Failed Bailout:

Lessons For Obama From Bush's Failures On TARP

U.S. PIRG Education Fund

The Campaign To
Secure America's Financial Future

February 2009

Failing the Bailout: Lessons for Obama From Bush's Failures on TARP

A Report of the Securing America's Financial Future program of

The U.S. Public Interest Research Group Education Fund
February 2009

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U.S. PIRG Education Fund gratefully acknowledges the Colston Warne Program of Consumers Union of the United States for its general support of our consumer research and education program. The findings and views expressed in this report and on the website are solely those of the authors, U.S. PIRG Education Fund.

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1. Summary and Conclusions

"If the taxpayers are helping you, then you've got certain responsibilities to not be living high on the hog,"

-- President Barack Obama to the Associated Press on Feb. 4, 2009.

Following the collapse of major financial institutions Congress enacted a sweeping $700 billion taxpayer-financed bailout of the financial sector. However, months into the program and billions of dollars later, no one knows how the money was spent and no one is convinced that it's achieved any of the intended results. The U.S Public Interest Research Group Education Fund (U.S. PIRG) believes it is critical for Congress to demand and the Department of Treasury to implement mechanisms and metrics to make sure that the actions of the TARP recipients reflect the original goals and objectives of the Emergency Economic Stabilization Act (EESA). Those mechanisms must be based on the sound public policy principles of oversight and accountability.

The report first establishes that what *is* known about how the TARP recipients' behavior before, during and after the bailout paints a dire picture of how the TARP funds were spent. It then presents a clear opportunity for lawmakers to regain some of the withering faith of the American people through widely supported execution tactics and simple communication practices with respect to TARP.

1.1 Key Findings:

- Without specific, proactive oversight, the TARP program will continue to fail. TARP fund recipients are not going to voluntarily comply with the intent of the EESA law or provide reports on their actions.
- The Congressional Oversight Panel (COP), the Special Inspector General, the Government Accountability Office and two bills currently active in Congress all provide actionable recommendations and pose tough questions to the Department of Treasury for reforming TARP. Treasury should consider the provisions and recommendations to reform TARP.
- Taxpayers deserve to know, in a clear and concise way, which reforms have occurred, to restore some level of confidence that the next $350 billion will be allocated and implemented fairly, strategically and with upfront sign-off on accountability measures.

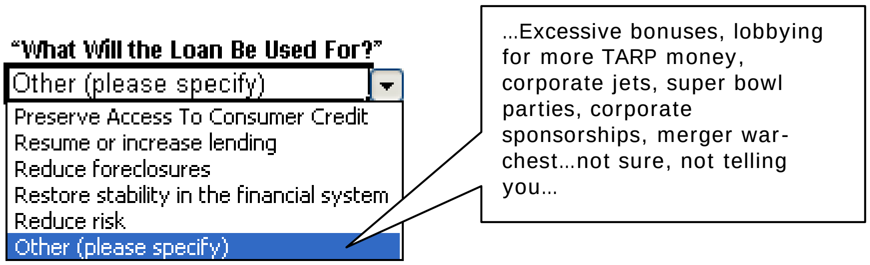
To help achieve these ends, U.S. PIRG Education Fund created a set of metrics and proposes the use of a TARP Report Card. The metrics are based on reports from leading government watchdogs, including the Government Accountability Office (GAO), the COP on the TARP and the TARP Special Inspector General. This report describes why that report card is needed. Based on the lack of any information about where the first $350 billion went, and the real possibility that Treasury never asked or required any information, the first report card, attached, gives the Bush Administration an F in almost every oversight category for its fourth quarter 2008 actions.

We will continue to issue quarterly report cards to track efforts by the fledgling Obama administration. Some early efforts are promising, such as its restrictions on lobbying by firms receiving TARP funds, its efforts to increase transparency and its actions on excessive executive pay and bonuses. We recommend that the Obama administration consider use of the report card to keep American taxpayers and lawmakers aware of the progress made in reforming the program.

2. Background

When a consumer applies for a personal loan, he or she fills out a form that asks a basic question: "What will the loan be used for?" If the consumer chooses "other" the bank may conduct additional underwriting and due diligence. After all, the bank needs to make sure that the loan terms make sense from a risk standpoint. Based on our analysis of the findings of government watchdog agencies, on news media reports and on Congressional testimony on the TARP program, it appears that not only did the Treasury Department encourage banks to choose "other," it did not require or conduct additional due diligence when they did.

Figure 1: Sample (Hypothetical) Financial Institution "TARP Loan" Application



Last fall, following the collapse of many of the nation's leading financial institutions, Congress enacted a sweeping government bailout of the financial sector. The centerpiece of the emergency law was a $700 billion taxpayer-financed bailout. Originally, the law countenanced using the funds – of which $350 billion was made immediately available to Treasury – to purchase troubled assets, hence the Troubled Assets Relief Program (TARP) was born. Immediately, Treasury decided that buying assets that could not be valued wouldn't work. It shifted the goals of the program to recapitalize the financial sector. The $350 billion was dumped into the financial system under several TARP programs using a variety of "strategies;" in some cases, some of the nation's largest banks received money under several different TARP programs.[1]

Nothing worked. The U.S. and world economies continue to crash. As 2008 came to a close, layoffs and foreclosures continue, as bank assets, home prices and 401-k values tumble. To make matters worse, while the original purpose of the Emergency Economic Stabilization Act was to jump-start consumer and business lending,[2] the Bush Administration's Treasury Department did little to ensure this would occur. Treasury placed minimal or no controls or reporting on the money's use. Although Congress added approximately 100 pages of controls and transparency measures to former Treasury Secretary Paulson's original 3-page proposed bill, no one knows what banks did with the money.

The publicly available information about TARP recipient activities leave the President, Congress and the American people with the only information they *do* have: that banks are spending taxpayer money on Super Bowl parties and Vegas junkets, lobbying for more bailout funds and for mergers and acquisitions, instead of making loans. The problem is worse than the optics of the lobbying and bonuses.

Although provisions providing for clarification of its intent and additional terms and conditions for the Troubled Asset Relief Program (TARP) funds were hastily worked into the final legislation passed last fall, so as not to issue a blank check to banks from an unchecked agency, our findings indicate that those transparency and accountability goals have not been achieved. Given the lack of proactive monitoring of the recipient selection and fund execution process, the TARP Congressional Oversight Panel agrees and says it "still does not know what the banks are doing with taxpayer money." Neither does the TARP Special Inspector General.

With hundreds of billions of taxpayer dollars and the future of the global economy already at stake, Treasury and financial institutions need to do a lot better than recommend and select "other," on their "loan application." In the last four months, banks have received $350 billion of taxpayer dollars without accountability. The bill to the American people, so far, is roughly $4,500 per worker,[3] or $2,300 for every single person in the United States.[4] An additional $350 billion may soon be distributed and more will likely be needed. Experts believe as much as 3 times as much – or $2 trillion - may ultimately be the total cost of stabilizing the financial markets. Worse, homeowners have seen no relief from the threat of foreclosure that keeps the economy in a slide. Meanwhile, taxpayer anger continues to grow over the waves of revelations of the program's poor implementation.

President Obama recently called it "shameful" for failed executives to collect exorbitant bonuses as their taxpayer-subsidized firms continue to fail. He said that they are essentially being "rewarded for failure." [5] Yet, according to media reports, TARP recipients remain indignant when asked how and why the money was spent.[6] It is clearly time to mandate action and to put mechanisms in place to make sure that the next $350 billion and more is allocated, spent and monitored in an objective, sensible and transparent way.

3. Reports on TARP Recipients Paint Ugly Picture

Reports of the activities of TARP recipients continue to paint a picture of an industry "running wild" even as it keeps asking for more and more taxpayer dollars. Some of the more egregious actions included those by firms who continued practices that contributed heavily to the meltdown as they were being saved. Merrill Lynch, for example, continued to buy troubled mortgage assets even as it was being bought out by the *bailed* out Bank of America in a government-assisted merger. Their massive losses amounted to billions of dollars and resulted in a second bailout for a distressed Bank of America.[7] The available examples of what is known about the activities of TARP recipients describe a corporate and regulatory culture unable to focus on the reality that they are no longer accountable only to shareholders, but also to the American taxpayer.

Completing a picture that is blurry at best and infuriating at worst are the widespread reports that bailed-out companies may be using TARP money on lobbying, bonuses and corporate perks. These actions fan the flames of taxpayer bailout fatigue. Encouragingly, the Obama Administration has already announced restrictions on lobbying and executive bonuses by TARP recipients.

3.1 Problem: Lack of Use for Either Lending or Foreclosure Relief

> *"Make more loans? We're not going to change our business model or our credit policies to accommodate the needs of the public sector as they see it to have us make more loans[8]."*
> *- John C. Hope III, Chairman, Whitney National Bank, in New York Times*

The primary outcomes anticipated or expected by the implementation of the TARP were to give banks more flexibility to make personal and business loans and to prevent a tidal wave of foreclosures. To date, there is scant evidence that the banks are using the TARP funds as a means to that end.

Lending. One of the original policy goals of the TARP program was increasing loans to both individuals and businesses. However as the program evolved and its intent apparently became both broader and less accountable, some banks looked at the infusion of capital as almost as a slush fund, using it for a variety of purposes, including to pad their balance sheets and put themselves in a better position financially without increasing lending.[9] Many of the smaller banks receiving TARP funds available to non-distressed firms are simply holding on to the funds in case things get worse, as often predicted, before they get better. In fact, ten of the large recipients of TARP funds and several smaller banks reported a decrease in lending by a total of $46 billion between the third and fourth quarters of 2008.[10]

Some banks blame the economy and cite fewer opportunities to originate a lot of new loans. Others claimed a small increase in lending, such as BB&T's reported two percent increase in lending, but most maintained that the bulk of the TARP money was simply "invested" without providing clarification.[11] Some banks apparently consider it unfair to be told to make loans and claim that they don't want to risk making bad loans.[12] The lack of increased lending highlights just one of the outcomes that has been inconsistent with the intent of the implementation of TARP.

Foreclosure Prevention. With respect to curbing foreclosures, the second report published by the Congressional Oversight Panel could find "no evidence" that the TARP funds were in any way being used to "maximize assistance for homeowners" by helping to prevent further foreclosures.[13]

The FDIC estimates that over the next two years, an estimated 4 to 5 million mortgage loans will enter foreclosure if nothing is done.[14] The vacant and often vandalized homes are prone to criminal activity and their boarded-up windows generally drive down the value of neighboring homes. Entire communities feel these effects. Nobel laureate and Columbia professor Joseph Stiglitz testified to the Congressional Oversight Panel that "The start of our economic problem…was in the mortgage market…banks made loans based on inflated housing prices; the mortgages were beyond many individuals' ability to pay…Matters have only grown worse, as we gradually discover the depth of their incompetencies in managing risk and allocating capital." While Citibank, a major recipient from several TARP programs, has recently announced its tentative support (with weakening amendments) for the priority reform of allowing bankruptcy judges to renegotiate loan terms to keep families in their homes paying their loans instead of out of their homes and in foreclosure, strident and vehement opposition from other TARP recipients has kept the bills locked up in House and Senate committees since the last Congress.[15]

3.2 Problem: Use for Lobbying and Corporate Perks

> *"JUST PLANE DESPICABLE."*
>
> \- Headline of New York Post (following the revelation of the size of the corporate jet fleet still held by taxpayer-subsidized banks.)

Living High on the Hog. Joe Cassano, head of A.I.G. Financial Products, earned $280 million the year he was essentially blamed for the company's rapid demise. In addition, he received a $34 million bonus and was kept on a $1 million per month retainer even after he was let go. As the government pumped money to the tune of $150 billion into A.I.G. because it was deemed systemically significant and therefore "too big to fail," its executives and top sales representatives enjoyed a California beach spa and golf retreat at a cost totaling $440,000.[16] Meanwhile former Merrill Lynch CEO John Thain demanded a $10 million bonus even as his company was acquired at a fire sale price -- due to its poor returns -- by Bank of America in a government-assisted acquisition. Despite an outcry, he still managed a $750,000 salary and a $4 million bonus after all was said and done. Another example is Citigroup. As the company received $25 billion from the government, it managed to designate $25.9 billion for compensation and bonuses.[17] Money is fungible. While the bank can say that the bonuses came from a different account, that account could have been empty before the TARP money came in.

Sponsored By. At the Super Bowl earlier this month, Bank of America sponsored the multi-million dollar "NFL Experience," as ABC News reported, which featured 850,000 square feet of a fan fest including interactive entertainment attractions.[18] Congressman Elijah Cummings, (D-MD), said, "They should know better, but obviously they don't."

Lobbying. It's now been widely reported, and finally acted upon by Treasury, that the same firms receiving billions of bailout dollars continue to lobby Congress not only for more money, but also to maintain the current toxic environment of deregulation that helped lead us to where we are today. According to the Associated Press (AP), these companies would not segregate dollar amounts by subject of the lobbying activity.[19] For example, the Capitol Hill newspaper The Hill reports that in light of the absence of any restrictions, (as were applied to Fannie Mae and Freddie Mac), Citigroup spent $1.28 million in the final quarter of 2008, Bank of America spent $820,000, Morgan Stanley spent $520,000.[20] The financial industry, which is largely not unionized, has also been reported to use TARP funds against major legislation sought by the labor movement to improve workers' rights to organize (the Employee Free Choice Act).

3.3 Problem: Deceptive Accounting and Reporting

"Americans were told you have to pony up some money to help these companies. And it's rather infuriating for them to find out now that those companies, when they were profitable, didn't want to pay taxes and found clever ways to hide their money overseas."

- Senator Byron Dorgan, Washington Post

Part of what makes the bailout hard to stomach for many Americans is how these companies behaved when things were going well for them. Fueled by a decade of deregulation and overzealous housing price projections, several of the largest recipients, who were first in line for TARP money, had a history of using questionable, unethical and even illegal business practices that gave them unfair competitive advantages while harming consumers. In January of this year, Senator Carl Levin (D-MI), chairman of the Permanent Subcommittee on Investigations, stated his findings before the Homeland Security and Governmental Affairs Committee:[21]

- Leading U.S. financial institutions such as Citigroup, JPMorgan Chase, and Merrill Lynch willingly participated in deceptive transactions to help Enron inflate its earnings [before its collapse].
- U.S. corporations engaged in misleading accounting, offshore tax abuses, excessive stock option payments, and other disturbing practices.
- Lehman Brothers, Morgan Stanley, and others helped offshore hedge funds dodge payment of U.S. taxes on U.S. stock dividends by facilitating complex swap agreements and stock loan transactions.
- Countrywide and others sold abusive mortgages, overcharged borrowers, and offloaded defective mortgage-based securities onto the market.

According to the Government Accountability Office (GAO), a number of the biggest (both in their size and their bailout fund receipts) financial institutions maintain revenues in offshore "tax haven" countries, where there are no or nominal taxes and minimal, if any, reporting. According to Department of Treasury reports, the U.S. government loses $100 billion a year in tax revenue from these tax dodges from all sources, including these firms.[22] For instance, Citigroup claims 427 different overseas locations or tax jurisdictions – 90 in the Cayman Islands alone; Morgan Stanley has 273 locations, of which 158, or well more than half, are in those notorious Cayman Islands.[23]

The most dangerous behavior, though, has to do with how banks assess their assets versus how the market does. The banks essentially value their assets at a price at which investors would not be willing to pay. If the Treasury has to end up selling these assets at a lower price, it would, and so the taxpayers would, endure massive losses.[24]

> "As a group, these [bailed out companies] are very risky companies. Unfortunately, the odds are that a number of these companies will fail at some level in the future, which raises the concern that the Federal Government is throwing good money at bad. At a minimum… we should demand a more thorough review of their accounting and corporate governance practices," surmised the CEO of Audit Integrity. [25]

In the end, the financial institutions in the TARP programs are likely in worse shape than their records would indicate, and taxpayer dollars are now at risk because no one has controlled the risks for years, even as firms increased their use of even riskier practices and acquisition of riskier assets.

4. Treasury Dropped the Ball: What We Know About TARP Execution

> *"Basically we dropped a huge amount of money…and we have nothing to show for what we actually wanted to happen."*
>
> - Campbell Harvey, Finance Professor Duke University[26]

> *"They didn't tell me that I had to do anything particular with it."*
>
> - Alan B. White, Chairman, PlainsCapital Bank[27]

4.1 Problem: Deceptive Accounting and Reporting

The TARP recipients mentioned previously weren't the only forces at work to make such a "mess" as described by Eric M. Thorson, the former inspector general in Bush's Treasury Department. In its January 9, 2009 report, the Congressional Oversight Panel bluntly criticized Treasury for having no strategy or even a solid set of guiding principles for how and why it expects the TARP to work.[28] And if Treasury isn't sure why it is doing what it is doing, it's hard to blame the banks alone for the lack of transparency on their part or the possibility that they spent money on lobbying, parties or bonuses. Senate Banking Chair Senator Chris Dodd (D-CT) referred to TARP implementation as mere "lurching interventions" with no clear direction or purpose.[29]

Strategy (?) Shifts. The trouble began at the outset when the former Administration changed the fundamentals of TARP from buying up bad mortgages, bad mortgage-backed securities and other "toxic assets" to instead buying preferred stock and warrants[30] in the nine largest American Banks and hundreds of smaller banks.[31] Treasury injected capital into "healthy" banks (the Capital Purchase Program), made loans to the automotive industry (the Automotive Industry Financing Program), made a direct investment in American International Group (the Systemically Significant Failing Institution program) and created a similar program for Citigroup and Bank of America (Targeted Investment Program). This confusion bled into every step of the bailout process, starting with choosing participants.

Arbitrary Choices. Although Treasury lays out the fields of its application process on its website, it provides no insight as to why certain institutions were chosen. Because the strategy continues to shift again along the way – from buying troubled assets to helping healthy banks and those "too big to fail," many engaged participants and overseers – including Members of Congress, the Congressional Oversight Panel and even the recipients themselves – have no idea what the criteria were and are for choosing participants. Further, Treasury did not evaluate the participants based on risk. It paid a uniform price across healthy and unhealthy financial institutions, which caused the Congressional Oversight Panel to issue a thousand-page report based on an expert consultant's analysis that found that the American taxpayer ended up overpaying for these assets by $78 billion.[32]

Citi, for example, received funds as a "healthy" bank, and then shortly thereafter, qualified as a failing bank. Bank of America received funds from three different programs under TARP, and even the Special Inspector General for TARP is not aware of the criteria for qualifying for each. [33] "Shifting criteria," as Senator Grassley testified in the Senate Banking Committee, "makes it easier for regulators to pick winners and losers."[34]

"It's totally arbitrary," said Republican Governor Mark Sanford of South Carolina to the Wall Street Journal last month. "If you've got the right lobbyists and the right representative connected to Washington or the right ties to Washington, you get the golden tap on the shoulder."[35]

Where's the Money? The Treasury failed to mandate any reporting from recipients of the massive Capital Purchase Program (CPP). Even those recipients who do not plead ignorance have been unapologetic and have no fear of repercussions for using the funds for things other than what the bill originally intended. The Treasury Department did not put forth any initial controls, plans or requirements for CPP recipients to agree to prior to receiving the money.[36] There are currently no enforcement mechanisms in place that have any meaning to TARP CPP recipients.

At the time of the release of this report, only Citigroup has provided a report on TARP fund uses and loan and foreclosure prevention activities for the last quarter of 2008. And this is likely because Citi agreed[37] as a result of its second TARP contract, for its specially-created Targeted Investment Program funds, to report on a quarterly basis. While this is a start, this practice needs to be standardized and required across ALL TARP programs, all participants, and complete with comparative data from previous quarters.

5. Not This Time: An Opportunity for Congress and The President

> *" Where you've got federal money involved, taxpayers' money involved, TARP money involved, and the way they have spent it, with no accountability, is getting close to being criminal."*
> - Sen. Richard Shelby (R-AL), to Associated Press

The new Congress and the Obama Administration have an immediate, specific and unparalleled opportunity to provide those bankrolling the banks – the American taxpayer – with a full disclosure of how their money was spent and with a clear, mandated plan to make sure that the recipients' actions are in line with the EESA goals.

There's an emerging philosophy among the industry and its supporters that government "interference" or participation is just fine when government wants to provide banks with a capital infusion, but that when the government moves toward attaching restrictions on compensation or operations, all of the sudden it's deemed an undue influence. Many lawmakers believe that hypocrisy needs to end now. As Senator Claire McCaskill, (D-MO) stated to the Associated Press, it's not enough to simply ask, or say "Please," if we want bailout recipients to spend the money as it was intended.[38]

5.1 Goal: Restoring Confidence

Results of a survey conducted in December by Luigi Zingales, a professor at the University of Chicago's Booth School of Business, and Paola Sapienza, a professor at Northwestern's Kellogg School of Management, demonstrate the degree to which people have little to no confidence in the financial system and the government's response to the meltdown.[39] Approximately 60% of respondents said they "believe the financial system is unfair" and 80% said the "government's methods made them less confident in the market." Also, a new poll from Celinda Lake finds strong support for greater transparency in both the use of economic recovery and bailout funds.[40]

The Obama administration has acknowledged that TARP requires a heavy overhaul and has begun to indicate ways in which it plans to change the program. For example, Treasury requested that TARP recipients submit lending data to the Treasury Department by the end of January. However, it has been reported that the disclosures won't disclose anything new.[41] This is just the beginning, we hope, of a series of announced reforms. The new Treasury officials need to essentially turn this program upside down, shake it and start over – from strategic planning to monitoring and maintenance.

A critical first step is for the Special Inspector General for TARP (SIGTARP), Neil Barofsky, to execute his inquiry to TARP recipients as to how the money was spent and how they plan to spend any remaining funds. After his extraordinary testimony that he had no idea what TARP recipients were spending money on, Barofsky reported to the Senate Banking Committee that TARP recipients now have 30 days to answer his straightforward questions, including how they spent the TARP funds. In a letter to the Senate Finance Committee's ranking Republican, Sen. Charles Grassley, SIGTARP Barofsky said, "If the American taxpayer is expected to fund this extraordinary effort to stabilize the financial system, it not unreasonable that the public…and Congress have some understanding as to how those funds have been used by the recipients." Barofsky has broader authority, including subpoena power, and a larger staff, than the Congressional Oversight Panel, to carry out this process.

Another step that Treasury recently took was to post TARP transactions and contracts on its websites. However, the contracts posted are, first, enormously large (8-10 mB) scanned files and, second, consist largely of boilerplate legalese with little specific information about an individual institution that would be useful in analyzing their effect. The goal here was laudable, but the execution lacking.

5.2 Goal: Reforming the TARP Program

Public outrage has continued to increase. Fortunately, there is now a great deal of consensus across outside watchdog groups, the Government Accounting Office (GAO), the TARP Congressional Oversight Panel (COP), the FDIC, Administration officials, Members of Congress and the general public about the specific steps that must be taken to ensure that this program is reformed. At time of publication, the COP and GAO have agreed that there is still no clear strategy or vision for what the TARP program aims to accomplish.[42] On January 28, the COP sent the same set of common sense questions regarding TARP transparency and accountability that it had sent to Secretary Paulson (and went mostly unanswered or answered poorly) to the new Treasury Secretary, Timothy Geithner.

Implementing stringent requirements has the potential to deter possible applicants who may not need the funds, and who will assume it's a free infusion of cash. It has been reported that even before any of these recommendations or additional requirements have been implemented, that the perception of new requirements and restrictions prompted many banks who were initially accepted into the program to withdraw.[43]

An even more powerful message to the current participants – and to the bail-out fatigued American taxpayers – would be to make these requirements retroactive. And if firms were unable or unwilling to meet the new strict reporting requirements and adherence to the original principles of the legislation, then they could be required to pay back their loans.

6. Conclusion

Based on the findings of this report, U.S. PIRG Education Fund recommends that reforms described to improve transparency and accountability under the TARP program be implemented immediately by Treasury or Congress as appropriate. In addition, U.S. PIRG recommends that policymakers use the metrics and Report Card described here as a way to identify and compare the status of the implementation of TARP reform programs in a way that can be easily communicated. Improving transparency and accountability within the program is an obvious goal to protect the taxpayer; improving transparency about the program will better inform both the taxpayer and policymakers. Of course, improving the TARP program is only a short term solution to our financial regulation problems. In a pending report of the Securing America's Financial Future program of the U.S. PIRG Education Fund, we intend to discuss why that long-term solution should be based on the findings of the Congressional Oversight Panel's Special Report on Regulatory Reform.

Attachments Follow:

Appendix A: 111th Congressional and Obama Administration Actions to date
Appendix B: TARP Implementation Quarterly Report Card
Appendix C: Additional Available TARP Resources

7. Appendix A: 111th Congress and Obama Administration Actions to Date

This appendix tracks the reform actions (including proposals) taken so far by both Congress and the new Obama Administration. Representative Barney Frank (D-MA) introduced the TARP Reform and Accountability Act, H.R. 384, which was passed by the full House of Representatives. Senator Byron Dorgan (D-ND) has introduced a bill, The Taxpayer Protection Act, S. 195, to increase the oversight, transparency and accountability of the EESA. Progress has been made in the effort to make real reforms with real meaning and real enforcement mechanisms happen – but there's still much to be done. And as we learned with the first disbursement, unless someone is watching, asking and mandating things in writing – it's not going to happen.

Appendix 1: TARP Reform Actions (including proposals) to date
(The actions are categorized under Recommendations prioritized by U.S. PIRG Education Fund based on reports of the Congressional Oversight Panel, the Special Inspector General for TARP, the GAO and other sources.)

Recommendation	Action from Congress	Action from Administration
Provide a detailed disclosure of how the first $350 billion was spent for all TARP fund recipients.	Both the House and Senate have held a number of hearings on TARP transparency. For example, on 5 Feb, Senate Banking heard from Gene Dodaro, Acting Comptroller General at GAO, Elizabeth Warren, Chair of the Congressional Oversight Panel on TARP and Neil Barofsky, Special Inspector General for TARP (SIGTARP). At that hearing, Senate Banking Committee members indicated strong support for SIGTARP enforcing the original intent of the EESA through rigorous reporting and auditing. Upcoming hearings scheduled include testimony from Bank of America. Financial Services Chairman, Rep. Barney Frank, sent a letter dated 1/27/09 to the Special Inspector General for TARP (SIGTARP) Neil Barofsky thanking him for his efforts and requesting an update as soon as available.[44]	Treasury's agreements with Bank of America and Citi require these entities to report on their use of funds. Treasury has begun the process of sending monthly surveys to 20 of the largest institutions and plans to implement a quarterly report from other institutions. A letter 1/22/09 from the SIGTARP to indicated that SIGTARP plans to send a request to all TARP recipients to account for their use of funds and their implementation of executive compensation restrictions.
Establish clear and unambiguous terms by which recipients of TARP funds are chosen		GAO reports that the Department of Treasury relies on regulator's recommendations (and banks choose their regulators) for approving applications to the Capital Purchase Program (CPP). There's also a lack of consistency as to the extent of information provided by these regulators.[45]
Establish specific terms and a mechanism to repay the American taxpayer (TARP purchases are guaranteed in some cases with non-voting preferred stock (which could change in value) or in warrants to re-purchase at fixed prices. However, the lack of accuracy around the value of these assets "puts" diminishes returns.	S. 195, the Taxpayer Protection Act, (Dorgan (D-ND) requires Treasury to collect data with a full description of the collateral or other interests granted to Treasury to ensure that taxpayers are repaid, to the maximum extent possible.[46] It essentially makes sure that taxpayers are beneficiaries to any upside of this investment. S. 195 also creates a Taxpayer Protection Prosecution Tax Force that would prosecute any person or entity found to benefit from financial wrongdoing.	

Appendix 1: TARP Reform Actions (including proposals) to date (The actions are categorized under Recommendations prioritized by U.S. PIRG Education Fund based on reports of the Congressional Oversight Panel, the Special Inspector General for TARP, the GAO and other sources.)		
Recommendation	Action from Congress	Action from Administration
Establish controls, operational checkpoints and specific reporting requirements to which ALLTARP recipients must comply to receive funding (and retroactively for the first round recipients). Provide continuous and frequent reports on the alignment with the goals and objectives of the EESA (retroactively for the first round recipients), including foreclosure mitigation and increase in lending	HR 384, (Frank, D-MA), the TARP Reform and Accountability Act, passed by the House of Representatives, on a roll call vote of 260-166 (1/29/09). The bill requires the Secretary to incorporate within the TARP assistance agreement how the funds are to be used and the benchmarks an institution must meet in using such funds. S. 195 requires entities to provide, in writing, an agreement to provide a detailed monthly report to Congress about how emergency assistance provided is being used to meet the intended objectives and goals of the program. S. 195 requires all firms receiving assistance to be subject to the same conditions as the automotive industry: prohibit executive bonuses, prohibit repayment of dividends, make operational changes to prevent reckless behavior. Failure to comply would require firms to repay their loans immediately.	Treasury has developed a survey for 20 of the largest recipients (which leaves out the majority of recipients) to report monthly on loan balances, new loan originations and purchases of asset-backed and mortgage-backed securities. The FDIC requires the banks that it regulates (state non-members of the Federal Reserve) to report on banks' use of TARP CPP funds and how their capital subscription was used to promote lending and encourage foreclosure prevention efforts. To be effective, this should be extended to the remaining, and much larger, participants.[47] The Administration has called for using the funds for foreclosure mitigation (reported from $50 - $100 billion).[48] Citigroup released a required quarterly report on 2/3 providing Quarter 4 2008 figures with respect to expenditures of the TARP funding. Citigroup is also the only entity for which a mortgage modification program is required. [49]
Limits on executive compensation, bonuses and dividends	S.195 limits executive compensation and annual executive compensation tax deductions. It also prohibits bonuses or incentive compensation awards to the 25 most highly compensated employees of the TARP recipient.	On 2/4/09 the Administration announced a new cap regarding executive compensation that would apply to institutions that negotiate agreements with the Treasury Department for "exceptional assistance" in the future. This new rule would not apply to previous recipients – including American International Group (A.I.G.), Bank of America and Citigroup.[50]

8. Appendix B: TARP Implementation Quarterly Report Card

There have been attempts from several different organizations, as well as from the Department of Treasury itself, to report out progress on reforming the program and demonstrating transparency. U.S PIRG Education Fund's financial, tax and budget staff have drawn from metrics proposed by the U.S. Government Accounting Office (GAO) TARP report (1/30), the TARP Congressional Oversight Panel findings in its 2nd report (1/9), and from the report by the Special Inspector General for TARP (2/6) to come up with a simple report card to show the Department of Treasury's progress against meeting accountability and transparency metrics. We will release the TARP Report Card at the close of each quarter going forward.

Government agencies, technology firms, consumer organizations and universities have systems established to provide product or service reports so that their stakeholders can make informed decisions. The TARP Report Card draws from both the detail of technical criteria[51] *and* the simplicity of consumer-focused reports.[52]

Based on the lack of any information about where the first $350 billion went, and the real possibility that Treasury never asked or required any information, the first report card, on the next page, gives the Bush Administration an F in almost every oversight category for its fourth quarter 2008 actions.

We recommend that the Obama administration consider use of metrics and the report card. We will continue to issue quarterly report cards to track efforts by the Obama administration. Some early efforts by the fledgling Obama administration are promising, such as its restrictions on lobbying by firms receiving TARP funds, its efforts to increase transparency and its actions on excessive executive pay and bonuses

This TARP report card for the initial implementation of the TARP program in the fourth quarter of 2008 gives an overall F grade on all but one line item.

U.S. PIRG Education Fund's **TARP Report Card**	**Quarter 4 2008 FINAL**			
TARP Reforms Should Include:	Complete	Consistent	Usable	**Overall Grade**
A clear strategy for the all TARP programs	○	○	○	**F**
Contingency or alternative plans should the program fail	○	○	○	**F**
Provision of clear and objective criteria for establishing eligibility for TARP assistance	○	○	○	**F**
Accessible information regarding the terms of receipt of TARP funds	○	○	○	**F**
Metrics to make sure that the TARP recipient is using the funds to forward the objectives of the EESA, including:	○	○	○	**F**
-- Reporting on lending	○	○	○	**F**
-- Reporting on foreclosure assistance/loan or rate modification	○	○	○	**F**
-- Reporting on consumer credit access	○	○	○	**F**
-- Clear consumer and taxpayer protection provisions	○	○	○	**F**
-- Reporting on all activities that do not directly support the goals	○	○	○	**F**
Prohibition for using funds for mergers and acquisitions	○	○	○	**F**
Organizational/operational reforms established for recipients	◐	○	○	**D**
A plan to make sure assets are accurately evaluated to give a holistic picture of recipients and the taxpayer investment	○	○	○	**F**
Limits and restrictions on executive pay, bonuses and payment of dividends	○	○	○	**F**

Criteria Definitions	
Complete	Item has been addressed and implemented.
Consistent	Consistent implementation of item/program across all TARP recipients.
Usable	Information provided to the recipient and the public is clear and accessible.

Legend for Ratings

● High ◐ Medium ○ Low

9. Appendix C: Additional Available TARP Resources

Program Descriptions and Participants (all directly from Department of Treasury Website):

Capital Purchase Program: Under the program, Treasury will purchase up to $250 billion of senior preferred shares on standardized terms as described in the program's term sheet. The program will be available to qualifying U.S. controlled banks, savings associations, and certain bank and savings and loan holding companies engaged only in financial activities that elect to. Treasury will determine eligibility and allocations for interested parties after consultation with the appropriate federal banking agency. Application guidelines and deadlines are available at http://www.treasury.gov/initiatives/eesa/application-documents.shtml.

Participants:
Bank of America
The Goldman Sachs Group
Morgan Stanley
Citigroup
JPMorgan Chase
Wells Fargo & Co.
Bank of New York Mellon
State Street
Merrill Lynch
+ other smaller banks: Transactions Report on Department of Treasury Website:
http://www.treas.gov/initiatives/eesa/transactions.shtml.

Systemically Significant Failing Institutions Program: The primary objective of this program is to provide stability and prevent disruption to financial markets in order to limit the impact on the economy and protect American jobs, savings, and retirement security from the failure of a systemically significant institution. In an environment of substantially reduced confidence, severe strains, and high volatility in financial markets, the disorderly failure of a systemically significant institution could impose significant losses on creditors and counterparties, call into question the financial strength of other similarly situated financial institutions, disrupt financial markets, raise borrowing costs for households and businesses, and reduce household wealth.

Participants:
American International Group (A.I.G.)

Targeted Investment Program: The objective of this program is to foster financial market stability and thereby to strengthen the economy and protect American jobs, savings, and retirement security. In an environment of high volatility and severe financial market strains, the loss of confidence in a financial institution could result in significant market disruptions that threaten the financial strength of similarly situated financial institutions and thus impair broader financial markets and pose a threat to the overall economy.

Participants:
Citigroup

Automotive Industry Financing Program: The objective of this program is to prevent a significant disruption of the American automotive industry that poses a systemic risk to financial market stability and will have a negative effect on the real economy of the United States. The program will require steps be taken by participating firms to implement plans that achieve long-term viability.

Participants:
GM
GMAC
Chrysler

Other online resources:

Congressional Oversight Panel:
http://cop.senate.gov/index.cfm

Senate Finance Committee:
http://finance.senate.gov/index.html

Special Inspector General:
http://www.sigtarp.gov/

Government Accountability Office:
http://www.gao.gov/

10. Endnotes

[1] See Appendix C
[2] To provide authority for the Federal Government to purchase and insure certain types of troubled assets for the purposes of providing stability to and preventing disruption in the economy and financial system and protecting taxpayers, to amend the Internal Revenue Code of 1986 to provide incentives for energy production and conservation, to extend certain expiring provisions, to provide individual income tax relief, and for other purposes. (Brief title: Emergency Economic Stabilization Act). Public Law No: 110-343 (2008)

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