BAILOUT REWARDS: THE TREASURY DEPARTMENT'S CONTINUED APPROVAL OF EXCESSIVE PAY FOR EXECUTIVES AT TAXPAYER-FUNDED COMPANIES

HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION AND REGULATORY AFFAIRS

OF THE

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Tuesday, February 26, 2013,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION & REGULATORY AFFAIRS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 2154, Rayburn House Office Building, Hon. Jim Jordan [chairman of the subcommittee] presiding.

Present: Representatives Jordan, McHenry, Lummis, Collins, Meadows, Bentivolio, DeSantis, Cartwright, Connolly, Pocan, Davis and Horsford.

Also Present: Representative Issa.

Staff Present: Ali Ahmad, Majority Communications Advisor; Alexia Ardolina, Majority Assistant Clerk; David Brewer, Majority Counsel; Caitlin Carroll, Majority Deputy Press Secretary; Katelyn E. Christ, Majority Professional Staff Member; John Cuaderes, Majority Deputy Staff Director; Linda Good, Majority Chief Clerk; Tyler Grimm, Majority Professional Staff Member; Christopher Hixon, Majority Deputy Chief Counsel, Oversight; Scott Schmidt, Majority Deputy Director of Digital Strategy; Rebecca Watkins, Majority Deputy Director of Communications; Jedd Bellman, Minority Counsel; Jaron Bourke, Minority Director of Administration; Devon Hill, Minority Research Assistant; Jennifer Hoffman, Minority Press Secretary; Jason Powell, Minority Senior Counsel; and Brian Quinn, Minority Counsel.

Mr. JORDAN. All right, the subcommittee will come to order. Today's hearing is on the Treasury Department's continued approval of excessive pay for executives at companies that are currently being funded by the taxpayer.

I want to welcome our witnesses today. Thank you for being here. As I mentioned to you just a few minutes ago, we will try to be done by noon; hopefully a little earlier, if we can. But it is an important hearing and you have to listen to us give a few statements before you get to talk; it is just sort of the way this thing goes. So I will do an opening statement, then the gentleman from Pennsylvania, Mr. Cartwright, will do his, and then we will hear from you all. You get five minutes to give your testimony and then we will get right into questions.

Today's hearing is about understanding why the Treasury Department continues to abdicate its responsibility to taxpayers, breaking a firm promise our President, President Obama, made to the American people.

In 2009, when it was discovered that executives at bailed-out firms were enriching themselves on the backs of taxpayer support, the President went on national television and stated that these actions were the height of irresponsibility and declared them shameful. He said he would not tolerate it as President.

To remedy the situation, he promised top executives at firms receiving extraordinary help from U.S. taxpayers will have their compensation capped at half a million dollars, a fraction of the salaries that they had been reported.

The person currently in charge of enforcing these restrictions is with us today, Ms. Patricia Geoghegan. She is the Acting Special Master for TARP Executive Compensation and is responsible for approving compensation at firms that have been given extraordinary assistance from the Federal Government.

The latest audit from the special inspector general for TARP shows that compensation for executives at bailed-out firms is egregiously out of line with what the President committed to the American people.

Of the 69 executives for whom Special Master Geoghegan had responsibility to approve compensation, all but one received pay of $1 million. In fact, 16 of these executives were paid over $5 million.

We are here today to fulfill the committee's mission of bringing transparency and accountability to the American people.

Treasury's failure to protect taxpayers is part of a disturbing pattern in which this Administration makes promises to the public, but then does not live up to them. We saw it with the stimulus; we were promised unemployment would never exceed 8 percent, and it exceeded 10 percent. We saw it with ObamaCare; the President said premiums would go down, and they have gone up.

When the President's promises do not materialize, he and his administration simply stick their heads in the ground and offer little to the American people by way of answers. Hopefully, this morning, Special Master Geoghegan can explain to us how things got so out of control and provide a plan to correct executive compensation for firms that continue to operate with taxpayer support.

With that, I would yield to the gentleman from Pennsylvania for his opening statement.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

I would like to thank our witnesses for appearing before the committee today. I look forward to hearing your testimony on the executive compensation at companies that received exceptional taxpayer assistance during the Government's response to the 2008 financial crisis.

Like most Americans, I was troubled to learn how the structure of compensation packages on Wall Street helped to create incentives for taking the unnecessary and excessive risks that led to the financial crisis in the first place. Too often, executives received huge cash salaries, discretionary raises, exorbitant bonuses, and golden parachutes, with little to no reason to care about their behavior's effect on the long-term consequences to the company and the Country because their compensation wasn't tied to the long-term health of the company.

With the economy collapsing, the taxpayers bailed out these companies; not because we wanted to, but because we had to. Millions of middle class jobs, blue collar manufacturing jobs would have been gone; millions of people out of work through no fault of their own, just because a bunch of traders on Wall Street didn't feel the need to think about the long-term consequences of their actions.

This was hard to stomach when the taxpayers, who saved these companies, are often struggling themselves to make ends meet. But it was a necessary thing to do and the right thing to do to save the jobs of millions of innocent, middle class people who had nothing to do with causing that financial crisis in the first place.

With these bailouts came conditions, and rightly so. One of the many conditions was that the Treasury Department would appoint someone to oversee executive compensation at these companies. This compensation was to be structured in a way that would incentivize long-term growth over risk taking and personal gain and, most importantly, get these companies back on their feet again by attracting and retaining quality employees that would keep these jobs safe so that they were able to pay back the taxpayers as quickly as possible.

TARP has been, overall, a success story. According to the Treasury Department, as of January 31, 2013, Treasury has recovered all or substantially all of TARP funds disbursed to date. Four of the seven companies we are talking about today, who received the most TARP funds, have already paid us back and exited the program.

Now, I would like to point out here a great irony that we will see in this room today. The same people who argued that they would rather have gone over the fiscal cliff because a 4.6 percent increase in taxes on the wealthiest 0.7 percent in our Nation would destroy the economy are the same people who are now saying that these specific 0.7 percenters are making too much money.

Now, I know we will be getting into the minutiae today, and I welcome that discussion; however, it is important to recognize the big picture here. We held our noses; we bailed out these companies so that millions of middle class jobs wouldn't be lost. This program was an overall success and millions of people are employed in this Country who otherwise wouldn't have been.

I thank the chairman for calling this hearing and I look forward to a productive dialogue on these issues. I yield.

Mr. JORDAN. I thank the gentleman.

I would just point out that this hearing is about following the law and about an administration keeping their word. They told us one thing. In fact, we are going to play what the President said. We have statements they said they were going to limit compensation, that it would be the rare and it would be the exception for executives who were receiving taxpayer dollars to go above half a million dollars in compensation, and it has been anything but that.

So this is about following the law and having this administration do exactly what they told the American taxpayers they were going to do when the American taxpayers ponied up the money for these various companies.

With that, I would yield to the chairman of the full committee, the gentleman from California.

Mr. ISSA. Thank you, Mr. Chairman. I will be very, very brief.

I think the ranking member will recognize that in this particular case we agree on what excess compensation is, and perhaps for a reason that you didn't note. To quote President Barack Obama, if you have a business, you didn't build that; somebody else made that happen. Now, that quote doesn't ring particularly true to me as an entrepreneur and a job creator, but it rings very true when it comes to General Motors and other companies who still owe us their very existence, their very existence depending upon the federal relief, a bailout for which, in the case of General Motors, we are still about $20 billion upside down. And I repeat, you don't take a bonus when, in fact, your investors are in the negative.

That is what we are talking about here today. I think that is exactly where we have to be. And I note that the chairman and ranking member together noted that not every company that is on this excess compensation list fits that bill, and I hope that we will concentrate on companies who were not able to exit TARP because, in fact, they have not paid us back. Once they exit TARP, I am one of those people who believes that it is up to the board of directors and stockholders to determine compensation, and I really am willing to support whatever they support as the owners of the company. But today America is a major owner of the company and, ultimately, without the United States Treasury there would be no General Motors and several other companies.

With that, Mr. Chairman, I thank you for that opportunity.

Mr. JORDAN. Thank you.

Is there anyone else on the committee wishing to make an opening statement?

[No response.]

Mr. JORDAN. All right, members have seven days to submit opening statements for the record.

We will now recognize our panel. We are pleased to have with us the Honorable Christy Romero, who is the Special Inspector General for the Troubled Asset Relief Program, and Ms. Patricia Geoghegan, who is Acting Special Master for TARP Executive Compensation.

Ladies, I need you to stand up. Raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Mr. JORDAN. Let the record show that the witnesses answered in the affirmative.

And we will just start with Ms. Romero. You will be given five minutes, more or less, and then we will go right to Ms. Geoghegan.

Ms. Romero, again, thank you for being here and you are recognized for your five minutes.

WITNESS STATEMENTS

STATEMENT OF THE HONORABLE CHRISTY ROMERO

Ms. ROMERO. Chairman Jordan, Ranking Member Cartwright, Chairman Issa, members of the committee, it is my honor to present SIGTARP's report. I thank the committee for bringing transparency and oversight to this use of taxpayer dollars.

Executive compensation did play a material role in causing the financial crisis. Pay was not tied to long-term performance; employees took too much risk in the short-term, and eventually that caught up with them. The companies would have failed, but taxpayers saved them with a bailout. Taxpayers stepped up because we were told that the entire economy would collapse. The bailout was supposed to protect taxpayers, not line the pockets of executives.

After TARP companies paid huge bonuses, the President announced reforms for seven companies receiving extraordinary bailouts. Executive compensation would be capped at $500,000, with anything additional paid in stock that can't be cashed until taxpayers are repaid. Treasury's Office of the Special Master determines each person's pay within the top 25 employees at these companies under six Treasury principles that are vague, conflicting, and so broad that almost any pay could be justified.

Former Special Master Feinberg developed guidelines in the public's interest to balance the conflicting principles, give incentives to repay, and address mistakes of the past, and he testified before Congress that they were: first, "pay should generally not exceed the 50th percentile,“ meaning pay that is right in the middle; second, "cash salaries should rarely exceed $500,000 and should be, in many cases, well under"; and, third, incentive pay should be tied to long-term performance metrics and only cashed out as TARP is repaid.

SIGTARP found in our first report that the special master reduced pay from pre-bailout times, but approved pay worth millions. The special master lacked strong criteria policies and procedures to apply its guidelines, and ended up making many exceptions when companies pushed back, claiming they were unique and needed the pay for retention. That is the same argument that Fannie and Freddie made.

In 2012 we did a followup. We found that Treasury made no meaningful reforms on our recommendations. Treasury approved excessive pay at AIG, GM, and Ally that exceeded its own guidelines, chipping away at the important changes that Mr. Feinberg had made, largely based on what the companies wanted. Every employee except one was paid $1 million; many were paid much more. Half were paid $3 million or more; one quarter were paid $5 million or more. Treasury approved two-thirds of these employees to be paid above the 50th percentile, meaning they got pay not at the middle of the pack, but above that.

The companies wanted raises for 18 employees, and that is what they got, ranging from $30,000 to a $1 million pay raise. There was no criteria for who would get a raise. Employees got raises at companies with profits, companies with losses, and even a company in bankruptcy. There was no criteria for who would be paid cash salaries over $500,000. Seventy percent were paid cash of $500,000 or more; 94 percent were paid $450,000 or more in cash. For half of the employees, Treasury removed long-term restricted stock, removing pay that is tied to individual performance and that gives the employee a personal stake in the company repaying TARP.

Treasury claims they are not bound by their guidelines, but we found too many exceptions to the guidelines to make the guidelines meaningful. Treasury has to be held to the standards they create and under which they make decisions. It is necessary for transparency, consistency, and oversight.

It should be a bare minimum to reduce pay from the ridiculous, out of control pre-bailout pay. The question is not how much should these employees be paid if it was business as usual. It is not business as usual; taxpayers own part of these companies. The question is what is the appropriate size of pay given the taxpayer ownership and how should that pay be structured to avoid repeating the mistakes of the past.

Mr. Feinberg said that the answer was in his guidelines. If Treasury does not follow the guidelines, taxpayers will subsidize excessive pay and Treasury risks turning back the clock to the compensation that contributed to the financial crisis.

Thank you again, and I am happy to answer any questions.

[Prepared statement of Ms. Romero follows:]

SIGTARP OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM

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AND REGULATORY AFFAIRS

STATEMENT OF THE HONORABLE CHRISTY ROMERO

SPECIAL INSPECTOR GENERAL

FOR THE TROUBLED ASSET RELIEF PROGRAM

(SIGTARP)

BEFORE THE
U.S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION,
AND REGULATORY AFFAIRS

FEBRUARY 26, 2013

Chairman Jordan, Ranking Member Cartwright and members of the Committee, I am honored to appear before you today to discuss SIGTARP's second evaluation of Treasury-approved pay for top employees at companies that stood out from the more than 700 TARP recipients because the amount and nature of their bailouts were considered "exceptional."

The Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP") serves as the watchdog over the Troubled Asset Relief Program ("TARP"), the Federal bailout resulting from the financial crisis. SIGTARP protects the interests of those who funded TARP programs – American taxpayers. Our mission is to promote economic stability through transparency, robust enforcement, and coordinated oversight.

I want to thank the Committee for your unwavering support in helping SIGTARP fulfill this mission. Let me first provide the Committee with a brief overview of the important work that SIGTARP is doing. SIGTARP is a white-collar law enforcement agency. In the last year alone, SIGTARP, as a result of its investigations, nearly doubled the number of individuals criminally charged to 121 (including 83 senior officers), and nearly tripled the number of defendants convicted to 84, with others awaiting trial. The consequences for these crimes are severe, with 36 individuals already sentenced to prison while others convicted await sentencing. The prison sentences imposed have been lengthy (for example, 30 years, 14 years, 12 years, 11.5 years, 8 years, and 6 years) reflecting the severity and complexity of the crimes SIGTARP investigates. We are sending the message to perpetrators, scam-artists, and fraudsters of the financial crisis that committing crimes against the American taxpayer will not be tolerated. Along with jail time, SIGTARP's investigations have prevented $555 million of TARP funds from being lost to massive fraud at the now-failed Colonial Bank. SIGTARP investigations have also resulted in court orders for the return of $4.15 billion to the Government and victims (including TARP companies), evidencing that SIGTARP as an agency more than pays for itself.

In our oversight role, SIGTARP has made 114 recommendations to Treasury to prevent fraud, waste and abuse related to TARP. Treasury has not implemented 50 of our recommendations to date. All SIGTARP recommendations can and should be implemented by Treasury without further delay. Finally, SIGTARP has brought significant transparency to TARP's 13 different programs through our 17 Quarterly Reports and 23 audits and other reports. SIGTARP's most recent evaluation, "Treasury Continues Approving Excessive Pay for Top Executives at Bailed-Out Companies," is the subject of my testimony before the Committee today. Treasury is in the process of approving 2013 pay packages for top employees at General Motors and GMAC (now rebranded as Ally Financial). SIGTARP has made recommendations to improve Treasury's process.

Background

In early 2009, after Congress provided in the TARP law that Treasury should require appropriate standards for executive compensation at TARP companies, several major TARP recipients paid employees billions of dollars in bonuses. On February 4, 2009, the President called the bonuses "shameful" stating, "...what gets people upset – and rightfully so – are executives being rewarded for failure. Especially when those rewards are subsidized by U.S. taxpayers.... As part of the reforms we are announcing today, top executives at firms receiving extraordinary help from U.S. taxpayers will have their compensation capped at $500,000 – a fraction of the salaries that have been reported recently. And if these executives receive any additional compensation, it will come in the form of stock that can't be paid up until taxpayers are paid back for their assistance."[1]

In June 2009, Treasury issued a rule to implement the standards required by the TARP law, as well as subsequent Recovery Act legislation that gave Treasury discretion to adopt additional standards on executive compensation. In the rule, Treasury created the Office of Special Master for TARP Executive Compensation ("OSM"). Kenneth R. Feinberg served as the Special Master and was succeeded in September 2010 by Patricia Geoghegan, who is the current Acting Special Master. Mr. Feinberg testified before the Congressional Oversight Panel, "Congress delegated to the Secretary of Treasury, who delegated to me the legal responsibility for linking executive compensation to regulation."

OSM has jurisdiction over compensation at the seven companies that stood out from the more than 700 TARP recipients because of the amount and nature of their "exceptional" bailouts. These seven companies were: AIG, Ally, GM, Bank of America, Citigroup, Chrysler and Chrysler Financial. Mr. Feinberg testified before the Congressional Oversight Panel, "once Congress provided substantial taxpayer assistance to these companies, I was, in effect, a surrogate creditor to the taxpayer." Mr. Feinberg testified before the House Oversight and Government Reform Committee, "These seven companies are owned by the taxpayer. And the taxpayer as creditors are asking these companies to rein in compensation."

OSM's primary responsibility is to approve compensation payments and structure each year for each of the Top 25 employees at the TARP exceptional assistance companies. OSM can disapprove pay that is inappropriate, unsound, or excessive, although those terms are not defined

[1] Remarks by President Barrack Obama, February 4, 2009 (see online at: www.whitehouse.gov/the_press_office/RemarksbyPresidentBarackObamaOnExecutiveCompensationSecretaryGeithner/)

in Treasury's rule.[2] Under Treasury's Rule, the Special Master must determine whether compensation is inconsistent with the law or are otherwise contrary to the public interest. In meeting this "public interest standard", the Special Master uses discretion to apply six broad principles listed in Treasury's rule and to determine the appropriate weight or relevance of those principles depending on the facts and circumstances or when principles conflict.[3]

Special Master Feinberg told SIGTARP that these principles are inherently inconsistent because of conflicting goals and company-specific circumstances. Three OSM principles illustrate this inconsistency: One principle states that compensation should be consistent with that of persons in similar positions or roles at similar entities, while other principles call for a significant portion of compensation to be paid over the long term and for compensation to avoid incentives to take excessive risks. Therefore, compensation paid over the long term may avoid excessive risk, but may not reflect compensation of an employee's peers, particularly in industries where compensation practices have historically encouraged excessive risk taking.

The Process Developed by Special Master Feinberg to Approve Pay Packages

When asked about how principles give rise to vagueness and ambiguity with regard to compliance, Special Master Feinberg testified before the Congressional Oversight Panel, "It seems to me that what we found is that the rule delegated to the special master the ability to provide more detailed principles that would be used to effectuate the rule." And that is what he did. Feinberg developed what he called "prescriptions" to shift compensation for Top 25

[2] See Press release on Interim Final Rule for TARP, June 10, 2009 (online at: http://www.treasury.gov/press-center/press-releases/Pages/tg165.aspx). OSM also approves compensation structures (rather than setting individual pay packages) for certain executive officers and the next 75 most highly compensated employees.
[3] The six principles are: (1) avoiding incentives to take risks; (2) keeping the company competitive and retaining and recruiting employees who would contribute to the company's success and its ability to repay TARP; (3) allocating compensation between salary and incentives; (4) basing a portion of pay on performance metrics; (5) setting compensation consistent with persons in similar positions at similarly situated companies; and (6) setting compensation that reflects an employee's contribution to the company's value.

employees away from large guaranteed cash salaries and toward stock. He testified before the House Committee on Financial services that he developed these prescriptions under the public interest standard.

Mr. Feinberg testified before the Congressional Oversight Panel about his prescriptions:

> I would say that the fundamental conclusion we drew is that you want to set up a competitive packages that provides competitive cash to the employee, but in a limited amount, a competitive amount. We said under $500,000 annually. And that the appropriate balance should be struck by giving the remaining compensation in a given year in stock in that company, but over a relatively lengthy period of time so that you are undercutting any incentive for quick turnaround, quick flip, making the stock in effect cash. And instead, you've got to hold as nontransferable a good share of that stock over as long as four years.

Feinberg's prescriptions were:

50th percentile: In trying to keep the companies competitive, Feinberg told SIGTARP that the 50th percentile was an "obvious" starting point and an "appropriate" level of compensation to balance the need to retain and attract people. To the House Committee on Financial Services, Feinberg testified, "total pay should generally not exceed the 50th percentile of total compensation for similarly situated employees."

To determine the 50th percentile, the companies submit market data that indicates the market pay for each Top 25 employee. OSM uses Equilar's *ExecutiveInsight Total Compensation Report,* an executive compensation benchmarking tool, among other resources, to assess the reasonableness of that market data. Feinberg testified before the House Committee on Financial Services, "there is a view constantly expressed by the companies under my jurisdiction that they are entitled to more, and more, and more. And that's the competitive market data that they provide to us. "

Cash salaries limited to $500,000: Feinberg testified before the House Committee on Financial Services that "...base cash salaries should rarely exceed $500,000, and only then for good cause shown, and should be, in many cases, well under $500,000..." OSM staff told SIGTARP that the $500,000 cash salary limit was based partially on President Obama's statement that salaries should be limited to $500,000. However, according to Feinberg, his decision to limit cash salaries to $500,000 and to increase the proportion of compensation in the form of stock struck a balance between reducing excessive risk and providing enough compensation to keep employees' "skin in the game." He testified before Congress, that "other than small cash-based salaries, the remainder of the compensation package should be tied to performance" over a period of time. Requiring incentive compensation to be paid in the form of long-term restricted stock – and to be contingent on performance and on TARP repayment: OSM determines how much of the remaining compensation would be paid in stock that is earned immediately versus long-term restricted stock.[4] In its first ruling issued October 22, 2009, OSM stated, "As the Secretary noted in his June 10 statement, incentive pay can be undermined by compensation practices that set the performance bar too low or simply reward rising tides. The Special Master's rulings require that incentives be paid only if executives reach objective goals agreed upon in consultation with the Special Master—and only if TARP is repaid." As previously reported in SIGTARP's January 2012 report, OSM officials told SIGTARP that companies were very hesitant to pay long-term restricted stock because there was no certainty that some of the companies would ever be free of TARP. Feinberg testified that long-term restricted stock was "the formula we tried to use to correct what we thought in our report were the problems with executive compensation practices in these seven companies."

[4] The Recovery Act limited long-term restricted stock to one-third of the employee's pay.

As SIGTARP reported in January 2012, OSM used this process for 2009, 2010, and 2011 pay.[5] In his final recommendation before he left in 2010, Special Master Feinberg made recommendations to his successor. Feinberg recommended that his successor "limit guaranteed cash," "demand a performance component for most compensation," and "hold the line on cash salaries."

SIGTARP's January 2012 Report

On January 23, 2012, SIGTARP published a report finding that, from 2009 to 2011, the Special Master could not rein in excessive compensation at the seven companies that received exceptional TARP assistance because he was under the constraint that his most important goal was to get the companies to repay TARP. Special Master Feinberg said that the companies pressured him to let the companies pay executives enough to keep them from quitting, and that Treasury officials pressured him to let the companies pay executives enough to keep the companies competitive and on track to repay TARP funds.

Given OSM's overriding goal, the seven companies had significant leverage over OSM by proposing and negotiating for excessive pay packages based on historical pay, warning Special Master Feinberg that if he didn't provide competitive pay packages, top officials would leave and go elsewhere.

In proposing high pay packages based on historical pay prior to their bailout, the TARP companies failed to take into account the exceptional situation they had gotten themselves into that necessitated taxpayer bailout. Rather than view their compensation through the lens of

[5] On October 22, 2009, OSM issued its first compensation determinations for 137 employees of 7 companies that had received TARP exceptional assistance. In December 2009, Bank of America and Citigroup repaid their exceptional assistance and were no longer subject to the Special Master's rulings. On March 23, 2010, OSM issued 2010 pay determinations for 121 employees of the 5 remaining companies. In May 2010, Chrysler Financial exited TARP. On April 1, 2011, OSM issued compensation determinations for 98 employees of the remaining 4 companies. In July 2011, Chrysler exited TARP.

partial Government ownership, the companies argued that their proposed pay packages were necessary to retain or attract employees crucial to the company paying back TARP. For example, Ally CEO Michael Carpenter told SIGTARP, "We had an individual who was making $1.5 million total compensation with $1 million in cash. Cutting this person's salary to $500,000 cash resulted in the person being cash poor. This individual is in their early 40s, with two kids in private school, who is now considered cash poor. … We were concerned that these people would not meet their monthly expenses due to the reduction in cash."

SIGTARP reported that under conflicting principles and pressures, despite reducing some pay from pre-bailout times, the Special Master approved multimillion-dollar compensation packages for many of the top 25 employees but tried to shift them away from large cash salaries and toward stock. OSM approved pay packages worth $5 million or more for 49 individuals.

SIGTARP reported that although OSM developed prescriptions, OSM did not have any established criteria for applying those prescriptions. Because there were so many differences in the companies' situations, companies pushed back on the prescriptions and OSM made many exceptions to the prescriptions on a case-by-case basis. SIGTARP recommended that OSM (1) substantiate good cause for cash salaries greater than $500,000; (2) better document its use of market data to determine the 50th percentile; and (3) develop more robust policies, procedures, or guidelines.

In addition, SIGTARP concluded in its 2012 report that while historically the Government has not been involved in pay decisions at private companies, one lesson of this financial crisis is that regulators should take an active role in monitoring and regulating factors that could contribute to another financial crisis, such as executive compensation. As a nation we are not out of the woods because many former TARP recipients remain as systemically important financial institutions. These companies have the responsibility to reduce risk taking that could trigger systemic consequences, including excessive cash compensation and other compensation not tied to long-term performance. For institutions that exited TARP, the responsibility for reforming compensation practices falls on the companies and their regulators. The regulators' strength and leadership in the area of executive compensation are crucial. Taxpayers are looking to the regulators to protect them so that history does not repeat itself.

SIGTARP initiated a second evaluation of OSM's pay-setting process for 2012 for top 25 employees of the remaining TARP exceptional assistance companies, AIG, GM, and Ally in light of the findings in SIGTARP's earlier report. Despite SIGTARP's January 2012 report identifying serious concerns with OSM's pay-setting process, Treasury continued to use the same process for setting 2012 pay without significant change. According to the Acting Special Master Geoghegan, the process OSM process used to set 2012 pay has not changed. She told SIGTARP that this was OSM's fourth year and the companies were not proposing anything out of the ordinary.

SIGTARP's Conclusions in its 2013 Evaluation

While taxpayers struggle to overcome the recent financial crisis and look to the U.S. Government to put a lid on compensation for executives of firms whose missteps nearly crippled the U.S. financial system, Treasury continues to allow excessive executive pay. AIG, Ally, and GM executives continue to rake in Treasury-approved multimillion-dollar pay packages that often exceed guidelines from OSM.[6] Treasury's formal response to SIGTARP's 2012 report came from Acting Special Master Geoghegan, who stated: "...OSM has succeeded in achieving

[6] OSM's primary responsibility is to set pay packages for the Top 25 employees at companies whose amount and nature of their TARP bailout were labeled "exceptional." At the end of 2012, only three companies receiving exceptional assistance under TARP remained: AIG, GM, and Ally.

its mission" by reducing pay for the top 25 executives at these companies from the pay they received prior to TARP.

Treasury's success should not be judged based on reductions in pay from a time when these companies stood on their own without taxpayer assistance. If that is the definition of success, the work of OSM was effectively over when Special Master Feinberg set the first pay packages in 2009, and there is no longer a need for a Special Master. Rather, Treasury's success should be based on whether Treasury awards appropriate pay for executives while taxpayers continue to fund these companies' bailouts.

SIGTARP found that once again, in 2012, Treasury failed to rein in excessive pay. In 2012, OSM approved pay packages of $3 million or more for 54% of the 69 Top 25 employees at AIG, GM, and Ally – 23% of these top executives (16 of 69) received Treasury-approved pay packages of $5 million or more, and 30% (21 of 69) received pay ranging from $3 million to $4.9 million. Treasury seemingly set a floor, awarding 2012 total pay of at least $1 million for all but one person. Treasury approved 24 of AIG's top 25 employees to receive pay packages worth at least $2 million.

Taxpayers deserve transparency on Treasury's decisions to award multimillion-dollar pay packages to executives at companies that had been stuck in TARP for four years. First, even though OSM set guidelines aimed at curbing excessive pay, SIGTARP previously warned that Treasury lacked robust criteria, policies, and procedures to ensure those guidelines are met. Treasury made no meaningful reform to its processes. Second, absent robust criteria, policies, and procedures to ensure its guidelines were met, OSM's decisions were largely driven by the pay proposals of the same companies that historically, and again in 2012, proposed excessive pay. Third, with the companies exercising significant leverage, the Acting Special Master rolled back OSM's application of guidelines aimed at curbing excessive pay.

Despite SIGTARP's previous warning that Treasury lacked robust criteria, policies, and procedures to ensure that Treasury's guidelines to curb excessive pay are met, Treasury made no meaningful reform to its processes.

Former Special Master Feinberg developed guidelines aimed at curbing excessive pay and reducing excessive risk taking. Treasury Secretary Geithner testified that executive compensation played a material role in causing the financial crisis because it encouraged excessive risk taking. Feinberg previously told SIGTARP that he limited cash salaries to $500,000 and shifted compensation more toward stock to reduce excessive risk and keep employees' "skin in the game." Feinberg also previously told SIGTARP that he targeted total compensation at the 50th percentile for similarly situated employees at similarly situated entities to keep the companies competitive. Feinberg testified before Congress that he used long-term restricted stock tied to performance metrics to correct problems with executive compensation practices at these companies.

Although SIGTARP previously reported serious problems with OSM's pay-setting process and recommended fixes for those problems, Treasury failed to take any meaningful action in response. SIGTARP reported that OSM approved multimillion-dollar compensation packages, trying to shift these packages away from large cash salaries and toward stock, but that OSM did not have any criteria for applying its guidelines. SIGTARP reported that OSM awarded cash salaries greater than $500,000 without OSM substantiating good cause. The only action Treasury took in response to SIGTARP's findings and recommendations was to document its use of market data on the 50th percentile and, in an eight-page spreadsheet, document limited explanations for cash salaries exceeding $500,000.

Despite SIGTARP's previous warnings, Treasury did not establish meaningful criteria for having good cause to award cash salaries greater than $500,000. In 2012, OSM did not independently analyze the basis for awarding cash salaries greater than $500,000. Without this analysis, OSM put itself in the position of relying heavily on justifications by the companies – companies that historically have pushed back on the Special Master's limitations on compensation, in particular, on cash salaries. By not making substantive changes, Treasury is clinging to the status quo of awarding multimillion-dollar pay packages.

OSM's decisions were largely driven by the companies' pay proposals, the same companies that historically, and again in 2012, proposed excessive pay, failing to appreciate the extraordinary situation they were in, with taxpayers funding and partially owning them.

Many believe that AIG, Ally, and GM would not exist except for the Government assistance each so desperately requested. SIGTARP previously reported that, given OSM's overriding goal to get the companies to repay TARP, the companies had significant leverage over OSM by proposing and negotiating for excessive pay, warning that if OSM did not provide competitive pay packages, top executives would leave and go elsewhere. This was also the case for 2012 pay. For 2012, AIG negotiated for Treasury-approved pay of approximately $108 million for 25 employees, GM negotiated for Treasury-approved pay of $64 million for 23 employees, and Ally negotiated for Treasury-approved pay of approximately $78 million for 21 employees.

By proposing and negotiating for excessive 2012 pay, these executives continue to lack an appreciation for their extraordinary situations and fail to view themselves through the lenses of companies substantially owned by the Government. Other company actions or statements in 2012 shed light on the companies' lack of appreciation for their extraordinary situation. AIG CEO Robert Benmosche, who has raked in the most compensation of any employee under OSM – $42 million in four years, with a cash salary exceeding by 200% the median salary of his peers – was quoted in New York Magazine as stating that neither Treasury nor the Federal Reserve Board has thanked him for repaying AIG's rescue package. GM CEO Dan Akerson asked Treasury Secretary Geithner to relieve GM from OSM's pay restrictions, a move Akerson said would ultimately benefit taxpayers, and issued a proxy statement complaining about the pay restrictions. Ally executives sought pay raises for the president of its subsidiary, Residential Capital, LLC ("ResCap"), despite the fact that ResCap filed bankruptcy in 2012 and sought extra pay for ResCap employees from the bankruptcy court.

Absent robust policies, procedures, or criteria to implement OSM's guidelines, in 2012, the Acting Special Master approved compensation largely driven by the three companies' proposals. For example, OSM awarded $6.2 million in pay raises to 18 employees. Treasury approved a $1 million pay raise for the CEO of AIG's Chartis subsidiary, a $200,000 pay raise for a ResCap employee – weeks before ResCap filed for bankruptcy – and a $100,000 pay raise for an executive at GM's European unit, despite that unit experiencing significant losses. OSM's written explanations for the pay raises lacked substance, largely parroting what each company asserted to OSM without any independent analysis by OSM. By requesting these pay raises, the companies failed to appreciate that they continued to be funded by taxpayers.

With the companies having significant leverage, the Acting Special Master appears to have rolled back OSM's application of guidelines.

50th Percentile Guideline: In 2012, OSM did not follow its own guidelines aimed at curbing excessive pay by having total compensation generally not exceed the 50th percentile for similarly situated employees. Treasury awarded total pay packages exceeding the 50th percentile by approximately $37 million for approximately 63% of the top 25 employees of AIG, GM, and Ally. The Acting Special Master appears to have rolled back the 50th percentile guideline, telling SIGTARP, for example, that she set total compensation for all of Ally's Top 25 employees between the 50th and 75th percentiles.

Cash Salaries Limited to $500,000: OSM's lack of meaningful criteria and independent analysis contributed to OSM's rolling back its guideline to limit cash salaries to $500,000. In 2012, OSM approved cash salaries greater than $500,000 for one-third of the employees within OSM's pay-setting jurisdiction (23 of 69 Top 25 employees at AIG, GM, and Ally).

Acting Special Master Geoghegan is not following former Special Master Feinberg's final recommendation that she "limit guaranteed cash," "demand a performance component for most compensation," and "hold the line on cash salaries." Feinberg testified before Congress that "...base cash salaries should rarely exceed $500,000, and only then for good cause shown, and should be, in many cases, well under $500,000..." However, Acting Special Master Geoghegan told SIGTARP there is no cash salary cap, and $500,000 is a "discretionary guideline that is useful," but there is no law or regulation that says she needs "a memo to permit a company to go above $500,000."

Never have there been so many exceptions to the $500,000 cash salary guideline for the number of people under the Acting Special Master's jurisdiction as there were in 2012. The Acting Special Master increased the number of employees with Treasury-approved cash salaries greater than $500,000 from 22 employees in 2011 to 23 employees in 2012. The number has quadrupled from six employees in 2009, despite the fact that the number of companies OSM reviews decreased as companies repaid and exited TARP.

In addition to questioning the approval of cash salaries in excess of $500,000 for one-third of the employees, SIGTARP questions whether OSM is following the spirit of its $500,000 cash salary guideline. Although OSM guidelines target salaries greater than $500,000, notably in 2012, OSM allowed 25 employees to have cash salaries exactly at the $500,000 limit (falling outside OSM's guideline by $1). Accordingly, OSM allowed cash salaries of $500,000 or more for 70% (48 of 69) of Top 25 employees at AIG, GM, and Ally. OSM allowed cash salaries of $450,000 or more for 94% (65 of 69) of Top 25 employees at AIG, GM, and Ally. In stark contrast, the 2011 median household income of U.S. taxpayers who fund these companies was approximately $50,000.

Similar to OSM's explanations for approving pay raises, OSM's "justifications" for good cause for cash salaries to exceed $500,000 largely parrot what each company asserted orally or in writing to OSM. Acting Special Master Geoghegan told SIGTARP that OSM does not perform an independent analysis, in part due to the 60-day constraint to issue a decision on the companies' proposals (which come in February). OSM uses data supplied by the companies, talks to company officials and other Treasury officials, and looks at publicly available data. Because many of the same employees remained in the top 25 from 2011 to 2012, OSM could have analyzed those employees' responsibilities and value to the company throughout the year, and then could have used the end of the year information to supplement its existing information. OSM should not limit itself to perform its primary mission from February to early April, when it issued its determination memorandums. By using only the 60 days, OSM missed an opportunity to conduct an independent analysis that could have limited pay raises and high cash salaries.

More importantly, the Acting Special Master appears to have no desire to independently analyze whether good cause exists to award an employee a cash salary greater than $500,000. The Acting Special Master told SIGTARP that it would be "utterly normal" for these individuals in the top 25 to expect over $500,000 in cash salary. That might be true if the companies had not been bailed out and were not still significantly owned by taxpayers. Acting Special Master Geoghegan said OSM "does not spend that much time on a small decision like whether to continue to give this person $600,000." She described taking an extra two hours to look at this person's pay justification to see whether there was "added responsibility" as a "waste of time." She said she did not think that when the $500,000 guideline was formulated, it would take an "independent little project" to determine when someone should go above $500,000. If the pay czar is not even willing to independently analyze high cash salaries for 23 employees, who else will protect taxpayers?

The Acting Special Master told SIGTARP that OSM would not normally reopen executive compensation from year to year because it would be disruptive, and it is "relatively easy for OSM to keep things the way they were." The Acting Special Master largely based her decisions on prior years' pay, telling SIGTARP that OSM would not change pay based on a change in circumstances. However, even where there was a negative change such as ResCap filing bankruptcy or GM Europe suffering significant losses, OSM did not reduce the compensation for the employees in charge of those entities.

Long-Term Restricted Stock: By removing long-term restricted stock from some executives' pay and using it only in half of the pay packages, the Acting Special Master is effectively removing a key OSM guideline aimed at reducing excessive risk by tying individual compensation to long-term company success. She also removed long-term restricted stock for senior executives, including the CEOs of AIG, GM, and Ally, calling it "a burden" to compensate them with long-term restricted stock "that has no value." However, Treasury's rule states that the portion of performance-based compensation compared to total compensation should be greater for positions that exercise high levels of responsibility. After making her decisions on pay in April 2012, she subsequently removed long-term restricted stock for all of Ally's top 25 employees on the basis that the company's subsidiary, ResCap, had filed bankruptcy, and that the company had announced it was exploring strategic alternatives such as a possible sale of international operations. However, only three employees in Ally's top 25 worked at ResCap and OSM knew in April that ResCap was planning a restructuring. In addition, both GM and AIG were selling international operations.

The guidelines originally created by former Special Master Feinberg were aimed at fixing the material role executive compensation played in causing the financial crisis by encouraging excessive risk taking. By not holding the line on large cash salaries (awarding $500,000 or more to 70% of the executives under OSM's pay-setting jurisdiction, and allowing 94% of employees to be paid cash salaries of $450,000 or more), and removing long-term, incentive-based stock as requested by the companies, OSM is effectively relinquishing some of OSM's authority to the companies, which have their own best interests in mind. The Acting Special Master told SIGTARP that OSM is not the compensation committee. SIGTARP agrees – the compensation committee looks out for the interest of the company. The Office of the Special Master's job is to look out for the interests of taxpayers, which it cannot do if it continues to rely to a great extent on the companies' proposals and justifications without conducting its own independent analysis. The Acting Special Master needs to be mindful of Feinberg's words that the "taxpayer as creditors are asking these companies to rein in compensation."

There are two lessons to be learned from OSM's 2012 pay-setting process and decisions: First, guidelines aimed at curbing excessive pay are not effective, absent robust policies, procedures, or criteria to ensure that the guidelines are met. This is the second report by SIGTARP to warn that the Office of the Special Master, after four years, still does not have robust policies, procedures, or criteria to ensure that pay for executives at TARP exceptional assistance companies stays within OSM's guidelines. Perhaps the Acting Special Master thinks that OSM has already succeeded in achieving its mission by limiting compensation for these executives from pre-TARP levels or believes that OSM's existing processes are sufficient. The question is whether it is sufficient for taxpayers. Treasury continues to award excessive pay packages, including large guaranteed cash salaries. Meaningful reform is still possible because GM and Ally remain under OSM's jurisdiction. Without meaningful reform, including independent analysis by OSM, Treasury risks that TARP companies could potentially misuse taxpayer dollars for excessive executive compensation.

Second, while historically the Government has not been involved in pay decisions at private companies, one lesson of this financial crisis is that regulators should take an active role in monitoring and regulating factors that could contribute to another financial crisis, including executive compensation that encourages excessive risk taking. According to OSM, OSM's authority to set pay for AIG executives has ended. SIGTARP previously reported that AIG CEO Benmosche told SIGTARP that the Special Master's practices would have no lasting impact. He also said, however, that pay and performance must be linked, and if the majority of income is fixed, or guaranteed, then pay is not linked to performance. Given AIG's considerable pushback on OSM's limitations on pay as reported in SIGTARP's prior report, it is highly likely that AIG could return to past compensation practices. The responsibility shifts to the Federal Reserve Board to ensure that AIG does not encourage excessive risk taking through compensation.

SIGTARP's Recommendations Going Forward

SIGTARP recommends the following:

1. Each year, Treasury should reevaluate total compensation for those employees at TARP exceptional assistance companies remaining in the Top 25 from the prior year, including determining whether to reduce total compensation.

2. To ensure that Treasury effectively applies guidelines aimed at curbing excessive pay and reducing risk taking, Treasury should develop policies, procedures, and criteria for approving pay in excess of Treasury guidelines.

3. Treasury should independently analyze whether good cause exists to award a Top 25 employee a pay raise or a cash salary over $500,000. To ensure that the Office of the Special Master has sufficient time to conduct this analysis, Treasury should allow OSM to work on setting Top 25 pay prior to OSM's receiving the company pay proposals, which starts the 60-day timeline.

4. To be consistent with Treasury's Interim Final Rule that the portion of performance-based compensation compared to total compensation should be greater for positions that exercise higher levels of responsibility, Treasury should return to using long-term restricted stock for employees, particularly senior employees such as CEOs.

Chairman Jordan, Ranking Member Cartwright, and members of the Committee, thank you again for this opportunity to appear before you, and I would be pleased to respond to any questions that you may have.

Mr. JORDAN. Thank you, Ms. Romero. We appreciate that.

Ms. Geoghegan, you are recognized for five minutes.

STATEMENT OF PATRICIA GEOGHEGAN

Ms. GEOGHEGAN. Chairman Jordan, Ranking Member Cartwright, Chairman Issa, and members of the subcommittee, I thank you for the opportunity to testify today on this important topic. My name is Patricia Geoghegan and I serve as the Acting Special Master for TARP Executive Compensation.

In the fall of 2008 our economy stood at the brink. The financial institutions and markets that Americans rely on to protect our savings, finance our homes and college educations, and fund our businesses were threatened as at no time since the Great Depression.

Congress acted by passing the Emergency Economic Stabilization Act, which created TARP and included important restrictions on executive compensation at businesses that received TARP assistance. Those restrictions were designed to ensure that compensation of top executives was aligned not only with the interests of shareholders, but also with the interests of taxpayers in preventing excessive risk-taking and in recovering TARP assistance.

Treasury acted quickly to implement these restrictions through a regulation that, among other things, created the Office of the Special Master. Established in June 2009 under the leadership of Kenneth Feinberg, the responsibility of the office is, each year, to review and either approve or modify the pay packages proposed for the top 25 employees of the seven companies that had received exceptional assistance under TARP. The special master has no jurisdiction to review pay packages at any other companies. All our determination letters are available publicly on our Web site.

As Mr. Feinberg noted almost four years ago before the full committee, the office has worked to achieve a balance between limiting compensation, while at the same time keeping pay at levels that enable the exceptional assistance companies to remain competitive and repay taxpayers. The regulation makes clear that we must consider market forces in determining pay levels.

In implementing the regulation, we established a number of guidelines that were the foundation of the initial determinations. These guidelines are not rigid formulas. Each pay determination requires the exercise of discretion and judgment that takes into account the specific facts and circumstances of each company and each employee. A careful look at our record shows that the office has struck an appropriate balance. Pay has been cut and taxpayers are being repaid.

Starting in 2009, we cut average cash pay for the top 25 executives at the seven companies by more than 90 percent and average total pay by more than 50 percent. Taken together, the original seven companies under the jurisdiction of the special master have returned the $352 billion in total assistance provided plus an additional positive return to date of more than $6 billion.

For the 2012 determinations we followed the same guidelines established by Mr. Feinberg in 2009. We continue to review and evaluate market data to make sure that pay does not exceed the levels paid for similar positions at similar companies.

In 2012, AIG's average pay packages for its top 25 employees were at the 48th percentile compared to similar positions at similar companies. GM's were at the 50th percentile and Ally Financial's were midway between the 50th and the 75th percentiles.

We continue to require that most pay be in the form of stock, the ultimate value of which will reflect the performance of the company. Ninety-four percent of the pay packages we approved in 2012 contained a majority of stock, rather than cash, up from 74 percent in 2010. We continue to limit cash salary. In 2012, the average total cash pay approved for AIG, GM, and Ally Financial was 63 percent lower than the median for total cash pay for similar positions at similar companies. We continue to require that incentive pay be awarded only on the achievement of pre-established performance goals and we continue to limit perks.

Today, TARP is in wind-down. In December 2012, AIG exited TARP. Thus, only two companies, GM and Ally Financial, remain under the jurisdiction of the office, and for these companies we will continue to follow the framework and guidelines we have used for the 2009 through 2012 determinations until they have exited TARP.

Thank you, and I welcome your questions.

[Prepared statement of Ms. Geoghegan follows:]

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Acting Special Master for TARP Executive Compensation Patricia Geoghegan
U.S. Department of the Treasury
Written Testimony Before the
House Committee on Oversight and Government Reform
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

February 26, 2013

Chairman Jordan, Ranking Member Cartwright, and Members of the Subcommittee, I thank you for the opportunity to testify today on the subject of executive compensation. I serve as the Acting Special Master for the Troubled Asset Relief Program Executive Compensation.

In the fall of 2008, our economy stood at the brink. The financial institutions and markets that Americans rely on to protect our savings, finance our homes and college educations, and fund our businesses were threatened as at no time since the Great Depression. Across the country, people were rapidly losing confidence in our financial system and in the government's ability to safeguard their economic future.

Congress acted by passing the Emergency Economic Stabilization Act (EESA) in October 2008, which created the Troubled Asset Relief Program (TARP). TARP was part of the broad-based federal response to the financial crisis that helped prevent a second Great Depression. And the law, as amended in 2009, included important restrictions on executive compensation at businesses that received TARP assistance. Those restrictions were designed to help ensure that compensation of top executives was aligned not only with the interests of shareholders, but also with the interests of taxpayers in preventing excessive risk-taking and recovering the TARP assistance.

The Treasury Department acted quickly to implement these restrictions through the Interim Final Rule, TARP Standards for Compensation and Corporate Governance, which provided for, among other things, the creation of the Office of the Special Master.

The Special Master's office was established in June 2009 under the leadership of Kenneth Feinberg. The Special Master's office was given an important responsibility under EESA and accompanying Treasury regulations: it was to review—and either approve or modify—the pay packages for the top 25 employees of seven companies that had received "exceptional assistance" under TARP.[1] Today, the Special Master only has jurisdiction to approve or modify pay packages for the two remaining companies that received exceptional assistance.

I joined Treasury in August 2009 to work on TARP executive compensation with Mr. Feinberg and the Special Master's office staff. During that time, we worked closely to shape the process

[1] The original seven companies were AIG, Ally Financial, Bank of America, Citigroup, Chrysler, Chrysler Financial, and GM. In 2009, the Office of the Special Master (OSM) reviewed a total of 136 top 25 pay packages proposed for these seven companies; in 2010 OSM reviewed 119 top 25 pay packages proposed for the then remaining five exceptional assistance companies; in 2011 OSM reviewed 98 top 25 pay packages proposed for the remaining four companies; and in 2012 OSM reviewed 70 pay packages for AIG, GM, and Ally Financial. The number of pay packages reviewed by OSM in any year may in fact be less than 25 per company because of departures and retirements of top 25 employees between January 1 and the date of the annual determination letters.

and framework by which we reviewed the pay for the top executives at seven TARP recipients. Under Mr. Feinberg's direction, we issued our first top 25 compensation determinations in October 2009, and subsequent determinations in 2010.[2] In September 2010, Mr. Feinberg stepped down as the Special Master, and I was appointed to succeed him. Accordingly, I have headed the office for the 2011 and 2012 compensation determinations.

In October 2009, Mr. Feinberg testified before the full House Oversight and Government Reform Committee as to how we were carrying out the responsibilities of the Special Master. And what he said then describes how we have carried out those responsibilities to this day. He described our objective as to "rein in compensation and come up with compensation packages that will maximize the likelihood, first and foremost, that the taxpayers will get their money back."

There were initially seven companies subject to the Special Master's jurisdiction. Today, only two companies are still subject to the jurisdiction of the Special Master. Treasury has exited its investments in five of the original seven companies, and is on track to exit a sixth by early 2014.

Moreover, taking as a group the original seven companies whose payments to top executives were subject to the Special Master's office review and considering the recoveries by Treasury and the Federal Reserve on a combined basis, **the taxpayers have now recovered more than the total assistance provided.**

The Process of the Office of the Special Master Balances the Objectives of the Law

As Mr. Feinberg noted almost four years ago, the Special Master's office has worked to achieve a balance between limiting compensation, while at the same time keeping compensation at levels that enable the exceptional assistance companies to remain competitive and repay taxpayers.

The process that I helped Mr. Feinberg create, and that we continue to follow today, accomplishes this objective by requesting comprehensive submissions from the exceptional assistance companies, which we then thoroughly and carefully examine. In reviewing these submissions, we analyze market data to determine what constitutes competitive marketplace compensation. The regulations make clear that we must consider market forces in determining compensation levels that will permit the exceptional assistance recipients to compete—including maintaining the ability to attract and retain employees—so they can exit TARP and repay taxpayers. The Special Master's office staff has also always included one or more executive compensation professionals. We have received help from academics who did not have companies as clients, to ensure there was no conflict of interest.

The original submissions from the seven companies were in large part contrary to the statute and the regulations, and contrary to the public interest. The companies wanted too much cash and guaranteed salary. They wanted stock that would be immediately transferable. And the submissions made no mention or insufficient mention of the perks that were part of the overall salary—such as personal use of corporate aircraft, golf club dues, et cetera.

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[2] OSM's annual review process results in the issuance of its annual top 25 determination letters, which can be found online at www.financialstability.gov (click on "Executive Compensation").

Therefore, we required the companies to drastically revise their proposals, and we established a number of guidelines that were the foundation of the initial determinations in 2009 and 2010. As Mr. Feinberg's successor, I have continued to follow these guidelines in our determinations for the remaining companies.

These guidelines included the following:

First, we said that pay generally should not exceed the levels paid for similar positions at similar companies.

Second, we required that most pay packages should be primarily stock-based. In this way, compensation is tied to the long-term performance of the company and executives are not just focused on short-term results or encouraged to take excessive risks.

Third, we drastically cut cash compensation.

Fourth, we required that incentives be contingent on the achievement of pre-established performance goals.

Fifth, we significantly limited executive perks.

As both Mr. Feinberg and I have consistently stated, these are guidelines rather than rigid formulas. Each compensation determination requires the exercise of discretion and judgment. And they each require achieving an appropriate balance between limiting pay and also keeping the companies competitive so they can repay taxpayers.

<u>The Office of the Special Master is Achieving its Mission</u>

An objective and thorough look at the record shows that the Special Master's office struck an appropriate balance in achieving its mission. Pay has been cut and taxpayers are being repaid. Starting in 2009:

- We cut average cash pay for the top 25 executives at the seven companies that originally received exceptional assistance by more than 90 percent.
- We cut average total pay for those top 25 executives by more than 50 percent.
- We fundamentally restructured the top 25 pay packages so that most pay packages are primarily stock-based (generally including the use of stock salary that immediately vests but is payable over time), with a relatively small percentage of cash pay (in most cases not exceeding $500,000), so that executives are not just focused on short-term results and are not encouraged to take excessive risks.
- We provided that, when a pay package includes incentive compensation, it is in the form of long-term restricted stock awarded upon the achievement of pre-established performance metrics and paid out generally over a three-year period.
- We significantly limited executive perquisites.

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- Taken together, the original seven companies under the jurisdiction of the Special Master's office have fully returned the $352 billion in total assistance provided—plus an additional positive return to date of more than $6 billion.

The Special Master's office has followed the same guidelines established under Mr. Feinberg's leadership in 2009 for the 2010, 2011, and 2012 top 25 determinations. We continue to receive detailed submissions from the companies, which we evaluate very carefully. We continue to review and evaluate market data to make sure that compensation does not exceed the levels paid for similar positions at similar companies. We continue to limit cash salary and require that most compensation be in the form of stock, we continue to require that incentive compensation be awarded only on the achievement of pre-established performance goals, and we continue to limit perks. This demonstrates a clear and thorough process to determine compensation.

Specifically, in 2012, our determinations regarding the three companies that still had exceptional assistance outstanding reflect the following:

- **We continue to limit compensation.**
    - AIG's average pay packages for its top 25 employees were at the 48th percentile compared to similar positions at similar companies.
    - GM's average pay packages for its top 25 employees were at the 50th percentile compared to similar positions at similar companies.
    - Ally Financial's average pay packages for its top 25 employees were mid-way between the 50th and the 75th percentiles compared to similar positions at similar companies.[3]
    - Most pay (83 percent overall in 2012) is in the form of stock, which means that the ultimate value of the majority of the pay of top executives will depend on the future performance of the company, generally over a three-year period.[4]

- **We continue only to permit pay increases that are reasonable under the circumstances.** Mr. Feinberg acknowledged in 2009 that, while emphasizing decreases in cash and total pay, he had permitted individual pay increases where appropriate based on the unique facts and circumstances of each case. That continues to be our approach. Neither AIG nor Ally Financial proposed any net increase in compensation for its top 25 executives for 2012. Although GM did propose a net increase in compensation for 2012, its pay packages nevertheless were on average at the 50th percentile for comparable positions at comparable entities. Moreover, we required that more than 97 percent of the approved pay increases be in the form of stock compensation rather than cash. In addition, the three current CEOs have not had any pay increase during their respective tenures.

[3] The above results are consistent with the benchmarks OSM has historically used for the three companies. (In simplified terms, if a pay package is at the 50th percentile—also sometimes referred to as the median—half the comparable pay packages are above that number and half are below; if a pay package is at the 60th percentile, 40 percent of the comparable pay packages are above that number and 60 percent are below, etc.)

[4] This result is consistent with the 82 percent overall number for 2011 and 2010.

- **We continue to require that compensation be predominately in stock and therefore performance-based.** Ninety-four percent of the pay packages we approved in 2012 contained a majority of stock compensation (rather than cash), up from 74 percent in 2010.[5]

- **We continue to limit the amount of cash compensation.** In certain instances under Mr. Feinberg, as well as today (for example, a total of 23 individuals in 2012 versus 22 in 2010), the Special Master's office has approved a cash salary above $500,000. In virtually every one of these cases, however, the large majority of the executive's pay package has been in the form of stock-based compensation. Moreover, for 2012, cash salaries for the top 25 executives at the three companies as a group were on average one percent less than the median of cash salaries for similar positions at similar entities.[6]

It's also important to note that in the 2012 proxy season, AIG received a 99 percent approval rate in its shareholder "say-on-pay" vote on 2011 compensation, and GM received a 97 percent approval rate. These approval rates are far higher than average results for shareholder say-on-pay votes.[7]

Moving Forward

Today, only two companies remain under the jurisdiction of the Special Master's office, and by next year we expect there will be only one remaining company. In December 2012, GM purchased 200 million shares of its common stock held by Treasury and Treasury announced plans to exit its remaining investment in GM by early 2014. In addition, Treasury has outlined its exit strategy for its investment in Ally Financial. Treasury expects to monetize its remaining investment as the company completes two strategic initiatives begun last year, which are the Chapter 11 proceeding involving Ally Financial's mortgage subsidiary ResCap, and the sale of Ally Financial's international operations.

We will continue to follow the framework and guidelines we used in the 2009-2012 determinations for GM and Ally Financial until they have exited TARP.

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[5] OSM also succeeded in increasing the percentage of pay packages that include long-term restricted stock to 73 percent of the total number of pay packages approved in 2012 and 2011, versus 67 percent of the total number of pay packages approved in 2010 and 2009.

[6] Total cash in the pay packages approved by OSM was even smaller in comparison. For example, in 2012 the average total cash pay approved for AIG, GM, and Ally Financial was 63 percent <u>lower</u> than the median for total cash pay (<u>i.e.</u>, cash salary and cash incentives) for similar positions at similar companies. This is because similar companies also pay cash bonuses, which are not permitted for executives whose pay packages are subject to review by OSM.

[7] Ally Financial does not have publicly held equity and therefore is not required to hold a shareholder say-on-pay vote. Note also that the say-on-pay vote results were not skewed by reason of Treasury's then ownership interests in AIG and GM; Treasury casts its say-on-pay votes in proportion to the "for" or "against" votes cast by the other shareholders.

Mr. JORDAN. Thank you, Ms. Geoghegan.

I will now turn to the gentleman from California for five minutes.

Mr. ISSA. I appreciate that.

Would you play the short video?

[Video shown.]

Mr. ISSA. Ms. Geoghegan, did you fully live up to the words the President said in that speech?

Ms. GEOGHEGAN. Chairman Issa, if you recall, after the President's speech, Congress amended EESA.

Mr. ISSA. Okay, and since my name is normally pronounced Essa, I will interrupt at this moment.

I agree; the statute does not exactly match the President's statement. So let's get into what the statute is supposed to do. You are authorized to provide such compensation. And I have done executive compensation actually greater than the $10 million that we are talking about for the top. You are authorized to get them, effectively, to the median, but you are also required to have a deferral. They are not allowed to receive it all in cash. Is that essentially what a layperson would think about the law relative to GM and the old GMAC, which is the only two entities we are talking about really here today?

Ms. GEOGHEGAN. Chairman Issa, I agree. Our two main guidelines would be to make sure that the compensation does not exceed the levels paid for similar positions at similar companies, on the one hand, and we want to make sure that most of the compensation is in the form of stock so that it is paid over time and reflects the performance of the company over time so that the executives are not encouraged to look at short-term results and are not encouraged to take excessive risks.

Mr. ISSA. And if you are an executive making $500,000, $1 million, $2 million, the truth is it is not a negative, it is a positive, to receive your compensation on a deferred basis, correct? In other words, companies routinely do not pay their top executives in large amounts of cash; just the opposite, executives typically want a deferred compensation package, and many of the compensation that top executives get are in non-cash deferred systems, including their pensions and so on. Isn't that true?

Ms. GEOGHEGAN. Chairman Issa, that is correct. In our case, however, the cash portion of the packages is a much smaller portion than is normal for similar positions at similar companies.

Mr. ISSA. I took the opportunity to look at General Motors' chief competitor, Ford. And when you look at Ford, it outperformed GM. When you look at the total compensation, I found it to be substantially similar. The difference is Ford has much lower debt, owes the Government nothing, is in fact, competing against General Motors, who got a bailout, isn't that correct?

Ms. GEOGHEGAN. Generally speaking, I believe that you are correct in describing their compensation.

Mr. ISSA. And because America chose, or the Treasury chose to have a substantial portion of that bailout in stock, it is particularly significant because it doesn't appear as debt on the balance sheet but, rather, stock that is currently under water by about $20 billion, right? More or less.

Ms. GEOGHEGAN. The stock that we own at current market prices is not sufficient for GM to repay us fully, that is correct.

Mr. ISSA. Well, let's understand something. General Motors is a public company, so we have lost that much money. If we take that money and we sell it and we put it into Apple or we put it into gold futures or anything else, we may or may not make money. The truth is, today, we have lost that much money, and the only way we get it back is through stock appreciation, correct?

Ms. GEOGHEGAN. It is true that the only way we will get the remaining investment in GM is through the value of our stock, that is correct, Chairman Issa.

Mr. ISSA. Okay. Now, I have sat on the board of a public company, even as a member of Congress, and I am very sensitive to what moves the value of stock. Since your compensation package was deferred almost not at all. In other words, they vest in three year increments; a third, a third, and a third.

Can you sit here today and tell the rest of us, who do not always deal in these kinds of things, that they are really linked to the long-term future? Long-term future is next year, the year after, and the year after, long-term; or is in fact three years three years after the bailout, or six years after the bailout, nearly. Is it in fact long-term or are we dealing with a relatively short horizon, one in which the CEO, for example, is likely to still be the CEO or barely exiting?

That is the question I really have for you here today. It is not the total compensation, which I have some concerns about whether it is fair based on their performance relative to their peer who didn't have the assistance. But even if it was reasonable, why wouldn't that compensation, the so-called TARP stock, be more linked to us getting out of the red on that very stock?

Ms. GEOGHEGAN. Chairman Issa, the task that the Office of the Special Master has under the law is to achieve a balance between limiting compensation on the——

Mr. ISSA. Well, my time has expired, but maybe because you are not exactly answering the question, if you could simply say did you have the authority to go beyond a third, a third, and a third? Not could you exercise it, did you choose to, but did you have the authority to have their compensation further out and more linked to the long-term performance than you did?

Ms. GEOGHEGAN. Chairman Issa, we did select three years as the appropriate long-term measure.

Mr. ISSA. I appreciate that you selected it.

Mr. Chairman and ranking member, if you would give me a little indulgence.

Did you have the authority to have their compensation more linked to where the company would be when it exits us being on the hook and upside down and currently having lost, potentially forever, our investment, did you have the authority to make it longer than essentially a third of it maturing in one year?

Ms. GEOGHEGAN. Chairman Issa, we could have made it longer and we could have made it shorter, you are correct.

Mr. ISSA. Okay. Mr. Chairman, ranking member, hopefully I have set the stage a little bit. One of my concerns today is exercise of authority, was it reasonable. Thank you. I yield back.

Mr. JORDAN. Thank you.

The gentleman from Pennsylvania is recognized for five minutes.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Now, one thing that we have been doing so far is referring liberally to the statements and opinions of Mr. Kenneth Feinberg, and one thing I would like to do, since a lot of those statements and opinions were made, he came out with a book, called Who Gets What: Fair Compensation After Tragedy and Financial Upheaval, in 2012, and I would like to submit for the record not the entire book, Mr. Chairman, but chapter chapter 5 of that book, which runs from pages 85 through 123.

Mr. JORDAN. We too have a budget.

Without objection.

Mr. CARTWRIGHT. Thank you.

Now, Ms. Romero, I want to thank you for your work and your testimony today. I appreciate the work that SIGTARP does.

Ms. Geoghegan, I also want to thank you for your work and your testimony.

Now, Congress required that Treasury prohibit bonus payments and retention awards for companies receiving exceptional assistance under TARP. Ms. Romero, do you have any indication at this point that Treasury failed to do that?

Ms. ROMERO. So the cuts that Ms. Geoghegan was referring to in her earlier testimony, there were definitely cuts made in 2009 from the pre-bailout time. Much of that cut actually comes from Congress prohibiting those cash bonuses and that compensation.

Mr. CARTWRIGHT. Thank you. Thank you.

Now, Ms. Geoghegan, have you done that, have you prohibited bonus payments and retention awards?

Ms. GEOGHEGAN. The statute has a small—has the opportunity to provide for incentive compensation up to one-third of the total package, and it is only permitted in the form of long-term restricted stock.

Mr. CARTWRIGHT. As you said.

Ms. GEOGHEGAN. And we do permit long-term restricted stock strictly in accordance with what the statute permits.

Mr. CARTWRIGHT. All right. Congress also required that Treasury prohibit golden parachutes, or exorbitant departure payments, to senior executives. Ms. Geoghegan, have you done that?

Ms. GEOGHEGAN. Yes. Golden parachutes are prohibited for the top 10 executives at all TARP recipients.

Mr. CARTWRIGHT. Okay.

And back to you, Ms. Romero. Do you have any indication that Treasury has failed to do that?

Ms. ROMERO. Golden parachutes? No.

Mr. CARTWRIGHT. Okay.

Now, in the statute, despite whatever video clips we want to show people, Congress did not include a specific dollar limit to impose on individual executives.

Now, Ms. Geoghegan, tell us what considerations are you required to weigh under the law?

Ms. GEOGHEGAN. Under the law, the specific principle in the Treasury regulations, Congressman Cartwright, states that compensation should be consistent with, and not excessive, taking into account amounts paid for similar positions at similar companies.

Mr. CARTWRIGHT. Well, I think it is fairly clear that Treasury has upheld the law that Congress passed on limiting executive compensation of companies receiving assistance from TARP. Still, the SIGTARP report calls into question the decisions the special master made when approving or modifying executive compensation.

Ms. Geoghegan, how do you evaluate executive compensation proposals from the companies that you oversee? Do you look at data; do you conduct interviews?

Ms. GEOGHEGAN. In performing our task of the balance between limiting compensation and making sure that the companies have sufficient pay to remain competitive and to repay taxpayers, we look at a lot of information. We gather an enormous amount of market data. We have on-staff executive professionals who have years of experience in the area, executive compensation professionals who have years of experience in the area, and they help us evaluate the market data, gather it, and decide where the pay proposals that the companies have given us fall within that range.

Mr. CARTWRIGHT. Okay.

Ms. GEOGHEGAN. By no means do we approve every compensation package that is put in front of us.

Mr. CARTWRIGHT. I understand that. My last question is when considering a company's proposal to pay an individual executive cash salary in excess of $500,000, which is allowed under your office's guidelines for "good cause," what analysis does the Office of Special Master conduct to determine whether or not there is in fact good cause?

Ms. GEOGHEGAN. Congressman Cartwright, we look at the facts and circumstances of the company and of the individual; we look at that individual's responsibilities; we look at where the cash salary of that individual falls, comparing it to amounts paid for similar positions at similar companies; and, in fact, in our 2012 pay packages, our total cash for the pay packages that we approved was, overall, 63 percent lower than median for similar positions at similar companies. So we have definitely followed our guideline of restricting cash pay.

Mr. CARTWRIGHT. Thank you, Ms. Geoghegan. My time is up.

Mr. JORDAN. I thank the gentleman.

I recognize the gentleman from Michigan for five minutes, Mr. Bentivolio.

Mr. BENTIVOLIO. Chairman Jordan, Ranking Member Cartwright, thank you for holding this important hearing. Billions of dollars of taxpayer money have been used to bail out companies that were failing largely due to their own poor decisions. Taxpayer money should not be used to enrich the executives of these companies.

I remember a long time ago a teacher told me that I don't care how talented you are, how smart you are, there is always somebody a little bit better, and our importance to any organization is directly proportionate to the hole you leave when you take your hand out of a bucket of water.

What I don't understand is how we can do this, reward people for failure.

But my question is for Ms. Romero. SIGTARP has admitted that increased moral hazard had been a byproduct of TARP. Thus far, the Dodd-Frank Act has also failed to have solved the perception problem that the markets expect large institutions to receive government support if they falter.

By accepting company requests for salaries above prescribed limits, the Office of the Special Master has set a precedent that may encourage future companies to seek bailouts. Does SIGTARP believe that increased moral hazard is a byproduct of a bailout?

Ms. ROMERO. Absolutely.

Mr. BENTIVOLIO. By relinquishing its pay-setting authorities to bailed out companies, do you think Treasury has potentially incentivized other companies to seek bailouts in the future?

Ms. ROMERO. Absolutely, even the companies who are still in. It shouldn't be comfortable or luxurious to be in TARP; you want it to be uncomfortable so there is an incentive to get out and to never ask to get back in again.

Mr. BENTIVOLIO. Is it true, as noted in footnote 4 of your recent audit, that Citicorp and Bank of America exited TARP so quickly in part not to have to follow OSM's pay restrictions?

Ms. ROMERO. Yes.

Mr. BENTIVOLIO. In your opinion, what does this entire experience say about the Federal Government's involvement in making pay decisions for private companies?

Ms. ROMERO. Well, I think whether it is required by law or rule, Treasury didn't actually implement TARP through law. For example, there is nothing in any law or any Treasury rule related to Treasury's standards it follows for cash injections in banks, which is most of TARP. So when Treasury sets guidelines, they have to follow them; and the guidelines are really important here. The guidelines actually protect the public; and without them the balance shifts to what the companies want, and that is very dangerous.

Mr. BENTIVOLIO. Thank you very much.

Mr. Chairman, I yield back my time.

Mr. JORDAN. I thank the gentleman.

All right. The gentleman, Mr. Davis, is recognized for five minutes.

Mr. DAVIS. Thank you very much, Mr. Chairman, and I want to thank you for calling this hearing.

I also want to thank our witnesses for coming and for sharing their expressions with us.

Like many of my colleagues, in several instances I voted to help find a solution and a direction to what I considered to be a very serious financial crisis that we were facing, and the seriousness that some of our companies were having difficulty making it. I am also pleased that when we look at what has been the success of some of them, where they were able to turn around their businesses.

But like many Americans, I didn't vote to line the pockets of any executives or to provide bonuses where it didn't appear to me that bonuses were warranted.

So just to try and make sure that my assessment is fair, when I look at your efforts to limit executive compensation, while also considering the ability of TARP recipients to perform as stable enterprises, let me ask you, Ms. Geoghegan, in a letter received by the committee just this morning, the former TARP special master, Ken Feinberg, wrote, "The market and economy have changed since the Office of the Special Master was established. The instability of the market and the economic recession posed particular problems for the special master when it came to calculating compensation in individual cases. Today the market and Wall Street-related competitive compensation are much different than they were when I was the special master. Wall Street-related executive compensation has increased since 2009. Accordingly, compensation decisions made by the special master must take into account this fact in making individual compensation decisions that will assure ongoing competitiveness in the marketplace. The initial pay prescriptions promulgated during my tenure may still be valid and credible, but waivers and exceptions are to be more frequent and expected in light of changing markets."

Would you respond to that statement, or would you agree?

Ms. GEOGHEGAN. Congressman Davis, thank you for the opportunity to address that statement. I certainly would, in general, agree with what my predecessor, Ken Feinberg, says about current compensation. Nevertheless, the Office of the Special Master adheres very closely to the same principles we have always followed and our guidelines.

We believe that we are following all the guidelines that were initially established, and we don't believe that we have issued additional waivers or have increased, in general, the level of compensation. We have looked to make sure that the compensation is consistent with market practice; we have limited cash; we have made sure that incentive compensation is awarded only on the basis of pre-established performance goals; and we have made sure that all the packages, as many as we can get, are mainly in the form of stock. In fact, 94 percent of our pay packages in 2012 were majority stock, up from 74 percent in 2010.

So while I appreciate Mr. Feinberg's view on the economy as a whole and where Wall Street compensation has gone, the fact is that we have remained extremely careful in limiting compensation. That is the balance we have to achieve. We limit compensation while, at the same time, permitting the companies to have pay levels that will keep them competitive so that they can succeed. And I don't believe that we should think about the companies as if they are failing; these companies are succeeding.

Mr. DAVIS. Thank you very much.

And thank you, Mr. Chairman. I yield back.

Mr. JORDAN. I thank the gentleman.

Ms. Romero, when Mr. Bentivolio was asking his questions, he talked about the moral hazard, and you mentioned uncomfortable, we should make these companies feel uncomfortable so that there is not this incentive to take taxpayer money. How many pay packages did the special master look at last year?

Ms. ROMERO. Sixty-nine.

Mr. JORDAN. Sixty-nine. And the way it works, the companies send those, they send in what they would like to pay their executives and then Ms. Geoghegan gives it the thumbs up or the thumbs down. How many of those 69 did the special master turn down?

Ms. ROMERO. Not that many. I mean, what we found was the pay that they got was largely based on what they had——

Mr. JORDAN. So 69 executives asked to pay a certain amount and they didn't change any of them?

Ms. ROMERO. I think they made some changes, but they gave 18 of 18 pay raises that were requested, $30,000 to $1,000,000 without, I mean, look at these pay raises. Only four of them are under $100,000. You see like $650,000 pay raise, $200,000 pay raise, even where the company is taking a loss; $100,000 pay raise.

Mr. JORDAN. So not exactly making these guys sweat, right?

Ms. ROMERO. No.

Mr. JORDAN. And I read through your testimony last night. At some point I have to ask, do you feel like you are pulling your hair out? I saw on page 9 you talk about despite SIGTARP's January 2012 report identifying serious concerns with the special master's pay-setting process, Treasury continued to use the same process for setting 2012 pay without significant change. Then you said on the next page, SIGTARP previously warned that Treasury lacked robust criteria, policies, and procedures to ensure these guidelines are met. Treasury made no meaningful reform to its processes.

Then I look at page 12: Treasury did not establish any meaningful criteria for having good cause to award cash salaries greater than half a million dollars. Page 18, finally, you said, the second report by SIGTARP to warn the Office of Special Master after four years still does not have robust policies, procedures, or criteria to ensure that for executives at TARP exceptional assistance companies stays within the OSM guidelines.

So how many times do you have to tell them put in place some policies that actually make some sense?

Ms. ROMERO. That is why this hearing is so important. We talk about, say on pay. The taxpayers get a say on pay, too. If we own part of the company, we speak through the special master.

Mr. JORDAN. And I think even in your opening remarks, I jotted this down, you said they haven't even held to the standards they created. So it is not only they need better policies, but what policies they do have, they haven't even followed those in the course of this process. Is that correct?

Ms. ROMERO. That is correct.

Mr. JORDAN. Now, Ms. Geoghegan, you cite in 2009 you actually had the executives, you cut their pay. Well, of course you cut their pay; that is the year they got all the money. That is the year they come to the taxpayers, hat in hand, saying we need money. Well, I hope their pay was cut then; they were living off the taxpayers then. So to use that as the standard for, well, we have made these folks uncomfortable, I would argue it is a lot less about what happened in 2009 and what has happened since 2009.

And since 2009, if my numbers are correct, Mr. Feinberg, in 2009, only approved executive pay compensation above half a million for six, at that point we had seven companies in the program, and I think when he approved six of those, we were focusing on five companies who were in the exceptional assistance category. Only six of those individuals received pay above half a million.

Today what is that number, Ms. Geoghegan?

Ms. GEOGHEGAN. In 2012, Chairman Jordan, 23 individuals——

Mr. JORDAN. Wait, wait, wait. So it went from 6 to 23?

Ms. GEOGHEGAN. Well, in 2012 we approved one additional pay package over the amount——

Mr. JORDAN. No, no, no, no. In 2009 it was six, right?

Ms. GEOGHEGAN. That is correct.

Mr. JORDAN. Yes. And how many companies were you looking at in 2009?

Ms. GEOGHEGAN. In 2009 it was seven companies.

Mr. JORDAN. All right. And today how many executive pay packages are above half a million? Twenty-three?

Ms. GEOGHEGAN. In our 2012 determinations there are 23 above $500,000 cash salaries, which is one more than the amount if 2011 and one more than the amount in 2010.

Mr. JORDAN. But I am going from where we started. 2009, six above half a million. And today it is how many?

Ms. GEOGHEGAN. Today it is 23.

Mr. JORDAN. Okay. And how many companies were you evaluating in 2009?

Ms. GEOGHEGAN. In 2009 there were seven.

Mr. JORDAN. And how many companies are you evaluating today?

Ms. GEOGHEGAN. In 2012 we evaluated three companies.

Mr. JORDAN. So only six above half a million in 2009, when you were looking at seven companies. That is 25 executives that you can look at at each companies, and only six out of all seven of those companies. And today, when you have three companies, you have 23.

Let me ask, the one company, I think I am correct with ResCap, the one company has gone bankrupt, is that right? Have they filed for bankruptcy?

Ms. GEOGHEGAN. Chairman Jordan, I want to clarify one point.

Mr. JORDAN. Have they filed for bankruptcy?

Ms. GEOGHEGAN. Ally Financial has not filed for bankruptcy.

Mr. JORDAN. ResCap?

Ms. GEOGHEGAN. They have a mortgage subsidiary as one of their strategic steps in make—our investment in Ally Financial is——

Mr. JORDAN. Has ResCap filed for bankruptcy?

Ms. GEOGHEGAN. They have done a Chapter 11 proceeding.

Mr. JORDAN. And is the head of ResCap, Mr. Merino, is he one of those 23 receiving compensation over half a million dollars?

Ms. GEOGHEGAN. Cash salary? I am afraid, Chairman Jordan, I don't feel that I can address specific pay packages for specific individuals.

Mr. JORDAN. We have that information. It says he is. It says he is one of the 23. So here is what the taxpayer sees, and think about it in the context of what Ms. Romero said; we want to make this uncomfortable because we have taxpayer money at risk. So in 2009, six executives, when you are looking at seven different companies, received pay above half a million dollars. Today you are looking at three companies and you have 23 executives receiving pay above that threshold, and one of those individuals at one of those companies, ResCap, is going bankrupt, and yet he is still one of the 23.

Do you think the taxpayers are a little nervous about that? And back to Ms. Romero's point, do you think that is making these folks uncomfortable?

Ms. GEOGHEGAN. Chairman Jordan, I understand that the American people——

Mr. JORDAN. And when you look at the pattern of 69 folks you evaluate and you didn't turn down any of them, basically you take what the company tells you. They offer, here is what we would like to pay our executives, all that, that is fine; check the box, that is fine.

Ms. GEOGHEGAN. Chairman Jordan, by no means do we approve every pay package that is put in front of us. We have turned down many proposals.

Mr. JORDAN. How many of those 69 did you turn down last year?

Ms. GEOGHEGAN. In our packages for last year, we required many increases in long-term restricted stock. We denied virtually every request for increased cash salary last year. AIG did not ask for any net increase in compensation; AIG asked for a new decrease in compensation.

Mr. JORDAN. Okay.

Ms. GEOGHEGAN. Their pay proposals, their one raise that they requested was more than offset by the pay decreases that they proposed for other people.

Mr. JORDAN. But this year AIG is not still in the program.

My time has expired. I now go to, I believe, the gentleman from Virginia, and then we go next to the gentleman from North Carolina.

Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Welcome to both of our witnesses.

Ms. Geoghegan, by the way, did TARP lose money for the taxpayers of the United States?

Ms. GEOGHEGAN. Congressman Connolly, TARP has been a great success, so it is very difficult to answer that question. We have not yet received back all of the investments made under TARP, but we have received back an incredibly large number of them; I believe roughly 93 percent of the investments. But, overall, TARP itself was an incredible success; it averted a financial calamity and prevented a second Great Depression.

Mr. CONNOLLY. Now, let me ask both you and Ms. Romero are you familiar with a letter addressed to Mr. Jordan and Mr. Cartwright, dated today, from Mr. Feinberg?

Mr. Chairman, I would ask that this letter be entered into the record.

Mr. JORDAN. Without objection.

Mr. CONNOLLY. I thank the chair.

He makes two points in response to queries from the subcommittee, and the reason you haven't seen it is he only got our letter yesterday. But he says the pay prescriptions promulgated during my tenure at Department of Transportation should be applied in a flexible manner and should not be used to strictly limit each individual executive's compensation.

He goes on to say that when one examines the statute, the statutory directive guiding the special master, in calculating compensation, he says there are different statutes that are conflicting. He says, for example, there are conflicting statutory directives. For example, make sure the Treasury compensation decisions ensure the ongoing competitiveness of those companies subject to Treasury oversight, while also making sure that such pay decisions promote overall company economic growth and avoid excessive risk. These conflicting directives guaranty the special master must exercise a fair amount of discretion in deciding compensation.

The second point he makes is that the circumstances that existed in 2009 are different than the circumstances that exist today and, therefore, they have to be taken into account in terms of current actions by the special master. He says compensation decisions made by the special master must take into account this fact in making individual compensation decisions that will ensure ongoing competitiveness in the marketplace.

Would you comment on the two points he is making, one that there is, apparently, before I got here, there were even some illusions to the breaking of the law? Ms. Romero, I assume that the special inspector general doesn't concur with that. You found no breaking of the law, did you?

Ms. ROMERO. No. I found a lack of adherence to the Office of the Special Master's own guidelines.

Mr. CONNOLLY. Well, that is what you say, but here is one of the special masters of all special masters saying, well, first of all, there is conflicting statutory guidance here, and the special master has to try to navigate his or her way through this conflicting statutory guidance.

Ms. ROMERO. Sure. I am very happy to talk about that. So because there is conflicting statutes, there is a lot of discretion in the Office of the Special Master. And what we have said is come up with the criteria, because that is what is necessary for consistency, transparency, and effective oversight. You have to set some standards. And this is why our initial recommendations were so important. Tell us what the criteria is under which you are going to make decisions for who gets a pay raise, for who gets cash over $500,000. And without the criteria there is no way to have effective oversight, and I would think this committee, as an oversight committee, would want that.

But I want to raise the competitive point. The competitive part that you raised, of the marketplace, is already embedded in the guidelines if they are followed.

Mr. CONNOLLY. Wait, wait. You just said there weren't any guidelines.

Ms. ROMERO. No, I said there were guidelines; they weren't adhered to.

Mr. CONNOLLY. Well, I heard you say come up with guidelines.

Ms. ROMERO. He came up with, well, criteria.

Mr. CONNOLLY. Criteria.

Ms. ROMERO. So he came up with guidelines, three guidelines that I mentioned in my opening. But what we said is there is no criteria or policies and procedures to ensure those guidelines are met. And the market and what happens with the market is already embedded in those guidelines if they are adhered to, because pay is supposed to not exceed 50 percent of what their peers are, so that already takes into account rising tide.

Mr. CONNOLLY. Okay. All right, I am running out of time.

Mr. Chairman, could I ask for just 30 or 40 more seconds to ask Ms. Geoghegan to respond?

Mr. JORDAN. Sure.

Mr. CONNOLLY. I thank the chair.

Ms. Geoghegan, what about Ms. Romero's point, that they have been asking for criteria to go along with guidelines and your office has failed to provide such criteria, which compromises transparency?

Ms. GEOGHEGAN. Thank you, Congressman Connolly. We have our guidelines. Our guidelines are extremely useful ways of implementing the somewhat conflicting principles under the Treasury regulations, but we try to carry out all those principles and that is why we have our guidelines. The fact is, as Mr. Feinberg would tell you, we have to exercise discretion; we have to exercise judgment in looking at the exact facts and circumstances of each executive and each company. That is what the principles say and that is what we do.

Mr. CONNOLLY. Well, what about Ms. Romero's criticism that you have yet to adopt clear criteria that all of us can then measure and see whether you are abiding by them reasonably or not?

Ms. GEOGHEGAN. Thank you. Congressman Connolly, we believe that if you were to look at our determination letters, we explain how we view market data; we explain our policies and procedures, which are incredibly robust; we explain all of how we go about examining all of the information that the companies submit. We believe that we have adequate policies and procedures for making the decisions that we have to make.

On the point of raises, if I might address that briefly, it is important to understand we do not always approve raises. But it is also important to understand that the companies are constantly evaluating the performance of their executives, and with respect to some executives they give them promotions, they give them added responsibilities, and that is why, in some cases, pay raises are totally justified. In other instances it is not unusual for them to come to us and to suggest that executives receive a pay decrease.

So I think you have to think of things in terms of the real packages that we see. It is not a question of the companies coming to us and simply asking for pay raises. Those pay raises are related to things like promotions and added responsibilities.

Mr. CONNOLLY. My time is up and I thank the chairman for his indulgence.

Mr. JORDAN. I thank the gentleman.

Real quickly before going to the gentleman from North Carolina. Ms. Romero, of the requests for pay above half a million dollars, as you evaluated what the special master did last year, of those requests, how many did they turn down and say, no, you cannot make above half a million dollars?

Ms. ROMERO. I think it was only a couple.

Mr. JORDAN. Couple out of how many?

Ms. ROMERO. So there were 23 given.

Mr. JORDAN. Twenty-three out of 25.

Ms. ROMERO. I think it was 26.

Mr. JORDAN. Excuse me, two out of 25 they turned down?

Ms. ROMERO. I think it was three. I think the number was three that were turned down and 23 that were given.

Mr. JORDAN. And did they take them from half a million down to $499,999, or what did they do?

Ms. ROMERO. Basically, everyone gets cash at $450,000 or more.

Mr. JORDAN. Oh, so this is not like they are going way down; they are just dropping them a dollar or two.

Ms. ROMERO. Ninety-four percent.

Mr. JORDAN. Again, making them uncomfortable so that we don't have this continue.

Ms. ROMERO. Right. Right.

Mr. JORDAN. I got it. I got it.

Ms. ROMERO. Well, give them some skin in the game. I mean, that is why you want to limit cash. You want an employee to have some skin in the game, not be paid for just showing up. You want pay for performance.

Mr. JORDAN. I was being sarcastic, but sometimes it doesn't work.

The gentleman from North Carolina.

Mr. MCHENRY. My sarcasm often doesn't work.

Thank you both for your service to our government and to the American people.

The question for you, Ms. Romero, is in light of my colleague's questions, Mr. Connolly's questions. So what you outline is, as an inspector general, as a special inspector general for TARP, you are there to critique the program to make sure the American people are taken care of and the taxpayer isn't further put the screws to; that there is transparency, there is consistency; you have a rules-based approach rather than an ad-hoc approach. What you outline in your report today is that the special pay master doesn't have a consistent application of the rules and guidelines that they have outlined and, furthermore, they are overly broad in the guidelines they use, which gives them such great discretion.

Obviously, they disagree. This is very often the case with inspectors general when they put critiques out. This is not uncommon, based on the experience that I know you have had with this program for the last five years.

Now, I ask this question because doesn't that ad-hoc basis raise and up the ante on moral hazard? Now, many of us disagreed with the bailouts, and I certainly appreciate Ms. Geoghegan's saying TARP was a great success. Now, the fact is the taxpayer, at current accounting, is going to lose about $70 billion on TARP. I appreciate you saying it is a great success. I appreciate you upping the ante.

I know it is your responsibility, as an administration official, to defend this Administration. You have done a yeoman's task today, even to the point where, when you called TARP a great success, I laughed. It wasn't a snicker; it was actually a genuine laugh. It is ridiculous. But that is your perspective.

The question I have for the American people and for the taxpayer, Ms. Romero, why does this matter? It is 69 people getting paid. It is how many companies now?

Ms. ROMERO. Three

Mr. MCHENRY. Three.

Ms. ROMERO. Well, two for 2013.

Mr. MCHENRY. All right, who cares? Why does this matter? Tell me why it matters.

Ms. ROMERO. Two reasons. One, you are paying for it. That is the first reason. So if there is excessive compensation, all taxpayers are subsidizing it. Then there is a more important reason, which is executive compensation played a material role in causing the financial crisis. When you have high cash, when you don't use long-term restricted stock tied to individual pay performance, you risk returning back to the very type of pay that got so out of hand that it caused these companies to nearly collapse, and all of us had to step in.

Mr. MCHENRY. So it is not the principles outlined by the original special pay master, Mr. Feinberg, that is the issue; it is their unwillingness to put a rules-based approach to judging these pay packages, is your critique.

Ms. ROMERO. Right. I mean, I think applying those guidelines, Mr. Feinberg said, was supposed to get that balance, where you don't have excessive compensation, but the companies keep competitive. You rip away those guidelines, you chip away at those guidelines, all you are left with is the companies in the ear of the special master saying this is what we want; and we are seeing more and more, each year, as time goes by, that the companies are getting more and more and more what they want.

Mr. MCHENRY. So you reference a report that both Citi and Bank of America exited TARP faster, in an accelerated way, based on the pay restrictions.

Ms. ROMERO. Right.

Mr. MCHENRY. So it does have an impact on getting people off the taxpayer dime and getting them back to independent entities again, does it not?

Ms. ROMERO. Absolutely.

Mr. MCHENRY. Okay. So, look, the question here is not about private sector pay, right?

Ms. ROMERO. Right.

Mr. MCHENRY. As you mentioned, say, on pay by shareholders, I think that is an important principle that we adhere to. Now, what I am concerned about is the American people and the taxpayer be on the hook for this pay. We have written a law in such a way that we should have principles adhered to by the special pay master.

And I would hope that your office, Ms. Geoghegan, would actually read the report, look at ways that you can change and improve, and actually stand up for the American people and the taxpayers that are paying not only your freight and my freight, but still own the greater portion of these companies.

Now, final question, and just so we have this on the record. How much has TARP been paid back from General Motors?

Ms. ROMERO. From General Motors, about half. It was $50 billion. They are still owed about $20 billion. I want to also point out, because I think this was raised earlier, the Government expects a loss in TARP, and about $20 to $25 billion of that is in the auto companies.

Mr. MCHENRY. Thank you, and thank you for noting that for the record.

Thank you, Mr. Chairman, for your leadership.

Mr. JORDAN. I thank you.

The gentleman from Georgia, Mr. Collins, is recognized.

Mr. COLLINS. Thank you, Mr. Chairman. I appreciate this.

What is amazing about this discussion, and I have been in Washington now all of probably eight weeks, as I was told, however, on January the 3rd, I became part of the problem. What I will fight back on, though, is the fact that I believe that we are all in this.

And I think, Ms. Romero, you made the comment just a minute ago why this is important is that you are paying for it. I think that just needs to be the theme that we hit here all along, is that we lose track in the numbers and the guidelines and everything else about who actually and why actually this is important, because there is a trust factor out there, if you have you not noticed. People don't trust us anymore. They don't trust us on the level to spend their money properly. They don't trust us to get the budget straight. They don't trust us on so many different levels. And then when we come to an issue like this, it is amazing.

One of the other things that I have been amazed about since I came here is hyperbole.

Ms. Geoghegan, to say that TARP was this excessive and great success and that it avoided the next Great Depression, I am just curious here, did it also cure the common cold? Did it also do all these other great things? Hyperbole here does not help us. The Administration wants to say that it was this and explain that, and as my colleague said, that is your opinion and you are having to sit here and endure this.

The questions that I have, though, sort of the basis of it is when we endure the issue of lack of adherence to guidelines, we don't follow the rules or we make them up as we go, or really what I think it is is time sort of cures all ills. In other words, time is progressing here. People get tired of hearing about this, so it becomes very easy for the special master to listen and say, well, maybe we need to approve this.

The concern, however, for me is this: when you look at the question, and you have stated you understand the 50 percent guidelines, Ms. Geoghegan, is that correct? You understand that process. However, we have over-exceeded on several occasions, and I will just use several lightly.

Ms. GEOGHEGAN. Congressman Collins, I would like to clarify. We satisfied the guidelines as we have applied them to AIG, GM, and Ally Financial. We apply the same benchmark we have always applied to those three companies.

Mr. COLLINS. But on the 50 percent rule, 63 percent of the time in 2012 you approved overage.

Ms. GEOGHEGAN. Congressman Collins, the way we apply——

Mr. COLLINS. Answer the question. Did you do it over 63 percent of the time?

Ms. GEOGHEGAN. There is a range of compensation. The average of the compensation——

Mr. COLLINS. Again——

Ms. GEOGHEGAN. The guideline is not do we exceed it; the guideline is do the packages as a whole at the particular company average to the benchmark. That includes, as we describe in our determination letters, that means that some of the pay packages are above and some are below, but the average is at our benchmark. That is how we have always applied the guideline for market forces.

Mr. COLLINS. Well, it seems like the averages that we are applying to, for the most part, are always on the side of approving. I mean, we are continuing this process. And, again, one of the things that was brought up, as we talked about it from a perspective of this being the taxpayer funding this, is that the Government is still on significant hook, especially GM and Ally, in a rate that we are not going to get paid back, that at the start process and others, that we are in for this. And I think what actually happens here is time progresses. And this is my concern, and it has been talked about here many times, of the fact that the guidelines and the adherence to those guidelines—you made an interesting comment. I will just have to ask; I am not sure. You mentioned pay decreases. How many of you approved pay decreases? This was in your own testimony just a few minutes ago.

Ms. GEOGHEGAN. Yes. Congressman Collins, AIG, last year, when we were in the pay packages that they proposed, the pay decreases that they proposed well outweighed the one pay increase that they requested. In the case of Ally Financial, the pay decreases that they proposed outweighed the pay increases that they requested. Neither of those companies asked for a net pay increase in 2012.

Mr. COLLINS. Well, I think the problem we have here is that they have become comfortable in the situation in which they are in. They have become comfortable where they are at. There is no incentive for them to get out of this and to find a way to pay this back or to get back—because they have become very comfortable. They can understand, well, if we do a little decrease here, get a little increase here, it begins to weigh out and nobody is paying attention.

Ms. Romero, I have a question for you in the short time left. Who will safeguard the taxpayers' money tied up in TARP, if it is not the special master?

Ms. ROMERO. That is the question. I will try. I will do my best. Our entire office at SIGTARP will do our best. But we are not ones making the decisions.

Mr. COLLINS. Because right now it looks like there is one, and your own comment just a minute ago, the company is in the ear, the company is making the progress, and that in the end we are sort of left on the hook with what the special master, in this "confusion of rules and guidelines."

I think the problem we have here, Mr. Chairman, and I know we are coming to an end, but this is the problem I have. The American people go to work every day, they look at these issues and they understand things that are grey at times, but they also understand process. They also understand rules. And what they do not want to hear from us is a continual, well, the rule says this, the statute differs here.

Look, the American people are on the tax line for this; they are paying for it. They are frustrated by it. And to come before this committee and say, well, we have done it here and we didn't do it here, and simply the guidelines are out of whack, that is not acceptable, and the taxpayer is paying for it.

Mr. Chairman.

Mr. JORDAN. Thank you, Mr. Collins. You are exactly right. The American people, what they hate is when they are told one thing and they see something else happen. The President said top executives at firms receiving extraordinary help from United States taxpayers will have their compensation capped at half a million dollars.

Mr. Biden, always one to have a statement for the public, said I would like to throw these guys in the brig. This was all back when the Government was convincing the American people they needed to pony up their tax dollars to bail out companies that were failing, and then, of course, the Treasury secretary said base cash salaries should rarely exceed half a million dollars and should be, in many cases, well under half a million dollars.

Well, we have heard from testimony today that is just not happening. The trend is exactly the opposite direction. Six executives in 2009, when there were seven companies in this exceptional assistance category, only six executives received pay above half a million dollars. Today it is 23 and we are only focusing on two companies today. So the trend has been like this, when the President said no one, no one should be receiving a compensation package above half a million dollars; and the trend is exactly the opposite direction.

And we also heard from Ms. Romero today; she said, in fact, those who are below half a million dollars, they are right next to the ceiling, they are all making $450, $480, $499,999.99. That is where they are all at. And yet Mr. Geithner, who is your boss, Ms. Geoghegan, said it should be, in many cases, well under half a million dollars.

So Mr. Collins is exactly right. The American taxpayers are like, we were told X and we are getting Y, and we are sick of it. We are sick of it from the politicians and we are certainly sick of it from other people who we are paying their salary to do their job. And frankly, Ms. Geoghegan, you are not doing it. You are not doing it and you are not doing it with companies they are bailing out in the process.

Ally Financial, 74 percent owned by the American taxpayer, and their subsidiary, ResCap, going bankrupt, you just approved their CEO's compensation package of over half a million dollars. So it is like what the heck is going on here. And it is no wonder Ms. Romero is ready to pull her hair out and so frustrated, because for several years now she has said get your act together, at least set some standards; tell us how you are making this thing work or how you are going to make it work.

In fact, how do you determine what the market rate is and what that median price? How do you determine that? What is the process in place that you have?

Ms. GEOGHEGAN. Chairman Jordan, we gather an enormous amount of market data. We have in-house executive compensation professionals who review it.

Mr. JORDAN. Is some of the data given to you by the very companies you are overseeing?

Ms. GEOGHEGAN. From the beginning we have given companies instructions as to exactly what we need in terms of market data.

Mr. JORDAN. So you are relying on the very company, Ally, the company 74 percent owned by the taxpayers, a subsidiary going bankrupt, you rely on some of the information they give you to determine what the market price is?

Ms. GEOGHEGAN. We give them——

Mr. JORDAN. Is that what they do, Ms. Romero?

Ms. ROMERO. Yes.

Mr. JORDAN. That is exactly what they do?

Ms. ROMERO. Yes.

Mr. JORDAN. Well, no wonder you are approving everything. So they get to be the judge, jury, and the decider in the whole thing, and they are the very company getting the taxpayer dollars in the first place. So they are saying, you know what, we think the average is here and, oh, by the way, this is what we want to be paid, and they give you the information and you check it off. Well, how is the taxpayer being protected in that formula?

Ms. GEOGHEGAN. Chairman Jordan, I would like to clarify. From the beginning we have asked the companies, they have the best access to the broadest and most comprehensive market data. Our executive compensation professionals have explained to them exactly what they need, and our professionals are——

Mr. JORDAN. This is amazing. This is like me asking, when my kids get in trouble, me asking them what kind of punishment do you want. This is amazing. Frankly, I didn't realize it was this bad; that you are asking Ally, 74 percent owned by the taxpayer, subsidiary, you are asking them give us the information that shows us what you should be paid and we will make a decision, and what is your recommendation?

Ms. GEOGHEGAN. Congressman Jordan, we have the expertise to evaluate that market data.

Mr. JORDAN. You have the experts who take all the information from the very people you are supposed to be overseeing, and you are saying they are so expert that they can determine that, oh, that is not going to work? And yet we just heard from Ms. Romero you are approving almost every compensation package they ask for. Well, of course; they are giving you the data to make the decision.

Ms. GEOGHEGAN. Chairman Jordan, we actually have the ability to evaluate the market data. We spend an enormous amount of time doing that. We do spend an enormous amount of due diligence.

Mr. JORDAN. Ms. Romero, this is frustrating. Ms. Romero, how I have characterized it, is that accurate?

Ms. ROMERO. The companies? Yes. The companies give market data. So, for example, for 2012, while the Office of the Special Master looked at that market data, they went with the companies' determination of the companies and the 50th percentile.

There is another important point here. When you look at the companies that are in the peer groups, for example, for AIG, the companies are picking those, JPMorgan Chase is in the peer group, other large banks. They set the peer groups. And one of the things Special Master Feinberg testified before Congress is that in that competitive market data that the companies send, he said the companies were asking for more and more and more, and that was his congressional testimony.

Mr. JORDAN. What is the remedy? Obviously, they are not going to listen to you. And we know GM and Ally are going to be in this for a while. We know what is happening with the stock; they are going to be here. So what is the remedy? Time and time again, I read your testimony where you over and over again say, come on, listen to me; set some standards, do something. Four years. How do we get at this? Are we going to have to look at some legislation?

Ms. ROMERO. I have seven recommendations, and the remedy is to get those seven recommendations implemented. Every year to re-look at it.

Mr. JORDAN. I read your recommendations. I get it. But what I am saying is are we going to have to look at legislation, introduce legislation, try to pass something to make this office accountable to the taxpayer?

Ms. ROMERO. The fact of the matter is every time an IG puts out a report and puts out recommendations, an agency has an opportunity. They have two choices: they can completely ignore them and end up in the same situation that caused the report in the first place.

Mr. JORDAN. And is that what you believe they have done?

Ms. ROMERO. So far.

Mr. JORDAN. Okay.

Ms. ROMERO. Or what they can do is they can say we are going to implement every single one of those recommendations and work with you to do it in a way that is done right. That is what should happen.

Mr. JORDAN. And that is what should happen not based solely on your good work, but that is what should happen based on what the leaders of our Government told the American people they were going to do when they started this program.

Ms. ROMERO. Absolutely.

Mr. JORDAN. So it is not just your good work at your office, which has been exceptional; it is because that is what the people in charge of our Government told the American taxpayer they were going to do, and it is not being done.

Ms. ROMERO. Absolutely. And, also, those guidelines were developed in the public's interest. So if they are not going to be adhered to, how is the public's interest going to be implemented?

Mr. JORDAN. Okay, Ms. Geoghegan, who is your direct boss at Treasury?

Ms. GEOGHEGAN. Ultimately, I report to the Secretary of the Treasury.

Mr. JORDAN. Okay. And can you let me know, has the White House, has Mr. Geithner said that this stuff was okay? Has the

White House communicated to you through Mr. Geithner, in a direct fashion, saying it is okay to see this trend, where more and more executives are getting their pay approved above the half a million dollar mark? What kind of communication have you had with the White House, if any?

Ms. GEOGHEGAN. Chairman Jordan, I have not had any communications with the White House.

Mr. JORDAN. Has Mr. Geithner expressed any communications to you about this program that he has had with the White House?

Ms. GEOGHEGAN. No, he has not.

Mr. JORDAN. And is your direct Mr. Massad, Tim Massad?

Ms. GEOGHEGAN. Yes, that is correct.

Mr. JORDAN. Has he expressed any indication that he has communicated with the White House chief of staff, someone at the White House, or with Mr. Geithner about this program?

Ms. GEOGHEGAN. Chairman Jordan, he has not, but may I clarify that the Office of the Special Master is an independent office in Treasury.

Mr. JORDAN. But you said your boss was Mr. Massad, right? Who does he work for?

Ms. GEOGHEGAN. I do brief the assistant secretary.

Mr. JORDAN. And he is in the Treasury, right? He is employed by the Treasury.

Ms. GEOGHEGAN. He is at the Treasury, but the decisions are made by the special master.

Mr. JORDAN. How about Mr. Lew today, any conversation Mr. Lew has had with you or Mr. Massad relative to this program?

Ms. GEOGHEGAN. I am not aware of any.

Mr. JORDAN. So the President goes on national television, talks about no one should be paid above half a million dollars, and yet they don't even talk to you about the fact that now we have all these people who are paid and the trend is this direction, and everyone who is below $500,000 is right next to $500,000? No conversations at all with the White House about this?

Ms. GEOGHEGAN. No, Mr. Chairman.

Mr. JORDAN. Man, we do need some controls put in place. The taxpayers are surely getting a bum deal here.

With that, I will yield to the gentlelady from Wyoming, then I will come back to Mr. Cartwright for his second round.

Mrs. LUMMIS. Thank you, Mr. Chairman.

Following on the chairman's line of questioning, Ms. Geoghegan, why not have an independent evaluation of these salaries, since they are being funded by taxpayers in no small part, rather than private sector, and since the New York Wall Street establishment has a network that sort of perpetuates a belief that what they do is worth more than what other people do? Why not have an independent evaluation? I managed billions of dollars when I was Wyoming State treasurer, and I got paid $92,000 a year, and I was managing $8 billion at the time. Why not have an independent evaluation, when taxpayer money is involved, of these kinds of salaries?

Ms. GEOGHEGAN. Congresswoman, I believe that is what the Office of the Special Master is there to do, and we do do an enormous amount of due diligence. We spend an enormous amount of time gathering market data and evaluating it.

Mrs. LUMMIS. But is the market data using only the private sector money management as its standard? Because, as I said, I was managing public money and I was paid by the public, and we are managing, we are responsible for taxpayer money that bailed out private businesses.

So no longer are we really talking about a private sector model; we are talking about the taxpayers being invested in this company and expecting that we will have oversight over how that money is handled. So when they only use a private sector model that is generated by their so-called peers like JPMorgan, that is really not a peer group for the situation that exists. So why not go outside, why not do independent evaluators?

Ms. GEOGHEGAN. Congresswoman, the Office of the Special Master takes its responsibility as steward of taxpayer investments in these companies very carefully. We have worked hard at determining which are the correct comparative companies and we have told these companies——

Mrs. LUMMIS. But they are companies, right? See, here is the problem. When I was State treasurer, again, paid $92,000 a year, I was managing billions of dollars, but it was taxpayer money and the taxpayers were paying me. And I would suggest to you, since, when I started as State treasurer, we had $3.5 billion and when I finished a term limit as State treasurer we had over $8 billion, but I was responsible, very prudent in the manner in which I managed taxpayer dollars for $92,000 a year.

Why isn't that part of the pool, State treasurers that are managing billions of dollars? Connecticut's State treasurer manages billions of dollars; North Carolina's State treasurer does. Not all do, but there were a handful of us that managed billions. Why are not those public employees, why are they not part of the so-called market in this instance, where it is the hardworking taxpayers' money that has bailed out these companies and not using a peer group that includes other Wall Street businesses that were not bailed out?

Ms. GEOGHEGAN. Congresswoman, if we take, for example, AIG, AIG is in the private sector and its competitors include companies like MetLife, like Aetna, like Prudential; they include financial services companies like American Express. These are the people against, these are the businesses against which they compete and these are the businesses from whom they recruit their employees.

Mrs. LUMMIS. And I understand that, but they are not competing on a level playing field right now. They are not the peer group anymore, because the taxpayers bailed them out.

Now, if we had allowed them to go the way of Lehman Brothers, I would absolutely agree with you. If the moral hazard had been executed, I would absolutely agree with you. I think Barclays should be paying the people it kept after Lehman Brothers was acquired by Barclays. Then I would agree with you. That is the peer group from which they are hiring.

But they are not in the same peer group anymore because the taxpayers of this Country, the little steel worker, the coal worker in my State bailed out AIG. So it is not the same peer group anymore, and I would suggest to you, and I respectfully disagree with you that it is the same peer group. In my opinion, it is not.

Mr. Chairman, I yield back.

Mr. JORDAN. I thank the lady for her good line of questioning.

I would yield now to the gentleman from Pennsylvania, and you can have a few more minutes than five, if you would like, Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

So, again, thank you to the witnesses for coming today. We look at the big picture here, we roll back to the clock to 2008, when we had this enormous catastrophic financial calamity that occurred in this Country and threatened to throw us right back into the worst financial picture since the Great Depression, and maybe worse than the Great Depression. We saw that; we remember that.

And in order to avert that the Federal Government, and all of the people at the highest reaches of the Federal Government, decided to hold its nose and engage in this TARP program, bailing out huge companies, in the process, obviously, successfully saving millions of middle class manufacturing jobs, jobs for people in all of our districts, jobs for people making cars in this Country, people making other things in this Country. Those jobs were saved as a result of the TARP program.

We held our noses because it cost so much money, so much federal taxpayer money indebted us so deeply to do that, but it turned out to be a good gamble because we have recovered, as Ms. Geoghegan has said, 93 percent of this money. Probably the biggest reason that we held our noses while we did that TARP program was that we had to pay the people to run these companies. We had to pay the people to run the companies to make sure that those employees were still employed making things, building cars, keeping the American economy rolling. And we had to pay those people to run the companies so that the taxpayers would get that TARP money back, 93 percent of which we have gotten back. We held our noses because you have to pay people who run companies an awful lot of money; that is just the way the market is. Everybody knows that. Mr. Feinberg has said it; the witnesses have said it.

So it is an unfortunate situation. It is something that we have been doing a lot of nose holding throughout the whole process, but it has been a success story. And what I want to know, what I really want to establish here is this the oversight panel, and the thing that I really care about is whether the law is being followed. Has the law been followed with respect to executive compensation?

Now, Ms. Romero, I want to direct this question to you.

Ms. ROMERO. Sure.

Mr. CARTWRIGHT. The standard examined in your report that "total compensation should target the 50th percentile for similarly situated employees at similarly situated entities and that cash salaries should not exceed $500,000," that is not in the statute but it is within Mr. Feinberg's "prescriptions," am I correct in that?

Ms. ROMERO. Mr. Cartwright, there is nothing in the TARP statute that talks about anything. If you remember, the TARP statute is October 2008, where TARP was supposed to be getting toxic assets off the books of banks. None of the 13 programs that are in

TARP are in the TARP statute, other than helping homeowners. There is nothing in the TARP statute.

That is not how Treasury implemented it; Treasury implemented it through guidelines. And, as an oversight entity, I have to look at the guidelines they used to implement and they set the standards, and that is how I have to judge performance; otherwise, there is no standards at all for the bank bailout. There is zero. There is nothing in the statute.

Mr. CARTWRIGHT. So they are guidelines, there are prescriptions, but it is not the law about $500,000 or 50th percentile.

Ms. ROMERO. Well, what the TARP law says, ESSA says, that Treasury should implement executive compensation standards. So that is what the law says. Treasury did implement executive compensation standards, and those are the standards they should be held to. So actually, there is, in broad form, the delegation in the law to Treasury to set the standards.

Mr. CARTWRIGHT. Now, at a February 25, 2010 Financial Services Committee hearing, Special Master Feinberg explained, "By application of the principles set forth in Treasury's rule on executive compensation to the facts and circumstances underlying my determinations to date, I have developed a number of generally applicable practical prescriptions, including the following: guaranteed income is rejected except for cash salaries at sufficient levels to attract and retain employees; these generally should not exceed $500,000 per year except for good cause shown; total pay should generally not exceed the 50th percentile of total compensation for similarly situated employees."

Now, Ms. Geoghegan, you have statutory requirements. Your office also has more specific responsibilities dictated by Treasury's interim final rule. Will you please place the Feinberg prescriptions in context for us?

Ms. GEOGHEGAN. Thank you, Congressman Cartwright. Mr. Feinberg's, what he calls prescriptions, what in all of our determination letters we call either standards or guidelines, were the general rules of thumb that the Office of the Special Master adopted to specifically apply the principles in the interim final rule. There are six principles; they are general principles, and in order to make them more specific when we are examining each pay package, the Office of the Special Master came up with what Mr. Feinberg sometimes called prescriptions, but which we usually call guidelines.

And those are exactly the guidelines that we continue to use today. We do benchmarking on market data to make sure that the pay packages do not exceed the level for pay for similar positions at similar companies. We minimize cash pay; we maximize stock pay; we make sure that if there is incentive compensation, it is awarded only on the achievement of pre-established performance goals; and we limit perks. Those were the five prescriptions that Mr. Feinberg adopted and those are the five prescriptions or guidelines that we continue to follow today.

Mr. CARTWRIGHT. Now, what do you believe was the intended use of those prescriptions or standards or guidelines?

Ms. GEOGHEGAN. Congressman Cartwright, clearly, the task under the law of the Office of the Special Master is to achieve a balance between limiting compensation and making sure that pay levels are such that companies can compete, can succeed, and will repay the taxpayer. And that is, I think, a look at our record shows that that is in fact what we have achieved and what we have accomplished, and these seven companies have done that and today we expect significant additional returns from our investments in both GM and Ally Financial.

Mr. CARTWRIGHT. The executives receiving the compensation that you are overseeing and approving, were all of them around? Are these people who were responsible for the financial mess in the first place?

Ms. GEOGHEGAN. Congressman Cartwright, I appreciate very much the opportunity to address that point. All three CEOs at these companies were hired by these companies after the taxpayers had made their investments in these companies. All three CEOs were hired in order to reform the companies, to restructure them, to lead them forward; and the top 25 individuals at each of the three companies whose pay packages we reviewed in 2012, virtually none of those people were there in 2009, for example.

Almost all of those people have been promoted into those positions or, in a few cases, they have been newly hired. So we are talking about the people who are leading the companies, who are producing the results, and who are working toward the return of the taxpayer investment. Those are the people that we are evaluating, and we are not paying for failure; we are paying for their successful management of these companies.

Mr. CARTWRIGHT. Finally, I don't think I say it too strongly, Ms. Geoghegan, when I say that there have been accusations leveled at you, that you have rolled back application of guidelines aimed at curbing excessive pay. How do you respond to that?

Ms. GEOGHEGAN. I think, Congressman Cartwright, in my oral testimony I went point by point through each of the five guidelines, or prescriptions, and showed exactly how, if you look at our numbers, if you look at our actual record carefully, it is clear that we have satisfied each of those guidelines in the 2012 determinations, and we will satisfy them in the 2013 determinations as well.

Mr. CARTWRIGHT. Thank you so much.

I will yield back the time.

Mr. JORDAN. Thank you.

Ms. Geoghegan, when we played the President's statement, he said top executives at firms receiving extraordinary help from the United States taxpayers will have their compensation capped at half a million dollars; he did not say top executives at firms receiving extraordinary help from U.S. taxpayers will have their compensation at half a million dollars unless it is a new CEO or a new employee at the company.

So the standard, we had this discussion about the law and how Treasury interprets the laws and how the guidelines work and all, but the fact is the statement is the statement, and it was sold to the American people on the simple premise we are capping it at $500,000. We don't care if he didn't say, oh, but if there is a new guy who comes in or a new lady who comes in this position, this position, or this position, forget that, we will make up our standard then and we will let them make more than half a million dollars, and we won't look at it and we will go from six out of seven companies. He didn't say that, did he?

Ms. GEOGHEGAN. No, sir, he didn't.

Mr. JORDAN. So the same standard applies, right, regardless of who is running the company?

Ms. GEOGHEGAN. Well, that standard was not incorporated into the statute.

Mr. JORDAN. The standard has not changed; the Treasury rules are the same, regardless if it is a new person. So the person who was there in 2009 or for someone else, the same standard applies, correct?

Ms. Romero, does the same standard apply?

Ms. ROMERO. Absolutely. It is Treasury's standard.

Mr. JORDAN. Exactly. So this idea that, well, we have different people running the company, so now it is different, that, I think, just proves what Ms. Romero has been saying for several years, that there is not guidelines that you guys have in place that you can objectively determine what the standard really is.

Ms. GEOGHEGAN. May I address that?

Mr. JORDAN. The simple question is, Ms. Romero, do you think they have listened to anything at all, any of the suggestions you have given over the last several years? Has the special master taken any of your advice, any of your counsel and implemented it in how they decide executive compensation?

Ms. ROMERO. Nothing meaningful.

Mr. JORDAN. And, Ms. Geoghegan, first of all, I assume maybe you would disagree, but why haven't you done that? Do you not like them? Do you think, what the heck, we don't have to; I am the boss here? They seem like pretty smart folks over there; they have given you suggestions. It seems it would be clear to me that there has been a trend in the direction of giving more and more executives compensation above half a million dollars. Why haven't you taken any of their recommendations to heart and implemented them?

Ms. GEOGHEGAN. Chairman Jordan, I would like to clarify that point. We understand the importance of diligent oversight and we have benefitted from SIGTARP's review of our work. However, we do have very robust policies and procedures. I hope today we have made the case that we continue to follow those policies and procedures and guidelines. We have actually implemented, if I may say so?

Mr. JORDAN. Sure.

Ms. GEOGHEGAN. We have implemented several of SIGTARP's recommendations and we are in the process of considering others. But we have fully implemented a number of them.

Mr. JORDAN. The lady beside you is shaking her head pretty strongly no.

Ms. Romero, would you disagree with that?

Ms. ROMERO. Eight recommendations; one has been implemented, and that was to keep better documentation of their use of market data. That is it.

Mr. JORDAN. The market data that they get from the companies that they are overseeing, correct?

Ms. ROMERO. And how they look at it. I will give you an example. We said substantiate why someone should be paid a cash salary over $500,000. What they did was maintain an eight-page spreadsheet which gives the reasons for that, which largely parrot what the companies say. Well, we didn't say better document it; we said substantiate, meaning there has got to be a real independent analysis.

Mr. JORDAN. I am glad you raised that point, because I wanted to get into this. Here is the document we received, which is justification for exceeding half a million dollars recommended by executive compensation committee. So this is the document we got from one of the companies. It has everything blacked out except the employee ID number. So employee 4859 gets, they are recommending a cash package of $1.7 million; employee 2986 they are recommending $850,000; employee 5021 they are recommending $875,000.

This is what we got. I hope you are getting more than that. Frankly, I hope they are getting more than that when they are making their decision. But it can't be this bad, I assume, for you guys; there has to be some justification.

Now, one of the things we did get is we got, and this was in 2012, employee performance goals. Some of the stuff that wasn't redacted, we got statements like move the organization to be market- and consumer-driven company. I guess that is versus a government-driven company. Optimize and manage complexity. These goals, I have no idea what they mean.

Ms. ROMERO. The goals really don't matter because they are only tied to long-term restricted stock, and it has been removed for half of the employees.

Mr. JORDAN. Okay.

Ms. ROMERO. So the pay for individual performance, the long-term restricted stock has been removed for every single Ally employee and some of the GM employees and some of the AIG employees. So most of them actually don't have any goals.

Mr. JORDAN. So no goals at all, let alone vaguely written ones like this?

Ms. ROMERO. Not individual goals, no.

Mr. JORDAN. I was telling the staff the other day, when I first looked at it, my background coaching, working with student athletes, and one of the things we do at every season, we say write down your goal for this season; and we said we don't want this baloney I want to be the best I can. Or, do you want to be a national champ, do you want to be an all American, do you want to make the varsity? What is your goal? Pretty specific.

This is—I have no idea what this is. But back to the first question, it can't be this bad for you, right?

Ms. ROMERO. No, we get information.

Mr. JORDAN. How much of what you get is redacted and blacked out?

Ms. ROMERO. No, we do not get anything redacted.

Mr. JORDAN. So you get to see the full thing. Okay.

Ms. ROMERO. We get to see the full thing.

Mr. JORDAN. But is it still kind of this generic language that I just cited here, some of this sort of warm and fuzzy language?

Ms. ROMERO. We see the language and then we do interviews and we try to see sort of why did somebody get a raise, for example; and we see the explanations from the companies and we see the explanations from the Office Special, and what we found is the Office of Special Master's reasoning largely parroted the reasoning of the companies.

Mr. JORDAN. So you are getting the same statement from the special master that you are getting from the companies, and the special master makes the decision on information they get from the companies, the very companies the taxpayers are bailing out.

Ms. ROMERO. Yes.

Mr. JORDAN. Such a deal. Such a deal.

Ms. Geoghegan, do you want to comment on any of that?

Let's go back to the first question. Why one of eight, and it was just more documents? Why haven't you looked at some of the other recommendations that repeatedly have been given to you by SIGTARP? And do you make that decision, or does Mr. Massad or does Mr. Geithner, or now Mr. Lew? Who makes that decision, is that ultimately your decision?

Ms. GEOGHEGAN. It is my decision, yes.

Mr. JORDAN. And do you have to clear it when them, let them know what you are doing? I mean, once you make the decision, do you inform them? Do they get some notice of that?

Ms. GEOGHEGAN. I certainly do inform them before we go out with a determination letter.

Mr. JORDAN. Okay, so eight recommendations you have been given by SIGTARP, you have implemented one, just this thing on documents. And when you do that or fail to do the other seven, you let Mr. Massad know that, I assume he lets Mr. Lew now know that or Mr. Geithner previously. Ever any feedback from those guys?

Ms. GEOGHEGAN. Chairman Jordan, in the Treasury there is actually a checklist as to where these recommendations stand, so we do keep track of whether we are or are not following up on any of SIGTARP's recommendations. And let me say we are always open to improving our policies and procedures, and we are currently considering some of these new recommendations that have come from SIGTARP.

Mr. JORDAN. Well, that is great to hear, that you are going to consider them in the future. I mean, it has been five years, repeated requests to do things different, and we have the same old thing.

The last thing I will say, and then we will go to Mr. Horsford, if my math is right, so in 2009 you had seven companies, so that is potentially, top 25 executives, so that is potentially 175 individuals who could potentially receive cash compensation above half a million. And six were okayed to receive that. Now, it may have been a lower number than 175, but potentially could have been 175, and only six were allowed.

And again, this is what I think people are seeing here, today you are down to two companies and it is 23. So potentially 50 and you are giving 23. So almost half now, where before, someone can do the percentage. Six out of 175 is a pretty low percentage. And now it is 23 out of potentially 50. That is the trend the taxpayer is seeing. That is the trend Ms. Romero, that is the trend we are seeing as part of the Oversight Committee. That is what concerns us.

The gentleman from Nevada is recognized.

Mr. HORSFORD. Thank you, Mr. Chairman.

Thank you to our witnesses for being here today.

Ms. Geoghegan, let me ask you. The Office of the Special Master is governed by the interim final rule on TARP executive compensation, is that correct?

Ms. GEOGHEGAN. Yes, Congressman, it is.

Mr. HORSFORD. Thank you. And that rule is very explicit in the principles your office is required to consider when approving or modifying executive compensation packages, correct?

Ms. GEOGHEGAN. Yes, sir.

Mr. HORSFORD. So could you explain, then, the requirements of the rule and the principles that you are explicitly directed to balance?

Ms. GEOGHEGAN. There are six principles, and two of the most important are that compensation should be consistent with and not excessive, taking into account amounts paid for similar positions at similar companies. Another is that compensation should be structured in a way that keeps the companies competitive so that they can attract and retain employees who will contribute to the success of the company and so that the company will be able to repay the taxpayer.

There are focuses on discouraging structures that would lead to excessive risk-taking. There is a principle focusing on stock-based compensation so that the compensation will ultimately reflect the performance of the company. There is a principle relating to having some combination of short-term and long-term and other elements of compensation. And, finally, there is a principle making sure that the compensation reflects the contribution of the individual to the success of the company.

Mr. HORSFORD. So let me follow up on one principle in the rule, and that is the compensation structure. Let me read what it is. It says "should reflect the need for the TARP recipient to remain a competitive enterprise; to retain and recruit talented employees who will contribute to the TARP recipient's future success and ultimately to be able to repay TARP obligations."

Can you explain some of the challenges or conflicts that this principle may create in making compensation determinations?

Ms. GEOGHEGAN. Thank you, Congressman. That goes to the main task of our office under the law, which is achieving the balance we need to achieve between limiting compensation on the one hand and the other, making sure that pay is at levels that permit the companies to be competitive and to repay the taxpayer. So we aim to make sure that those pay levels are market-based, not excessive when considering what similar companies pay for similar positions. But on the other hand we look at the structure to be sure that it doesn't encourage excessive risk-taking. We minimize cash; we maximize stock. We have fundamentally restructured the whole compensation package that we generally approve for these employees.

Mr. HORSFORD. So then, Ms. Geoghegan, can you then, from your mandate to balance these set of principles when limiting compensation, can you discuss how you arrived at these determinations for GM and AIG, specifically, in context of these principles, please?

Ms. GEOGHEGAN. Thank you. I would be happy to. For all of our pay packages that we approved last year, we looked at those six principles that we described, in addition to the five guidelines that Mr. Feinberg originally established. Each of the pay packages, if you look at our set of pay packages in 2012, 94 percent of those pay packages are majority stock; the total amount of cash pay in those pay packages is 63 percent lower than the median of cash pay compared to what similar companies pay; we have made sure that the market levels meet our benchmark.

In the case of AIG it was 48th percentile, GM 50th percentile, and Ally Financial midway between 50th percentile and 75th percentile. We have long-term—while there is not a guideline requiring long-term restricted stock, there is a guideline focusing on having a lot of stock-based pay, which we do have. That may be in the form of stock salary and not necessarily long-term restricted stock. Where we do have long-term restricted stock, it is awarded only upon the achievement of pre-established performance goals. And, finally, we significantly limit perks.

And that describes our pay packages that we approved in 2012.

Mr. HORSFORD. Thank you, Mr. Chairman.

Mr. JORDAN. The gentleman from Pennsylvania is recognized.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Well, Ms. Geoghegan, I want to follow up with you. One thing that we have talked about is the elimination of bonuses as executive compensation, the elimination of golden parachutes as executive compensation. Those have been done, is that correct?

Ms. GEOGHEGAN. Congressman Cartwright, that is correct. On the other hand, I do want to point out that some amount of incentive compensation is permitted under the law and under the interim final rule, and for that portion, if we can, we like to have some amount of long-term restricted stock.

Mr. CARTWRIGHT. Right. And that is where I was headed, Ms. Geoghegan. You have talked at several points in today's testimony about minimizing the cash compensation and putting an emphasis on stock compensation. Would you again make clear for us why we are doing that?

Ms. GEOGHEGAN. We want to be sure that the maximum part of the compensation will reflect the performance of the company over time. By having stock that becomes transferrable or payable only over a period of three years, we feel that this is a structure that makes sure that the executives are not focusing on short-term results and that they are not encouraged to take excessive risks.

Mr. CARTWRIGHT. So, in essence, their reward is the success of the company that they are running.

Ms. GEOGHEGAN. Exactly.

Mr. CARTWRIGHT. Okay. And that is what we want, because these are companies that we need to succeed not only because they are employing the middle class people that work there, but also because we need to get back our bailout money.

Ms. GEOGHEGAN. Exactly. And if I can just point out, in 2012, when we made our AIG determinations, for example, I believe it is the case that Treasury owned more than 70 percent of the stock of AIG, at the time that we made the 2012 determinations, and we made those determinations based on market data. In December of 2012 AIG exited TARP and the Federal Reserve and Treasury received back the entire $182 billion of assistance that AIG had received from the Federal Reserve and from the Treasury, with a total positive return of $22.7 billion. So it is that kind of result that we are working for when we set our pay packages in our determination letter process.

Mr. CARTWRIGHT. Well, thank you for that. Now, of course, we have Ms. Romero here, who has testified that SIGTARP has made an awful lot of suggestions that didn't get accepted by your office. Are you aware of a legal requirement that you have to take all of SIGTARP's suggestions for how to structure executive compensation, and what to approve and what not to approve?

Ms. GEOGHEGAN. Congressman Cartwright, I am not aware of any legal requirement. Nevertheless, we have definitely benefitted form SIGTARP's review of our work. We have made some changes in our policies and procedures simply as a result of the audit process when we are interviewed by SIGTARP or when we give them information.

If I may give an example, it was not a recommendation of SIGTARP last year; nevertheless, in our 2012 determination letters, as a result of SIGTARP's focus on our market data, we incorporated for the first time into all of our determination letters an overview of the market data and our process for evaluating the market data. That, I think, is a definite improvement in our determination letters; they are all available on our Web site. And we did that as a result of our interaction with SIGTARP; it was not a specific recommendation of theirs. But, as I say, we are always open to improving our policies and procedures.

Mr. CARTWRIGHT. And we have also heard in today's testimony, I think from Ms. Romero, that your office has been open and forthcoming and transparent with information with SIGTARP. Is that true?

Ms. GEOGHEGAN. I certainly hope that that is what they believe. I believe we are totally cooperative with all the interviews they have requested and all of their written questions. I think we give them all the information they ask for in a prompt and cooperative manner.

May I just point out, also, Congressman Cartwright, that we are very supportive of openness and transparency, and we do have an excellent Web site, and we have a lot of information on our Web site, including all our determination letters and fact sheets.

Mr. CARTWRIGHT. Well, I want to thank you again for coming here today, both of you.

Mr. JORDAN. I am going to, if I could real quickly, Mr. Cartwright, just one other line of questioning. In your questioning with Ms. Geoghegan she talked about AIG, and I think one of you said the reward is actually the success of the company in the end, so I want to pick up on that and go to a subsidiary of Ally, ResCap.

ResCap, I think we talked about this earlier, Ms. Geoghegan, they currently are filing for bankruptcy, is that correct?

Ms. GEOGHEGAN. That is correct.

Mr. JORDAN. And at least the information we were provided, I assume you have the same information, 2013 exceptional assistance justification for top 25 employees with cash salaries greater than half a million dollars, and on this paper is Mr. Moreno, employee ID number is listed, CEO of ResCap. He is going to be paid over half a million dollars in cash. His total compensation package, which was, again, given to us not redacted, is $8 million.

So when you talk about, this is a company, again, 74 percent owned, the parent company, Ally, 74 percent owned by the taxpayers. The justification given on this piece of information that you all have says, under the line justification for exceeding half a million dollars in cash salary, salary at the request of the ResCap board of directors. And you guys approved this.

Here is a company in bankruptcy, 74 percent owned by the American taxpayers, and just because the board of directors at the company says, you know what, even though we are in bankruptcy, we think our CEO needs to make half a million dollars and needs a total pay compensation package of $8 million, and you guys said yes to that? How do you justify that?

Ms. GEOGHEGAN. Chairman Jordan, in response to that, I would like to make two points. The first one is that a successful resolution of the ResCap legacy mortgage liability situation is an important step before Treasury can continue to receive value for its investment in Ally Financial.

Mr. JORDAN. Are you going to approve it?

Ms. GEOGHEGAN. If I may, Chairman Jordan?

Mr. JORDAN. Go ahead.

Ms. GEOGHEGAN. Secondly, whatever we approve for any ResCap employees, all of those amounts are also subject to bankruptcy court approval, and the unsecured creditors.

Mr. JORDAN. We are not talking about that; we are talking about what you are going to approve. Are you going to approve that? You approved his salary in the past. They weren't in great condition before and you approved it. Are you going to approve it now?

Ms. GEOGHEGAN. I actually can't address that, I don't know what they are proposing. We have looked preliminarily at their proposals. We are very far from approving anything that they have proposed.

Mr. JORDAN. Okay.

Ms. GEOGHEGAN. We have to do all of our processing work first.

Mr. JORDAN. Ms. Romero, do you think a company 74 percent owned by the taxpayers, subsidiary ResCap with its CEO compensation package of $8 million being proposed, cash assistance over half a million dollars, do you think that should be approved when we are trying to look at the best interest of the taxpayers and this program and getting people out of this program?

Ms. ROMERO. No. And let me talk about Ally for just a second, because we issued a report this past month on Ally.

Mr. JORDAN. Sure.

Ms. ROMERO. Ally is GMAC, it is a subprime mortgage lender. Ally was taken down literally by its mortgage unit of Rescap, which was a subprime mortgage lender for all of these years. Ally has continued to fail the Federal Reserve stress test year after year after year. The ResCap issue, the mortgage liabilities has been a problem since the start.

Mr. JORDAN. Probably the biggest problem for the company.

Ms. ROMERO. The biggest problem. It has never been addressed. Ally's CEO called it a millstone around the company's neck. It has now become a millstone around taxpayers' neck. And they finally filed bankruptcy in April 2012 for this company, but at this point there is no concrete plan how Treasury is going to get out of its 74 percent investment.

And when I say there is no concrete plan, I mean I go to Treasury and I say how are you going to get this company back on its feet without taxpayers' assistance, and they say we could sell assets, the company could re-buy the shares, or we could sell the shares on the market. And I said, well, that is just how you dispose of any stock. There is no concrete answer, which one of those things are you going to do? And the answer is we don't know.

So there is no concrete plan at all to get Ally out of TARP.

Mr. JORDAN. And all of this was understood where this was heading; it has been common knowledge in the market and, frankly, something that the special master should know, and yet they approved a pretty good compensation package for the CEO of ResCap just last year. Is that correct?

Ms. ROMERO. The pay was approved in April 2012.

Mr. JORDAN. Before they filed.

Ms. ROMERO. Just weeks before ResCap filed bankruptcy, and it included, and I just want to point this out, a $200,000 pay raise for an employee at ResCap; three ResCap employees got packages exceeding the 50th percentile. And this is not the amount of the pay package, this is how much it exceeded it by, $1.7 million, $1.2 million, $850,000.

Mr. JORDAN. So, to cut to the chase, the special master allowed pay increases to take place with a company 74 percent owned by the taxpayers on the verge of bankruptcy. The night before bankruptcy they allowed pay raises to take place with the top executives at that company.

Ms. ROMERO. And exceeding the 50th percentile.

Mr. JORDAN. And exceeding the 50th percentile. So even exceeding the average in the industry. Amazing.

I have nothing further. I want to thank both our witnesses. We will follow up, Ms. Romero and Ms. Geoghegan, we think there has to be a better way to deal with this, so we want to thank you both. I know I promised two hours and, look at that, only three minutes past the deadline. So it is not too awful bad. Thank you. You have both been very good. We appreciate that.

The committee is adjourned.

[Whereupon, at 12:02 p.m., the subcommittee was adjourned.]

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Opening Statement
Rep. Matt Cartwright, Ranking Member

Subcommittee on Economic Growth, Job Creation and Regulatory Affairs
Hearing on "Bailout Rewards: The Treasury Department's Continued Approval of Excessive Pay for Executives at Taxpayer-Funded Companies"

February 26, 2013

Thank you Mr. Chairman.

I would like to thank our witnesses for appearing before the Committee today. I look forward to hearing your testimony on the executive compensation at companies that received exceptional taxpayer assistance during the Government's response to the 2008 financial crisis.

Like most Americans, I was troubled to learn how the structure of compensation packages on Wall Street helped to create incentives for taking the unnecessary and excessive risks that led to the financial crisis. Too often, executives received huge cash salaries, discretionary raises, exorbitant bonuses, and golden parachutes, with little to no reason to care about their behavior's effects on the long-term consequences to the company—and the country—because their compensation was not tied to the long term health of the company.

With the economy collapsing, the tax payers bailed out these companies—not because we wanted to, but because we HAD to. Millions of middle class jobs, blue-collar manufacturing jobs, would have been gone, millions of people out of work, through no fault of their own, because a bunch of traders on Wall Street didn't feel the need to think about the long term consequences of their actions.

This was hard to stomach, when the taxpayers who saved these companies are often struggling to make ends meet. But it was a necessary thing to do, and the right thing to do, to save the jobs of millions of innocent middle class folks who had nothing to do with causing the financial crisis.

With those bailouts came conditions, and rightly so. One of many conditions was that the Treasury Department would appoint someone to oversee executive compensation at these companies.

This compensation was to be structured in a way that would incentivize long term growth over risk taking and personal gain and, most importantly, get these companies back on their feet again, by attracting and retaining quality employees that would keep these jobs safe, so that they are able to pay back the tax payers as quickly as possible.

TARP has been, overall, a success story. According to the Treasury Department, as of January 31, 2013, Treasury has recovered all or substantially all of TARP funds disbursed to date. 4 of the 7 companies to receive the most TARP funds have already paid us back and exited the program.

I would like to point out here, a great irony that we will see in this subcommittee today. The same people that argued that they would have rather gone over the fiscal cliff because a 4.6% increase in taxes on the wealthiest 0.7% would destroy the economy, are the same people who are now saying that these specific 0.7%ers are making too much money.

I know that we will be getting into the minutiae today, and I welcome that discussion. However, it is important to recognize the big picture here. We held our noses and bailed out these companies so that millions of jobs wouldn't be lost. This program was an overall success, and millions of people are employed who wouldn't have otherwise been.

I thank the Chairman for calling this hearing and look forward to a productive dialogue on these issues.

Contact: Jennifer Hoffman, Press Secretary, (202) 226-5181

WHO GETS WHAT

Fair Compensation after Tragedy and Financial Upheaval

KENNETH R. FEINBERG

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Dedicated to the memory of my sister,
Ruth Feinberg Connors:
my greatest ally and most constructive critic.
With love and appreciation.

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PAYING WALL STREET EXECUTIVES

"I Believe in You"

Until June 2009, my professional role in determining who gets what involved calculating damages for victims of tragedy: Vietnam veterans exposed to Agent Orange, innocent bystanders of the 9/11 terrorist attacks, and students and faculty murdered by a student misfit at Virginia Tech. In an emotionally charged atmosphere characterized by grief, frustration, and anger, my role was to determine the value of life itself and to find a way to offer solace to those suffering loss and disability through no fault of their own. I was immersed in a strange, surreal world where I was required to apply a dollar figure to every victim.

However, in one sense my work—though unique—was tied at least in some way to the prevailing legal system, where judges and juries determine liability and calculate damage awards every day in courts throughout the nation, guided by tort law and the concept of compensation paid to innocent victims in recognition of their loss. Then, after the shock of the 2008 financial crisis, the trajectory of my career changed course.

Treasury Secretary Timothy Geithner asked me to undertake a new public service assignment with no historical parallel—this time to determine pay packages for selected members of the business elite. My role would be to analyze all the facts and figures surrounding corporate pay and calculate *in specific dollars* what a chief executive officer or chief financial officer should earn. It would be an entirely new and controversial variation on the familiar question of who gets what.

The justification for my new role could be traced directly to Congress.

Compelled to use taxpayer dollars to bail out American companies on the verge of bankruptcy—a blue-chip list that included Citigroup, Bank of America, and the insurance giant American International Group (AIG)—Congress could not stand idly by and accept a one-way bargain with Wall Street. There would have to be a price to pay for such congressional largesse. Constituents would be appalled at the idea of Congress using public funds to rescue private companies headed by corporate chieftains earning millions of dollars. The political problem was especially acute during a time of growing unemployment, widespread hardship, and financial uncertainty. The politics of the bailout demanded that we impose penalties. The Emergency Economic Stabilization Act of 2008, which created the Trouble Asset Relief Program (TARP), authorized the Treasury secretary to use public funds "to promote financial market stability." Pursuant to this new statute, the Treasury Department in both the Bush and Obama administrations propped up corporate

America by purchasing company shares of stock worth trillions of dollars. These purchases—in the form of loans that the government hoped would one day be repaid—were a first. In effect, the American taxpayer now owned a majority equity stake in some of the largest American businesses in financial distress.

At the same time, Congress passed the American Recovery and Reinvestment Act (ARRA) of 2009, which imposed new restrictions and requirements on paying corporate executives at the individual companies receiving the most TARP financial assistance: AIG, Bank of America, Citigroup, Chrysler, Chrysler Financial, General Motors, and GMAC. When it came to these seven companies—and only these seven—Treasury would have a pervasive role: determining the specific compensation packages for each of the top twenty-five officials of these companies. The CEOs, CFOs, senior vice presidents, and top Wall Street traders would submit to having their pay fixed directly by the government. In addition, Treasury would promulgate rules and regulations governing how each of these corporations would go about compensating its next seventy-five senior officials. The government also would have veto power over the proposed compensation structures.

If Main Street was required to come to Wall Street's rescue, there would be a price to pay: leaders in Congress and the new Obama administration didn't want to see headlines describing how financial "fat cats" were collecting outrageous salaries from companies supported by taxes on ordinary citizens.

This one-of-a-kind statute placed the Treasury Department squarely in the compensation business. Treasury—not the companies themselves—would now decide the appropriateness of private corporate pay.

ARRA made it clear that until and unless each corporation repaid all of its debt to the taxpayers, compensation restrictions would continue to apply. Specific statutory language also prohibited compensation that would encourage senior corporate officers from taking unnecessary and excessive risks in the marketplace, and any corporate bonus or other incentive compensation would have to be paid in the form of long-term restricted stock that could not fully vest or be redeemable as long as the corporation still owed money to the taxpayers. Treasury could also seek to recover, or "clawback," from the corporation previously paid incentive compensation. And "golden parachute" payments—overly generous guaranteed severance payments to departing corporate officials—were prohibited. The new statute required that Treasury issue additional regulations defining in more detail how it would implement these directives. The creation of these rules was motivated by several impulses. One was the traditional "good government" concern over prudent use of taxpayer dollars. It would seem inappropriate for TARP government funds to be used to subsidize payments in the hundreds of millions of dollars to individual financial executives, particularly in a time of economic hardship for so many Americans. Members of Congress, senators, even presidents don't earn paychecks like that—why should anyone dependent on public funds be compensated in such a fashion?

A second was the desire not to reward excessive risk-taking by corporate managers. With the global financial system having nearly collapsed partly as a result of overly risky bets by executives eager to boost profits and thereby increase their own bonuses, many experts felt it was important to begin reforming the incentive system that governed financial decision-making. The com-

pensation paid to bankers and others bailed out by TARP seemed a natural place to start.

The third driving factor—perhaps the most diffuse and ill-defined, yet potentially the most explosive—was voter anger over the perceived misdeeds of the financial community and the populist demand that Wall Street's "fat cats" ought to pay a price for their crimes.

American history documents time and again the ongoing tension between Main Street and Wall Street: Hamilton versus Jefferson; the nineteenth-century Jacksonian political struggle over a national bank; the tycoons of the Gilded Age versus the Progressive movement; and the political battles over Roosevelt's New Deal. But Congress had gone further than ever before. With excessive corporate pay the sore point and heedless Wall Street executives the culprits, Congress would directly intervene and require that the government determine the private compensation of those responsible for the financial debacle. No question: this was a first.

But somebody had to make these compensation determinations. The new statute delegated the responsibility to the secretary of the Treasury. But Congress well knew that Treasury Secretary Geithner would have neither the time nor the political inclination to weigh in on a subject as contentious and problematic as regulating private corporate pay. Besides, the Department of the Treasury—the bastion and symbol of the free market system, of capitalism itself—was not in the business of micromanaging private business compensation decisions as to who gets what.

A few weeks after President Barack Obama signed the legislation into law, I received a call from Neal Wolin, the deputy secretary and number-two man at Treasury. A forty-seven-year-old former wunderkind with a pedigree that included Yale Law School and stints as head of a Hartford Insurance division and deputy White House counsel, Wolin was a solid public servant who combined enormous competence with political acumen and creativity. Over the years Wolin and I had worked together in a vain attempt to solve the national asbestos litigation crisis that threatened to overwhelm the courts.

Wolin quickly came to the point: "Ken, have you read the new statute requiring the secretary to fix corporate pay? We need to create Treasury regulations implementing the statute. Do you have any ideas? Can you help?" He then threw in the kicker: "Do you have any interest in taking on the job?" Treasury needed to distance itself as much as possible from the day-to-day role of fixing corporate pay. Was I available?

Happy to help the Obama administration and take up the challenge of a new public assignment, I told Wolin yes. I seconded his opinion that it made political sense for the secretary to delegate his authority under the statute to an official who would not be part of the Treasury bureaucracy. I suggested appointing a special master according to Treasury regulations. This new official—not Geithner—would design and administer the new compensation program. The political heat would be directed at the special master.

Wolin was now reading from a well-prepared script. He had the entire plan worked out in his mind before he even called me. Now that I had expressed interest, he deferred any further action until he formally advanced his idea with the secretary and others at Treasury and the White House. With me in the fold, a specific point man willing and able to act as special master, he now had the ammuni-

tion needed to sell his idea. He anticipated that any appointment would promote controversy from red-state Republicans in Congress who rejected the idea of big government fixing private corporate compensation, but also from blue-state Democrats who would howl if the pay determinations did not adequately reflect populist outrage toward Wall Street.

It looked like a lose-lose situation. "But you relish controversy," Wolin observed. "You won't mind this latest blowup."

A few days later Wolin called again, informing me that his plan was moving forward and that I should schedule an appointment with Geithner. I met with the secretary, Wolin, Treasury adviser Gene Sperling, and a few other members of the senior staff in the secretary's impressive, carpeted Treasury office overlooking the Washington Mall. The secretary thanked me for my willingness to consider the assignment, raising his eyebrows at the very idea of such a statute. He was all business. I was impressed with his knowledge of the statute. He was thoroughly familiar with the language of the new law and the conflicting obligations it imposed on the Department of the Treasury (and on him personally). He immediately expressed reservations about the Treasury Department's role in fixing private corporate pay.

But our conversation quickly evolved from the theoretical to the practical. He reminded me that the taxpayers had loaned the seven companies billions of dollars, money still very much at risk in an uncertain financial environment. He expressed concern that Main Street anger directed at corporate pay could further jeopardize these companies' already tottering financial stability. Responsible for the safety and security of the nation's financial system, the secretary had little interest in promoting excessively harsh compensation policies that could further weaken the damaged economy.

The secretary made clear that my primary goal as Treasury's special master for TARP executive compensation was to determine payments for senior corporate officials that would maximize the likelihood that the designated companies would repay TARP loans as quickly as possible. The taxpayers had to be made whole. This was the top priority—not any effort to "punish" corporate officials by cutting their pay to rock bottom or any attempt to placate congressional critics saddling up to pit Main Street against Wall Street.

Sperling's take was all political. He saw the statute as a mischievous attempt by Congress to inject politics into the complexities of determining private corporate pay. He warned that I would be buffeted by conflicting political pressures: congressional Republicans having second thoughts about the statute; Democrats demanding that Treasury slash corporate pay closer to the bone. I agreed with him. I perceived nothing but political trouble arising out of the statutory directive to the secretary of the Treasury.

If the secretary came across as careful, studied, and deliberate, Sperling was a frenetic whirlwind, his mind racing from one political consequence to another. Together the two of them provided me an excellent preview of what was to come.

Whatever could be done to satisfy the statute (and congressional critics) by reducing compensation excesses should be encouraged; the law and politics required it. But not at the risk of driving these seven companies into defaulting on their financial obligations to the American taxpayer. The secretary was clear on this fundamental point.

Wolin's plan had worked. The secretary offered me the job and I agreed to work, again, without compensation as a special Treasury employee. He expressed his total support for my effort in implementing these seemingly conflicting objectives. I would be as independent and free from Treasury interference as the statute and regulations would allow. The Office of the Special Master for TARP Executive Compensation technically would be housed in Treasury's Office of Financial Stability, headed by the former president and CEO of Merrill Lynch, Herb Allison. But in reality I would look to Neal Wolin—the architect of the entire plan—to resolve any intramural policy disputes that might arise. As for the secretary, I would meet with him only two or three times during my sixteen-month tenure as special master.

I now confronted the task of assembling a first-rate team of lawyers, experts in executive compensation, and support personnel to occupy the special master's office in the basement of the main Treasury building. But this was easy. I knew I could count on two loyal colleagues from my law firm: Camille Biros and Jacqueline Zins, who had been part of my law practice for decades. Both of them had been at my side during my administration of the 9/11 fund. When I learned that career Treasury officials were also available and eager to assist in implementing the new program, I took advantage.

Twelve Treasury professionals were assigned to my office. The TARP companies quickly learned that they were up against a formidable group; they could not prevail with bluster and sophistry. Arguments about compensation would be decided on merit, based upon the evidence submitted and the policy decisions made. The Department of the Treasury would be more than equal to the task.

I also wanted to retain a few private executive compensation experts, not only to assist in the substantive task of determining appropriate corporate pay, but also to blunt the criticism that was sure to come: that Feinberg and Treasury simply didn't understand the Wall Street corporate culture and the competitive environment when it came to pay. What better way to weather the gathering storm than by hiring consultants actually working the Wall Street beat.

But I soon discovered that it was all but impossible to find credible, truly independent commercial compensation consultants. All the major consulting firms specializing in executive compensation suffered from the same problem: a real or perceived conflict of interest in representing the very types of companies and corporate officials subject to my new regulatory authority. I was already learning a valuable lesson even before I began my work. In making pay decisions, American businesses and their favorite "independent" compensation consultants worked hand in glove, comparing notes and sizing up the competition. Under the guise of promoting "competitive pay practices," true independence became diluted as consultants recommended increasing pay for their corporate clients as a way to ingratiate themselves with the executives who'd hired them in the first place. Their very livelihood was a self-fulfilling prophecy.

At least this was the perception. And in the politically charged world of Washington, perception was reality.

So I did the next best thing: I retained the services of two academics, experts in the field, professors Lucian Bebchuk of Harvard Law School and Kevin Murphy of the University of Southern California. Both were accomplished scholars who had very different worldviews of compensation. Bebchuk believed the government should intervene, while Murphy felt it should maintain a hands-off free market attitude. As the special master, I would cite their input, not only to buttress the credibility of our compensation determinations but also, just as important, to secure some additional political cover: "the two nationally recognized professors signed off on what we are doing."

TARP Compensation Treasury Regulations would spell out the variables to consider in determining who got what. Building on the new statute, the regulations focused on seven guiding principles that would put big business on notice when it came to pay:

1. *Risk.* Compensation packages should avoid incentives that encourage corporate executives to take "excessive" risks that threaten the financial viability of the company. Risk is not to be discouraged; it is an integral part of our free market system. But "excessive" risk—whatever that means—is something else again. This concern about risk—the idea that compensation practices all too often reflect and encourage greedy corporate behavior—was, of course, a populist favorite underlying the new statute.
2. *Taxpayer return.* This was Secretary Geithner's primary concern. Compensation should reflect the need for the company to recruit and retain key employees so the company ultimately could repay every cent borrowed. Pay back the taxpayers—with interest. Every company subject to my jurisdiction, and much of the Treasury bureaucracy, referenced this variable in urging the special master to be generous when it came to compensation.

3. *Different types of compensation.* Corporate pay packages should be diverse, a mix of base salary and incentives, including cash, stock, executive pensions, and other monetary benefits. "Golden parachutes" are prohibited by statute; all other financial benefits are subject to review by the special master.
4. *Performance-based compensation.* This is the heart and soul of the regulations, a direct response to congressional outrage. Only an executive's base salary is guaranteed. The remainder of the compensation package depends on individual and corporate performance over at least three years. Short-term corporate success should not trigger additional compensation; instead the regulations focus on extended corporate growth. Corporate officials and the companies they manage should be joined at the hip when it comes to compensation.
5. *Relating to the competition.* Companies must be able to compete in the marketplace. Accordingly, the pay packages the special master reviews and approves should be competitive with those of other businesses. Placing these distressed companies at a competitive disadvantage is self-defeating; the goal is to restore them to health, not inflict additional chronic pain by limiting pay. This was another variable corporate advocates constantly cited in pushing back on the special master's findings.
6. *Focusing on the individual.* Both the compensation structures and amounts paid to each corporate official should reflect the individual's current and prospective contributions to the company's overall value. Obvious, perhaps, except that the regulations delineate examples of these "contributions," for example, revenue production, specific expertise, compliance with company policy, and corporate leadership. In sum, what role did the corporate official play with respect to changes in the company's financial health or competitive position?

7. *Discretion.* Finally, the regulations delegate to the special master broad discretion to determine the appropriate weight or relevance to give these various compensation principles, depending upon the facts and circumstances of each case.

As with my administration of the September 11th Victim Compensation Fund, both the statute and the regulations conferred a huge amount of discretion on one person with ultimate responsibility to determine who got what. It is this discretion—largely free of other governmental checks and balances—that led the media to confer the title of "pay czar" on the new special master. Although I chuckled at how confused my grandfather from Lithuania would have been to learn that his grandson had become a "czar," I disliked the term. I was not a czar issuing arbitrary imperial decrees about pay based upon whim or fancy. The statute and accompanying regulations were clear in defining the authority of the Treasury Department and went even further, detailing the specific factors to be considered in calculating executive pay. I could not roam at will exercising unfettered discretion. Far from being some type of "czar," I was trying to walk the line between populist sentiment and the legitimate concerns that pay be tied to performance and that these seven companies repay the taxpayer. This was a fine line indeed. I was a mediator, not a czar, balancing competing public policy interests in an effort to comply with a hastily written, politically charged statute. But the title "pay czar" would dog me throughout my tenure.

The tension inherent in my assignment would only increase in the ensuing months. I took heat not just from the seven companies under my purview but also from Treasury officials themselves—especially Herb Allison and Tim Massad in the Office of Financial Stability, and Jim Milstein, who was responsible for Treasury oversight of AIG. He continually complained to Wolin that my effort to rein in corporate compensation packages threatened to undercut their efforts at restoring financial stability to companies on the brink of ruin. They made excellent arguments. But I was determined to make an impact, and Wolin backed me up (while warning me to be careful with my brinksmanship). How far could I go in complying with the statute and regulations? I needed to satisfy a Congress reflecting Main Street anger while at the same time making sure the seven companies would remain in business and begin the torturous road back to financial health so the taxpayers would be repaid. This was the challenge embedded in conflicting public policy and political considerations.

I braced myself for attacks from both right and left. I assumed that from ideological Republicans would come the argument that the government, in the person of the pay czar, was interfering with the free marketplace and laissez-faire capitalism, that private pay was none of Treasury's business. Meanwhile, the Democrats would blast my pay determinations as "too little, too late," that I was merely a shill for corporate America. I told my Treasury team to circle the wagons.

But the onslaught never came. I misread the congressional mood. It had been Congress, after all, that enacted the statute au-

thorizing a limited government role in determining who got what. My jurisdiction was confined to the top twenty-five corporate officials in seven companies, a total of 175 individuals. I was presiding over a largely symbolic sideshow. This became apparent when I visited Senator Richard Shelby of Alabama, the ranking Republican on the Senate Banking Committee. "Ken," he told me, "you will have no trouble with me. I voted against TARP. I thought it was a mistake to use taxpayer money to save these companies. Now we are creditors and I believe that creditors have a right to fix corporate pay. Just don't expand your authority. Don't go beyond these seven companies. I won't object."

Camille Biros and I went to see Democratic Congressman Barney Frank, a key player in the House. He was blunt: "I'm focusing on the Dodd/Frank legislation, policies of the Federal Reserve, the SEC, and FDIC. Real changes in corporate pay won't come from your work; we need real, fundamental reform, and you are not it." Clearly if I did not attempt to broaden my mandate, and as long as Congress was preoccupied with other more pervasive and long-lasting financial regulatory reform initiatives, I would be left alone. I would receive a political pass.

Whatever the substantive merits of the statute mandating Treasury intervention in private corporate pay decisions, it quickly became clear to me that, at least politically, I could accomplish my mission by exercising narrow discretion and limiting the scope of my pay decisions. Do what Congress demanded; nothing more, nothing less.

Although Congress might not view my work as a top priority, the American people were eager, to a surprising degree, to see exactly how I would answer the question of who gets what. I thought that determining pay for just 175 corporate officials would not be front-page news. I was wrong. In a time of great public uncertainty following the financial crisis and home mortgage debacle, with unemployment increasing and the gap widening between Wall Street and most other pay, the American people were very interested in exactly what dollars would be placed next to the name of a corporate master of the universe. What was a CEO at AIG or Bank of America worth? How much money should be paid the head of General Motors, currently exiting from bankruptcy? And what about the chief financial officer at Citigroup or AIG? These companies had driven themselves to the financial precipice, to the brink of ruin. What was appropriate pay—in actual specific dollars—for the individuals responsible? The taxpayers were eager to know the results; many were ready to criticize if the compensation packages were "excessive."

We began our work by providing each of the companies with a twenty-two-page, single-spaced set of instructions requesting extensive company and employee information, the compensation history of the top twenty-five corporate officials at the company, and competitive market data. In addition, we asked key questions: What did the company propose in the way of compensation, and what would be the suggested mix of such compensation keeping the statute and regulations in mind; for example, cash versus stock, base salary, short-term versus long-term pay, bonus payments, etc.? We asked the companies to lead with their chins: "You tell us what each official is worth."

Reams of paper flowed in from the companies. Many of them retained their own outside compensation experts and business consulting firms to advance their cause. The companies spent millions

of dollars to prepare their submissions, which often were accompanied by colorful graphs and charts, a visual attempt to highlight the unique qualities of their key employees. Everyone was deemed "irreplaceable" and "essential," and the submissions all ended with the same bottom-line argument: "If you fix pay that is too low, our key people will leave the company and the taxpayers' TARP loans will be at risk. We are on the edge trying to survive; do not push us over the cliff." Occasionally a company would invoke the ultimate horror: departing employees would not simply depart for a more generous domestic competitor but would leave America altogether and go to work for a competing bank or auto company in Europe, Japan, or even China.

The submissions made it bold and stark—the special master's office held the future of the seven companies in its hands. So, Mr. Feinberg, you'd better be careful with your pay determinations.

The completed questionnaires and submissions were just the beginning of our process. We also collected information from our own independent sources (such as Equilar's Benchmark Top 25 Executive Compensation Benchmarking Pay report) in an effort to produce a more balanced, less argumentative picture of a company's pay practices in relation to the rest of the industry. We compared notes, placing our own data next to the statistics the companies submitted. Our two compensation experts also weighed in.

But the most important part of the process was the personal meetings we scheduled with company officials who sought an audience to plead their case on behalf of their key corporate employees. My previous experiences in determining who got what had taught me the value of face-to-face dialogue. Private, confidential meetings not only gave the participants an opportunity to make their arguments in person but also promoted a sense of due process and fairness. The special master would not make critically important compensation determinations based strictly on numbers, charts, and graphs. Instead every company had the right to be heard, to make the case, to influence the result.

The hearings helped to validate the entire compensation process by promoting its credibility. In participating in a private hearing, traveling to Washington to sit across the table from the special master and plead their case, company officials had a personal stake in the venture. They were directly co-opted into the process. Compensation determinations were not being made solely by pencil-pushing government functionaries in some dark basement office at Treasury; they were the result of a deliberative transparent process in which high-level company representatives themselves had a voice.

CEOs and their lawyers all traveled to Washington to mount the soapbox, warning about adverse consequences if pay demands were not met. It was not just the company and the taxpayers' money that were at risk; the American economy would suffer if particular officials did not get their due. The world was watching.

Two ground rules characterized these meetings. First, unless specifically requested, I would not meet with the 175 individual corporate officials who were the subjects of my pay determinations. Neither the statute nor the regulations contemplated this. I was engaged in a company-wide project focused on each company's compensation culture, and how designated officials in that company hierarchy were part of that culture. So when I met with CEOs, chief financial officers, and vice presidents of human re-

sources, they came to see me wearing their official company hats, not to make self-serving arguments about their own individual pay.

Second, all sessions were conducted at the main Treasury building in Washington. As an experienced mediator, I knew the importance of conducting meetings in the most effective venue. The majesty and grandeur of this building, next door to the White House, offered me distinct advantages. Lavish and imposing, with oil paintings of previous Treasury secretaries lining the hallways and marble floors leading to plush conference rooms exhibiting antique desks and tables, this was the perfect forum to conduct hearings about pay. If not exactly intimidated by the surroundings, corporate officials immediately realized that they were up against a formidable negotiating partner—the federal government.

I explained that the special master was not an adversary, that I rejected the phrase "pay czar." Rather, I was a mediator hoping to achieve consensus pertaining to pay. But ultimately both the statute and the regulations conferred final authority on me to decide who got what. I would exercise that authority only after first trying to reach an accommodation with each company.

The confidential meetings at Treasury were often emotional and contentious. Anecdotal evidence about the top twenty-five corporate executives—their ongoing importance to the company and their lack of involvement in earlier decisions that had almost brought down the business—dominated the discussions. Competitive statistical comparisons were secondary and ineffective as argument; we at Treasury possessed the same data and knew how to interpret the numbers. But the human element—that was something else again.

It became very personal. I discovered that contrary to public perception, compensation meant much more to a senior corporate official than mere material gain. Although not minimizing the benefits of wealth—a second home at the beach, a second (or third) automobile in the driveway, private schools for the children—most corporate executives who came to see me emphasized that adequate compensation was a symbol of self-worth. Compensation mirrored individual fulfillment, that without generous pay, company officials would view themselves as failures. Individual success could be determined only by comparing oneself to the competition, and dollars paid would be the deciding factor. By comparison, family, friendship, and community respect paled in significance.

This narrow vision of what defines a life fueled occasional emotional outbursts by corporate executives: "Why are you demeaning my individual success? Why don't you acknowledge my value to the company? Why don't you believe in all that I have accomplished?" And they really believed these arguments, convinced that compensation was the only appropriate measure of success. To these business leaders, these captains of industry, these officials, the special master was evaluating their true worth—to the company, to society, to themselves.

I recalled the famous scene in Frank Loesser's Broadway musical *How to Succeed in Business Without Really Trying*, in which J. Pierrepont Finch, a clever young window cleaner with a hankering for corporate advancement, gives himself a personal pep talk in front of a mirror. He assures himself he is a paragon of wisdom, judgment, talent, and drive, each verse of comically inflated self-praise ending with the refrain "I believe in you!" Sometimes the pay hearings made me feel as if America's corporate suites were

populated by platoons of insecure J. Pierrepont Finches, all desperate to have their worth validated—preferably by a paycheck containing as many zeroes as possible.

Trying to separate my work from its inherent emotional impact wasn't easy. To add an element of consistent, objective rationality to the process, I developed five principles that I followed throughout:

- Guaranteed cash salary would be limited to $500,000 per year; any additional amount would require special master approval. (In the end, fewer than 10 percent of the officials in the seven companies received such approval.)
- Cash bonuses were prohibited. Any remaining annual compensation would be in the form of company stock that, by law, would vest immediately and be valued on the day of issuance. But this stock could be redeemed only in three equal annual installments beginning in 2011 (with each installment redeemable one year earlier if TARP obligations were repaid). In this manner, individual compensation would be tied to company-wide performance over the long term.
- Additional bonus payments could be made, but only in the form of "long-term restricted stock," which required individual executives to remain employed at the company for at least three years after the stock was issued. Even then it could be redeemed only in 25 percent increments for each 25 percent of TARP repaid to the taxpayer.
- Any other individual compensation and perquisites, such as private plane travel and country club dues, would be limited to $25,000; any additional amount would require special master approval.

- Deferred compensation pursuant to retirement programs and severance arrangements were frozen at 2009 levels; special additional compensation for senior corporate officials exiting the company was prohibited.

In the end, General Motors and Chrysler, and their financing arms, GMAC and Chrysler Financial, did not prove to be much of a problem. Struggling to survive (GM had just completed its bankruptcy reorganization and Chrysler Financial was planning to close its doors), these four companies could not afford to present compensation packages that raised eyebrows. So fixing compensation for the auto industry and its financial partners was relatively simple and straightforward. Everybody (other than the CEO or CFO) received total all-in compensation packages well under $1 million per year, with few financial perks and little in the way of long-term stock. If my pay determinations for the auto industry were not exactly aligned with Main Street, they were unlikely to trigger an angry response from a public focused on Wall Street excesses.

The special master's 2009 and 2010 compensation determinations for the four auto industry companies were announced with little fanfare and even less commotion. The public and Congress did not seem to care. They had their eyes on a different prize—the financial services industry represented by AIG, Bank of America, and Citigroup—especially after my office released figures showing that the top *three* corporate officials at both Citigroup and Bank of America were requesting more annual compensation than the *combined* pay packages of all twenty-five individuals at GM or Chrysler.

The three financial giants each took a different tack when it came to dealing with the special master.

Citigroup was the easiest, primarily because all of our negotiations were with Lewis Kaden, a company lawyer and vice president with a healthy dose of political savvy and experience. I had known Kaden for twenty years and our relationship was grounded in mutual respect and admiration. Kaden realized that doing battle with the special master made little political or substantive sense; at the end of the day I would be making the ultimate compensation decisions. So, Kaden and Citigroup decided to pursue a sensible course of action based on the realities of the moment: offer sensible compensation proposals, negotiate the best deal possible, and ultimately accept the results as inevitable.

This strategy was immediately put to the test when it came to Andrew J. Hall and PHIBRO, a Citigroup subsidiary energy trading unit. Hall had a contract with Citigroup entitling him to receive more than $95 million in bonus compensation! This was far and away the biggest such package I had to handle. (A second executive was pegged to receive more than $30 million.) Meeting with Kaden in New York City, I warned him that there was no way I would approve such compensation: "I don't care if Hall has a binding contract written in stone. He can go to court to try and get it. He won't get $95 million on my watch. Talk about compensation based on taking 'excessive risk.' Anybody receiving a bonus of $95 million must be engaged in risky transactions. Hall is the poster child showing how pay promotes risk. Congress will schedule a ten-camera hearing with Hall being the featured witness. You better do something about this."

Within a few weeks, prior to the announcement of my Citigroup compensation determinations, the company sold PHIBRO to Occidental Petroleum for a bargain-basement price. Because Occidental had not received any TARP assistance and was not subject to my jurisdiction, it could negotiate a compensation package with Hall without government interference. A showdown was averted. To this day I have no idea what Occidental paid Hall in the end.

In all other cases involving Citigroup officials, Kaden and I negotiated acceptable compensation packages that were competitive in the industry. The total packages were high—most senior Citigroup officials received in excess of $2 million each—but the guaranteed base salary cash component for each individual was more modest, less than $500,000. The remaining pay took the form of long-term stock, which could not be redeemed for at least three years. And the CEO of Citigroup, Vikram Pandit, accepted no salary or bonus compensation. By back-channeling with Kaden and negotiating pay individual by individual, we reached agreement with the company.

Bank of America was different. Negotiations began in a spirit of cooperation. I convinced retiring CEO Kenneth D. Lewis that it was in his interest, as well as that of the bank, for him to return his entire 2009 compensation. I pointed out that in his thirty-year career at the bank, Lewis had amassed a retirement pension and severance package in excess of $50 million. "Be sensible," I told his lawyer. "What is one year's salary to Lewis? He is walking away with $50 million, guaranteed and airtight. Do you want him dragged before Congress to justify his salary as he departs?" Lewis agreed, and another battle was averted.

My discussions with Bank of America Vice President Steele Alphin were cordial enough. But we could not reach agreement on about a half dozen other senior bank officials. The reason could be traced to the bank's earlier purchase of Merrill Lynch and its top traders, each earning $10 million to $30 million a year. I reminded Alphin that Bank of America was, after all, a bank and that no top-twenty-five official would earn anything like double-digit millions on my watch. Alphin was incredulous. The Merrill Lynch traders had arrived at the bank with a track record of making upward of $10 million. He warned that if I didn't continue the pay scale, they would quickly leave for a competitor. Some modest reduction might be acceptable, but a sharp reduction in pay would send them to the exits. The bank could not afford to lose them.

I was unmoved. First I reminded Alphin that he was ignoring political realities. If I authorized the compensation he was requesting, we would both end up being attacked by Republicans and Democrats alike at a congressional hearing. The traders themselves would be called on the carpet to explain their pay. It would be a public relations disaster for both them and the bank. Second, what about the compensation culture at the bank itself, and the effect of such pay on loyal, longtime bank officials who were not previously employed by Merrill Lynch? I warned Alphin that his pay recommendations could drive a wedge between the two camps trying to coexist. He was being shortsighted in promoting such disparate pay; the bank itself would suffer in the long term from such compensation policies.

I advised him to heed my words. The special master was only trying to save the capitalists from themselves! A political tin ear would inevitably result in more Draconian government intervention.

But we could not agree. So I imposed compensation packages for the top twenty-five officials at the bank, including the former Merrill Lynch traders. Some would still receive up to $9 million but, again, only a small amount was guaranteed as cash salary, with the remainder in long-term bank stock.

Alphin retired within a matter of weeks.

The most emotional battle involved financial services giant AIG. It was not cordial or pretty. It was a heavyweight bout with the gloves off. In one corner stood Robert Benmosche, the new CEO of AIG, smart and combative, who decided to become an active front-line participant in the Treasury discussions.

The very embodiment of "too big to fail," AIG had been in the crosshairs of Congress from the beginning. It was the most visible symbol of all that was wrong with Wall Street. When AIG's former CEO, Ed Liddy, had testified earlier before the House Banking Committee that certain AIG employees in the financial products division would receive $165 million in guaranteed retention bonuses—even after receiving TARP subsidies from the taxpayers—Congress howled. It was the financial products division that had brought down AIG. How could these very employees be awarded $165 million in bonus compensation? Liddy had tried to explain that AIG was obligated to make these bonus payments under contracts that had been signed before the financial debacle. And he had legal opinions from lawyers at both AIG and the Federal Reserve confirming this obligation. But congressional leaders remained furious.

Now those old guaranteed contracts were up for negotiation between Liddy's successor and me.

Benmosche made it very personal, promoting morale within the beleaguered company by offering to brave public criticism while supporting AIG executives. He enlisted the support of some very credible seconds in the government—Treasury officials in the Office of Financial Stability and high-ranking deputies at the Federal Reserve in New York City. Benmosche laid down the gauntlet: meet AIG's compensation demands or risk company bankruptcy and the loss of the taxpayers' money.

Many government officials were ready to blink. But not Neal Wolin. "Ken, work it out with Benmosche," he said. "Don't cave, but don't push him over the edge. You know the breaking point. We need to protect the taxpayers' investment."

I met with Benmosche on about a half dozen occasions in the Treasury building. I liked him. Despite all of his bluster, I sized him up as a deal maker, a poker player who would never disclose when he was bluffing. He knew how to close a deal. And he had a personal, vested interest in working out pay issues involving his senior AIG employees. Failure was not an option while he was in charge.

But it would not be easy.

Over months of discussions with Benmosche and others at AIG, I confronted foursquare those guaranteed retention contracts, some going as far back as 2005. Benmosche (and others at Treasury) demanded that they be honored. They did the simple math—after calculating appropriate pay for each AIG official, add to the bottom line any retention bonuses due.

I balked. Some of these individual bonuses exceeded $1 million. Three key senior executives in the financial products division, whose compensation ranged from $1.5 million to $2.4 million, were demanding overdue huge retention bonus payments. Awarding these officials their bonuses in a post-TARP world would ignite a political firestorm in Congress, and it could not be justified on the merits. Changed circumstances—the global financial crisis and threatened AIG demise—surely altered the original expectations of the contracting parties. The retention contracts were unenforceable in post-2008 America. The world had changed—along with the fortunes of AIG.

At the same time, though I did not let on to Benmosche, I agreed with everybody at Treasury that it would be a huge public policy mistake to mount a court challenge to the validity of these retention contracts. Sanctity of contract, enshrined in our Constitution, could not be lightly disregarded, especially by the Department of the Treasury and the Federal Reserve, steadfast pillars of our financial system. Asking creative lawyers to find loopholes in existing contracts entered into by private parties in good faith was not a viable option.

But the world *had* changed since the signing of these bonus contracts. Surely, I argued, changed circumstances compelled voluntary reformation of the contracts.

Now it was Benmosche's turn to push back. First he joined the common chorus, warning that if the old contracts were not honored, key AIG employees in the financial products division, who had nothing to do with the earlier financial crisis, would leave, threatening AIG's financial future and the taxpayers' investment. "Ken," Benmosche pleaded, "I am trying to rebuild this company. You are not making it easy. The dollars in dispute are nothing compared to what is at stake."

I offered a solution. In line with one of my five compensation principles, I urged Benmosche to take the retention bonus money and convert it into long-term AIG stock. Instead of giving AIG employees immediate cash, they would invest it in the company's future. If AIG succeeded, their stock would increase in value and they would be handsomely rewarded; if it tanked, they would lose their investment. Consistent with our regulations, their financial future would be tied to the company they served. This solution had already been accepted by some individuals owed retention bonuses at both Bank of America and Citigroup. Why not do the same at AIG?

To my surprise this proposal was also rejected, not only by Benmosche but also by Treasury and the Federal Reserve. They all contended that AIG's financial future was so perilous and uncertain that trading cash for stock could not be justified. Bank of America and Citigroup were in a different financial posture—though they had needed the government's help, their future was optimistic. AIG was flat on its back, its stock virtually worthless. When I reminded my critics at AIG, Treasury, and the Federal Reserve that the stock was currently selling at more than $30 a share, they responded that it was all speculative. In reality, it was not worth even $3 a share!

I was shocked to hear this. The implication was that it was okay for the public to invest in AIG's future, even as AIG's own senior employees were unwilling to make a similar commitment to their own company.

I offered an alternative. Treasury regulations permitted the special master to factor past due bonus money into calculations determining present pay. Money was fungible. If a senior AIG official was entitled to a pre-TARP retention bonus, we could consider this in calculating the official's bottom-line net pay, past *and* present.

Benmosche agreed, and we began the arduous task of negotiating individual pay packages for each AIG official, with retention bonus money thrown into the mix: How much cash? How much stock? How much of a discount in bottom-line dollars to account for past bonus compensation now overdue? What level of compensation would keep AIG personnel at their desks? How much would they be willing to discount their cash to avoid public and political criticism? Somehow I had to satisfy all my constituents—Benmosche, senior AIG executives, officials at both Treasury and the Federal Reserve, and my colleagues in the special master's office. It took months to hammer out the individual compensation packages.

But I demanded one more concession from Benmosche. After Liddy had testified in Congress, certain AIG officials who had already received retention bonus payments had publicly promised to return this money, totaling $45 million, to the taxpayers. They had not done so, and the public was watching. I conditioned our new deal on Benmosche's making it happen. He agreed. And as promised, individual AIG officials paid in full the $45 million before the prospective pay packages were announced.

There was one more issue I had to wrestle with: lateral hires. This was exemplified at the highest level by Bank of America's search for a new CEO in the wake of Kenneth Lewis's retirement.

Under the rules of the game, the special master would have to approve any proposed compensation package. And any credible, experienced lateral hire (that is, someone already serving as a CEO at a comparable company) would come to the bank with an exist-

ing compensation package that would never pass muster—millions in guaranteed cash, a vested pension plan in the double-digit millions, a severance package of additional millions, and a demand for such financial perks as a private jet for personal use and the payment of country club dues. On two occasions the bank sought my guidance and ultimate approval to hire a new CEO from a competing bank. Each time I rejected the proposed pay arrangements, reminding the bank that it was ignoring political realities.

"Why not promote somebody already employed at the bank?" I finally suggested. It was the only logical way to avoid the lateral-hire dilemma. Bank of America finally agreed. It had no choice. It would elevate one of its own as Lewis's successor.

On October 22, 2009, the Office of the Special Master publicly announced the compensation determinations for the top twenty-five corporate officials in each of the seven companies. Applying my five principles had a major financial effect on senior company executives. Individual cash compensation was reduced by approximately 90 percent from 2008 levels, and overall compensation dropped by 50 percent from 2008. Only three corporate executives received base cash salaries greater than $1 million: Benmosche and two senior officials at Chrysler Financial (which was planning to go out of business and could not award any long-term incentives other than cash).

Unlike past pay practices, which allowed executives to sell their stock immediately, the special master's rulings required that stock be held for the long term and that corporate executive compensation be inextricably linked to company performance. My rulings also prohibited any special retirement or severance compensation beyond that available to the company's everyday workers.

In the press conference announcing my determinations, I took the offensive, highlighting the cuts we had made, the reductions in guaranteed cash, the need for the companies to thrive if corporate officials were to be paid additional compensation, and an end to exorbitant perks. I reminded all who would listen that my jurisdiction was, after all, limited to just 175 corporate officials—hardly an assault on the entire free enterprise system. During the next week I appeared frequently on television and radio, extolling the virtues of my rulings and expressing the hope that they could act as a model that other companies could adopt voluntarily. And I braced for the wave of criticism from both sides that I had always expected.

The seven companies themselves were not pleased. They complained privately to anybody and everybody in the Treasury building that my compensation determinations threatened to relegate the companies to secondary status, unable to attract necessary talent.

Publicly, however, six of the seven companies expressed satisfaction with the results. They issued public statements taking the high road, declaring that the compensation determinations would not inhibit their ability to compete and that they would abide by the decisions and work to restore the companies to financial health.

But not Bank of America. Stating that my compensation determinations were too onerous, unfair, and counterproductive, bank officials offered dire warnings about future competitiveness and the bank's ability to flourish. The special master had blithely ignored the practical realities confronting the bank and its competitors. The bank would not put on a smiling face merely to please the public.

Meanwhile, public reaction to my compensation determinations was surprisingly positive. I'd expected attacks criticizing my unwillingness to demand even greater cuts in corporate pay. None came. Officials at the Treasury Department—and, I assume, at the White House—exhaled. Wolin's plan had succeeded with muted public fuss and bother.

In the end—perhaps ironically—the interests of Treasury, the Office of the Special Master, and the seven companies were all aligned. Eager to escape future scrutiny by the special master, three of the companies did what was necessary to free themselves from my oversight. Bank of America actually *borrowed* the funds needed to pay back the taxpayer in full, thereby escaping my jurisdiction. (Shares in Bank of America rose 3 percent following the repayment announcement.) Citigroup followed in a matter of months; so did Chrysler Financial.

It took this roundabout final act to ensure that the new law's ultimate objective be fulfilled at last: the taxpayers had been made whole. And three of the seven companies could once again go their own way when it came to pay, rejoining the traditional free enterprise system we've always cherished.

Nor, despite the dark warnings, was there any mass exodus of executive talent from these companies. To the contrary, 85 percent of the individuals whose pay was determined by the special master remained at their desks during the following year. This made a great deal of practical sense. It is not so easy for a senior member of corporate management, long identified with a company brand and familiar with a well-defined corporate culture, simply to move across the street (or across the ocean) and join a competitor. How marketable is such an individual? How risk averse is he or she after so many years at a company? There is a certain comfort level in remaining in place, well paid, respected, and generally satisfied with the business environment. Your colleagues are not only business associates but friends of long standing; you eat, work, and socialize together; the commute from home to work is familiar and comfortable. Familiarity breeds confidence. And as for the 15 percent who left the company following my pay decisions, it is not at all clear that their departure was tied to compensation. Corporate officials leave for myriad reasons, including retirement. Pay was only one possible factor.

I confronted one final challenge: the law and regulations had conferred on the special master wide-ranging discretion to "clawback," or seek to recover compensation previously provided to corporate officials at *any* company that had received TARP financial assistance. There were over 450 such companies. In conferring this power to the special master, Congress was expressing its belief that the corporate titans responsible for the financial crisis should not be able to escape intact. The special master therefore had the authority—if he decided to exercise it—to attempt to recoup whatever he determined to be appropriate. He could seek to recover billions—or nothing at all.

For months I wavered on the issue. It made some political sense to mount an offensive against those perceived to be responsible for America's financial peril. It would be political theater of a high order. Besides, some companies had infamously used TARP money to pay bonuses to high-level executives. The public would cheer any effort to recover these funds.

But I hesitated. I knew that seeking to recover such compensation would be almost impossible. Lawsuits would be necessary.

Few, if any, officials would voluntarily return their own money to the Treasury. And the lawsuits might very well prove costly and unsuccessful. These individuals had violated no law or regulation; creative lawyering might be effective, but at what price and over what period of time? Finally, I was troubled by the idea that I would become an armchair quarterback second-guessing previous pay decisions.

Neal Wolin shared my concern: "Be careful. Treasury should not be in the business of trying to recover pay from individuals who were entitled to the money at the time. Besides, we want these companies back on their feet, not fighting us in the courtroom."

I decided not to exercise *any* of my "clawback" authority. Instead the special master promulgated a new regulation, purely prospective, urging all companies that received any TARP assistance to adopt a new "brake provision." If a company found itself in financial peril (as designated by government regulators), it would no longer be required to honor previous individual compensation contracts. Instead, "brakes" would be placed on otherwise legally binding compensation obligations; contracts could be voided based upon unanticipated financial consequences.

The rule was purely voluntary. No company was compelled to adopt it. Once again I was seeking a form of compensation compromise that would offer the Congress some political and substantive satisfaction that it was no longer "business as usual" on Wall Street. Without a proposed "brake provision," or some similar measure offered as a substitute for exercising my "clawback" authority, I anticipated adverse political fallout—and perhaps something worse in the form of new legislation targeting Wall Street.

I knew that no company would agree to the "brake provision"—at least voluntarily. The idea not only would promote contractual uncertainty, but it also would place companies at a distinct competitive disadvantage. Corporations would have difficulty attracting the talent they needed if potential candidates knew their "ironclad" compensation contracts were not binding but could be declared null and void—and by the government, no less.

To this day, I know of no company that has ratified the special master's brake provision. But I still believe it would be a good idea for American business in the long run. Just don't expect Congress, any federal regulatory agency, or corporate America to agree with me.

It's too early to tell whether, and to what extent, the special master's pay decisions will have any lasting value. But I am dubious.

For one thing, interest has waned. By the middle of 2011, the new focus of populist discontent was on the Occupy Movement, a series of public demonstrations in cities around the world demanding broad changes in how corporations are structured, do business, influence public policy, and get paid. Despite the Occupy Movement's interest in income inequality, the attention of Congress, the public, and the media has decisively moved on from the special master's office at Treasury—now ably filled by my replacement, Patricia Geoghegan, who continues to determine pay packages for the four companies still subject to her jurisdiction: AIG, Chrysler, GM, and GM's new financing arm, Ally.

This should surprise no one. Historically, laissez-faire capitalism and private free market forces have determined pay. Neither

Congress nor the executive branch disagrees. Both branches of government made it clear to me that I was engaged in political showmanship, implementing a policy more symbolic than real, the focus restricted to just seven companies and 175 individuals. The real work of financial and economic reform would be done elsewhere: Dodd/Frank legislation, the federal regulatory agencies, and the G-20. Corporate governance reform providing shareholders with new authority over pay is now required by statute (Dodd/Frank). Meanwhile, the SEC is promoting the idea of transparency, that internal corporate decision-making involving compensation be subject to sunlight and open debate. And the Federal Reserve and FDIC have promulgated new compensation principles that track much of what we required at Treasury. Finally, Secretary Geithner himself has taken the lead in urging G-20 foreign leaders to impose similar regulatory pay rules so that American companies are not placed at a competitive disadvantage.

One conclusion is clear: nobody should expect corporate America to voluntarily accept my compensation determinations as a guide to their future pay policies. Why should they? In past times of public anger over financial industry excesses, Wall Street has played a waiting game, lying low until the political storm subsides. History is on Wall Street's side, at least when it comes to government fine-tuning of corporate internal decision-making. Add to this the government deregulation philosophy that followed in the wake of the Reagan administration, and it is easy to see why American businesses are emboldened when it comes to pay. To most on Wall Street, the seven companies had only themselves to blame for Treasury's interference. They assumed that such interference would never, ever apply to them. And they're almost certainly right.

Like many of my other public-interest assignments, the congressional decision to regulate corporate pay was an aberration. The government is not in the habit of fixing private pay, nor should it be. The circumstances of the TARP bailout, the financial system collapse, and the public anger aimed at Wall Street triggered a unique political response.

Did the limits we imposed on compensation for 175 corporate executives work as intended? That depends upon the objectives against which we measure the program.

Did it save the taxpayers money, as good-government advocates would demand? No. The compensation limits didn't reduce the TARP moneys already provided to the seven companies. But if smaller compensation packages to corporate executives helped improve the companies' profit margins, then the limitations and restrictions played at least a modest role in bolstering the financial system, as intended by the lawmakers who passed TARP in the first place.

Did the program have any lasting impact on Wall Street's compensation incentive structure, reducing the likelihood that executives would incur excessive risks in pursuit of huge personal gain? Probably not. Financial services firms, in particular, have not dramatically reformed their bonus systems. Market forces and diminished profits have had some impact leading to reduced Wall Street pay, but I doubt these reductions are attributable to the special master's work.

As I mentioned, the proposed "brake provision" to be inserted into employee contracts has not been adopted by any financial services firm. It seems that an even more catastrophic collapse may

be necessary before corporate executives decide to voluntarily limit their risk-taking in pursuit of profits.

But did the program defuse the political issue of populist anger directed at excessive earnings by "fat cat" bankers? Apparently it did—at least to the extent that neither the program itself nor the compensation packages directed at the 175 top bailed-out executives ever attracted the controversy and hostility I initially expected.

As symbolic gestures go, the statute was effective—and this, of course, is exactly what Congress intended.

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February 26, 2013

The Honorable Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation, and Regulatory Affairs
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Matthew Cartwright
Ranking Minority Member
Subcommittee on Economic Growth,
Job Creation, and Regulatory Affairs
U.S. House of Representatives
2471 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Jordan and Congressman Cartwright:

I received a request late yesterday from the staff of your above-captioned Subcommittee to respond to two specific questions to be posed during today's scheduled Subcommittee Hearing. As the Former Special Master for TARP Executive Compensation, I am pleased to offer the following answers to the two questions:

1. The pay prescriptions promulgated during my tenure at the Department of the Treasury should be applied in a flexible manner and should not "be used to strictly limit each individual executive's compensation…" This is because the initial Regulations promulgated while I was Special Master – and any subsequent modifications of such Regulations – must, of course, take into account the clear statutory directive guiding the Special Master's work in calculating compensation. When one examines this statute enacted by Congress, it becomes readily apparent that there are conflicting statutory directives e.g. make sure that Treasury compensation decisions ensure the ongoing competitiveness of those Companies subject to Treasury oversight; make sure that such pay decisions promote overall Company economic growth and avoid excessive risk, etc. These conflicting directives guarantee that the Special Master must exercise a fair amount of discretion in deciding how much compensation should be calculated in individual cases. This discretion is implicit in the statute creating the Program.

2. It is obvious to all that "the market and economy have changed since the Office of the Special Master was established." I respectfully remind this Subcommittee that, during the financial crisis of 2009, the instability of the market and the economic recession posed particular problems for the Special Master when it came to calculating compensation in individual cases. Today the market – and Wall Street related competitive compensation – are much different than they were when I was the Special Master. Wall Street related executive compensation has increased since 2009; accordingly, compensation decisions made by the Special Master must take into account this fact in making individual compensation decisions that will assure ongoing competitiveness in the marketplace. The initial pay prescriptions promulgated during my tenure may still be valid and credible; but waivers and exceptions are to be more frequent and expected in light of changing market conditions.

Mr. Chairman and Congressman Cartwright, I apologize for the haste in responding to the two questions posed just sixteen hours ago. If the record of this Subcommittee Hearing is kept open for a few days, and if you request that I supplement this letter with additional information, I would be pleased to do so.

Sincerely,

Kenneth R. Feinberg

KRF:shs

Statement for the Record
Congressman Michael R. Turner (OH-10)
House Committee on Oversight & Government Reform
Subcommittee on Economic Growth, Job Creation & Regulatory Affairs Hearing
"Bailout Rewards: The Treasury Department's Continued Approval of Excessive Pay for Executives at Taxpayer-Funded Companies"
Tuesday, February 26, 2013

Mr. Chairman, today the Committee on Oversight and Government Reform, through the Subcommittee on Economic Growth, Job Creation & Regulatory Affairs, is gathered to continue our work in identifying waste, fraud, and abuse in the administration of the Troubled Asset Relief Program (TARP). This hearing will shed light on President Obama's Administration approving lucrative salaries, paid for with taxpayer funds, to executives of companies still owned, at least in part, by the federal government and the American people.

The topic of today's hearing, the Administration's egregious violations of their own rules for approving excessive corporate salaries, highlights what I believe is the President's marked failure to prioritize the needs of hardworking Americans impacted by the auto bailout. The President's bailout of General Motors (GM) and its effect on Delphi Salaried Retirees illustrate the Administration's unwarranted deviation from both the rule of law and tenets of basic fairness.

In the course of the President's bailout of GM, more than 20,000 salaried retirees of the Delphi Corporation had their pensions wrongfully terminated and drastically reduced, whereas hourly retirees were made whole with generous "top-up" agreements. The Administration's decision to deny these salaried retirees their hard-earned retirement has left some retirees with their pensions reduced by up to seventy percent and faced with the Administration's continued refusal to provide information in a thorough and transparent manner.

Therefore, we have on the one hand, the Treasury Department approving salaries in excess of $500,000 for forty-eight of the sixty-nine executives whose compensation was subject to the Administration's approval in 2012. And on the other hand, we have tens of thousands of retirees being denied both the pensions they earned, and access to the information and documents the Administration used in making this decision.

The gross inequity imposed on Delphi Salaried Retirees is, by itself, unacceptable. The same is true of the information recently uncovered by the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) on executive compensation. However, when we view these items together, I believe it demonstrates the Administration's blatant disregard for taxpayers and wrongly prioritizing excessive bonuses over transparency and fairness.

Mr. Chairman, it is my hope that we will continue our work together to investigate the unjust treatment of these retirees and uncover the truth behind the Administration's actions.