

HEARING OF THE SENATE BANKING, HOUSING AND URBAN AFFAIRS
COMMITTEE

“Pulling Back The Tarp: Oversight Of The Financial Rescue Program”

WITNESSES:

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SEN. DODD: The committee will come to order.

Let me begin by thanking our witnesses and the audience who have gathered here today for this very important hearing, "Pulling Back the TARP: The Oversight of the Financial Rescue Program." And I want to begin by thanking our witnesses for their not only presence here today, but the tremendous work that they're doing. Mr. Dodaro, of course, is now becoming a permanent party in this room here, having spent a good part of yesterday with us as well, and we thank you for being here today.

What I'll do this morning, I have some opening comments to make. I'll turn to Senator Shelby for any opening comments he will have. And then, because of the nature of the subject matter, I'm going to invite my colleagues for any brief opening comments they would like to make as well, and then we'll get to our witnesses. And obviously all statements and supporting documents and materials that our witnesses and colleagues feel are necessary for the record will be included by unanimous consent. And without objection, that'll be the case.

So with that in mind, let me proceed, if I may, and then we'll move along with the other members and our witnesses.

Today the Banking Committee meets to continue our oversight of the Troubled Asset Relief Program and explore how the program can be made more effective as we work to address the financial crisis in our country, and around the world, for that matter.

In creating the TARP program as part of the Emergency Economic Stabilization Act of last October, the United States Congress granted the Treasury extraordinary powers and a staggering sum of money to address the economic crisis -- \$700 billion of taxpayer money.

The TARP program's goals are certainly as relevant today as they were then. As prescribed by EESA, the Treasury Department is supposed to use the authority for four reasons, which we outlined at the time of the legislation: One, to protect people's home values, college funds, retirement accounts and life savings; two, to preserve home ownership and promote jobs and economic growth; three, to maximize the returns to the taxpayers for their investment; and four, to provide some measure of public accountability for the exercise of the authority as they spend this tremendous amount of money.

Unfortunately, the previous administration failed to uphold the intent of the law in many respects, in my view. Recipients of TARP funds were effectively given, in too many instances, a free pass, not helping homeowners and small businesses, but rather choosing to hoard taxpayer funds, acquire other companies, and in some instances pay lavish bonuses to executives and handsome dividends to shareholders.

The public is outraged by this behavior, and with good cause. As the Congressional Oversight Panel chaired by one of our witnesses today concluded in its report, there were, and I quote, "what appear to be significant gaps in Treasury's monitoring of the use of taxpayer money," end of quote.

I want to commend the panel not only for its commitment to ensuring the TARP program achieves the objectives that the Congress wrote into the law, but also for its aggressive oversight, highlighting areas of weaknesses and the improvements Treasury can make.

But this hearing is not just about the problems of the past. With some \$350 billion of taxpayer money on the line as our economic crisis deepens, it is very much about the future. Let me state unequivocally, I believe that the TARP program remains a critical tool our government will need to address the economic crisis. That is why I supported the release of the last batch of the funding a few days ago.

But for the sake of our economy and the public's confidence in our ability to address this crisis, we must see a sharp change in the direction of this program under new management. If there were ever a program in need of a sign in front of it that read "Under New Management," it is this one.

Allow me to outline the changes that I believe should be made. First, Secretary Geithner and the rest of the administration's economic team must develop and clearly communicate a long-term comprehensive plan for using TARP funds to support the financial system. In short, they must provide a framework. Why do we need TARP, and what do we hope to achieve with this program?

The previous administration's piecemeal, lurching interventions in the financial system contributed to the confusion, I believe, and the volatility that have dragged down consumer and investor confidence. Outlining a clear direction and plan as to how the government will use taxpayer money going forward will provide Americans with the clarity and assurance they need, in my view, to help restore the confidence and optimism absolutely essential to long-term economic stability.

Second, there needs to be greater transparency and taxpayer protections to safeguard the use of taxpayer money, including stricter limits on executive compensation and bonuses. The American people have been subjected to almost weekly news accounts, if not daily news accounts, about TARP recipients spending lavishly, undermining the integrity of the program and the institutions it is supposed to rescue.

Just last week we heard that Wells Fargo, which received \$25 billion in TARP funding, planned a series of corporate junkets this month to the most extravagant Las Vegas casinos. Unfortunately, the bank got the message loud and clear that this kind of behavior is an insult to every American taxpayer footing the bill, and they canceled their plans.

And I applaud the Obama administration for moving to impose new and tougher restrictions on executive compensation for companies that receive TARP funds. In fact, I'd say, as an aside, I intend to offer an amendment to our economic recovery package either later today or over the weekend that would build on these restrictions and prohibit bonuses to the 25 most highly paid employees of companies that receive TARP funding, authorize the Treasury secretary to limit certain other performance-based bonuses, as well as require say-on-pay votes on executive compensation and exact other safeguards.

If a company accepts taxpayer assistance, it shouldn't be offering bonuses to top executives or awarding shareholders with cash dividends. One of the largest banks in America paid one-half of its TARP funds to stockholders in dividends. That is unacceptable. The president told the world two weeks ago that a new era of responsibility has begun. Apparently our Treasury secretary will have to deliver that message more forcefully to some financial institutions.

Fourth, Treasury should establish clear guidelines to increasing lending. Too many TARP recipients used these funds for everything but lending to small businesses or helping move families into large or rather long-term affordable mortgages.

As reported in The New York Times, soon after Treasury launched the TARP, an executive at JPMorgan Chase seemed to boast of plans to use TARP funds to make acquisitions or as a cushion against a worsening economy just after receiving \$25 billion in federal funding. And according to the Washington Post earlier this week, some of the institutions that have received the most federal assistance have cut their lending sharpest.

Treasury must require recipients of assistance to provide quarterly reports, specifying amounts of consumer and commercial loans made, details about acquisitions, and the number and type of loan modifications made to prevent homeowners from going into

foreclosure. If financial institutions refuse to abide by any of these conditions, they should not be given public funds, period.

Finally, we must apply the same sharp and urgent focus to help the homeowners whose plight is at the root cause of this crisis. Two years ago, almost to the day, on February 7th, 2007, this committee met for the first time to discuss the foreclosure crisis. We held our first hearing on foreclosures on February 7th, 2007, and predatory lending.

At that time I said, and I quote, "It's time for Congress, the administration and the lending industry to face up to the fact that predatory and irresponsible lending practices are creating a major crisis for millions of American homeowners at a time when general economic trends are not good," end of quote. I recall my colleague from New Jersey, I think on that very day, talking about a tsunami of foreclosures that would come. I believe that was on February 7th, two years ago.

Stopping foreclosures must be our top priority. Failing to do so will have devastating consequences for our economy. There are several ways the TARP funds could be used to address the foreclosure crisis, by making changes to the Hope for Homeowners program, to the approach advocated by the FDIC chairman, to restructure delinquent mortgages using a streamlined process.

TARP funds need not be the only means of preventing foreclosures. But with no silver bullet on the horizon to stop the rising tide of foreclosures, TARP funds can and must be used to encourage participation in these various programs.

These improvements to TARP will go a long way, in my view, toward not only making the program more effective at stabilizing our economy, but also bolstering public confidence in the very programs which we all recognize as critical to our ultimate success.

The Obama administration has already committed to making many, if not all, of these changes. And I look forward to continuing the committee's close and detailed oversight of the implementation of this program. Next week we will hear directly from Secretary Geithner about the administration's plans for major changes to this program, and I look forward to his testimony.

At today's hearing, I hope that we can better distinguish questions about past management of TARP from questions about the law itself. What is not in question is the need for our president to have the tools at his disposal to restore stability to our economy. Ensuring that the TARP is the most effective, dynamic instrument it can be remains our goal today, and I eagerly await hearing from our witnesses as to how we can make that possible.

With that, I turn to Senator Shelby.

SEN. RICHARD SHELBY (R-AL): Thank you, Chairman Dodd.

We're here this morning to examine how the Treasury's Troubled Asset Relief Program, or TARP, is working. TARP was sold to Congress and the American people with great urgency as the sure cure for our ailing financial system. Last September, you will recall, when Secretary Paulson and Chairman Bernanke came to us to ask for TARP authority, they urged us to act with all deliberate speed.

We were warned that if we did not give Treasury \$700 billion immediately, the financial system would collapse. There was no time for thoughtful deliberation, no time to examine the origin of the crisis, no time to discuss whether TARP actually would solve the problems. We had no time to examine.

Secretary Paulson and Chairman Bernanke assured us that the TARP was the answer to those problems. I had my doubts. As described, TARP would remove illiquid assets at that time from bank balance sheets, restart the flow of private capital into the hands of consumers and businesses, and inspire confidence in investors.

We were promised a methodical and transparent approach. I wasn't convinced then and I opposed the bill. I voted against the TARP because Treasury's warnings and promises seemed calculated to induce panic rather than to ensure proper stewardship of taxpayer dollars.

I recognize, all of us do, that we face tremendous challenges. Solutions, however, crafted in haste rarely are effective, and even worse, can be counterproductive -- (inaudible). Four months have passed since the TARP legislation was enacted. Americans have a right to know, I believe, where their money went and whether it's working, which many are doubtful.

Illiquid assets remain on the bank balance sheets. Private capital is sitting on the sidelines. And institutions of all sorts are looking at the federal government as the lender of first resort. Investor confidence remains dismal.

Deep economic problems persist, even though Treasury has handed out \$350 billion of taxpayer money and is working its way through the second \$350 billion installment. These outcomes are not exactly consistent with the promises that we heard last fall. Not only have the promised results eluded us, but TARP money has been used, as Senator Dodd mentioned, as a haphazard, opaque and unanticipated manner.

Treasury, when it came to Congress last fall, talked about purchasing troubled assets through reverse auctions. That plan which had never been fleshed out with practical details was abandoned within two weeks of the legislation's passage. Instead, Treasury, as you know, injected capital into purportedly healthy banks under the Capital Purchase Program. Less than a month later, additional assistance was announced for one of the same banks under a new TARP program, the Targeted Investment Program, an ad hoc approach.

AIG got help through yet another TARP program called the Systematically Significant Failing Institutions Program. Think about that. After Congress decided not to give taxpayer money to the auto companies, Treasury set up a program especially for the auto sector, under TARP and the last administration headed by President Bush. Each program has eligibility criteria, but Treasury seems willing to create a new program for entities that fail to meet those criteria.

In a troubled market that craves predictability, this ad hoc approach is particularly harmful, I believe. In addition, this disorderly approach makes it much more difficult for our witnesses, this committee and others to hold Treasury accountable for the choices it has made under the TARP. Shifting criteria for the receipt of TARP money makes it easier for Treasury and the bank regulators to pick winners and losers without ever having to explain their choices.

Why is it, for example, that Citigroup, one of the nine so-called healthy banks -- nobody believed they were healthy, though, or they were -- selected to be the first participant in the Capital Purchase Program needed a second installment of TARP funds one month later? Obviously, the Fed and Treasury didn't know what they were doing.

Oddly, Treasury announced the outlines of the program under which the second 20 billion (dollars) investment was made in January after Treasury had already invested the money.

Similarly, as you know, Bank of America, another recipient of aid under the so-called healthy bank program, in October was back for another \$20 billion last month. Perhaps the decisions by Treasury working with the Federal Reserve to classify Citibank and Bank of America as healthy institutions in October ought to be reviewed. They need to be reviewed. Treasury has not yet taken the time in the GAO's words, quote, "to clearly articulate and communicate a vision for TARP."

But then, why should Treasury set forth a strategic plan if Congress, our Congress, us, if we're willing to hand over hundreds of billions of dollars without regard to whether the first installment has had the desired effect?

All of the witnesses here today have expressed similar concerns about the undisciplined and opaque manner in which TARP has been administered. The GAO has commented on TARP's unclear strategic vision. Mr. Barofsky has noted that the manner in which the TARP money has been used remains almost entirely opaque. The Congressional Oversight Panel has also commented on the confusion over the purpose and effects of the TARP.

I look forward to hearing all these witnesses and concerns here this morning. The taxpayer deserves better than what we're getting.

SEN. DODD: Thank you, Senator Shelby, very much.

I want to recognize the arrival of our colleague, David Vitter. David, thank you for joining the committee. Appreciate it very, very much. And Kay Bailey Hutchison was here a minute ago. I'm sure she's coming back. And we welcome here to the committee as well. I'm delighted you've joined us to be a part of this Congress in this session.

With that, let me turn to Senator Johnson.

SEN. TIM JOHNSON (D-SD): Mr. Chairman, I will submit my statement for the record.

SEN. DODD: So ordered.

Senator Vitter.

SEN. DAVID VITTER (R-LA): Thank you, Mr. Chairman. Thank you for holding this hearing which is very, very important. It's important in at least two categories. The first really gets more debate and focus in the public square, and it's important in terms of how firms that get this money use it, whether they use it properly, whether they abuse it in any way, executive pay, bonuses, compensation, meetings held in exotic locations, all of those sort of big-headline issues. And I don't want to trivialize that. It's important that we put some parameters to build public confidence in the program around that and prohibit certain activity and also ensure that if money is given to institutions to increase lending that we have a reasonable expectation that that's going to happen. And so that's an important topic of this sort of oversight discussion.

But I think the second category of our discussion is even more important, and that's the fact that the program itself within government, within Treasury and elsewhere really has no clear rationale or clearly defined mission. As Senator Shelby said, to say it's evolving is to use polite language. It's completely ad hoc. It changes day to day. To the casual observer, it really seems like decisions are made on the fly about giving particular companies particular amounts of money and then, after the fact, there's a new program with a very high-sounding title created to justify that very individual ad hoc decision. And Senator Shelby named a number of those examples.

To me, that's the most worrisome. There is no overarching strategy or model that we're using with this huge amount of taxpayer funds. I point to two things as the easiest proof of that. Number one, we're still using the term TARP, Troubled Asset Relief Program. And yet, hundreds of billions of dollars into it, we haven't bought the first troubled asset.

Number two, the legislation, in terms of its specific language, focused on financial institutions. And yet, some of the most significant recipients are auto manufacturers. Now, look, I know we can construe terms broadly, but those aren't financial institutions, pure and simple. And so to me, the most worrisome aspect of this discussion is that TARP has really become just a slush fund to use as any administration, first the Bush administration, now the Obama administration, sees fit on a purely ad hoc basis, and then

the high- sounding titles and programs are announced the next day to justify the very specific decision regarding naming firms and picking winners and losers.

So that's what I, in particular, want to focus on and certainly be a positive part of changing as we move into the future. Thank you, Mr. Chairman.

SEN. DODD: Thank you, Senator.

Senator Reed.

SEN. JACK REED (D-RI): Well, thank you, Mr. Chairman. This is a vitally important topic. And I thank the witnesses for being here. And I'd like to just mention three brief points.

First, when we authorized the TARP program, we were clear to try to obtain an interest by the taxpayers by creating warrants, that if we're going to bear the risk of these investments then taxpayers should have the benefits in the future. I'm concerned that the pricing of these warrants has not been comparable to what commercial entities and private investors are getting, and that we have to be, I think, conscious of that. If we are going to bear risks, taxpayers are going to bear risks, they should be compensated going forward.

The second point, and it's with respect to compensation which is, I think, President Obama's statement yesterday was right on point. But as we go forward, I believe that the Treasury Department and these institutions should consider very seriously making the bonus pools consist of the troubled assets that they were going to ask us to purchase. I've talked to individuals, companies who claim that these assets are essentially sound, it's just an illiquid market. Well, if they are, then they could be suitable for bonus purposes, too. I think at least one company has done that, but I think many more companies should do that.

And then a final point as we go forward, particularly with respect to troubled assets. Evaluation of these assets is going to be absolutely critical. So I would like your advice going forward as to what mechanism we can put in place to ensure the valuations are accurate and appropriate and sound. Because otherwise, there will be, I think, a great pressure to not give accurate evaluations which will benefit the industry and disadvantage the taxpayers.

And again, I look forward to your testimony. And thank you, Mr. Chairman.

SEN. DODD: Senator Corker.

SEN. BOB CORKER (R-TN): Mr. Chairman, out of respect for the witnesses, I'd like to listen to them, and then I'll ask questions. Thank you.

SEN. DODD: Thank you very much.

Senator Menendez.

SEN. ROBERT MENENDEZ (D-NJ): Thank you, Mr. Chairman. I respect the witnesses as well, but I also want my constituents to know what I'm doing here. So I'm going to just take a minute or two.

Let me just say, when Secretary Paulson came before the Congress and requested the \$700 billion last October I was skeptical, as was so many. But it (was) very clear to me at the time that, had we not acted, we would have seen a series of banks collapse. And some ideologically believe that that may be is the right way to go in a free market system, that that, in fact, is what is necessary to be able to have the system work out its own set of circumstances. I think that would have been even more catastrophic than where we are today, with all the difficulties in this program. So, I just want to frame it in the context of choices at the time.

Now, my primary concern then, as it is now, is how does this money get to ultimately liquefy the credit crunch? How does it get to working families? How does it get to small businesses that need the loans to make sure they can continue to operate and employ people? How do students get -- afford a college education? How do families stay in their homes?

Now, when Secretary Paulson and the Bush administration assured us repeatedly the rescue money would be used exactly for these purposes, many of us -- knowing the set of circumstances at the time, and with those guarantees, agreed to move forward. They assured us the money would not be going to bonuses and golden parachutes, or dividends and private jets, but rather to boost the consumer lending that was so desperately needed to restore the economy and to create jobs.

Unfortunately, many of the results have shown that what was represented by the previous administration could not be farther from the truth. Many institutions have decided to use TARP funding to acquire healthy banks, continue dividends to shareholders, pay exorbitant bonuses and golden parachutes to their senior executives. As the New York State controller reported recently, over \$18 billion -- billion -- dollars in bonuses were handed out to employees at financial firms in 2008, the sixth highest payout -- the sixth highest payout -- in Wall Street history.

And I understand about keeping talent, but let me tell you, when there's no job you've got a lot of talents. You've got a lot of talent flowing all through Washington looking for employment, and back home in New Jersey where there's a lot of talent. And you can't tell me that it takes \$18 billion to keep that talent.

That staggering figure stands in stark contrast to the industry's record losses last year which required taxpayer funding assistance to forestall an unprecedented meltdown. With so many Americans losing their homes, their jobs and their health care, that kind of abuse of taxpayer money is offensive and unconscionable.

Not only have banks refused to increase lending, many have actually reduced the amount of loans they offer. According to the Federal Reserve, banks decreased lending during the last quarter even while the Treasury infused them with hundreds of billions dollars. Even more troubling, banks had received -- that received taxpayer funds decreased lending by twice as much as those who did not receive any funds.

And based on this information, it seems that one of the things -- following things must be true: Either Secretary Paulson misled the Congress when he said that the purpose of the TARP was to promote funds -- banks to lend, or implementation of the TARP, as we were told it was going to take place, has been a failure. Either way, the American people are not just skeptical about this, they are angry, and they have every right to be.

Finally, I saw the Treasury Department's responses, particularly under the previous administration -- or lack thereof, reveal of level of contempt for transparency and accountability. Professor Warren, the oversight panel you chair is tasked with that critical mission and it's unacceptable for the Treasury Department to be anything less than fully cooperative with your investigation.

By my count, the Treasury failed to adequately respond to 32 questions, including 25 which they left in blank -- in blank, Mr. Chairman. Now, I might not be a college professor, but where I come from -- in my days when I was in school, that student would get an "F." Bottom line, that is simply unacceptable. Now, I applaud the Obama administration for the reforms they're considering and will soon announce.

I look forward to listening to these witnesses. The banking system is still greatly challenged, credit markets are still largely frozen. If we do this right, then we can meet some of the challenges we have. But, we need transparency and openness in this process, otherwise there can be no faith, there can be no credibility, and, at the end of the day, we won't achieve the goals that we have.

Thank you, Mr. Chairman.

SEN. DODD: Senator, thank you very, very much.

Senator Hutchison, I welcomed you to the committee a few moments ago when you were -- stepped out of the room for a second, and so I'll say so again in your presence, we're delighted you joined the committee. Thank you for joining us. Do you have any opening comments? We'd be happy to receive them.

SEN. KAY BAILEY HUTCHISON (R-TX): I'd just love to say a few things. I do want to hear the witnesses. And I thank you -- I'm so glad to be on this committee. I've wanted to be on it for a long time, but when I came to the Senate Senator Gramm was on the committee so, though I was -- banking really is my background. So, I'm very pleased to be on it.

Let me just say a couple of things. Like so many others, I was so taken about the first TARP -- taken with the arguments that were made by the secretary of the Treasury, the Federal Reserve Board chairman that we had a crisis and we had to deal with it. The original proposal was that we would basically take warrants in the banks for taxpayer upside, which I agree that we should do; take the bad assets off and try to work those out so that as many people as possible can work out loans and stay solvent.

That changed in two weeks. And then there was another change. And the impression out in America is, no one's getting credit, and nobody knows what they're doing because there's no focus. So, now is the time that we can learn from you what might work, what has worked. We already know what hasn't worked. And you can help us craft the parameters around the next TARP, or the one after that.

Let me just say, from my standpoint, having lived through the crisis of the '80s and the Resolution Trust Corporation, anything we do with bad assets, and the reform of the TARP, or, going forward, we should have a policy against calling performing loans. Nothing is more demoralizing to a person than to see all of the property around it being sold at fire-sale prices -- as Resolution Trust Corporation did, and then good loans be called because the collateral value has gone down.

But the performing loans were being called. I will filibuster to the end of the earth if we don't have something that protections people who are making their payments from not being called. Thank you, Mr. Chairman, and I appreciate and look forward to working with all of you toward a productive future for our country.

SEN. DODD: Thank you very much, Senator.

Senator Tester.

SEN. JON TESTER (D-MT): Thank you, Mr. Chairman. I too want to echo what many of our committee members have said about appreciation for holding this committee -- the committee meeting. And, thank you, Ranking Member Shelby, for being a part of that.

I want to thank the members for being here. Oversight of this TARP program is critically important. And I've listened to my members opening statements, and it continues to frustrate me, as it does my constituents, about what's transpired with this program -- you know, who's gotten the money and where this massive amount of dollars have gone.

I'm going to cut right to the chase. There's four or five questions that I really need to get answered. Number one, what the large systemic commercial banks and bank holding companies are doing with the money? What the role community banks are doing, if they get access; and if they're not getting access, what is the impediment? Did the banks have a detailed plan when they initially applied for the money? And, how much of that plan was centered around increasing lending, getting the housing crisis problem solved, versus bank consolidation and shoring up their balance sheets?

I hope you have had the opportunity to look thoroughly. I heard Senator Menendez talk about the fact that the Treasury Department has -- had not been opening their books to you with total transparency and honesty. I can tell you that, from my perspective, heads should roll if that policy continues, and I'd like to know if that is the case in the Obama administration.

I think things need to be totally transparent, and as people have enough heartburn about these dollars from the get-go, that we, quite frankly -- well, there's just no room for secrets at this point in time. These are taxpayer dollars, these are dollars that I think the folks who supported this had intended to go free up the credit market. And it may have done some positive things in that vein, but it certainly isn't getting to Main Street like was advertised.

I want to thank you for being here, once again. I appreciate, and I look forward to your testimony. And, hopefully, I'll be here for some questions. Thank you.

SEN. DODD: Thank you, Senator, very much.

Senator Bunning, any opening comments?

SEN. JIM BUNNING (R-KY): Yes, just a short one. Thank you, Mr. Chairman.

As we all know by now, and it's been previously stated, the previous Treasury secretary and the Fed chairman pulled a bait-and-switch on us with the original TARP program. Not only did they come to Congress and ask for a plan to buy toxic assets, but they also rejected, in public and in private, the idea of capital injections into banks.

But just after Congress approved the plan, Treasury and the Fed changed course, undermining what little faith the American people had in the plan to begin with. Not only is the money being used in ways Congress did not intend, but we do not have the transparency that was promised.

We do not know what caused Treasury and the Fed to change course. We do not know how or why they decided to inject funds in the original nine banks. We do not know why some banks were later given funds, but others were rejected. What we do know are the outrageous stories about private jets, luxury offices, trips to resorts, and multimillion-dollar bonuses for managements.

Because of all these and more problems, it is important for the witnesses before this committee to carry out their assignments and look into the actions of the Treasury and the Fed. I look forward to hearing from them on their findings and about what other tools they may need to carry out their investigation.

And I would like to close by stating last night by U.C., the Senate passed additional powers to you to use so that you can get into those Treasury and Fed and the transparency that is not here right now. I don't know if everybody realized last night by U.C. we

granted this inspector general new powers to do whatever he needs to do. And I am proud of the fact that it went through.

Thank you.

SEN. DODD: Thank you very much.

Senator Bennett.

SEN. MICHAEL BENNETT (D-CO): Thank you, Mr. Chairman.

I appreciate it. I just have a very short statement. Thank you for holding this hearing and thank you to the ranking member, thank you, witnesses, for being here today.

I was a private citizen watching this happen. And I can tell you what everybody here knows is that there isn't a family in any of our states that doesn't, at the end of the month, know where every single dollar has been spent and isn't figuring out what they have to cut back on for the coming months.

And it seems to me that that's the least -- that when they're going through times like that, that's the least they can expect of their government and the banks and other institutions that have received their funds.

And I think the work that you're doing is so important, because it will lead to that accounting -- something that is long overdue.

I am grateful for the administration's commitment, Mr. Chairman, to this path of transparency and accountability, which is job number one, I think, for the American people. And then getting the credit markets moving again is the other big piece of it.

Finally, I think we need to make sure we're always reminding people that we have to see both the recovery plan that we're working on this week, and the TARP, as part of a piece that is an approach that, taken together, will give us the chance to get this economy out of the ditch and moving again. These are not and can't be considered to be separate activities.

And I think, Mr. Chairman, your amendment is a reminder about that -- about the use of some of the next TARP money to deal with our housing crisis.

So thank you for being here today and I look forward to your testimony.

SEN. DODD: Senator, thank you very, very much.

And I guess it's time to go to Senator Warner. Mark.

SEN. MARK WARNER (D-VA): Thank you, Mr. Chairman, and Ranking Member.

I want to hear the testimony as well and get to the questions. I'm just going to give you a heads up. I'm going to come at you on issues around transparency. I'm glad to see in the inspector general's report the first time I've ever seen -- at least for a few of the institutions -- the terms and conditions of the investments that were made. I think most folks would be amazed to realize that on some of those dividend payments -- we actually may see some of those dividend payments this month coming back.

You've got some of the institutions here, but we invested in over 300 institutions. I still don't know why we don't have a greater transparency of everywhere we've invested. And I know there's -- I share my colleagues' concerns about the failure of these institutions that we've invested in in terms of opening up the credit flows again. Although, clearly, so many of these institutions got so over levered and they're all going through this de-leverage process right now, I'm just curious whether in your investigations you've been able to find that there was at least some informal understanding that when these institutions got their leverage rates down, that their flow of credit will go up. And so I'll come back to that in more specificity in my questions.

Thank you, Mr. Chairman.

SEN. DODD: Thank you very much, Senator.

Senator Bayh.

SEN. EVAN BAYH (D-IN): Thank you, Mr. Chairman.

This is a very timely hearing. And the reason for that, ladies and gentlemen, is that there are -- as I think you're aware -- reports circulating that the original TARP program might not be enough and that perhaps there will be proposals coming before this Congress for additional hundreds of billions of dollars.

Let me be clear: There will be no additional funding for this program without airtight assurances that it will be better managed. That's the bottom line.

I'm one of those who voted for the original program, because of the economic crisis that we faced at that time. I think that was the right decision. I'm also one of those who voted against releasing the second tranche, because of the way the program had been mismanaged. We cannot allow that to happen.

I mean, the bitter irony, Mr. Chairman, is we may have succeeded in stabilizing the financial markets some, but it has been at the cost of losing the public's confidence. And without regaining that confidence, there simply will be no additional monies provided for this program.

The popular perception is that the way this has been implemented has essentially enabled incompetence, malfeasance, the affluent and the well-connected and we have to correct

that. And I would suggest doing that by essentially three things: accountability, accountability and accountability.

And therein lies the purpose for this hearing and the challenge going forward to improve the implementation, if we're going to regain the public's confidence and in so doing, justify any additional public investment.

So I think that the hearing is absolutely timely and critically important.

SEN. DODD: Thank you very much, Senator.

Senator Akaka.

SEN. DANIEL AKAKA (D-HI): Thank you very much, Mr. Chairman.

I want to commend you and the ranking member for holding this hearing to examine TARP. And because of that, this is a very, very important hearing for all of us and for our country.

I want to echo what has been going on and to add my piece in this. Typical of the Bush administration, congressional inquiries -- as has been mentioned already as well -- went unanswered. And implementation of the program proceeded in a chaotic, unorganized and an ad hoc manner. And I'm afraid the Bush administration overpaid for assets; failed to set specific strategic goals and objectives for the program; inconsistently administered or withheld assistance and did not specify conditions for use of federal support. And that's now history! The Obama administration has inherited a difficult set of circumstances. Our economic situation has worsened.

I look forward to working with the witnesses and members of this committee and the administration to improve the implementation of TARP and ensure adequate oversight of the program.

There's no question we need to help our country and this may be (answer ?) can do it right and we want to try to do it with examining it at the present time.

I appreciate the witnesses appearing today and look forward to hearing you.

And again, thank you, Mr. Chairman.

SEN. DODD: Thank you very much, Senator.

And let me express our appreciation to our witnesses for your patience in listening to our colleagues this morning.

But as Senator Menendez has said, I think, earlier: It's important we hear from you, obviously, but our constituents also want to know what we believe about this. And so it's

also important that we have an opportunity to express our concerns -- as you heard virtual unanimity about the concerns, not total unanimity about the idea initially for the program; although I think many of us agree it was essential to step forward.

But how it's being run, as Senator Bayh said, will have an awful lot to do as to whether or not we can go forward at all with other ideas that are going to be imposed, I'm sure, by the Obama administration to continue the efforts to stabilize our economic condition.

So with that, let me begin with Gene Dodaro, who was here yesterday for several hours testifying about the reforms of our regulatory structure -- and we thank you immensely for that testimony yesterday -- and here today as the acting comptroller general of the United States Government Accountability Office.

Neil Barofsky is the special inspector general of the TARP program. And we thank you for your service to our country -- both of you.

Professor Elizabeth Warren -- truth in advertising -- is a friend of mine. I admire her immensely. A professor at Harvard and has spoken and written eloquently over the years about consumer issues and has been a real advocate on behalf of consumers and chairs the Congressional Oversight Panel for Troubled Asset Relief Program.

We thank you immensely, Professor Warner, for being with us as well.

So we'll begin with you, Gene. And then again, ask you to try to keep your remarks to five to eight minutes or so if you can, and then we'll get to the questions.

MR. DODARO: Thank you very much, Mr. Chairman. Good morning to you, Senator Shelby, members of the committee.

I'm very pleased to be here today to discuss GAO's role in helping monitor oversight of the TARP program.

Under the legislation, we're to have ongoing monitoring efforts of Treasury's management of the program and report every 60 days to the Congress. On December the 2nd, we issued our first 60-day report, and in that report we outlined nine recommendations to improve the accountability and transparency for the program.

We issued our second 60-day report last Friday following up to see how Treasury had implemented our previous recommendations and we made some additional recommendations there as well.

Now our recommendations to improve the transparency and accountability program have fallen into three general categories. One is monitoring and reporting on the use of the capital purchase program, money that's been distributed. That's been the lion's share of the money that's been allocated so far. Second was the need for a better communication strategy and an articulated approach to what the vision was for the TARP

Program. And third is the management infrastructure that Treasury has in place to ensure that the program has integrity and that they've got the right type of people, procedures and controls in place to manage the vast amount of money that's used here.

I'll touch on each one a little bit more. The monitoring and reporting under the Capital Purchase Program has been a big concern to us from the beginning. There was no set process at the outset to monitor, track and report on the use of that money. Now we made a recommendation in December that Treasury put in place, a system working with the regulators to systematically collect information to ensure the use of the Capital Purchase Program allocations were consistent with the objectives of the legislation and that the requirements for executive compensation, dividend controls were effectively implemented.

Since our recommendation in December, Treasury has instituted a monthly survey now that they have originally sent out to kind of catch up on the 20 largest institutions that have received money, and are planning to track the rest of the institutions with quarterly call report data. Now we think this is a good step in the right direction, but we don't think it's enough. We think that more timely information needs to be collected on all institutions that are receiving the money to make sure that there's a better tracking of the lending practices of all these institutions and Treasury has more timely information to provide more transparency and to analyze the effects of the program in achieving its objectives. So we think it's very important, and we're going to stay on that issue.

Now communication has been a problem plaguing the program from the outset. As many of you mentioned in your opening statements, the shift from the original plan to purchase troubled assets to the capital purchase program wasn't explained very well. The rationale for that, we had recommended in our December report that Treasury institute a more effective communication strategy. They've put more information out since then, however it doesn't fully explain the integrated nature of the programs that they have established to date, nor does it effectively address the issue of what the additional 350 (billion dollars) will be used for. So we made a recommendation in our report on Friday that they needed to have a clearly articulated vision of the program to ensure a more cohesive understanding of what was trying to be achieved, how they were going to achieve that and how they were going to report progress.

Now in the management infrastructure area, we've touched on the hiring needs to make sure Treasury has the adequate personnel necessary to manage this. They needed to expedite their hiring process, they've made some progress but there's a long way to do there to get the right people and skills in place. And a large part of this will be determining what the objective are for the program overall -- what their strategy is to be able to determine what people that they need and what the right skills to manage it effectively.

Overseeing the contractors that they've hired has been another area. We've made recommendations are to ensure that they've trained the people that are going to be

providing oversight over the contractors, and that they move more to fixed price contracts which better protects the government's interests going forward.

And also we want to make sure that they have a proper internal control structure in place to make sure that the government adequately accounts for the dividend payments back and the money that's been distributed already and so that there's a good accountability scheme in place and to mitigate risk going forward.

So we think all these recommendations are very important.

In closing, I would say we are going to continue our efforts and we'll be continuing to report every 60 days. We're going to be following up with the Treasury Department to make sure that they fully implement our recommendations. Most of our recommendations that we made in the December report, while progress has been made, have yet to be fully implemented. We're going to also continue to work with Mr. Barofsky and Ms. Warren to coordinate our efforts to look more specifically at aspects of this program in more detail, including the plans that are going to be submitted by the automakers here soon. I was before this committee back in December talking about the need to have proper controls over that aspect as well.

So we appreciate the opportunity to be with you today, to help improve the management of this program. And I look forward to answering questions at the appropriate point in time.

SEN. DODD: Thank you very, very much again, for your testimony. And again I'll always be impressed you do that without reading notes; you put a lot of this to your own memory which is very impressive as well.

Mr. Barofsky, that's not a challenge to you, by the way. (Laughter.)

MR. BAROFSKY: The gauntlet is thrown down, Mr. Chairman.

SEN. DODD: I shouldn't have done that. But none of us are doing that up here either so -
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MR. BAROFSKY: Mr. Chairman, Ranking Member Shelby, members of the Committee, it is an honor to appear before you today and deliver to this Committee my initial report to Congress.

The Troubled Asset Relief Program represents a massive investment of tax payer money. The long-term success of this program is not assured. Success or failure will depend on whether Treasury has spent the tax payer's money wisely and efficiently. Our mission as stated on the cover of my report, is to advance financial stability through transparency, coordinated oversight and robust enforcement. As I promised you when I was last before you during my confirmation hearing, I've hit the ground running, focusing on the past 52

days on three areas I just mentioned, transparency, coordinated oversight and enforcement, trying to have a maximum impact while still having minimal resources.

First transparency. Within days of coming onboard, I recommended that Treasury post all of its agreements on its internet site. Treasury first agreed to provide many of these reports online and I was encouraged last week when Secretary Geithner adopted my recommendation in full and will provide this basic level of transparency to the American people.

I've also just initiated a project designed to shed light into what has been one of the darkest areas of the TARP; what banks have done with the hundreds of billions of taxpayer money that they have received.

Starting today, we will be sending out letters to each TARP recipient, asking them to report on how they've used the taxpayer money to date, and how they plan to use money that they've not yet spent. We will also ask them to provide in detail how they plan to comply with the executive compensation restrictions in their agreements, and whether they have changed the way they pay senior executives to get around those rules.

As to coordinated oversight, it is my honor to sit here today with my co-panelists. It has been a true pleasure coordinating oversight of this historic program with them, as it has been with the members of the TARP IG Council, a council that I have founded and now chair that includes GAO as well as the other inspectors general who are working with providing oversight and working with the regulators who are involved in the administration of this program.

Our oversight efforts have also included leveraging our position within the Executive Branch to make recommendations to Treasury before the money goes out the door. To that end, we asked for and obtained important oversight language in Treasury's agreements with Citigroup, Bank of America, and the auto industry deal that put real teeth into the conditions of those agreements.

I also note that for Bank of America and Citigroup, we also made the recommendation that they be required to report on their use of funds, which was adopted, and the only two financial institutions that currently have that requirement. And I think that the impact of transparency is shown in Citigroup's first report under that agreement which came out this week, which indicated in a transparent way that more than \$34 billion of TARP funds they are saying is going to be committed to increased lending. And I think that's a demonstrable impact of what transparency can do.

I'm further pleased to inform you that my office this week is announcing two additional audits designed to shed light on TARP activities. First, we're going to do a case study on the process into which Bank of America received \$45 billion of TARP funds and received guarantees of toxic assets and how it came to participate in three separate TARP programs.

Second, we're starting an audit designed to address potential outside influences such as lobbying on the TARP application process.

Finally, with respect to criminal law enforcement, my office has focused on laying the groundwork from one of our most important tasks, the task that we serve alone, serving as the cop on the beat for TARP programs. Our hotline and website are up and running. We have joined the president's corporate fraud task force and started up alliances with the FBI, Department of Justice and several U.S. attorney's offices. We've already opened several criminal matters, and we have teamed up with SEC, providing assistance to them in shutting down a securities fraud scam in Tennessee that had reaped millions of dollars.

The report that we have provided you today, we've also included our recommendations based on our initial observations of the TARP. For example, we recommend that Treasury develop a strategy for valuing and managing the assets that it has purchased so that we can obtain a better understanding of the true value of the taxpayer's investment. We also continue to recommend that Treasury enter into agreements with strong oversight provisions, both to deter non-compliance and to enable us to do our jobs.

We've also made a series of recommendations with respect to the TALF, a program that's still under construction, about ways the program can be designed to avoid waste, fraud and abuse.

Our report also attempts to provide a detailed description of TARP programs in Main Street terms so that more of the American taxpayers who are so heavily invested in these programs can better understand what is being done with their money.

I look forward to my next report, to updating you on Treasury's response to my recommendations, as well as to update on the activities of my audit and investigative divisions.

Mr. Chairman, Ranking Member Shelby, members of the committee, I want to thank you again for this opportunity to appear before you. And I look forward to answering any questions you may have.

SEN. DODD: Well, I thank you very much.

And before I turn to Professor Warren, let me just mention as well I know we're going to have scheduled hearings obviously on this over the coming weeks and months. But I'm going to recommend that we try to set up some more frequent, even with our staffs necessarily, so there's a more ongoing relationship, so we don't just wait for public hearings to hear things that are happening. I think all of us would like to have a more consistent source of information about how this is progressing, obviously almost from day to day and week to week. And we don't want to overload you. Obviously, you've got a job to do. But we need to figure out how to do that. But I know demanding certainly accountability stands in public, but we need to know this information with some

regularity. So we'll try and figure that out. But I want to put you on notice that we're going to set up some sort of a system to allow us to do that.

MR. BAROFSKY: I look forward to that.

SEN. DODD: Thank you, Mr. Barofsky.

Professor Warren.

MS. WARREN: Thank you, Chairman Dodd and Ranking Member Shelby and members of the committee. It's a pleasure to be here. I am the chair of the Congressional Oversight Panel established under the Emergency Economic Stabilization Act.

Because I'm going to speak only from notes and not tightly scripted, I should emphasize these are my views and have not been pre- approved by everyone on my panel.

I also want to say that while I'm here to describe what's happened so far, what we have done in our reports and tell you where our next reports in the immediate future are headed, I'm also here to listen. We are, after all, your panel. And so your advice, your thoughts, your criticisms and concerns are important to us. So we want to be able to hear that while we're here.

What we're doing -- we also hit the ground running. We were established the day before Thanksgiving and in early December issued our first report. Our report focused on questions, what we thought were the appropriate questions which should be put to Treasury about what they were doing with the first \$350 billion that had been granted to them.

Our first report had 10 areas of questions. We asked, first of all, what is Treasury's strategy? Is there a framework here, or are we engaging in simply ad hoc plans stuck together? Is this strategy working to stabilize markets? Is there any evidence that shows that? Is Treasury doing anything with the money to help reduce foreclosures, something that was specifically mentioned in statute?

What have financial institutions done with the taxpayer's money that they have received so far? Is the public receiving a fair deal? This is the stocks and warrants question, in part. As we put in money, we are supposed to be getting something back out that at least is of roughly equivalent value. Is that happening?

What is Treasury doing to help the American family since that's where this starts and ends? Is Treasury imposing reforms on financial institutions that are taking taxpayer money? How is Treasury deciding which institutions will receive the money? What procedures are being used? What is the scope of Treasury's statutory authority?

And finally, the question that we hope to get to someday, is Treasury looking ahead, creating contingency plans and alternatives?

Our first report went out, lots of questions. We tried to talk about this. We talked about it with Congress. We talked about it with the American people. Remember, we're on a 30-day reporting requirement. We turn to our second report which came out at the beginning of January.

The second report examined Treasury's responses to our questions and their non-answers. I will just stop at this point by saying we continue to ask, and we will ask until we get answers.

Our current focus, we have a third report that will be due out tomorrow. For this report, we've focused more tightly on question number five, is the public receiving a fair deal? And for this report, we engage in a much deeper valuation analysis of the first transactions that have taken place under the TARP program.

I will mention just the results to you and that is that at the time of the first set of transactions, Treasury substantially overpaid. According to the data we've investigated, Treasury put in about \$254 billion for which it received about \$176 billion in value from the financial institutions. That's a shortfall of about \$78 billion when measured as of the date of the transactions, not in terms of what's happened to the markets since then.

We want to emphasize there may be good policy reasons for overpaying. But without a clearly delineated reason, we can't know that. We return to a theme that we have spoken about repeatedly and that is the need for clear goals, for a clear framework, for methods how we're getting there and measurements to see if that is happening.

And fourth, we identify the report that we will have in March, where we intend to go. This one, we intend to focus at that point much more deeply on the issue of foreclosures. We are deeply concerned about the lack of action and the lack of progress to date on stemming foreclosures, particularly preventable foreclosures. And again, an issue addressed directly in the statute, and so we think it's particularly important to go back to it.

We are going to emphasize in that report the importance of developing reliable data. Our reports proceed from the underlying belief that if you don't know what's going on, it's very hard to diagnose the problem and develop a good strategy to fix it. So there's going to be a lot of emphasis on importance of developing better data about what's happening and then developing meaningful metrics in order to measure progress.

We are very much of the view that it's not enough simply to throw a program out there with a great name. We really have to have a way to measure whether it's doing any good. Americans have had enough false promises in this area.

So I want to just summarize what we've done by saying we are deeply committed to the notion that flexibility is good, that Congress is sensible in doing work through agencies that have some flexibility. But with flexibility goes great responsibility. Treasury must

articulate clear objectives, develop a -- (inaudible) -- strategy for reaching those goals, utilize specific methods to measure progress and spell these out before they spend more money.

I want to say that it is a particular pleasure to be working with the inspector general and with the GAO. Cooperation could not be higher. This has been a wonderful opportunity of people and institutions that have different strengths and different resources to bring to bear on this problem. And it's quite an honor to work with this group, and we are glad to do that.

I also want to say the panel looks forward to working with Congress. We are here at your pleasure, and we will do what we can in your name to enhance the accountability and ultimately the credibility of this program. I'm happy to answer any questions if I can.

SEN. DODD: Well, thank you very, very much. And we're not -- I see my colleague from Ohio Senator Brown.

I know you were here earlier. Would you like to make a quick comment at all?

Well, I'll put the clock on for eight minutes, and I won't hold everyone rigidly to that. We don't have a full complement of members here, so we can kind of be a little loose about the time constraints.

First of all, thank you, thank all three of you.

One question I want to just get out, I don't suppose you have the answer to this, but I'd like to get the answer soon. I'd like to know who the personnel are that are running this program and whether or not the people who were running it in the previous administration are hanging around in this administration. So I'd like to know who they are, what their backgrounds are, what their expertise is in dealing with these kinds of questions that are very complicated and difficult. But do they bring the kind of background and experience that would raise our confidence level that they know how to manage these kinds of issues? So I suspect you may not have that today. I don't know if you've had a chance to examine that. Have you had a chance to look at the personnel?

MS. WARREN: Well, we know that Mr. Kashkari, who was in charge of the TARP program in the previous administration, remains in charge of the TARP program. I believe that's true still at this point. I think the change in personnel may be taking place but that it's doing so slowly.

SEN. DODD: Well, Kashkari I know about, although I don't know if he's staying or not. But even going down into the ranks of who are the actually people doing the crunching of the numbers and so forth, I'd like to have a level of confidence that people here bring some background and experience in this area, that are going to be critical as we go forward. So I don't (want to ?) dwell on that point.

Let me jump to the issue obviously you've raised, Professor Warren, about the report coming out tomorrow. Your testimony this morning here says that Treasury may have pursued other policy objectives in overpaying for assets, but if so they didn't clearly articulate those objectives. And I respect that. And I realize the report is coming out tomorrow, and I don't want to jump ahead of your report. But obviously, you've mentioned the disparity of \$78 billion in terms of what we paid and what those assets may have been worth. And obviously, I suspect most of my colleagues here, I think my eyebrows went up, I suspect theirs did as well.

As you look at it, is it at all possible that Treasury could have used a different but sound methodology that produced a different result? Could you just share with us the methodology you use? And is there a possibility there may be a different interpretation to arrive at different numbers?

MS. WARREN: Senator, I have great confidence in our numbers. We used specialists who value companies, this is what they do. A publicly traded company, Duff & Phelps, we engaged to help us in this process. And this was only after talking to other companies as well that do this.

In addition, we had the benefits of two finance professors who were enormously helpful to us, one from Yale and one from Northwestern University. And their process was to go through the valuation using publicly available data -- I want to be clear, we were using only publicly available data -- but to use multiple ways to value the assets.

As some of you may know, there are some disputes at the margin about when Black and Shole should be used and when it shouldn't be. This is why you have academics in the room. So what the group did is that they valued it three different ways. They took the primary ways that are thought by anyone to be appropriate ways to value assets, this kind of asset, and they valued it three different ways, and the three different ways converged, which gives us a very high confidence that the valuation we're using is on target.

Now, when you read the whole report, all 700 pages, from the valuation report, you'll see that there's some plus or minus. But the plus or minus is very modest. And I stand by these numbers. These are good numbers.

SEN. DODD: Well, we're going to pursue that. I'm sure my colleagues will have many questions this morning for you, but also, once the report is out, to pursue that, questioning how that could possibly have occurred. One would understand some gap. No one's expecting perfection here between the price you pay and what you think you're getting. But that's a pretty large disparity, given the amount of money we're talking about.

Let me ask the panel members, and I'll ask any one of you to respond to this, but Treasury designed the capital purchase program to provide -- (inaudible) -- capital infusions to banks that are viable, without regard to these infusions. In at least two instances, a couple of the largest institutions received TARP funds under the capital purchase program, subsequently received additional assistance under the targeted

investment program. The selection process has been completely shielded from public scrutiny.

Do you believe that Treasury and the federal agencies who selected the banks for these infusions have consistently applied the capital purchase program criteria, i.e., funding only viable, healthy banks? And what are your plans to review the selection process? And how do you go from that one to immediately institutions that looked like they were in deep trouble? Do you want to begin?

MR. DODARO: We -- (inaudible) -- and we've had discussions with Mr. Barofsky's office about this -- a coordinated effort to look at the decision-making process that's in place for the capital purchase program going forward. And Neil has been very effective in coordinating this with the respective inspectors general in the regulatory agencies as well, because the process starts with the regulators providing recommendations to the Treasury Department, and then Treasury ultimately making the decision on a capital purchase program.

So we're going to be digging deeper into that program to ensure the integrity of the process, or at least evaluate the integrity of the process and the consistency of the process going forward.

With regard to the capital purchase program versus some of these other programs, we point out in our report that some of the criteria are similar and it's not well understood what the full range of differences are between those programs.

SEN. DODD: Mr. Barofsky, do you want to comment on this?

MR. BAROFSKY: Mr. Chairman, I'm launching an audit today that precisely addresses your question. We are going to do a case study of Bank of America. And the reason why we're doing that is precisely for the reasons that you just stated, because they participated in three separate programs. And we're going to take a good look at the selection process, the decision-making process, from beginning to end on Bank of America for each of those three programs. So I look forward in our next report, or when this audit is completed, to give you a very detailed and clear explanation of the answer to your question.

SEN. DODD: Professor Warren?

MS. WARREN: Senator, I think it was Senator Shelby who said when Citibank is declared a healthy bank and then within a matter of weeks is declared at risk of bringing down the whole system, we have to have some skepticism about the identification of these banks as healthy banks. And I think the numbers that come out in this valuation report at least raise the possibility that the secretary of Treasury's description of this program was not entirely candid and that we may want to consider that there were multiple objectives, only some of which or perhaps none of which could be described as infusing money into healthy banks.

SEN. DODD: Well, it's a major point for us, because this is -- again, my colleagues have pointed out, on the one hand, we're told this is going to healthy banks, and a week later you find out they're not a healthy institution. And you're wondering -- give us the plan. I mean, if it's one or the other, we all understand things can change; we don't expect things to be consistent from day to day. But there has to be -- this is infuriating to watch these decisions be completely conflicted about what we're looking at.

I noticed, in going over the reports, that there were some very common points you all took. It could almost be one report, in a sense, rather than three. And let me just share with you the common points that jumped out at us -- jumped out at me, anyway -- and I think you addressed some of this in your opening comments.

Number one, Treasury has yet to articulate a vision for the TARP as a whole, this framework idea. One thing I hear about over and over again is "Why are we here? What is the plan? And what is your vision of how we go from what we're doing here that will get us to these other -- to the desired results of economic stability and back to economic growth and freeing up capital markets?" the sense that there isn't that framework or vision.

Number two, Treasury's selection process to decide which institutions, a subject matter of this last question of mind.

And three, there's been no accountability with respect to the use of TARP recipients of the funds they've received, no process in place to track whether the funds are being used properly. All three of you draw those same conclusions.

You talked about your coordination, and I appreciate that very much, how well you're working together in all of this. But whether or not individually or collectively, have these concerns been raised specifically to the Treasury at this point? And do you have confidence that they'll be addressing any of these with this new crowd, the new administration?

MS. WARREN: Well, yes, Senator, we sent a letter with our very first report. Our December report was sent directly to Treasury with a letter from me -- I signed it -- asking the secretary of Treasury to respond to the questions we had raised. And it was precisely that set of questions, I will say, plus more.

We received a response on December 30th. We have posted that response on our website, made that response available to you as part of my testimony here. And quite frankly, Senator, it answered only some of the questions. And even of those that were answered, some answers were not directly responsive. So we do not yet have answers.

Now, we have sent the letter again. I am nothing if not persistent. The letter has gone to the new secretary of Treasury. We recognize it's a time of transition, and so we have

asked for a date later in February so that we can get the answers to these questions. And we will stay after it.

SEN. DODD: Are you all of a similar mind on this point?

MR. BAROFSKY: Yes, Mr. Chairman. In fact, I think, on the use- of-funds question, it's a good example of what we've done. We made our recommendation to Treasury. They adopted it with respect to some of the financial institutions. And now we've essentially taken matters in our own hands in watching the survey to bring transparency into the use of funds.

SEN. DODD: Let me just say on this point, by the way, I think all of us -- I certainly do, as the chairman of this committee -- I want to know immediately. I don't need to get letters. Just tell me when you're not getting answers. You will hear -- we will join you in this effort, I promise you, on a strong, bipartisan fashion, to get these answers. This is unacceptable, to put it mildly.

So, again, we can wait for these letters and reports to come out, but we want this ongoing, virtually daily communication with the work that's being done so that we can respond much more rapidly than waiting for reports to come out or letters to be responded or not responded to.

MR. DODARO: I think, Mr. Chairman, having a continuing coordination effort (like that ?) on a regular basis really makes a lot of sense, because there are a lot of developments. And we can raise to your attention if we're having difficulties.

Now, I might point out that soon after his confirmation, Secretary Geithner did ask to meet with all the oversight groups, and we had a discussion with him and we conveyed to him our concerns. And he listened carefully. And I think that, you know, I'm an auditor by background, so I'll wait to see what steps are taken going forward. But at least he sought our views, which I found encouraging. And as we've reported in our report, the Treasury has taken some steps, but I think more needs to be taken, steps in all these areas.

I'd also -- on your point about the personnel that are in place, initially they brought in a lot of career people as detailees from other regulatory agencies, some of which I've known in the past, so I think they had some credible people in there initially. They're replacing them with permanent people now going forward, and I think, you know, they're doing -- going through that process. But they need to make sure it gets completed. And then once the overall plan is in place and the vision, then they have to look to see whether they have the full complement of people. So that point remains an open issue.

SEN. DODD: Well, good. I want to make sure that people have the background and experience to deal with this, and -- (inaudible) -- being plucked out; maybe a lawyer or maybe an accountant, but frankly it never worked in areas like this -- (inaudible).

The last question I have for you -- and Senator Vitter made a point earlier, and I want to associate myself with his words. None of us want to trivialize this situation. And so the issue of executive compensation is not to trivialize it at all, but I think all of us appreciate that for many of our constituents, they have a hard time getting beyond this issue in order to understand the deeper, if you want to, questions that are involved in these programs. And they just hear that part of the responses and they just react to that. They don't get any further than that. It's literally infuriating.

And again, there are examples of it. I noticed on February 3rd Citibank published a TARP progress report, describing what it's doing with TARP funds, and the report states that Citi's chairman, its chief executive, chief financial officer asked not to be paid bonuses, but another 51 members of the senior leadership at Citi received, quote, "substantially reduced bonuses," end of quote.

Does the IG have the authority to look at such payments, for example, for the purposes of determining whether they are consistent with the TARP recipients' obligations as we crafted it originally? And there are other efforts being made by the administration in the last 24 hours.

As I mentioned earlier, I'll be proposing something later today as part of the stimulus package in the same regard.

But I want to know whether or not you have the authority to reach in and get that information or are you just relying on these public statements that are being made?

MR. BAROFSKY: No, Mr. Chairman, we absolutely have that authority and we are launching initiatives in four different areas on executive compensation. We have already submitted a request and that response is included in our report to Treasury on how they're going to be enforcing compliance with those conditions.

Second, the letter I mentioned is part of an audit effort where we are going to be surveying the firms on how they're complying, what their plans are for these -- for the executive compensation rules. Third, we're leveraging outside resources. We've teamed up with the New York State Attorney General's office in their inquiry in looking at bonuses on Wall Street and we're closely coordinating with them, so not just our resources but using those outside resources in addressing exactly the type of concern that you just addressed -- by looking behind these reports and getting the information through joint requests and joint review of certain data. And at times we'll do it on our own as well.

And finally -- and this is sort of also in answer to your previous question about where we see it going with the new administration -- I had a very productive conversation last night with the new chief of staff for Secretary Geithner about the new conditions that have been announced and we're going to sit down and try to assist them in making sure that these conditions have teeth. I had a very good and positive dialogue and I do look

forward to working with the new administration and I do think that they will be responsive to our recommendations.

SEN. DODD: Well thank you for that. And, again, I'll turn the questioning over to Senator Shelby but -- and, again, I don't want to trivialize compensation issues, I realize there's a danger in that. But again, for millions and millions of people in this country they have a hard time getting beyond that question in terms of having confidence that this program is working right when they see a failure to appreciate their money being used to stabilize the situation and then directly or indirectly being used to compensate. So that's the reason I raised it.

Senator Shelby?

SEN. SHELBY: Thank you Chairman Dodd, thank you for your questions too for the panel. Just an observation, Mr. Barofsky, about you and your role. Just a few weeks ago you came before this committee -- you were sworn by Chairman Dodd as to your testimony -- and you told us that you were going to do everything you could -- this is a very important job that you occupy, special inspector general of this TARP program, a lifetime opportunity of public service that very few people ever have to do right.

You might be unemployable after you do this (scattered laughter) but you know and I know that these people have got to fear you and your office. If they don't fear you, they're going to play with you. They're going to deny you this and they're going to deny you that. Senator Dodd wanted to know -- wants you to tell this committee what you need at all times. If somebody's stifling you, we want to know because we're the oversight committee of the banking industry and there's a lot of distrust in this everywhere.

Having said that, the TARP hiring practice is of concern to me. I understand that the Treasury Department has hired several former employees of the very banks to which it's providing capital -- think about it. While there's clearly a need for financial expertise in the TARP program, a lot of it's not in Wall Street anymore; they failed us. I'm concerned, especially given the limited life of the TARP program, that employees of TARP may be facing significant, Mr. Inspector General, conflicts of interest.

It seems to be an incestuous financial relationship situation here, moving from firms to Treasury to -- you know, to TARP to this and that. And that's very troubling not only to a lot of people on this committee but to the American people. We used to look at Wall Street, oh, they're the smartest people in the world; now that's being doubted today in a lot of ways. So a lot of these people helped bring about this financial debacle. It looks to me like people could go elsewhere for expertise, you know? I understand that and I know this is something you will look into, and I hope you will.

Do you like that? Does that bother you at all? I mean you're the people's man now. You're the watchdog and you've got a great opportunity if you don't blink -- I pray you won't blink.

MR. BAROFSKY: I assure you I will not blink and, obviously, conflicts of interest is an important area that we're reviewing with GAO, whose done an excellent job in reviewing the policy.

SEN. SHELBY: GAO has done a good job. I hope they won't blink -- they never have up to now. I hope they won't.

MR. BAROFSKY: I don't think they will.

MR DODARO: Now's not the time to start, Mr. -- Senator --

SEN. SHELBY: Absolutely not.

MR. DODARO: -- and we won't.

SEN. SHELBY: One of the stated purposes that we've all talked about here of the TARP is to maximize overall returns to the taxpayers; some have even claimed that the TARP will make money, I doubt that. Yet the CBO, congressional budget office, recently estimated that the currant value of TARP activity so far -- and this is new -- has been negative 64 billion (dollars) at a subsidy rate of 26 percent. In some cases, such as auto bailout, Congressional Budget Office estimates a subsidy rate of 63 percent, meaning that for every \$3 the taxpayers put in the car companies we're expected to get back only \$1. I doubt we'll get back anything but, you know, of that. What's your comment on that, Gene?

MR. DODARO: Well, I think the CBO, under the TARP legislation, the Economic Stabilization Act, is required to use the credit reform principles in doing these evaluations, which means they calculate the subsidies in a similar manner to loan guarantee programs and other things that the federal government subsidizes. So we're looking at those numbers. We've been having discussions with CBO and OMB now both from a budgeting standpoint but we're also -- another role that we have is we're the financial auditors for the Office of Financial Stability. And so we'll be looking at how these things are tracked and handled in terms of the valuation of the programs and on the financial statements as well. So this is a complicated issue but we're looking into it very carefully.

SEN. SHELBY: Professor Warren, you got a comment?

MS. WARREN: The numbers that our specialists have used in evaluating this suggests --

SEN. SHELBY: And who are your specialists? We'd like to know all of this stuff.

MS. WARREN: Sure. You bet. We hired Duff & Phelps, it's a publicly-traded company that's in the business of valuing companies, and we did it after a competitive bid and I probably -- I don't know if I'm allowed to say we got them to do it at half price.

SEN. SHELBY: Are they in the rating business?

MS. WARREN: No, they are not in the ratings business.

SEN. SHELBY: Thank God.

MS. WARREN: They're in a different kind of business here. And they were aided by Professor William Goetzmann and Professor Deborah Lucas -- I want to be sure that I give them credit because they put in many hours --

SEN. SHELBY: Absolutely. Absolutely.

MS. WARREN: -- finance professors who helped us out here. And they were also aided - - we did a legal analysis at the same time. As appalling as this may sound, there were people who actually sat down and read all the terms of the transactions and read the terms of comparable transactions that were going on in the marketplace so that we could really understand how valuable or not valuable the different elements of the deals were -- you know, not just headlines.

And as I said, we used three different valuation methods. They all hammered until they were all confident that we had a good number. And what it suggests to us is that the CBO numbers are understated.

SEN. SHELBY: I believe that.

MS. WARREN: Yeah.

SEN. SHELBY: Healthy failing institutions -- all of this brought some of this up.

In an October 14th -- just a few weeks ago -- press release the Treasury Department announced a capital purchase program, designed to provide capital to so-called healthy institutions. The release suggested that nine healthy institutions were already participating in the program. Of these nine, one no longer exists -- Merrill Lynch -- and two others, Bank of America and Citigroup, are on the brink of collapse and may still be and had to be rescued under the TARP program. A 33 percent failure rate does not, to me, exactly provide confidence to the market that either Treasury or any of the federal regulators, including the Fed, understood the term "healthy" or used that term loosely to get the money in there. Does that concern you, Gene?

MR. DODARO: I think that's been part of the communication problem all along here.

(Cross talk.)

SEN. SHELBY: Now it's more than communications -- well, substance dealt on that didn't it?

MR. DODARO: Right, well they made the initial decision to go with the large banks and then started the capital purchase program with a process using the regulators going forward. So I agree that it's not consistent entirely in terms of how they've explained the program going forward. And so, yeah, it's something we're looking at and making sure that we can understand the differences between these various programs that they've eventually evolved to.

SEN. SHELBY: Market mechanisms. In making purchases under the TARP program, as I understand it, the Treasury secretary was required by statute to use market mechanisms in determining the appropriate price of assets -- you know, purchase if they get it. To what extent were market mechanism used or talked about in determining the pricing and terms of purchases under the capital purchase program and the auto bailout?

In cases where Treasury has not used market mechanisms to determine prices, what justifications has Treasury offered for ignoring those requirements?

Professor Warren?

MS. WARREN: Well, Senator Shelby, I think it's clear that Treasury did not use market mechanisms, and I think, frankly, if we just read their public announcements, we can tell that.

SEN. SHELBY: I think you're absolutely right.

MS. WARREN: They pay the uniform price. And as soon as you pay a uniform price -- that is, they said, "We're going to pay the same amount. We'll give you the same number of dollars for the same return, regardless of whether or not you are a very risky financial institution or you are a healthier financial institution." And as soon as you decide to do that, you've moved away from risk-based pricing.

SEN. SHELBY: Isn't that a terrible way to look after the taxpayers' money and to make purchases anywhere?

MS. WARREN: Well, if the goal --

SEN. SHELBY: It is, or not?

MS. WARREN: Senator, Treasury simply did not do what it said it was doing.

SEN. SHELBY: No, like everybody said here.

MS. WARREN: I can't say that more clearly.

SEN. SHELBY: In other words, they misled the Congress, did they not?

MS. WARREN: Well, they did not do --

SEN. SHELBY: The Bush administration, Secretary Paulson --

MS. WARREN: -- what they said they were --

SEN. SHELBY: -- Chairman Bernanke misled the people -- the Congress and the people of the United States.

MS. WARREN: They announced one program --

SEN. SHELBY: Absolutely.

MS. WARREN: -- and implemented another.

SEN. SHELBY: They said one thing and, two weeks later, did another. Is that correct?

MS. WARREN: Senator, it's more than that --

SEN. SHELBY: No, -- okay.

MS. WARREN: Yes, Senator, they did, but it's more than that. It's even in the program that they moved to -- in the second program. They described that program one way, and they priced it a different way. They did not price for risk. That's what markets do.

And when they didn't price for risk, they create differences in how great a deal it is to receive this government money. The best way I can explain it would be is if we had 10 paintings in front of us and I announced that I was going to pay a million for each painting. And one was a Picasso, and, you know, one was a Rembrandt --

SEN. SHELBY: Sure.

MS. WARREN: -- and the other seven were not.

SEN. SHELBY: Yeah.

Mr. Barofsky, political influence -- this is very important here. You know, the American people, as you well know right now -- you can see it in polls, you can just go home, any of us can -- they don't trust the TARP program. They don't trust what's been going on. They see our banking system in shambles, in a sense. Not everywhere, but a lot of places.

Now that the Treasury Department, Mr. Barofsky, has a significant financial interest in more than 200 financial institutions, we need to be vigilant, I believe, that banks are not pressured to lend to politically-favored borrowers -- either side, you know. What steps do you plan to take, as the inspector general, to ensure that bank lending is insulated from political favoritism, because this would just compound the TARP program more so?

MR. BAROFSKY: Two areas: First is the -- one of the audits that we are announcing today is designed to detect the impact of outside influences -- of all outside influences on the application process within Treasury.

As opposed to -- the second part of your question, on what we're going to do with external, as I mentioned in my opening statement we have set up our hotline and our website, www.sig tarp.gov, if I can plug that, and we want to encourage anyone that is hearing about, or knowing about any type of TARP-related misactivity to let us know, and with that information we can then respond.

SEN. SHELBY: Senator Dodd, I'd just like to ask the inspector general one last question, you've been generous with your time here with me.

Do you believe that the TARP money has been wisely expended thus far, from what you've seen?

MR. BAROFSKY: (No immediate response.)

SEN. SHELBY: Sir, I'm asking -- addressing you.

MR. BAROFSKY: I don't know.

SEN. SHELBY: You don't know? You don't know that and you're the inspector general?

MR. BAROFSKY: I think -- I think it is too early to tell whether it was been -- it's been wisely spent.

SEN. SHELBY: Do you believe that -- where a lot of these banks have benefitted, loaned no money, paid huge bonuses, and so forth, like Merrill Lynch and others, do you believe that's the right message and the right thing for the American people at this time of great challenges?

MR. BAROFSKY: Senator Shelby, I think your question asks a number of questions. And, obviously, I think that any institution --

SEN. SHELBY: You're not evading the question, are you?

MR. BAROFSKY: No, no. I think any institution that has violated the terms of its agreement, obviously that's very much a wrong thing. Banks that misuse the funds, that is a wrong thing.

And I think that's why we're pushing for this accountability, not only within the TARP but outside the TARP, to our survey. And I look forward to being able to report back to you and give you an answer to your question after I've acquired the necessary data to answer it.

SEN. SHELBY: Thank you. Thank you, sir.

SEN. DODD: Senator Reed.

SEN. REED: Thank you very much, Mr. Chairman.

Following up on the conversation between Senator Shelby and Professor Warren about risk pricing, (is ?) the mechanism -- (inaudible) -- price on the warrants that are taken, or the equities taken, is that correct?

MS. WARREN: Actually, it's both, Senator. The entire "healthy banks" purchase program was to use exactly the same approach and exactly the same pricing straight across for all eight purchases made under it.

SEN. REED: But, essentially, the mechanism (is for ?) the warrant that the government --

MS. WARREN: The warrant is the central mechanism. Yes, sir.

SEN. REED: Right. And that goes to the question I want to address to Mr. Barofsky, that is, do you concur that these warrants were imprecisely priced, inaccurately priced? Are you prepared to look at these warrants -- not only that exist, but in the future, to ensure that they are appropriately priced for risk, appropriately priced for a return to the taxpayers?

MR. BAROFSKY: As we indicate in our report, (I think ?) the warrants were uniformly priced by the same methodology, which would be (a) 20-day trailing price until the date of approval by the TARP for advancement of funds.

And what we've done in our report is we actually have a chart where we set out, for every financial institution, every warrant -- what the strike price is of the warrant, what that stock was trading at as of January 23rd, the cut off date of our report, and how far in or out of the money each stock is. And I think that gives a good snapshot of where the taxpayer investment is.

And finally, to address your question, one of our recommendations directly addresses this, which is we think that -- and I think it also shows how coordinated oversight works with Professor Warren, as she is addressing the issue, as GAO is addressing the issue -- and our recommendation is that we get (it ?) real-time, and that Treasury needs to do evaluation, as of today, on an ongoing basis, valuing these warrants and the other preferred shares so we can have a snapshot of how the investment is doing today, and so the Treasury can make better investment decisions.

SEN. REED: Thank you.

Professor Warren, this issue of compensation keeps coming up, and up and up. And I think the Chairman was right, it has captured so much of the attention of the public that it has to be dealt with.

One institution has started giving bonuses out in some of these troubled assets. I recognize that there's -- there is a need to maintain and keep talent in these institutions, and that for one company to do this might lead to a loss of valuable personnel. So, -- (inaudible) -- suggest to me that, across the board, in the context of TARP, we might consider doing something that requires at least a portion of the (bonuses ?) -- (inaudible) -- these troubled assets. And also maybe mitigate that by allowing people to borrow against it at -- (inaudible) -- rates so that they can pay for household expenses and things that are necessary, particularly the -- not the highest compensated, but those that depend on bonuses, -- (inaudible) -- just in expensive places, just to get by.

Your thoughts?

MS. WARREN: Well, I think it's a very creative idea, the notion that your own money is on the line, and your own future, rather than just that of the taxpayers. So, I think it's certainly something worth exploring. Thank you, Senator.

SEN. REED: Thank you.

I just want to get an idea, in terms of your focus. You're coordinating your efforts, but could you just tell me, -- (inaudible) -- with Dodario (sic), what's the chief point of your responsibility, and how does it relate to your colleagues? And, just go right down the line.

MR. DODARO: Yes. First, right after the legislation passed we were the only organization that was really able to get in right away, until Mr. Barofsky was confirmed and the Congressional Oversight Panel was in place. So, we took a broad view of trying to monitor Treasury's stand-up of the program, their initial decisionmaking, and how they staffed-up, and got organized and got started in the beginning.

But, we also uniquely have the responsibility to do the financial audit of the TARP program in the Office of Financial Stability. Now, that involves looking at internal controls; how the custodians are going to collect the dividend payments; how the money flows in and out. So, we have -- a primary focus of ours is the financial auditing and integrity of the program.

We are starting to have conversations about where we'll decide to focus, versus more in-depth views. The legislation really contemplates a lot more detailed oversight, by the inspector general's office and the Congressional Oversight Panel, from a policy standpoint. So, we're trying to figure out, you know, where we can fill gaps and focus on some of these issues.

Like, for example, in the automobile area we were, early on, providing some advice to this committee. We'll probably take point on that. And we have regular meetings to work out those issues. But, that's a rough outline of how we're going forward.

SEN. REED: Mr. Barofsky, your, sort of -- how you fit in?

MR. BAROFSKY: We focus on where I think where we can add the most value. And the key, from our audit perspective, is coordination, because GAO is the gold standard on audit. I hired, as my chief auditor, an alumni of GAO. So, we'll work closely with them in figuring out where we fit and where they fit.

But, our focus is, outside of audit is -- sort of, where we stand alone, as I said in my opening statement, is in investigations, in criminal investigations.

And that's going to be a large focus in my office because that is the area that we occupy alone.

We also want to leverage our position as being the oversight body that's within the Executive Branch, and as I mentioned earlier, taking the opportunity to try to influence from an oversight perspective making sure the right mechanisms are in place before the money goes out the door. Obviously a lot of what happened occurred before I was confirmed and before I took the job, but we think that's an area for our focus as well.

SEN. REED: And when you came before the Committee, I asked you about your whistleblower program. Can you just very briefly, because time is -- where are you on that?

MR. BAROFSKY: It's posted on our website along with our hotline and we are committed to protecting whistle-blowers.

SEN. REED: Professor Warren, your role or --

MS. WARREN: I see my role as much more -- we look at things like the structure overall, whether or not we have a framework that's going to work here or is it just something that's adhoc, things are put together. We're also -- when we talk about transparency, we're really asking questions about transparency in a very grand sense; that is, it's not just transaction-by-transaction, it's when you describe a program as healthy banks, is it really about healthy banks, is it really about something else.

We also have the capacity to work with outsiders, with experts, academics, people in the business world, to get more input, more perspectives on what's going on here. For example, with the foreclosure initiative, this is really an opportunity for us to come in and talk about the kinds of data we need so that we can really diagnose what the problem is, the kind of metrics that should be used for ascertaining whether or not it's doing any good.

So we see ourselves as able to maybe take a step back from the more detailed work and see if we can be helpful in both monitoring, describing and hectoring about larger pieces and how they're moving together.

SEN. REED: In that context of stepping back, this is a much maligned program and -- with cause, but where do you think the credit markets would be today if this program had not been passed?

MS. WARREN: Well, I think this is a really hard question. I'm not confident, A, that we would've done something else. It's not as if there was only one option and if we didn't do that option, we would all sit around on our hands. It might be that we might have taken another path. It is possible that the biggest cost of the TARP program will turn out to be the road not taken with that first what may turn out to be \$700 billion, and the three months not spent getting a clearer focus on what we're trying to accomplish and some clear strategic plans for how to put it in place.

SEN. REED: Let me -- I just have 30 seconds.

MS. WARREN: Please.

SEN. REED: Mr. Dodaro do you have a comment?

MR. DODARDO: Yes, one of the other roles that we're trying to do is to develop a set of indicators that can kind of track this over a period of time, Senator. and you know what we've noted is the, you know, inner bank lending rate in particular has come down during this period of time, although the spreads remain high between corporate bond markets and mortgage markets and obviously the mortgage rates have gone down. The difficulty is isolating TARP's impact compared to the Federal Reserve's impact.

But we're -- that's one of our continuing roles is to try to see if we can develop a more sophisticated set of indicators to shed as much light as possible, recognizing the difficulties inherent in trying to pinpoint TARP specifically.

SEN. REED: Thank you very much. Thank you.

Thank you, Mr. Chairman.

SEN. DODD: Thank you, Senator. Our next Senator is Senator Corker, I believe.

SEN. BOB CORKER (R-TN): Yes, sir. Mr. Chairman, and Ranking Member, thank you for having a very timely hearing. I appreciate it. I think many of my colleagues have expressed the frustration that people all across my state feel and that I feel, and I want to thank each of you for the job that you're doing.

It's an amazing thing to really watch some of the lack of public relations efforts that are taking place, and certainly I appreciate the focus that you have on making sure that bad

things are not occurring. And so I agree with all of those things and I certainly agree with what Kay Bailey Hutchinson said about the fact that we have lots of people out here that have great credit that are having loans called and there're lots of reasons for that and we've met with regulators and others and so I want to express all those emotions if you will that are similar to many people on the Committee.

But then I want to go down a little bit different path. I wonder if anybody -- I know you all are working and sometimes we in government, we want to make sure we're doing a really good job going down this path, but sometimes we really don't look at the path we're going down, okay. And that's sort of the worst of government sometimes. And I guess I would ask this question, I mean banks in their own self-interest loan money to make money. I mean, that's how banks make money, there's a spread involved and that's how they have dividends for shareholders.

Have any of you all stopped to just ask sort of the big question, why banks are not lending money. And would you answer that in what I think much of what we're doing in some ways is petty compared to focusing on the essential issue of why banks are not loaning money. And Elizabeth -- excuse me, Professor, it seems like you might want to answer that.

MS. WARREN: Well yes, Senator, because this was actually a point we raised back in our December report and that we have raised in our meetings with Treasury. The Treasury at least publicly announced that we will lend money to healthy banks. And so the presumption is exactly as you said, okay, if they're going to have pay us interest on this money and they're really healthy, then if they have the extra money, the banks will go ahead and lend it out. They've got to lend it out. They can't afford to sit on this money.

So it was a sort of derivative notion right, this is how the theory will work. Then it doesn't happen, and the data seems to suggest that it doesn't happen, although there's some dispute about that. But when it doesn't happen, we think it's really important that you back up and say maybe the problem is different. You know, they kept using --

SEN. CORKER: I like all that, but I've only got --

MS. WARREN: I'm sorry. I apologize.

SEN. REED: -- why are they not lending. I understand all those other --

MS. WARREN: Senator, we can't tell. One possibility, they could say, they're not lending because there aren't good lending opportunities, that's certainly an argument that some banks have used. Other because there were no restrictions put on the money can simply say we're not lending because we can figure out a better way to make money with this money. We can buy other banks, we can buy different assets. We're not lending because we have better ways to use the money you've given us. And quite frankly, Senator, if you're underwater, it makes no sense to lend when you've got this money. You hang on to the money and hope that it's going to see you through --

SEN. CORKER: So you sort of hit in your third point -- and I think there are obviously slightly less lending opportunities in an economic recession; I mean, that's just sort of A plus B equals C, right?

MS. WARREN: Right.

SEN. CORKER: And I do think that in some cases there are some acquisition opportunities that maybe make more sense. But I think the big -- the 90 percent issue is that many of these banks know because of gap accounting on their accrual loans they haven't taken losses that they know are coming and they're holding on to this liquidity because they know the losses are coming.

And secondly, banks are having great difficulty leveraging, they're having difficulty selling commercial paper and so with the money they have they're having difficulty making loans. So it seems to me that the major issue we ought to be talking about in these hearings with the information that you have is how do we solve that problem, okay.

And it seems to me with the next 350 (billion dollars) that's coming down the pike, there's a debate that's going in the administration okay, and I think I know the views of the two people that are mostly at the table. But it seems to me that this hearing would actually be constructive -- not that it isn't on some of these other issues -- but it seems like the 90 percent issue would be what is it, what is the issue. And if it's -- if the fact that these banks really, in many cases, know they are insolvent, okay, we would make better use of our time figuring out and helping in this hearing direct what's getting ready to happen. Would that be a fair assessment?

MS. WARREN: Yes, Senator.

SEN. CORKER: So since you guys have been up under the hood, okay, my fear is actually -- I just want to digress for one second; I mean, you talk about the funds being used properly. Unless we're marking the bills as we go over -- and I know we're not -- I know the money's -- the money's fundable, we don't know what's TARP money and what's not TARP money. So say our TARP funds are being used wisely or unwisely, is kind of silly. I mean, the bank has money, and ours is a portion of that and to say that some of it's going to be used for signs on stadiums, it's not TARP money, all that's kind of a silly and useless conversation. I'm actually far more concerned about -- I don't think we ought to have outside influences, I agree with that, and I thank you for making sure that doesn't happen. I'm a whole lot more concerned about inside influences just to be candid where forced acquisitions take place if we get money. I mean, those things actually big picture wise concern me almost more.

But let's get back to this issue. I think people are not loaning money because they know they're getting ready to be insolvent, or they're having tremendous difficulty raising leverage money, which they do through commercial paper and other ways to lend money. Do you agree or disagree with me?

MS. WARREN: Yes, Senator, I think that's important.

SEN. CORKER: Well if that's the case, what do we, in your opinion, what do we do about that?

I mean, that is a pretty major issue. And it seems to me that -- and I question these valuations, because you're only valuing the warrants, right?

MS. WARREN: No, no. We value the whole package.

SEN. CORKER: The preferred stock is -- you've got all -- (inaudible).

MS. WARREN: Yeah, yeah.

SEN. CORKER: So if it's all at par, then the investment is --

MS. WARREN: It's not, Senator.

SEN. CORKER: Okay. Well, I guess I would go back to, again, what do we do? I mean, these banks know they're worth a whole lot less, okay, internally. They know they're going to have losses. What is it we do at this time? Do we make them all insolvent and recapitalize again? Do we seize them?

What is it we do to solve this problem versus working on the little bitty issues around it that are very important to all of us and drive a lot of emotion, but really don't get us where we need to go with the money that's being expended? What do we do now?

MS. WARREN: Well, Senator, I think we start by telling the truth. And that means if we have financial institutions who have liabilities up here and the value of their assets is down here, that until the day comes that we find a way to bring those two things together, whether we have --

SEN. CORKER: Okay, so GAAP accounting doesn't allow that to take place is really kind of -- (inaudible) -- okay. So do we make a change so that we devalue them immediately and say we lose their top 50 banks immediately? I mean, really, this --

MS. WARREN: Senator, the point is, we've got to acknowledge if there is a gap, we have to acknowledge what that gap is, and then we're just going to have to make some decisions about how much American taxpayer dollars is going to go into that to try to fill that in so that the value that is held in these banks, whether it comes from outside held assets or whether it comes from the American taxpayer, makes it up to the point that it matches their liabilities. That's the question in front of you.

SEN. CORKER: And so in public, with some of the folks at the White House who are debating this listening, what you would say the notion, then, of just putting money in and

letting the banks sort of meter out their losses over time and in essence be dead men walking is not a good solution. Is that what you're saying?

MS. WARREN: I think there are enormous risks and enormous costs to doing this slowly over time, because I do believe markets are smart. They see it coming.

SEN. CORKER: And that's why the common shares of these banks are so low, is it not? I mean, people who are investing in these banks understand that these losses are coming. Is that correct?

MS. WARREN: I think that's right, Senator.

SEN. CORKER: Okay. Listen, I know my time is up. Mr. Chairman, this is a great hearing. And all of the emotions that the American people are feeling about what they're seeing, I think, are very well- founded. I do think that we can get in trouble sometimes by trying to make a program that we're working on better instead of just facing the facts -- and by the way, I say this with no criticism to anybody, okay?

I candidly have not heard anyone yet come up with a solution that all of us think is workable, because if we follow Elizabeth's path -- excuse me, the professor's path -- which I, by the way, happen to agree with -- I also understand we are talking about trillions of dollars -- trillions, okay. And that's what concerns me so much about this stimulus package right now. And I don't mean to be political.

We're going to borrow a trillion dollars, and then I know and you know and they know and the banks know and everybody that's involved in this knows there is still another trillion minimum coming, and probably a whole lot more than that in losses.

And so I hope that at some point we'll have the ability to affect what is getting ready to happen in TARP. I hope this discussion that we're all having will help with that. I think this hearing is helpful, but I hope that we also will pursue this simple course. And I don't know that I fully have the answer yet.

SEN. DODD: Listen, I thank the senator for it. He's been obviously a valued member of the committee. I don't -- in fact, I agree with your assessment, by the way, on why banks are not lending. I think that's absolutely the case. There may be other reasons, but the major reason is they know what's coming.

Look in the commercial real estate area alone; you've got a bill due in one year of \$400 billion and the second year maybe \$800 billion, just in commercial real estate, coming down the pike. And so you're hedging against these obligations which are emerging, and so a little unwilling to step up at this point and lend when you know you may have obligations coming along that you're going to have to meet. So I think your point on that is very well taken.

I think the value we're getting at here is individuals, who all have wonderful ideas and thoughts on where to go from here, but the value of the inspector general or the GAO or the Congressional Oversight Board is to make sure, in my view, that the program is accountable and working well.

I'm interested in your ideas of how we -- we're willing to listen to anybody who's got an idea on how best to get us out of this. So I think Senator Corker's questions here are very appropriate. But it's also the substance of what I'm trying to make sure we do here is that we have a program that's running well.

What's been missing is not your responsibility, and that is to frame this program in a way that people can understand. And as Senator Bennett said earlier and others have said along the way, these are integrated efforts. We have a tendency to deal with these like stovepipes; you deal with the TARP program and then the stimulus program and then something else, as if somehow they were unrelated activities, all designed to move us in a direction.

And so I appreciate my colleague's point. He's absolutely correct, by the way. If the estimates are correct, we're looking at a gap of some \$2 trillion over the next several years, plus an \$800 billion stimulus package, that get us close to filling that gap that's emerging. Obviously it's quite short of that. What are the tolerance levels, the tipping points? Because we all have to make decisions up here and produce necessary votes to get us to the point that we'll hopefully have a package in place that will assist us get to that stabilization.

SEN. : Mr. Chairman, could I say one thing?

SEN. DODD: Yeah, just let me finish the last thought and I'll turn to my -- and that is the notion as well -- and I think we're in danger of overselling a lot of these ideas -- that I think the president has it right in that what we're trying to do here, we'd like to make it better tomorrow. But if we can stop making it worse tomorrow, that's a major achievement at this point -- and a further deterioration is what's at stake immediately, in my view -- and that our hope is, obviously, by doing that, then we'd begin to turn this around and move in the right direction.

But I'm worried that we're overselling this whole program as a way that somehow miraculously, through the adoption of a stimulus package and the adoption of a TARP program, that all of a sudden things are going to turn around. They're not. They're not. We've got a long way to go. And the one thing we hope to be able to do is to begin to stop the further deterioration. And that's the best maybe we can hope for with a lot of this at this juncture, and then talking as well about what we need to be doing, exactly to Senator Corker's point. What do we need to do to get this moving in the right direction?

And my intention is and hope is here, obviously, we'll do as many formal, informal discussions, hearings and others to listen to people who can help us sort that out and make ideas and thoughts and recommendations to the administration.

But I think there is a danger here; we're debating the September debate. People want to go back and debate whether or not we did the right thing or the wrong thing by supporting the TARP program. I don't know; maybe history will tell us the answer to that question. There were those of us here who made the decision, in the absence of anything else, we thought this was the right thing to do.

When the chairman of the Federal Reserve Bank, the secretary of the Treasury and economists across the spectrum say, "You've got a matter of days to react to a meltdown of the financial system in this country," and to have global implications, some of us decided to step up and (give it ?) a chance, 40 days before a national election, with all of the implications that made that decision what it was. And I happen to believe it was the right thing to do. I'm deeply furious about how it's been managed, but I think it was the right thing to do.

My friend -- and he is a wonderful friend of mine, sitting next to me here -- had a different point of view on that. I respect that. But at some point here we've got to go forward. We can't go back and redebate September all the time. We've got to decide where we go from here and how we make this work well. And that's what we hope to get done.

I didn't mean to digress, and obviously Senator Menendez and Senator Warner have questions.

Senator Shelby, quickly.

SEN. SHELBY: A few observations. First of all, I have a lot of respect for Senator Dodd. I chaired this committee and worked with him.

I can tell you, I think that the TARP program was induced by panic. I don't believe that the Fed knew then and Treasury knew then and don't know now what they were doing. Look at the mistakes they've made. And I believe that this committee, Mr. Chairman, has to go back and see what went wrong. If we don't go back to see what went wrong -- sure, we've got to go forward. We're wasting our time holding these hearings. We've got to break down what went wrong, because we'll repeat it again. And we're about to repeat it on this stimulus bill, and we'll repeat it again on another financial deal if we don't put it all together.

And I was going to pick up on what Professor Warren said. I think sometimes we're in denial. Even banks, they're insolvent. Are they too big to fail? As Dr. Volcker said yesterday, some of them might be too big to exist. Who knows? But the American people can stand the truth. They can stand the truth. It's brutal and challenging, but we shouldn't deny that to the American people, and we shouldn't keep banks -- the Fed shouldn't keep banks operating that are insolvent and won't make it, or car companies that are insolvent and won't make it.

Thank you, Mr. Chairman.

SEN. DODD: Senator Menendez.

SEN. ROBERT MENENDEZ (D-NJ): Thank you, Mr. Chairman.

You know, I -- just listening to this line of question and discussion, I also think that even if all of the status that we've talked about of where the banks are at is the case, for argument's sake, that at the end of the day that won't put -- we won't get anybody to work, even if we were to make a governmental decision to infuse money in them, or if we were to allow them to fold.

And at the end of the day, we're only going to get people to work in this economy if we create the jobs and the opportunities for them to go to work. So I think that we could study this ad infinitum -- and I'm for studying it, for sure.

But right now when you're losing 2.45 million jobs last year; when you are poised to lose millions more; to sit back -- if you happen to be like us who happen to be employed maybe you don't feel the pain. The realities are there are millions of people in this country and millions more poised to lose their jobs. To suggest that we largely sit back and do nothing is not a course. I think we need solutions that call for bold action that give us a chance to succeed. We are in unprecedented times and so therefore some of those challenges along the way are, by devising and putting all the best minds together to the best ability, is what we move forward on and that's what I think is the debate at present before the senate.

Let me just say, I was troubled to see how your report revealed the treasury department under Secretary Paulson overpaid for the equity it received in the banks by \$78 billion and my question is, do you believe the treasury's methodology was geared more towards productive implementation of the TARP or proffering up the banks at that moment in time? What do you think their methodology was? Seventy-eight billion is not a small figure to have a difference on.

MS. WARREN: When Treasury decided that it was going to use the same terms for all banks and not engage in risk-based pricing -- which is what the market would do; it would say for some banks the terms have to be different because there's more risk associated with those banks -- then that built into the system that there would be larger subsidizations and no subsidizations for some of the banks. It was structural from the beginning. Treasury may have had other reasons for wanting to do that -- the ease of implementation, speed -- but that is the effect and I can't speak to their psychology but I can certainly speak to the plans that they implemented and what the direct consequences of those plans were. I have to assume treasury understood that at the moment that they structured the program.

SEN. MENENDEZ: Now when we talk about lending, if in fact you have largely the absence of conditionality, if one of your goals is to liquefy the credit crunch and lending

is one of your goals, in the absence of conditionality you're not necessarily going to get lending.

MS. WARREN: No.

SEN. MENENDEZ: I think that's one of our big challenges here. Now there are payments that are coming in, aren't there, Mr. Barofsky? I think you put in your report \$271 million and February is a big month of payments on interest or dividends, are they not?

MR. BAROFSKY: That's correct, February 15th.

SEN. MENENDEZ: Do we have a projection of what that number will be?

MR. BAROFSKY: We do not include it in our report, I'm sure we can get you that information.

SEN. MENENDEZ: Mr. Dodaro, do you have any sense of what that number will be?

MR. DODARO: Not yet. The dividend payments are at 5% and a lot of the payments under the initial capital purchase program are still being made. The money, the original \$250 billion under the capital purchase program, has not all been spent yet with the banks -- that started going out at the end of October and the next set of payments were made in the early December time frame and they continue to be made now.

SEN. MENENDEZ: I'd like to get a sense of what's being carried back because as we talk about what's going on I also want to get a sense of what is coming back in payments as well. Let me ask you: yesterday the treasury announced new restrictions on executive compensation. Former Secretary Paulson voiced concerns that such restrictions are counterproductive because they will deter institutions from seeking the assistance they need and potentially drive them to choose failure over intervention. Do we really believe that that's a realistic concern, that the need for these bonuses are such that an institution would choose to fail versus not be able to pay out the bonus?

MS. WARREN: Senator, I work in the bankruptcy much of the time -- my academic work -- and it's pretty much the case, the data showed, the CEOs lose their jobs when companies fail. Worse yet, they don't get jobs in other companies; they don't get to lead them -- the data just showed that; that's a cost and that's a cost of driving the business into failure.

So the notion always was that it had a nice disciplining effect on making you take care of your company and trying to keep it out of failure. In a world in which -- I understand, there are market forces that are larger sometimes than any individual CEO but I want to make two points: there are still some very healthy banks out there. There are some banks who did not get involved in these practices. Every time the banks that engaged in very risky practices are bailed out, every time their CEOs are rewarded, it works against all of those people who took smaller rewards in order to engage in safer practices and keep

their institutions safe. I'm a strong believer in supporting those who took the prudent steps and I think we'd best support them by saying that the others have to pay the price.

SEN. MENENDEZ: Thank you. Mr. Barofsky, let me ask you -- we had a hearing here about Madoff's massive scheme and about the SEC's process for handing tips or lack thereof even though there were early warning signs, a couple of things; one, what mechanism do you have to make sure that credible and actionable tips are followed through swiftly and thoroughly?

That's my first question. Secondly, is part of your charge going to look at the type of lending that takes place? In pursuit of those of us who supported this and thought that lending would be used also to liquefy the credit market and get to small and mid-sized business as well that ultimately employ people in this country, if you just lend from bank to bank, at the end of the day we don't get a sense of what the lending takes place in terms of what is the essence of the lending that will take place -- is that part of it?

Thirdly, you list on page eight: fraud vulnerabilities as one of your early recommendations and I'm wondering what has been the response from the Federal Reserve on that \$20 billion of TARP funds that is being used with them?

And then finally -- these are all questions to you -- finally, your mission as you defined it on page 13 is to advance economic stability through transparency, coordinated oversight, and robust enforcement; therefore being a voice for and protecting the interests of those who funded the TARP program, i.e. the American taxpayers. You go on to say how you're going to do that and you say one of those elements is by robust criminal and civil enforcement against those either inside or outside of the government who waste, steal or abuse TARP funds. I hope that section, that you would herald that very loudly so people are forewarned of decisions that they might make in the marketplace.

One of our problems has been that regulators have been asleep at the switch so if you don't act as a cop on the beat and you don't take actions that send a very clear message to the marketplace, then people unfortunately left to their human devices will have excesses and those excesses often can fall into those categories that you listed in your report. I hope you're going to take a very strong message that that's clearly going to be part of what will consider actionable items under your term. Can you respond to those elements?

MR. BAROFSKY: Certainly, and I think that enforcement -- it drives some of the things that we've done early on and insisting and recommending that treasury include certification reporting requirements on conditions. One of the reasons why we insist so strongly on that is that it sends a message that the senior executive who has to sign that certification, upon criminal penalty, has to make sure that the information on that certification is correct. We will certainly be monitoring that. Those that lie to treasury, whether it's to trick treasury into making investments that it otherwise would not or lying on their certifications to avoid conforming with their contractual requirements, we're going to be on top of that. One of the ways we're going to be on top of that -- getting back to your first point -- is through our hotline and our whistleblower process.

We're still in the process of developing our policy and procedures but it is going to be -- what we are already talking about is going to address just those concerns that you raised. We're going to have every whistleblower, every hotline tip -- we actually hired someone already, one of the few people we have on board, whose job is going to be to monitor the hotline and I don't mean just be answering the phones but someone on senior level who is going to be reviewing all of the complaints, all of the tips that we receive; that person is then going to put these together and we're going to have senior staff meetings where we're going to review these complaints as they come in and determine which ones we need to follow up on.

So we plan on taking that very seriously and we certainly do not want to avoid -- we certainly do want to avoid missing a good and credible tip.

SEN. MENENDEZ: On the fraud question that I asked you and that's in your report, has the Federal Reserve responded to you in terms of your recommendations?

MR. BAROFSKY: Yes, when we first addressed this issue in early January -- and what we did is we worked off the term sheet in the initial briefing -- we thought that the mechanisms that they had in place were insufficient; it was basically relying on rating agencies and investor due diligence. We pointed out to both the Federal Reserve and to treasury that we thought that was not a good model based on how historically those private players had failed.

The response has been positive.

Before our report came out, obviously, we shared our recommendations with both the Federal Reserve and with Treasury. And we had a very productive meeting at the Federal Reserve. And they've indicated to us that they are considering additional fraud prevention measures that are in the process of being formed.

This is a program that has not yet been completed. And we were very encouraged that they are on the right path. They are considering our recommendations, both as we advanced them in early January and that are here today in our report. And we'll continue to work with them to give our advice on how they can best tailor this program to limit the possibilities of waste, fraud and abuse. You can't eliminate it, but we do hope to continue to work with them to find the right way to limit it.

SEN. DODD: Thank you very much, Senator.

Senator Bunning.

SEN. BUNNING: Thank you very much, Mr. Chairman.

I just want to step back for a second. The current secretary of the Treasury had a seat at the table when all of this original TARP was designed. And now next week -- at least

that's what I hear -- next week he's going to come back with a detailed plan on how we're going to spend the next \$350 billion. And his chief of staff that he hired -- and had to get a waiver from the ethics rules of the Obama administration to hire him, because he was the chief lobbyist for Goldman Sachs -- now, in the total TARP monies, there was \$10 billion that went to Goldman Sachs.

My question to you is, the American people are screaming because they think that the TARP money was designed for one reason -- to relieve the credit crunch -- and was being used completely to take care of friends and others on Wall Street.

How do we dispel that notion with the American people when in fact, the bait-and-switch took place? How -- please, Mr. Inspector General, tell me how we dispel that conception that the American people! I can tell you, my phones in my office rang off the hook. Twenty-five thousands calls -- I haven't got 25,000 calls since I've been in the Senate! But they questioned me and my sanity if I voted for that. Two hundred calls were the other way. They said it's essential, we need it -- 25,000 to 200.

Now, explain to me how I'm going to have to believe what is being said next week by the new secretary of the Treasury and his expenditure of the additional \$350 billion.

MR. BAROFSKY: Senator, first of all, just in response to your opening statement: I want to thank you and the chairman and the ranking member for cosponsoring the bill that you referenced in your opening statement.

I'm very encouraged to hear that that was passed last night and I look forward to it being passed in the House as well. So I want to thank you for your support on that.

SEN. BUNNING: We tried to get it passed, you know, a month ago.

MR. BAROFSKY: I remember and I appreciate those efforts.

In response to your question, as an inspector general it's not my job to believe what I'm told; it's to test what we're told.

And to answer your question: What we are doing, what GAO is doing, what other inspector generals are doing, and which we're coordinating through our Inspector General TARP IP Council, are audits? We're going to be testing the questions of the application process.

The FDIC IG has initiated the first audit on what's going on in that regulator. The Federal Reserve is doing one to test that regulator's application process. GAO is sampling Treasury IG -- he's doing a case study. We're going to be doing a case study. All with one common theme of all these different audits, which we're going to coordinate and hopefully do a capping report --

SEN. BUNNING: I don't want to interrupt, but I have to interrupt to say to you that you have the ability to inspect those IGs. You have the ability to inspect the Fed's IGs and make sure that you're getting to the right part of the point.

You know, they may not -- they may not be exactly -- since they were part of the problem and the switch -- they may not be giving you all the information that you should be getting.

So your job is even more important than all of those other IGs, because you have got to make sure that the money that the American people are being spent -- \$700 billion -- is being used in a fashion that is believable -- believable for the American people and accurate.

MR. BAROFSKY: And Senator, I want to stress the respect I have for those inspectors general. They've been incredibly helpful in standing up my office.

And with that said, I will -- one of the things that we're going to be doing is -- we anticipate doing -- is a capping report, where we do look at the different methodology, we do look at these issues. And as I said, we're also going to be doing our own audits.

So I think that part of it is coordinating and leveraging the resources of the other audit agencies, all going to the basic fundamental question, which I think is -- and I don't want to characterize, but I think is your question -- which, were similar banks all treated the same? Was this process fair?

SEN. BUNNING: I can read from your page three. You're pleased to inform my office -- we're pleased to inform you that my office is announcing the first four audits. One was on the Bank of America, that received 45 billion (dollars) in TARP funds and guarantee relating to more than 100 billion (dollars) in troubled assets. That's certainly not a healthy financial institution.

And so I'm worried about your audits. If they're going to be as accurate as you say they are, how in the world that you didn't go to Bank of America and say, by the way, you guys are short. You're not only short, but it's in black and white that you're short. You're short \$65 billion in the red!

MR. BAROFSKY: Senator, obviously --

SEN. BUNNING: What about the other three audits that were mentioned? Who were the other three that you audited?

MR. BAROFSKY: Well, Senator, just to address that question: We're just commencing this audit. We haven't done an audit of Bank of America or reviewed the Bank of America transaction. That's a responsibility of Treasury as they determine which investments to make.

Our role doesn't kick in in that area. It's just not the role of the inspector general.

SEN. BUNNING: Well, if they've got TARP money it does.

MR. BAROFSKY: Yes. And that's where we come in and that's why we're issuing this audit is to take a look at this precise issue.

SEN. BUNNING: Well, you also mentioned three other audits that you have initiated. Would you share that with the committee?

MR. BAROFSKY: Certainly, Senator.

As I mentioned in my opening statement, one is on the use of funds -- and that's the survey letter we put out so we can report back on how financial institutions are using the TARP funds; second is on executive compensation, where we're reviewing both the institution's compliance, as well as internally to TARP management, how they're setting up their processes and procedures to ensure compliance; third, as you mentioned, was the Bank of America audit -- a case study on what happened there, addressing the questions that you've rightfully raised and correctly raised. And then the fourth audit is on outside influences to see and determine and test whether outside influences had a role in the application process.

I think that also addresses your question, Senator.

SEN. BUNNING: I urge you -- I urge as sternly as I can -- as a member sitting on this committee -- to not be bashful, because the American people don't want you to be bashful! They want you to get to the bottom of why we're not loosening the credit reins in this country after spending 700 billion of their dollars.

And they're not interested in return on capital. They're interested in my son or my daughter or my grandkids can't go to a bank and get a 30-year mortgage by putting 25 percent down.

MR. BAROFSKY: I assure you I will not -- and I don't think there are too many people at 1500 Pennsylvania Avenue right now who would describe me as bashful. And I look forward --

SEN. BUNNING: Well, I urge you to use all your power -- and the additional ability now, as soon as the House passed that bill.

MR. BAROFSKY: I absolutely will, Senator.

SEN. BUNNING: Thank you very much, Mr. Chairman.

SEN. DODD: Thank you very much, Senator.

Senator Bennett.

SEN. ROBERT BENNETT (R-UT): Thank you, MR. Chairman.

This has been a very informative hearing and most of the ground has already been covered.

Let me take your comment that we need to be looking forward, and Senator Shelby's comment that we need to understand what's gone on and kind of put them together and ask the question that our witnesses may not be able to respond to, but that we need to pay attention to.

Like Chairman Dodd, I supported the TARP initially very strongly. And we helped frame the agreement that gave the secretary of the Treasury virtually full authority to do whatever he wanted to do.

Now, we did put in that agreement the creation of an IG and a trigger point where the secretary of the Treasury had to come back to the Congress -- neither one of those things was in the original proposal from Treasury. They just wanted \$700 billion, no questions asked, no oversight all the rest of it. And we created the kinds of institutions that your presence here today represent.

Now, I approved the idea that the secretary of the Treasury should have complete authority to do whatever it was he felt he had to do -- that the Congress should not micromanage.

But there was no question in anybody's mind that we were told it would be used to acquire toxic assets, and as I did my own back-of-the-envelope calculation, there are \$14 trillion, roughly, of face value of mortgages in the country. Seven hundred billion (dollars) represents 5 percent of 14 trillion (dollars). And I thought, okay, if we can take off the market 5 percent of the \$14 trillion we can't be exactly sure that we're doing it but it follows that you would take off the most toxic -- the top 5 percent that were absolutely worthless -- and that would give you a degree of confidence in the 95 percent that remained, and that's where we started and that's not where the first 350 (billion dollars) went.

The decision was made in Treasury no, we're going to go to capital investment, warrants, direct infusions, and so on. We gave the secretary full authority to do that because we recognized that he and the people working for him were the ones on the ground and we wouldn't micromanage or second guess it. Now we're beginning to second guess it and say no, it was a mistake and the full 350 (billion dollars) that he had before he had to come back to the Congress should have gone towards acquiring toxic assets, or not.

And as I hear what you're saying here today, you can't make that judgment as to whether that was a right call or a wrong call, and I'm not asking you to. But all of you are examining Treasury, examining the process by which this whole thing has rolled forward,

and now moving from the history to the looking forward can you give us an outsider's view of the tidiness, if you will, of the decision-making process of the structure that was put in place that would examine the alternatives and say we should not go ahead with the toxic asset acquisition, we should move ahead?

In your opinion, was this a tidy kind of decision-making process carefully structured or was there such an ad hoc nature about it that we need to be concerned looking forward as to how the present Treasury might move? Now, I know that's not something that yields itself to an audit. It's not something that yields itself to numbers. But you've been wallowing in this for long enough now that I think you may have a sense and I -- if you do I'd appreciate it if you would share it with us.

MS. WARREN: Senator, I want to say in terms of the design of the TARP program at a time of emergency, the concept of flexibility and -- and giving a lot of flexibility to the secretary of the Treasury was a very reasonable and thoughtful approach. I understand when there's an emergency the last thing you want to do is be standing there telling the firefighter, I think you ought to be moving over here instead of over there.

But what has happened is flexibility without responsibility -- without responsibility for transparency, without requirements that one might have assumed the Treasury would engage in -- has given us a circumstance where I've been working with this now for three months and I can't begin to answer you. It is an opaque process at best. Decisions come out. You saw what happened.

We asked very specific questions, we asked more general questions, and we got no answers to many of the questions we asked. I can't even say systemically we didn't get them in one area or another. We just got no answers. So the question now is whether or not we have a Treasury that's going to be more transparent, more responsive, is going to bring to Congress and to the American people a statement of its diagnosis of the problem, its plan for structure, for how to go forward, and its metrics of which it can be measured and be found either succeeding or failing.

But that's just the moment where we find ourselves now. I certainly didn't mean to suggest earlier that Congress had made a mistake earlier. It's that you made the assumption that Treasury was going to behave differently from the way they behaved.

SEN. BUNNING: Well, that raises the obvious question. Can we believe what we get told next time and, of course, one of the answers will be yes, this is a different Treasury, this is a different administration, and I buy that. But at the same time, I would like to have and I think the people whose money is involved need to have some kind of clear understanding as to what is happening to the toxic assets because if we were going to reduce them by 5 percent with 700 billion (dollars) we've only spent 350 (billion dollars) so that takes you down to 2.5 percent, and of the 350 (billion dollars) probably the majority did not go to acquiring the toxic assets.

That means instead of looking at a recession where 5 percent of the toxic (access to ?) mortgages had been removed from the system we're going in -- we are in a recession -- we're not going, we are in a recession -- where less than 1 percent of the toxic assets have been removed from the system.

MS. WARREN: Senator, I would say it this way. I think we're way past (trust me ?). I think where we are now -- look, I'm an empiricist. Show me what you've done and I'll tell you whether or not I think it addresses the problem. I don't think we're going to be called on to trust anyone. I think we're either going to get a structure or we're not going to get a structure.

We're either going to get some serious plans that explain to us how this is going to work and how it's going to help the economy, what it's going to do particularly about foreclosures. I can only say I share your deep concern this is where the problem started and if the solution doesn't start there then, in my view, it is not a solution.

And it will be transparent and we will have the right mechanisms in place to monitor that or we won't. Frankly, Senator, I just don't think (we're at trust ?) anymore. I want to see the mechanisms. I want to see what they're putting in place. I want to see the structure.

SEN. BUNNING: Well, my -- my time is -- is up but assuming you're the acting chairman so --

SEN. SHELBY: Well, I'm not the chairman. We're Republicans over here.

SEN. BUNNING: All right. All right. I'll just make --

SEN. SHELBY: But I'll assume the -- the --

SEN. BUNNING: Yeah, I will just make this -- this observation. If in fact we do not have the kind of transparency that you're talking about our constituents will not permit us to put up the money. It won't just be the 25,000 calls to Senator Bunning that hit the Congress. It will be 25,000 calls to Chairman Dodd, et cetera, et cetera, et cetera, and the political support for putting up the money will not be there. Those of us who decided we were going to take the political risk of voting for this in the first time will be faced with a constituency that will say, fool me once, okay, but don't fool me twice, and I hope the administration understands that.

I listened to the first presentation on TARP. I took it on face value. I supported it and expected that when the 700 billion (dollars) was -- was expended the level of toxic assets in the system would have been reduced by 5 percent. It's now very clear that will not happen and I have a very hard time explaining to my constituents why that hasn't happened when I had every assurance that -- that it would. Thank you, Mr. Chairman.

SEN. DODD: Thank you, Senator, very, very much. Senator Shelby?

SEN. SHELBY: I'll just take a minute. I want to -- I have a few observations I want to reiterate. One, I want people to know again that I oppose the TARP program. I know -- I knew it was flawed then. I -- we all know it now. I don't believe it was administered well. I think the Secretary of the Treasury Paulsen there who we put more power in than any Treasury secretary since Alexander Hamilton (but ?) he didn't, in my judgment and the judgment of the American people, acquit himself in the manner of Alexander Hamilton by a long way.

Did he not know? Did the people not know around him? Were they -- was the structure different? He put the structure together with his friends. Or was it a lack of judgment? Diligence on buying (in the ?) insolvent banks and so forth? I don't know but I agree with Professor Warren here. She's touched on something I think is very important. Trust -- trust in the banking system, especially the Wall Street banks right now, it doesn't exist.

Now, we have a lot as she said -- we have a lot -- (inaudible) -- well-run, well-managed banks in this country. Should we punish them? No. She's absolutely right. But -- but to -- to try to justify, I think -- and this is my own opinion, speaking for myself -- that the TARP program is a great program -- was a great conceptualized program -- that's nonsense, and I don't believe that the Congress should try to fool the American people.

Trust is important. People don't have that trust today and they shouldn't, and Mr. Barofsky, you can help and gosh, I pray you will. I pray you're going to have a spine and it's going to grow and that you will not say -- let somebody say no to you. As I said earlier, you've got a great opportunity to serve this country. As I said earlier, you'll probably be unemployable later but that's okay. Thank you, Mr. Chairman.

SEN. DODD: Thank you, Senator Shelby, and let me say -- and obviously there was a division in the debate that went on with 75 of our colleagues. No one enjoyed -- I can tell you flat out no one welcomed the debate in September. It was a tragic time in our nation's history that it had come to that, and the administration two years ago taking on the issue of the residential mortgage market more seriously than they obviously didn't we wouldn't have been in that situation in September, in my view.

This was not a natural disaster that occurred. It was one created through malfeasance, misfeasance, neglect, and a failure to recognize the problems in front of us. But unlike my friend from Alabama -- not that we enjoyed the moment. There was no celebration with that vote at all. But the issue was did we step up and try and do something in the face of people across the spectrum recommending this action to try and get our credit markets moving. It's a legitimate debate about how well the program has been managed, and history will determine whether or not the decision we made in September and October was the right one to help us get moving in that direction.

There are those of us who voted for it reluctantly, with great regret. We (tried ?) in 13 days what we could do to manage a program. It went from a 3.5-page bill at 1:30 in the morning of September 19th or 20th to an 82-page bill that laid out the ideas that I incorporated in my opening statements, and then to try and pull something together that

would give flexibility and authority to deal with the problem simultaneously demanding accountability and other measures including warrants (and the like to ?) taxpayers.

We also included, of course, the provision to judge and come back for the second half of that money, and I'm glad we did or we might be looking at a situation today where all 700 (billion dollars) might have been mismanaged, in my view. The question is now can we manage this traunch well. We've got a new crowd in town -- (inaudible) -- to do so.

The debate will (belong ?) for years to come as to whether or not people thought the vote in September and October was right or wrong but I happen to believe that it was the right course of action to follow at that moment, and my only hope is here that this will be better managed, it will get our capital markets moving, that with this good, well-crafted stimulus program here to put people back to work along with other steps we can stop the erosion that's occurring in our economy, and understand that we need to do some other things to get us moving in the right direction.

A very important part of that is framing this program, letting the American people know what's going on, how it's working, minimize the kind of mistakes that were made that infuriate people, as we've talked about, and I'm confident that can happen. We're going to have Secretary Geithner before this committee next week to talk about exactly what they intend to be doing. We'll have you back here either formally or informally in the weeks ahead to determine how well that is working to go forward.

But it's important that we also do what we can to inject some confidence and optimism in our constituents. We're not to be Pollyannas and to give false hopes where hopes don't exist but we also don't need to spend all of our time talking about everything that's wrong either. We need to be talking about what we can do right to get this right.

We're an optimistic people and a confident people but obviously that confidence and optimism has been damaged badly. There'll be no economic recovery without confidence and optimism coming back. I don't know how to calibrate that. I don't know what mathematical formula gives you that. But I promise you, you can design all the plans and all the formulas you want but if national leadership does not engender some confidence and optimism that we're heading in the right direction trying to get this right that all of those plans will amount to nothing.

And so it's important both as members, as a committee, as a Congress, as a people, that we try and take steps necessary to move us in that direction. They're not going to be perfect. There'll be mistakes made along the way. If we exaggerate the mistakes at the expense of things we're doing right, the predictable confidence will be eroded. I'm not suggesting we deny them but we need to keep them in perspective if we're going to succeed as a people and a generation.

This will be a time written about for decades and decades to come -- the decisions we're making every single day here to get this country back on its feet again. It's our generation, it's our moment, it's our watch as a people -- both public and private citizens -

- to try and get this correct. And so we bear a responsibility on this committee in charge of the jurisdiction over many of these issues and we're going to do our very best to get it right, to listen to people like yourselves and others to help us make those decisions.

But I'm determined as well to see to it that we engender that confidence and optimism that is absolutely critical that we need to have as a country. So I thank all three of you and the staff that worked with you for the jobs that you're doing. But I'm also confident that we're going to come out of this. Other generations have faced far more serious problems in many ways than the ones we're confronting, as serious as this is. But if we remind ourselves what other generations have done during moments of crisis I think we'll succeed. I'm confident of that. I thank you for being here this morning.

Committee stands adjourned.