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Neil Barofsky's SIG TARP: "Difficult, Rigorous, and Independent" Oversight of the TARP

I. INTRODUCTION

When introducing Neil Barofsky during the nomination hearing for his appointment as Special Inspector General for the Troubled Asset Relief Program (SIG TARP) in November 2008, Senator Charles Schumer offered, "If he can take on the [Revolutionary Armed Forces of Columbia], I am sure he can handle a few Wall Street bankers"¹ Senator Schumer was referring to Barofsky's role in investigating and prosecuting the Colombian narco-terrorist organization that controlled one-half of the world's cocaine production while the nominee served as Assistant U.S. Attorney for the Southern District of New York.² Barofsky was confirmed as SIG TARP on December 8, 2008.³ In his first two years as chief TARP overseer, Barofsky might equate dealing with the U.S. Department of the Treasury (Treasury) in pursuit of transparent TARP oversight to navigating the jungles outside Bogota.⁴ 2010 marked a tense year between SIG TARP and Treasury, with disagreements involving three areas of the TARP: the Home Affordable Modification Program (HAMP); the

1. *The Nomination of Neil M. Barofsky, of New York, to be the Special Inspector General, Troubled Asset Relief Program: Hearing before the S. Comm. on Banking, Housing, and Urban Affairs*, 110th Cong. 3 (2008), available at <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg50419/pdf/CHRG-110shrg50419.pdf> (statement of Sen. Charles Schumer, Member, Comm. on Banking, Housing, and Urban Affairs).

2. *Id.*

3. Paul C. Light, *Senate Confirms N.Y. Prosecutor as Inspector General for Bailout*, WASH. POST, Dec. 9, 2008, at A17, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/12/08/AR2008120803538.html>.

4. See SPECIAL INSPECTOR GEN. FOR THE TROUBLED ASSET RELIEF PROGRAM, QUARTERLY REPORT TO CONG. 9 (Oct. 26, 2010), available at http://www.sig tarp.gov/reports/congress/2010/October2010_Quarterly_Report_to_Congress.pdf [hereinafter SIG TARP QUARTERLY REPORT, OCT. 2010] ("Treasury's unfortunate insensitivity to the values of transparency has led it to engage in conduct that risks further damaging public trust in Government.").

Treasury auto plan for General Motors Company (GM); and finally, Treasury's loss estimate for the government's stake in American International Group, Inc. (AIG).⁵

Between December 2008 and November 2010, SIG TARP grew in size from 2 to 140 full-time employees.⁶ Part II will chart this development.⁷ Through much of 2009, the growing SIG TARP office was in dispute with Treasury concerning SIG TARP's legal status and respective authority.⁸ Part III concerns this conflict.⁹ In 2010, an emboldened SIG TARP office issued pointed criticism of Treasury's TARP programming under Treasury Secretary Timothy Geithner.¹⁰ Part IV will examine three areas of the TARP in which SIG TARP and Treasury Department have clashed, namely: the HAMP; GM programming; and the AIG loss estimate.¹¹

In its first two years in operation, SIG TARP has asserted itself through rigorous oversight, seeking transparency in the

5. See *infra* Part IV.

6. See *Emergency Economic Stabilization Act: One Year Later: Hearing before the S. Comm. on Banking, Housing, and Urban Affairs*, 111th Cong. 42 (2009), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg56019/pdf/CHRG-111shrg56019.pdf> [hereinafter *EESA: One Year Later*] (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program: "When I started on December 15 [2008], it was just me and my deputy. . ."); Robert Schmidt, *Neil Barofsky: The Bailout Cop the White House Loathes*, BLOOMBERG (Nov. 11, 2010, 5:00 PM), [hereinafter Schmidt, *Neil Barofsky*] http://www.businessweek.com/magazine/content/10_47/b4204042291239.htm (noting that SIG TARP employs 140, as of this date).

7. See *infra* Part II.

8. See Evan Perez & Deborah Solomon, *Treasury Retreats From Standoff With TARP Watchdog*, WALL ST. J., Sept. 3, 2009, at A3, available at <http://online.wsj.com/article/SB125193355469281319.html>.

9. See *infra* Part III.

10. See, e.g., OFFICE OF THE SPECIAL INSPECTOR GEN. FOR THE TROUBLED ASSET RELIEF PROGRAM, SIGTARP-10-005, FACTORS AFFECTING IMPLEMENTATION OF THE HOME AFFORDABLE MODIFICATION PROGRAM 31-33 (Mar. 25, 2010), available at

http://www.sig tarp.gov/reports/audit/2010/Factors_Affecting_Implementation_of_the_Home_Affordable_Modification_Program.pdf [hereinafter SIG TARP HAMP AUDIT REPORT] (criticizing Treasury's implementation of the HAMP); Robert Schmidt, *U.S. Treasury's Bailout Cop Trains Fire on the White House*, BLOOMBERG (Nov. 11, 2010, 11:06 AM), <http://www.bloomberg.com/news/2010-11-11/u-s-treasury-s-bailout-cop-trains-fire-on-the-white-house.html> [hereinafter Schmidt, *Bailout Cop Trains Fire*] (criticizing Treasury for alleged manipulation of TARP loss figures).

11. See *infra* Part IV.

largest emergency expenditure by the government in U.S. history.¹² Some argue that Barofsky's office merely second-guesses the inherently complex, yet commonly successful, TARP measures adopted by Treasury.¹³ Ultimately, this Note concludes that SIG TARP has served well in its first two years; that arguably over-aggressive oversight is better than the alternative.¹⁴

II. THE SIG TARP OFFICE IS ESTABLISHED AND TAKES FORM

The Emergency Economic Stabilization Act of 2008 (EESA)¹⁵ was signed into law by President George W. Bush on October 3, 2008 in response to a financial system on the brink of collapse.¹⁶ Failures of risk management within the financial services industry, together with government regulatory failures, led to a severe credit crisis upon the decline of the U.S. housing market.¹⁷ A total of \$700 billion in TARP funds were authorized

12. Russell Goldman, *Financial Bailout Balloons to the Trillions*, ABC NEWS (Nov. 25, 2008), <http://abcnews.com/Business/Economy/story?id=6332892> ("The government's financial bailout will be the most expensive single expenditure in American history . . .").

13. See, e.g., Jen Psaki, White House Deputy Communications Director, *The Facts on AIG*, THE WHITE HOUSE BLOG (Oct. 27, 2010, 6:00 AM), <http://www.whitehouse.gov/blog/2010/10/27/facts-aig> (defending Treasury's TARP reporting policies, saying of Barofsky, "Some people just don't like movies with happy endings"); Editorial, *Treasury's Back-Seat Driver: The Auto Dealers Find Another Friend*, WASH. POST, July 20, 2010, at A20 [hereinafter *Treasury's Back-Seat Driver*] (arguing that the July 2010 audit report criticizing Treasury's auto program was not constructive).

14. See *infra* Parts IV-V.

15. Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (to be codified at 12 U.S.C. §§ 5201-5261).

16. Greg Hitt & Deborah Solomon, *Historic Bailout Passes as Economy Slips Further*, WALL ST. J., Oct. 4, 2008, at A1, available at <http://online.wsj.com/article/SB122304922742602533.html>.

17. Olufunmilayo B. Arewa, *Risky Business: The Credit Crisis and Failure (Part I)*, 104 NW. U. L. REV. COLLOQUY 398, 403-404 (2010) (describing failures in industry and regulatory risk management). The underlying causes and nature of the economic crisis cannot be covered here in detail, though they have been studied extensively by others. See generally Brian J. M. Quinn, *The Failure of Private Ordering and the Financial Crisis of 2008*, 5 N.Y.U. J. L. & BUS. 549 (2009) (detailing the many causes of the 2008 crisis which included: decreased regulation, increased credit, complex financial instruments, and the failure of the housing markets that collateralized mortgage-backed securities); Evan N. Turgeon, *Boom and Bust for Whom?: The Economic Philosophy Behind the 2008 Financial Crisis*, 4 VA. L. & BUS. REV. 139 (2009) (assessing the causes of the 2008 crisis, and critiquing the government's past and current regulatory policy); Karl S. Okamoto, *After the Bailout: Regulating*

by EESA; \$350 billion available immediately, and a second \$350 billion installment requiring Senate approval.¹⁸ This approval was granted on January 15, 2009.¹⁹

EESA also established the SIG TARP office.²⁰ The legislation mandated audits of Treasury TARP programming, in which SIG TARP must list and estimate the total amount of troubled assets purchased by the Treasury Department.²¹ In addition, SIG TARP audits must summarize Treasury's purpose in taking on such assets.²² Under EESA, SIG TARP must report quarterly on its activities.²³ SIG TARP also investigates cases of private sector TARP fraud, but these matters are outside of the scope of this Note.²⁴

EESA does not identify the department in which SIG TARP exists; rather, this is implied from the Inspector General Act of 1978 (IG Act).²⁵ Under the IG Act, as the TARP is a Treasury program, it follows that SIG TARP technically exists within the Department of Treasury.²⁶ Under EESA, funding for the SIG TARP office is independent of the Treasury Department;

Systemic Moral Hazard, 57 UCLA L. REV. 183, 186 (2009) (“[M]arket incentives converged to increase systemic risk to the point of collapse.”).

18. Emergency Economic Stabilization Act of 2008 § 115, 12 U.S.C.A. § 5225 (West 2008).

19. Deborah Solomon & Greg Hitt, *TARP Funds' Second Half Set for Release as Senate Signs Off on Request*, WALL ST. J., Jan. 16, 2009, at A3, available at <http://online.wsj.com/article/SB123205759811587287.html>.

20. Emergency Economic Stabilization Act of 2008 § 121, 12 U.S.C.A. § 5231 (West 2008).

21. *Id.* at § 121(c).

22. *Id.*

23. *Id.* at §121(f).

24. Allegations of TARP fraud which SIG TARP has helped prosecute include: *U.S. v. Lee Bentley Farkas*, No. 1:10-cr-00200 (E.D. Va. filed June 15, 2010) (indicting on one count of conspiracy and fifteen counts of fraud concerning the alleged misappropriation of over 1 billion dollars); *U.S. v. Jeffrey L. Levine*, No. 1:09-cr-554 (N.D. Ga. filed Dec. 22, 2009) (indicting, similarly, for TARP fraud); *U.S. v. Charles J. Antonucci Jr.*, No. 1:10-mj-00507 (S.D.N.Y. filed May 13, 2010) (filing suit on ten counts, including bribery and fraud).

25. Inspector General Act of 1978, 5 U.S.C. app. 3 (2006).

26. *See* Inspector General Act of 1978 § 6(c). Barofsky offered his own interpretation of SIG TARP's legal standing, describing SIG TARP as “a strictly independent agency within Treasury.” *Following the Money: Report of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP): Hearing before the H. Comm. on Oversight and Gov't Reform*, 111th Cong. 39 (2009) [hereinafter *Following the Money (H. Oversight Comm.)*] (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

\$50,000,000 was initially authorized for the SIG TARP to carry out its duties.²⁷ Finally, the SIG TARP office will be terminated when the Treasury Department is no longer responsible for any troubled assets.²⁸ As the TARP has evolved from a bank investment program into a more complex program²⁹ reaching additional areas such as the Auto Industry and mortgage modification,³⁰ the winding-down of SIG TARP under EESA is not imminent.³¹

The SIG TARP was not the only oversight office established under EESA. The Congressional Oversight Panel (COP) also has its genesis in the October 2008 Act.³² The five panelists, appointed by legislative leaders, have held positions in various areas of politics, academia, law, and finance.³³ Every month, the COP must issue a report;³⁴ each report has centered on one aspect of the government's financial recovery efforts.³⁵ Though the offices oversee similar areas, the COP differs from SIG TARP in a some important ways.³⁶ COP has neither the

27. Emergency Economic Stabilization Act of 2008 § 121(g), 12 U.S.C.A. §5231(j) (West 2009).

28. Emergency Economic Stabilization Act of 2008 § 121(h) (stating that SIG TARP will terminate on the later of two dates: 1.) the date that the last troubled asset has been sold or transferred out of the control of the Federal Government; 2.) the date of expiration of the last insurance contract issued by EESA).

29. See Dawn Kopecki & Catherine Dodge, *U.S. Rescue may Reach \$23.7 Trillion, Barofsky Says*, BLOOMBERG (July 20, 2009, 3:01 PM), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aY0tX8UysIaM>.

30. See *infra* Part IV.

31. See Schmidt, *Neil Barofsky, supra* note 6 (describing how after Treasury's declaration of the end of the TARP in October 2010, Barofsky says that he intends to keep SIG TARP operating for another 8-10 years because, while new disbursements are finished, established TARP programs move forward).

32. See Emergency Economic Stabilization Act of 2008 §125.

33. The panel is currently composed of Ted Kaufman (COP Chairman, U.S. Senator from Delaware), Richard Neiman (New York Superintendent of Banks), Damon Silvers (Director of Policy and Special Counsel, AFL-CIO), J. Mark McWatters (Attorney), and Kenneth Troske (Professor of Economics, University of Kentucky). The former COP Chair was Elizabeth Warren (Professor of Law, Harvard University). CONGR. OVERSIGHT PANEL, DEC. OVERSIGHT REPORT: A REVIEW OF TREASURY'S FORECLOSURE PREVENTION PROGRAMS 168 (Dec. 14, 2010), available at <http://cop.senate.gov/documents/cop-121410-report.pdf> [hereinafter COP DEC. 2010 REPORT].

34. Emergency Economic Stabilization Act of 2008 § 125(b)(1), 12 U.S.C.A. § 5233(b)(1) (West 2009).

35. See, e.g., COP DEC. 2010 REPORT, *supra* note 33 (providing an update and analysis of one particular TARP program, the HAMP).

36. Compare Emergency Economic Stabilization Act of 2008 § 121, with Emergency Economic Stabilization Act of 2008 § 125.

auditing mandate nor the private-sector investigatory purpose of the SIG TARP.³⁷ Also, with around 140 employees, the SIG TARP office is significantly larger in size.³⁸

Almost all of the TARP's first \$350 billion had been committed to use³⁹ by the time Barofsky took control of SIG TARP on December 15, 2008.⁴⁰ By April of 2009, nearly \$600 billion had been allocated.⁴¹ Amidst an urgent need to begin its oversight activities, an early challenge the newly established office faced was personnel.⁴² SIG TARP needed a sizeable staff of experienced auditors and investigators, and it needed them quickly.⁴³ On April 24, 2009, the Special Inspector General for the Troubled Asset Relief Program Act of 2009 (SIG TARP Act of 2009)⁴⁴ became law; it would allow SIG TARP certain extended hiring flexibilities.⁴⁵ For example, as SIG TARP lacked the capacity to train new federal employees, the SIG TARP Act allowed Barofsky to rehire experienced annuitants – retired auditors and investigators who were drawing a pension – with a waiver such that they would not need to give up that pension.⁴⁶ On the day that President Barack Obama signed the SIG TARP Act

37. See Emergency Economic Stabilization Act of 2008 § 125.

38. See Schmidt, *Neil Barofsky*, *supra* note 6 (noting SIG TARP's approximate number of employees).

39. See Kevin Drawbaugh, *Democrats Prepare Hurdle for 2nd TARP \$350 Bln*, REUTERS (Dec. 15, 2008, 6:26 PM), <http://www.reuters.com/article/idUSTRE4BE6AE20081215> (noting that in mid-December 2008 only \$15 billion of the originally authorized sum remained undistributed).

40. *EESA: One Year Later*, *supra* note 6, at 42 (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

41. Paul Krugman, Op-Ed., *Money for Nothing*, N.Y. TIMES, Apr. 27, 2009, at A23, available at <http://www.nytimes.com/2009/04/27/opinion/27krugman.html>.

42. *A Review of TARP Oversight, Accountability, and Transparency for U.S. Taxpayers: Hearing before the Subcomm. on Oversight and Investigations of the H. Fin. Services Comm.*, 111th Cong. 6 (2009), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111hrg48676/pdf/CHRG-111hrg48676.pdf> [hereinafter *A Review of TARP Oversight*] (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

43. *Id.*

44. SIG TARP Act of 2009, Pub. L. No. 111-15, secs. 1-7, § 121, 123 Stat. 1603 (to be codified at 12 U.S.C. § 5231).

45. See SIG TARP Act of 2009, sec. 3, § 121(e) (to be codified at 12 U.S.C. § 5231).

46. *A Review of TARP Oversight*, *supra* note 42, at 11 (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

of 2009, SIG TARP had only thirty-seven employees on staff.⁴⁷ By the end of July 2009, a mere three months later, the ranks at SIG TARP had grown to seventy.⁴⁸ In April 2010, Barofsky's office employed 116.⁴⁹ The 2009 SIG TARP Act was an early sign that SIG TARP would be the object of Congressional favor; unsurprising, as the TARP program which it oversees has been immensely publicly unpopular.⁵⁰

By the spring of 2010, the well-staffed SIG TARP was exerting significant influence through published audit reports citing failures in Treasury's TARP mortgage-relief and auto programs,⁵¹ along with additional criticism of Treasury's estimates of TARP losses in the AIG program.⁵² But before studying areas of more recent concern, some background into the early auditing activities of SIG TARP, and the resulting pushback by Secretary Geithner's Treasury Department, warrants discussion.

47. See *Following the Money: A Quarterly Report by the Special Inspector General for the TARP: Hearing before the J. Econ. Comm.*, 111th Cong. 17 (2009), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg52273/pdf/CHRG-111shrg52273.pdf> [hereinafter *Following the Money (J. Econ. Comm.)*] (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

48. *Following the Money (H. Oversight Comm.)*, *supra* note 26, at 32 (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

49. *Fin. Services and General Gov't Appropriations for 2011: Hearing before the H. Comm. on Appropriations*, 111th Cong. 205 (2010) (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

50. See, e.g., Deborah Solomon, *Bailout Anger Undermines Geithner*, WALL ST. J., Feb. 22, 2010, at A1, available at <http://online.wsj.com/article/SB10001424052748703798904575069610953163620.html> (“[Secretary Geithner’s] association with unpopular financial bailouts has become an albatross.”).

51. SIG TARP HAMP AUDIT REPORT, *supra* note 10; OFFICE OF THE SPECIAL INSPECTOR GEN. FOR THE TROUBLED ASSET RELIEF PROGRAM, SIGTARP-10-008, FACTORS AFFECTING THE DECISIONS OF GENERAL MOTORS AND CHRYSLER TO REDUCE THEIR DEALERSHIP NETWORKS (July 19, 2010), available at http://www.sig tarp.gov/reports/audit/2010/Factors%20Affecting%20the%20Decision%20of%20General%20Motors%20and%20Chrysler%20to%20Reduce%20Their%20Dealership%20Networks%207_19_2010.pdf [hereinafter SIG TARP AUTO AUDIT REPORT].

52. SIG TARP QUARTERLY REPORT, OCT. 2010, *supra* note 4, at 8 (“Treasury [is] vulnerable to charges that it has manipulated its methodology for calculating losses . . .”).

III. SIG TARP'S FIRST YEAR: BUILDING A REPUTATION FOR INDEPENDENT OVERSIGHT

A. *Barofsky Decries Initial Failure of Treasury to Seek Accountability for TARP Funds*

“Treasury could, can and should require the banks to report on their use of [TARP] funds,” Barofsky said before Congress in March 2009.⁵³ Banks were given scant guidelines upon TARP disbursements; only Bank of America and Citigroup were required by Treasury to report on their use of government funds.⁵⁴ SIG TARP, immediately, intended to bring more transparency to the TARP – by March, it had mailed voluntary surveys to all TARP recipients and had received 100 percent compliance in its request for information on each institution’s use of government funds.⁵⁵ Barofsky told Congress that he initiated his survey program after Treasury indicated that it would not require the banks to report on their use of TARP funds.⁵⁶

SIG TARP argued that, in fairness to taxpayers, reporting requirements on the use of public funds should be adopted by Treasury.⁵⁷ Specifically, SIG TARP noted that the government was preparing to inject an additional \$30 billion into insurance-giant AIG.⁵⁸ Considerable controversy had arisen from claims that AIG used its initial TARP disbursements for executive bonuses in

53. *Sen. Max Baucus Holds a Hearing on TARP Oversight*, 111th Cong. 23 (2009) (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program), available at http://www.sig tarp.gov/reports/testimony/2009/Hearing_Transcript_Senate_Finance_Committee_3_31_09.pdf.

54. *See Following the Money (J. Econ. Comm.)*, supra note 47, at 6 (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

55. *See Troubled Asset Relief Program: Hearing before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 111th Cong. 9 (2009) [hereinafter *TARP (Ways and Means Comm.)*] (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

56. *Following the Money (J. Econ. Comm.)*, supra note 47, at 6-7 (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

57. OFFICE OF THE SPECIAL INSPECTOR GEN. FOR THE TROUBLED ASSET RELIEF PROGRAM, QUARTERLY REPORT TO CONG. 137-138 (Apr. 21, 2009), available at http://www.sig tarp.gov/reports/congress/2009/April2009_Quarterly_Report_to_Congr ess.pdf.

58. *Id.* at 138.

2008.⁵⁹ SIG TARP argued that if AIG was not required to report on its use of additional funds – as was the case under Treasury policy – public trust in the government’s TARP program would be further compromised.⁶⁰ In its first quarterly report to Congress in April 2009, along with accompanying Congressional testimony, SIG TARP sharply criticized Treasury’s lack of reporting requirements for institutions accepting TARP funds.⁶¹

B. Treasury’s Request for OLC Clarification on SIG TARP’s Legal Standing

The 2009 conflict between SIG TARP and Treasury has been described by some commentators as an effort by Treasury to rein in the oversight authority of SIG TARP.⁶² On the eve of an interview with a member of the Treasury General Counsel’s Office regarding TARP payments to AIG that had arguably been used for executive compensation, Barofsky received an email from Bernard Knight, Treasury General Counsel, concerning SIG TARP’s position within the Department of the Treasury.⁶³ Knight said that Treasury would seek a legal opinion from the Office of Legal Counsel (OLC) of the Department of Justice regarding whether the Secretary of the Treasury had supervisory authority over SIG TARP.⁶⁴ One journalist speculated on the particular timing of Treasury’s request, given the start of SIG TARP’s audit regarding AIG bonus payments and Secretary Geithner’s position in 2008 as Chairman of the New York Federal Reserve, where the

59. *Id.*

60. *Id.*

61. *See id.*; TARP (*Ways and Means Comm.*), *supra* note 55, at 9 (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

62. *See generally* Tom Hamburger, *Concern About Timing of Two Events*, L.A. TIMES, June 19, 2009, at A20 (“[The OLC request] leaves open the possibility of conflict [between Treasury and SIG TARP] in the future as audits of [TARP] multiply.”); Amit R. Paley & Ed O’Keefe, *Authority Over Bailout Office is Questioned*, WASH. POST, June 19, 2009, at A21, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/06/18/AR2009061804052.html> (including commentary that the Treasury is aggressively trying to protect its powers).

63. Memorandum from Neil M. Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program, to Bernard Knight, General Counsel, U.S. Dep’t of the Treasury 1 (Apr. 7, 2009) [hereinafter Barofsky to Knight].

64. *Id.*

bonus-money was distributed under his watch.⁶⁵ A Treasury spokesperson described the confluence of events as “entirely a coincidence,”⁶⁶ and Barofsky later said, “I wouldn’t go so far as to do a causal relationship between the two”⁶⁷

In his response to Knight, Barofsky cited specific legislative intent from Senator Max Baucus, who designed the SIG TARP section of EESA.⁶⁸ Baucus stated while advocating for EESA before Congress, “I designed the office of this inspector general to be truly independent.”⁶⁹ The framework of the Inspector General Act of 1978 suggests that SIG TARP is within the Department of the Treasury, in that Treasury must provide SIG TARP with space, equipment, services, and a delegation of its subpoena power.⁷⁰ Though technically within the Department of the Treasury and the Executive Branch, Barofsky stressed, “independence is the most vital thing for an Inspector General.”⁷¹ Given the nature of SIG TARP audits of Treasury TARP programs, whether SIG TARP was accountable to Treasury was an issue with important consequences.⁷²

C. *Victory for SIG TARP and Independent Oversight*

In September 2009, Treasury withdrew its request for the OLC opinion, and Barofsky announced that SIG TARP was free from Treasury supervision.⁷³ Treasury declined to explain the reason for the withdrawal of the request.⁷⁴ Some political

65. Hamburger, *supra* note 62, at A20.

66. *Id.*

67. *Following the Money (H. Oversight Comm.)*, *supra* note 26, at 56 (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

68. Barofsky to Knight, *supra* note 63, at 3.

69. *Id.* (quoting Congr. Record, p. S10218 (Oct. 1, 2008)).

70. Inspector General Act of 1978 § 6(c), 5 U.S.C. app. 3 § 6(c) (2006).

71. *Following the Money (H. Oversight Comm.)*, *supra* note 26, at 48 (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

72. See Darrell Issa, Op-Ed., *TARP and the Demands of Democracy*, THE AMERICAN SPECTATOR (Sept. 10, 2009, 6:08 AM), <http://spectator.org/archives/2009/09/10/tarp-and-the-demands-of-democr> (discussing the importance of independent oversight of the TARP, although Rep. Issa’s additional political comments are extraneous for the purposes of this Note).

73. Perez & Solomon, *supra* note 8, at A3.

74. *Id.*

pressures may have played a role.⁷⁵ Senator Charles E. Grassley had requested from Secretary Geithner an explanation of the OLC request.⁷⁶

One month later, Barofsky demonstrated his independence from Treasury supervision with scathing remarks before Congress concerning Secretary Geithner's performance when he served as Chairman of the New York Fed.⁷⁷ Regarding the much-maligned executive compensation AIG paid with funds administered through the Federal Reserve, Barofsky testified that Geithner failed to know of these payments when it was his job to know.⁷⁸ Of Geithner and the AIG compensation-payment ordeal, Barofsky stated, "he is ultimately responsible."⁷⁹ This sentiment was supported in SIG TARP's published audit report on the matter.⁸⁰ This very audit process had prompted Treasury's request for the OLC opinion in April 2009.⁸¹ It was not the last criticism offered by SIG TARP of a Geithner-led office – future statements would

75. See Jim Kuhnenn, *Treasury Backs Down in Clash with Bailout Watchdog*, AP FIN. WIRE (Sept. 3, 2009, 5:48 PM), available at http://www.huffingtonpost.com/2009/09/03/treasury-backs-down-in-cl_n_276779.html.

76. Letter from Sen. Charles E. Grassley, Ranking Member, U.S. Senate Comm. on Finance, to Timothy F. Geithner, Sec'y, U.S. Dep't of Treasury (June 17, 2009).

77. See Mark Trumbull, *Obama "Pay Czar" Lacks Clout to Stop \$198 Million in AIG Bonuses*, CHRISTIAN SCI. MONITOR (Oct. 15, 2009), <http://www.csmonitor.com/Business/2009/1014/obama-pay-czar-lacks-clout-to-stop-198-million-in-aig-bonuses> (covering Barofsky's testimony before Congress on the subject of the AIG payments and Mr. Geithner's role).

78. *AIG Bonuses: Audit Report of the SIGTARP: Hearing before the H. Comm. on Oversight and Gov't Reform*, 111th Cong. 93 (2009), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111hrg55101/pdf/CHRG-111hrg55101.pdf> (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

79. *Id.* at 78 (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

80. See OFFICE OF THE SPECIAL INSPECTOR GEN. FOR THE TROUBLED ASSET RELIEF PROGRAM, SIGTARP-10-002, EXTENT OF FEDERAL AGENCIES' OVERSIGHT OF AIG COMPENSATION VARIED, AND IMPORTANT CHALLENGES REMAIN 23 (Oct. 14, 2009), available at http://www.sigtar.gov/reports/audit/2009/Extent_of_Federal_Agencies'_Oversight_of_AIG_Compensation_Varied_and_Important_Challenges_Remain_10_14_09.pdf (describing failures of communication within the Federal Reserve Bank of New York regarding AIG bonus payments).

81. See Hamburger, *supra* note 62, at A20; Barofsky to Knight, *supra* note 63, at 3.

concern Secretary Geithner's current administration of the Treasury Department.⁸²

IV. SIG TARP'S SECOND YEAR: AGGRESSIVE CRITICISM OF TREASURY IN THREE AREAS

When TARP officially expired in October 2010, the Department of Treasury estimated the final cost of its programs to taxpayers at \$51 billion.⁸³ Treasury's arithmetic included a \$17 billion gain from TARP Bank and Credit Market Programs, offset by losses in the HAMP (estimated at \$46 billion), Auto Programs (estimated at \$17 billion), and AIG (estimated at \$5 billion).⁸⁴ Treasury later reassessed the AIG figure, saying that the government may ultimately profit from its current ownership stake in the company.⁸⁵ Barofsky questioned the validity of Treasury's figures, saying that Treasury was "manipulating numbers for a big PR push."⁸⁶ In 2010, SIG TARP and Treasury disagreed in assessments of three major TARP areas: the HAMP; GM programming; and the AIG loss estimate.⁸⁷

82. See SIG TARP HAMP AUDIT REPORT, *supra* note 10, at 31-34 (criticizing Treasury's implementation of the HAMP); SIG TARP AUTO AUDIT REPORT, *supra* note 51, at 28-32 (criticizing the manner by which auto-dealerships were shuttered under Treasury supervision); SIG TARP QUARTERLY REPORT, OCT. 2010, *supra* note 4, at 9 (stating, of AIG loss estimates, "Treasury's unfortunate insensitivity to the values of transparency has led it to engage in conduct that risks further damaging public trust in Government").

83. U.S. DEP'T OF THE TREASURY, OFFICE OF FIN. STABILITY, TROUBLED ASSET RELIEF PROGRAM: TWO YEAR RETROSPECTIVE 4 (Oct. 2010), available at http://www.treasury.gov/initiatives/financial-stability/briefing-room/reports/agency_reports/Documents/TARP%20Two%20Year%20Retrospective_10%2005%2010_transmittal%20letter.pdf [hereinafter TREASURY TARP TWO YEAR RETROSPECTIVE].

84. *Id.*

85. Brady Dennis, *AIG files plan to pay off debt to NY Fed*, WASH. POST, Dec. 9, 2010, at A18, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/08/AR2010120807407.html> (including a statement from Tim Massad, acting Treasury Assistant Sec'y for Fin. Stability: "we believe taxpayers will recover every dollar invested in AIG and stand a good chance of making a profit").

86. Schmidt, *Bailout Cop Trains Fire*, *supra* note 10 (quoting Barofsky directly, and also describing the "animus" that has developed between SIG TARP and the White House).

87. See *infra* Part IV.A-C.

A. *The Home Affordable Modification Program (HAMP)*

The HAMP was announced by Treasury in February 2009 as a program to subsidize the restructuring of privately-owned mortgage loans with the goal of helping citizens avoid foreclosure.⁸⁸ The program functions by providing incentives for modification to home-loan servicers on properties in default or at serious risk of default – it helps fund the modifications, then awards incentive payments to servicers upon successful modifications.⁸⁹ There is no mechanism for repayment; it is a government subsidy.⁹⁰

The HAMP set out to modify between 3 million and 4 million mortgages through 2012.⁹¹ Through late 2010, there were only 519,648 permanent modifications in place.⁹² Meanwhile, in that same time period, 541,907 trial modifications were cancelled.⁹³ Thus, there was a forty-nine percent rate of success for a HAMP modification during this time period.⁹⁴ Through 2010, the HAMP has been much criticized.⁹⁵ Treasury defended the program in October 2010, asserting that HAMP “has used taxpayer resources efficiently.”⁹⁶ SIG TARP disagreed with this assessment.

88. SIG TARP HAMP AUDIT REPORT, *supra* note 10, at 1.

89. *Id.* at 2.

90. CONGR. BUDGET OFFICE, REPORT ON THE TROUBLED ASSET RELIEF PROGRAM—NOV. 2010 7 (Nov. 2010), *available at* <http://www.cbo.gov/ftpdocs/119xx/doc11980/11-29-TARP.pdf> [hereinafter CBO TARP REPORT, NOV. 2010].

91. Jim Puzzanghera, *Mortgage Aid Program Struggling*, L.A. TIMES, Aug. 21, 2010, at B1, *available at* <http://articles.latimes.com/2010/aug/21/business/la-fi-obama-foreclosures-20100821>.

92. COP DEC. 2010 REPORT, *supra* note 33, at 18.

93. *Id.* at 29.

94. 519,648 permanent modifications, divided by 1,061,555 total attempted modifications, equals a 48.9% “success rate.”

95. See generally Stephanie Armour, *Trials drag on for loan help; Many 3-month plans are hitting 6 months*, USA TODAY, Aug. 23, 2010, at 3B, *available at* http://www.usatoday.com/printedition/money/20100823/mortgages23_st.art.htm (detailing the problems in HAMP’s execution); Nick Timiraos, *HAMP Slips*, WALL ST. J., Aug. 11, 2010, at C8 (briefing the percentages of delinquent payments in current HAMP trial modifications); Kathleen Lynn, *Homeowners frustrated by delays in federal loan program*, WASH. POST, Aug. 7, 2010, at E3, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/05/AR2010080507425.html> (describing delays in decisions on HAMP applications by struggling homeowners).

96. TREASURY TARP TWO YEAR RETROSPECTIVE, *supra* note 83, at 72.

SIG TARP found that Treasury's goals for HAMP were unclear.⁹⁷ Though the plan had initially sought to "help 3 to 4 million homeowners avoid foreclosure," later statements by Treasury suggested that 3 to 4 million homeowners would receive offers for trial modification.⁹⁸ Given the poor success rate for conversion of three-month trial modifications into permanent loan modifications, Treasury had no set number by which to measure performance.⁹⁹ SIG TARP also criticized Treasury's implementation of the HAMP, citing: repeated changes to program terms, causing confusion and delay; insufficient efforts to market the program to the public; and a high re-default rate which threatened the long-term success of the program.¹⁰⁰ SIG TARP characterized the HAMP as "spending tens of billions of dollars of taxpayer funds on a program that is assumed . . . to fail ultimately for 40 percent of the participants"¹⁰¹

Given that most banks have paid back their TARP obligations, Treasury's HAMP operation is one of the few remaining TARP programs in which taxpayers' money might be used inefficiently.¹⁰² Barofsky's October 2010 public statement that HAMP "has had incredibly anemic effect so far,"¹⁰³ exists in stark contrast to Treasury's October claim that the program, "has transformed the way the entire mortgage servicing system operates."¹⁰⁴ In September 2010, Barofsky responded to Treasury comments that HAMP was successful because of its *attempts* to help homeowners, despite the high failure rate of these trial modifications, saying, "a failed trial modification is a failure; there is no success . . . I don't see how you can define success through a failure, which is what [Treasury's] attempt here is."¹⁰⁵

97. See SIG TARP HAMP AUDIT REPORT, *supra* note 10, at 30.

98. *Id.*

99. *Id.*

100. *Id.* at 31-33.

101. *Id.* at 33.

102. See TREASURY TARP TWO YEAR RETROSPECTIVE, *supra* note 83, at 4.

103. Interview by Neil Cavuto with Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program (Oct. 4, 2010).

104. TREASURY TARP TWO YEAR RETROSPECTIVE, *supra* note 83, at 72.

105. Interview by Thomson Reuters Media with Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program in Wash. D.C. (Sept. 21, 2010).

According to Treasury's October 2010 estimate, the HAMP will account for \$46 billion in TARP losses to taxpayers.¹⁰⁶ In contrast to Treasury figures, the Congressional Budget Office (CBO) has estimated a significantly lower cost for the HAMP subsidy. In November 2010, the CBO estimated that \$12 billion in total TARP funds would ultimately be expended on HAMP.¹⁰⁷ The COP weighed in on the matter, citing the CBO estimate in arguing that, due to HAMP's failings, much of the \$45.6 billion allocated for foreclosure prevention will go unused.¹⁰⁸ In short, in 2010, reports from SIG TARP, the CBO, and the COP suggested that the HAMP was floundering.

Secretary Geithner, aware of these criticisms, has pledged to revise cost estimates for the HAMP subsidy.¹⁰⁹ Though he believes that the \$12 billion CBO figure is "too pessimistic" he has committed to a comprehensive assessment of what Treasury is likely to spend on mortgage-relief programming under the TARP.¹¹⁰ In this way, by questioning Treasury's optimistic October 2010 assessment for HAMP disbursements, oversight authorities are bringing clarity to Treasury's TARP implementation and reporting.

B. Treasury's GM Plan

In October 2010, Treasury estimated a \$17 billion loss from its auto programs.¹¹¹ In supporting the forecast, Treasury cited two positive quarters of net income for GM and Chrysler and four positive quarters for auto-financing company Ally Financial.¹¹² Before the November 2010 Initial Public Offering (IPO) of the government's common shares, GM owed the government \$40

106. TREASURY TARP TWO YEAR RETROSPECTIVE, *supra* note 83, at 4.

107. CBO TARP REPORT, NOV. 2010, *supra* note 90, at 7.

108. See COP DEC. 2010 REPORT, *supra* note 33, at 107.

109. See *COP Hearing with Treasury Secretary Timothy Geithner (Video Recording)*, COP.SENATE.GOV (Dec. 16, 2010), <http://cop.senate.gov/hearings/library/hearing-121610-geithner.cfm>, at 97:00 [hereinafter *COP Hearing Video*].

110. *Id.*

111. TREASURY TARP TWO YEAR RETROSPECTIVE, *supra* note 83, at 4.

112. *Id.* at 48.

billion in TARP funds,¹¹³ which translated into a sixty-one percent ownership stake in the auto manufacturer.¹¹⁴

Upon Senator Grassley's request, SIG TARP analyzed the current debt of GM and what stock price, per share, would repay TARP loans.¹¹⁵ In August 2010, Barofsky settled on a figure of \$133.78 per share.¹¹⁶ This figure did not include the government's preferred shares or legal and investment banking fees for the IPO.¹¹⁷ Barofsky's figure also did not take in account any potential stock split.¹¹⁸ Such a split occurred before the IPO, with GM splitting by a factor of 3-to-1.¹¹⁹ As a result, the break-even point for the U.S. Treasury to recoup losses from sale of stock is around \$44 per share.¹²⁰

The November 18, 2010 IPO allowed the Treasury to reduce its stake in GM to around thirty-seven percent or slightly lower by some estimates,¹²¹ as the company sold 478 million of 912 million total shares at an average price of \$33 per share.¹²² In order to break even, the company will need to sell its remaining shares at an average price of \$52.80 per share.¹²³ President Obama welcomed the return of GM stock to active trading as "another big

113. Editorial, *GM: Car-buncle on the Body Politic*, INVESTOR'S BUS. DAILY, Sept. 23, 2010, at A10.

114. Peter Whoriskey, *GM Shares must sell at \$134 for US to break even*, WASH. POST, Sept. 23, 2010, at A20, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/22/AR2010092206067.html>.

115. Letter from Neil M. Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program, to Sen. Charles E. Grassley, Ranking Member, U.S. Senate Comm. on Fin. (Aug. 30, 2010).

116. *Id.*

117. *Id.*

118. SIG TARP QUARTERLY REPORT, OCT. 2010, *supra* note 4, at 147.

119. See Craig Trudell & David Welch, *GM IPO Aims to Make US Minority Holder*, BOSTON GLOBE, Nov. 5, 2010, at Business 9, available at http://www.boston.com/business/articles/2010/11/05/gm_ipo_aims_to_make_us_minority_holder.

120. See *id.*

121. Marilyn Alva, *GM Rises In Debut After Massive IPO But Ends Near Lows*, INVESTOR'S BUS. DAILY, Nov. 19, 2010, at A1 (figuring a decrease in government ownership to 33% of GM stock, or lower at 26% if warrants and over-allotments are used).

122. Mark Guarino, *Feds begin pull back from managing General Motors operations*, CHRISTIAN SCI. MONITOR (Nov. 20, 2010), <http://www.csmonitor.com/USA/2010/1120/Feds-begin-pull-back-from-managing-General-Motors-operations>.

123. *Id.*

step toward becoming a success story.”¹²⁴ Not surprisingly, Neil Barofsky’s SIG TARP office offered a more cautious assessment of GM’s prospects.

Noting mismanagement in the Treasury’s TARP Auto Program, SIG TARP has highlighted issues which may prove problematic for GM.¹²⁵ In early 2009, GM came to the “Auto Team” of the Department of the Treasury – two advisors with private equity background, together with fifteen staff, charged with determining the viability of GM and Chrysler¹²⁶ - with a plan to close 1,650 dealerships by 2014.¹²⁷ Treasury’s Auto Team rejected this plan, and GM resubmitted a more accelerated schedule that would close 1,454 dealerships by October 2010.¹²⁸ SIG TARP found that this forced acceleration by the Auto Team was a mistake for at least two reasons.¹²⁹ First, accelerated dealership terminations were not based on GM’s cost savings estimates, so the interest of the long-term viability of the company was not served.¹³⁰ Secondly, the Auto Team’s actions resulted in thousands of jobs lost, perhaps unnecessarily.¹³¹

As GM reorganizes, SIG TARP auditors have argued the negative effect of Treasury decisions on the long-term viability of the corporation. This argument is not without rejoinder – that Treasury’s decision to close dealerships, while perhaps unfortunate, was reasonable given GM’s difficult financial position.¹³² In any case, Barofsky’s analysis of TARP auto

124. Laura Meckler, *Obama Claims Vindication on GM*, WALL ST. J. BLOG (Nov. 18, 2010, 5:35 PM), <http://blogs.wsj.com/washwire/2010/11/18/obama-claims-vindication-on-gm>.

125. See SIG TARP AUTO AUDIT REPORT, *supra* note 51, at 2.

126. *Id.*

127. 156 CONG. REC. H5813 (daily ed. July 20, 2010), available at <http://www.gpo.gov/fdsys/pkg/CREC-2010-07-20/pdf/CREC-2010-07-20-pt1-PgH5810.pdf> (statement of Rep. Gohmert, quoting Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

128. *Id.*

129. SIG TARP AUTO AUDIT REPORT, *supra* note 51, at Summary.

130. *Id.*

131. *Id.*

132. *Treasury’s Back-Seat Driver*, *supra* note 13, at A20 (further commenting on SIG TARP’s speculation on lost jobs, “The alternative was zero jobs for everyone. . .”).

programming demonstrated SIG TARP's knack for rigorous oversight through its Treasury audits.

C. *Treasury's AIG Loss Estimate*

In October 2010, Treasury estimated an ultimate \$5 billion loss in its AIG holdings from the TARP.¹³³ SIG TARP soon responded, harshly criticizing Treasury for allegedly adopting inconsistent methodology.¹³⁴ The disagreement resulted in a series of acrimonious public statements between Administration and SIG TARP officials. One columnist remarked that SIG TARP was "in open warfare" with the Administration.¹³⁵ Ultimately, the occurrence showed the benefit of independent oversight. Treasury's November 2010 AIG loss estimates incorporated the clarity and explanation that SIG TARP requested.¹³⁶

In September 2010, AIG announced a recapitalization plan which created the possibility of an accelerated government exit from AIG ownership through a prospective IPO of the government's shares.¹³⁷ With the recapitalization plan in mind, Treasury projected the overall estimated government cost of AIG aid under TARP at \$5 billion.¹³⁸ SIG TARP cried foul. Barofsky's office maintained that Treasury failed to take volatility in stock-prices into account in its projection.¹³⁹ Furthermore, SIG TARP contended that Treasury adopted different methodology "as part

133. TREASURY TARP TWO YEAR RETROSPECTIVE, *supra* note 83, at 4.

134. See SIG TARP QUARTERLY REPORT, OCT. 2010, *supra* note 4, at 7-10

135. Schmidt, *Neil Barofsky*, *supra* note 6.

136. See Mary Williams Walsh, *A Footnote Explains a Dispute over Treasury's Bailout Figures*, N.Y. TIMES, Nov. 17, 2010, at B4, available at <http://www.nytimes.com/2010/11/17/business/17aig.html> ("In its new annual report, the Treasury provided what appears to be the footnote that Mr. Barofsky was looking for."); U.S. DEP'T OF THE TREASURY, OFFICE OF FIN. STABILITY, AGENCY FIN. REPORT: FISCAL YEAR 2010 11, tbl.6, n.3 (Nov. 2010), available at http://www.treasury.gov/initiatives/financial-stability/briefing-room/reports/agency_reports/Documents/2010%20OFS%20AFR%20Nov%2015.pdf [hereinafter TREASURY OFS FIN. REPORT, 2010].

137. See SIG TARP QUARTERLY REPORT, OCT. 2010, *supra* note 4, at 7.

138. TREASURY TARP TWO YEAR RETROSPECTIVE, *supra* note 83, at 4.

139. SIG TARP QUARTERLY REPORT, OCT. 2010, *supra* note 4, at 7.

of a multifaceted publicity campaign touting the positive aspects of TARP”¹⁴⁰

The Administration responded with vigor. White House Deputy Communications Director Jen Psaki quipped, “some people don’t like movies with happy endings,” and accused SIG TARP of trying to grab a few cheap headlines.¹⁴¹ In a more official response, Timothy Massad, Acting Assistant Secretary of Treasury’s Office of Financial Stability, insisted that the loss estimate was consistent with the Department’s published methodology standards.¹⁴² Massad argued that the table calculating the AIG loss estimate was qualified, in bold print, as “post-Restructuring.”¹⁴³ Barofsky was not satisfied; he wanted a footnote whenever the AIG figure was used – for example, in the Executive Summary – explaining that the estimate assumed positive values on transactions yet to occur.¹⁴⁴

Ultimately, Barofsky received his footnote. In November 2010, Treasury published its yearly, audited, financial report on the TARP.¹⁴⁵ When the AIG \$5.1 billion loss estimate was listed, a healthy footnote included, among other things, that “market prices will change” and that “the restructuring is subject to contingencies and has not been completed.”¹⁴⁶ Though the result was only a few words of clarification, SIG TARP seemed to achieve its goal – transparency in presentation of Treasury figures.¹⁴⁷

140. *Id.* at 8.

141. Psaki, *supra* note 13. Barofsky responded to Psaki’s comments, calling them “staggeringly inappropriate.” Schmidt, *Neil Barofsky*, *supra* note 6.

142. Memorandum by Timothy Massad, Acting Assistant Sec’y, Office of Fin. Stability, U.S. Dep’t of the Treasury, RE: AIG Loss Estimate, Oct. 29, 2010.

143. *See id.* at 1; TREASURY TARP TWO YEAR RETROSPECTIVE, *supra* note 83, at 52.

(containing the chart to which Mr. Massad refers).

144. *See* Walsh, *supra* note 136, at B4 (characterizing the clarification that Barofsky sought).

145. TREASURY OFS FIN. REPORT, 2010, *supra* note 136.

146. *Id.* at 11, tbl.6, n.3.

147. *See* Walsh, *supra* note 136, at B4.

V. CONCLUSION

The SIG TARP office has a hotline, which anyone can call to report an incident of TARP fraud.¹⁴⁸ Neil Barofsky explained that, when SIG TARP began, calls to the hotline were routed to his office telephone; “I would just pick it up.”¹⁴⁹ This type of hands-on approach seems appropriate for the watchdog of our history’s largest emergency transfer of public funds to the private sector. Even Secretary Geithner, the object of seemingly constant criticism from SIG TARP, reflected, “one of the great strengths of our country is that we subject the judgments of public officials to very difficult, rigorous, independent oversight.”¹⁵⁰

In 2009, Barofsky’s growing SIG TARP operation fought to maintain this independence. In 2010, SIG TARP offered criticism of Treasury’s TARP measures in three areas: the HAMP; Auto Programs; and the AIG loss estimate. In response, Treasury has made important alterations in its TARP implementation and reporting. To borrow Secretary Geithner’s words, Neil Barofsky’s oversight as SIG TARP has been difficult, rigorous, and independent.¹⁵¹

SAMUEL R. DIAMANT

148. *See Following the Money (J. Econ. Comm.)*, *supra* note 47, at 19-20 (statement of Neil Barofsky, Special Inspector Gen. for the Troubled Asset Relief Program).

149. *See id.*

150. *COP Hearing Video*, *supra* note 109, at 52:00.

151. *Id.*