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U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE
FINANCIAL CONTRACTING AND OVERSIGHT SUBCOMMITTEE

WRITTEN TESTIMONY SUBMITTED BY
THE HONORABLE CHRISTY L. ROMERO
SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM

BEFORE THE
U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE
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Chairman McCaskill and Ranking Member Johnson, I want to thank you for holding today's hearing on "Oversight of Small Agencies." I am a stalwart believer that every government agency requires vigorous oversight by an independent inspector general (IG). There are enormous benefits to having targeted oversight by an IG, and a significant deterrent effect by the very presence of an IG.

Without question, independent inspectors general serve a critical role in the front-line protection of the American people. They ensure that government agencies and government programs are accountable to the taxpayers who fund them. They promote transparency in the management and operation of the government. They protect the American public by ensuring that government agencies are performing at their best. They prevent fraud, waste and abuse. They find efficiencies to save tax dollars. They enforce the law, with some offices of IGs (OIGs), including our office, the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"), having criminal law enforcement authority to search, seize, and arrest. Even the presence of an inspector general can have a significant deterrent effect to foster accountability and impact agency officials' decision-making, as well as preventing fraud or other crime that could victimize the government.

SIGTARP serves as the watchdog over the Troubled Asset Relief Program ("TARP"), the Federal bailout resulting from the 2008 financial crisis. Congress created SIGTARP because it wanted targeted oversight of TARP. Although SIGTARP today is one of the larger offices of inspector general, that was not always the case. SIGTARP started out in December 2008 with no staff, no office space, no equipment, and a significant mission to protect the interests of those who funded TARP programs – the American taxpayers – by conducting criminal investigations and audits. It is our job to advance economic stability by

promoting the efficiency and effectiveness of TARP management, through transparency, robust enforcement, and coordinated oversight.

I came to SIGTARP specifically because of that mission. With my law enforcement background, I was concerned that some would see the disbursement of hundreds of billions of taxpayer TARP dollars as a criminal opportunity. I had the privilege of joining SIGTARP in its early days in 2009. I interviewed in a room under construction with not much furniture, standing up through much of the interview, and eventually sitting on a plastic chair being used by construction workers. But those limitations did not deter me, or others at SIGTARP, from commencing on our important mission.

In SIGTARP's first few years, we were very much in a ramp-up state, which we have now been able to turn to steady state. As a small start-up we faced a number of challenges, but we overcame all of them, and as a result have provided significant benefit to the American public over the past five plus years. Our accomplishments on their behalf include:

- criminal charges brought against 174 individuals, including 112 senior officers (CEOs, owners, founders, or senior executives) of their organizations;
- criminal convictions of 122 defendants;
- prison sentences for 72 defendants (others are awaiting sentencing);
- civil cases and other actions against 64 individuals (including 50 senior officers) and 52 entities (in some instances an individual will face both criminal and civil charges);
- orders temporarily suspending or permanently banning 75 individuals from working in the banking or financial industry, working as a contractor with the Federal government, or working as a licensed attorney;

- *orders of restitution and forfeiture and civil judgments and other orders entered for \$4.71 billion to victims and the Government*;
- savings of \$553 million in TARP funds that SIGTARP prevented from going to the now-failed Colonial Bank; and
- 128 recommendations to Treasury and Federal banking regulators related to TARP.

Challenges SIGTARP faced as a small start-up IG

SIGTARP faced many challenges in its first two years as a small start-up OIG. We lacked office space and sufficient staff. We faced recruitment challenges because we were unknown and had no proven track record of success. We had an uncertain budget appropriations process in which we were already behind the normal budgetary timeline. We had no equipment for SIGTARP special agents, no forensic technology, and no information technology.

However, even during those first years, despite all of these challenges, we were able to accomplish a great deal because what we had was much bigger—an overwhelming sense of purpose to be the voice of the American people. That sense of purpose led us to achieve meaningful results in audits and investigations and in making recommendations.

In our first few months with skeletal staff, one of SIGTARP's first audits involved a SIGTARP survey sent to every TARP bank asking them how they had used the TARP funds. In February 2009, three months after Congress created SIGTARP, we received responses from 100% of the TARP banks. We reported on the banks' use of TARP funds in an audit, which our limited staff produced on an accelerated timeframe. The importance of this first audit cannot be overstated. It brought unprecedented transparency. The American people wanted, and were entitled, to know how banks used TARP funds. It also led to accountability. Treasury and

SIGTARP can use these responses to determine whether the TARP programs are meeting their goals. In addition, SIGTARP uses these responses in its investigations. For example, Mainstreet Bank Chairman and Chief Financial Officer Darryl Woods was convicted of misleading SIGTARP in his response to the survey reporting on the use of TARP funds. Woods failed to tell the truth that within days of receiving TARP funds, the bank spent more than one-third of the \$1.037 million in TARP taxpayer dollars to buy a luxury waterfront condo for his and other bank executives' enjoyment. An important part of Woods' guilty plea is that he is banned from banking.

A SIGTARP investigation in our first year led to the New York Attorney General's (NYAG) lawsuit against Bank of America and its former Chief Executive Officer (CEO) Kenneth Lewis and former Chief Financial Officer (CFO) Joe Price. SIGTARP conducted that investigation with staff sitting at different buildings where we could find space and other limited resources. SIGTARP's investigation with the NYAG's office revealed that Bank of America duped shareholders by not disclosing massive losses at Merrill Lynch prior to the merger of the two companies and snookered the federal government into investing billions of taxpayer dollars into the company through the TARP bailout by falsely claiming that the bank would back out of the Merrill merger if the government did not make an additional TARP investment. Last month, NYAG settled that lawsuit for \$25 million. Mr. Lewis was ordered to personally pay \$15 million of that total and is banned from serving as an officer and director of any public company for three years. The settlement against Bank of America and Mr. Lewis' three-year ban send a powerful message that accountability of individuals and institutions for their actions during the financial crisis will continue to be pursued.

Another important early success came in the Colonial Bank and Taylor, Bean & Whitaker (TBW) case, where our investigation discovered a massive \$2.9 billion fraud scheme by former TBW chairman Lee Bentley Farkas that contributed to the failure of Colonial Bank, the sixth largest bank failure in U.S. history. Although our resources were limited in this investigation, we put much of our resources towards this investigation. As a result, even as a then-small OIG, SIGTARP prevented \$553 million in TARP funds that Treasury had already approved from being disbursed to the now-failed Colonial Bank before the taxpayer TARP funds went out the door. All of those funds would have been lost when Colonial Bank failed. Additionally, because of SIGTARP's investigation, eight senior officers of Colonial Bank and TBW were sentenced to prison including Mr. Farkas, who was sentenced to Federal prison for 30 years, was barred from contracting with the Federal government and is prohibited from working in the financial or real estate industries.

How SIGTARP overcame challenges of being a small, start-up OIG

SIGTARP has worked hard to overcome the early challenges of being a small start-up OIG and we relied on others to help us overcome those challenges. We hired experienced staff with targeted expertise who could hit the ground running. We made use of special hiring authorities with the support of the Office of Personnel Management such as direct hire and annuitant waivers, which greatly enhanced our ability to staff quickly. SIGTARP also benefitted tremendously from other offices of inspectors general providing detailed employees for mission-centric positions so that immediate work could begin. We doubled-up on office space until we could get space for ourselves. We utilized short term options while simultaneously pursuing longer term solutions for space, which included having staff spread out in different buildings.

We maximized our resources through creative solutions. We initially borrowed equipment for SIGTARP special agents from other OIGs. We used shared service contracts with different Treasury bureaus for technology services. We also contracted with the Administrative Resource Center to provide the necessary support services to process transactions such as the issuing of travel credit cards and purchase cards.

We did not try to reinvent the wheel. Looking to help from other OIGs was critical in our first few months as a small start-up. We utilized the existing systems of an established OIG via a memorandum of understanding to greatly facilitate our stand-up process. We used position descriptions and many of their established policies until we could establish our own policies and procedures. Other OIGs also provided us initially with human resources services to assist in establishing and posting the different position recruitments, Legislative Affairs assistance for relations with the Hill, Communications assistance to handle inquiries from the press and public, and General Counsel assistance to review procured contracts in the course of standing up the organization. We even met our requirement to report to Congress by using the template quarterly report of another special IG.

Just as critical to our ability to perform was Congressional and Office of Management and Budget (OMB) support to amend the appropriations process to provide for our budget. We first established access to immediate funding while our organization accounting system was being set up. Ultimately, we were able to obtain support for annual appropriations.

With limited staff and a sense of urgency, we were able to think outside of the box on traditional IG practices. Rather than issuing lengthy audits that would have taken significant staff and time and might not have addressed issues timely enough for quickly-evolving TARP programs, we issued recommendations where we saw an area that needed immediate attention to

prevent fraud, waste, and abuse or to promote the effectiveness of efficiencies of TARP. We looked for ways to make the process work for us, not against us.

We partnered heavily with other law enforcement agencies including federal, state, and local organizations to leverage resources—workspace for SIGTARP agents, space to house evidence that we seized in search warrants such as bank records, use of their computer systems to store and search evidence, and local support to aid SIGTARP special agents in executing arrests and searches. With respect to our case management system to house records relating to our investigations, we utilized proprietary software provided at no cost from another IG initially. We continue utilizing the same system today, but have customized the software to meet our ongoing requirements. We worked hard to establish early relationships with the Department of Justice, both at Main Justice and with United States Attorney's Offices across the country, to partner on investigations and support criminal and civil prosecution. We would not have been able to accomplish what we have without these critical partnerships.

Finally, we worked to coordinate our efforts with other agencies, including other IG offices that had related responsibilities so that there was not a duplication of efforts. We worked with other oversight organizations such as the Financial Stability Oversight Board and Congressional Oversight Panel and the Government Accountability Office to ensure responsible coordinated oversight of TARP issues.

Partnership among OIGs is critical. Without question, the support of our OIG partners paved our way going forward. We benefitted from their expertise and policies as we were first starting up. As we were able to gain additional resources, we were able to assist other new and smaller OIGs. Our partnerships with law enforcement partners and other OIGs have made us the

effective OIG we are today. The more any small OIG can utilize these great resources, the more effective they can be with less.

Conclusion

While small OIGs do face very real challenges, the important benefits they bring to the American people significantly outweigh these challenges. When a federal agency knows that its actions will be subject to direct scrutiny and vigorous oversight, they often conduct themselves differently, and third parties that deal with that agency also often conduct themselves differently. I can say with certainty that is the case related to TARP as I have personally heard these sentiments from Federal officials at Treasury and the Federal banking regulators, and at companies that received TARP funds.

SIGTARP was able to accomplish a lot in its early years as a small OIG, and our work and staff have only improved with experience and time. The work of an OIG is continual. New issues present themselves and over time the quality and quantity of the work of an OIG improves and progresses. For instance, we now have a stellar computer forensic group that has the capability of rooting out crimes that were not possible for us to discover at our initiation. It is an evolving process in which I like to think of our work as a marathon and not a sprint.

One final word – Congressional support is key. Congress helped us with budgeting and hiring issues and brought transparency to the importance of our mission through public hearings, through written requests for our work, and through letters to the Treasury Secretary in support of our recommendations. For example, SIGTARP reported to the House Committee on Oversight and Government Reform the refusal of three former Treasury officials to be interviewed for a SIGTARP audit. Only after SIGTARP reported this to the Committee and the Committee held a hearing on the matter did these former Treasury officials finally agree to be interviewed allowing

us to complete the audit. We would not be the IG office that we were in our first year or the IG office that we are today without bipartisan strong support from Congress. If any meaningful change is to occur at the agency or program being overseen, then Congressional support of IG oversight is necessary and critical.

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the troubled asset relief program, please contact the SIGTARP Hotline.

Via Online: WWW.SIGTARP.GOV
Via Toll Free Phone: 877-SIG-2009
Via Fax: 202-622-4559

Via Mail: Hotline, Office of the SIGTARP
1801 L St., N.W.
Washington, D.C. 20220