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YPFS Lessons Learned Oral History Project: An Interview with Neil Barofsky

Neil Barofsky

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Lessons Learned Oral History Project Interview

Interviewee Name and Crisis Position	Neil Barofsky ¹ Special Inspector General, Troubled Asset Relief Program, U.S. Treasury Department
Interviewer Name	Mercedes Cardona, Interviewer, Yale Program on Financial Stability
Date of Interview	September 10, 2021
Lessons Learned No.	2021-25

Introduction:

The Yale Program on Financial Stability (YPFS) reached out to Neil Barofsky to request an interview regarding his time as Special Inspector General of the Troubled Asset Relief Program and, more specifically, his observations and concerns over the handling of the Global Financial Crisis stimulus rollout.²

Barofsky, a former prosecutor, was appointed in November 2008 as the first inspector general of the \$700 billion TARP. He established and supervised the audit division that monitored the financial assistance provided to companies and individuals as part of the program, provided advice and oversight to the U.S. Department of Treasury and reported to Congress on that work. In testimony to Congress in July 2020, he noted SIGTARP's investigative division had secured 384 convictions and recovered more than \$11 billion to date in cases related to attempts to defraud the program.

After leaving his post as SIG-TARP in 2011, Barofsky became a Senior Fellow at New York University School of Law's Center on the Administration of Criminal Law. In 2013, he became a partner at Jenner & Block LLP, where he is head of the Monitorship Practice, and more recently, of the firm's COVID-19 Response Team.

This transcript of a telephone interview has been edited for accuracy and clarity.

Transcript

YPFS: **At this moment we give our interviewees an opportunity: If you have any disclaimers or caveats regarding the discussions we're going to have, this will be a good time to just get them on the record.**

¹ The opinions expressed during this interview are those of Mr. Barofsky, and not those any of the institutions for which the interview subject is affiliated.

² A stylized summary of the key observations and insights gleaned from this interview with Mr. Barofsky is available [here](#) in the Yale Program on Financial Stability's Journal of Financial Crises.

Barofsky: This is Neil Barofsky and all the statements and everything I say today is in my own personal capacity and in no way reflective of the views of my law firm that I work at today, Jenner & Block LLP.

YPFS: Let's start with a little narrative, since this is an oral history. Can you tell us what you were working on in late 2007 and early 2008 as the financial crisis was looming? You were not yet with the government, you were still in the private sector, I believe.

Barofsky: I was with the government, but I wasn't in the Treasury Department. I wasn't down in Washington, and I wasn't on the economic side of the government. I was an assistant United States Attorney, a federal prosecutor in lower Manhattan, the US attorney's office for the Southern District of New York. By 2008, I'd been there about eight years. I prosecuted any number of cases during my eight-year tenure as an assistant United States attorney, but by late 2007, early 2008, I was focused on economic crimes.

In particular, I had joined the office's Securities and Commodities Fraud Task Force, so I was doing big securities fraud cases: Wall Street institutions, prosecuting executives who were committing fraud, who were committing complex securities fraud. As the financial crisis started to take hold in early 2008, we started seeing a huge, huge spike in mortgage fraud, which of course is one of the main contributors to the crisis. I would say early 2008, my boss, the US Attorney, asked me to head up a group that would specialize in investigating and prosecuting mortgage fraud. So when the financial crisis really started to grip and take hold and manifest itself in the summer of '08 and in the fall of '08, I was in the heart of that from a law enforcement perspective, investigating and prosecuting securities fraud and mortgage fraud cases right when the shoes began to drop in the fall of 2008.

YPFS: How did you come to be appointed special inspector general for the TARP program?

Barofsky: When TARP was passed in October on 2008, it included a provision I was completely unaware of it at the time, that created this new function, the Office of the Special Inspector General for the Troubled Asset Relief Program, with the uncomfortable acronym SIG-TARP. To be honest, it was something I was completely unaware of as I was going about, doing my job of investigating and prosecuting mortgage fraud and securities fraud. But of course I was very much aware at that point of what was going on and the crisis, but again, from the law enforcement perspective.

My first time I learned about SIG-TARP was when my boss, the United States Attorney, called me into his office and started talking to me and telling me about this new office, this new Office of the Special Inspector General. It was kind of funny, because as he was talking to me about it, I didn't really know

why he was talking to me about it. I wasn't sure if it was because he was going to take that job and wanted me to work with him. I was kind of confused, but by the end of the conversation, he made it clear that he was asking me if I wanted to be put up for that job. He explained to me that it was a presidentially nominated and senate-confirmed position.

I have to say when I first heard about it, I was not interested at all. I loved my job as a federal prosecutor, and I had no interest in politics. I had no interest in Washington, and I certainly thought there was zero chance that a Republican president would appoint me, a lifelong Obama-contributing Democrat, in some big high-profile position in the Treasury Department. So, I politely declined initially and said I wasn't really interested in it. But the US Attorney was very persuasive. He pointed out that I had spent a lot a time building a profile and experience that was going to be relevant for this job—my experience in securities fraud, my experience in mortgage fraud—and this job of special inspector general, one of its big components, was going to be policing the bailouts. You've got to remember at that point, the bailouts were still thought of as the Treasury Department going to take a \$700 billion revolving fund and going to buy troubled assets. Troubled assets as people originally thought, meant bad mortgage-backed securities. And that was what I had built up to in my career.

He made a very compelling case. He compared it to an economic 9/11. My office, the US attorney's office in the Southern District of New York, of course led the investigations and prosecutions after 9/11. I was a very young AUSA at that time, so I wasn't involved in that, but I had seen it. It was a very compelling speech. Ultimately, I didn't think there was any chance that I would actually get the job, given my political background or lack of political background, but I told my boss, "Yeah, go ahead. You can put my name forward."

It was pretty much a whirlwind after that, but before I knew it, I was testifying in front of the Senate and a confirmation hearing or two confirmation hearings. My nomination was held up by a Republican Senator who didn't want me in there. Then all of a sudden—I think it was December 8th, 2008—I got the word that I actually ended up getting confirmed to be the Special Inspector General for the Troubled Asset Relief Program and had to go about building an office from scratch and stepping into that role.

YPFS: Once you joined SIG-TARP, did you have sufficient resources? Were there established goals for you to meet? What was your first priority when you got there?

Barofsky: Trash cans, that was my first priority. No, I'm joking. On the question of whether we had enough resources to accomplish our goal, it sounds kind of trite, but failure was not an option. We just had to make do with what we had.

Now, we had money, Congress had allocated \$50 million to start up this new office, which is a lot of money. So, we weren't lacking money, but it was hard in the beginning to spend that money, because of all the different bureaucratic hoops. The government is not made to start up agencies from scratch in the middle of a crisis, where the building and the operating and the deadlines and everything was all happening at the same time. But we didn't lack money. It just was really hard to get through the tangle of regulations to hire people, find office space and yes, get garbage cans. It took about three days before we got our first set of garbage cans.

When it started, it was just me and a colleague of mine, Kevin Puvalowski, who came down with me from the US Attorney's office. The Department of Justice lent him to me at Treasury Department. It was just the two of us and we were put in a basement office, which was on top of a broken sewage line. We had those Laverne-and-Shirley English basement windows, where we could see the feet of people walking by the Treasury Building, and we just had to get going.

We had a report that was due to Congress within 60 days of my appointment, not when I got sworn in, but when I was actually confirmed. It was a mad scramble to put together the resources and get going, but we had a ton of support and I'm very, very grateful for that support. Other Inspector General offices lent us support, and the Treasury Department, notwithstanding putting me in that terrible basement office. There were some real heroes on the administrative side who just helped us bulldoze all the walls that were put up to keep us from getting up and running.

We were able to fulfill our goals. And those goals were: One, in the first 60 days to do a reporting, to understand what was going on with these hundreds of billions of dollars that had already flown out the door with very, very few protections and very, very few conditions. On the other hand, the other responsibility we had was building a law enforcement agency from scratch to police this program, to deter criminals who were coming out to try to steal from it, and to investigate and bring to justice those who would try to take criminal advantage of a national crisis.

We were very busy, but we were able to have an impact, I think pretty quickly. I think we made our first recommendation within a few days. We had impact on some of the agreements that were going out the door to ensure transparency, to put in place anti-fraud provisions. We got rolling pretty quickly and before long, the two of us turned into three and then into five and then into 10 and then into 20. Before you knew it, we had about a good hundred people working for us.

YPFS: Did you have to fight for access in terms of getting the information you needed for your audits? And did being put in place months after the TARP

money had started flowing put you at a disadvantage, in terms of establishing some control once the purse strings had already been released?

Barofsky: Both things present real challenges. Nobody had quite seen something like us before, this Special Inspector General with broad authority, over all things related to the bailout. And we were dealing with a lot of agencies that were not quite used to transparency and whose initial reaction our requests was, "no." No, with every type of excuse that one could imagine. The Federal Reserve wouldn't give us access to documents because they said we were outside of the supervisory privilege. Treasury told us that they wouldn't give us documents protected by attorney-client privilege. And the list went on and on. Some of the other banking regulators said that we had no jurisdiction over them. What we had to do was knock down those barriers, one after another. One of the things that we had as a resource, far, far more important than all of the money in the world, was we had bipartisan congressional support. That sounds like a unicorn in 2021: What? Bipartisan congressional support for something? But it was a different time, and we did. That really made all the difference in the world.

Look, there was nothing particularly intimidating about me and my deputy, Kevin Puvalowski, as we demanded the documents and pointed to the statute and said that we needed this material. We were pretty easy to say no to. But we carried the cudgel of being able to go to the chairs of the committees that oversaw those agencies. So whether it was Senator Max Baucus, who at the time was the head of the finance committee, which had oversight over Treasury; whether it was Senator Dodd or representative Barney Frank who had oversight over banking and financial services, they had our back. People like Senator Grassley, I could go on and on, but the point was: Republicans and Democrats--big, important members of Congress who oversaw key committees that oversaw these agencies--the threat of going to them. And at times we did go to them. I remember one time I was in Barney Frank's office where he picked up the phone and just gave Tim Geithner, then the Treasury Secretary, a true beating on his voicemail in front of me, because Geithner was playing games with some of the work that we were trying to do. That was a huge, huge difference maker in getting us access to the documents and the information that we needed.

As to the second part of your question, yes, hundreds of billions had gone out the door and it's somewhat understandable, but there was absolutely no oversight over that money as it went out. The Treasury Inspector General, a man named Eric Thorson, was responsible for doing that while we were standing up and he completely abdicated his responsibility. He was much more concerned with pleasing and sucking up to the Treasury officials than acting as a watchdog. And so, he rubberstamped everything, gave absolutely no consideration to any of the goals of the TARP legislation, of what was

supposed to be accomplished, had absolutely no concerns about antifraud and just let the Treasury Department do what they did. And what they did was try to get the money into the hands of the banks that were collapsing and on the verge of collapse as quickly as possible, without any real consideration to fraud or to the broader goals of the TARP program.

When we went in there, that's what we were presented with. There was stuff that had already been done but there was still a lot to go. We were in the midst of the bailout of the auto companies, and we were able to have an impact on that. And then we tried to go back for money that was still going to the banks, to try to impact that. There was still other bailouts, Citi needed to go back to the well for another round of money, Bank of America needed another round of money. We tried to have as much impact as we could on that and tried to have as much retroactive impact on the money that went out the door.

We really were ineffective in getting Treasury to revisit the existing contracts, but we were able to use one of our two functions—I mentioned law enforcement, the other was the audit function. We were able to use that to go back and look at what happened and bring transparency to some of the screwed-up things that happened during that process, and through that, to hopefully deter from those mistakes being repeated. We did what we could with what we had.

YPFS: **You have said that TARP met its main goal of avoiding the total financial system collapse, but then it fell short when it came to the secondary goals of helping individuals, helping businesses. Can you talk a little bit about how did it fall short, and why? Where were there failings that made it fall short?**

Barofsky: Well, TARP was supposed to do two things. And I don't know if I would say that one was primary and one was secondary. That bill does not pass Congress, Treasury does not get that \$700 billion, but for its commitment to not just help the banks, but to help people. I put the two goals on the same plane. Now, if you were to ask Treasury officials, government officials, White House officials, they will all tell you that the only goal in TARP was to save the financial system from another collapse. But they are wrong and they're lying if they keep saying that, because they know that bill does not pass Congress—it failed the first time—it gets by because of commitments to help people.

What do I mean by people? I mean struggling homeowners, I mean small businesses, I mean those who are on the receiving end of credit that had completely dried up as a result of the financial crisis, and the foreclosure wave that swept across the country. I've spoken to so many members of Congress in so many different districts who really didn't care that much about saving the big banks on Wall Street, but cared very much about their local businesses, their local banks and the homeowners who were being forced out of their

homes in a giant, giant crisis. They were the frontline victims of the financial crisis, victims of the big banks that were being bailed out so generously.

Those two goals coexisted, and I think it is a revisionist view of history to say that the real goal from TARP was just to save the banks and that that other stuff was just other stuff. But that is the controlling narrative of those who were responsible. If you look at the legislative history, you look at the statements at the time, it's not a true one.

What was the original goal of TARP? TARP was going to buy these toxic assets, these residential mortgage-backed securities and derivatives. And then as written into the legislation, what was Treasury going to do once it bought these securities—which were really made up of thousands, tens of thousands, maybe even over time hundreds of thousands of home mortgages? Well, the statute said that Treasury, as owners of these mortgages, had to modify them, to fix them. To make it so that the victims, the people, could stay in their homes. That was one of the things the statute said.

The other thing was driven by the policy makers who were explaining once the Treasury shifted and decided that it wasn't going to buy the mortgages. Instead it was going to put money directly into the banks to save them, to buy shares of their stock so they wouldn't collapse because they had burned through their capital, through their incredibly reckless and risky bets that blew up in their face. They said we were going to use it to restore lending, to open up the spigots of capital and cash to the smaller businesses that were failing in droves.

So, what happened, what actually happened? The only thing the Treasury Department focused on was saving the banks from their own misdeeds, by shoveling hundreds of billions of dollars into the banks to keep them from failing. But they absolutely failed to fulfill the policy goals that were supposed to go alongside that. Once that money went in to take the necessary steps, to assure that money wouldn't go into the pockets of the executives in the form of huge bonuses, wouldn't go to stock buybacks to reward investors, wouldn't go to buy other banks and consolidate and become even bigger and more powerful, it was supposed to restore lending so the banks would kickstart the economy.

They did nothing to accomplish that, and as a result, none of those things happened. Lending did not kickstart and instead, there were policy failures of diversion of TARP money just to increase profits--frankly, at times at the expense of the people that were supposed to be helped. They did absolutely nothing to require or significantly and meaningfully incentivize the banks to do anything about the waves of foreclosures. There was a subsequent program, a total failure of a program that came after that. People say: "Wasn't TARP a ringing success?" No, TARP was not a success, TARP was a failure,

because TARP failed to do one of its primary goals, which was to help homeowners and restore lending to small businesses.

It got an A+ by saving the banks, that's one of the things that gets lost when the Tim Geithners, the Secretary of Treasury congratulate themselves as they often do on their heroism and how brilliant they were. It's not that much of an accomplishment to take hundreds of billions of dollars of taxpayer money with trillions of dollars sponsored by the Fed's liquidity to throw it all at a bunch of institutions and keep them from failing. That's not that impressive to me. I don't think you need to have a PhD in Economics or great heroism or strength or brilliance to shovel tons of money into a bank that lost a lot of money and replenish it with government money.

That's not what Congress intended to happen. And so that's why I take issue with the idea that TARP was successful just because it did stave off a complete and total economic collapse. That is important. That is significant. It is meaningful. It would've been terrible if that hadn't happened, but no one should be satisfied that that was enough.

YPFS: Trying a contrarian point of view here: A fragmentation of oversight has been blamed by a lot of people, for why these programs, TARP for example, were so focused on helping one portion of the financial establishment, as opposed to people. These were all tasked with looking at institutions. Was that the main flaw, this focus on large institutions, that doomed TARP from doing what should have been its main goal?

Barofsky: Well, first of all, I would take issue with the predicate of your question. I think that it is utter nonsense that the banking regulators didn't have oversight over these issues, and didn't have an opportunity to do something about it. I understand why after the fact, everyone wants to point the finger at someone else, but the risk-taking and the razor-thin capital, and the lack of fundamental understanding of what these institutions risk exposure was—that falls entirely on the banking regulators. And this notion that "oh, gee, these are all securities, and we are not responsible for securities" is nonsense.

The banks were fully exposed to this. It is a banking regulator's job. They have scores of people inside these institutions looking at their capital, looking at where their risk is, and they whiffed. They didn't understand it. When Tim Geithner gave a speech, six months before the crisis hit, and talked about how credit default swaps and some of these derivatives were what had eliminated risk in the system, that wasn't because the Fed didn't have the authority to regulate the big banks. It's because they didn't understand what was going on. They had been so brainwashed, and so slavishly followed the lead of the CEOs of the banks. They were so fundamentally captured by those institutions and became nothing more than vessels for their profitability.

That's why that happened, not because they didn't have the power or authority. It's because they were incompetent and didn't do their jobs, in my humble opinion. That's more of the contrarian view, I would say, than the other. Ultimately, the focus on the big institutions, let us remember, was not in the legislation. That was not in the statute. That was the decision of the policymakers at Treasury. The idea that they were focused on that because that's all TARP would do is nonsense. It's not true. The way it was rewritten gave it very, very broad authority. It is one of the reasons why we, among others, were constantly pushing them to use the hundreds of billions of dollars that were available to do stuff other than help the big banks. That was pushed across the board. They chose not to, they chose to only help the big institutions. And that's one of the reasons why there was a failure.

People forget: not Republicans, not Democrats—nobody in Congress could stop a broader use of TARP. There was some \$225 billion or so that the Treasury Department and the White House could have used to help struggling homeowners that was fully authorized, 100%, by the bill, and there was a decision made to give that money back and not help them. There's this big, compelling narrative that we hear all the time: How, "oh, the poor administration really wanted to help people, but the big, bad Republicans wouldn't authorize the money to let them do so" and it's nonsense. It's a lie and it's not true. It was a decision made to take \$225 billion and give it back and not use it to help people, and instead to have that laser-like focus on just helping the biggest financial institutions.

YPFS: Were the optics of bailing out banks versus people ever discussed, the moral hazard of bailing out homeowners who were flipping houses or bailing out large banks? Can we draw a line from the TARP failure to help homeowners to the Occupy Wall Street movement and the distrust of institutions that we are seeing today?

Barofsky: Absolutely. And yes, those conversations were constant. And it wasn't just us at SIG-TARP, we were hardly alone on this. The congressional oversight panel, which at the time was headed by now Senator Elizabeth Warren, was on this point as were others, to be clear, but we were constantly pushing for a more robust approach towards helping homeowners. We did that because it was the right thing to do; but more than that, our job, our mission, was to accomplish the legislature's goals in passing the TARP. This was clearly one of them and they were ignoring it.

So, yes, that was one of the constant refrains we've heard. We heard it from Secretary Geithner. We heard it, frankly, all the way down to the assistant secretary who was running the TARP programs. This refrain of moral hazard, which was remarkable because there's no greater example of moral hazard than the direct support of the biggest financial institutions. They're the ones who blew out their balance sheets by taking these enormous risks with razor-

thin capital and all they had done was lavishly rewarded by the government through the TARP program. But when it came to homeowners, that's where moral hazard really came in.

I can't tell you how many times we would hear about these fictional droves of homeowners, who, the only reason why they're being foreclosed was because they took out a second mortgage in order to put in a new pool or a second bathroom. This is really the heart of it. This was the heart of the administration's view towards struggling homeowners, that essentially, they deserve to be foreclosed upon. They made their bad decisions, they should have to live with them.

This was not reality. In my view and in my experience—both anecdotally, and I think this has been backed up by the research—that isn't who was victimized by the foreclosure crisis. Those being foreclosed upon were the people who were victimized by the banks and the predatory lending practices that gave rise to the financial crisis. Most people were tricked by the banks, by shady real estate brokers, into taking on mortgages that they didn't understand and never could have been able to afford. They were victims. They weren't greedy. Of course, can you point out an anecdote of a person or two who got in over their heads and were greedy? Sure, but that's not the tens of millions of people who are subject to foreclosure during the crisis. Not at all, but that's how they were viewed.

I often would think: why do we have such a different view of this? I really think that a large part of it is that, when you look at the backgrounds of who those people were in the White House or in the Treasury Department, where they came from and what their social set was, I don't think they knew a lot of people who had been foreclosed upon. I don't think that was in their social set. Most of these people came from Wall Street banks or very affluent, elite privileged backgrounds. They didn't know people who were foreclosed upon.

I knew people who were going through this, I knew they weren't deadbeats. I knew they weren't bad people who were taking advantage of a system, that they were victims. They were on the wrong side of predatory practices. And so I think that human element really went into a lot. It's a political element. I think they were terrified of Fox News finding someone who put in an extra bathroom getting helped and thought that that would be a real problem. I think a lot of it was just a complete lack of empathy and a lack of human interaction with those outside of their elite set.

Absolutely, to finish the answer to your question, that is what led to Occupy Wall Street. That is what led to this rise of populism. I don't think Donald Trump would've been elected president but for the actions taken by the administration and the Treasury Department with TARP. I think if they had a more people-focused approach that took the responsibility to help struggling

homeowners and put that on par with their passion for rescuing the biggest banks, we wouldn't have seen the transformation, the political results that resulted in the election of President Trump. I put that squarely on their doorstep for those decisions.

YPFS: **Some of this moral hazard argument is now being mirrored in the debate over the pandemic unemployment benefits. You testified before Congress last July, about the supervision of the pandemic response. What would be your advice for the SIG overseeing the COVID programs now?**

Barofsky: The most important reason why we were able to have an impact—and to be clear, we didn't have the impact that I wish we had—was we brought a lot of transparency to a lot of issues, but we didn't move the Treasury Department the way that we tried really hard to. We didn't move them to use that extra hundreds of billions of dollars to reduce the principal of mortgages across the country, which would've been transformational for our economy and helped so many people. We lost those arguments, but I would say to the extent that we did have success, we did have our successes where we did bring a lot of transparency, which is important.

I think we did a very, very effective job in limiting losses to fraud. Even our harshest critics, including both secretaries of Treasury that I worked with, Paulson and Geithner, both acknowledged we did a very good job of deterring people from taking advantage of the program, of committing fraud. The reason why we were able to have any success was that we were able to use our credibility to get support from Congress. The advice is getting that bipartisan support. Being able to get both Republicans and Democrats—significant congressional leaders—to back up our efforts, to make sure that we could get access to the information, for hauling government officials before their committees after each of our reports were issued, to reinforce the accountability that comes with transparency--those were meaningful moments.

One time I had a meeting with the assistant secretary who was responsible for TARP, his name was Herbert Allison, and he was complaining to me about one of my reports and the fact that I spoke about it publicly in Congress and gave an interview on cable television. I said to him: "This is what I do. I'm not in the room with you. When you guys are deciding what to do, when you're making the plans, you don't invite me to those rooms, into that room for that decision making. I've got to do whatever I can to try to influence and protect taxpayers and protect these programs. And for me, that means I got to go to Congress. And for me to get Congress to pay attention, sometimes I got to go on TV. And that's the reality." In other words, since I wasn't in the room where the decisions were made, I went on TV so that Congress would pressure the administration to pay attention to our concerns. Herb's response was: "You may not be in the room, but your voice is heard. In fact, your voice is probably

the biggest voice in there as we're making these decisions." It is how an inspector general makes an impact.

It's not like those decisions all went the right way by any means, but that would be my advice as an inspector general: You really can't accomplish much if you don't have strong backing in Congress, it's just essential. It's really the most important thing. You need to have members of Congress who have your back and will help you push your agenda to make sure you have the access and that your reports are paid attention to.

YPFS: **In your testimony to Congress last year you mentioned there were some areas like the PPP that were just potential breeding grounds for fraud. Your testimony seemed to point out that there was like a bit of a tension there between speedy delivery of aid and transparency, the ability to move quickly to provide relief versus oversight. Is oversight generally seen as a speed bump in terms of getting aid out?**

Barofsky: Almost by definition. I think that the only way to make sure a program has no exposure to fraud is to not have a program. When programs are putting money into the private sector—providing government money to the private sector and providing it in a way that is essentially giving the money away, whether it's a low-interest or interest-free loan, like some of the pandemic programs, or just flat out grants of money—whenever you have a program like that, there are going to be those who are going to try and steal from it. That's just reality. That's just human nature, unfortunately, and that's the world we live in.

You've got to put some restrictions in place so that you can detect those types of fraud and try to keep from providing money to those who are just trying to steal from it, who don't qualify. For example, if you're saying: "Okay, here's the three qualifications to get this money: A, B and C." You could do it a couple of different ways. One way, which is what PPP essentially did, is say: "All right, you just signed this piece of paper that says that you qualify for A, B and C." If you do that, you're going to get the money out really quickly, because the only thing the gatekeeper has to do is make sure that this piece of paper is submitted, the person says I did A, B and C. That's all the criteria is. Since anybody can do that, then the money goes out the door, but you have almost no protection for fraud.

How would you want to have maximum protection for fraud? Okay. For A, B and C, I need documentary proof that's got to be attached to it, and I'm going to check that documentary proof against a government database to make sure that it matches up. I'm going to do that, not just for A, but for B and for C. Now there you're going to be much, much better protected against fraud, but you're going to slow that program down to a halt. You're going to bring it to a halt, because it's going to take time to find the people necessary to conduct those

reviews. And then for them to conduct those reviews, particularly in a program where you're putting out money to tens of thousands of businesses.

That's the tension: Where do you draw the line between a piece of paper that says, "I qualify because I'm A, B and C" versus "I'm going to check in great detail, all of A, all of B and all of C?" That's a policy decision. To be honest, it is a policy decision that had to be made in the PPP program. The policy decision was: this is a giant crisis, we need to get this money out as quickly as possible. We're not going to worry about fraud, it's more important to get this money out.

In TARP, it was a different type of program because you're dealing with very sophisticated institutions, and it wouldn't necessarily have slowed it down that much to put in those types of restrictions. But in the PPP program, they could have decided to put in some smaller mechanisms that wouldn't have materially slowed down the process, but would've better protected. Not completely protected. A program like that is going to have an enormous amount of fraud. It is foolish and frankly, just not realistic to think that you're going to not have significant amount of fraud in a program that is designed and intended to do what PPP did.

I think what they could have done differently and should have done differently was take the necessary precautions to get the money where it was supposed to go, where it was intended to go. To use the TARP parallel, we talked earlier how TARP was supposed to help homeowners and small businesses, but when they gave the money to the banks, they didn't put any requirements or incentives for them to do so. Zero. And so what happened, none of the money that went to the banks went to help small businesses or homeowners. Zero matchup of what you want and what actually happens.

Here with PPP, my complaint was they just did it again. They shoveled all this money out and they gave it to the banks who were responsible for distributing it, but they didn't give them any incentives or requirements to direct it to the truly needy small businesses, the minority-owned businesses, the women-owned businesses, the true mom-and-pop stores, nothing. Instead, they said, "go and give this money out." And because it was a limited amount of money, the banks—and I don't fault the banks for this, to be honest with you—they gave it to their biggest customers, who technically qualified, whom they've already had onboarded and already had relationships with. Because frankly, that was the cheapest, easiest way to distribute the money. But as a result, a lot of those under-banked, traditionally mom-and-pop, traditionally black-owned businesses, women-owned businesses got left behind. That was just a complete repeat of the mistakes that were made during TARP that were ignored here.

YPFS: **Why did that happen? Did the administration underestimate the severity of the pandemic or was that it a structural issue? Was the flaw build into the program?**

Barofsky: I think it's the exact same thing as TARP. I think they just didn't care. They wanted to get the money out the door. This was a form of stimulus for the economy to help spur recovery or at least put the brakes on the decline, and just like their predecessors in the Treasury Department of a decade earlier, they didn't really care about the little people. They didn't really care about Mom and Pop. They didn't really care about the minority-owned or the women-owned businesses. I don't think it bothered Steve Mnuchin for one second that giant chains of hotels and restaurants were getting the money and the Black barbershops were not.

I think he cared about his much as Tim Geithner cared that homeowners were getting driven out of their homes, just as long as that crisis was arrested in some way by saving the big banks. Because again, these are people with the same backgrounds, the same point of view and in a different sense lack of empathy. It's a complete parallel of just dealing with the problem in their face; frankly, doing things that makes their peers, their former colleagues, the people in their social set happy. They don't really care about the people that they don't deal with in their lives, the people who are not amongst the elites. That's the history that repeated itself and will repeat itself, unfortunately.

YPFS: **But, so what's your advice for future IGs? In view of what just happened with the CARES act oversight, what reforms would you propose to make the next special inspector general more effective?**

Barofsky: I think that there's legislation and fixes for IGs that can help around the margins. I think Donald Trump was firing IGs who disagreed with him. I lived in constant fear of being fired. And I had other IGs come up to me and say to me, "Neil, I really admire what you're doing. I wish I could do that, but I can't, because I've got kids who are going to college and I need this job and I can't afford to take that risk of getting fired." And I get that. I get that. When I took that job, I was newly married. I had no kids. I was a lawyer. I didn't want to get fired, it would've been devastating, but I knew I'd get a job. I knew I wouldn't be out on the street. Not all IGs have that flexibility. Requiring that IGs can only be fired for cause, I think is important. I think making better mechanisms to make sure IGs can get the materials and documents they need is important. But at the end of the day, the administration's got to listen to the IGs and that's going to only come from congressional support. That's the reality.

And even that only goes so far. I mean, you can't create empathy in people who don't have it. And a lot of these policy makers just didn't then and didn't in the Mnuchin Treasury Department. Ultimately, that's going to be political accountability. In a way, there was political accountability. As I said before, the

political accountability was the Democratic Party losing a lot of its traditional base to Donald Trump. I think it's very early going, and I think there are signs that maybe President Biden is learning that lesson. But as we sit here in September 2021, we'll have to see if that lesson is learned.

YPFS: Did the Dodd-Frank Act address any of your concerns about things like transparency and oversight?

Barofsky: Dodd-Frank made things safer. I don't think there's any question about that. I think that it didn't go far enough, but I think that it was certainly a lot better than the system that preceded it. To me, from my perspective, that last crisis was caused because we have banks that are too big to fail. That means that, basically because they're so large and so interconnected, the failure of any one of them could bring down the entire financial system. That creates or warps, the normal functions of capitalism in a way that really incentivizes too much risk-taking. It generates enormous profits and incentives to take on too much risk.

Dodd-Frank didn't go far enough to address that. I think there are mechanisms within Dodd-Frank that, if used, could be helpful. But ultimately, because it didn't go far enough, what you saw is that it can change with the administration. And so, what was the basic core of Dodd-Frank is entrusting the regulators with and giving them the power and authority to manage the big banks in a way to help limit the risk and the damage they can impact on the system. But that presumes two things: One, regulators who have not shown themselves historically to be competent will be competent and not captured by the banks that they deal with and be able to see around corners, and they find risk in advance and manage it. And second, it assumes that regulators actually have that mindset. And what you saw after Donald Trump was elected was a series of regulators who believed in the exact opposite, who believed in the free markets and that there should be no regulation.

That's a problem with Dodd-Frank, it gives that opportunity for the pendulum to swing back and forth and create a ton of risk in our system that could lead to another blow up, another financial crisis. And so it would've been my preference to break up the big banks. Congress came very close to doing so, but was lobbied by the Obama administration not to do it, and I think that was a mistake. Or there just needs to be such significantly higher capital requirements, meaning that they raise more of the money that they use to operate by selling stock and retaining profit, as opposed to going out and borrowing money. Fewer stock buybacks, lower dividends, keeping that money and reinvesting in the business. If you get that to a significantly high level, that also will help to protect the system. I think those are some of the options. Those things can be done under Dodd-Frank, you just need to have the regulatory and political will to do them, which we've not yet seen.

YPFS: **Right. So just rounding things out. If you were going to write a memo to your younger self on how to handle the financial crisis, what would be the main bullet point? And if you could include a post script for the COVID-response SIG, what would you tell him or her?**

Barofsky: If future Neil was to go back and talk to 38-year-old Neil? I was impossibly young for that job, I will say that looking back on it, sitting here at 51. I should have moved on the housing stuff earlier. I waited too long to issue my first report on it. I had an audit, and I wanted the audit to be complete before I publicly pushed the issue. I didn't know it at the time, but looking back, I was too late on that and that's probably my biggest regret. I should have been pushing harder for that and bringing that to light and not waited for the report to be finished.

I think I would also have told myself, don't stress out so much. Maybe that stress is what drove me, but I was talking to Kevin, my former deputy the other day, about one of the advantages of being so young in that job. At the time, I didn't think I was young, but looking back on it, 38 was pretty young to have that job and that much responsibility. I think what comes with that relatively modest age was we cared so deeply about everything. And we were so passionate to do the job that we have been entrusted to do by Congress, by the president, within the statute.

I think that as a result of caring so much, we drove ourselves to extremes. Sometimes when you care so much, you lose a little bit of perspective. But I don't know if I could have changed that. I think that's part of being younger and part of being older. Maybe to relax a little bit would've been good advice, and not to take everything so intensely and so seriously, I don't think 38-year-old me would've listened to me for one second if I told myself that. That probably would've been really wasted advice.

YPFS: **What about the COVID SIG? What would you advise him or her to get the job done?**

Barofsky: I think probably that that ship has sailed for that office. They didn't get the congressional support that they needed. As a result, the Treasury Department decimated its jurisdiction. I think that early days of the strong congressional support wasn't there for that agency. I wish them the best because they have an important role to fulfill. But the mandate has been whittled down pretty significantly. I think that agency is in a very, very difficult spot. What it needs to do now is to get Congress to beat back a lot of the stuff that was taken away through executive action, but I don't know if there's the political will or concern to do that. Right now I think what they're doing is probably the best of what they can with the hand that they're dealt, which is try to do a look back on the money that was spent and try to impact and bring people to justice, to

the extent that any individuals or institutions defrauded the programs, or at least the areas of the program over which they do have jurisdiction.

YPFS: **Just to round things up: Is it true that somebody gave you advice regarding how an IG should be, whether a lap dog, a watchdog or a junkyard dog?**

Barofsky: Not one person. Many, many. It was so funny. I had not been an inspector general when I got the job, and I didn't really know too much about the job. I mean, I had dealt with IGs offices as a prosecutor because some IG's offices have pretty strong law enforcement arms. I would deal with the agents from some of those agencies and they were good agencies. It was fun working with them, but I didn't really understand the workings of inspectors general. I didn't understand their audit function. I really just only knew the law enforcement side of it. When I got to Washington, I went around and I met with as many IGs as I could and asked them for advice, like what do I do here?

And almost every time I got the same speech, which was: "Neil, there are three types of IGS. There's the lap dog, that's the one who cozies up and cuddles up with the governmental agency and does what they want. You don't want to be that. And then there's the junkyard dog who's really aggressive and is just tearing everything down. You don't want to do that. What you want to be is a watchdog, sort of somewhere in between." I got that advice over and over again.

Then I was talking to Ken Donohue, who is the IG of HUD and very good guy and a good IG. And he's like: "Nah." He's like: "You don't want to be that. You want to be the junkyard dog. You want to rip their throats out. You want to take advantage of this position that you have, this platform that you have to bring transparency, to bring people to justice, to make them do what they need to do." And it was great, because I had heard that speech so many times and always was: "You don't want to be the junkyard dog, you've got to be the watchdog. You've got to be in between." And he was: "No. You've got to go for it."

It was great advice. We weren't always a junkyard dog, but it was good to know. It was important to hear that sometimes, you've got to really fight for what you're doing and not worry about what other people think about you. Just go and do the job that you're entrusted to do.

Suggested Citation Form: Barofsky, Neil, 2021. "Lessons Learned Interview Interview by Mercedes Cardona, September 10, 2021." Yale Program on Financial Stability Lessons Learned Oral History Project. Transcript. <https://elischolar.library.yale.edu/ypfs-documents2/307>

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