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Grassley seeks accountability from Treasury Department on severance payments to TARP executives

WASHINGTON – Senator Chuck Grassley today asked the Special Inspector General for TARP to investigate why the Treasury Department did not follow through on the mandate from Congress in last year's stimulus bill to require that all TARP recipients, including AIG, meet appropriate standards for executive compensation.

"Since the Treasury Department failed to do this, we now see the multi-million severance payments going to departing TARP executives, such as the $3.9 million paid in severance to AIG's former general counsel, who left the job voluntarily," Grassley said.

Grassley also asked the TARP watchdog to determine if Treasury Department officials with potential conflicts of interest were permitted to draft the Treasury regulations that govern executive compensation, including severance at bailed out companies such as Bank of America, AIG and others.

Grassley described his request of the Special Inspector General in a statement placed in today's *Congressional Record*. The floor statement text is below. Click here to read Grassley's letter of request to the Special Inspector General.

Last week, Grassley questioned the Treasury Secretary about the failure of the Department to act on the congressional mandate to impose appropriate standards on executive compensation. "It seems as if the Treasury Department unnecessarily tied the hands of the Special Master for Compensation before he even assumed his duties," Grassley said. Click here to read that news release and letter.

Floor Statement of Senator Chuck Grassley
AIG Severance Payments
March 23, 2010

Mr. President. I recently asked Secretary Geithner why the Treasury Department is allowing AIG to pay millions of dollars of severance pay to executives given the billions of dollars of taxpayer assistance AIG has received.

At one point I even said that AIG has the American taxpayer over a barrel and that AIG has outmaneuvered the Administration.

Mr. Kenneth Feinberg, the Treasury Special Master for executive compensation, insisted he was not outmaneuvered by AIG.

As it turns out, he was not outmaneuvered by AIG.

Instead, he was outmaneuvered by Secretary Geithner. Let me explain what I mean.

In February, 2009, we enacted the Recovery Act. The law required Secretary Geithner to take control of the runaway executive compensation at companies that the American taxpayer bailed-out.

Congress provided Mr. Geithner with several tools to accomplish this critical job.

By far the most important and most flexible tool Congress gave Mr. Geithner was a general mandate to require bailed-out companies like AIG to meet “appropriate standards” for executive compensation.

This rule was applicable to compensation already in place, compensation in the future, and compensation for all executives, not just a handful of the most senior executives.

What happened to this tool?

Well, even before the law was passed the bonuses, retention awards, and incentive compensation were “grandfathered.”

That means that while one part of the statute banned them for a handful of senior executives, another part said they had to be paid if the payments were based on a contract that existed in February, 2009.

We all remember the outrage when people learned that this provision was quietly added by the Senate drafters on the other side of the aisle because it required AIG to pay massive bonuses in March 2009 and again earlier this year.

Secretary Geithner was quoted in the press at the time saying that “Treasury staff” worked with the Senate drafters on the grandfather carve-out. Well, the damage was done.

The grandfather loophole was law. You might say the American taxpayer was outmaneuvered by Treasury staff too.

The President instructed Secretary Geithner to "pursue every single legal avenue to block these bonuses and make the American taxpayers whole."

The next step required Treasury to implement the law and use the tools Congress gave Mr. Geithner to put the brakes on runaway executive compensation at firms where taxpayers are footing the bill.

What did Treasury do?

One thing Treasury apparently did was hire a Wall Street executive compensation lawyer from a firm that specializes in helping highly paid executives maximize their pay, but more about that later.

Despite the public outcry over the loophole, which permitted AIG employees and others to walk away with millions, Treasury wrote a regulation that actually expands the loophole even further.

That’s right, in the face of overwhelming public outrage, Treasury quietly worked to expand the loophole. Let me explain how they did that.

The grandfather provision in the law that Congress enacted protected three things: bonuses, retention awards, and incentive compensation. It did not protect severance. Let me repeat: it did not protect severance.

But in what appears to be an effort to protect severance agreements despite the statutory language, the regulations Treasury drafted expanded the term “bonus” beyond its normal meaning.

Unlike bonuses, severance payments are intended to ease someone out the door, not reward them for doing a great job. Severance is basically the opposite of a retention bonus.

But, after Treasury drafted the regulation, suddenly, severance payments were also protected by the grandfather loophole, just like bonuses. Treasury must have known exactly what it was doing.

AIG had an executive severance plan that dated back to March 2008. It was just the sort of contract the grandfather provision would protect if Treasury expanded the loophole.

And what was the impact of the Treasury regulation on the bottom line? What did American taxpayers have to pay?

Because of this regulation, AIG recently paid two of its executives $1 million and $3.9 million in severance pay. We don't yet know how many others have received severance or may receive it in the future.

As the law was passed, these payments would not have been protected by the grandfather provision because they were not a bonus, retention, or incentive payment.

But Treasury officials took care of that. Rather than setting appropriate standards for executive severance payments generally, as the law passed by Congress required, the regulation leaves AIG free to pay excessive severance payments to many of its executives. Then, the American taxpayer gets the bill.

The Recovery Act told Mr. Geithner that he "shall" require each bailed-out company to meet appropriate standards for executive compensation. This command covers all types of executive compensation for all executives, not just bonuses for the most senior executives.

It is a command, not a suggestion. And the grandfather provision that protects certain bonuses does not apply to this more general provision.

But the Treasury regulation almost completely ignores this mandate. It does address one form of executive compensation. The regulation bars tax gross-up payments for senior executives.

That is the practice of allowing the company to pay the executive's income taxes for him. Now don't get me wrong -- tax gross-up payments should be banned for companies that were bailed-out, and I am glad to see that this was done.

But Congress gave Mr. Geithner a powerful tool that should have been used to curb other types of inappropriate executive compensation as well.

That includes tax gross-ups, extravagant severance payments, and other goodies Wall Street thinks it's entitled to.

Secretary Geithner should have used the tool as it was intended. It's like using a big tractor to plow a little flower garden.

There's nothing wrong with banning tax gross-ups or planting flower gardens, but you could have done so much more with the tool you had.

If Secretary Geithner had done what he was directed to do in the law, we would not be witnessing this spectacle.

AIG is paying multimillion dollar severance payments at taxpayer expense to executives who chose to resign rather than work for the maximum salary of $500,000 per year set by the Special Master.

This is a scandal as far as I am concerned. The American taxpayer, as well as Mr. Feinberg, was outmaneuvered by Secretary Geithner and his staff. And it all happened before the Special Master's first day on the job.

There is another troubling matter that I must address. I mentioned earlier that the Treasury Department hired at least one Wall Street executive compensation lawyer from a firm that specializes in helping wealthy executives maximize their pay.

There is nothing wrong, as a general matter, with hiring talented people with expertise in technical legal subjects to draft regulations and administer the law.

But there are some red flags here that need a little sunshine. We need to be sure that the people working on these issues at Treasury have dealt with any potential conflicts of interest carefully and openly.

Recently I learned that at least one Treasury official previously worked for Wachtell, Lipton, Rosen and Katz, a top Wall Street law firm. Wachtell, Lipton has represented at least two former AIG executives.

The firm's job was to look-out for the interests of the executives, not the shareholders. They were paid to make sure the compensation contracts, including severance provisions, were as generous as possible for their clients.

Wachtell, Lipton also represented Bank of America on its controversial Merrill, Lynch acquisition in 2008. A Wachtell attorney who worked on that deal joined Treasury in the spring of 2009.

He said that he then worked on the Treasury executive compensation regulations. These are the regulations I have been describing: the regulations that were to govern AIG, Bank of America and all of the other bailed-out companies.

This situation raises a host of questions, for example:

- How many other Treasury officials have similar potential conflict issues?
- Why wasn't the attorney recused from participating in the drafting of a regulation that was going to have a direct effect on Bank of America, his former client, and AIG executives, his firm's former clients?
- Did the attorney comply with the revolving door provision of the President's Executive Order, which prevents appointees from working on matters that relate to their former clients?
- The President has committed to publicly disclosing all the waivers issued to exempt appointees from his ethics executive order. If this attorney recused himself, as he should have, why was that recusal not also disclosed so that the public would know about the potential conflict?

At a minimum there is the potential for an appearance of impropriety here.

What we know so far raises serious questions and red flags. But there also are facts we do not know.

Therefore, I am asking that the Special Inspector General for TARP investigate these issues and report his findings to Congress and the public as soon as possible.

Specifically, I am asking the Inspector General to examine why Treasury did not set appropriate compensation standards pursuant to Section 111(b)(2) of the Recovery Act sufficient to prevent severance payments like those AIG recently paid to its former General Counsel and Chief Compliance Officer.

I am also asking him to determine whether Treasury officials working on executive compensation matters have fully complied with the revolving door provision of the President's Ethics Executive Order.

In the meantime, there are still numerous documents that I have requested that have not been provided to me despite assurance that I was going to get them.

There are many questions I have asked that remain unanswered, and I will continue to seek information on these issues.

I call on Secretary Geithner to stop stonewalling. Oversight is important. Oversight is necessary to protect the American taxpayer. I take that duty seriously, and I am not going away. American taxpayers deserve to know where their money is going.