

Congress of the United States
Washington, DC 20515

August 31, 2009

The Honorable Neil Barofsky
Special Inspector General for the Troubled Asset Relief Program
1801 L Street NW
Washington, D.C. 20220

Dear Mr. Barofsky:

We appreciate your ongoing efforts to hold the Department of Treasury (“Treasury”) accountable for the operation of the Troubled Asset Relief Program and to shed light on the federal government’s bailout activities. Recent news reports and congressional hearings have raised troubling questions about a lack of transparency and accountability in the delegation of authority to an independent trust that manages the taxpayers’ interest in AIG.¹ These reports raise additional questions about the Administration’s plan for a similar trust arrangement for management of the government’s interest in Citigroup.² A hearing was held on May 13, 2009, to question the AIG trustees as well as AIG Chief Executive Officer Edward Liddy.³ As part of our Committees’ ongoing oversight of the taxpayer bailout of AIG and other firms, we are writing to request that your office conduct an audit of the formation, content and operation of these trust arrangements and the degree to which the public can be confident in their ability to hold the trustees accountable.

The AIG Credit Facility Trust Agreement (“AIG Trust”) was established to manage the government’s ownership stake in AIG.⁴ This trust charges three trustees (“AIG Trustees”) with responsibility for managing and disposing of the federal government’s shares in AIG.⁵

The AIG Trust created an entity which is responsible for the management of the taxpayers’ 80% share of the company and yet is apparently accountable to no one. The AIG Trust protects the AIG Trustees from liability, so long as they act lawfully and in “the best interests of the Treasury.”⁶ It further indemnifies the AIG Trustees “for any loss, cost or expense of any kind or character whatsoever,” so long as the AIG Trustees

¹ See e.g. “3 Trustees of A.I.G. Are Quiet, Perhaps to a Fault.” *The New York Times*, April 20, 2009.

² *Id.*

³ See House Committee on Oversight and Government Reform, “AIG: Where is the Taxpayer’s [sic] Money Going?” May 13, 2009.

⁴ See “AIG Credit Facility Trust Agreement,” Federal Reserve Bank of New York, January 16, 2009. Available at <http://www.newyorkfed.org/newsevents/AIGCFTAgreement.pdf>.

⁵ *Id.*

⁶ *Id.*

had no reasonable cause to believe their actions were unlawful.⁷ Finally, the AIG Trust removes standard fiduciary duties from the AIG Trustees to the other shareholders. For example, the AIG Trust does away with the standard practice of prohibiting company directors from taking advantage of business opportunities that may be of use to the company they serve for private benefit. The AIG Trust states:

No Trustee shall be obligated to present any business activity, investment opportunity (or so called corporate opportunity) or prospective economic advantage to the FRBNY, the Treasury or [AIG], even if the opportunity is of the character that, if presented to the FRBNY, the Treasury or [AIG], could be taken by it...⁸

The combination of the AIG Trust's broad indemnification of the actions of the AIG Trustees, the AIG Trustees' lack of standard fiduciary duties, and the AIG Trustees' ambiguous duty to act in "the best interests of the Treasury," reduces my confidence that the AIG Trustees will act in the best interests of the taxpayers.

It is not clear how the American people can hold the AIG Trustees accountable for their actions. While the trustees have the discretion to exercise full control over AIG, since the American taxpayers own nearly 80 percent of its shares, the trustees cannot be fired if their decisions conflict with the preferences of government officials.⁹ This raises a troubling and urgent question: who can the American taxpayers hold accountable if the trustees make a decision that is not in their best interest?

The lack of transparency and accountability in the operation of the AIG Trust is particularly relevant if Treasury moves forward with a similar trust agreement for its interest in Citigroup. On February 27, 2009, Treasury indicated that it plans to put its Citigroup shares into a trust and turn over its voting power to a similar set of little known and unaccountable trustees.¹⁰

Yet six months later no such trust agreement has been announced. If the AIG Trust is going to be the model for the delegation of the management of the public's shares in Citigroup and other bailed out companies, the American people have a right to know how these trusts are going to be designed, how they will operate, and how the trustees can be held accountable.

⁷ *Id.*

⁸ *Id.*

⁹ See note 1, *supra*.

¹⁰ See "Treasury Announces Participation in Citigroup's Exchange Offering." Press Release. Department of the Treasury, February 27, 2009, available at http://www.treasury.gov/press/releases/reports/transaction_outline.pdf.

President Obama has repeatedly promised an unprecedented level of transparency and accountability for his Administration's bailout efforts. Once again, the American people are not getting what they have been promised. The operation of the AIG Trust and

the likely design of a Citigroup Trust suffer from the same fatal flaws that have hampered other Treasury efforts and have delayed economic recovery: a lack of transparency and accountability.

In light of these concerns, we would suggest that a SIGTARP audit include, but not be limited to, the following issues:

1. The establishment of the AIG Trust: Why was the AIG Trust established? What federal officials took part in the decision-making process? How were the AIG Trustees selected? Was the process of the establishment of the AIG Trust sufficiently transparent?
2. The structure and content of the AIG Trust: Are the terms of the AIG Trust consistent with standard business practices? Are the protections and indemnifications for the AIG Trustees excessive? Do all parties agree on the fiduciary duties of the AIG Trustees? Who can the American taxpayers hold accountable if the trustees make a decision that is not in their best interest? Does the Administration have sufficient processes in place to prevent potential violations of securities laws, including but not limited to insider trading, by the AIG Trustees or federal officials? Does the AIG Trust provide a framework for the management of the taxpayers' interest in AIG which increases the probability of the taxpayers being repaid in full?
3. The operation of the AIG Trust: What is the role of the AIG Trustees in the management of AIG? Are the AIG Trustees involved in the day-to-day decision-making process at AIG? What is the working relationship between the AIG Trustees and the officials of the New York Federal Reserve Bank who take part in oversight of management operations at AIG?
4. The use of the AIG Trust as a model for other trust agreements: Should the AIG Trust be used as a model for the management of the taxpayers' interest in other firms, including Citigroup? Is the federal government designing a trust agreement to manage the government's shares in Citigroup, as Treasury indicated on February 27, 2009? If so, who is drafting the Citigroup Trust? Will it be open to public comment? Who is the government considering as candidates for trustee positions? How much will they be paid?

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Thank you again for your ongoing public service. If you have any questions regarding this request, please contact Christopher Hixon or Brien Beattie of the Oversight and Government Reform Committee staff at (202) 225-5074.

Sincerely,



Darrell E. Issa
Ranking Member
Committee on Oversight & Government Reform



Spencer Bachus
Ranking Member
Committee on Financial Services

cc: The Honorable Edolphus Towns, Chairman
The Honorable Barney Frank, Chairman