

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

March 16, 2010

Via Electronic Transmission

The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Geithner:

On several occasions I have communicated with you and Mr. Kenneth Feinberg, the TARP Special Master for Compensation, asking why your department allowed AIG to pay multi-million dollar severance payments to departing executives given the extraordinary level of taxpayer support provided to AIG. After an exchange of letters, my staff met with the Special Master, Kenneth Feinberg to discuss these issues in detail. Mr. Feinberg indicated that although he believed the payments were outrageous and unjustified, AIG was required to make them because the severance agreements were “grandfathered” by law, just as the retention bonuses were.

This is factually incorrect. The law Congress passed to address executive compensation for AIG and other TARP recipients required you to ensure that companies receiving taxpayer TARP dollars meet “appropriate standards” for executive compensation. The Treasury Department then drafted regulations creating the Special Master’s office to implement this broad mandate from Congress. However, for reasons that are unclear, Treasury chose to limit the Special Master’s ability to regulate severance payments such as those AIG paid to its former General Counsel Anastasia Kelly and former Chief Compliance and Regulatory Officer Suzanne Folsom. These limitations appear to tie the Special Master’s hands in ways not required by the statute.

This sort of subtle maneuvering to protect executive severance payments at taxpayer expense is troubling and has resulted in a reported \$3.9 million payment to Anastasia Kelly, a reported \$1 million payment to Suzanne Folsom, and more to follow. It is critical that Congress and the American taxpayer understand why you did not fully exercise your authority to prevent these sorts of payments. As you know, there was a great deal of public outcry over the grandfather provision allowing retention bonuses for certain AIG employees, including questions about how and why it was inserted into the law at all. In light of that controversy it is especially surprising that Treasury would then move to grandfather severance payments as well through regulation, even though the law did not require it.

Treasury Creates an AIG Severance Payment “Grandfather”

Section 111 of the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (the “Recovery Act”), provides that the Secretary of the Treasury shall require each TARP recipient to meet appropriate standards for executive compensation. It also contained a little-noticed provision protecting AIG retention bonus payments based on contracts in existence as of February 11, 2009. This is the provision that allowed AIG to pay bonuses of \$165 million last year and \$198 million again this year. When the controversial “grandfathered” bonus contract loophole came to light following passage of the Recovery Act, the author of the provision in the Senate was reported to have said that he added the language protecting the bonuses at the request of the Administration. The next day, you reportedly said that “Treasury staff” worked with the Senate drafters on this provision.

As harmful as the grandfather provision in the law has been for taxpayers, it did not apply to severance payments. The statute singles out “bonuses,” “retention awards,” and “incentive compensation” for special grandfathered protection. None of those terms are generally understood to refer to severance payments. Thus, after the enactment of the Recovery Act on February 17, 2009, the law grandfathered only certain existing bonus, retention and incentive compensation contracts. Severance agreements were not protected by the grandfather.

The law specifically prohibited golden parachute payments, which might arguably include severance payments, but only for certain high ranking “senior” executives. For all other executives, not just senior executives, the law required you to set “appropriate standards” for executive compensation generally, which would include severance payments.

Four months later, on June 15, 2009, your department published regulations implementing TARP standards for executive compensation. Your department went out of its way to expand the grandfather loophole to include all executive severance payments based on a contract in existence as of February 11, 2009. The Treasury Department accomplished this feat by expanding the definition of “bonus” far beyond its ordinary meaning to include “any payment” other than executive salary. Consequently, the regulation expands the reach of the controversial grandfather provision in the statute to cover severance payments, even though the statute itself grants you the authority to regulate severance payments along with all other executive compensation by TARP recipients in general terms.

In order to assist Congress and the American taxpayer in understanding the reasons for your decision to tie the Special Master’s hands in this manner, please provide detailed written answers to the following questions:

- 1) Who at the Treasury Department drafted the regulation? Please provide the name and title of each official who participated substantively.

- 2) Did anyone at Treasury who participated in drafting the regulation communicate with AIG or its representatives about the regulation? If so, please describe the communications in detail and provide copies of related documents to the Committee.
- 3) Did anyone at Treasury who participated in drafting the regulation formerly represent or work for a law firm that represented AIG or AIG executives on compensation related matters? If so, please provide (a) the name and title of each official and describe in detail the nature of their or their former firm's representation of AIG or any AIG executive, including the names of any AIG executives represented, and (b) all records related to any reference, review, or analysis of the ethical propriety of those individuals participating in drafting the regulation.
- 4) Were the severance payments to the former AIG General Counsel Anastasia Kelly or the former AIG Chief Compliance and Regulatory Officer Suzanne Folsom paid pursuant to an agreement dated after February 11, 2009 and thus not grandfathered by Treasury's regulation? Were these executives part of the group of AIG executives covered by the grandfathering provision in the statute as extended by the Treasury regulation?
- 5) In the TARP executive compensation regulations, 31 C.F.R. § 30.11(d), Treasury restricted the use of "gross-up" payments to eliminate executive tax liabilities. Did any AIG executive compensation agreements prior to February 11, 2009 contain "gross-up" provisions?
- 6) On February 3, 2010, I asked, among other things, "Why wasn't the AIG Executive Severance Plan cancelled pursuant to the authority provided in Section 111(b)(2) of the American Recovery and Reinvestment Act of 2008?" That question has not been answered in either the written replies or in two follow-up teleconferences with my staff. Please provide a written reply. In addition, please explain why Treasury chose not to at least use section 111(b)(2) authority to require all TARP recipients to meet appropriate standards for all executive severance payments generally, in addition to other forms of executive compensation?
- 7) For what legitimate policy reason did Treasury choose to restrict the Special Master's authority to regulate severance payments more than section 111(b)(2) of the statute requires?
- 8) Section 111(b)(3) is a list of specific authorities included in Section 111(b)(2). However, it does not purport to limit the more general authorities in (b)(2). Accordingly, please explain why Treasury chose to treat (b)(3) as limiting the scope of (b)(2) on some matters, such as retention and severance payments, yet exercised broader authority under (b)(2) on other matters, such as prohibiting "gross-up" payments?

I reiterate my previous document and information requests related to this matter, which remain unresolved. Congress and the American taxpayer have a right to get a complete explanation of the facts and circumstances surrounding these payments. Please provide a written reply no later than March 23, 2010 in electronic format to Brian_Downey@finance-rep.senate.gov. Thank you for your prompt attention to these important matters.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Neil M. Barofsky
Special Inspector General
Office of the Special Inspector General
Troubled Asset Relief Program

Kenneth R. Feinberg
Special Master for Compensation
Troubled Asset Relief Program
U.S. Department of Treasury