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Brennan Center for Justice  
*at New York University School of Law*

161 Avenue of the Americas  
12th Floor  
New York, New York 10013  
212.998.6730 Fax 212.995.4550  
www.brennancenter.org

March 30, 2009

Chair Elizabeth Warren  
732 North Capitol St., NW,  
Rooms C-320 and C-617  
Mailstop: COP  
Washington, DC 20401

Re: Political Spending by Publicly Funded Entities

Dear Chair Warren,

The recent outpouring of public indignation over AIG's bonuses makes clear that public interest in how taxpayer dollars are being spent is acute. As you investigate how to improve the accountability of TARP and other bailout recipients,<sup>i</sup> we urge you to consider another area in which greater transparency is warranted: the potential use of taxpayer funds for political purposes, including campaign expenditures and lobbying. We think that such political spending should be fully disclosed to the Treasury.

Disclosure of relevant information is a lynchpin of a functioning democracy. As President Lincoln once said, "If given the truth, the American People can be depended upon to meet any national crisis. The great point is to bring them the real facts." While campaign finance principles typically presume corporate entities to be private actors, the new role of federal taxpayers in substantially funding these corporations, and the public's appropriate interest in proper use of the funds, means that far greater transparency is now warranted.

Moreover, there is a governmental interest in furthering the goals of the Emergency Economic Stabilization Act, which include maximizing returns to the taxpayers and providing public accountability for the use of the funds.<sup>ii</sup> In sum, taxpayers deserve to know whether their investments are being spent on elections, lobbying and other partisan activity. Heightened disclosure would also allow the public to monitor the swirl of money between regulators and the regulated, helping to prevent legislative and administrative capture.

Corporations and banks are restricted in how they may spend corporate treasury funds to influence *federal* elections, but there are many additional avenues for influence, including:

- Donations through separate segregated funds (SSFs) or what are commonly referred to as corporate Political Action Committees (PACs);
- Independent expenditures related to elections that are not express advocacy or its functional equivalent; and
- Grassroots and direct lobbying of the legislative and executive branches.<sup>iii</sup>

Moreover, corporations may spend money in many states to influence the outcome of state elections, including state elections for attorneys general and judges. In many states, corporations may spend an unlimited amount of corporate treasury money — including investments from shareholders (both private and public) — to pay for political expenditures.

We encourage the COP to request that corporations and banks that received TARP and related bailout funds disclose to the public, at a minimum, the following information in a single searchable document:

- Contributions to candidate committees;
- Contributions to political action committees (PACs);
- Contributions to political parties or political party committees;
- Independent expenditures on advertisements that mention candidates for office or office holders; and
- Expenditures to pay for registered lobbyists and lobbying activity.

While many federal and state statutes and regulatory regimes require disclosure of political spending, these are far too porous. Too frequently, disclosure is often neither user-friendly nor easily aggregated. Because political spending by corporate entities is not disclosed in a single place like a Form 10-K filed with SEC, discovering the full extent of political spending of any corporate entity takes copious research.

At the federal level, to track contributions by TARP SSFs, the public would need to know the exact names of the SSFs funded by each TARP recipient. Tracking spending becomes particularly difficult when political committees do not contain the “doing business as” names of the TARP banks.

Federal spending is only one subset of political spending. Bailout recipients may also spend on state elections and ballot initiatives. Each state has its own distinct disclosure requirements with its own definitional loopholes and architectural failings. As the Campaign Disclosure Project has demonstrated, year after year, states fail to have meaningful disclosure or accessible databases.<sup>iv</sup> Discerning who gave what to whom can require costly due diligence.

Some political spending does not directly support candidates or parties. Instead, supporters make independent expenditures which are underreported in most states. One 2007 study from the National Institute on Money in State Politics found that only five states make information about independent expenditures readily available to the public. As this report noted, “holes in the laws — combined with an apparent failure of state campaign-finance disclosure agencies to administer effectively those laws— results in the poor public disclosure of independent expenditures. The result is that millions of dollars spent by special interests each year to influence state elections go essentially unreported to the public.”<sup>v</sup>

Corporate entities can also spend money lobbying without fully disclosing their activities to the public because lobbying reports are so frequently sites for subterfuge. As the Center for Responsive Politics noted in a recent report, many lobbyists flout the spirit of the law by turning in lobbying forms that are blank. “[N]early 19,000 reports totaling at least \$565 million in payments to lobbying firms for activity that was almost entirely unaccounted for. Last year, more than one in 10 filings were the equivalent of a single page — no issues listed, no lobbyists named, no government agencies contacted.”<sup>vi</sup>

There is a basic asymmetry of information that needs to be addressed. Unraveling all of the ways a single bank — let alone hundreds of banks — spent money on lobbying, independent expenditures or gave directly to federal and state candidates, political parties and PACs would require a prohibitively large investment in research spanning all 50 states and federal regulators. This is not a workable way to get meaningful, digestible disclosure from TARP recipients. The banks know the full information concerning political expenditures. Consequently, banks should aggregate and disclose their own political spending, as Citigroup has done on its corporate webpage.<sup>vii</sup> Other banks have not been so transparent.

We propose that this aggregated reporting be given to the Treasury, which can publish it on the Web for the public. Disclosures should also note whether any of the political spending was done using taxpayer funds.

The potential use of public funds for lobbying of either Congress or Treasury is of particular concern to us. Already, under existing law, the Treasury Department must ensure that appropriated public funds are not being used for self-interested lobbying by government contractors under 31 CFR 21.100, *et seq.*<sup>viii</sup> Yet some of the biggest TARP recipients lobbied Congress heavily in late 2008,<sup>ix</sup> and it appears that such lobbying continues this year.<sup>x</sup> The highly general nature of Congressional lobbying reports currently prevent the public from knowing whether public funds were used to lobby or not.

In late January 2009, Secretary Timothy Geithner promised that the Department would curb lobbyists’ influence, stating that “[t]he Treasury Department will implement safeguards to prevent lobbyist influence over the program, including restricting contacts with lobbyists in connection with applications for, or disbursements of, EESA funds.”<sup>xi</sup> However, it does not appear that any new regulations have yet been promulgated or implemented. The terms regarding lobbying in some of the TARP deal sheets and contracts released to the public by Treasury appear ambiguous at best.<sup>xii</sup> Furthermore, it

appears that most of the asset purchase agreements between Treasury and the TARP banks were silent on the matter of lobbying.

The transparency for political spending we suggest here is merely a subset of the transparency the COP already seeks from Treasury. We recommend that the COP focus on this issue and urge Treasury to use its immense power to induce banks and corporations to disclose whether TARP and related bailout funds have been used to lobby. We think it would be a perverse result if money intended to unfreeze the credit markets instead ended up being spent on political expenditures.

We look forward to working with you on finding solutions to the novel issues raised by de facto public ownership of the banks and other financial institutions, and would be delighted to discuss the issue at your convenience. If you have any questions related to this letter, please do not hesitate to contact us.

Sincerely,

Susan Liss, Director, Democracy Program  
Laura MacCleery, Deputy Director, Democracy Program  
Ciara Torres-Spelliscy, Counsel, Democracy Program

## Endnotes

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<sup>i</sup> TARP and related bailout funds include the Capital Purchase Program (“CPP”), the Targeted Investment Program (“TIP”), the Systemically Significant Failing Institutions (“SSFI”) and the Automotive Industry Financing Program (“AIFP”).

<sup>ii</sup> Emergency Economic Stabilization Act of 2008, Sec. 2, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:h1424enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h1424enr.txt.pdf).

<sup>iii</sup> FECA prohibits corporations, labor organizations and banks from making direct contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. These organizations may, however, sponsor a separate segregated fund (SSF), which collects contributions from a limited class of individuals and uses this money to make contributions and expenditures to influence federal elections. 11 CFR 100.6.

<sup>iv</sup> See Campaign Disclosure Project, Grading State Disclosure 2008 at <http://www.campaigndisclosure.org/gradingstate/index.html>. The Campaign Disclosure Project is a collaboration of the UCLA School of Law, the Center for Governmental Studies, and the California Voter Foundation.

<sup>v</sup> Linda King, National Institute on Money in State Politics, *Indecent Disclosure Public Access to Independent Expenditure Information at the State Level 4* (Aug. 1, 2007) <https://www.policyarchive.org/bitstream/handle/10207/5807/200708011.pdf?sequence=1>.

<sup>vi</sup> Lindsay Renick Mayer, *Empty Disclosure*, (Mar. 19, 2009)

<http://www.opensecrets.org/news/2009/03/empty-disclosure.html>.

<sup>vii</sup> Citigroup, *U.S. Political Contributions January 1 - December 31, 2008*, <http://www.citigroup.com/citi/corporategovernance/data/uscontribs08.pdf>.

<sup>viii</sup> 31 CFR 21.100 (a) states “No appropriated funds may be expended by the recipient of a Federal contract... to pay any person for influencing or attempting to influence an officer or employee of any agency, [or] a Member of Congress, ... in connection with ...: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract....”

<sup>ix</sup> See lobbyist reports on file with the Clerk of the House of Representatives,

<http://lobbyingdisclosure.house.gov/> and Secretary of the Senate, <http://www.senate.gov/lobby>.

<sup>x</sup> Elizabeth Williamson & Brody Mullins, *Firms Keep Lobbying as They Get TARP Cash*, WALL ST. J., Jan. 23, 2009,

[http://online.wsj.com/article/SB123267702062508887.html?mod=googlenews\\_wsj#printMode](http://online.wsj.com/article/SB123267702062508887.html?mod=googlenews_wsj#printMode).

<sup>xi</sup> Treasury, Press Release, *Treasury Secretary Opens Term Opens With New Rules to Bolster Transparency, Limit Lobbyist Influence in Federal Investment Decisions* (Jan. 27, 2009).

<sup>xii</sup> Letter from Neel Kashkari to Elizabeth Warren (Dec. 30, 2008),

<http://www.treas.gov/press/releases/reports/123108%20cop%20response.pdf>; Treasury, TARP AIG SSFI Investment Senior Preferred Stock and Warrant Summary of Senior Preferred Terms (Nov 10, 2008), <http://www.treas.gov/press/releases/reports/111008aigtermsheet.pdf>; Section 4.11 of American International Group, Inc. (“AIG”) Fixed Rate Cumulative Perpetual Preferred Stock Offering dated November 25, 2008, p. 35,

[http://treasury.gov/initiatives/eesa/agreements/AIG\\_Agreement\\_11252008.pdf](http://treasury.gov/initiatives/eesa/agreements/AIG_Agreement_11252008.pdf); Section 4.10(d) of the Securities Purchase Agreement between the United States Department of the Treasury and Citigroup dated December 31, 2008, pp. 33-34,

[http://treasury.gov/initiatives/eesa/agreements/Citigroup\\_12312008.pdf](http://treasury.gov/initiatives/eesa/agreements/Citigroup_12312008.pdf); Treasury, Summary of Terms Preferred Securities Issuer: Bank of America (“BofA”) (Jan. 16, 2009); Securities Purchase Agreement between the United States Department of the Treasury and Bank of America (Oct. 26, 2008), [http://treasury.gov/initiatives/eesa/agreements/BOA\\_10262008.pdf](http://treasury.gov/initiatives/eesa/agreements/BOA_10262008.pdf).