

TARP's new "cop on the beat" pledges aggressive federal investigations



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Financial institutions and those professionals who interact with them should take note—there's a new federal "cop on the beat" charged with investigating the misuse of funds issued under the Troubled Asset Relief Program ("TARP"). He's armed with broad powers to do the job, and he's looking to make examples of those abusing the system.

Last October, Congress authorized the Department of the Treasury to spend more than \$700 billion to purchase or insure so-called "troubled assets" held by financial institutions. To oversee the receipt and use of these TARP funds, Congress created the Office of the Special Inspector General of TARP and invested it with broad powers—including the authority to issue subpoenas and take sworn testimony—as well as the mandate to investigate criminal activity related to the procurement or use of TARP funds.

In December, Neil M. Barofsky was confirmed as TARP's first special inspector general. Formerly the chief prosecutor in the Mortgage Fraud Group of the United States Attorney's Office for the Southern District of New York, Barofsky has already begun exercising his authority. In February, he sent letters to TARP fund recipients, giving

them 30 days to provide details regarding their use of TARP funds and their plans for satisfying the executive compensation restrictions that accompanied the funding. In addition to warning TARP funding recipients to segregate and preserve documents relating to their use of TARP funds (including internal e-mails, budgets, and memoranda), Barofsky requires responses to be certified by a senior executive and submitted with "pertinent supporting documentation."

This last requirement squarely places those executives within the reach of federal prosecutors. Under federal law, making a false certification is a felony that carries a penalty of up to five years' imprisonment. Indeed, on February 5 Barofsky told the Senate Banking, Housing, and Urban Affairs Committee that he plans to come down hard on "[t]hose that lie," noting that his office has initiated several criminal investigations in the last two months. He also described how he was "laying the groundwork [for] one of our most important tasks, the task that we serve alone, serving as the cop on the beat for TARP programs." This groundwork includes commencing TARP-related audits of financial institutions, developing a hotline and Web site for tipsters, and forging partnerships with state and federal regulatory and law enforcement agencies (including an initiative with New York Attorney General Andrew Cuomo to coordinate executive compensation oversight).

Testifying before the Senate Judiciary Committee on February 11, Barofsky elaborated further on his plans for exercising his criminal enforcement

authority. He predicted that his office could have "the biggest impact" by targeting "the licensed professionals," such as lawyers, appraisers, and licensed mortgage brokers. In his view, "[t]hey have the most to lose, but they're most likely to flip, and they make the best examples."

While the Special Inspector General's authority is currently limited to TARP funding, there have been rumblings on Capitol Hill about providing similar oversight for other recent measures designed to address the economic downturn. In fact, during Barofsky's February 11 appearance before the Judiciary Committee, Senator Chuck Grassley advocated extending his authority to cover the funds used to bail out Bear Stearns and AIG. Some provisions in the \$787 billion stimulus and spending legislation that President Obama signed on February 17 could also come under Barofsky's oversight.

In the meantime, financial institutions and the professionals who interact with them should take Barofsky's words regarding TARP enforcement—and his underlying commitment to protecting this \$700 billion taxpayer investment in the financial sector—seriously. Armed with a narrow focus, a team of investigators, and a \$50 million budget, Barofsky has emerged as a powerful player in an already heavily regulated industry.



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