

Testimony of Professor Elizabeth Warren  
Chair, Congressional Oversight Panel  
before the  
House Financial Services Committee  
Subcommittee on Oversight and Investigations  
February 24, 2009

Thank you, Chairman Moore, Ranking Member Biggert, and members of the Subcommittee, for inviting me to testify about the work of the Congressional Oversight Panel. My name is Elizabeth Warren, the Panel's Chair. My testimony before you today reflects my own views and not necessarily those of the Panel.

This Subcommittee has an important responsibility for overseeing the operation and regulation of the nation's financial system, and I want to begin by acknowledging your continuing efforts to highlight the critical need for accountability and transparency in our financial markets. I am pleased to assist your efforts in any way that I can.

I am especially happy to be testifying today alongside my colleagues Gene Dodaro, the Acting Comptroller General of the United States, and Neil Barofsky, the Special Inspector General for the Troubled Assets Relief Program, who is already called simply the "SIGTARP." Together we are charged with ensuring that the tax dollars of the American people are used prudently and effectively to ameliorate and ultimately reverse the deepening financial crisis in which our country – and much of the world – now finds itself.

The Oversight Panel was created as part of the TARP in last year's Emergency Economic Stabilization Act. The job of the Panel is to "review the current state of the financial markets and the financial regulatory system" and report to Congress every 30 days. The Panel has submitted reports to Congress on December 10, January 9, and February 6, and it is preparing its

fourth report for submission in early March. The Panel also submitted a special report on regulatory reform to Congress, as required by the legislation, at the end of January.

The Oversight Panel is one of three organizations to which the TARP legislation gives oversight responsibilities. The Special Inspector General for the TARP has a broad responsibility, and matching authority, to audit and investigate any part of the Program. GAO is given an even more detailed set of instructions for “ongoing oversight of the activities and performance of the TARP,” as well as responsibility for an annual audit of the TARP’s financial statements. Between the Oversight Panel’s obligation to report to Congress every 30 days, the GAO’s obligation to report every 60 days, and the obligation of the Special Inspector General to report every 90 days, Congress will receive an average of two TARP oversight reports every month.

The three oversight organizations are working to complement, not duplicate, one another. We have begun regular meetings with the office of the Special Inspector General and with GAO senior staff responsible for TARP oversight, and we have discussed scheduling three-way meetings at appropriate intervals. We have begun sharing ideas and information, and we have discussed sharing, where possible, preliminary work product. If GAO or the SIGTARP identify questions for the Oversight Panel, they will pass them to us and give us access to data that we can synthesize to inform our work; similarly, when our analysis or information indicates a significant instance of non-compliance with the terms or spirit of the TARP legislation, we will inform GAO, the SIGTARP, or both. We all want to make the whole of our work greater than the sum of its parts.

The Oversight Panel is the smallest of the three organizations. We see our contribution as fact-based analysis that will raise issues about the operation and direction of the TARP and about the broader effort to restore stability to the financial system. In the Emergency Economic Stabilization Act, Congress specifically asked that the Oversight Panel conduct oversight on: the use of Treasury authority under the TARP; the Program's effect on the financial markets, financial institutions, and market transparency; the effectiveness of foreclosure mitigation efforts; and the TARP's effectiveness in minimizing long-term costs and maximizing long-term benefits for the nation's taxpayers. Our ultimate question is whether the TARP is operating to benefit the American family and the American economy. If we believe the answer is no, we will ask "why not," and try to suggest alternatives.

I would like to give the Subcommittee two examples of our Panel's approach. The Panel's February 6 report asked whether the public was receiving a "fair deal" when Treasury used TARP funds to make capital infusions into financial institutions last year. We worked with recognized independent experts to assemble multiple valuation models to see if the securities Treasury received had a fair market value equal to the amount of the infusions. With minimal variation, the models all demonstrated that Treasury made its infusions at a discount – it received securities that were worth substantially less than the amounts it had paid in return, given the financial institutions involved. In all, the Panel's report found that Treasury had overpaid by an estimated \$78 billion. Treasury had received back about 66 cents worth of obligations for each dollar it paid. We believe this is an important issue.

Our report does not explore why such discounts may – or may not – have been appropriate as a matter of policy, although it hopes Congress will keep the issue in mind, and the

Panel continues to explore the matter. But Treasury has not given the public an explanation, and the most important lesson we draw from our analysis is that without a clearer explanation from Treasury about its overall plan for each capital infusion, and without more transparency and accountability for how that plan was carried out, it is not possible to exercise meaningful oversight over Treasury's actions. Congress has given Treasury substantial discretion, as befits this fast-moving crisis. But that discretion carries with it an equivalent obligation to explain, in real time, why the discretion is exercised as it is. Congress and the American people need to understand Treasury's conception of the problems in the financial system and its comprehensive strategy to address those problems. Our collective financial security is on the line, and we all have a stake in the outcome.

The Oversight Panel is also focused on another extremely serious policy question: the lack of progress on mortgage foreclosure mitigation. The Panel's next report will focus on this issue, with particular regard to impediments to mitigation efforts. I was very pleased to hear President Obama announce the Administration's Homeowner Affordability and Stability Plan last week, and I hope that the Panel's report will be useful to the federal government and to local and state governments as they develop and implement plans to address the nation's mortgage crisis. I remain concerned, however, about the lack of adequate information on loan performance and loss mitigation. Without accurate data, measuring the success or failure of mitigation efforts is at best a "hit-or-miss" proposition. As part of our report, we plan to focus on a checklist of features that will be critical to developing any successful plan to stem the rising number of mortgage foreclosures.

The TARP legislation is almost five months old, and Treasury has spent or committed nearly \$350 billion under its terms. Both the Oversight Panel and GAO have called on Treasury to articulate a clear strategy for its use of TARP funds; the absence of such a baseline hampers effective oversight. A month ago I sent a letter to Secretary Geithner requesting that the Department complete its responses to a set of questions the Oversight Panel had posed to then-Secretary Paulson in its December Report. The Secretary has not yet responded, but the initiatives he has announced in the last several weeks, including the Financial Stability Plan announced on February 10, 2009, have described his commitment to transparency and accountability in the future administration of the TARP, for which I commend the Secretary. Even so, the Financial Stability Plan lacks crucial details, particularly about the manner in which the Treasury proposes to deal with “toxic assets” on financial institution balance sheets. These general frameworks do not provide an adequate foundation to oversee Treasury’s activities or to measure the success of the TARP or the Stability Plan. I hope the Secretary will provide the necessary details soon.

What have we learned thus far? Even in a crisis such as we are experiencing, transparency, accountability and a strategy with clearly delineated goals are necessary to maintain public confidence and the confidence of the capital markets. Sophisticated metrics to measure the success and failure of program initiatives are also essential. Assuring that the TARP reflects these elements underlies all of our oversight efforts.

Thank you again for the opportunity to appear before you to explain the work of the Oversight Panel. That concludes my testimony, and I will be pleased to answer your questions.