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Congressional Oversight Panel Examines Use of Private Contractors in the TARP

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For Immediate Release

Despite Treasury's Efforts, Significant Concerns Remain about Accountability and Potential Conflicts

WASHINGTON, D.C. - The Congressional Oversight Panel today released its October oversight report, "Examining Treasury's Use of Financial Crisis Contracting Authority." The Panel found that Treasury's extensive use of private contractors in Troubled Asset Relief Program (TARP) programs creates significant concerns about transparency and potential conflicts of interest. Although Treasury has taken considerable steps to ensure the appropriate use of private contractors, further improvements can and should be made.

Private businesses today perform many of the TARP's most critical functions, operating under 91 different contracts worth up to \$434 million. In fact, the vast majority of people working on the TARP now receive their paychecks from private companies. Fannie Mae alone employs 600 workers on TARP's foreclosure programs, while Treasury has only 220 staffers working on all TARP programs combined.

Treasury has made notable efforts to ensure that it has used private contractors properly. For example, Treasury provided for competitive bidding for most of its contracts, and it has established several layers of controls to monitor contractor performance and to prevent conflicts of interest. This praise must be viewed in context, however. The government contracting process is notoriously non-transparent, and although Treasury appears to have performed well on a comparative basis, it remains capable of improvement.

Significant concerns remain about the transparency and accountability of private contractors. Contractors are immune to requests under the Freedom of Information Act. They may hire subcontractors, and those subcontracts are not disclosed to the public. Important information is buried in task orders that are never published in any form, and Treasury publishes no meaningful information on contractors' performance during the life of the contract. To address these concerns, the Panel recommended that Treasury publish subcontracts online and provide regular, public updates on contractors' performance.

The largest TARP contracts, provided to Fannie Mae and Freddie Mac, raise particular concerns. Both Fannie Mae and Freddie Mac have a history of profound corporate mismanagement, and both companies would have collapsed in 2008 were it not for government intervention. Further, both companies have fallen short in aspects of their performance, as Fannie Mae recently made a major data error in reporting on mortgage redefaults and Freddie Mac has had difficulty meeting its assigned deadlines. The Panel explored these concerns in a detailed case study.

Because private businesses seek private profit and may serve many clients with different motives, their work may create conflicts of interest. For example, some of the law firms providing advice to Treasury have also advised banks that received TARP funds. Treasury has taken steps to prevent conflicts of interest, but it relies primarily on contractors and agents to self-disclose their own conflicts. The Panel recommended that Treasury develop an independent mechanism for monitoring conflicts that makes it less reliant on contractors and agents for information.

The full report is available at cop.senate.gov.

The Congressional Oversight Panel was created to oversee the expenditure of the Troubled Asset Relief Program (TARP) funds authorized by Congress in the Emergency Economic Stabilization Act of 2008 (EESA) and to provide recommendations on regulatory reform. The Panel members are Senator Ted Kaufman (D-DE); J. Mark McWatters; Richard H. Neiman, Superintendent of Banks for the State of New York; Damon Silvers, Policy Director and Special Counsel for the AFL-CIO; and Kenneth Troske, William B. Sturgill Professor of Economics at the University of Kentucky.

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