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

ADVANCING ECONOMIC STABILITY THROUGH TRANSPARENCY, COORDINATED OVERSIGHT AND ROBUST ENFORCEMENT

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HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

STATEMENT OF NEIL BAROFSKY

SPECIAL INSPECTOR GENERAL
TROUBLED ASSET RELIEF PROGRAM

BEFORE THE
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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Chairman Issa, Ranking Member Cummings and Members of the Committee, I am honored to appear before you today to discuss the Office of the Special Inspector General for the Troubled Asset Relief Program's ("SIGTARP") Quarterly Report to Congress. This past quarter SIGTARP marked its second anniversary. In the time since its inception in December 2008, SIGTARP has had notable success in fulfilling its goals of transparency, oversight and enforcement. Through nine quarterly reports and 13 completed audits, SIGTARP has brought light to some of the darkest areas of the financial crisis and the Government's response to it, and has provided 68 recommendations to Treasury. Treasury's adoption of many of these recommendations has helped protect aspects of the Troubled Asset Relief Program ("TARP") against vulnerability to fraud, with potential losses to fraud unlikely to come even close to standard expectations for a Government program. Where fraud has managed to slip in, SIGTARP's Investigations Division has already produced outstanding results in bringing to justice those who have sought to profit criminally from TARP, with 45 individuals charged civilly or criminally with fraud, of whom 13 have been criminally convicted. SIGTARP's investigative efforts have helped prevent $555.2 million in taxpayer funds from being lost to fraud. And with 142 ongoing investigations (including 64 into executives at financial institutions that applied for and/or received TARP funding through TARP's Capital Purchase Program ["CPP"]), much more remains to be done.

Last quarter also marked the second anniversary for TARP. Now in its third year of operation, TARP remains a study in contrasts. On the financial side, TARP's outlook has never been better. Not only did TARP funds help head off a catastrophic financial collapse, but estimates of TARP's ultimate direct financial cost to the taxpayer have fallen substantially, from the Office of Management and Budget's ("OMB") August 2009 estimate of $341 billion to a November 2010 Congressional Budget Office ("CBO") estimate of just $25 billion. Indeed, with the recent closing of American International Group, Inc.'s ("AIG") recapitalization plan, there is a chance that TARP may break even or possibly turn a profit on one of its most controversial transactions, while General Motors Company's recent initial public offering demonstrates Treasury's ability to exit some of its most difficult investments. While Treasury's ultimate return on its investment depends on a host of variables that are largely unknowable at this time, TARP's financial prospects are today far better than anyone could have dared to hope just two years ago. At the same time, a tunnel-vision focus on the good financial news should not distract from the hard work still ahead, with more than $160 billion in TARP funding still outstanding and an additional $59.7 billion available to be spent, or from the careful and necessary assessment of TARP's significant, non-financial costs. Those costs include the damage to Government credibility that has plagued the program, as detailed in SIGTARP's October 2010 Quarterly Report, the failure of programs designed to help Main Street rather than Wall Street, and perhaps TARP's most significant legacy, the moral hazard and potentially disastrous consequences associated with the continued existence of financial institutions that are "too big to fail."

TARP and Too Big to Fail

Earlier this month, SIGTARP published the audit report “Extraordinary Financial Assistance Provided to Citigroup, Inc.,” which examines a series of transactions over several months that resulted in the Government’s remarkable bailout of one of the world’s largest financial institutions. The report details how the Government assured the world in 2008 that it would use TARP to prevent the failure of any major financial institution and then demonstrated its resolve by standing behind Citigroup Inc., along with others such as AIG and Bank of America Corp. (“Bank of America”). Indeed, public statements by then-Secretary of the Treasury Henry Paulson in late 2008 and Treasury Secretary Timothy Geithner in early 2009 made clear that they were ready, willing, and able to use TARP funds to ensure that not one of the nation’s largest banks would be permitted to fail. While these statements and actions succeeded in reassuring troubled markets, they also did much more: by effectively guaranteeing these institutions against failure, they encouraged future high-risk behavior by insulating the risk-takers who had profited so greatly in the run-up to the crisis from the consequences of failure, and gave an unwarranted competitive advantage, in the form of enhanced credit ratings and access to cheaper credit and capital, to institutions perceived by the market as having an implicit Government guarantee. In many ways, TARP has thus helped mix the same toxic cocktail of implicit guarantees and distorted incentives that led to disastrous consequences for the Government-sponsored enterprises (GSEs) — the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”).

Institutions such as Citigroup operate in an environment where size matters because the then-explicit and now implicit Government guarantee that they will not be allowed to fail results in a gross distortion of a normally functioning market, where an institution’s creditors, shareholders, and executives bear the brunt of poor decisions, not the taxpayers. First, for executives at such institutions, the Government safety net provides the motivation to take greater risks than they otherwise would in search of ever-greater profits. This “heads I win, tails the Government bails me out” mentality promotes behavior that, while it may benefit shareholders and executives in the short term if the risks pay off, increases the likelihood of failure and, therefore, the possibility of another taxpayer-funded bailout. Second, an institution’s “too big to fail” status has a dramatic impact on its creditors and other counterparties, which then gives it an advantage over its smaller competitors. Ratings agencies continue to give such institutions higher credit ratings based on the existence of an implicit Government backstop. Creditors, in turn, give those institutions access to debt at a price that does not fully account for the risks created by their behavior. Cheaper credit is effectively a subsidy, which translates into greater profits, which allows the largest institutions to become even larger relative to the economy and materially disadvantages smaller banks. The prospect of a Government bailout also reduces market discipline, giving creditors, investors, and counterparties less incentive to monitor vigilantly those institutions that they perceive won’t be allowed to fail. In short, the continued existence of institutions that are "too big to fail" — an undeniable byproduct of former Secretary Paulson and Secretary Geithner's use of TARP to assure the markets that during a time of crisis that they would not let such institutions fail — is a recipe for disaster. These institutions and their leaders are incentivized to engage in precisely the sort of behavior that could trigger the next financial crisis, thus perpetuating a doomsday cycle of booms, busts, and bailouts.

The Dodd-Frank Act and Too Big to Fail

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "Act"), signed into law by the President last July, was intended, in part, "to end 'too big to fail'" and "to protect the American taxpayer by ending bailouts." Secretary Geithner, testifying before the Congressional Oversight Panel ("COP") in June 2010, shortly before the Act's passage, said "The reforms will end 'too big to fail.'"[1] The Act's proponents cite several provisions as particularly important components of this effort. These include, among others, creation of the Financial Stability Oversight Council ("FSOC"), charged with, among other things, the responsibility for developing the specific criteria and analytic framework for assessing systemic significance; granting the Federal Reserve new power to supervise institutions that FSOC deems systemically significant; granting the Federal Deposit Insurance Corporation ("FDIC") new resolution authority for financial companies deemed systemically significant; requiring the development of "living wills" designed to assist in the orderly liquidation of such companies; and granting regulatory authority to set more stringent capital, liquidity, and leverage requirements and to limit certain activities that might increase systemic risk.

Whether these provisions, which rely heavily on the discretion and actions of the financial regulators, will ultimately be successful remains to be seen. First, many commentators, from Government officials to finance academics to legislators, have expressed concern that the Act does not solve the problem. For example, Kansas City Federal Reserve Bank President Thomas Hoenig has repeatedly expressed "doubt that our too-big-to-fail problem has been solved,"[2] noting in December 2010 that "after this round of bailouts, the five largest financial institutions are 20 percent larger than they were before the crisis. They control $8.6 trillion in financial assets — the equivalent of nearly 60 percent of gross domestic product. Like it or not, these firms remain too big to fail." Massachusetts Institute of Technology professor Simon Johnson argued in September 2010 that "there is nothing [in the Act] that ensures our biggest banks will be safe enough or small enough or simple enough so that in the future they cannot demand bailout — the bailout potential exists as long as the government reasonably fears global financial panic if such banks are allowed to default on their debts." Senators Sherrod Brown and Ted Kaufman, among others, have noted that "too big to fail" isn't just the United States' problem, but the world's, and have argued that by itself

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[1] Treasury Press Release, "Secretary of the Treasury Timothy F. Geithner Written Testimony before the Congressional Oversight Panel," 6/22/2010, www. treasury.gov/press-center/press-releases/Pages/tg754.aspx, accessed 1/20/2011.

[2] Federal Reserve Bank of Kansas City, "It's Not Over 'Til It's Over: Leadership and Financial Regulation," 10/10/2010, www.kansascityfed.org/speechbio/ hoenigpdf/william-taylor-hoenig-10-10-10.pdf, accessed 1/20/2010.

the Dodd-Frank Act cannot provide the *global* regulatory framework required to resolve incredibly complex mega-banks operating in scores of countries. Senator Kaufman and others have also questioned the wisdom of delegating so much responsibility to the very same regulators who performed so poorly in identifying the most recent crisis before it struck. Others, including Congressman Spencer Bachus and Speaker of the House John Boehner, have expressed concern that the Dodd-Frank Act's provisions, particularly those relating to designation and resolution, will "institutionalize" Government bailouts.[3]

Second, the new authorities in the Dodd-Frank Act are a work in progress — a tremendous amount of research and rule making by FSOC, FDIC, and a host of other regulators remains to be done. Their tasks will not be easy. Secretary Geithner told SIGTARP in December 2010, for example, that identifying institutions as systemically significant, one of the Act's premier mandates, "depends too much on the state of the world at the time," and that he believes "you won't be able to make a judgment about what's systemic and what's not until you know the nature of the shock." If the Secretary is correct, and regulators have difficulty properly identifying non-banks as systemically significant and therefore subject to the Act's restrictions, then the Act's effectiveness will undoubtedly be undermined. Even in the realm of the possible, the path regulators choose to take could make all the difference. FDIC Chairman Sheila Bair, for example, has argued that FSOC should use the Dodd-Frank Act's "living will" provisions as a tool to force companies to simplify their operations and shrink their size if necessary to ensure that orderly liquidation is possible:

> Under Dodd-Frank, the FDIC and the Federal Reserve wield considerable authority to shape the content of these [living will] plans. If the plans are not found to be credible, the FDIC and the Fed can even compel the divestiture of activities that would unduly interfere with the orderly liquidation of these companies. The success or failure of the new regulatory regime will hinge in large part on how credible those resolution plans are as guides to resolving those companies. And let us be clear: we will require these institutions to make substantial changes to their structure and activities if necessary to ensure orderly resolution. *If we fail to follow through, and don't ensure that these institutions can be unwound in an orderly fashion during a crisis, we will have fallen short of our goal of ending Too Big to Fail.* (Emphasis added.)[4]

If either Chairman Bair's position prevails, and the Dodd-Frank Act is used to simplify and shrink large institutions as necessary, or if some other effective regime is adopted along with similar provisions being

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[3] Congressman Bachus Statement on Dodd-Frank Regulatory Bill, 6/30/2010, http://bachus.house.gov/index.php?option=com_content&task=view&id =1034&Itemid=108, accessed 1/20/2010; House Financial Services Committee, "What's REALLY in the Dodd-Frank Financial Reform Bill? Lots of Bailouts," no date, http://financialservices.house.gov/singlepages.aspx?NewsID=1730, accessed 1/20/2010.

[4] FDIC, "Remarks by FDIC Chairman Sheila C. Bair: The Financial Crisis and Regulatory Reform to the AICPA - SIFMA National Conference on the Securities Industry; New York, NY," 11/17/2010, www.fdic.gov/news/news/speeches/chairman/spnov1710.html, accessed 1/20/2011.

implemented internationally, then perhaps in the long run the Act will have a chance to end “too big to fail.” In short, the proof will be in the pudding, and the pudding is still being cooked.

Finally, even if all the required regulations are properly calibrated and fully implemented, the ultimate success of the Dodd-Frank Act depends to a certain degree on market perception. As long as the relevant actors (executives, ratings agencies, creditors and counterparties) believe there will be a bailout, the problems of “too big to fail” will almost certainly persist.

Federal Reserve Chairman Ben Bernanke, in a speech to community bankers in March 2010, summed up the problem this way:

> The costs to all of us of having firms deemed too big to fail were stunningly evident during the days in which the financial system teetered near collapse. But the existence of too-big-to-fail firms also imposes heavy costs on our financial system even in more placid times. Perhaps most important, if a firm is *publicly perceived* as too big, or interconnected, or systemically critical for the authorities to permit its failure, its creditors and counterparties have less incentive to evaluate the quality of the firm’s business model, its management, and its risk-taking behavior. As a result, such firms face limited market discipline, allowing them to obtain funding on better terms than the quality or riskiness of their business would merit and giving them incentives to take on excessive risks. (Emphasis added.)

In other words, unless and until institutions currently viewed as “too big to fail” are either broken up so that they are no longer perceived to be a threat to the financial system, or a structure is put in place that gives adequate assurance to the market that they will be left to suffer the full consequences of their own recklessness, the prospect of more bailouts will continue to fuel more bad behavior with potentially disastrous results. Thus far, the Dodd-Frank Act appears not to have solved the perception problem. The largest institutions continue to enjoy access to cheaper credit based on the existence of the implicit Government guarantee against failure. Indeed, earlier this month one of the world’s most influential credit rating agencies, Standard & Poor’s (“S&P”), announced its intention to make permanent the prospect of Government support as a factor in determining a bank’s credit rating, a radical change from pre-TARP practice. According to S&P, “We believe that banking crises will happen again. We expect this pattern of banking sector boom and bust and government support to repeat itself in some fashion, *regardless of governments’ recent and emerging policy response*.”(Emphasis added.) S&P intends to “recognize government support throughout the cycle and not just during a crisis,” and has described the U.S. Government’s likelihood of support for a systemically important bank as “moderately high.” In short, S&P is telling the market that it does not believe that the Dodd-Frank Act has yet ended the problems of “too big to fail,” and given the discounts that such institutions continue to receive, the market seems to be listening.

Secretary Geithner, in a December 2010 interview with SIGTARP, likewise acknowledged that despite the "better tools" provided by the Dodd-Frank Act, "[i]n the future we may have to do exceptional things again" if we face a crisis as large as the last one. To the extent that those "exceptional things" include taxpayer-supported bailouts,* his acknowledgement serves as an important reminder that TARP's price tag goes far beyond dollars and cents, and that the ultimate cost of TARP will remain unknown until the next financial crisis occurs.

HAMP

As SIGTARP discussed in its October 2010 Quarterly Report, after two years, TARP's Main Street goals of "increas[ing] lending," and "promot[ing] jobs and economic growth" had been largely unmet, but it is TARP's failure to realize its most specific Main Street goal, "preserving homeownership," that has had perhaps the most devastating consequences. Treasury's central foreclosure prevention effort designed to address that goal — the Home Affordable Modification Program ("HAMP") — has been beset by problems from the outset and, despite frequent retooling, continues to fall dramatically short of any meaningful standard of success. Indeed, even the "good news" of falling estimates for TARP's cost is driven in part by the ineffectiveness of HAMP and related programs, which provide for TARP funded grants and incentives. In its most recent TARP cost estimate, CBO cited diminished expectations for participation in TARP's housing programs in lowering its anticipated cost, estimating that all of Treasury's foreclosure programs combined will spend only $12 billion out of an allocation of approximately $46 billion. While Treasury continues to insist that HAMP will expend the full allocation of TARP funding, if CBO is correct then considerable TARP funds that could have been made available through better program design and administration may well never reach the distressed homeowners on Main Street whom Congress intended to benefit from TARP just as much as the rebounding Wall Street financial institutions.

Today, HAMP appears to be under siege, with a chorus of criticisms from all points on the ideological spectrum growing more insistent and calls for termination or a dramatic restructuring gaining traction. The numbers are remarkably discouraging. According to RealtyTrac data, a record 2.9 million homes received foreclosure filings in 2010, up from 2.8 million in 2009, and 2.3 million in 2008. RealtyTrac predicts that filings will be 20% higher in 2011, crossing the 3 million threshold. Similarly, the firm's data reveal that bank repossessions continue to increase, from just under 820,000 in 2008 to over 918,000 in 2009 to 1.05 million in 2010. In contrast, the number of permanent mortgage modifications under

* It was apparent to SIGTA RP from the context of the interview, including the reference to doing something exceptional "again" in the face of a future financial crisis that Secretary Geithner was referring to the possibility of future bailouts. While Treasury has not disputed the quotation attributed to Secretary Geithner or the context in which it was presented in SIGTA RP's audit report "Extraordinary Financial Assistance to Citigroup, Inc.," a Treasury spokesperson has reportedly suggested that Secretary Geithner was actually referring to using the tools of the Dodd-Frank Act to wind down an institution.

HAMP remains anemic — there were just under 522,000 ongoing permanent modifications as of December 31, 2010, with approximately 238,000 of those funded by and attributable to TARP.

The remaining were funded outside of TARP by the GSEs. A combined total of more than 792,000 trial and permanent modifications have been cancelled, with more than 152,000 trial modifications still in limbo. These permanent modification numbers pale in comparison not only to foreclosure filings, but also to Treasury's initial prediction that HAMP would "help up to 3 to 4 million at-risk homeowners avoid foreclosure" "by reducing monthly payments to sustainable levels."

While Treasury continues its astonishing silence by refusing to provide an estimate, goal, or projection of the total number of permanent modifications it expects to complete and maintain, in December 2010, the Congressional Oversight Panel ("COP") estimated that, if current trends hold, HAMP will result in only 700,000 to 800,000 effective permanent modifications.[5] Unfortunately, COP's dispiriting projection appears all too reasonable, with participation trends getting worse and worse with each passing quarter. For example, HAMP produced only a net increase of slightly more than 18,000 permanent modifications per month over the most recent quarter, down 35% from the quarter before that, with the TARP portion yielding only approximately 10,000 modifications per month. And even those who do obtain permanent modifications still remain in danger of redefaulting on their loans. That danger persists notwithstanding Treasury's attempt to launch two programs funded by more than $12 billion in TARP funds to address one of the leading indicators of redefault, underwater mortgages in which borrowers owe more than their homes are worth. Treasury reported to SIGTARP that FHA Short Refinance, launched on September 7, 2010, had only resulted in 15 refinances as of December 31, 2010, and was unable to report any information about homeowner participation in its Principal Reduction Alternative program, which was available to servicers in June 2010 but formally launched on October 1, 2010.

As SIGTARP and the other oversight bodies have chronicled in audits and reports, HAMP's failure to have a material impact on the foreclosure crisis has many causes, starting with a rushed launch based on inadequate analysis and without fully developed rules, which has required frequent changes to program guidelines and caused unnecessary confusion and delay.[6] Perhaps most fundamentally, Treasury has steadfastly refused to adopt meaningful goals and benchmarks for HAMP despite consistent and repeated recommendations from SIGTARP and the other TARP oversight bodies — COP and the Government Accountability Office ("GAO"). Rather than develop meaningful goals and metrics for the program, which would allow meaningful oversight, promote accountability, and provide guidance for useful

[5] Congressional Oversight Panel, "December Oversight Report," 12/14/2010, http://cop.senate.gov/documents/cop-121410-report.pdf, accessed 1/20/2010.

[6] SIGTARP audit report, "Factors Affecting the Implementation of the Home Affordable Modification Program," 3/25/2010, www.sigtarp.gov/reports/ audit/2010/Factors_Affecting_Implementation_of_the_Home_Affordable_Modification_Program.pdf, accessed 1/21/2011; GAO, "Troubled Asset Relief Program-Home Affordable Modification Program Continues to Face Implementation Challenges," 3/25/2010, www.gao.gov/new.items/d10556t.pdf, accessed 1/20/2011; Congressional Oversight Panel, "Evaluating Progress of TARP Foreclosure Mitigation Programs," 4/14/2010, http://cop.senate.gov/ reports/library/report-041410-cop, accessed 1/21/2011.

change, Treasury instead has regularly changed its criteria for success, citing at different times the total number of trial modification offers extended to borrowers, regardless of whether they were accepted, and then the total number of trial modifications, regardless of whether they became permanent, which far fewer than half have actually done. More recently, after SIGTARP and others pointed out the destructive impact of many failed trial modifications, Treasury has retreated to arguing that a benefit of HAMP has been its impact on private modifications that occur outside of the HAMP program. This too is a questionable measure of success. While Treasury may deserve some credit for having had a positive, if inadvertent, impact on industry practice, according to the December 2010 COP report, "when pressed, Treasury acknowledges that there is no clear causal link between HAMP and proprietary modifications," which often include more unfavorable terms for the borrower, are more likely to redefault, and permit broader imposition of fees.[7] Regardless of Treasury's stated criteria, however, while HAMP may provide a significant benefit for those who are fortunate enough to benefit from a sustainable permanent modification, given the current pace of foreclosures, HAMP's achievements look remarkably modest, and hope that this program can ever meet its original expectations is slipping away.

Servicers

One of the great frustrations with HAMP, as expressed by legislators, consumer advocates, oversight bodies, and even Treasury itself, has been the abysmal performance of loan servicers, which not only operate as the point of contact for distressed homeowners seeking to participate in the program but also administer the loans on behalf of investors. Anecdotal evidence of their failures has been well chronicled. From the repeated loss of borrower paperwork, to blatant failure to follow program standards, to unnecessary delays that severely harm borrowers while benefiting servicers themselves, stories of servicer negligence and misconduct are legion, and the servicers' conflicts of interest in administering HAMP — they too often have financial interests that don't align with those of either borrowers or investors — have been described both by SIGTARP and COP.

Treasury's reaction to servicer non-compliance with the requirements of HAMP and its related programs appears to be driven largely by the fear that forcing servicers to comply with their contractual obligations will drive them away from HAMP. Despite nearly daily accounts of errors and more serious misconduct, Treasury reports that it has yet to impose a financial penalty on, or claw back incentives from, a single servicer for any reason other than failure to provide data. Treasury recently told COP that since participation by the servicers is purely voluntary, "our abilities to enforce specific performance are extremely limited" and "aggressive enforcement [is] difficult." This same fear of servicer withdrawal was offered by Treasury in response to SIGTARP's recommendation that Treasury reconsider its decision to make its Principal Reduction Alternative program entirely voluntary, and Treasury continues to operate

[7] Congressional Oversight Panel, "December Oversight Report: A Review of Treasury's Foreclosure Prevention Programs," 12/14/2010, http://cop.senate. gov/documents/cop-121410-report.pdf, accessed 1/20/2011.

an appeals system that leaves the ultimate decision of whether to approve or deny a modification squarely with the servicer. At some point, Treasury needs to ask itself what value there is in a program under which not only participation, but also compliance with the rules, is voluntary. TARP's oversight bodies — SIGTARP, COP, and GAO — have all called on Treasury to get tough on servicers. Without meaningful servicer accountability, the program will continue to flounder. Treasury needs to recognize the failings of HAMP and be willing to risk offending servicers. And if getting tough means risking servicer flight, so be it; the results could hardly be much worse.

As HAMP approaches its second anniversary, the time has come for Treasury to set realistic and meaningful goals for its collective foreclosure prevention efforts, even though those goals will necessarily be far more modest than those envisioned when the program was announced. Doing so, in conjunction with a thorough reevaluation of its failing programs and imposing discipline on servicers with real penalties for violating program guidelines, will maximize the potential benefits for struggling homeowners going forward.

PROGRAM UPDATES AND FINANCIAL OVERVIEW

TARP consists of 13 implemented programs. Because TARP investment authority expired on October 3, 2010, no new obligations may be made with TARP funds. However, dollars that have already been obligated to existing programs may still be expended. As of October 3, 2010, $474.8 billion had been obligated across TARP to provide support for U.S. financial institutions, the automobile industry, the markets in certain types of asset-backed securities, and homeowners. Of the obligated amount, $389.8 billion had been spent as of December 31, 2010, leaving $80.0 billion in five programs remaining as obligated and available to spend. When including the January 14, 2011, recapitalization of AIG, $410.1 billion had been spent and $59.7 billion still remains available to spend. As of December 31, 2010, 148 TARP recipients had paid back all or a portion of their principal or repurchased shares, for an aggregate total of $235.4 billion of repayments and a $5 billion reduction in exposure to possible future liabilities, leaving $149.4 billion in TARP funds outstanding (not including an additional $20.3 billion in TARP funds expended in connection with the AIG recapitalization on January 14, 2011).

In addition to the principal repayments, Treasury has received interest and dividend payments on its investments, as well as revenue from the sale of its warrants. As of December 31, 2010, the Government had received $35.2 billion in interest, dividends, and other income, including $10.2 billion in proceeds that had been received from the sale of warrants and preferred stock received as a result of exercised warrants. At the same time, some TARP participants have missed dividend payments: among CPP participants, 155 have missed dividend or interest payments to the Government, although some of them made the payments on a later date. As of December 31, 2010, there were $276.4 million in unpaid CPP dividends.

OVERSIGHT ACTIVITIES OF SIGTARP

SIGTARP actively strives to fulfill its audit and investigative functions. Since its inception, SIGTARP has issued 13 audit reports, including two that have been issued since the end of the last quarter. In addition to "Extraordinary Financial Assistance Provided to Citigroup, Inc.," discussed earlier, SIGTARP also issued the audit report, "Selecting Fund Managers for the Legacy Securities Public-Private Investment Fund." This document, released on October 7, 2010, discussed the process for selecting fund managers to participate in the Public-Private Investment Program. Detailed discussion of these audits is included in Section 1 of SIGTARP's Quarterly Report: "The Office of the Special Inspector General for the Troubled Asset Relief Program," which also discusses SIGTARP's announcement of three new audit projects during the past quarter, as well as 10 other previously announced audits in process.

SIGTARP's Investigations Division has developed into a highly sophisticated white-collar investigative agency. As of December 31, 2010, SIGTARP had 142 ongoing criminal and civil investigations, many in partnership with other law enforcement agencies. Since SIGTARP's inception, its investigations have delivered substantial results, including:

- asset recoveries of $151.8 million, with an additional estimated savings of $555.2 million through fraud prevention
- civil or criminal actions against 45 individuals to date, including 22 senior officers (Chief Executive Officers, owners, founders, or senior executives) of their organizations
- criminal convictions of 13 defendants for fraud
- civil cases naming 12 corporate entities as defendants

Although much of SIGTARP's investigative activity remains confidential, over the past quarter there have been significant public developments in several of SIGTARP's investigations. A description of recent developments, including those relating to SIGTARP investigations into the Shmuckler Group, LLC, the Residential Relief Foundation, Park Avenue Bank, Omni National Bank, and Nations Housing Modification Center, are in Section 1: "The Office of the Special Inspector General for the Troubled Asset Relief Program" of SIGTARP's Quarterly Report.

SIGTARP RECOMMENDATIONS ON THE OPERATION OF TARP

One of SIGTARP's oversight responsibilities is to provide recommendations to Treasury so that TARP programs can be designed or modified to facilitate effective oversight and transparency and to prevent fraud, waste, and abuse. Section 4 of SIGTARP's Quarterly Report: "SIGTARP Recommendations" includes new recommendations, provides updates on existing recommendations, and summarizes implementation measures for previous recommendations.

This quarter, Section 4 includes a follow-up discussion of recommendations regarding the implementation of the Small Business Lending Fund ("SBLF") that were first published in SIGTARP's October 2010 Quarterly Report. SIGTARP examines Treasury's response to three recommendations designed to ensure the soundness of TARP recipients that may seek to enter SBLF and to prevent TARP recipients from receiving windfall benefits through SBLF without any relevant increase in lending. While Treasury "generally agrees with and is implementing" SIGTARP's recommendation that all institutions applying for SBLF investment undergo a new financial health analysis, it has rejected the remaining two SIGTARP recommendations. Those recommendations were designed to prevent SBLF from providing windfall benefits to existing CPP participants who refinance to SBLF and to reduce the risk of potentially needless harm to taxpayers. Section 4 reviews Treasury's responses in detail and sets forth SIGTARP's discussion of those responses.

Additionally, Section 4 provides two new SIGTARP recommendations related to the recapitalization of Treasury's CPP investments, or their refinancing into SBLF. In the past, as part of its due diligence on CPP institutions seeking to recapitalize, Treasury consulted with SIGTARP in advance of such action in order to determine whether such institutions were the subject of an ongoing criminal investigation by SIGTARP. Doing so gave Treasury the opportunity to avoid shifting the risk of loss from fraud onto private investors who might participate in the restructuring and to examine with particular care the information provided by the CPP institution. Recently, it appears that Treasury has stopped identifying these candidates to SIGTARP in advance of a public announcement. As detailed in Section 4, SIGTARP recommends that Treasury return to prior practice. In addition, because similar concerns will arise when CPP recipients seek to refinance into the SBLF program, and at the same time seek additional taxpayer dollars, SIGTARP recommends that Treasury should similarly consult with SIGTARP to learn whether the entity is the subject of an ongoing investigation. SIGTARP provided a draft of these recommendations to Treasury on January 14, 2011. As of the drafting of this testimony, Treasury had not responded.

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

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the troubled asset relief program, please contact the SIGTARP Hotline.

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