

April 14, 2009

Leadership Council

Anna Burger
Chair
Change to Win
International
Secretary-Treasurer
Service Employees
International Union (SEIU)

Neil Barofsky
Office of the Special Inspector General
For The Troubled Asset Relief Program
1500 Pennsylvania Ave., NW, Suite 1064
Washington, D.C. 20220

Edgar Romney
Secretary-Treasurer
Change to Win
Executive Vice President
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Dear Special Inspector General Barofsky:

We ask you to conduct an audit to determine whether the financial services industry inappropriately used public TARP funds to protect excessive bonus payments from legislative reform initiatives.

Joseph Hansen
International President
United Food and
Commercial Workers
International Union (UFCW)

It is beyond dispute that working families and our Congress object to underwriting excessive bonuses for the executives of bailed out banks. The House has already approved two measures opposing excessive bonuses. The Senate has promised action. And the White House has openly declared its opposition to the massive bonus payments paid out to bank executives. The American public overwhelmingly opposes the use of public funds for any activity that would weaken or undermine Congressional action to reign in excessive compensation practices at banks receiving taxpayer subsidies.

James P. Hoffa
General President
International Brotherhood
of Teamsters (IBT)

However, news reports indicate that TARP recipients have been lobbying against these proposed restrictions, which raises concern that this lobbying may be supported by TARP funds. For example, the Associated Press reported March 25:

Gerelyn Luty
International Vice President
United Food and
Commercial Workers
International Union (UFCW)

Two weeks ago, it looked inevitable. But a Wall Street lobbying blitz helped derail a near-total tax on bonuses for executives at AIG and other bailed-out companies.

Douglas J. McCarron
General President
United Brotherhood
of Carpenters
and Joiners
of America (UBC)

Sen. Olympia J. Snowe, R-Maine — who teamed with Democratic Sen. Ron Wyden of Oregon earlier this year to attach similar legislation to the economic stimulus bill that was subsequently dropped — said she believes industry opposition played a major role in scuttling both that measure and the more recent House-passed [tax] bill.

Terence M. O'Sullivan
General President
Laborers' International Union
of North America (LIUNA)

Bruce Raynor
General President
UNITE HERE

This Associated Press story suggests that Wall Street TARP recipients used federal funds to lobby against the passage of bills that would recoup excessive payments made to bank executives. If true, this would be an egregious abuse of the TARP program.

Arturo S. Rodriguez
President
United Farm Workers
of America (UFW)

Wall Street's Lobbying Efforts

Andrew L. Stern
International President
Service Employees
International Union (SEIU)

When revelation of \$165 million paid to AIG managers boiled the pot of public outrage in mid-March, both the House and Senate promised swift action. The House, for example, quickly approved a 90 percent tax on bonuses paid after December 31, 2008. Through trade associations, firms such as Bank of America countered with a frenzy of lobbying activity. Trade associations asked their members "to barrage Congress with

letters and phone calls pleading with lawmakers to kill it,” according to the Associated Press. The Financial Services Roundtable, where a Bank of America official serves on the board of directors, wrote Congress that “to deprive the tens of thousands of mid-level employees their due wages from 2008 is unjust.” It is, of course, laughable, to characterize the House action, which applies only to employees who earned more than \$250,000 in 2008, as aimed at “mid-level employees.” But the letter is a prime example of the frenzied lobbying effort directed by TARP recipients to oppose limitations on excessive bonuses.

On April 1, the House approved a softened measure. Instead of a tax and instead of actions aimed at the excessive bonuses already paid, it called on a committee of financial regulators to prohibit what they would determine to be excessive compensation in the future.

The lobbying by TARP recipients apparently paid off. The question now is whether this lobbying was itself paid for with TARP funds.

Public records show that TARP recipients expended a reported \$114 million on political activity in 2008. In a March letter to Congressional Oversight Panel Chair Elizabeth Warren, Rep. Tammy Baldwin wrote, “There is something odious about TARP-supported entities engaging in lobbying and electioneering, potentially with taxpayer dollars.” Bills introduced by Sen. Dianne Feinstein and Rep. Carolyn Maloney would specifically prohibit such public funds for lobbying.

Bank of America CEO Ken Lewis agreed during testimony that TARP funds shouldn’t be used for lobbying. At the same time, Lewis admitted that the bank does not track TARP dollars. In his February 11th Congressional testimony, Lewis explained:

As a practical matter, we cannot tell you whether the next loan we make is funded by that \$45 billion of TARP preferred stock, or our approximately \$32 billion of preferred stock placed with other investors, or the approximately \$163 billion of common equity that we hold, or the remaining approximately \$2.2 trillion of other obligations that make up our balance sheet.

If Bank of America can’t tell whether a loan is funded by TARP funds, it is equally possible that its lobbying and contributions to lobbying organizations such as The Financial Services Roundtable are funded by TARP funds.

By contrast, Citigroup represents that it does track TARP dollars, and in fact issues quarterly reports on the issue. Citigroup has appointed a special committee to which the businesses within Citigroup are required to report “at least every quarter on the activities for which any TARP capital is used.” According to Citigroup, TARP capital may not be used for “compensation or bonuses” or “lobbying or government relations activities.”

Bank of America does not appear to have issued such a report, and the testimony of its CEO indicates no intent either to control the purposes for which TARP funds are used or to report to the public on the use of those funds. Given that Bank of America appears to be complicit in the payment of \$3.6 billion in bonuses to Merrill Lynch executives, this lack of accountability for the taxpayer dollars it has received is appalling.

Bank of America-Merrill Lynch Bonus Payments

We believe lobbying related to the \$3.6 billion bonus pool at Merrill Lynch/Bank of America deserves special attention. This pool is 22 times larger than the pool at AIG and the equivalent of

36 percent of TARP monies Treasury allocated to Merrill and awarded to Bank of America after their merger.

The timing and responsibility for these bonus payments are already the subject of scrutiny by several authorities. After a Congressional leader expressed concern about whether sizeable bonuses should be paid at all, Merrill Lynch/Bank of America accelerated the payments. After the bonus payments became known publicly, Bank of America disavowed responsibility. Had the payments been made in January or February, according to common practice at Merrill Lynch under this bonus plan, and had Bank of America been forthcoming about its ability to alter these bonus payments, Congress would have been in a position to exercise its legislative authority or other powers to curb or eliminate the bonuses. It appears that Merrill Lynch/Bank of America accelerated these bonus payments precisely to avoid such a possibility.

Key Questions for SIGTARP

We urge SIGTARP to examine the following issues:

- What lobbying resources did firms such as Merrill Lynch and Bank of America deploy in defense of the bonus pool? Can these firms show that no TARP funds were used for its political efforts regarding the bonuses?
- What resources did the Financial Services Roundtable expend to lobby against the TARP recipient executive compensation claw-back or bonus tax legislation? How much of the FSR's membership dues are now being subsidized by TARP funds (given that the FSR membership has received the majority of the TARP funds distributed)? What information can be requested from the FSR's and other Wall Street lobbying associations' member companies to ensure that they are not using TARP funds to pay membership dues, which in turn are used to lobby on those companies' behalf?

The SIGTARP is well positioned to answer these questions, given its ongoing audit of the process by which Bank of America received \$45 billion in TARP funds, its official cooperation agreement with the New York Attorney General, its request that banks account for how TARP funds are used, and its audit designed to address potential outside influences such as lobbying on the TARP application process.

News reports such as the Associated Press article fuel cynicism that American tax dollars are doubly wasted by paying excessive bonuses and then lobbying to protect those excessive bonuses. We believe SIGTARP should address this cynicism either to lay it to rest, or provide the details that can inform necessary reforms.

Sincerely



Anna Burger

Cc: Rep. Barney Frank, Chairman, House Committee on Financial Services
Rep. Spencer Bachus, Ranking Member, House Committee on Financial Services

Sen. Christopher J. Dodd, Chairman, Senate Committee on Banking, Housing and
Urban Affairs

Sen. Richard Shelby, Ranking Member, Senate Committee on Banking, Housing
and Urban Affairs

Rep. Edolphus Towns, Chairman, House Committee on Oversight and
Government Reform

Rep. Darrell Issa, Ranking Member, House Committee on Oversight and
Government Reform

Rep. Charles Rangel, Chairman, House Committee on Ways and Means

Rep. Dave Camp, Ranking Member, House Committee on Ways and Means

Sen. Max Baucus, Chairman, Senate Committee on Finance

Sen. Chuck Grassley, Ranking Member, Senate Committee on Finance

Rep. Carolyn Maloney, Chair, Joint Economic Committee

Sen. Dianne Feinstein, Chair, Senate Committee on Rules and Administration

Sen. Olympia Snowe

Sen. Ron Wyden

Rep. Dennis Kucinich, Chairman, House Oversight Subcommittee on Domestic
Policy

Rep. Tammy Baldwin

Elizabeth Warren, Chair, Congressional Oversight Panel

Ken Lewis, Chairman and CEO, Bank of America