

ANTICIPATED NOMINATION OF NEIL M. BAROFSKY

HEARING

BEFORE THE

**COMMITTEE ON FINANCE
UNITED STATES SENATE**

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON THE

ANTICIPATED NOMINATION OF

NEIL M. BAROFSKY, TO BE SPECIAL INSPECTOR GENERAL, TROUBLED
ASSET RELIEF PROGRAM, DEPARTMENT OF THE TREASURY

NOVEMBER 17, 2008



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CONTENTS

OPENING STATEMENTS

	Page
Baucus, Hon. Max, a U.S. Senator from Montana, chairman, Committee on Finance	1
Grassley, Hon. Chuck, a U.S. Senator from Iowa	4
Schumer, Hon. Charles E., a U.S. Senator from New York	5

ADMINISTRATION WITNESS

Barofsky, Neil M., nominated to be Special Inspector General, Troubled Asset Relief Program, Department of the Treasury, Washington, DC	7
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ALPHABETICAL LISTING AND APPENDIX MATERIAL

Barofsky, Neil M.:	
Testimony	7
Prepared statement	25
Biographical information	27
Responses to questions from committee members	33
Baucus, Hon. Max:	
Opening statement	1
Bunning, Hon. Jim:	
Prepared statement	42
Grassley, Hon. Chuck:	
Opening statement	4
Salazar, Hon. Ken:	
Prepared statement	43
Schumer, Hon. Charles E.:	
Opening statement	5

**ANTICIPATED NOMINATION OF NEIL M.
BAROFSKY, TO BE SPECIAL INSPECTOR
GENERAL, TROUBLED ASSET RELIEF
PROGRAM, DEPARTMENT OF THE TREASURY**

MONDAY, NOVEMBER 17, 2008

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:06 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Rockefeller, Conrad, Wyden, Schumer, Stabenow, Salazar, Grassley, Snowe, Kyl, Crapo, and Roberts.

Also present: Democratic Staff: Bill Dauster, Deputy Staff Director and General Counsel; John Angell, Senior Advisor; Joseph Adams, Economic Development Advisor; Ayesha Khanna, Detailee; and Mary Baker, Detailee. Republican Staff: Emilia DiSanto, Special Counsel and Chief Investigator; Jason Foster, Investigative Counsel; Nick Wyatt, Tax Research Assistant; and Jim Lyons, Tax Counsel.

**OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR
FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The hearing will come to order.

In the book of Chronicles, King David says, "I know, God, that you test the heart and are pleased with integrity." During King David's time, a prophet like Nathan could help to keep the government in line. These days we do not have a Nathan. These days we have an Inspector General.

So, thank you, Mr. Barofsky, for your willingness to serve your country in this job of testing the government's work. Thank you for your willingness to help ensure its integrity. It is going to be a demanding job, to say the least.

I see from your resume that you have been a prosecutor. You are going to be able to test that experience as Special IG for the Troubled Asset Relief Program, otherwise known as TARP. The financial rescue program is huge, \$700 billion. The number and variety of financial institutions receiving money from Treasury is extensive. Tracking the path of the bail-out dollars through these institutions is going to be a difficult task.

You are also going to confront the harsh reality that almost half of the \$700 billion is already out the door. The chart behind me tells the story. For a while, you are going to be playing catch-up.

You will be looking back at Treasury's use of about \$290 billion in about 43 days.

I have a great interest in the Special IG for the TARP. I raised the idea in the first place the first weekend that we were examining the Treasury financial bail-out proposal.

As many will remember, the Treasury's original proposal for the TARP was 3 pages long. I read it word for word, and I was stunned at its audacity and its failure to comprehend what was needed to get our financial institutions back in shape. It is arrogant, in fact. It gave the Treasury unlimited power over \$700 billion and provide no oversight by anyone.

The House and the Senate spent 2 weeks hammering out a better bill. That better bill included strong oversight, and it included the Office of the Special IG for the financial rescue program. The size and complexity of this effort is unprecedented in recent memory. It is essential to have a team that focuses exclusively on the asset management efforts of the Treasury Department, and it is essential for a team to report to Congress on the status of this new program. We will be looking aggressively at your report due back before us the first part of next year.

My proposal for a Special IG was based on the Iraqi Reconstruction Special Inspector General. It was another massive oversight challenge then, and it is going to be a massive oversight challenge now.

During the negotiations on the rescue package, 33 Senators signed a letter to the congressional leadership endorsing the idea of a Special IG to oversee the Troubled Asset program. During the negotiations, the Treasury Department resisted; they did not want it. But then the administration and the Congress agreed that a Special IG should be part of the financial rescue package and should be a part of the final legislation. Congress passed it, and the President signed it into law.

The law gives a Special IG a \$50-million budget. He will have the duties and responsibilities of Inspectors General under the Inspector General Act of 1978. He will have the power to supervise, and the power to coordinate audits and investigations of target activities.

He will have power to appoint staff to carry out the activities of the office, and he may encounter conflicts of interest, which I ask you to report on. You may also, under the legislation, enter the contracts for audits and contracts for studies, which I hope you will follow up with.

Once you are on the job, we expect you to report to the Finance Committee every 120 days on activities of the TARP. The law also directs you to report to Congress if information requested by you is refused.

We could spend hours asking questions about the TARP program and how it is being managed. We know that the Treasury Department has named Neil Kashkari, Assistant Secretary of International Economics, to head the financial rescue program. Treasury has decided to spend \$125 billion on nine major banks, including Citigroup and J.P. Morgan Chase, and another \$125 billion to be allocated for hundreds of small and mid-sized banks.

Secretary Paulson has also announced a policy regarding preferred shares and warrants for common stock. Standards for restrictions on executive compensation are being developed, and those include a claw-back provision and a ban on golden parachutes during the period that Treasury holds equity issued through this program.

Several senior posts have been filled. The law firm of Simpson, Thacher, and Bartlett has been selected as the legal advisor. Treasury has announced that the bank of New York Mellon will serve as its custodian for the implementation of the Troubled Asset Relief Program, and PricewaterhouseCoopers and Ernst and Young have been hired to help with accounting and internal controls services. These decisions made by the Treasury Department are critically important, I think, to the financial rescue program, yet the Treasury has made them all without any oversight by a Special IG.

As for the use of funds, the bottom line, frankly, is that the Secretary of the Treasury told Congress and the American people that the Bush administration needed \$700 billion to purchase troubled assets. Yet this past Wednesday, the Treasury announced that, in fact, there were no plans to purchase troubled assets. To say that this was a surprise is an understatement.

We are going to find out why the first plan was rejected and why a new plan was developed. What is the theory behind the new plan for providing equity to these financial establishments? What exactly are the agreements with the financial institutions who have received TARP funds? What conflict of interest standards were followed?

Mr. Barofsky, you undoubtedly have opinions, but you also undoubtedly have been advised to decline to answer very many of these questions. After all, you were just nominated. Nominees usually are quite reticent. But I can assure you that we will not rest until we get answers to these questions. This might not be the proper time and place for a full airing of your answers. There will be time down the road, certainly the first of next year when we have further oversight hearings.

But I pledge to you that I will push also in the meantime to get you confirmed. We have to get you on the job as quickly as possible. Half the money is already gone, and it is way past the time when you should have been on the job overseeing the program. I hope you will be on the job by the end of the week.

So thank you for your willingness to serve. I urge you to work hard to test the government's work. I urge you to stick to what will be a demanding job, and I urge you to do so with all the energy and focus and integrity that you can command to help ensure the program's integrity.

I might say that there are some of us on the committee here who voted for the rescue package, and although we received lots of telephone calls and letters from the people we upset back home, it is my view that this is the right thing to do. It is my view that we improved upon the original plan immensely. It is also my view that we do not know whether this is going to work or not, but we are going to do all we can with oversight hearings on down the road to help you make sure that it works so that the country's financial

integrity is back on even footing. Thank you very much for your willingness to serve.

I will now turn to Senator Grassley.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM IOWA**

Senator GRASSLEY. Thank you, Mr. Chairman. I am glad that we are having this hearing and can get this nomination confirmed. So, thank you.

This committee has a long history of vigorous and continuous oversight of the Treasury Department. That oversight experience led the chairman and me to press the lead congressional negotiators for the TARP legislation to provide an Inspector General for this program; with \$350 billion of taxpayers' hard-earned money at stake now, we need this watchdog inside the program. There is potentially as much as another \$350 billion that could be spent on the rescue plan. I do not think any of us would be surprised if the dollar amounts went higher than what is already initially out there.

Frankly, a vacuum has been created by a delay in filling this Inspector General's position. We need to fill this vacuum now. As scores of billions of Federal dollars have rolled into these troubled financial institutions, the chairman and I have raised issues of whether the legislative intent of the program has been followed.

We have raised questions about executive compensation, questions about institutions' use of the funds, and questions about a homeowner relief program. Just this last Friday, I asked the Inspector General at Treasury to look into the circumstances of any possible conflict of interest involving Treasury's administrative move that gives a big tax break to banks that acquire poorly performing banks.

All of this adds up to appropriate oversight. It is a tradition in this committee, and now that we have elected a new President and will soon have more Democratic members of Congress, I expect that oversight will not abate once we have a new administration in 2 months. I do not believe that it will, but I want to continually raise this issue so that we know we have just as vigorous oversight by Congress of a Democratic President as we have had of a Republican President. We need the eyes and ears of an Inspector General inside the TARP program now and through the life of this extraordinary Federal assistance.

The concept of an Inspector General—we say "IG" around here—is extremely relevant where so much Federal money is being used in such an unprecedented manner. The Inspector General's Act of 1978 charged these IG offices with, among other responsibilities, the prevention and detection of fraud and keeping Congress fully and currently informed about serious problems within each agency. The work undertaken by each of the 64 statutory IGs is vastly important to Congress. IGs help to minimize and eliminate fraud, waste, and abuse. This conserves and promotes the efficient, effective, and economical use of taxpayers' money.

I will underscore what I said a few moments ago. With up to \$700 billion of taxpayers' money at stake, we cannot cut corners in ensuring against waste, fraud, and abuse. IGs also police Federal

employees so that they do not abuse their positions of responsibility. This entails investigating allegations of misconduct, and sometimes even referring criminal violations to the Attorney General.

In carrying out this important work, it is absolutely vital that all IGs and their staffs be beyond reproach with regard to the rules that they enforce. Anyone who accepts responsibility for enforcing the law also takes on greater responsibility for being accountable under the same law. As top cops in their respective agencies, we should be able to hold IGs and their staffs as models of ethical behavior and judgment, and in most cases we can.

The initial TARP IG has big shoes to fill. Neil Barofsky, our witness, has indicated his willingness to fill those shoes. He is certainly a talented attorney. We found, in the Southern District of New York, great work being done. That is right in the heart of our Nation's financial center. For over 8 years, he has been involved in prosecuting sophisticated criminal cases where key players in the financial sector have skirted the law. Before that time, he practiced law in a couple of high-pressure Wall Street law firms.

So you may say that Mr. Barofsky is moving from the frying pan into the fire, but we are glad that you are making that move and willing to take on this important responsibility.

Thank you.

The CHAIRMAN. Thank you, Senator.

I see the good Senator from New York is here. Since the nominee is from New York, I expect that the good Senator from New York would like to say a few complimentary words about the nominee from New York.

**OPENING STATEMENT OF HON. CHARLES E. SCHUMER,
A U.S. SENATOR FROM NEW YORK**

Senator SCHUMER. Yes. I appreciate it. And they will be complimentary. I want to welcome my constituent, and most importantly, a fellow Yankees fan, I am told. I hope you root for the Giants, too. They are pretty good. No, he does not. [Laughter.]

Neil Barofsky, who is—

The CHAIRMAN. That shows his integrity.

Senator SCHUMER. Exactly. Straight answers from Barofsky. I hope it is not the Dallas Cowboys, though.

Anyway, given the amount of taxpayer dollars at stake, we certainly need to be vigilant in making sure the funds are used as promised, so the post of IG is an important one. I know you, Mr. Chairman, played a vital role in making sure that this position—you and the Senator from North Dakota—was in the bill, and I think it is important.

Mr. Barofsky, I would let my colleagues know, is a former work colleague of my Chief Judiciary Counsel, for whom I have enormous respect, and he has enormous respect for Mr. Barofsky, having worked side by side with him in the U.S. Attorney's Office in New York City.

During that time, Mr. Barofsky was part of a group of attorneys devoted to investigating and prosecuting mortgage fraud-related crimes, so he has background in this area. Before that, he was lead prosecutor on the successful prosecution of former Refco officers for

their participation in a \$2.4-billion accounting fraud, and last year he won the Attorney General's John Marshall Award for outstanding legal achievement for asset forfeiture.

Some may say that Mr. Barofsky is a brave man for being willing to take this position. I already know not to be concerned about any lack of bravery, because Mr. Barofsky demonstrated great personal bravery when he investigated the Revolutionary Armed Forces of Colombia, FARC, the narco-terrorist group that controls more than half the world's annual cocaine production.

He successfully indicted the FARC's top 50 leaders at great risk to his own personal safety, so, if he can take on FARC, he can surely make sure that taxpayer money is being spent wisely and legally. So, I think he is the right man for the job, and I look forward to supporting his nomination.

Just three quick points while I have the floor. First, please scrutinize the decision-making process that the Department used to develop the term sheet that applies to the capital purchase program. I have said on a number of occasions that I think, in Treasury's zeal to include the major banks, it made the terms too weak to make the program effective.

Without including some sort of lending requirement and strong restrictions on dividends, banks are too tempted to hoard the capital rather than lend it to consumers and businesses that need credit. So there are important questions that should be asked about their decisions, what analysis was done about how the capital would be used.

Second, I think it is important, sir, that you look into how the banks are spending the money they receive from TARP. Of course, in an ordinary circumstance we would not want the government telling the banks what to do, but these are taxpayer dollars, and it is important we ensure that they are being used in a way consistent with our goals, which is more lending.

The money should not be hoarded or used for outsized compensation packages under the IG's authority to oversee the management of the government's interest. It is critical that Congress have a clear understanding of how the money is being spent.

Finally, the office should examine the process by which Treasury is allowing entities that were not originally eligible to receive TARP funding to become eligible. The Federal Reserve has received many requests from financial firms to become bank holding companies, in part so they can get access to the TARP. I do not want to delay the process of distributing assistance that companies need, but I think it is important that we, and the markets, have a clear understanding of how this program will be implemented across the broader financial sector.

Mr. Barofsky, thank you for stepping forward and serving your country. We need you. I think you have excellent qualifications to do a good job.

Thanks, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

This Finance Committee is extremely interested in the whole program, clearly. The committee does not, however, have jurisdiction over your nomination—that is the Banking Committee—but we will be holding hearings because of this committee's deep in-

volvement in the program. I just want you to rest assured that you do not have to worry about a vote in this committee. The vote you need to be concerned with is in the Banking Committee.

Having said that, however, because we are so concerned about the program, I will ask the three standard questions that we ask of all nominees who are before this committee, and I will ask those questions right now.

The first is: Is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. BAROFSKY. No, I am not.

The CHAIRMAN. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. BAROFSKY. No, I do not.

The CHAIRMAN. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if you are confirmed?

Mr. BAROFSKY. I do, of course.

The CHAIRMAN. And that would include the Finance Committee.

Mr. BAROFSKY. Yes.

The CHAIRMAN. Great. All right.

Now is an opportunity for you to introduce any family you might have with you. We would be very honored to meet them.

Mr. BAROFSKY. My wife Karen is here today.

The CHAIRMAN. Nice to meet you, Karen.

Mr. BAROFSKY. Who has become a Yankees fan. [Laughter.]

The CHAIRMAN. And thank you, Karen, because this is a great sacrifice all the way around. This is clearly a shared family sacrifice, and we thank you very much for your vicarious participation in public service, very much.

Mr. Barofsky, we have allocated about 5 minutes for your statement. Your full statement will obviously be in the record.

Why don't you proceed?

STATEMENT OF NEIL M. BAROFSKY, NOMINATED TO BE SPECIAL INSPECTOR GENERAL, TROUBLED ASSET RELIEF PROGRAM, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. BAROFSKY. Thank you. Senator Schumer, I would like to thank you for that kind introduction. I appreciate it. I know my mother down in Miami really appreciates it, so I thank you.

Chairman Baucus, Senator Grassley, members of the committee, I am honored to appear before you as the President's nominee to be the Special Inspector General for the Troubled Asset Relief Program. I am grateful to this committee for taking the time to consider my nomination, and it is indeed humbling to be considered for such an important and vital position in this moment in our Nation's history.

If confirmed, I look forward to working closely with the members of this committee and your respective staffs, as well as the other committees that will be overseeing the program and the carrying out of my responsibilities as Special Inspector General.

If I may, I will take a moment to share with you my professional background and why I think it prepares and qualifies me for this position. For the past 8 years, I have served as an Assistant U.S. Attorney in the Southern District of New York. My experience as an AUSA has reaffirmed to me the importance and rewards of public service, and, if confirmed, I look forward to the opportunity to provide greater service to this country in this most serious time.

This past summer, our U.S. Attorney asked me to supervise a newly created mortgage fraud group to respond to the havoc that mortgage fraud has caused to countless homeowners and lenders in our district. Drawing on an amazingly talented group of prosecutors at different levels of experience and expertise in such areas as securities fraud, organized crime, major bank fraud, asset forfeiture, and civil fraud, we have attacked at the root those who have contributed significantly to the current housing and financial crisis through wholesale fraud of homeowners, lenders, and investors.

We have focused on crimes committed by those who have tricked lenders into making loans they never intended to repay, those who have engaged in predatory lending practices by tricking homeowners into applying for mortgages that they never could afford, and the criminals who have engaged in schemes in which they literally steal the homes from citizens who found themselves in default on their mortgages.

I have also supervised our office's joint investigation into the vast credit default swaps market—the Office of the New York State Attorney General. I believe that my experience as the head of the Mortgage Fraud Group and my role in both supervising and participating in these investigations has given me a vital education in understanding some of the root causes of the current financial crisis, as well as the securities and derivative instruments whose decline in value has been such an important part of it.

It has also given me the tools to identify the markers of fraud throughout the financial industry, the necessary expertise in investigating such frauds, and the experience of establishing a plan of attack on those committing these frauds.

While an AUSA, I was also one of the lead prosecutors in the investigation and prosecution of those criminally responsible for the \$2.4-billion fraud that was committed at Refco, Inc., a commodities giant that imploded in October of 2005 just months after the company went public. This investigation and trial have given me the experience to understand and detect complex billion-dollar frauds and an understanding of financial audits and where they can fail.

Over the last few weeks, as have many Americans, I have been closely following the current financial crisis and the government's response, and in particular the creation and execution of the TARP. If confirmed, I look forward to contributing to the oversight that Congress established to protect the taxpayers' \$700-billion investment, fulfilling the duties of the Special Inspector General as outlined in the relevant governing statutes.

My overriding goal as Special Inspector General for the TARP will be to make sure that its rules and regulations are followed and to prevent waste, fraud, and abuse. We will need to establish an efficient and effective audit program and, of course, we will need

to establish an investigation arm, which I can assure this committee will tirelessly investigate and refer for prosecution any individual or entity that dares to try to criminally profit from this program.

I intend to work closely with each of you, your colleagues on the other committees that are overseeing the program, your staffs, GAO, and all others who are charged with overseeing this historic program. I want to emphasize to you that I fully understand and appreciate that, if confirmed, I am accountable to you, the Congress, and the American people. I fully intend to keep you fully and promptly apprised of significant findings and concerns.

Mr. Chairman, Senator Grassley, members of the committee, I want to thank you for the opportunity to appear before you, and I would be pleased to respond to any questions that you may have.

The CHAIRMAN. Thank you, Mr. Barofsky.

[The prepared statement of Mr. Barofsky appears in the appendix.]

The CHAIRMAN. First, do you think \$50 million is enough?

Mr. BAROFSKY. Mr. Chairman, it is very hard to determine the answer to that question at this time. The TARP is obviously—all the funds have not been committed. It is not entirely clear which direction the TARP may take with the new administration. It is very hard at this stage for me to tell you if \$50 million will be enough. We do not even know how long the program is going to last.

The CHAIRMAN. Well, I expect when you report back to us—I think your first report is due around Inauguration Day—maybe you would be in a position to advise us and to answer that question.

Second, could you talk just a little bit about what staff you think you need? I mean, we are talking about fairly sophisticated financial instruments, sophisticated products, arrangements. What sort of staff do you need? Do you think you would need to be able to accrue the talent that you are going to need?

Mr. BAROFSKY. Mr. Chairman, I am confident that we will be able to recruit the right talent. I think that an opportunity to work on a program as important as this will bring out many, many qualified applicants. I think to begin with, we obviously have to put together our core staff, if confirmed, of a management group, obviously a Deputy Inspector General, as well as an audit director, investigations director, and counsel. I think we would start with that core group and build out from there.

I know recently Inspector General Thorson has estimated that as many as 100 people may be required to staff this office. I plan, if confirmed, to meet with Inspector General Thorson and find out where he determined those numbers and get a sense of what his estimates are, and we will go from there. But I think it is important to start with a core group and build it out from there.

The CHAIRMAN. And obviously you are going to need full access not only to Treasury and Treasury's decisions, but also to the entities that Treasury has hired, that is, the law firm and the accounting firm. Is that correct, that you will have the same access to their books as you will Treasury? Is that your understanding?

Mr. BAROFSKY. I assume so, Mr. Chairman.

The CHAIRMAN. You said something about, you would make sure the rules are being followed. Personally, I would like you to look to see where the rules and standards are sufficient. It is not enough just to follow the rules that Treasury sets, to follow the rules and standards that Treasury sets, the administration sets. It is to make sure that the rules and standards are the proper ones and sufficient.

Could you comment on that, please? Do you see that as part of your duty?

Mr. BAROFSKY. Yes, Mr. Chairman. Obviously the TARP is an evolving process. I think there are two points raised by your question. One, we would need to look back at the current rules and regulations that have been promulgated, look as to what went into the decision-making process and determine if they are sufficient under the attempt of the statute, and to provide the right degree of oversight.

Then, of course, as new regulations, new contracts are entered, I believe it would be appropriate for the Special Inspector General to be consulted and begin to make sure that, not only are the proper rules and regulations being followed, but that they are sufficient. Obviously, if we found out or came to the determination that they were insufficient, we would raise that with the Secretary and bring it to your attention.

The CHAIRMAN. At this point, it is early, but you have given some thought to this. What should Congress be most concerned with in this whole program? I mean, is it standards? Is it conflicts of interest? Is it the complexity? Is it whether the money is being sufficiently targeted? What are some of the issues you think we should be concerned with here? I cannot ask you to specifically answer for yourself because you are new to the job, you are not even confirmed. But what should we be thinking about as we try to ensure that this program is working well?

Mr. BAROFSKY. Mr. Chairman, I think the answer to your question is yes. I think all the things you noted are going to be important considerations. As you have noted, I am coming at this from the outside. My basis of knowledge is what I read in the newspaper and what I have seen on the Treasury website.

But I think all the things that you identified are going to be important concerns and will be important concerns for the Special Inspector General. It is difficult right now from my perspective to rank those concerns, but I think all of them, as well as preventing fraud and abuse and those who may take advantage of this program, are all very important considerations.

The CHAIRMAN. What sort of conflicts of interest or potential self-dealing are you going to be looking at?

Mr. BAROFSKY. Well, I think there are different areas to look at conflicts of interest as you go down the ladder of the TARP. Obviously at the top level it would be within Treasury, people who are in the selection of the contractors and the employees. The next level up from those contractors, obviously there is enormous opportunity for conflicts of interest with respect to, for example, the law firms, the asset managers once they are hired, Bank of New York, each of the contractors. And obviously we will have to take a strong

and hard look at what the mitigation plans are, what is in place, and make sure that they are sufficient.

The CHAIRMAN. Well, my time has expired. But before I turn to Senator Grassley, I might say that one of my major concerns, frankly, is one I hear from financial institutions in my home State—namely, they did not cause this problem, that is, the subprime mortgage and the credit crunch and so forth—but some of the TARP funds are being used in a way that is harmful to them.

Namely, it is that some of the TARP funds—and I am not the first to mention this point—are used without sufficient restrictions on the funds. That is, without restrictions saying, all right, you have to lend to credit-worthy customers first and not pay dividends, not pay executive compensation, not use the funds to buy other institutions.

I am very concerned about that. I guess the question is the fungibility of money. It is to make sure this money is not just going to the firms, because they will use it in a way that is in their own financial best interests rather than the public purpose here. We want to make sure that the public purpose is well served. I ask you, when you come and report back to us, indicate the degree to which you think there have been sufficient conditions to ensure that the money is targeted for the purpose it is intended, that is, to relieve the credit crunch and get the company back on track. Thank you.

Senator Grassley?

Senator GRASSLEY. Yes. My first question is going to deal with, if you will have access to certain records that I think it is important for you to have access to. I want to start out by saying, first of all, my staff recently received a briefing from the Government Accountability Office. In that briefing, the GAO noted that it has access under the Emergency Economic Stabilization Act to TARP-related records of Treasury itself, as well as to records of TARP agents and representatives, and any vehicles that Treasury establishes under that Emergency Economic Stabilization Act.

But the Government Accountability Office does not have clear access to information from recipients of TARP funds, such as banks, either through the Emergency Economic Stabilization Act or through the GAO's other access authority under two or three other statutes—I will not go into naming them. So can you please tell us what type of access you believe that you will have as the TARP IG, and is that sufficient for you to do your job?

Mr. BAROFSKY. Senator Grassley, I would fully intend—I do not know the full scope of the authorities under the statute. They do appear broad to me. They obviously incorporate the Inspector General Act of 1978 and its broad authorities, including subpoena authority.

But one of the first things that I would do, if confirmed, would be to look at exactly what our tools are, with consultation of counsel, and to the extent that I felt that we did not have the necessary tools, I can assure you that we would come back to this committee to ask for whatever additional tools that we would need to fulfill the duties that are imposed on us by the statute.

Senator GRASSLEY. I would encourage you to not only look at what the statute says, but to assume as much as you can reasonably assume from the law and let somebody tell you why you cannot have access to the records, and challenge every place you can because, if you do not have access to where the money went and is being used, I do not know exactly how you can do the job that is before you.

Mr. BAROFSKY. That is an excellent strategy, Senator.

Senator GRASSLEY. All right.

We are going to be looking to you, along with the Government Accountability Office, to be our eyes and ears. With that in mind, would you please tell us what type of reporting do you see being provided to Congress so that we know what is going on with the enforcement or carrying out of this legislation?

Mr. BAROFSKY. Well, obviously the statute requires the Special Inspector General to report within 60 days of confirmation, and sets forth a series of things that must be required in that report, and then at a minimum, every quarter thereafter. I think, as Special Inspector General, if confirmed, one of the other first things I would do would be to reach out to GAO, because I think that they have an audit function, as well as the Special Inspector General's Office has an audit function, and I think coordination with those audits is of vital importance.

Obviously GAO has its own and separate reporting schedule, but I think that we, as the Special Inspector General's office, will have to work closely and be very coordinated not only with GAO, but any other oversight body so we have a comprehensive oversight approach to the TARP.

Senator GRASSLEY. Two questions. How quickly would you expect to have the full complement of your staff in place? That is about doing your job. Then, second, what do you see as the key risks or challenges facing TARP, and how would you work with Treasury to address those?

Mr. BAROFSKY. I think that, as far as the timing on a full staff, it would be very difficult for me to give an estimate of that. I think that the first step will be to hire key management staff. But I also do not anticipate waiting until we are fully staffed up before actually performing the oversight duties. I will be there from Day 1, if confirmed, and that is when the Special Inspector General's oversight will begin, on that Day 1.

As far as the key risks and challenges, I think that, any time you have a program of this size, \$700 billion, and an accelerated program of getting that money out onto the street, there are going to be risks associated with that, with people who are well-meaning and intending the best. It is a lot of money in a short period of time. Part of the oversight, I think, would be to help make sure that, not only is there no fraud, waste, or abuse, but also mistakes that may be made. We would work hard to help the Treasury personnel avoid those mistakes and to keep the ship on the right path.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Wyden?

Senator WYDEN. Mr. Barofsky, your job is not for the faint-hearted, suffice it to say. As I was reviewing for this hearing, I saw that

the current Treasury Inspector General said, "The oversight of the program is a mess." And he goes on to say, "I don't think anyone understands right now how we're going to do proper oversight of this thing." That, if anything, seems to me to be an understatement.

Given the fact that Treasury still declines to say exactly how it spent the taxpayer money, nor has it said who the beneficiaries are or what conditions have been placed on them, I would characterize the operation of this program now in terms of oversight as like Dodge City before the marshals showed up. I think it is critically important that you get on top of this.

Senator ROBERTS. Would the gentlemen please not refer to my hometown in that definition? I would really appreciate it. [Laughter.]

Senator WYDEN. As a fellow Kansan, I appreciate that statement.

Senator ROBERTS. You are only 150 miles east of us.

Senator WYDEN. We will talk Kansas later.

What I want to ask you, though, is on these key points—Treasury not saying how it spent the money, nor whom the beneficiaries are, nor what conditions have been placed on them—is that acceptable to you? It is certainly not acceptable to the American people. Does the public not have a right to that information?

Mr. BAROFSKY. Senator, obviously, if confirmed, part of the job and part of the statute is transparency. I would certainly work with Treasury to make sure that all the obligations that are provided under this statute as far as transparency are met.

Senator WYDEN. But the fundamentals of transparency are knowing how the money is spent, who got it, and what conditions are. Does that not define, in its very essence, transparency?

Mr. BAROFSKY. Yes, Senator. I believe in our first 60-day report, by statute, if confirmed, we would be required to report on many of those specific items that you are discussing, and we certainly would include those items in our report.

Senator WYDEN. How important is it to you to watchdog the bonus abuse issue? Because I know when I have been home and people have asked about this, that is the first thing that they bring up. Of course, in TV reports you have people inside the industry saying that a very substantial portion of the overall funds available under TARP would go to bonuses. So to you, as you kind of prioritize the issues for watchdogging, how important is it to you to watchdog against bonus abuse?

Mr. BAROFSKY. Well, not only as the nominee for Special Inspector General, but obviously as a taxpayer and an American citizen, it is of great concern if taxpayer money is inappropriately being used by those who receive it for an improper purpose that is outside the scope of their agreement with the government or outside the requirements of the statute and the regulations. Obviously we would look into that. That would be a top priority.

Senator WYDEN. Now, do you see a role for yourself in ensuring the part of the legislation, the intent issue of the legislation, that homeowners see some relief through this program? As you know, there was considerable discussion in the debate about trying to help homeowners. We have homeowners getting clobbered all over the United States. Do you see a role for yourself in ensuring that

Treasury adheres to congressional intent, that homeowners get relief through the program?

Mr. BAROFSKY. I think it would be difficult for me to answer that question right now, Senator, not knowing the details of the policy decisions that went into the creation of this statute, and of what other acts Treasury or other parts of the government are taking. It is difficult for me to answer that question from the outside coming in.

Senator WYDEN. Do you have a difference of opinion with respect to congressional intent? The reason it is so important is that it seems that TARP keeps moving into these other fields, and so homeowners seem to be getting the short shrift in the exercise. Every day, it seems that the exercise moves further and further away from what was finally spelled out in the congressional intent of the program. I want to see if you think it is a big part of your work to ensure that Treasury adheres to the intent, particularly now when the program seems to be moving away from homeowners.

Mr. BAROFSKY. Again, Senator, I would have to take a really close look at the language of the statute, getting into the issues of intent. I just don't feel qualified right now to really give you an answer. I apologize for that. Perhaps, if confirmed, I can come back.

Senator WYDEN. My time is up. I hope you will look at that.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I will now turn to the Senator from Dodge.

Senator ROBERTS. We try to get the hell into Dodge, not out of Dodge. [Laughter.]

But at any rate, Neil, thank you for offering to do this and to bring your expertise to this very, very difficult problem. You have quite a record in regards to expertise in combatting securities fraud, organized crime, major bank fraud, asset forfeiture, civil fraud, and credit default swaps. We did not even know what that was about 2 months ago, but you have already had experience with it, so I really appreciate that.

Then you say "the experience of establishing a plan of attack on those who are committing fraud." Of course, I did not know that you had been a major player in exposing whatever you have exposed with the FARC in Colombia. But if you can do that, why, you can maybe take on this job.

I think that it has been said by Senator Wyden already, and I think it is obvious that, while we have committed nearly \$300 billion in taxpayer dollars to the TARP program, mainly through the direct capital injections, there is little oversight of the program. Senator Wyden did quote Eric Thorson, who is overseeing the bailout. He said, "The lack of oversight is a mess." He said, "I don't think anybody understands right now how we're going to do this thing." How then can we have any proper oversight?

Then we have changed in a very dramatic shift. We are under a different TARP. I remember asking in the Marine Corps, is it brown side out or green side out? We got a green tarp instead of a brown tarp. So, you will probably have four more acronyms to work with: TARP 3, TARP 4, whatever. You have a changing target. But you have the background and you certainly have the com-

mitment. You answered the questions that obviously could not be answered very well.

Here is mine: Senator Grassley has indicated that under the TARP legislation multiple entities are charged with the oversight of the program. I have seven of them. First you have the GAO, and you have already mentioned the GAO and how you are going to work with them. I think that is some very good insight on your part. Then you have a specially-appointed congressional panel which has not been appointed yet, or at least not that I am aware of. Third, you have the IG position for which you are nominated, and 50 million bucks and appropriate staff. You have the newly created Financial Stability Oversight Board. You have this committee, led by the able chairman and ranking member. You have the Banking Committee. You have the House and Senate leadership who tend to jump over committees, unfortunately. Then you have the new administration. And you have to report within 60 days of your nomination in regards to this program.

Can you meet the deadline and are you independent enough and have the ability to work with people, all of these different oversight entities, to somehow bring this together? I do not know how you are going to do this. You really have swallowed a major job, and I wish you well, but I do not know how you are going to do it.

Mr. BAROFSKY. I fully intend to meet the 60-day reporting requirement for what is required under the statute, if I am confirmed. I do believe that I have the independence to deal with those conflicting concerns. I think that the way the office was created lends to that independence and that, while it certainly will be demanding, a job of this importance and \$700 billion requires comprehensive oversight. I look forward to coordinating the various oversight—

Senator ROBERTS. Well, it is that coordination that I am really concerned about. I apologize for interrupting you, sir.

Senator Rockefeller and I served on the Intelligence Committee. There were 16 different agencies under the Intelligence Committee. We were very worried about intelligence oversight and “stovepipes,” is what we called it, where you had one agency and their stovepipe of information. How are you going to take down that stovepipe information with regards to TARP?

I mean, you are the guy in charge, and yet you have all these other stovepipes. You are going to have to interconnect that. How are you going to coordinate this?

Mr. BAROFSKY. Well, I would certainly look to other examples for guidance, but I think having a strong leadership position and, at the end of the day, oversight is vitally important, but it is also vitally important that it is coordinated. If there are contradictory and duplicitous demands on those trying to run this program, the oversight could end up defeating its own purpose, which is, of course, to make sure that the program succeeds and succeeds fairly.

Senator ROBERTS. I have only one thing to add on. My time has expired. I apologize to the chair. I do not think we need more regulation, I think we need better regulation and transparency. There is a difference. I do not want the pendulum to swing back to the regulatory overkill that always affects our small community banks and lending institutions in my State of Kansas.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Salazar?

Senator SALAZAR. Thank you very much, Chairman Baucus.

I think for all of us who have supported this economic rescue package, it was a tough vote and I think one of the most historic votes of our time. I was pleased that, as we worked on that package, that we were able to move forward with Senator Baucus and his efforts to have an Inspector General appointed to oversee this program so that we do not have the kind of taxpayer abuse and fraud that could otherwise occur when you have this kind of money that is on the table. So, I was very pleased with that.

My question to you has to do with candor, and candor in front of this committee. In that same seat that you are in, I think, Secretary Paulson came before this committee 2 months before President Bush called for an economic rescue package. I still remember him, in the response to questions asked by members of this committee, saying that the economics of the Nation were fundamentally strong, we did not have any significant problems on the horizon, et cetera.

Then all of a sudden we have President Bush and Secretary Paulson and Chairman Bernanke saying the sky is falling, the conditions are such that we are looking at the possibility of an economic situation like the one that we saw during the Great Depression. Yesterday, I think the President said in the meeting of the G-20 that he thought that the economic rescue package was necessary in order for us to avoid the kinds of problems that we saw during the Great Depression.

My whole problem with where we are today, frankly, is that many of us saw these problems coming. We were very aware, for example. We were having a subprime housing melt-down a year ago and we were trying to get something done, and yet it seemed the administration was turning its eye and looking the other way.

So, as I look at you sitting there in your chair today, what I remember is Secretary Paulson himself saying the fundamentals of the economy are strong. Frankly, I think what has been missing is candor, that is, a candid explanation and understanding of our economic condition and the program that will help us move forward to the kind of circumstance that we all want, which is a healthy economy for our country.

So my question to you is, in this position as Inspector General, will you come before this committee and be candid with us in terms of the implementation of this program? As part of that, I would like you also to answer why it is that you have been chosen for this program, from your point of view. Why is it that a Republican President, President Bush, would choose someone who has been an Obama supporter in this campaign to become the Inspector General of this \$700 billion program? So, if you would comment on that, I would appreciate it. And I congratulate you, by the way, and thank you for taking on what is a very, very important and difficult task.

Mr. BAROFSKY. Thank you, Senator. I do not know, of course, what went into the President's decision-making process. I can only assume that he selected the person that he believed was the best person for the job. I was never asked or questioned during my ap-

plication process whether I was a Democrat, Republican, or Independent, or whom I supported, so I have to assume that the President selected the person who had the best experience and background and demonstrated integrity for the job, and I am humbled and flattered by that nomination.

Senator SALAZAR. Does it matter to you that we are going to have a transition here in not too many days down the road, and you will be overseeing a very significant component of an economic recovery program that President-Elect Obama will put into place? Does that have any bearing at all in terms of how you look at this job?

Mr. BAROFSKY. Well, obviously we will work very closely, if I am confirmed, with the transition team to ensure that it is as seamless as possible, frankly, if confirmed, that we transition into what Inspector General Thorson is doing.

Senator SALAZAR. All right. Did you apply for this job or were you called one day and asked, are you interested in this job? What went into that process?

Mr. BAROFSKY. The latter, Senator. I was asked by my U.S. Attorney, Michael Garcia, if I would be interested in the job. After talking to Karen about it, we decided that it was—I love my current job, but we decided it was too important of a task not to pursue.

Senator SALAZAR. Well, thank you very much.

I do have a statement that I will submit for the record, but I just want to say to you that I very much look forward to having the kind of relationship with you where this committee and the rest of the Congress can have the kind of candor which I think this Congress expects and deserves, and I think which the American people expect and deserve on such a major undertaking.

Thank you very much.

Mr. BAROFSKY. Thank you, Senator.

The CHAIRMAN. Thank you, Senator.

[The prepared statement of Senator Salazar appears in the appendix.]

The CHAIRMAN. Senator Rockefeller?

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The economy is in enormous trouble. Japan has just gone into a recession, technically. Everything is going downhill in our country.

The CHAIRMAN. Not everything.

Senator ROCKEFELLER. Not everything, but a lot. Along comes this economic recovery package, which we voted for. What was the purpose of it? The purpose of it was to protect the American people, to make it possible for people to get their homes back, to work with their mortgages. That is what the banks were meant to do. They have not done that.

I think the American people at this point have some reason, with already several hundred billion dollars having been spent, to have even further doubts about their government. This disturbs me as much as it disturbs you, whom I honor and will vote for.

But I want to know—you answered a question earlier, I think from Senator Grassley or from somebody about, can you make sure that you get the information that you need. I think, if I heard you correctly, you said “I assume so.” I do not want to hear an answer like that. I am going to get it. We need a strong IG. Chairman Bau-

cus was right about that. IGs, whether it is in intelligence, whether it is finance—and particularly in finance, or particularly in all of them—IGs are the key to accountability.

We do not have any other oversight capacity. There are too many committees of Congress. Only IGs can really do good oversight, and they have to level with the American people, to protect the American people, and to do what was in the law that we passed which we are not now doing. So, on two levels, the money is not going to the banks to be helpful on mortgage situations, and it is not in any way establishing patterns, mandates in terms of executive compensation.

Now, Treasury has the authority to make it binding now, to make it binding for those banks that accept government money to restructure the home loans for those homeowners facing foreclosure. They are not doing that. There was a big switch. Paulson did a big switch. It was treated rather mildly, I thought, in the press, but I do not think across the country. I think the people are angry. So, so much of this comes down to you.

I am not talking about Republican or Democratic administrations. I think people in high finance and people who deal with finance have certain ways of doing things. It is like GM or others, or any group trying to change their way of behavior. They can do it at the top, but if you can't do it five or six levels down it does not mean anything because it does not last.

So the IG is the person who is always there, who always has his mind out for protecting the American people and the law that we passed, which is not being followed, which is dangerous for this country. I want to know that you are going to be that kind of Inspector General. Not "I assume so," but "I am going to get that information, I am going to know what the banks are spending that money for, I am going to know it all, and I am going to know about the executive compensation." You are in the law, and they will be reporting to you. They have to do it. They do not feel like they have to do it now because it is sort of a take-it-as-you-want law. It makes me as a West Virginian and an American citizen very upset, very angry. I think a lot of other people feel the same way, and I want to know why you are going to be different.

Mr. BAROFSKY. Well, Senator, when I said "I assume so," I assumed that authority is already in the statute. If there is any authority that is necessary to carry out the job of the Special Inspector General that is not already in the statute, I can assure you that we will lean forward, as Senator Grassley suggested, and we will come back and ask Congress for the authority to get the right information that we would need to do our job.

Senator ROCKEFELLER. All right. Answer my broader question. Why should I believe that you are going to be the IG I want to, I am inclined to—that you are going to be the IG who is going to be so all over this program that nobody in this or the next administration can slip stuff by? Because banks have ways of doing things, and people in high finance have ways of doing things, and you know that perfectly well.

Mr. BAROFSKY. Senator, I will not give you empty words. Instead, I will just point to my record and what I have done as a prosecutor in the Southern District of New York. Whether it was attacking the

FARC in the jungles of Colombia or Refco on Wall Street, all I have done is go after those who have violated the law. I will take that exact same tenacity and dedication to this job as I have done to every prosecution I have worked on.

Senator ROCKEFELLER. Thank you. I am glad you will be doing it, and we will all be watching.

The CHAIRMAN. Senator Snowe?

Senator SNOWE. Thank you, Mr. Chairman. First of all, I want to thank the chairman because it was obviously his initiative at the time of considering this legislation to incorporate a Special Inspector General, and I think it was absolutely essential and paramount in terms of providing confidence overall in the administration of this program. I only regret that it has taken the administration 45 days to consider your nomination, Mr. Barofsky. I want to thank you for your willingness to undertake it at this consequential time in our Nation's history.

The program has obviously changed, since we enacted it, from the purchase of troubled assets to direct equity investments. I would like to know from you, what is your understanding now in terms of those responsibilities? How do you have to adjust your data collection or your responsibilities that are enumerated in the law? What has to change in that regard?

Mr. BAROFSKY. I think that, again, based on my understanding of the statute, while the scope of what we are looking at has changed, responsibilities are the same. The responsibilities, of course, are to audit and investigate, in particular, to fulfill the reporting requirements.

I do not think the reporting requirements have changed. I think that these are, statutorily, still defined as troubled assets, even if they are in some ways different from the collateralized debt obligations that were originally contemplated or may have been originally contemplated. But I think the approach is the same. We need to investigate and audit, and that means take a close, long, hard look at these transactions, at the decision-making, at the hiring, and I do not think that the core focus of a Special Inspector General has changed.

Senator SNOWE. Well, it is interesting in noting the differences in responsibility between the Inspector General, the Comptroller's Office, and the GAO. That concerns me. I am wondering if you have had a chance to examine those responsibilities and the nature of the missions. For example, you cannot, as I understand it, get access to information directly from companies, but the information is to be elicited from other agencies. Is that correct?

Mr. BAROFSKY. I am not sure, Senator.

Senator SNOWE. I think that that is important because, if your responsibilities are narrow in scope, that has to change. I think central to this program, as Senator Rockefeller has indicated, is that we have to provide confidence in the underpinnings at a time in which an overwhelming majority of Americans obviously do not support this program. It has changed by lightning speed even since we have enacted it. Day by day, there have been alterations to the original nature of the program. We have seen banks that have not made the lending commitments that were really the underpinning of this legislation.

So, when I look at the scope and I have staff enumerate them, there is a difference in responsibility and the nature of it. Yours is much more specific and narrow in contrast to the Comptroller General and the GAO with respect to their responsibilities, which are much broader.

Mr. BAROFSKY. Senator, I would obviously have to take a close look, again, and have to consult with counsel as to exactly how narrow they are. But of course, if I am confirmed, and if we believe that the authorities and the powers are too narrow, we would certainly report that back to this committee and the Congress.

Senator SNOWE. Well, as I understand, the Treasury Department is not required to respond to Special IG audits or make changes to the way the TARP program functions based on your recommendations. Is that your understanding?

Mr. BAROFSKY. I am not certain, Senator.

Senator SNOWE. I think that, if Treasury has the ability to disregard those recommendations, clearly that is a serious problem and certainly undermines the effectiveness of the program. I think, frankly, as soon as you assume your responsibilities, I think these issues have to be quickly examined. I cannot impress upon you enough how paramount your responsibilities are going to be to the core of credibility.

It is absolutely vital at this very serious time. I was just concerned about the fact that the Treasury does not have to respond to an audit, and you do not have the access that is so essential, I think, to any and all information that is going to be critical for your assessment of how this program is being administered.

Now, for example, how would you determine the valuation of stock or preferred stock that the Federal Government is going to take, given this change in program?

Mr. BAROFSKY. Senator, that is something we would have to look into. I really am not prepared to give a precise method of valuation of that today.

Senator SNOWE. But you would agree that you would have to change your data collection based on what it was going to be, originally intended, to what it is now?

Mr. BAROFSKY. It clearly is contemplated within the statute that we do that. I do not know if it is a change, since the job has not yet been created.

Senator SNOWE. Right.

Mr. BAROFSKY. But it is certainly a different approach.

Senator SNOWE. Now, the CRS also indicated one other question, that there seems to be no requirement that the Inspector General publish, or even keep, records regarding any investigations made. Can we have your assurances that any and all information will be preserved and made available to the public based on any investigations that are done?

Mr. BAROFSKY. That sounds like a reasonable request. Obviously I would have to consult with counsel as to the nuances of your request, but it certainly seems like a reasonable one, and obviously something we would take very seriously.

Senator SNOWE. I appreciate that. Thank you again.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Before I turn to Senator Kyl, let me say that the Senator's question raised an interesting point. It is fully my understanding that the Special IG has full authority, full access to whatever information the Special IG would like to have. The GAO is an arm of Congress. It is not located and put in the Justice Department—not directly, but indirectly—to get information needed.

I understand the concerns shared by my colleague, but it is my understanding that the statute is written in a way and fully intends to allow the Special IG to have full access to all information that he needs to have. If there needs to be any clarification there, we are going to provide it. But I want you to assume that you do have it. You go ahead, until someone raises a ruckus and says no.

If they say no, then I want you to continue to assume that you have it. I want you to have the tenacity of a mongoose, or as some say, the tenacity of “mean as a junkyard dog.” I want you to be the IG whom we all are going to be proud of, who steps in and makes sure that this program is run the way it is supposed to be, and, if it is not being run the way it is supposed to be, that you give us the recommendations that are necessary to make sure that it is run as it is supposed to be.

So, somewhat along the lines of what Senator Rockefeller said, you just assume you can do anything you want to do. Assume it is all there. Again, even if someone says no, do not take no for an answer. The answer you want is the information in the public's best interests. That is my understanding of the way the statute is written. You have that. I appreciate the concerns of my colleague, but I want to make sure that—yes?

Senator SNOWE. Yes. Mr. Chairman, in that case we ought to make sure it is clearly delineated.

The CHAIRMAN. Yes.

Senator SNOWE. Because the responsibilities are clearly different between the Comptroller and the GAO.

The CHAIRMAN. They are very different, but we are not going to be able to make any changes until next year. So, I am saying in the meantime, I want Mr. Barofsky—I assume he is going to be confirmed by the end of this week—to assume he has full power to do whatever he wants, and, if any changes are necessary, we will make the changes.

Senator KYL?

Senator KYL. Thank you, Mr. Chairman.

The Stabilization Act which created the TARP placed several requirements on participating firms which restrict executive compensation, so you may be spending a portion of your time reviewing executive pay at these firms. One criterion in particular says, “It shall include limits on compensation that exclude incentives for senior executive officers of a financial institution to take unnecessary and excessive risks that threaten the value of the financial institution.” Obviously people in business take risks. How do you think you will differentiate between, in effect, an unnecessary risk and a calculated risk within the normal bounds of business behavior?

Mr. BAROFSKY. Senator, I think that is a difficult question for me to answer today. Obviously the first step would be to look and see what the policies, and what the contractual terms are, and what

the specifics are that these companies are going to be required to fulfill with respect to their risk committees and make recommendations as to whether or not those are appropriate and sufficient. But as I sit here, I cannot really answer your question as to where the dividing line should be, or would be between an acceptable risk and an unacceptable risk.

Senator KYL. If you find that it is too difficult to make a subjective decision in certain situations, would you recommend to the Congress any kind of guidelines that might be useful for you to follow that we would need to legislate?

Mr. BAROFSKY. It is certainly something that, if confirmed, I would consider.

Senator KYL. All right. You are probably also going to be pressured to pursue investigations against firms. Some of them may even be politically motivated. Obviously there is a lot of money that the taxpayers have at risk here. How do you balance the need to provide Congress with accurate information about how TARP is operating against undue interference in the business operations of the companies that are receiving the funding?

Mr. BAROFSKY. I think the Office of the Special Inspector General has some mandated reporting requirements and, beginning, middle, and end, as an office we have to fulfill those reporting requirements. As far as undue political influence on the office, I can assure this committee that it will not impact our operations. We serve the American people, if confirmed, and this Congress. It just will not have a place in an office, if I am confirmed.

Senator KYL. Obviously, though, you see that there could be some difficult situations where there is pressure to investigate a firm, and yet you might conclude that the activities of the firm do not merit an investigation. You acknowledge the potential pressure on your office in that event?

Mr. BAROFSKY. Senator, part of my job for the last 8 years is making the determination of when to pursue an investigation after an allegation has been made. There is a tried-and-true formula of balancing the credibility of the allegation versus the resources required, versus the likelihood of success of the investigation. Irrespective of the politics of any given allegation or referral, that formula has to be followed by the Office of the Special Inspector General, and will be followed, if I am confirmed.

Senator KYL. All right.

Finally, you are aware of the definitional limitations on potential recipients of funds under the TARP program. Originally it was the Asset Purchase Program. Now most of this is going, actually, to lend to different financial institutions. There are definitions of who qualifies for those kinds of funds.

From your understanding—and clearly you would not have agreed to accept this position, if confirmed, if you had not reviewed it fairly carefully—do the limits of the definition of those who qualify for the funds include entities like those being discussed today—the automobile companies, for example?

Mr. BAROFSKY. Senator, I would not hazard an opinion today.

Senator KYL. I am sorry?

Mr. BAROFSKY. I would not hazard an opinion today. I have not looked into that and gotten sufficient input. It seems like it is a

complicated question, and from my outsider's perspective I am just not prepared to answer that question.

Senator KYL. Well, you have looked at the statute, though?

Mr. BAROFSKY. I have.

Senator KYL. And see that it defines financial institutions as the recipients of the funding?

Mr. BAROFSKY. Yes.

Senator KYL. I just wonder if it is complicated beyond that as to some entity that is not a financial institution, like a car manufacturing company, as to whether it would be qualified or not.

Mr. BAROFSKY. Senator, I would be answering you merely based on my reading of press materials. I know there have been suggestions in the press that the financing arm of auto companies may or may not qualify. I just really would not feel comfortable with giving an opinion without doing sufficiently more research into the statute, the definitional terms, looking at the nuances of these particular companies.

Senator KYL. Mr. Chairman, I would just note that it is encouraging to see someone who is actually desirous of reading the statute, perhaps looking at the case law or anything else that might bear on a proper understanding. I appreciate your answers. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I just have one final point. I am impressed with your experience and results that you obtained as a prosecutor. However, this position is a bit different than a prosecutor. A prosecutor is charged with bringing people to justice who have not followed the law and letting a judge or jury then decide whether or not the person named has followed the law or not.

In this case, there are not a lot of laws, not a lot of standards. There is a lot of discretion left to Treasury in how these dollars are to be spent or not spent. So it is going to be your job here, when you are tracking down how the money is spent, to tell us, the country, what the law should be, what the standards should be, whether the standards set by Treasury are sufficient or not. It is going to take a lot of work, clearly, and it is going to take a lot of discretion, a lot of wisdom in reading the statute, the underlying statute, and understanding not only the letter, but the spirit of the statute. Clearly, the bigger spirit is: what is the public interest here?

So I encourage you to do that. Tell us not only how the dollars are being spent, but whether they are being spent wisely and properly and what the standards should be if they are insufficient standards, remembering that we set this up so that you could be truly independent, so you would not be subject to the pressures of an administration, or Congress, for that matter, although we are giving you a little guidance here of what we want, what we expect from you.

But this is not just a garden-variety Inspector General within a Department. I think some Inspector Generals do a pretty good job, some do not. It is my thought just to make doubly certain that we have an Inspector General that is truly independent and that we have given the resources to do that, that we have set up a Special IG similar to the Special IG we set up in the Iraq reconstruction fiasco. That IG uncovered millions—tens of millions, maybe hun-

dreds of millions—of dollars of waste that would not be known to the American public were it not known for that Special IG.

So I am hoping there is not a lot of waste here, but my thought was we would put you ahead of the process, not behind it. That is, let us not try to find the waste. Let us set up, have you go in right now off the top with very vigorous scrutiny to ensure as much as possible that dollars are not wasted.

You are independent. You are special. You are not another GAO report, you are not an oversight board, you are not these other oversight institutions that are mentioned and created in the statute. You are targeted with laser-like focus and all your resources on this program. You are independent. You are fully independent.

You have a great opportunity to do just a super job so that not only the American public feel better about this whole program—I think Senator Rockefeller is right, there are a lot of misgivings about this. I think a lot of American people think, hey, this thing is not working the way it is supposed to; maybe we were right after all to be skeptical about it.

So it is up to you to make sure these dollars are spent properly and fundamentally clearly so that you have the self-respect and knowledge that, by gosh, you did the greatest and best job possible. We want you to know that you have the full cooperation of this committee in helping to accomplish that objective. We want to work with you because, clearly, the American public are our employers. We are just employees, just the hired hands. It is up to us to serve our employers, and you are in just a great position to help make that happen. I want to just commend you again for it and wish you good luck.

Other questions? [No response]. All right. Thank you, Mr. Barofsky. All I am saying is: go for it.

Mr. BAROFSKY. Thank you, Mr. Chairman. Thank you, Senators. [Whereupon, at 3:22 p.m., the hearing was concluded.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

**Testimony by Neil Barofsky
Before the Senate Finance Committee
For Consideration for the Position of
Special Inspector General for
Department of the Treasury's Troubled Asset Relief Program**

November 17, 2008

Chairman Baucus, Senator Grassley, and Members of the Committee, I am honored to appear before you as the President's nominee to be the Special Inspector General for the Troubled Asset Relief Program (TARP). I am grateful to this Committee for taking the time to consider my nomination, and it is indeed humbling to be considered for such an important and vital position at this moment in our nation's history. If confirmed, I look forward to working closely with the Members of this Committee and your respective staffs, as well as the other Committees that will be overseeing the program in carrying out my responsibilities as Special Inspector General.

If I may, I will take a moment to share with you my professional background and why I think it prepares and qualifies me for this position. For the past eight years I have served as an Assistant United States Attorney in the Southern District of New York. My experience as an Assistant United States Attorney has reaffirmed to me the importance and rewards of public service, and if confirmed, I look forward to the opportunity to provide greater service to this country at a most serious time.

This past summer, our United States Attorney asked me to supervise a newly created Mortgage Fraud Group to respond to the havoc that mortgage fraud has caused to countless homeowners and lenders in our District. Drawing on an amazingly talented group of prosecutors of different levels of experience and expertise in such areas as Securities Fraud, Organized Crime, Major Bank Fraud, Asset Forfeiture and Civil Fraud, we have attacked at the root those who have contributed significantly to the current housing and financial crisis through wholesale fraud of homeowners, lenders, and investors. We have focused on crimes committed by those who have tricked lenders into making loans that were never intended to be repaid; those who have engaged in predatory lending practices by tricking homeowners into applying for mortgages that they never

could afford; and the criminals who have engaged in schemes in which they literally steal the homes from citizens who found themselves in default on their mortgages. I have also supervised our office's joint investigation into the vast Credit Default Swaps market with the Office of the New York State Attorney General. I believe that my experience as the head of the Mortgage Fraud Group, and my role in both supervising and participating in these investigations has given me a vital education in understanding some of the root causes of the current financial crisis, as well as the securities and derivative instruments whose decline in value has been such an important part of it. It also has given me the tools to identify the markers of fraud throughout the financial industry, the necessary expertise in investigating such frauds, and, of course, the experience of establishing a plan of attack on those committing these frauds.

While an Assistant United States Attorney, I was also one of the lead prosecutors in the investigation and prosecution of those criminally responsible for the \$2.4 billion fraud that was committed at Refco, Inc., the commodities giant that imploded in October 2005, just months after the company went public. This investigation and trial has thus given me the experience to understand and detect complex billion dollar frauds, an understanding of financial audits and where they can fail.

Over the last few weeks, as have many Americans, I have been closely following the current financial crisis and the Government's response, and in particular the creation and execution of the TARP. If confirmed, I look forward to contributing to the oversight that Congress has established to protect the tax payers' \$700 billion investment and fulfilling the duties of the Special Inspector General, as outlined in the relevant governing statutes.

My overriding goal as Special Inspector General for the TARP would be to make sure that its rules and regulations are followed and to prevent waste, fraud, and abuse. We will need to establish an efficient and effective audit program. And of course, we will need to establish an investigative arm, which I can assure this Committee will tirelessly investigate and refer for prosecution any individual or entity that tries to criminally profit from the Program.

I intend to work closely with each of you, your colleagues on the other committees that are overseeing the program, your staffs, GAO, and all others who are charged with overseeing this historic program. I want to emphasize to you that I fully understand and appreciate that, if confirmed, I am accountable to you, the Congress and the American people. I fully intend, accordingly, to keep you fully and promptly apprised of significant findings and concerns.

Mr. Chairman, Senator Grassley, and Members of the Committee, I want to thank you for this opportunity to appear before you. I would be pleased to respond to any questions that you may have.

**SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.) Neil M. Barofsky
2. Position to which nominated: Special Inspector General for the Troubled Asset Relief Program
3. Date of nomination:
4. Address: (List current residence, office, and mailing addresses.)

5. Date and place of birth:

Abington, PA. April 16, 1970

6. Marital status: (Include maiden name of wife or husband's name.)

7. Names and ages of children:

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

New York University School of Law, August 1992 to May 1995, J.D.

University of Pennsylvania, September 1988 to May 1992. B.A. in International Relations and B.S. in Economics, May 1992.

Spanish River High School, October 1986 to May 1988, High School Diploma.

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Assistant United States Attorney, United States Attorney's Office for the Southern District of New York, New York, NY. October 2000 - present.

Associate, Morvillo, Abramowitz, Grand, Iason & Silberberg, New York, NY. February 1997 to October 2000.

Associate/Summer Associate, Weil, Gotshal & Manges, New York, NY. October 1995 to February 1997; Summer 1994.

Research Assistant, New York University School of Law, New York, NY. Summer 1993.

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)

See above.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

None.

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

None.

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

I have been a registered Democrat since 1988.

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

I donated \$200 to the Obama presidential campaign in 2008.

- 14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Executive Office of the United States Attorneys Director's Award for Superior Performance by a Litigative Team (December 2008).

Attorney General's John Marshall Award for Outstanding Legal Achievement for Asset Forfeiture (October 2007).

New York University School of Law International Law Fellowship (September 1993 – May 1994).

- 15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

None.

- 16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with **two** copies of each formal speech.)

None.

- 17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

(please see my attached resume).

B. FUTURE EMPLOYMENT RELATIONSHIPS

- 1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

No.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None.

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

None.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with **two** copies of any trust or other agreements.)

No potential conflicts.

5. **Two** copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.
6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Yes. I am a plaintiff in a pending medical malpractice case in New York Supreme Court (Barofsky v. Krinick) and was the defendant in an uncontested divorce case (Youssef v. Barofsky) in Kings County, New York.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes.

FINANCE COMMITTEE QUESTIONS FOR THE RECORD

**United States Senate
Committee on Finance**

**Hearing Regarding
the Nomination of Neil Barofsky
to be Special Inspector General**

November 17, 2008

Questions from Senator Grassley

Question 1:

Mr. Barofsky, can you please tell us a little bit about what financial industry experience you have?

Response:

As head of the mortgage fraud group, I have supervised our office's joint investigation into the Credit Default Swaps market. I have also supervised and participated in investigations into the defrauding of financial institutions through mortgage fraud, and investigations into bank insiders who aided and abetted these frauds. I believe that my understanding of these frauds within the financial industry will be essential if the next administration uses TARP funds to purchase mortgages, mortgage related securities and mortgage related derivative instruments.

I was also one of the lead prosecutors in the investigation and prosecution of those criminally responsible for the \$2.4 billion fraud that was committed at Refco, Inc., the commodities giant that imploded in October 2005, just months after the company went public. As a result of our investigation, we have forfeited and returned hundreds of millions of dollars to defrauded victims, obtained guilty pleas from former Refco CEO Phillip Bennett (who is currently serving a 16-year prison sentence), and its former Chief Financial Officer and Executive Vice President. We also obtained the conviction after trial of Refco's former President, Tone Grant, who is serving a 10-year sentence, and the indictment of Refco's former outside counsel. During the course of the investigation, we uncovered and prosecuted fraud that in the financial industry in connection with a \$1.9 billion leveraged buyout (including \$600 million in subordinated notes and \$800 million in senior debt stolen from financial institutions) and an approximately \$500 million IPO, and which included various accounting frauds; frauds in the valuation and mismarking of assets; fraud in financial statements; fraud in disclosures to different Government entities, including the SEC and CFTC, fraud by accountants; fraud through sham treasury and foreign exchange transactions; and fraud by outside counsel.

In order to investigate and prosecute this fraud, I not only worked with and managed a group of Assistant U.S. Attorneys (AUSAs), legal assistants, and law enforcement agents, but a variety of outside relationships in the financial industry as well, including representatives of the SEC and CFTC; the bankruptcy trustee and examiner; audit and forensic accountants; banks (both domestic and international); underwriters; investment banks; hedge funds; pension funds; and of course, many of the major law firms that specialize in these areas. I was also responsible for managing complex parallel civil proceedings involving these parties. This investigation and trial has thus given me the experience to understand and detect complex billion dollar frauds, an understanding of financial audits and where they can fail, and a familiarity with many of the same entities and institutions with whom the Special Inspector General will have to contend in carrying out his or her duties.

Question 2:

EESA established multiple organizations to provide broad oversight over TARP including a Financial Stability Oversight Board and a Congressional Oversight Panel. The act also placed audit responsibilities for the program with GAO and CBO.

- **How will you coordinate the work of the Special IG with these other organizations?**

Response:

The statute requires the Special IG to coordinate its audits and activities, and if confirmed, I would meet with the other oversight bodies and work with them to devise a coordinated plan.

- **What do you believe the Special IG can uniquely offer in oversight of TARP?**

Response:

Among other things, I believe the Special IG can offer a leadership role; a comprehensive plan; a diversity of audit, legal and investigatory experience; and resources that come with a \$50 million budget. The Special IG will also be in a unique position to look directly into the activities of the TARP Program and to report back to Congress on their transparency.

Question 3:

Your relevant work experience includes serving as an Assistant United States Attorney for the Southern District of New York and Chief of the Mortgage Fraud

Unit. Prior to this you served as a lead prosecutor in the Southern District's Securities Fraud Unit.

- **How have these experiences prepared you for becoming the Special IG for TARP?**

Response:

For the past eight years I have served as an Assistant United States Attorney in the Southern District of New York. My testimony explains in detail that experience and I would like to refer to that in my response to the question.

“This past summer, our United States Attorney asked me to supervise a newly created Mortgage Fraud Group to respond to the havoc that mortgage fraud has caused to countless homeowners and lenders in our District. Drawing on an amazingly talented group of prosecutors of different levels of experience and expertise in such areas as Securities Fraud, Organized Crime, Major Bank Fraud, Asset Forfeiture and Civil Fraud, we have attacked at the root those who have contributed significantly to the current housing and financial crisis through wholesale fraud of homeowners, lenders, and investors. We have focused on crimes committed by those who have tricked lenders into making loans that were never intended to be repaid; those who have engaged in predatory lending practices by tricking homeowners into applying for mortgages that they never could afford; and the criminals who have engaged in schemes in which they literally steal the homes from citizens who found themselves in default on their mortgages. I have also supervised our office's joint investigation into the vast Credit Default Swaps market with the Office of the New York State Attorney General. I believe that my experience as the head of the Mortgage Fraud Group, and my role in both supervising and participating in these investigations has given me a vital education in understanding some of the root causes of the current financial crisis, as well as the securities and derivative instruments whose decline in value has been such an important part of it. It also has given me the tools to identify the markers of fraud throughout the financial industry, the necessary expertise in investigating such frauds, and, of course, the experience of establishing a plan of attack on those committing these frauds.

While an Assistant United States Attorney, I was also one of the lead prosecutors in the investigation and prosecution of those criminally responsible for the \$2.4 billion fraud that was committed at Refco, Inc., the commodities giant that imploded in October 2005, just months after the company went public. This investigation and trial has thus given me the experience to understand and detect complex billion dollar frauds, an understanding of financial audits and where they can fail.”

Question 4:

Our equity, credit, and funding markets remain under considerable strain, as banks have been forced to reduce their leverage dramatically and have lowered their risk

appetite. In addition, the primary and secondary mortgage markets are impaired by reduced liquidity.

- **What do you see as some of the most prudent ways to restore the orderly functioning of our markets?**
- **Based on what you know to date, do you believe that the Treasury is focusing its resources in the areas of greatest need?**
- **Based on your mortgage fraud background, do you see advantages to Treasury moving forward more aggressively with a program to help restructure mortgages so that individuals have a better chance of staying in their homes?**

Response:

I have only had access to publicly available information and have not had access to the underlying data and rationale behind the policy decisions addressed by these questions. If confirmed as the Special IG, I would work to report to Congress the rationale for the decisions that have been made regarding the purchase of assets, and seek to fulfill the oversight functions set forth in the statute. I believe that offering an opinion on these issues could impair the ability of the Special IG to carry out his or her duties, as it may create the perception that in doing so the Special IG is attempting to advance a policy goal as opposed to fulfilling his or her oversight duties.

Question 5:

On October 14, 2008, the Treasury published the program description for its Capital purchase program and made available \$250 billion of purchase authority to increase the capacity of U.S. financial institutions to lend to U.S. businesses and consumers and to support the U.S. economy. However, the terms of Treasury's investments in these institutions provides few requirements that would insure that these institutions actually use funds provided to achieve the purposes of the act.

- **What would you believe to be the appropriate roles of Treasury, the banking regulators, and the Special IG in insuring that the billions in taxpayer dollars given to these financial institutions are actually being put to use to strengthen our financial system as opposed to using such funds for other unrelated purposes?**

Response:

I believe that the role of the Special IG is to fulfill his or her reporting requirements and provide the information contained in those reports to those charged with making the relevant policy (and legislative) decisions. My overriding goal as Special Inspector General for the TARP would be to ensure that its rules and regulations are followed and

to prevent waste, fraud, and abuse. As Special IG, I would work to report to Congress the rationale for the decisions that have been made regarding the purchase of assets, and seek to fulfill the oversight function set forth in the statute.

Question 6:

Treasury's program today does not resemble the program that was commonly expected when EESA was enacted, nor the program that Treasury advocated. While Treasury Secretary Paulson defends this as necessary and appropriate changes in response to changed circumstances, critics have suggested that ad hoc changes lessen the program's effectiveness by creating uncertainty about the government's actions.

- **What is your assessment of the changes in the program and the concerns that inconsistent actions lessen effectiveness?**

Response:

I have only had access to publicly available information and have not had access to the underlying data and rationale behind the policy decisions addressed by this question. As Special IG, I would work to report to Congress, as required by statute, the rationale for the decisions that have been made regarding the purchase of assets, and seek to fulfill the oversight function set forth in the statute. I do not foresee the role of the Special IG as making economic policy decisions or assessing the macroeconomic impact of the program, but I would work with Congress to provide the information as required by the statute and to ensure the Department is following the EESA.

- **Do you believe that the program, with its current focus on capitalizing banks, is the appropriate way to achieve the goals of EESA?**

Response:

I have only had access to publicly available information and have not had access to the underlying data and rationale behind the policy decisions addressed by these questions. As Special IG, I would work to report to Congress the rationale for the decisions that have been made regarding the purchase of assets, and seek to fulfill the oversight function set forth in the statute.

- **What would be the indicators of TARP effectiveness in reports you would issue as Special Inspector General?**

Response:

I do not believe that the statute contemplates that the Special IG issue macroeconomic reports on the impact of the use of TARP funds on the overall economy. We would report back to Congress the rationale for the decisions that have been made regarding the purchase of assets, and seek to fulfill the oversight functions set forth in the statute which may address those indicators of effectiveness. If it does not, then I would work with Congress to address any additional reporting concerns.

- **Based on what you have seen of the TARP program, what is your current assessment of its effectiveness to date in loosening credit market conditions?**

Response:

I do not know at this time. I have only had access to publicly available information and have not had access to the underlying data and reports on the impact of the use of TARP funds on the overall economy.

Question 7:

If you were to become the Special IG, please describe the access authority needed to oversee the activities of TARP.

- **Do you believe EESA provides the Special IG with sufficient access authority to determine whether participants of TARP's capital injection program are using funds provided by TARP to achieve the purposes of the act?**

Response:

At this time, I do not believe that I can answer this question, given that I have not had an opportunity to review all of the relevant agreements and to conduct a detailed analysis of the relevant authorities conferred to the Special IG under the EESA and the IG Act of 1978. If confirmed, I would conduct such an analysis and report to Congress if determined that the Special IG needed additional access authority.

Question 8:

The Treasury plans to rely heavily on contractors and financial agents to carry out its responsibilities under the TARP program.

- **What are your plans for determining whether the contract prices and fees paid to the contractors and agents are a good value for the American taxpayer?**
- **What are your plans for reviewing how the contracts and financial agent agreements were awarded?**

- **What are your plans for reviewing Treasury's efforts to include small businesses—including those owned by women and minorities—in providing services to TARP?**
- **What are your plans for reviewing Treasury's oversight of contractors and financial agents?**

Response:

If confirmed I plan to confer with my staff and the other oversight bodies to formulate a comprehensive audit plan to address each of the concerns listed in this question. I believe that I would need a greater understanding of the internal deliberations, policies and processes underlying Treasury's decisions before I could commit to a specific plan.

Question 9:

Reliance on contractor expertise inherently creates the potential for conflicts of interest, or the appearance of conflicts. It is my understanding that the Treasury plans to rely mostly on self-reported information from the contractors and agents to identify such potential conflicts.

- **What are your plans for independently investigating whether these firms have conflicts that are not self disclosed?**
- **Given Treasury's recent shift in focus from purchasing troubled assets to equity infusions, how does this alter the risk posed from potential conflicts of interest?**
- **What policies and standards do you believe are needed to effectively manage these contracts to avoid potential conflicts or to mitigate the effects of any unavoidable conflicts?**
- **What standards would you and your office observe to help to avoid conflicts of interest?**

Response:

I do not have access to the mitigation plans that I understand are required from each of the contractors, or of the efforts of Treasury to enforce those plans, and it is therefore difficult to answer these questions. If confirmed, I plan to sit down with Treasury personnel, my staff, and the other oversight bodies to formulate a comprehensive audit plan to address the conflict of interest issues raised in these questions, based on an understanding of all of the relevant data.

Question 10:

EESA originally contemplated that the troubled assets being purchased and insured would be residential or commercial mortgages and instruments based on those mortgages. However, there are other financial products such as credit default swaps that are now playing a key role in the financial crisis. Although the Treasury

program has announced that it is not currently focused on purchasing such troubled assets, this approach could still be considered in the future.

What do you think are the advantages and disadvantages of products such as mortgage backed securities, collateralized debt obligations, and credit default swaps and what role have they played in the current crisis?

I do not believe that I have access to the types of information and data required to answer this question. However, if Treasury were to use TARP funds to purchase the assets listed in this question, I believe that my experience as head of the Mortgage Fraud Group would be valuable in identifying potential fraud.

- **What ways do you believe that an understanding of these products and the financial market in general is important to conducting TARP audits and investigations?**

Response:

While the current plan for the TARP does not contemplate acquiring such assets, it is certainly possible that the next administration will use TARP funds to purchase such assets. If so, I have also supervised our office's joint investigation into the vast Credit Default Swaps market with the Office of the New York State Attorney General. I believe that my experience as the head of the Mortgage Fraud Group, and my role in both supervising and participating in these investigations has given me a vital education in understanding some of the root causes of the current financial crisis, as well as the securities and derivative instruments whose decline in value has been such an important part of it. It also has given me the tools to identify the markers of fraud throughout the financial industry, the necessary expertise in investigating such frauds, and, of course, the experience of establishing a plan of attack on those committing these frauds.

Question 11:

Before becoming an Assistant U.S. Attorney I understand you were a white-collar criminal defense attorney. Is there any possibility that your earlier defense work could create a conflict of interest if you are confirmed? Is there a possibility that as TARP IG you would interact with any of your former clients, and what will you do to eliminate the possibility of a conflict of interest should any situation arise?

Response:

I do not foresee any such potential conflict, and given that more than eight years have passed, I believe that the chances of an unanticipated conflict arising are extremely small. If a conflict did arise, however, I would consult with ethics personnel to determine the appropriate manner to eliminate or contend with such a conflict.

Question from Senator Stabenow**Question 1:**

The Michigan economy is facing one of the most difficult and severe recessions in the country. The tightening credit markets coupled with high unemployment, a struggling manufacturing sector and record foreclosure rates have led to a particularly adverse economic situation. Community banks, a cornerstone of our economy, have been especially impacted by the downturn. Bank closures and restricted lending further decrease consumer confidence—only exacerbating our current condition. However, to date, no Michigan institutions have received funding under the Treasury Capital Purchasing Program. In your new position will you examine the selection process that Treasury has used under the program?

Response:

If confirmed, I will use the full authority accorded to the Special IG to examine all aspects of the policy determinations in the selections made under the TARP Program.

Question from Senator Kyl**Question 1:**

Earlier this month, CBO reported that our nation recorded a \$134 billion budget deficit during the first month of the 2009 fiscal year. Spending on TARP accounted for \$17 billion of October's deficit. However, when Treasury released its Monthly Treasury Statement (MTS) for October, it showed a deficit totaling \$237 billion. Treasury calculated that TARP spent \$115 billion last month.

1. I understand that our government uses special budgetary rules under the Credit Reform Act of 1990 when calculating the cost of certain financial transactions. Did Treasury calculate the cost of TARP's financial purchases using these rules?
2. There is a big difference between \$17 billion and \$115 billion. How much did Treasury spend last month when it injected capital into our nation's financial intuitions?

Response:

As a nominee who is not currently working within the Treasury, I do not have access to the information requested in your questions. If confirmed, I would work with Treasury to determine the answers to these questions.

STATEMENT FOR SENATOR BUNNING
SENATE COMMITTEE ON FINANCE
“Nomination Hearing of Neil Barofsky”
November 17, 2008

I thank the Chairman for holding this hearing to allow the Committee to review the President’s nominee for the post of Inspector General for the Troubled Asset Relief Program (TARP) under the recently enacted Emergency Economic Stabilization Act.

As one of the nation’s elite prosecutors in the Southern District of New York, Mr. Barofsky clearly is very familiar with the criminal laws that pertain in this area. The EESA law also authorizes \$50 million to his office, and so he will have ample resources to do his job.

I have several concerns with his nomination, however.

In particular, I wonder how he will perform the role the EESA law envisions for him when the purpose of the Troubled Asset Relief Program (TARP) is already drifting loose from its statutory moorings, less than two months after its enactment.

The bill authorizes the Treasury Secretary to purchase “troubled assets” and tasks the Inspector General to oversee the management of these assets. Last week, however, the Secretary made clear that he has no plans to purchase any such assets, and he has, instead, used \$290 billion to provide capital to banks and American International Group. The Inspector General has the obligation to question the Secretary’s authority to diverge so fundamentally from the EESA bill’s purpose, but this nominee has not stated any intention to do so.

The EESA bill contemplates the purchase of troubled mortgage backed securities, but it appears now that there will be none under the IG’s jurisdiction. What will his office oversee?

Thank you, again, Mr. Chairman for holding this hearing. I look forward to hearing Mr. Barofsky’s testimony.

SENATOR KEN SALAZAR
OPENING STATEMENT

Thank you, Chairman Baucus and Ranking Member Grassley, for holding this afternoon's hearing to examine the President's nominee to be Special Inspector General for the Troubled Assets Relief Program, or TARP.

Let me first say that I am glad to have the opportunity to discuss issues and concerns related to the economic rescue legislation that was signed into law last month. When we learned in September about the grave crisis in the nation's financial markets and the potential consequences to businesses and families across the country, Congress worked around the clock to draft and pass a proposal that would be both effective in addressing the crisis and responsible in protecting taxpayer dollars, providing strong and independent oversight, and penalizing companies that stood to benefit from government assistance.

While I supported passage of the economic rescue package, I made it clear that I believed the proposal had shortcomings, and that I was committed to forcefully exercising the Congressional oversight authority that it provides and to work diligently to ensure its effective implementation. With that in mind, I commend Senator Baucus for his work in creating the position of Special Inspector General for the program. I joined Senator Baucus in urging its inclusion, and am eager to see it put into place.

Since enactment of the economic rescue legislation, we have had an opportunity to see the program in action, and the results are not all good.

First, I am concerned that those responsible for administering the program do not have an adequate grasp on the nature of the problem or the most effective response. Just last week, Secretary Paulson announced a major shift in the overall structure of the program. Rather than buying distressed assets – an approach he adamantly asserted would work – the Secretary announced that the government will now purchase a direct stake in the nation's banks.

I understand the potential benefits of this approach from the perspective of injecting cash more quickly into the market and protecting taxpayer dollars, but I continue to believe that the government must develop a well-thought-out strategy and execute it rather than jump from tactic to tactic and hope one will eventually work.

Second, I share the concerns that have been raised about how banks are using the funds the government has provided to them. If the goal of the program is to restore the flow of credit that is vital to health economic activity for small businesses and families seeking loans, then the government assistance should not be used to compensate executives or shareholders.

Finally, given the results of the recent election and the changing political dynamic in Washington, I want to be absolutely clear that I am equally committed to ensuring effective implementation of this program and protecting the taxpayer regardless of which political party is in power. Whether this program is run by President Bush or President Obama, I will not hesitate to be tough on the program and its administrators, the Special Inspector General, or the President. The people of Colorado and the nation expect nothing less.

I look forward to discussing these important issues with Mr. Barofsky and my colleagues on the Committee this afternoon, and to hearing from the nominee about how he plans to ensure the effective, responsible use of our constituents' tax dollars.

Thank you.