

January 23, 2009

Neil M. Barofsky
Special Inspector General for the Troubled Asset Relief Program
Department of the Treasury
1500 Pennsylvania Avenue, NW, Suite 1064D
Washington, D.C. 20220

Re: Public Interest Organizations Recommend Whistleblower Protection Initiatives to Enhance Accountability in EESA spending

Dear Inspector General Barofsky,

As Congress considers whether and how to release the second \$350 billion tranche under the Emergency Economic Stabilization Act of 2008 (EESA), we write to share our perspective as the nation's largest and oldest whistleblower protection organizations, government watchdogs, scientists, taxpayer advocates, and on behalf of small property owners across the country. We congratulate you on your appointment as Special Inspector General for the Troubled Asset Relief Program (TARP) and offer our enthusiastic support for your efforts to ensure that any tax dollars allocated to the TARP program be spent transparently, according to the law and the intent of Congress, as outlined in your January 23 letter to Senator Charles Grassley. We also wish to share our recommendations for carrying out this vital task.

Whistleblowers, those who risk their careers and livelihoods to challenge betrayals of the public trust, can play a vital role in allowing your office to effectively hold the Administration and the financial services industry accountable for expenditures of the TARP money. However, a paper accountability mandate will prove impossible to enforce without cooperation from those who can bear witness to past and potential misconduct. We encourage you to send a loud and clear signal to would-be witnesses that you will protect courageous individuals who are willing to speak out in defense of the taxpayers.

The environment that caused the economic collapse was sustained by failing to heed the warnings of whistleblowers at all levels of the financial industry and in the government—from loan origination to the bundling, rating, and insuring of mortgage backed securities. As the Justice Department has frequently recognized in the context of contracting fraud, an effective whistleblower system acts as an early warning system *to prevent* far more misconduct than it reveals.¹

¹ DOJ Press Release, November 10, 2008, "More Than \$1 Billion Recovered by Justice Department in Fraud and False Claims in Fiscal Year 2008" – "Now, more than ever, it is crucial that taxpayer dollars aren't lost to fraud." said Gregory G. Katsas, Assistant Attorney General for the Department's Civil Division. "The billion dollars collected this year is only part of the story. By rooting out fraud and vigorously pursuing it, the Department, with the help of concerned citizens who report fraud in hotline calls and in *qui tam* complaints, undoubtedly saves the country many times that amount in aborted schemes and misconduct."

In addition, two recent studies, one by PriceWaterhouseCooper and another by the University of Chicago, both found that whistleblowers are the #1 way to uncover corporate fraud.

As you likely know, the House version of the “American Recovery and Reinvestment Act of 2009” wisely includes whistleblower protections for employees of contractors and grantees who receive stimulus funds. As Congress considers policy prescriptions to prevent a recurrence of the economic nightmare, if your input is sought, we ask that you indicate the importance of “best practices” whistleblower protections for employees in the industry and in government who identify violations of law and who challenge conduct that places excessive risk on the integrity of financial institutions. However, with the Administration and Congress currently focused on an economic stimulus plan, efforts to reform the financial services industry may be many months away. **We encourage you in the short term to consider the following concrete steps to provide interim whistleblower and accountability measures that are possible to implement within the structure of the already-passed EESA:**

- As an initial step, the web site for the office of the TARP Special IG should signal that it will have a zero tolerance policy for retaliation against witnesses who make disclosures in the course of IG audits and investigations, including private citizens who inform your office of wrongdoing. The web site should remind industry and government audiences of potential criminal liability and referrals to the Attorney General for any efforts to obstruct justice by threatening or harassing witnesses.
- Second, all TARP IG staff should be trained to recognize, respond to, and investigate cases of reprisal. Counsel with subject matter expertise from our coalition will volunteer to share our accumulated knowledge however helpful.
- Next, we believe financial institutions should be encouraged to adopt internal whistleblower protection and disclosure programs through a “corporate compliance” program, modeled on a similar Department of Justice initiative that has been in existence for decades. The IG should inform institutions participating in the bailout that whether the institution has adopted a legitimate, internal whistleblower program will be one of the criteria in determining if any misconduct discovered through IG audits and investigations is considered a good faith aberration capable of self-correction, or should be investigated and referred to the AG for prosecution.
- Consistent with this, companies should be encouraged to implement a “best practices” whistleblower hotline to the Audit committee of their Board of Directors for disclosures of misconduct.
- We also encourage you to construe the IG’s duties and reporting requirements to include a section on whistleblower activity and any efforts to control waste, fraud and abuse in bailout spending by implementing any whistleblower protection measures.
- Lastly, your office should insist that the Financial Stability Oversight Board carry out its duty of (3) *reporting any suspected fraud, misrepresentation, or malfeasance to the Special Inspector General for the Troubled Assets Relief Program or the Attorney General of the United States...*”

While the Oversight Board has met at least five times since the law passed, it has yet to address how it will carry out its responsibility to report fraud, waste or abuse to your office or the Attorney General. We encourage you to brief the inter-agency Oversight Board on any structures in place to facilitate such reporting.

We appreciate your consideration of these recommendations and the important positive impact they can have on the spending program. We would be pleased to offer additional information or details if requested. We encourage you to follow up with Tom Devine, tomd@whistleblower.org, or Adam Miles, adamm@whistleblower.org, of the Government Accountability Project, at 202-547-0034.

Sincerely,

Tom Devine
Government Accountability Project

F. Patricia Callahan
American Association of Small Property Owners

Pete Sepp
National Taxpayers Union

Patrice McDermott
OpenTheGovernment.org

Ellen Miller
Sunlight Foundation

Celia Wexler
Union of Concerned Scientists

Sean Moulton
OMB Watch

Steve Kohn
National Whistleblower Center

Terry Francke
Californians Aware

Mark Zaid
James Madison Project

Cc: Senator Max Baucus
Congressman Barney Frank
Senator Richard J. Durbin
Senator Claire McCaskill
Senator Charles Grassley
Elizabeth Warren, Chair, Congressional Oversight Panel