (Washington, D.C.: Dec. 2, 2008).

²The Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (2008). The act requires the U.S. Comptroller General to report at least every 60 days, as appropriate, on findings resulting from oversight of TARP's performance in meeting the act's purposes; the financial condition and internal controls of TARP, its representatives, and agents; the characteristics of asset purchases and the disposition of acquired assets, including any related commitments entered into; TARP's efficiency in using the funds appropriated for its operations; its compliance with applicable laws and regulations; and its efforts to prevent, identify, and minimize conflicts of interest among those involved in its operations.

My statement today is based primarily on our January 30, 2009 report, the second under the act's mandate, which covers the actions taken as part of TARP through January 23, 2009, and follows up on the nine recommendations we made in our December 2, 2008 report.³ This statement also provides additional information on some recent program developments, including Treasury's new financial stability plan. Our oversight work under the act is ongoing, and our next report is due to be issued by March 31, 2009, as required.

Like the report, this statement focuses on (1) the nature and purpose of activities that have been initiated under TARP; (2) the status of the transition to the new administration at OFS and its hiring efforts, use of contractors, and development of a system of internal control; and (3) preliminary indicators of TARP's performance. To do this work, we reviewed documents related to TARP, including contracts, agreements, guidance, and rules. We also met with OFS, contractors, federal agencies, and officials from all eight of the first large institutions to receive disbursements. We plan to continue to monitor the issues highlighted in the report, as well as future and ongoing capital purchases, other more recent transactions undertaken as part of TARP (for example, guarantees on assets of Citigroup and Bank of America), and the status of other aspects of TARP. We conducted this performance audit between December 2008 and February 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Summary

Treasury has announced a number of new programs to try to stabilize financial markets, but most of its activity during this period has continued to be through its Capital Purchase Program (CPP). As of February 19, Treasury had disbursed about \$300 billion in TARP funds, about \$196 billion of which was for CPP. Treasury has recently announced the Financial Stability Plan, which outlines a set of measures to address the financial crisis and restore confidence in the U.S. financial and housing markets, and a Homeowner Affordability and Stability Plan to mitigate foreclosures and preserve homeownership. Treasury also has taken

³Information is current as of January 23, 2009, unless otherwise noted in the statement.

important steps since our first report to implement all nine of our recommendations. However, due in part to the short time frame since our first report, we continued to identify a number of areas that warrant Treasury's ongoing attention concerning TARP. Therefore, we recommended in our latest report that Treasury continue to take action to further improve the transparency and accountability of the program and more clearly articulate and communicate a strategic vision. Specifically, we recommended that Treasury

- expand the scope of the monthly CPP surveys for the 20 largest banks to include collecting at least some information from all institutions participating in the program.
- ensure that future CPP agreements include a mechanism that will better enable Treasury to track the use of the capital infusions and seek to obtain similar information from existing CPP participants.
- establish a process to ensure compliance with all CPP requirements, including those associated with limitations on dividends and stock repurchase restrictions.
- communicate a clearly articulated vision for TARP and how all individual programs are intended to work in concert to achieve that vision. This vision should incorporate actions to preserve homeownership. Once this vision is clearly articulated, Treasury should document skills and competencies needed within the department.
- continue to expeditiously hire personnel needed to carry out and oversee TARP.
- expedite efforts to ensure that sufficient personnel are assigned and properly trained to oversee the performance of all contractors, especially for contracts priced on a time-and-materials basis, and move toward fixed-price arrangements whenever possible as program requirements are better defined over time.
- develop a comprehensive system of internal control over TARP, including policies, procedures, and guidance for program activities that are robust enough to ensure that the program's objectives and requirements are met.
- develop and implement a well-defined and disciplined risk-assessment process, as such a process is essential to monitoring program status and identifying any risks of potential inadequate funding of announced programs.

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- review and renegotiate existing conflict of interest mitigation plans, as necessary, to enhance specificity and conformity with the new interim conflicts of interest regulation, and take continued steps to manage and monitor conflicts of interest and enforce mitigation plans.

Consistent with our recommendations, Treasury's recently announced Financial Stability Plan outlines some steps it is taking to improve the transparency and accountability of new programs going forward, but Treasury still faces several challenges. First, our first report emphasized the lack of monitoring and reporting for CPP investments and recommended stronger measures for ensuring that participating institutions use the funds to meet the program's purpose and comply with CPP requirements on, for example, executive compensation and dividend payments. In response to our recommendation, Treasury completed its initial survey of the 20 largest institutions to monitor lending and other activities and announced plans to analyze quarterly monitoring data (call reports) for all reporting institutions.⁴ While the monthly survey is a step toward greater transparency and accountability for the largest institutions, we continue to believe that additional action is needed to better ensure that all participating institutions are accountable for their use of program funds. Second, Treasury has continued to develop a system to ensure compliance with CPP requirements, including executive compensation, dividend payments, and repurchase of stocks, but it has not yet finalized its plans for detecting noncompliance and taking enforcement actions. Third, we noted that Treasury had made limited progress in articulating and communicating an overall strategic vision for TARP, while continuing to respond to institution- and industry-specific needs. This lack of clarity has complicated Treasury's ability to effectively communicate to Congress, the financial markets, and the public. However, Treasury has announced a plan to address foreclosure mitigation and homeownership preservation, and as Treasury provides more details on its new Financial Stability Plan, its strategic approach to addressing the financial crisis may become clearer.

Treasury has taken proactive steps to help ensure a smooth transition to a new administration by keeping positions filled and using an expedited hiring process. However, it continues to face difficulty providing

⁴Call reports are quarterly reports that collect basic financial data of commercial banks in the form of a balance sheet and income statement (formally known as *Report of Condition and Income*).

competitive salaries to attract skilled employees. Also, given the program's evolving nature and the likelihood of changes under the new administration, Treasury will need to identify OFS's long-term organizational needs. Additionally, consistent with our recommendation about contracting oversight, Treasury has enhanced such oversight by tracking costs, schedules, and performance and addressing the training requirements of personnel who oversee the contracts. However, as we previously recommended, Treasury needs to continue to identify and mitigate conflicts of interest in contracting. Similarly, OFS has adopted a framework for organizing the development and implementation of its system of internal control for TARP activities, which is consistent with our recommendation. However, as of our January report, it had yet to implement a disciplined risk-assessment process.

Finally, given the fact that program actions have only recently occurred and that there are time lags in the reporting of available data, it is too early in the program's implementation to see measurable results in many areas. Even with more time and better data, it will remain difficult to separate the impact of TARP activities from the effects of other economic forces. Credit market indicators we have identified demonstrate that between our December and January reports, the cost of credit declined in interbank, mortgage, and corporate debt markets. Conversely, while perceptions of risk (as measured by premiums over Treasury bonds) have declined in interbank markets, they appear to have changed little in the corporate bond and mortgage markets. However, attributing any of these changes directly to TARP continues to be problematic because of the range of actions that have been and are being taken to address the current crisis. While these indicators may be suggestive of TARP's ongoing impact, no single indicator or set of indicators can provide a definitive determination of the program's impact.

Treasury Has Continued to Focus on CPP, but a Variety of Other Programs Have Been Created or Are in Progress

Treasury has continued to focus on CPP, but a variety of other programs have been created or are in progress, as shown in table 1. As of February 19, 2009, Treasury had disbursed almost 80 percent of the \$250 billion it had allocated for CPP to purchase almost \$196 billion in preferred shares of 416 qualified financial institutions. Treasury has begun to receive dividend payments relating to capital purchases under CPP and other programs. According to Treasury, as of February 17, 2009, it has received about \$2.4 billion.

Table 1: Status of TARP Funds as of February 19, 2009 (dollars in billions)

Program	Disbursed
Capital Purchase Program	\$196.0
Systemically Significant Failing Institutions	40.0
Targeted Investment Program	40.0
Term Asset-backed Securities Loan Facility	0.0
Automotive Industry Financing Program	23.7
Citigroup Asset Guarantee	0.0
Bank of America Asset Guarantee	0.0
Totals	299.7

Source: Treasury OFS, unaudited.

Initially, Treasury approved \$125 billion in capital purchases for nine of the largest public financial institutions that federal banking regulators and Treasury considered to be systemically significant to the operation of the financial system.⁵ At the time, these nine institutions held about 55 percent of U.S. banking assets. Subsequent purchases were made in qualified institutions of various sizes (in terms of total assets) and types. As we noted in our January report, most of the institutions that received CPP capital were publicly held institutions, while a limited number of privately held institutions and community development financial institutions (CDFI) also received funds.⁶

Treasury has taken a number of important steps toward better reporting on and monitoring of CPP, in accordance with our prior recommendations that it bolster its ability to determine whether institutions were using the proceeds consistent with the purposes of the act and that it establish mechanisms to monitor compliance with program requirements. However, more needs to be done. First, Treasury has initially surveyed the largest institutions to monitor their lending and other activities and announced

⁵While Treasury approved \$125 billion to the nine largest institutions, it initially disbursed funds to eight of the nine institutions. The \$10 billion to Merrill Lynch was not disbursed until January 9, 2009, after its merger with Bank of America was completed.

⁶A CDFI is a specialized financial institution that works in market niches that are underserved by traditional financial institutions. CDFIs provide a range of financial products and services such as mortgage financing for low-income and first-time homebuyers and not-for-profit developers; flexible underwriting and risk capital for needed community facilities; and technical assistance, commercial loans and investments to small start-up or expanding businesses in low-income areas.

plans to analyze quarterly monitoring data (call reports) for all reporting institutions. While the monthly survey is a step toward greater transparency and accountability for the largest institutions, we continue to believe that additional actions are needed to better ensure that all participating institutions are accountable for their use of the funds. Without more frequent information on all participants, Treasury will have little timely information about the changing condition of the institutions, which may limit the ability of its newly created team of analysts to understand the institutions' use of the funds and the effectiveness of the program. In addition, without ensuring that future CPP agreements include a mechanism that will enable Treasury to track the use of capital infusions and without seeking to obtain similar information from existing CPP participants, Treasury may have difficulty determining that an institution has used the funds in a manner consistent with the purposes of the program. Therefore, we recommended that Treasury expand the scope of planned monthly CPP surveys to include collecting at least some information from all participating institutions. We also recommended that it ensure that future CPP agreements include a mechanism that will enable Treasury to track the use of capital infusions and seek to obtain similar information from existing CPP participants. We will continue to monitor Treasury's oversight efforts as well as the consistency of the approval process in future work.

Second, Treasury has continued to take steps to increase its planned oversight of compliance with terms of agreements such as limitations on executive compensation, dividends, and stock repurchases. These steps include naming an Interim Chief Compliance Officer. However, Treasury has not finalized its plans for detecting noncompliance with these requirements and taking enforcement actions. Without a more structured mechanism in place to ensure compliance with all CPP requirements—and as more institutions continue to participate in the program—ensuring compliance with these aspects of the program will become increasingly important and challenging. In its recently announced Financial Stability Plan, Treasury called for banks receiving future government funds to be held responsible for appropriate use of those funds through (1) stronger restrictions on lending, dividend payment, and executive compensation and (2) enhanced reporting to the public. In addition, Treasury is in the process of drafting new regulations to implement the executive compensation requirements in the American Recovery and Reinvestment Act of 2009.⁷ We will also continue to monitor the system that Treasury

⁷Pub. L. No. 111-5, 123 Stat. 115 (2009).

develops to ensure compliance with their agreements and the implementation of additional oversight and accountability efforts under its new plan.

Treasury has continued to make some progress in improving the transparency of the program and a few weeks ago announced its plans for the remaining TARP funds. In our December 2008 report, we first raised questions about the effectiveness of Treasury's communication strategy for TARP with Congress, the financial markets, and the public. These questions were further heightened in the COP's January report, which raised similar questions about Treasury's strategy for TARP. In response to our recommendation about its communication strategy, Treasury noted numerous publicly available reports, testimonies, and speeches. However, even after reviewing these items collectively, we found that Treasury's strategic vision for TARP remained unclear. For example, Treasury initially outlined a strategy to purchase whole loans and mortgage-backed securities from financial institutions, but changed direction to make capital investments in qualifying financial institutions as the global community opted to move in this direction. However, once Treasury determined that capital infusions were preferable to purchasing whole mortgages and mortgage-backed securities, Treasury did not clearly articulate how the various programs—such as CPP, the Systemically Significant Failing Institutions Program (SSFI), and the Targeted Investment Program (TIP)—would work collectively to help stabilize financial markets. For instance, Treasury has used similar approaches—capital infusions—to stabilize healthy institutions under CPP as well as SSFI and TIP, albeit with more stringent requirements. Moreover, with the exception of institutions selected for TIP being viewed as able to raise private capital, both SSFI and TIP share similar selection criteria. Treasury also created the Auto Industry Financing Program in December 2008 to prevent a disruption of the domestic automotive industry that would pose systemic risk to the nation's economy and provided loans to two auto companies and two financing companies that, among other business lines, provide consumer automotive loans. Finally, the same institution may be eligible for multiple programs—at least two institutions (Citigroup and Bank of America) currently participate in more than one program—and this has added to confusion about Treasury's strategy and vision for the implementation of TARP. Other actions also have raised additional questions about Treasury's strategy. For example, Treasury announced the first institution under TIP weeks before the program was established. Similarly, the Asset Guarantee Program was established only after Treasury announced that it would guarantee assets under such a program, and many of the details of the program have yet to be worked out.

Since our January report, Treasury has taken two key actions related to our recommendation about the need for a clearly articulated vision for the program. On February 10, Treasury announced the Financial Stability Plan, which outlines a set of measures to address the financial crisis and restore confidence in U.S. financial and housing markets. The plan appears to be an approach designed to resolve the credit crisis by restarting the flow of credit to consumers and businesses, strengthening financial institutions, and providing aid to homeowners and small businesses. On February 18, Treasury unveiled its Homeowner Affordability and Stability Plan, which, in part, is based on the use of TARP funds. Specifically, the plan will use \$75 billion of TARP funds to modify the loans of up to 3-4 million homeowners to avoid potential foreclosure. The plan also includes a number of other components, including an initiative to help an additional 4-5 million homeowners with loans owned or guaranteed by Freddie Mac and Fannie Mae refinance their loans at current market rates.⁸ We will continue to monitor the development and implementation of Treasury's plan. In addition, we will assess the extent to which the plan addresses the need for a clearly articulated vision for TARP and explains how the individual programs are intended to work in concert to achieve that vision.

Efforts to Establish OFS Are Ongoing

Treasury has made progress in establishing its management infrastructure, which included hiring, contracting oversight, and internal controls. However, hiring for the Office of Financial Stability is still ongoing, Treasury is working to improve its oversight of contractors, and its development of a system of internal control is still evolving.

- In the hiring area, Treasury took steps to help maintain continuity of leadership within OFS during and after the transition to the new administration, one of the areas we highlighted in our first report. Specifically, Treasury ensured that interim chief positions would be filled to ensure a smooth transition and used direct-hire authority and various other appointments to bring a number of career staff on board quickly. OFS has increased its overall staff since our December 2008 report from 48 to 90 employees as of January 26, which includes an increase of permanent staff from 5 to 38. While progress has been made since our last

⁸As part of its Homeowner Affordability and Stability Plan, Treasury announced that it was increasing its funding commitment to Fannie Mae and Freddie Mac to ensure the strength and security of the mortgage market and to help maintain mortgage affordability. The \$200 billion funding commitment is based on authority granted to Treasury under the Housing and Economic Recovery Act of 2008 Pub. L. No. 110-289, 122 Stat.2654 (2008).

report, the number of temporary and contract staff who will be needed to serve long-term organizational needs remains unknown. Because TARP has added many new programs since it was first established in October and program activities may expand or change under the new administration, we recognize that Treasury may find it difficult to determine OFS's long-term organizational needs at this time. However, such considerations will be vital to retaining institutional knowledge in the organization.

- Treasury's use of existing contract flexibilities has enabled it to enter into agreements and award contracts quickly in support of TARP. However, Treasury's use of time-and-materials contracts, although authorized when flexibility is needed, can increase the risk of wasted government dollars without adequate oversight of contractor performance. Although Treasury has improved its oversight of contractors, the department itself has identified certification of its Contracting Officer Technical Representatives and the use of time-and-materials pricing to be high-risk issues that still need attention. In addition, while Treasury has taken the important step of recently issuing an interim regulation outlining the process for reviewing and addressing conflicts of interest among new contractors and financial agents, it is still reviewing contracts or agreements that existed prior to issuance to ensure conformity with the new regulation. We believe this is a necessary component of a comprehensive and complete system to ensure that all conflicts are fully identified and appropriately addressed.
- OFS has adopted a framework for organizing the development and implementation of its system of internal control for TARP activities. OFS plans to use this framework to develop specific policies, drive communications on expectations, and measure compliance with internal control standards and policies. However, it has yet to develop comprehensive written policies and procedures governing TARP activities or implement a disciplined risk assessment process.

In each of these areas, we made additional recommendations. Specifically, we recommended that Treasury continue to expeditiously hire personnel needed to carry out and oversee TARP. For contracting oversight, we recommended that Treasury expedite efforts to ensure that sufficient personnel are assigned and properly trained to oversee the performance of all contractors, especially for contracts priced on a time-and-materials basis, and move toward fixed-price arrangements whenever possible as program requirements are better defined over time. We also recommended that Treasury review and renegotiate existing conflict-of-interest mitigation plans, as necessary, to enhance specificity and conformity with

the new interim conflicts of interest regulation, and take continued steps to manage and monitor conflicts of interest and enforce mitigation plans. Finally, we recommended that Treasury, in addition to developing a comprehensive system of internal control, develop and implement a well-defined and disciplined risk assessment process, as such a process is essential to monitoring program status and identifying any risks of potentially inadequate funding of announced programs. We will continue to monitor OFS's hiring and contracting practices as well as its implementation of the internal control framework, which is vital to the effectiveness of the program.

Measuring the Impact of TARP on Credit Markets and the Economy Continues to Be Challenging

Given the fact that program actions have only recently occurred and that there are time lags in the reporting of available data, it continues to be too early in the program's implementation to see measurable results in many areas. Even with more time and better data, it will remain difficult to separate the impact of TARP activities from the effects of other economic forces. Some indicators suggest that the cost of credit has declined in interbank, mortgage, and corporate debt markets since the December report. However, while perceptions of risk (as measured by premiums over Treasury securities) have declined in interbank markets, they have changed very little in corporate bond and mortgage markets. Finally, as noted in December, these indicators may be suggestive of TARP's ongoing impact, but no single indicator or set of indicators can provide a definitive determination of the program's effects because of the range of actions that have been and are being taken to address the current crisis. These include coordinated efforts by U.S. regulators—namely, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Federal Housing Finance Agency—as well as actions by financial institutions to mitigate foreclosures. For example, a large drop in mortgage rates occurred shortly after the Federal Reserve announced it would purchase up to \$500 billion in mortgage-backed securities, highlighting that policies outside of TARP may have important effects on credit markets. We will continue to refine and monitor the indicators. Additionally, we plan to use the Treasury survey data in our efforts to evaluate changes in lending activity resulting from CPP. We recognize that the data has certain limitations—primarily that it is self-reported and difficult to benchmark because it is unique. Nonetheless, we think it will prove valuable in future analyses.

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to discuss this critically important issue and would be happy to answer any questions that you may have. Thank you.

Contact

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