

# United States Senate

WASHINGTON, DC 20510-4606

March 20, 2009

Mr. Scott M. Polakoff  
Acting Director  
Office of Thrift Supervision  
1700 G Street NW  
Washington, D.C. 20552

Dear Acting Director Polakoff:

I write today about your authority to prevent the issuance of bonus and retention payments to the London-based financial products group of AIG American International Group, Inc. (AIG). Specifically, I want to clarify your responses on two specific matters raised when I questioned you before the Senate Banking Committee earlier this week:

1. What is your justification for claiming that AIG is no longer regulated by the Office of Thrift Supervision (OTS), what documentation can you provide, and in the absence of documentation will you resume your regulatory responsibilities; and
2. Does the existing regulatory authority provided OTS by the Federal Deposit Insurance Act allow you to seek restitution for bonuses paid at AIG and prevent similar bonuses at other regulated institutions?

As you recall, I asked whether the OTS had the authority to take action against the payors of bonuses, or the receivers of bonuses, at the holding company and/or subsidiary company level, if it determined that the payor and/or receiver have engaged or participated in any unsafe and unsound practice, or engaged in any act, omission, or practice which constituted a breach of their fiduciary duty.

My understanding of your reply is that OTS would have taken such action in this instance but that because Treasury had taken an ownership position in AIG (as of September 2008) OTS was no longer its regulator. This answer contradicts my understanding of AIG's current ownership structure, and I would like you to explain this reasoning and provide documentation from the Treasury Department stating, consistent with your assertion, that they own and control AIG.

As I understand it, the ability of OTS to continue to act as the consolidated home country supervisor of AIG, and the applicability of the banking law provisions on banning participation in banking, restitution and civil money penalties, depends on whether the Treasury controls AIG. As I also understand from the Federal Reserve Bank of New York (FRBNY) web site, Treasury's control of AIG is not established under the agreements between the Treasury-FRBNY and AIG.

Under these arrangements, a Trust has been established to hold the 77.9 percent of the equity of AIG in the form of convertible preferred stock for the benefit of the Treasury. Under the terms of the Trust Agreement, three independent trustees, selected by the FRBNY, in consultation with Treasury, have absolute discretion and control over the AIG stock, subject only to the terms of the Trust Agreement, and exercise all rights, powers and privileges of a shareholder of AIG. Moreover, the Trust has been specifically structured so that the FRBNY cannot exercise any discretion or control over the voting and consent rights associated with the Treasury's equity interest in AIG. In this circumstance where Treasury is without voting rights, and without the ability to select or discharge the Trustees, there is a good basis for concluding that the Treasury as the beneficial owner of convertible preferred stock of AIG does not control AIG. The absence of Treasury control would appear to be clearly evidenced by the current bonuses affair.

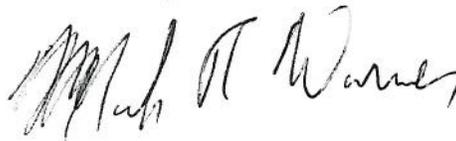
Based on this analysis, and the effective role that OTS could play in resolving the AIG bonus matter within the confines of existing law, I would suggest that OTS should resume its role as the consolidated home country supervisor of AIG. I would hope that the Trustees would also support this continued role for OTS, and that AIG, which choose to be regulated by OTS as its consolidated home country supervisor, would also add its endorsement.

In addition to resolving this matter I would like further clarification of your opinion on whether provisions in the Federal Deposit Insurance Act (FDI Act) can be applied to employment contracts, the incentives they create for employees and the payment of bonuses at AIG and other regulated financial institution.

Existing provisions of the FDI Act (12 USC 1818) provide the bank regulators with authority to issue cease and desist orders against banks and bank holding companies. In addition, individuals could then be banned from banking and from other financial positions, and civil money penalties imposed and/or restitution required. I understand that the current application of this law may be more narrow than I am suggesting, and it may not have been previously used for bonus and compensation related decisions. However, I believe we are in a new era, and that the financial failures of the recent past provide clear evidence that the incentives and payments created by existing compensation practices were unsafe and unsound.

I believe that the AIG bonus issue may be resolved to the satisfaction of the OTS, Treasury, the Congress, and the American taxpayer with this tool. I look forward to your prompt and complete response, including documentation from Treasury to the OTS clarifying this issue of control of AIG. Please call me if you have any question or if I can be of any help to you in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark R. Warner". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark R. Warner