

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

March 23, 2010

Via Electronic Transmission

The Honorable Neil M. Barofsky
Special Inspector General
Office of the Special Inspector General
Troubled Asset Relief Program
United States Department of the Treasury
1500 Pennsylvania Avenue, NW, Suite 1064
Washington, DC 20220

Dear Special Inspector General Barofsky:

I have communicated on several occasions during the last few months with the Secretary of the Treasury and the Special Master for TARP executive compensation to try to get to the bottom of why AIG was allowed to pay excessive severance awards to AIG executives after the passage of the American Recovery and Reinvestment Act of 2009 (Recovery Act). Answers have not been forthcoming and therefore I am writing to ask that you investigate these matters and report your findings to me as soon as possible. I am particularly troubled by a chronology of events that seems to suggest a deliberate decision on the part of Treasury to improperly protect executive severance pay and tie the hands of the Special Master.

The Recovery Act required the Treasury Secretary to set standards for appropriate levels of executive compensation at TARP recipients generally. It specifically prohibited the payment of bonuses, retention awards and incentive compensation to the top 25 executives at bailed-out companies like AIG, but then protected many such payments by the controversial “grandfather” provision added late in the drafting process. Consequently, bonus payments, retention awards and incentive compensation based on a contract in existence on or before February 11, 2009, were required to be paid. But the provision did not cover severance pay because severance is not generally understood to be within the meaning of incentive or retention bonuses. That is why I was surprised to learn earlier this year that AIG reportedly paid its former General Counsel \$3.9 million and its former Chief Compliance and Regulatory Officer \$1 million in severance.

Treasury published regulations on June 15, 2009, implementing the Recovery Act’s executive compensation provisions. Treasury also named Mr. Kenneth Feinberg as the Special Master. It appears that, despite the earlier public outcry over the retention bonus grandfather loophole, Treasury’s regulation added severance pay to the list of executive compensation items covered by the grandfather. Worse still, Treasury virtually ignored the requirement in section 111(b) (2) of the Recovery Act that the Secretary “shall require each TARP recipient to meet appropriate standards for executive

compensation.” Section 111(b) (2) is a general provision and is not limited by the more specific restrictions in 111(b) (3) related to the top 25 executives and the grandfather provision. Nevertheless, this mandated authority was not used to regulate severance pay for executives like the former AIG General Counsel. Therefore, I am asking you, among other things, to evaluate why Treasury did not effectively implement the Congressional mandate in section 111(b) (2) to prevent inappropriate executive compensation, such as excessive severance payments, more broadly.

There is another troubling matter that I am asking you to review. The current Deputy Special Master joined Treasury in May 2009. He told us he participated in drafting the Treasury regulations. Of course, those regulations governed executive compensation at TARP recipients like AIG and Bank of America. The problem is that this attorney worked for the Wall Street law firm Wachtell, Lipton, Rosen & Katz prior to joining Treasury. While at Wachtell, it is my understanding that this attorney represented Bank of America during its acquisition of Merrill, Lynch in the fall of 2008. Also, the Wachtell firm represents the former CEO and former CFO of AIG on executive compensation matters, including severance. In fact, I understand that those executives may still be planning to make claims against AIG for millions of dollars of severance pay.

At a minimum this presents the appearance of serious impropriety. There are several red flags and questions stemming from this information including, for example, why was this Treasury official permitted to work on a regulation that would directly affect his former client and a client of his former law firm? Did he fully comply with the revolving door provisions of the President’s Ethics Executive Order, prohibiting appointees from participating in matters involving their former clients? If he was recused, when did the recusal occur and why was it not publicly disclosed? How many other Treasury officials working on executive compensation matters have similarly undisclosed potential conflicts for which recusals have been necessary to ensure compliance with the President’s executive order? What are the details of the other potential conflicts, if any? Therefore, I also ask that you examine this situation and report your findings.

Thank you in advance for your attention to this important matter. Please contact my staff at (202) 224-4515 if you have any questions or need additional information.

Sincerely,



Charles E. Grassley
Ranking Member