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SERVICES SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

**STATEMENT OF NEIL BAROFSKY
SPECIAL INSPECTOR GENERAL
TROUBLED ASSET RELIEF PROGRAM**

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

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Chairman Moore, Ranking Member Biggert, and Members of the Subcommittee, I am honored to appear before you today.

The Office of the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”) was created under the Emergency Economic Stabilization Act of 2008 (“EESA”), Pub. Law No. 110-343. More than \$300 billion has already been expended under TARP, and, recently, Secretary Geithner outlined his plans for how Treasury will spend the balance of the \$700 billion approved by Congress. In addition to the six programs previously announced, Treasury has announced several new programs that will be implemented in the coming weeks, including efforts to deal with rampant foreclosures, to infuse additional capital to struggling banks, and to address the toxic assets that remain on many financial institutions’ books. As announced, the total amount of money potentially at risk in these programs, as well as the TARP related programs that are funded in part by the Federal Reserve and FDIC, is approximately \$2.875 trillion. These huge investments of taxpayers’ money, made over a relatively short time period, will invariably create opportunities for waste, fraud and abuse for those seeking to profit criminally and thus require strict oversight.

It is SIGTARP’s mission to report on the activities of TARP and make recommendations that can facilitate, through effective oversight, the success of the program. I have focused on three areas since our inception, just a little more than two months ago: transparency, coordinated oversight and robust enforcement.

Transparency has been an area of focus for SIGTARP since day one. In late December, I formally recommended that Treasury post all TARP agreements, whether with recipients of TARP funds or with its vendors, on the Treasury website. Shortly after his confirmation, Secretary Geithner adopted this recommendation in full. Similarly, I asked for and obtained oversight language in the Citigroup and Bank of America agreements that require those banks to account for and report on their use of the TARP funds. I was pleased to see that Citigroup recently reported on its use of funds and its announcement that it was using more than \$34 billion in TARP funds for lending.

SIGTARP is also using its audit function to bring increased transparency to the TARP. For example, we have sent letter requests to each of the TARP recipients asking them to report on how they have used TARP funds and how they plan to use the funds that they have received but not yet spent. We have already begun to receive responses to these requests and look forward to providing an interim report to Congress on this audit project after we receive the responses. In that same survey, we also asked TARP fund recipients to provide details on their plans to comply with applicable executive compensation restrictions and whether they have altered their compensation structure in response to these rules. We believe that this important project will shed light on what has been one of the most opaque areas of the TARP.

We have initiated two other audits that will also bring increased transparency to the TARP. First, we are looking into the impact of outside influences on the TARP application process, and we will report back to Congress on our finding as to what impact, if any, that lobbyists or other outside influences have had. Additionally, if necessary, we will make recommendations on dealing with such outside influences going forward. Second, we have begun an audit into the

process under which Bank of America received \$45 billion in capital investment and is to receive a guarantee relating to approximately \$100 billion of toxic assets in four separate TARP transactions under three different TARP programs.

As to coordinated oversight, it has been and will continue to be a privilege and a pleasure to work closely with my co-panelists, Acting Comptroller General Gene Dodaro and Professor Elizabeth Warren, Chair of the Congressional Oversight Panel. Over the past two months, we have worked effectively together coordinating oversight efforts to provide maximum oversight coverage while avoiding unnecessary or duplicative burdens on those charged with managing TARP. I have also founded and chair the TARP-IG Council, which has, as its members, a GAO representative and the Inspectors General of the other agencies involved in aspects of the administration of TARP programs: the Inspectors General of the FDIC, SEC, FHFA, Federal Reserve, HUD, Tax Administration and Treasury. Through all of these coordinating efforts, we are establishing protocols and sharing ideas for comprehensive audits and investigations.

In conducting oversight, one focus of SIGTARP has been to attempt to have a positive impact on TARP programs before the money goes out the door. Because I did not take office until mid-December, I was not able to do so with respect to the early TARP transactions. However, we have been active in providing recommendations concerning the programs and contracts that followed. Among other things, pursuant to our recommendations, the Auto Industry, Targeted Invested Program and Asset Guarantee Program agreements all contain explicit acknowledgement of SIGTARP's oversight authority over the contracts, and require that, for many of the significant conditions imposed by the agreements, the recipient be required to establish an internal control to comply with that condition, that they are required to report on their compliance, and that they certify, under criminal penalty, that the reporting was accurate. Collectively, these agreements – representing approximately \$465 billion of TARP investments and guarantees – are a significant step forward from an oversight perspective as compared to earlier agreements and programs. We have also made a series of recommendations pertaining to the first part of the \$200 billion Term Asset-Backed Securities Lending Facility (“TALF”), and have met extensively with the Federal Reserve and Treasury to discuss those recommendations. I anticipate making similar recommendations and look forward to working with both Treasury and the Federal Reserve to help protect against waste, fraud and abuse of the more than approximately \$2 trillion that is anticipated to be committed in the newly announced TARP programs.

The scope and variety of the announced TARP programs, now involving eight different programs and more than \$2.8 trillion, leads to our third area of focus, enforcement. Of the four primary oversight bodies set forth in EESA, SIGTARP stands alone as the sole TARP oversight body charged with criminal law enforcement authority – as the cop on the beat. This is obviously one of our most important functions, and we have met this unprecedented challenge head on.

We stand on the precipice of the largest infusion of Government funds over the shortest period of time in our Nation's history. History teaches us that an outlay of so much money in such a short period of time will inevitably draw those seeking to profit criminally. Hurricane relief, Iraq

reconstruction, and the savings and loan bailout serve as important and difficult lessons. If, by percentage terms, some of the estimates of fraud in those programs apply to the TARP programs, we are looking at the potential exposure of tens if not hundreds of billions of dollars in taxpayer money lost to fraud. We must be vigilant.

As we build, we have focused on developing relationships with other law enforcement and prosecutorial agencies to leverage those resources and to provide proactive leadership. For example, I have joined the President's Corporate Fraud Task Force and have initiated coordinated planning efforts with the FBI, the Criminal and Civil Divisions of the Department of Justice, the Internal Revenue Service, and U.S. Attorney's offices from coast to coast. We have already opened several criminal investigations involving multiple jurisdictions. We have also teamed up with the SEC, and have provided assistance to them in shutting down a securities fraud scam in Tennessee that had reaped millions by illegally trading on the TARP name. Based on a meeting we had last week with the Chairman, Mary Schapiro, I am confident that our partnership with a reinvigorated SEC will generate important investigations and serve as a powerful deterrent to those contemplating fraud in connections with TARP programs. Finally, we have been coordinating closely with the New York State Attorney General's investigation into executive compensation issues, including issues surrounding the year-end bonuses paid by Merrill Lynch. Through these relationships, we are exploring task force and similar regional relationships throughout the country to deter criminal activity before it occurs, and to investigate and prosecute any and all who attempt to profit criminally from this National crisis.

We have begun our outreach to potential whistleblowers and those who may have tips about ongoing waste, fraud and abuse. The SIGTARP Hotline is operational and can be accessed through the SIGTARP website at www.SIGTARP.gov, and by telephone at (877) SIG-2009. Plans are being formulated to develop a fraud awareness program with the objective of informing potential whistleblowers of the many ways available to them to provide key information to SIGTARP on fraud, waste and abuse involving TARP operations and funds, and explaining how they will be protected. Training programs are being developed to instruct law enforcement at a variety of agencies to assist in the oversight of the TARP, particularly with respect to the recently announced programs.

The proactive cooperation and coordination that is at the heart of our investigative strategy is resource intensive, and while I believe that SIGTARP is effectively establishing a framework that will permit us to meet our oversight obligations with respect to the nearly \$3 trillion at risk in the TARP programs, we face serious challenges. Most significantly, we have had significant difficulties in meeting our hiring needs. Currently, I have nine permanent staff members, nine detailees on loan from other federal agencies and six individuals who have accepted positions but not yet started. In hiring, we face many of the same problems faced by Treasury itself as it hires TARP managers, as outlined by Mr. Dodaro in his recent report to Congress, including the limitations on pay, the difficulties of hiring into a demanding federal agency, and our conflict of interest rules, which, of course, limit our ability to hire employees who have represented or worked for the entities that we investigate and oversee or have a financial interest in them. We also face additional challenges given our need to identify highly trained and experienced government investigators and auditors and to convince them to join what is, by definition, a

temporary agency. With the passage of the recent stimulus bill, which provides more than \$300 million in new funding to other law enforcement agencies and Inspectors General to provide oversight for programs funded by the bill, we are also facing stiff competition for a limited pool of experienced investigators and auditors. We desperately need more hiring flexibility, the type of which is contained in S. 383, the Special Inspector General for the Trouble Asset Relief Program Act of 2009. This bill was unanimously approved in the Senate on February 4, 2009, the same day it was introduced, by a bipartisan group led by Senators McCaskill, Bunning, Dodd, Lieberman, Schumer, Grassley, Snowe, Nelson, Shaheen and Collins. S. 383 would address our most pressing need by permitting SIGTARP to hire up to 25 retired investigators and auditors, without them having to offset their pensions. It would similarly enable us to use temporarily the hiring authority permitted under 5 U.S.C. 3161. These authorities have been given on a blanket basis to the other Special Inspectors General, and have proven to be essential to their efforts to stand up their offices. Similarly, when the Inspector General for the Office of the Director of National Intelligence was stood up several years ago, that office was also given the authority to rehire annuitants. I have spoken to these Inspectors General, and they have informed me that it was absolutely vital to their efforts to build their offices to have this authority, which is also currently available to the entire Department of Defense, FDIC, and even the FBI (in emergency situations).

The TARP program has changed significantly since EESA was passed last October. Originally intended to purchase and manage \$700 billion of toxic assets, that task is now just a portion of one of the eight intended programs, and the total number of programs and dollars to be overseen dwarf the original amounts contemplated when Congress created my office. Quick passage of this important and essential legislation will allow me to hire rapidly the essential personnel to meet the challenge of providing effective oversight.

Because of the great importance of this bill for SIGTARP, I am requesting the Subcommittees' help to move S. 383 to the House floor as quickly as possible. I believe that this bill will help provide the necessary resources for us to meet our obligation to help protect the U.S. taxpayer's investments.

Chairman Moore, Ranking Member Biggert, and Members of the Subcommittee, I commend you for your efforts to insure that the trillions of dollars being expended under TARP-related programs receive close oversight scrutiny. Your support for prompt House approval of S. 383 will be very helpful in allowing my office to meet the aggressive goals set by Congress.

This concludes my statement and I would be happy to answer any questions you may have.