

Congress of the United States
Washington, DC 20515

August 31, 2009

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Geithner:

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 inform you that we are asking the Special Inspector General for the Troubled Asset Relief Program to 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.

As President of the Federal Reserve Bank of New York ("FRBNY"), you were intimately involved in the decision not to pursue a bankruptcy filing for AIG, instead choosing to use taxpayer money to bail out AIG and its counterparties and to establish the AIG Credit Facility Trust Agreement ("AIG Trust"). The 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

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.*

“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 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.

⁶ *Id.*

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, please provide the following information to our Committees by close of business on Tuesday, September 14, 2009:

1. A full and complete explanation of your decision not to allow AIG to enter into bankruptcy.
2. All records and communications referring or relating to the establishment of a trust agreement for the U.S. Government's purchase of shares in AIG, Citigroup and any other financial institution in which the U.S. Government has purchased shares.
3. A full and complete definition of "the best interests of the Treasury," as defined in the AIG Trust agreement.
4. A full and complete explanation of the fiduciary responsibilities of the AIG Trustees under the AIG Trust.
5. All records and communications referring or relating to the Administration's plans to prevent violations of securities laws, including but not limited to insider trading, by the AIG Trustees.
6. All records and communications referring or relating to the selection of the AIG Trustees, including but not limited to any background information about each trustee that the FRBNY or Treasury considered in evaluating the trustee's candidacy.
7. A full and complete explanation of the process in which Treasury is designing a trust agreement to manage the government's shares in Citigroup, including but not limited to answers to the following questions: Who is drafting the Citigroup Trust? Will it be open to public comment? Who is Treasury considering as candidates for trustee positions? How much will they be paid?

The Honorable Timothy Geithner
August 31, 2009
Page 4

Please note that, for purposes of responding to this request, the terms “records,” “communications,” and “referring or relating” should be interpreted consistently with the attached Definitions of Terms.

Thank you for your cooperation in this matter. 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 and Government Reform



Spencer Bachus
Ranking Member
Committee on Financial Services

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

Attachment

Definition of Terms

1. The term "record" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
3. The terms "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.