QUESTIONS FOR THE RECORD

FOR US DEPARTMENT OF THE TREASURY

SECRETARY TIMOTHY GEITHNER

CONGRESSIONAL OVERSIGHT PANEL

September 23, 2009

Questions for the Record from Panel Chair Elizabeth Warren

1. **Given the proportion of whole loans to total assets held by small banks, and Treasury's shelving of the legacy loans portion of PPIP, what is Treasury doing to prevent large numbers of failures of small banks? What is Treasury doing to help small banks that are part of the growing "troubled list" get off this list?**

   Treasury is focused on the needs of small and community banks throughout the country. Since January, the Administration has invested $11 billion through the Capital Purchase Program in more than 350 financial institutions, many of which are community banks. In addition, we announced the CPP expansion for Small Banks Program in May, which allows viable banks with total assets under $500 million to receive CPP funds up to 5% of risk-weighted assets (versus the 3% limit for all other banks). Injecting capital through these programs can improve banks health, allowing them to keep their overall supervisory ratings high and supports greater lending.

   Only viable institutions, as determined by each institution's primary regulator, are eligible for CPP funds, reflecting Treasury's continued interest in protecting the taxpayer while working towards continued improvement in financial stability. While the Federal Deposit Insurance Corporation's (FDIC) "problem list" has been growing, it is important to note that many more financial institutions would likely have been at risk had the Administration not made these programs available.

   What is Treasury's plan with respect to the legacy loans program going forward? Does Treasury expect the eventual roll out of the legacy loans program as originally planned? If so, can you please provide a timetable?

   The Public-Private Investment Program (PPIP) was announced in March by the Secretary of the Treasury, the Federal Reserve, and the FDIC, and is being developed to help restart the market for loans and securities and to help banks remove troubled loans and other assets from their balance sheets. Reviving the market for these assets will enable banks to raise new capital and be better positioned to lend to further the recovery of the U.S. economy. In June, the FDIC announced that it would develop the Legacy Loan Program ("LLP") by testing the mechanism on a pilot basis through the sale of receivership assets. On September 16th, the FDIC announced that it had signed a bid confirmation letter with a private investor in a pilot sale of receivership assets to test this funding mechanism. The results of this test sale will be analyzed to determine whether the LLP can be used to remove troubled assets from the balance sheets of open banks, and in turn spur lending to further support the credit needs of the economy. The FDIC has indicated that it will publish additional details about the sale after the closing later this month.

Has Treasury considered a "matching program" that would direct TARP funds to troubled small banks by contributing government aid in equal amount to what small banks raise in the private markets?

The Treasury Department has a keen interest in attracting private capital to the banking system. We continue to explore additional ways to achieve this goal. It is important to note that viable small banks are currently eligible under the CPP expansion for the Small Banks Program, subject to a maximum TARP investment of 5% of risk weighted assets without any matching requirement. These firms are not restricted by TARP from raising capital in the private sector.

2. **Some small banks that are denied TARP funds allege that they are held to a different standard from large banks. They claim that that while large banks received CPP funds when they were in financial trouble, small banks that need the funds to remain solvent are denied. Does Treasury apply different standards when evaluating big banks versus small banks?**

   All institutions are evaluated under the same standards. The primary test is that any institution, regardless of size, must be found to be viable without TARP funds by its primary regulator.

3. **The FDIC's level of reserves has reportedly fallen to about $20 billion, and it currently guarantees billions of dollars in bank loans and parts of a pool of Citibank assets. If the FDIC's purpose is to protect insured depositors, how are these commitments consistent with that purpose? Why has the burden of handling the crisis been shifted to this extent to the FDIC, given the amount of TARP funds unspent and the Treasury's position that it is running a revolving fund to permit new money to be expended as TARP funds are repaid? The FDIC can borrow from its line of credit with the Treasury if necessary to support the costs of its responsibilities. Does such borrowing simply shift the costs borne by the taxpayer from one Treasury budget category to another?**

   Although many aspects of this question would be best addressed to the FDIC directly, it is clear that the FDIC has the resources and necessary tools to protect insured depositors and resolve failed banks. According to the FDIC, its total reserves were $42.4 billion as of June 30. To further bolster their position, Congress expanded the borrowing capacity of the Insurance Fund from $30bn to $100bn, with the potential to expand to $500 billion through December 31, 2010 with approval of 2/3 of FDIC Board, 2/3 of Federal Reserve Board of Governors, and approval of the Treasury Secretary, in consultation with the President. Throughout the FDIC's 75-year history, no depositor has ever lost a penny of insured deposits. While deposits insured by the FDIC are backed by the full faith and credit of the United States Government, the FDIC is funded not with taxpayer money, but with deposit insurance premiums imposed on banks. These assessments on banks both in the near term and the future are the source of funds to repay any Treasury borrowings and replenish the fund. In this manner, the costs of FDIC action are ultimately borne by the bank industry itself, not the taxpayer. In addition, the FDIC has received fees in exchange for its asset guarantees and the TLGP program. These programs have been important components of the government's overall financial stability initiatives.

4. **Bank of America and the U.S. government have an unconsummated agreement for a $118 billion guarantee. What is the status of this transaction? Should Bank of America be required to pay for the implied benefits of a guarantee it never signed?**

   On September 21, 2009, Treasury, the Federal Reserve and the FDIC entered into a Termination Agreement with Bank of America regarding the Asset Guarantee Transaction originally announced on January 16, 2009. In connection with the termination of the guarantee contemplated by the Term Sheet dated January 15, 2009, Bank of America agreed to pay in cash a total fee of $425 million, consisting of $276 million to UST, $57 million to the Federal Reserve, and $92 million to the FDIC.

   The Term Sheet contemplated that the US government would bear the risk of the loss on the pool from January 15, 2009, to May 6, 2009, the date that Bank of America notified the US government parties of its desire to terminate guarantee negotiations. From and after the date of the Term Sheet, Bank of America benefited from (i) the USG parties' support of the guarantee, and shared losses on the pool of assets and (ii) the related effect on restoration of market confidence in Bank of America. The fee was appropriate, for the benefit Bank of America received over period from the date of the term sheet to the date of notification of termination.

5. **AIG used some of its TARP funds to pay its credit default swap counter-parties 100 cents on the dollar. Did Treasury know who AIG's counter-parties were before it provided these funds? Did Treasury or the FRBNY consider other options that would have permitted the counter-parties to share the financial loss with the U.S. taxpayer? Did Treasury or the FRBNY approach the AIG counter-parties to discuss whether any such arrangement would be possible?**

   AIG's obligation to post billions of dollars of cash collateral to its derivatives counterparties in mid-September of 2008 was triggered by the downgrade of AIG's credit rating in early September. TARP did not exist at that time so it was the Federal Reserve that provided AIG with an $85 billion credit facility to meet those obligations. After the creation of TARP in October, Treasury's first investment into AIG was made in November 2008 as a preferred stock investment. The investment proceeds were used to pay down $40 billion of the $85 billion outstanding under the Fed credit facility so as to reduce AIG's total indebtedness and thereby avoid a threatened further ratings downgrade that could have triggered additional collateral calls from its derivative counterparties. Treasury was consulted by the Federal Reserve in connection with its decision to provide AIG a credit facility in September to meet its collateral posting obligations and other liquidity needs triggered by its ratings downgrade.

The rationale at that time for providing AIG sufficient liquidity to meet its collateral posting requirements and other liquidity needs in full derived from the interplay between those obligations and AIG's other indebtedness. Under the contracts governing most of AIGFP's derivatives trades, the failure to meet a collateral posting obligation in full would constitute an event of default, giving rise to the right of AIGFP's counterparty immediately to terminate the affected trade and to assert potentially even greater claims against AIGFP upon such termination. In turn, AIGFP's failure to honor the payments required to be made by it under any particular trade would constitute a default under all of its other trades, permitting its over 1000 counterparties to terminate the almost 50,000 trades they had with AIGFP. Further, AIG had guaranteed AIGFP's obligations under most of its derivative contracts. If AIGFP defaulted on its obligations to its counterparties and then AIG failed to honor its guaranty of AIGFP's obligations, that failure would have constituted a default under the contracts and indentures governing most of AIG's own indebtedness. The result could potentially have accelerated of in excess of $50 billion of third party indebtedness against AIG, which would have almost certainly required AIG to seek relief under Chapter 11 of the United States Bankruptcy Code.

On the second day following the commencement of the Lehman Brothers bankruptcy, the decision was made that the risk that any one of AIG's counterparties would refuse to accept anything less than 100 cents on the dollar, declare a default and trigger a cascading series of cross defaults across AIG's complex capital structure was too great to take. The already fragile financial system would likely not withstand the shock of the immediate bankruptcy of AIG, yet another large financial institution. Therefore, AIG was provided with sufficient funding to meet its obligations in full.

6. **The Panel's September 15, 2009, letter to you asked about your statement that the indicative loss rates that were used to estimate losses in the more adverse stress test scenario were set higher than those seen during the Great Depression. Since the Great Depression, banking and market regulation has changed fundamentally to prevent a repeat of the banking crises that occurred during 1929-32. These changes included the creation of the FDIC and the SEC, and substantial changes in the structure and terms for supervision of financial institutions. Please explain the relationship between the choice of indicative loss rates and the strength of the present regulatory process. Please discuss whether the loss rates reflect a buffer to guard again faulty risk assessment by the regulatory agencies.**

   Economic statistics indicate that, while the nation is enduring the most severe economic reversal since the end of World War II, if not since the Great Depression, the recession is still far less serious than the Depression. Does

the Treasury believe that the seriousness of the recession may increase to the point that economic reality draws closer to the indicative loss rates?

As indicated in the Federal Reserve's May 7, 2009 release of the SCAP results, the total loan loss rate of 9.1% assumed under the SCAP's more adverse scenario exceeds all two year loan loss rates that have been observed for U.S. commercial banks from 1921 to present, including the Great Depression. This reference point indicates the severity of the adverse scenario assumed in the stress tests. As you point out, the U.S. banking industry has evolved significantly since the 1920s and regulations have evolved alongside, in some cases in response to industry developments and past crises. The assumed loss rates were designed to capture potential losses in a deeper and more protracted economic downturn than was anticipated in spring of 2009. To guide estimation, the banking supervisors provided firms with a common set of indicative loss rate ranges for specific loan categories under the baseline and "more adverse" economic scenarios. These indicative loss rate ranges were derived using a variety of methods for predicting loan losses, including analysis of historical loss experience at large bank holding companies and quantitative models relating the performance of loans or groups of loans to macroeconomic variables.

We cannot let the beginning signs of normalcy lead to complacency. The Administration has proposed a plan to address the core regulatory failures and weaknesses that directly contributed to the crisis, and the dangers that could lead to the next one.

7. **The amount of the capital buffer required for ten of the stress-tested bank holding companies was reduced by first quarter 2009 operating results. There have been a number of media reports that those results reflected significant accounting changes rather than economic performance. For each of the 19 stress-tested bank holding companies, please describe in detail the extent to which accounting changes increased operating income in the first and second quarters of 2009.**

   Please explain the extent to which accounting changes were factored into the computation of projected earned income by the stress-tested bank holding companies, on a forward-looking basis, for 2009 and 2010.

   Questions on the precise methodology used to conduct the stress tests are best addressed to the Federal Reserve and any questions on specific institutions would be best addressed to the institutions themselves or their primary supervisor. However, a number of high level observations could be helpful. At the time of the stress test, there was some public discussion of FAS 115-2 and FAS 124-2 which addressed the recognition of an other-than-temporary-impairment ("OTTI") on debt securities held in the available-for-sale ("AFS") or held-to-maturity ("HTM") accounts. The guidance provided some additional flexibility to companies, assuming certain conditions were met, to recognize only the credit loss component of the OTTI in earnings rather than the full amount of the OTTI (which would include any liquidity discount or other factors) than was previously the case.

As you note, the supervisors did use an adjustment in the SCAP for Q1 results. But, as noted in the paper released with the SCAP results, less than $20 billion of the $110 billion adjustment in the required capital buffer was due to pre-tax, pre-provision net revenues ("PPNR") for the first quarter exceeding the SCAP estimates. Further, the accounting changes referenced above, as they relate to loss recognition, would have no impact on the PPNR adjustment. For conservatism, it is important to note that in the consideration of losses in the adverse scenario, no credit was given to banks' forward-looking estimates of the impact of these changes to the OTTI amounts. The stress test assumed that the full amount of OTTI would be realized on applicable debt securities.

Supervisors did make efforts to incorporate likely changes to accounting rules into the SCAP. For example, the SCAP papers make clear that supervisors did take into account the expected impact of FAS 166 and 167 which amended FAS 140 and FIN 46(R) with respect to the on-boarding of off-balance sheet assets likely to occur in the first quarter of 2010. Further adjustments were made by supervisors to take into account the change in the characterization of income resulting from these changes from securitization-related income to net interest income. Further, while not related to an accounting change, supervisors did not give any credit either in the Q1 adjustment or in the estimates of PPNR for any fair value gain banks had recorded on their own liabilities. While it would have been impossible for those conducting the assessments to incorporate all conceivable changes to accounting rules, supervisors did attempt to address the changes that were most likely to be adopted.

8. **In what ways does Treasury oversee contractors, especially contractors who are themselves responsible for program oversight? In what ways are contractors held accountable for their performance? Does Treasury directly tie contractors' pay to performance? Please elaborate with specific examples.**

Treasury contractors provide vital support to the Troubled Asset Relief Program (TARP). However, the responsibility for managing and overseeing programs rests squarely with government personnel.

Treasury has a robust process for overseeing performance of all contractors. The oversight process starts during the requirements planning phase and carries through inspection and acceptance of goods and services to closing out a completed contract. The Office of Financial Stability (OFS) uses a number of mechanisms to ensure that contractors fulfill the operational, financial and compliance requirements of their contracts. The operational activities of contractors are tracked through the regular submission of activity reports to OFS personnel charged with oversight. Contractors are required to submit monthly cost accrual and invoices that are reviewed by OFS to ensure appropriate costs control.

The OFS has created a Contract Administration Manager position to oversee long-range requirements planning and provide leadership and guidance to staff overseeing contractors. Each contract is managed by a certified Contracting Officer Technical Representative (COTR) who assesses and reports contractor cost, schedule and quality, inspects and accepts deliverables, audits contractor records, provides appropriate technical direction, and performs periodic quality assurance reviews. Contractor performance information is presented regularly to an executive Contract Review Board. Treasury contractors are paid based on performance. Less than satisfactory performance may result in termination of the contract, reduced payments, or loss of follow-on work. Treasury has withheld and reduced payments on contracts where cost submitted were considered unallowable or unsupported by contract requirements. In other cases, performance information was considered in the decision to not award follow-on work.

Treasury mitigates financial and performance risk through selection of the most effective contract type for the required work. Fixed price arrangements are negotiated where the contract deliverables can be reasonably anticipated and fairly priced into the contractors' proposals. Treasury facilitates competition to select the contractors offering the best value, and where appropriate enters into multiple-award contracts to maintain competitive pressures over the contract period of performance. Treasury continually seeks to improve its oversight of contractor performance through in-line review of procurement actions for consistency and adoption of best practices, verification and validation of contract information to ensure accuracy and integrity, periodic re-assessment of effectiveness of systems and procedures, and a built-in feedback loop through regular COTR Roundtables, a Contract Review Board, and intra- and inter-agency exchanges.

In addition to using contractors, Treasury may use its statutory authority to designate Financial Agents as third party service providers. Treasury has currently designated seven Financial Agents to provide vital program support under EESA. The services to be provided under EESA include custodial support, asset management and program administration under the Government's home preservation programs. Financial Agents are governed by a separate authority from contractors, stemming from the National Bank Acts of 1863/1864, and are not subject to the Federal Acquisition Regulation. Financial agents are generally considered to be acting in the Treasury's stead for the stated purpose of the Financial Agency Agreement (FAA) rather than serving at an arm's-length capacity.

The financial agents supporting TARP are managed by a dedicated Office of Financial Agents (OFA). OFA has primary responsibility for ensuring that the financial agents are fulfilling the terms and requirements of their respective FAAs. OFA works closely with the other offices within OFS to ensure that the financial agents are meeting the needs of the programs. The operational activities of the financial agents are tracked through close working relationships between the financial agents, OFA, and OFS program offices, the submission of regular reports and detailed maintenance of internal control documentation. OFS also receives compliance certifications such as an annual certification of a financial agent's representations and warranties and quarterly certifications regarding conflicts of interest from the financial agents. Further, each FAA contains requirements for financial agents to complete assessments of their IT systems and an evaluation of their internal controls such as a SAS 70 Type II. In addition, each of the financial agents is subject to annual or ad hoc reviews by the OFA or other OFS offices, including OFS's internal controls division, and outside auditors including GAO and SIGTARP.

Regarding accountability, Treasury has significant unilateral authority under a FAA, among other things, to terminate the FAA, reduce the scope of services provided by the financial agent, or to place a financial agent on probation and withhold payment if it is not fulfilling the responsibilities of the FAA, or if it is deemed necessary to protect the interests of the United States.

Treasury has implemented procedures to oversee conflict of interest situations that may arise in connection with contractors and financial agents, based on our administration of the Conflict of Interest Interim Final Regulation 31 CRF Part 31. The Interim Final Regulation requires the contractor or financial agent to disclose potential, perceived or actual conflicts and to provide a mitigation plan to Treasury during the lifecycle of the procurement process including new contract task orders or new work under an FAA. The conflicts of interest team within OFS's Chief Risk and Compliance Office (CRCO) will perform a review of the conflicts disclosed and the mitigation plan. The CRCO will work with OFA, PSD, COTR, and, in some instances, the business sponsors to understand the facts and circumstances in determining if the conflicts disclosed are complete and the associated mitigation plan is appropriate. Factors that are considered in CRCO's review include, but are not limited to, the kinds of the conflicts disclosed, the type and nature of the contractor's / financial agent's business activities, and the scope of services the contractor / financial agent is performing for Treasury.

In addition, OFS and PSD remain in close contact with contractors and financial agents, and make regular inquiries, to discover conflict of interest situations that may not have been reported to OFS.

OFS also receives, tracks, and reviews conflict of interest compliance certifications from contractors and financial agents, regarding organizational and personal conflicts of interest. Certifications are required at the time of award of a new contract / agreement, the beginning of a new task order, and periodically based on the nature of the work performed for Treasury. For example, the financial agents generally have a quarterly certification requirement whereas contractors may have an annual certification requirement. If a contractor or financial agent fails to timely provide an acceptable conflict of interest certification, OFS identifies the gap, informs OFA / PSD / COTR, contacts the contractor or financial agent, and focuses on bringing the contractor or financial agent into compliance.

Finally, each contractor and financial agent is subject to annual or ad hoc reviews of their conflicts of interest procedures and compliance by CRCO.

Questions for the Record from Panelist Congressman Jeb Hensarling

1. **Will you agree to provide the Panel with a formal written legal opinion justifying the:**

   (i) use of TARP funds to support Old Chrysler and Old GM prior to their bankruptcies;*

   (ii) use of TARP funds in the Chrysler and GM bankruptcies;*

   (iii) transfer of the equity interests acquired by the United States government in New Chrysler and New GM to the UAW/VEBAs; and**

   (iv) delivery of notes and other credit support* by New Chrysler and New GM for the benefit of the UAW/VEBAs?**

   *** A plain reading of EESA would necessarily preclude the employment of TARP funds for the benefit of the auto industry because, among other reasons, neither Chrysler nor GM qualifies as a "financial institution." Further, a funding bill specifically aimed at assisting the auto industry was not approved by Congress. Nevertheless, the Administration orchestrated the Chrysler and GM bankruptcies which resulted in an investment of over $81 billion in the auto industry.**

   **** Since the acquisitions of the equity interests were financed with TARP funds, the transfer of the equity interests to the UAW/VEBAs constitutes a use of TARP funds.**

   ***** The promissory notes issued to the UAW/VEBAs are senior to the TARP financed equity issued to the United States government. Since the United States government controlled New Chrysler and New GM at the time the notes were issued, the government directly or indirectly orchestrated the subordination of the TARP financed equity issued to the government to claims held by the UAW/VEBAs.**

   We believe the Secretary had the authority under the Emergency Economic Stabilization Act (EESA) to make the investments in the auto industry, both with respect to old Chrysler and old GM and in connection with the new companies that acquired their assets.

   The purpose of EESA was to provide the Secretary of Treasury with the flexibility to take the actions necessary to restore U.S. financial stability. Congress provided the Secretary broad authority by including broad definitions of "troubled" assets and "financial institution." Providing assistance to the auto companies at the time the determinations were made was consistent with both the language and intent of the statute. The auto companies were and are interrelated with entities extending credit to consumers and dealers and because of the effects a disruption in the industry would have had at such time to financial stability, employment and the market as a whole.

The GAO noted in testimony before the Senate Banking Committee last December that the authority was sufficient to permit the purchase of troubled assets from the auto companies.
In answer to the specific factual questions asked above (iii and iv), we provide the following information:

The interests received by other stakeholders of Chrysler and GM, including the United Auto Worker (UAW)/ Voluntary Employee Beneficiary's Association (VEBAs), resulted from negotiations between all stakeholders as described in detail by Ron Bloom and Harry Wilson in their depositions in the bankruptcy cases, transcripts of which have been provided to the Congressional Oversight Panel (COP).

The terms of the purchase agreements relating to the sales under section 363 of the Bankruptcy Code by Chrysler and GM set forth the interests each party would receive either as equity or debt. Treasury's equity in the new Chrysler was part of the consideration for its loan to new Chrysler. Treasury's equity in the new GM was part of the consideration Treasury received for credit bidding certain loans in the 363 Sale. There was no transfer of interests from Treasury to the UAW/VEBA of either of the new operating companies. Further, Treasury retained $7.1 billion of senior debt in new GM. Since valuable claims of the UAW/VEBA under existing labor agreements were extinguished in the bankruptcies, the debt and equity it negotiated to receive was the basis for it agreeing to enter new labor agreements. Without these concessions and agreements, neither operating company would have been able to continue operations.

2. Will you agree to provide the Panel with:

(i) the criteria the Administration will use to determine which "non-financial institution" may be allowed to receive assistance through TARP; and

(ii) a formal written legal opinion justifying the use of TARP funds for any such non-financial institutions?

Treasury has used funds under the EESA only in accordance with the purpose and specific requirements of the statute. EESA authorizes the Secretary of the Treasury (the "Secretary") to establish the TARP to "…[p]urchase troubled assets from any financial institution".

Section 3 of EESA defines "financial institution" broadly to mean "[a]ny institution, including, *but not limited to*, any bank, savings association, credit union, security broker or dealer, or insurance company, established and regulated under the laws of the United States…and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government" (emphasis added).

3. **Will you agree to provide the Panel with a formal written legal opinion justifying the treatment of TARP as a revolving facility?**

   The Treasury Department does not treat TARP as a revolving fund. When financial institutions repay financial assistance they have received under the TARP, Treasury does not re-use funds from the repayments to provide new TARP financial assistance. Treasury deposits the proceeds of repayments into the Treasury general fund for reduction of the public debt, as required by section 106 (b) of the Emergency Economic Stabilization Act of 2008, as amended. Such repayments do, however, reduce the amount of outstanding troubled assets that count against the maximum amount of troubled assets that Treasury is authorized to purchase under the TARP (i.e., the "statutory cap"). Further, Treasury has authority through the statutory termination date to enter into new commitments to purchase troubled assets up to the statutory cap and continuing authority to fund such purchases if committed before the termination date.

4. **In just three months, TARP's $700 billion authorization will expire. When will you decide whether or not to extend TARP beyond December 31, 2009?**

   Upon what specific criteria will you base your decision?

   The Administration is evaluating the necessity, efficacy, and cost of its financial policies, including programs implemented under TARP. Our financial policies have had four key objectives. First, we have been unequivocally committed to preserving financial stability. Second, we have sought to ensure that the financial system has adequate capital. We have done this in two ways: by reducing uncertainty and by mobilizing private sources of new capital. Third, we have sought to restart key non-bank channels for private credit. Finally, we have sought to moderate the impact of the adjustment in the real estate sector on households.

   As the Administration's policies have taken hold, and the economy and financial markets have started to recover, many of the policies put in place to contain the crisis are being wound down. In the August Midsession Review (MSR), the Administration dropped the "placeholder" that was included in the President's Budget to support an additional $750 billion in total activity to stabilize financial markets if necessary. As a result, we lowered the projected deficit for Fiscal Year 2009 by $250 billion. The Money Market Mutual Fund Guarantee Program, which Treasury established at the height of the crisis one year ago, expired on September 18. The program stopped a run on money market mutual funds, incurred no losses, and generated $1.2 billion in revenue for taxpayers. Due to market improvements, the FDIC anticipates that the last day that banks can issue debt guaranteed through its Temporary Liquidity Guarantee Program (TLGP) will be October 31, 2009. These are signs of our commitment to roll back government support as soon as practicable.

   The financial results suggest that these programs have been implemented responsibly. Following the successful conclusion of the large bank "stress tests" initiated as part of the Obama Administration's Financial Stability Plan, banks were able to raise a substantial amount of new private capital. As a result, banks have repaid more $70 billion in TARP capital, allowing us to reduce the projected national debt by a similar amount. When President Obama took office the U.S. government had invested in financial institutions holding almost 90 percent of all banking system assets. With repayments in recent months, that number has fallen to about 55 percent. While it is difficult to project the ultimate return to taxpayers for TARP investments, in those cases where the banks have repaid and any remaining government stake in these banks has been sold completely, taxpayers have earned a 17 percent return.

In spite of the progress achieved to date, the normalization of financial markets is partial and fragile, and the economic recovery is, at best, in its very early stages. The housing market has not established a firm bottom and foreclosures continue to rise across all classes of mortgages, with prime mortgages now leading the way. The restructuring process for the commercial real estate market has only recently begun. The pace of bank failures has increased, and it is expected to remain elevated for some time. During this difficult period of adjustment, the financial system could be sensitive to future economic and market events.

In this context, it is important to maintain financial initiatives in three key areas, even while other programs are winding down. First, some programs remain critical for rebuilding the supply of credit to households and businesses. Second, some programs continue to contribute to financial stability even if they are not being utilized heavily. Finally, we still need to be able to respond to unforeseen financial developments. Maintaining such capacity provides critical insurance for the financial system and may, by bolstering confidence, actually reduce the chances that we will have to use such capacity.

In addition, we must address the structural weaknesses in our financial system that this crisis revealed. That requires a significant overhaul of our financial regulatory system. The Administration has put forward specific proposals for such reform, which should reduce the risk of another episode of financial upheaval and create conditions for financial stability and sustainable economic growth.

History suggests that both waiting too long to address a financial crisis as well as exiting too soon from policies designed to contain a financial crisis can significantly prolong an economic downturn. We have tried to learn from this history. We must not waver in our resolve to ensure the stability of the financial system and to support the nascent recovery that the Administration and Congress have worked so hard to achieve.

At the same time, we must work together to set our country on a fiscally sustainable path, an objective the Administration has pursued despite the overwhelming needs for public intervention that it inherited. We continue to attempt to minimize the potential costs of our financial and economic policies to taxpayers, while meeting our critical objectives.

I will weigh the circumstances and factors outlined above as I consider whether to extend my authority under the EESA beyond December 31, 2009.

5. Should you extend the program's authorization, does the Administration plan to ask Congress to extend TARP past October 2010?

Upon what specific criteria will you base your decision?

EESA does not provide for an extension of Treasury authority to purchase, to make and fund commitments to purchase, or to guarantee assets under Sections 101(a), 101(a)(3), and 102 beyond October 2010. However, if financial and economic conditions warrant an extension, the Administration will work with Congress to provide Treasury with adequate authority. In doing so, the Administration will be guided by the circumstances and factors outlined above in my response to question 4.

6. TARP was enacted to provide "financial stability," and the recent Stimulus Package was enacted to provide "economic stimulus." Do you agree that the Administration is now using the TARP to promote "economic stimulus" instead of "financial stability"?

If TARP is not being used for "economic stimulus," then how else may you explain the $81 billion "investment" in Chrysler and GM, neither of which is a "financial institution"?

The purpose of EESA was to give the Treasury the authorities necessary to "restore liquidity and stability to the financial system of the United States." I have consistently used TARP for this purpose. The auto companies are financial institutions within the definition provided under EESA.

This term is defined broadly in EESA to include "any institution" and is specifically not limited to banks, brokers, etc. A plain reading of the definition supports providing funds to the auto companies if it was necessary to promote financial stability. The outright failure of GM and Chrysler would likely have resulted in disruptions to the financial system and the economy as whole.

The broad authority of the Secretary to interpret terms in EESA supports the determinations by me and my predecessor that financial instruments purchased from the auto companies qualify as troubled assets, the purchase of which was necessary to promote financial market stability.

GAO noted in testimony before the Senate Banking Committee last December that the authority provided under EESA was sufficient to permit the purchase of troubled assets from the auto companies.

7. **According to Treasury's TARP *Transactions Report* for the period ending September 11, 2009, over $22 billion out of a possible $50 billion in TARP funding has been allocated towards incentive payments for the *Home Affordable Modification Program* (HAMP), which is over 40% of the total commitment. Also according to Treasury data, about 360,000 trial modifications have started. When the program was announced in March, Treasury estimated that HAMP would reach 3 to 4 million homeowners.**

   (i) Will Treasury extend the commitment size of HAMP beyond $75 billion in order to reach the goal of carrying out loan modifications for 3 to 4 million homeowners? If so, through what authority will HAMP be extended, *Emergency Economic Stabilization Act* (P.L. 110-343), Housing and *Economic Recovery Act* (P.L. 110-289), or other?

   Treasury believes that it has sufficient resources under current authorities to reach the stated goal of the Home Affordable Modification Program to provide assistance to up to 3 to 4 million borrowers over 3 years. $22 billion represents the total amount that has been allocated to all servicers currently participating in the program under the "caps" that are calculated for each servicer, based on their eligible loans and other factors. It does not represent funds actually paid as incentives. We are currently starting about 20,000 to 25,000 trial modifications per week, and are on pace to meet the stated goal of helping up to 3 to 4 million borrowers over 3 years.

   What is the expected all-in cost to the taxpayers of HAMP and any such expansion of HAMP, either using EESA or other authority?

   The cost of the HAMP program is not expected to exceed the allocated amount of $75 billion, $50 billion from TARP authority and $25 billion from HERA authority.

   (ii) Does Treasury anticipate that it may introduce any additional foreclosure mitigation programs, including, without limitation, any refinancing, modification, second lien and other programs?

   The Home Affordable Modification Program is one element of the Administration's comprehensive efforts to foster stability in the housing market and help American homeowners. On Feb. 18, the Administration announced Making Home Affordable, which includes: (1) the $75 billion Home Affordable Modification Plan to provide an opportunity for 3 to 4 million Americans to reduce their monthly mortgage payments to affordable levels; (2) increased refinancing flexibilities for the GSEs, including the Home Affordable Refinancing Plan which provides new refinancing opportunities to borrowers whose homes have lost value; and (3) increased support for the GSEs, including a $200B increase in the Senior Preferred Stock Purchase Agreements to help keep mortgage rates low and support mortgage affordability across the market.

In addition to the Making Home Affordable Plan, the Administration has worked with Congress to enact a number of housing market programs as part of the American Recovery and Reinvestment Act (ARRA), which included: (1) raising the loan limits for GSE loans, from a previous maximum of $625,500 per loan to $729,750, thus supporting conforming loans even in high-cost markets, (2) implementing an $8,000 first-time home buyer credit, (3) Neighborhood Stabilization grants, and (4) the Tax -Credit Assistance Program (TCAP) and the Low Income Housing Tax Credit Exchange. ARRA expenditures for the neighborhood and affordable housing programs total nearly $12 billion. In addition, in conjunction with the Fed's MBS purchase program, the Administration has taken actions to support mortgage financing generally and support market liquidity. Helping to keep mortgage rates low has provided the opportunity for over 2.9 million Americans with GSE loans to refinance since February.

On second liens specifically, we have developed a program to require modification of second liens as part of the Home Affordable Modification Program for servicers participating in the Second Lien Program. Details of the Second Lien Program were announced on April 28.

If so, what is the anticipated all-in cost to the taxpayers of such programs, either using EESA or other authority?

The total cost of the Home Affordable Modification Program, including the Second Lien Program and Foreclosures Alternatives Plan falls within the $50 billion under EESA and $25 billion under HERA that has been allocated to the program.

(iii) How many HAMP modifications have been started for borrowers with home loans owned or guaranteed by Fannie Mae and Freddie Mac? How many HAMP modifications have been started for borrowers with "private label" (non-agency) home loans?

We reported on September 9 that 360,000 trial modifications were underway. Of that number about 210,000 are loans owned or guaranteed by Fannie Mae or Freddie Mac. The balance are non-agency loans.

(iv) How much funding has been committed to the *Home Affordable Refinance Program* for homeowners with loans owned or guaranteed by Fannie Mae and Freddie Mac, either using EESA or other authority? How much funding has been committed to the *Home Affordable Modification Program* for homeowners with loans owned or guaranteed by Fannie Mae and Freddie Mac, either using EESA or other authority? Both programs were announced as separate initiatives in the Administration's *Updated Detailed Program Description* released on March 4, 2009.

There is no direct allocation of funds for the Home Affordable Refinance Program. The Home Affordable Refinance Program is an increase in refinancing capabilities for the GSEs, but has no funding associated with the program.

$25 billion under HERA authority is allocated to incentive payments for modification of mortgages owned or guaranteed by Fannie Mae or Freddie Mac as part of the Home Affordable Modification Program.

What is the anticipated all-in cost to the taxpayers of such programs, either using EESA or other authority?

The all-in allocation of funds for the Home Affordable Modification Program is $75 billion, $50 billion from TARP and $25 billion from HERA. There is no funding allocated to the Home Affordable Refinance Program.

(v) What is the anticipated all-in costs of the programs described in (i)-(iv) above to the holders of the mortgages?

Servicers are required to run all loans through a net present value (NPV) test developed for the program, and modifications are required to be offered when loans test positive under the NPV test. The result of the NPV test is positive when the expected future cash flows from a modification are greater than the expected future cash flows from not modifying the loan. This means that modifications under our program occur when the modifications are expected to yield a net benefit to the mortgage holder.

In addition, the Home Affordable Modification Program requires lenders or investors to pay the full amount to reduce a borrower's payment to 38 percent of gross monthly income. Once the lender or investor reduces the monthly payment to 38 percent DTI, HAMP matches reductions in monthly payments dollar-for-dollar with the lender/investor from 38 percent to 31 percent DTI.

(vi) Why do the MHA programs not include a "shared appreciation" or "equity kicker" feature where the mortgage holder and Treasury share in any post-workout appreciation in the fair market value of each home with the homeowner? In other words, why should the homeowner receive all of the benefit from any subsequent appreciation in fair market value even though the mortgage holder and Treasury assisted the homeowner by reducing interest and/or principal payments and making payments to the mortgage servicer for the benefit of the homeowner?

In designing MHA we explored a wide variety of program designs and balanced many competing factors. Shared appreciation specifically includes substantial administrative costs and complexities, which would have to be offset against any potential benefit to taxpayers. Such a program would also be difficult for servicers, trustees, mortgage holders and others to assess and implement. Costs would be substantial because the government would have to design operational systems to price, acquire, track and ultimately collect shared appreciation. We would also have to manage ownership interests in properties across the nation on an ongoing basis. We have considered this option and concluded that the costs outweighed the benefits.

We are focused on getting as many families as possible who are struggling with their mortgages into a mortgage that they can afford. The program we have designed gets the borrower's interest rates and monthly payments down to a level they can afford in a way that is most cost effective for taxpayers.

8. **Will Treasury announce any new TARP programs or expand the size of any existing programs?**

Treasury continues to monitor the progress we are making in returning to a stable and strong financial system and will continue to consider the best ways to achieve that objective. The normalization of financial markets achieved to date is partial, and the economic recovery is, at best, in its very early stages. Key parts of the financial system are still substantially impaired, and the system as a whole remains somewhat fragile. In those markets where conditions have improved, it is unclear whether improvements achieved to date will persist without a period of continued government support. The restructuring process for the commercial real estate market has only recently begun. Credit losses in some parts of the system are still increasing and bank failures, which tend to lag economic cycles, are still on the rise.

Treasury must balance the desire to exit its investments in private sector entities as quickly as is practicable with the need to ensure that such a withdrawal does not put the progress that the Obama Administration has made in restoring financial stability at risk. To that end, Treasury will continue to provide support where it is necessary to sustain confidence in the financial system and to support critical channels of credit to households and businesses.

9. **So far in 2009, there have been over 90 bank failures and there are now 416 banks on the FDIC's "at-risk" list. Is Treasury considering any new TARP program for small- or medium-sized financial institutions to handle losses that may be forthcoming for commercial-mortgage holdings or any other types of losses?**

The Treasury Department is constantly monitoring markets and institutions to inform policy response. Treasury is particularly focused on the challenges faced by small and community banks because of the important role that these institutions play in lending to small businesses, families and consumers across the country. In May, we announced the CPP expansion for Small Banks Program, which allows viable banks with total assets under $500 million to receive CPP funds up to 5% of risk-weighted assets (versus the 3% limit for all other banks). This program has helped smaller financial institutions withstand the current economic circumstances and continue to lend.

As you note, the commercial real estate market is experiencing stress due to declining macroeconomic fundamentals and an adverse economic financing environment. Because of the important role commercial real estate plays in our economy, Treasury has undertaken a number of programs in response to this stress in this industry.

In March 2009, Treasury launched two liquidity initiatives targeted at commercial real estate. The Term Asset-Backed Securities Loan Facility (TALF) and the Public-Private Investment Program (PPIP) have both been successful in helping to reduce spreads for commercial real estate borrowing and attracting private capital to the commercial real estate lending sector. Since the announcement of the program, spreads on CMBS have fallen by approximately 50% from their peak.

Further, on September 15, 2009 tax guidance was issued clarifying the circumstances in which CMBS securitization vehicles that elected treatment as real estate mortgage investment conduits (REMICs) may modify commercial loans held by those vehicles without jeopardizing the REMIC status of the vehicles.

The guidance clarifies a number of issues regarding the REMIC rules, including (1) that SPVs with REMIC elections and borrowers may discuss loan modifications at any time; (2) that a loan need not already be in default for default to be reasonably foreseeable; and (3) that a loan may be modified whenever default is reasonably foreseeable based on relevant facts and circumstances. The guidance also contains an example in which a performing loan may be modified 12 months before it is due if, based on all facts and circumstances, default is reasonably foreseeable at that time.

Treasury will continue to closely monitor both the health of the sector as well as the impact of our recent initiatives.

10. **Over the past few years Chrysler was owned by Daimler AG. Daimler AG could not fix Chrysler. Next, Chrysler was owned by Cerberus Capital. Cerberus Capital could not fix Chrysler. Given this recent and painful history why do you think the United States government--at an enormous cost to the taxpayers--can fix Chrysler?**

The US government provided assistance to Chrysler last December because of the risks that the conditions in the industry posed to the stability of financial markets and the economy as a whole. That assistance was provided on the condition (among others) that Chrysler develop a restructuring plan. After an initial plan was rejected, the President made a viability determination regarding Chrysler's return to profitability and from that platform he directed the Auto Team to take a commercial approach to the restructuring of the company. As a result, the Administration dealt with the various creditors and stakeholders of Chrysler using the bankruptcy code as a commercial actor, which allowed New Chrysler to buy the majority of the assets of Chrysler creating a substantially healthier company. This was significantly more effective and transformative than what Chrysler had gone through in the past. Also, the Auto Team reviewed the strategic plan that the management teams of new Chrysler and its Alliance partner Fiat developed, and determined it was a viable business plan that included an appropriate level of funding from the Department of the Treasury.

11. On September 16, 2009, CNNMoney.com reported under the title "Fiat CEO: Chrysler Worse Than We Thought":

> **"The situation at recently rescued Chrysler Group is even more dire than first thought, the CEO of Italy's Fiat -- which came to the aid of the U.S. automaker -- said Wednesday.**
>
> **'We were surprised by how little had been done in the past 24 months,' Sergio Marchionne told reporters in Frankfurt, Germany.**
>
> **…**
>
> **Industry analyst Todd Turner of Car Concepts Automotive Research, speaking from the floor of the Frankfurt Motor Show, found it difficult to believe Marchionne's assertion that he didn't know how little work had been going on at Chrysler.**
>
> **'I'm a little surprised that he was surprised,' he said.**
>
> **More likely, Turner said, Marchionne is laying the groundwork for drastic actions that will be announced in November but may have been planned all along.**
>
> **'That is that Chrysler is over, basically,' he said of Chrysler's flagship car brand. 'Within five years, you're going to see nothing.'"**

Do you believe that Chrysler is "over, basically" and that within five years its models will be supplanted by Fiat and Alfa models?

That is not our view. The New Chrysler is being run by a new board of directors and a new management team. They are overseeing the daily management of the Company and are making decisions that they deem to be in the best interest of the Company's stakeholders. As has been stated in the past, the Administration is committed to managing its investment in the companies in a commercial manner, but will not interfere in the operations of the companies. It plans to exit those investments as soon as practicable, and will only vote on core governance issues, including the selection of a company's board of directors and major corporate events or transactions.

How is it possible that the American taxpayers will recover their investment in Chrysler?

The return will depend on the overall market, the economy, and the recovery of the auto sector. The decision to provide funds to the companies by the current Administration was based upon a determination that the companies have viable business plans. As a result, we will monitor GM and Chrysler's performance and seek the return of taxpayer funds as soon as is practicable.
Is Fiat committed to rebuilding Chrysler or is it only interested in obtaining Chrysler's "in place" dealer network in order to re-enter the American market with foreign manufactured Fiat and Alfa products?

The New Chrysler is being run by a new management team and is being overseen by a new board of directors, who have a fiduciary responsibility to Chrysler's shareholders and stakeholders. They are operating the business with a focus on shareholder value and the long-term viability of the company. Today, Fiat owns only 20% of the equity of New Chrysler. The decision to sell Fiat products through New Chrysler will be made by the New Chrysler management team for the benefit of New Chrysler's stakeholders in aggregate.

12. **According to the latest estimate from the Congressional Budget Office (CBO), the investment of TARP funds in the auto industry is expected to add $40 billion more to the deficit than CBO calculated just five months earlier in March 2009. It seems that a reasonable interpretation of such estimate is that the American taxpayers may suffer a loss of at least 50 percent of the TARP funds invested in Chrysler, GM and the other auto programs.**

In addition, in a discussion with staff members of the Panel, Ron Bloom, the head of Treasury's Auto Task Force, stated that it is unlikely the taxpayers will recover all of their TARP funded investments in Chrysler and GM.

How is it possible that the Administration—based upon its due diligence investigation—invested $81 billion in the auto industry only to discover less than three months later that it grossly overinvested and will suffer substantial losses?

One of your responsibilities under EESA is to ensure "taxpayer protection." How could you have discharged that responsibility by investing TARP funds in such questionable investments?

The purpose of all investments made under EESA, including those in the automobile industry, was to promote financial stability. In the case of the auto investments in particular, the US government made the investments because of the risks that conditions in the industry posed to the stability of financial markets as well as the economy as a whole. As noted above, the Auto Team evaluated many scenarios concerning the recoverability of the investments during its diligence process of GM and Chrysler. As described, these scenarios were a function of various factors including assumptions around the overall market, the economy, and the recovery of the auto sector. Under some of these scenarios, GM will be able to return a high percentage of the total funds advanced by the taxpayers and Chrysler will return the money invested as part of the restructuring. Other scenarios, which in Treasury's view are more likely, show much lower recoveries for the initial loans made to GM and Chrysler, but also indicate a reasonably high probability of the return of most or all of the government funding for GM and Chrysler that was advanced as part of the restructurings. Also, as stated above, the decision to provide funds to the companies by the current Administration was based upon a determination that the companies have viable business plans.

13. **The United States government spent tens of billions of dollars of taxpayer money to bail out employees and retirees of the UAW to the detriment of non-UAW employees and retirees--such as retired school teachers and police officers from the State of Indiana--whose pension funds invested in Chrysler and GM debt.**

    What do you say to those Indiana school teachers and police officers who lost part of their pension?

    What message does the Chrysler and GM bankruptcies send to non-UAW employees whose pension funds invested in Chrysler and GM indebtedness—you lose part of your retirement savings because your pension fund does not have the special relationships of the UAW?

    What message does the Chrysler and GM bankruptcies send to the financial markets—contractual rights of investors may be ignored when dealing with the United States government?

    The President directed the auto team to take a commercial approach to the restructuring process of these companies. As a result, the Administration dealt with the various creditors to GM/Chrysler as a commercial actor would. The final division of debt, preferred, and equity securities between the various creditors was the result of arm's length negotiations.

    The UAW/VEBA had many billions of dollars of claims and labor agreements governing the companies' active workforces. As part of this process the Union agreed to major modifications in their labor agreements. Under the new contracts, the VEBA received a stake in the reorganized companies without any immediate payment. The cooperation and support of the UAW is essential to the ability of the reorganized companies to succeed.

14. **If Chrysler and GM are unable to sell a substantial number of cars at an appropriate profit margin will they be permitted to fail and liquidate or will they remain wards of the state?**

    If Chrysler and GM do not turn-around their economic prospects, does this Administration have the courage to stop throwing good money after bad?

The Administration reviewed Chrysler's and GM's business plans, which were developed by the companies. As part of this review process, the Administration's financial advisors performed sensitivity analyses by varying the assumptions underlying the business plans, and these scenarios helped the Administration with its decision making process. The Administration believes it has provided sufficient capital to fund these companies to allow them to successfully restructure and achieve sustainable operations.

15. On September 1, 2009, *The Washington Times* reported:

> **"A former Treasury official has told the watchdog for the $700 billion Wall Street bailout program that President Obama's promise to restrict lobbyist access to the bailout was made purely for political reasons.**
>
> **Months after the administration's pledge, the lobbyist rules haven't been implemented and Neel Kashkari, the one-time czar of the agency's Troubled Asset Relief Program, told the office of the special inspector general for TARP that the pledge to craft safeguards against lobbyist influence was a defensive move.**
>
> **In January, amid concerns that lobbyists would sway TARP decisions, the Treasury Department pledged to write rules to restrict their access, acting "in light of President Obama's firm commitment to transparency, accountability and oversight in our government's approach to stabilizing the financial system."**
>
> **More than six months later, the rules have not been issued."**

When will the rules mentioned in the article become effective?

Why has it taken so long to produce what should have been straight-forward restrictions on the activity of lobbyists?

Treasury issued its Instructions Regarding Communications with Registered Lobbyists and Other Persons About Emergency Economic Stabilization Act Funds on September 10, 2009 and the Instructions are posted on the Internet at www.FinancialStability.gov. In order to preserve consistency between the guidance issued regarding Recovery Act and EESA funds, Treasury waited to issue the EESA Instructions until OMB issued the final Recovery Act guidelines. We note that on January 27, 2009, Secretary Geithner announced new principles designed to limit outside influence in the EESA process and ensure that investment decisions are guided by objective assessments of the health and stability of the financial system. The principles include restricting lobbyist influence in connection with particular applications for or disbursements of EESA funds. Treasury has followed these principles since they were announced and will continue to do so.

16. The same article in *The Washington Times* also reports:

> **"'The Treasury Department has actively obstructed our ability to determine what the true value of the TARP investments are worth and what TARP recipients are doing with taxpayer dollars. Until we have full transparency, we will never be able to know how much risk Treasury is assuming on behalf of the taxpayers,' Mr. Issa said [Rep. Darrell Issa of California, the senior Republican on the House Oversight and Government Reform Committee]."**

At a July hearing before the oversight committee, Rep. Edolphus Towns, New York Democrat and the committee chairman, threatened to subpoena Treasury Secretary Timothy F. Geithner to testify.

Mr. Towns demanded that Treasury give a full accounting of how TARP funds have been used and to make public the monthly reports that the biggest banks are required to submit to Treasury showing the dollar values of their new loans."

Will you commit to disclose in a prompt, complete and transparent manner how TARP funds are being used by the recipients—particularly the dollar amount and type of new loans?

Will you commit to assist the Panel and Representatives Issa and Towns in our respective efforts to value the various TARP investments?

<u>Reporting on the Use of TARP Funds by TARP Recipients</u>

Treasury is committed to transparency and has developed monthly reports that address these issues. Treasury believes that most of the information contained in SIGTARP survey responses is already captured by Treasury's Monthly Lending and Intermediation Snapshot, CPP Monthly Lending Report or Quarterly CPP Report. Specifically, these Treasury reports capture financial institution activities regarding lending, capital cushions and other reserves, and investments in mortgage-backed securities and asset-backed securities. Treasury publishes its Monthly Lending and Intermediation Snapshot to help measure the lending activities of the nation's largest financial institutions that participated in the CPP. This report includes quantitative information on lending and other intermediation activities, as well as a qualitative section that allows banks to comment on the lending environment and the host of factors outside a bank's control that affect lending levels, such as loan demand, borrower creditworthiness, capital markets liquidity and the macroeconomic environment. Although some of the largest recipients of TARP funds have recently repaid the assistance, Treasury has obtained their agreement to provide this information to Treasury for the remainder of 2009.

In addition to the Monthly Lending and Intermediation Snapshot, Treasury provides an expanded CPP Monthly Lending Report that includes the monthly average outstanding balances of consumer loans and commercial loans and total loans from all CPP participants. Finally, Treasury publishes a Quarterly CPP Report that provides extensive detail on the financial positions and activities of both CPP and non-CPP banks based on regulatory data collected by each institution's primary financial regulator.

In our continuing effort to improve the transparency of our programs, and in order to more closely adopt the recommendations in the SIGTARP report, Treasury plans to expand its Quarterly CPP Report to include additional categories of information included in the SIGTARP survey responses underlying the SIGTARP report, such as financial institutions' repayments of their outstanding debt obligations and total investments. This expansion will begin with the next Quarterly CPP Report, scheduled to be released during October 2009.

With these efforts, including tracking the additional information discussed above, we believe these reports provide the information needed to insure transparency of the TARP programs. Moreover, because quantitative data used in these reports is based on data that is provided and reviewed by the financial institution's primary banking regulator, they constitute a more reliable and measurable way of tracking how financial institutions use their capital.

<u>Valuation of TARP Portfolio</u>

Treasury agrees with COP that it is in the public interest to provide periodic disclosure of the estimated value of the TARP portfolio so that the public knows the value of the investments that Treasury has made. A valuation of the portfolio was previously provided as part of the President's 2010 Budget. Under Federal law, Treasury is required to provide a valuation of its investments in connection with the preparation of its annual financial statements. In the coming months, Treasury will publish the financial statements for the fiscal year that ended September 30, 2009. The methodology used for such valuation is governed by the Federal Credit Reform Act, the Emergency Economic Stabilization Act, and Federal accounting principles. The financial statements and the methodology are being audited by the GAO.

17. Thomas E. Lauria, the Global Practice Head of the Financial Restructuring and Insolvency Group at White & Case LLP, represented a group of senior secured creditors, including the Perella Weinberg Xerion Fund ("Perella Weinberg"), during the Chrysler bankruptcy proceedings.

On May 3, *The New York Times* reported:

> **"In an interview with a Detroit radio host, Frank Beckmann, Mr. Lauria said that Perella Weinberg '*was directly threatened by the White House and in essence compelled to withdraw its opposition to the***

deal under threat that the full force of the White House press corps would destroy its reputation if it continued to fight.'

In a follow-up interview with ABC News's Jake Tapper, he identified Mr. [Steven] Rattner, the head of the auto task force, as having told a Perella Weinberg official that the White House *'would embarrass the firm.'*" [Emphasis added.]

In a written response to the Panel following the Detroit Auto Hearing Treasury stated:

> **"As [Mr. Bloom—the head of Treasury's Auto Task Force] testified during the July 27 Field Hearing of the Congressional Oversight Panel, [he has] spoken to Mr. Rattner about this matter, and he categorically denies Mr. Lauria's allegations. [Mr. Bloom has] no knowledge of any other contact with Mr. Lauria or with people at Perella Weinberg regarding the issues mentioned above. SIGTARP will determine the appropriate use of its subpoena power."**

The response is not appropriate because Treasury failed to conduct a proper investigation of this matter by contacting Mr. Lauria and representatives of Weinberg Perella.

Will you agree to conduct a prompt and thorough investigation of this matter by contacting Mr. Rattner, Mr. Lauria and representatives of Weinberg Perella and submit your findings to the Panel?

Note 1: In a press release Perella Weinberg stated that it did not change "its stance on the Chrysler restructuring due to pressure from White House officials." Such a response is entirely different from simply denying Mr. Lauria's statements. It's possible that Perella Weinberg has issued other press releases. See *The New York Times*, May 3, 2009, at http://dealbook.blogs.nytimes.com/2009/05/03/white-house-perella-weinberg-deny-claims-of-threat-to-firm/#statement.

Note 2: Mr. Beckmann's interview with Mr. Lauria is available at http://www.760wjr.com/article.asp?id=1301727&spid=6525.

SIGTARP will determine the appropriate actions with regard to this issue.

But as noted above, I would reiterate that Mr. Rattner categorically denies Mr. Lauria's allegations.

18. Regarding the reorganization of the auto parts manufacturer, Delphi, on July 17, *The New York Times* reported:

> **"Delphi's new proposal [reached with its lender group] is similar to its agreement with Platinum [Equity, a private equity firm], which was announce June 1, the day GM filed for bankruptcy. But hundreds of objectors, including the company's debtor-in-possession lenders,**

derided that proposal as a *"sweetheart deal"* that gave the private equity firm control of Delphi for $250 million and a $250 million credit line." [Emphasis added.]

On June 24 The New York Times reported that

> **"Delphi worked with G.M. and the Obama administration to negotiate with Platinum…"**

In a written response to the Panel following the Detroit Auto Hearing Treasury stated:

> **"The Delphi transactions were negotiated between GM and Delphi. GM determined a failure of Delphi would have led to high losses at GM. The auto team was involved in discussions to the extent necessary to avoid potential destruction of equity value of GM, which would have led to large losses to the Treasury investment and for the U.S. taxpayer."**

This response is not appropriate because Treasury failed to address the key issue—did the Administration advocate a "sweetheart" deal for the benefit of Platinum Equity.

Will you agree to conduct a prompt and thorough investigation of this matter by contacting all appropriate parties and submit your findings to the Panel?

<u>Note</u>: See *The New York Times*, July 17, 2009, at <u>http://www.nytimes.com/2009/07/17/business/17delphi.html?_r=1&scp=8&sq=delphi%20july%20sweetheart&st=cse</u>. See also *The New York Times*, July 24, 2009, at <u>http://dealbook.blogs.nytimes.com/2009/06/24/tensions-grow-over-delphis-platinum-deal/?scp=1&sq=delphi%20june%2024%20sweetheart&st=cse</u>

With regard to this issue, the Auto Team worked purely in a commercial manner to help facilitate the successful sale of assets to new GM and avoid the loss of equity value in order to protect U.S. taxpayer interests. SIGTARP will determine the appropriate actions with regard to any necessary investigations.

Questions for the Record from Panelist Paul Atkins

1. **Sec 116 (b) (1) of the Emergency Economic Stabilization Act (EESA) provides that "[t]he TARP shall annually prepare and issue to the appropriate committees of Congress and the public audited financial statements prepared in accordance with generally accepted accounting principles, and the Comptroller General shall annually audit such statements in accordance with generally accepted auditing standards."**

   What is the current status of this audit? Have the auditors begun work on it, including planning and scoping? Is Treasury consulting with any outside firms in producing the audit? When do you expect the audit to be completed? When do you expect to issue it to the "appropriate committees of Congress?"

   The first audited financial statements for OFS will be for the fiscal year that ended September 30, 2009. The audit is ongoing with Government Accountability Office (GAO) staff on site with OFS. The entrance conference for the financial statement audit was conducted on February 27, 2009. Bi-weekly audit review meetings between OFS and GAO have been held since mid April 2009. Treasury engaged Ernst & Young (E&Y) to assist with accounting services and PricewaterhouseCoopers (PWC) to assist with internal controls in October 2008. The audit is anticipated to be completed on November 8, 2009 and OFS will issue the financial statements in accordance with the timelines set forth by the Office of Management and Budget.

2. **SEC. 106. (d) of EESA states that "[r]evenues of, and proceeds from the sale of troubled assets purchased under this Act, or from the sale, exercise, or surrender of warrants or senior debt instruments acquired under section 113 shall be paid into the general fund of the Treasury for reduction of the public debt."**

   Treasury apparently takes the position that the $700 billion of TARP funds is essentially a line of credit that may be paid down and re-borrowed. If Treasury recycles these "revenues" and "proceeds" for the purchase of other troubled assets, then how does that achieve a "reduction of the public debt?" If Treasury continues to produce a profit on the sale of assets and warrants, does it believe that the program can exceed $700 billion? Please provide Treasury's detailed legal analysis on the issue of reusing TARP funds.

   When financial institutions repay financial assistance they have received under TARP, the Treasury Department does not re-use the funds from the repayments to provide new TARP financial assistance. Treasury deposits the proceeds of repayments into the Treasury general fund for reduction of the public debt, as required by section 106(b) of the Emergency Economic Stabilization Act of 2008, as amended ("EESA").Such repayments do, however, reduce the amount of outstanding troubled assets that count against the maximum amount of troubled assets that Treasury is authorized to purchase under the TARP (i.e., the "statutory cap"), and Treasury has authority through the statutory termination date to enter into new commitments to purchase additional troubled assets up to the statutory cap and has continuing authority to fund such purchases if committed before the termination date.

In answer to the specific additional questions asked above, we provide the following information:

The warrants that Treasury receives in connection with purchasing troubled assets are not themselves troubled assets. The proceeds from the sale of warrants are deposited into the general fund for reduction of the public debt, as required by section 106(b) of EESA, but because the warrants are not themselves troubled assets, their sale does not reduce the amount of troubled assets that count against the statutory cap. Similarly, the revenues from dividend and interest payments that Treasury receives on account of troubled assets that Treasury has purchased are deposited into the Treasury general fund, but these revenues do not reduce the amount of troubled assets that count against the statutory cap.

If a troubled asset is sold back to a financial institution at a higher price than was paid by Treasury, the amount of troubled assets that count against the statutory cap is reduced as described above, but the amount of that reduction would not include the amount of such return. Section 115(b) of EESA provides that it is the "purchase price" of a troubled asset that counts against the statutory cap, so when a troubled asset is sold back, the amount of reduction of troubled assets that count against the statutory cap would not be measured by the sales price, but rather by the original purchase price.

3. **How much funding has been repaid to TARP? How much funding has Treasury committed to all of the various programs under TARP? Please provide a full list of all current and proposed programs under TARP, and how much Treasury has committed to (and expended for) each of these programs.**

As of COB September 29, 2009, $636.85B has been publically announced; $444.05B has been obligated; $365.09B has been disbursed for the various TARP programs and a total of $85.20B has been repaid to the Treasury Department. The breakdown of these figures is listed below:

TARP Funds as of 9/29/2009

Program Titles	**Announced**	**Obligated**	**Disbursed**	**Repaid**
*(*All dollars in billions*)*				
Capital Purchase Program (CPP)	**$218.00**	**$204.62**	**$204.62**	
CPP Redemptions/Repayments				$ 70.69
Proceeds from Warrants and Stock				$ 2.90
Dividends and Other Income				$ 9.24
Targeted Investment Program (TIP)	**$ 40.00**	**$ 40.00**	**$ 40.00**	
Asset Guarantee Program (AGP)	**$ 5.00**	**$ 5.00**	**$ 0.00**	
Capital Assistance Program (CAP)	**TBD**	**TBD**	**TBD**	
Consumer and Business Lending Initiative (CBLI)	**$ 70.00**	**$ 20.00**	**$ 0.10**	
Public-Private Investment Program (PPIP)	**$100.00**	**$ 0.00**	**$ 0.00**	
AIG Investments	**$ 70.00**	**$ 69.84**	**$ 43.21**	
Automotive Industry Financing Program (AIFP)	**$ 82.59**	**$ 81.05**	**$ 75.90**	
Auto Loan Principal Repaid				$ 2.14
Interest Received from Loans				$ .21
Proceeds from Additional Notes				$ .02
Making Home Affordable (MHA)	**$ 50.00**	**$ 22.28**	**$ 0.00**	
Helping Families Save Their Homes Act	*$ 1.26*	*$ 1.26*	*$ 1.26*	
Program Totals:	**$636.85**	**$444.05**	**$365.09**	
Total Revenues Repaid to TARP:				**$ 85.20**

4. Sec. 120 (b) of EESA states "[t]he Secretary, upon submission of a written certification to Congress, may extend the authority provided under this Act to expire not later than 2 years from the date of enactment of this Act. Such certification shall include a justification of why the extension is necessary to assist American families and stabilize financial markets, as well as the expected cost to the taxpayers for such an extension."

This provision essentially calls for Treasury to employ a cost-benefit analysis in determining whether to extend the program. Will Treasury conduct a rigorous economic analysis, including all direct and indirect costs of TARP? Will moral hazard be a consideration? What specific criteria will Treasury use in determining whether it intends to extend TARP? Will Treasury use the results of any cost analysis it produces?

What are the current costs of the TARP, not just in terms of out-of-pocket expenses, but also other real, if latent, costs such as moral hazard? Has Treasury produced any type of cost analysis of the current cost of TARP to the taxpayer? Is so, what were the results?

The Administration is evaluating the necessity, efficacy, and cost of its financial policies, including programs implemented under TARP. We are committed to setting our country on a fiscally sustainable path, an objective the Administration has pursued despite the overwhelming needs for public intervention that we inherited. We continue to attempt to minimize the potential costs of our policies to taxpayers, while stabilizing and rehabilitating financial markets and creating conditions for sustainable economic growth.

Pursuant to the requirements of ESSA, if we elect to extend the authority provided under Sections 101(a), 101(a)(3), and 102 of the Act, we will provide Congress with written certification of why the extension is necessary to assist American families and stabilize financial markets, as well as the expected cost to the taxpayers for such an extension. These are factors that the Administration has considered carefully in deciding whether to initiate, continue, or wind down TARP programs. And as I explain in my response to Panelist Congressman Hensarling's questions, these are factors that will inform our decision of whether to extend EESA authority.

Note that financial results for TARP suggest that these programs can be implemented responsibly and with sufficient protections for taxpayers. Following the successful conclusion of the large bank "stress tests" initiated as part of the Obama Administration's Financial Stability Plan, banks were able to raise a substantial amount of new private capital. As a result, banks have repaid more than $70 billion in TARP capital, allowing us to reduce the projected national debt by a similar amount. While it is difficult to project the ultimate return to taxpayers for all TARP investments, in those cases where the government's stake in banks has been sold completely, taxpayers have earned a 17 percent return.

Per the timelines established by the Office of Management and Budget, Treasury will publish a financial statement that includes detailed cost estimates for each TARP program. Those estimates are based on actual and projected cash flows from repayment and income Treasury investments, as well as administrative costs. And the programmatic cost estimates reflect adjustments to the discount rate for market risks. The financial statement will include an analytical discussion and copious footnotes to provide context and transparency into our methods of estimating costs. We have hired E&Y and prominent economists to review and improve our methods of estimation, and various asset managers have validated the results. In addition, GAO is conducting a financial audit that includes TARP programs.

The Administration appreciates that intervening in financial markets any longer than necessary risks distorting markets. Although it is difficult to quantify those costs, they are real. For this reason, we are terminating programs as soon as practicable. For example, we recently ended the Money Market Mutual Fund Guarantee program put in place last fall, which guaranteed at its peak over $3 trillion in assets. Once financial conditions stabilize and we finish winding down our extraordinary financial programs, we will need to evaluate the appropriate role for government in financial markets in the broader context of regulatory reform.

System-wide breakdowns of the financial system can have devastating impacts on households and businesses. Ever since the Great Depression, the government has provided a safety net for essential parts of the financial system in order to limit the economic fallout from financial instability. As your question suggests, by insulating financial institutions from the full consequences of their actions, that safety net encourages risk taking. Effective regulation is essential to contain this moral hazard.

The Administration has put forward specific proposals to reform our regulatory structure to accomplish these objectives. For example, we propose holding the largest, most interconnected financial firms to tougher standards: tougher capital standards, tougher liquidity requirements, and tougher supervision and regulation regardless of their legal form. These higher standards help ensure that our largest financial institutions take into account the risks that they impose on the system as whole. Further, any losses incurred in managing the failure of a large, interconnected financial firm should be recouped through assessments on financial firms that benefit most directly from financial stability, commensurate with size and risk. Those financial firms –not the taxpayer – will bear the ultimate cost of that resolution under our proposals.

Regulatory reform will minimize moral hazard in our financial institutions, reduce the need for future government support, and make the financial system more stable, efficient, and robust.

5. **Does Treasury plan to include TARP in its review as required by the Government Performance Results Act? If not, why not? If so, how detailed will this review be? To what extent has Treasury been working on this review?**

OFS/TARP will be included in the overall Treasury review of its performance as required by the GPRA. OFS has drafted five overall goals and 15-20 corresponding performance indicators. Currently these goals and indicators are being vetted through the standard Treasury process, and following this will be sent to OMB for approval. Concurrently, OFS is creating the data set that will allow us to track performance of these indicators. Our plan is to include these baseline results in Treasury's Fiscal Year 2009 Performance Summary.

6. **Why did Treasury make the decision to put its ownership of AIG in a trust, but not its ownership of General Motors? What are the implications of the Government Corporations Control Act with respect to the government's ownership in AIG and General Motors? Also, Treasury has stated its intention to put its ownership of Citigroup in a trust; however, this has not yet occurred. When does Treasury plan to fulfill this commitment?**

(a) The interests in AIG that Treasury received from its TARP investments are not held in a trust. They are held by Treasury.

The trust established pursuant to the AIG Credit Facility Trust Agreement (the AIG Trust) was created by the Federal Reserve Bank of New York (FRBNY) to hold assets the FRBNY received in consideration for its loans to AIG. These loans were not made by Treasury pursuant to EESA.

The customary purpose of a trust is to divide beneficial ownership of the assets within the trust from control or supervision over those assets. The AIG Trust is an independent voting trust, providing the trustees with the sole voting power of the AIG shares held in the trust.

Treasury does not have authority under EESA to create an independent voting trust because EESA requires that any vehicle created by the Treasury to manage assets acquired under EESA must be “subject to supervision by the Secretary” (EESA Section 101(c)(4)). It is the view of Treasury that a trust providing the trustees with voting discretion would not satisfy the “supervision” requirements of EESA.

(b) The Government Corporation Control Act (GCCA) prohibits the United States government from establishing or acquiring corporations to act as an agency unless there is a law of the United States specifically authorizing the action. The GCCA does not apply because, among other reasons, neither GM nor AIG “act as an agency.”

(c) The term sheet provided with a February 27, 2009 press release regarding Citigroup’s exchange offering, through which Treasury would exchange a portion of its non-voting preferred stock for common stock, stated that it was “anticipated that [the United States Government] will hold such securities in a trust”. This term sheet was a transaction outline representing contemplated terms of the potential exchange. Treasury subsequently determined that a trust was not appropriate and did not put the securities into a trust.