



# **SIGTARP**

OFFICE OF THE SPECIAL INSPECTOR GENERAL  
FOR THE TROUBLED ASSET RELIEF PROGRAM

ADVANCING ECONOMIC STABILITY THROUGH TRANSPARENCY, COORDINATED OVERSIGHT AND ROBUST ENFORCEMENT

## **Treasury's Monitoring of Compliance with TARP Requirements by Companies Receiving Exceptional Assistance**

**SIGTARP-10-007  
JUNE 29, 2010**



OFFICE OF THE SPECIAL INSPECTOR GENERAL

FOR THE TROUBLED ASSET RELIEF PROGRAM

1801 L STREET, NW  
WASHINGTON, D.C. 20220

June 29, 2010

MEMORANDUM FOR: Mr. Herbert M. Allison, Jr.  
Assistant Secretary for Financial Stability

SUBJECT: Treasury's Monitoring of Compliance with TARP Requirements  
by Companies Receiving Exceptional Assistance (SIGTARP-10-  
007)

We are providing this audit report for your information and use. This report is part of broader audit work examining companies that received exceptional assistance under the Troubled Asset Relief Program ("TARP"), including American International Group, Inc., Bank of America Corporation, Chrysler Group, LLC, Citigroup, Inc., General Motors Company, and GMAC, LLC. This report discusses the requirements imposed on exceptional assistance recipients and how the Office of Financial Stability has established monitoring of their compliance with those requirements. Under separate cover, the Government Accountability Office ("GAO") will publish a report discussing a review conducted by Special Inspector General of the Troubled Asset Relief Program ("SIGTARP") and GAO of Government involvement in companies receiving exceptional assistance.

SIGTARP conducted this audit under the authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended.

We considered comments from the Department of the Treasury when preparing the final report. The comments are addressed in the report, where applicable, and a copy of Treasury's response to the audit is included in the Management Comments appendix E of this report.

We appreciate the courtesies extended to our staff. For additional information on this report, please contact Mr. Kurt Hyde ([Kurt.Hyde@do.treas.gov](mailto:Kurt.Hyde@do.treas.gov) / 202-622-4633).

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil M. Barofsky".

Neil M. Barofsky  
Special Inspector General  
for the Troubled Asset Relief Program

# Table of Contents

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Introduction	1
OFS-Compliance Has Developed a TARP Compliance Monitoring Strategy, But Implementation Has Been Slow	5
OFS-Compliance Relies on Companies to Identify Instances of Non-Compliance	9
Conclusion and Recommendations	13
Management Comments and Audit Response	15
Appendices	
A. Scope and Methodology	16
B. Companies' TARP Compliance Efforts	17
C. Acronyms	19
D. Audit Team Members	20
E. Treasury's Management Comments	21



## **TREASURY'S MONITORING OF COMPLIANCE WITH TARP REQUIREMENTS BY COMPANIES RECEIVING EXCEPTIONAL ASSISTANCE**

**SIGTARP REPORT 10-007**

**JUNE 29, 2010**

### **Introduction**

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In response to a request from Senator Max Baucus, Chairman of the Senate Finance Committee, the Office of the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”) and the Government Accountability Office (“GAO”) initiated a review of Government involvement in companies receiving exceptional assistance under the Troubled Asset Relief Program (“TARP”).<sup>1</sup> As part of this review, SIGTARP and GAO reviewed: (1) Government involvement in these companies, including input on day-to-day management, changes to boards of directors and senior management, and limits on executive compensation; (2) Treasury’s efforts to ensure that these companies comply with the requirements associated with receiving such assistance; and (3) Treasury’s monitoring of the various investments made in these companies, its plans for an exit strategy, and lessons learned in case future investments in private industry prove necessary. This report addresses the second issue—Treasury’s efforts to date to ensure companies that received exceptional assistance comply with the conditions of their agreements.

Under separate cover, GAO is issuing a report that reflects GAO’s and SIGTARP’s high-level review of the Government’s involvement in companies receiving exceptional assistance. Moreover, both SIGTARP and GAO have ongoing work that will provide additional insights into the role the Government has played in these companies. Over the next several months, SIGTARP will issue reports related to the decision to provide Citigroup assistance under the Targeted Investment Program and the Asset Guarantee Program; the role that Treasury’s Auto Team played in decisions by General Motors Company (“GM”) and Chrysler Group LLC (“Chrysler”) to eliminate about 2,000 dealerships as part of their overall restructuring efforts; and an independent review of Treasury’s oversight of executive compensation. Finally, SIGTARP continues to monitor the Government’s involvement in the American International Group, Inc. (“AIG”) Credit Facility Trust, participating companies’ compliance with TARP requirements, the tax implications of Treasury’s disposition of Citigroup stock, the restructuring and disposition of AIG assets, and the disposition of Treasury’s equity ownership interests in GM and Chrysler. SIGTARP intends to announce audit work soon in several of these governance areas and others, building on the joint GAO/SIGTARP effort represented by these reports.

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<sup>1</sup> Institutions that have received exceptional financial assistance, as defined by Treasury Interim Final Rule 31 C.F.R. 30.1, are those that participate in TARP’s Targeted Investment Program, Systemically Significant Failing Institutions Program, Automotive Industry Financing Program, and any future program designated by the Treasury Secretary as providing exceptional assistance.

SIGTARP and GAO have previously reported and made recommendations about Treasury's efforts to establish programs designed to monitor and report on TARP recipients' compliance with the terms of their assistance and to include important oversight-enabling conditions in its contracts with companies receiving TARP assistance. For example:

- On December 23, 2008, just eight days into SIGTARP's existence, SIGTARP recommended that the Office of Financial Stability ("OFS") require that TARP recipients establish internal controls to ensure compliance with their requirements, report periodically on the implementation of those controls and their compliance, and provide a signed certification from a senior official that such report is accurate. OFS subsequently adopted this recommendation for companies receiving exceptional assistance, as well as aspects of other TARP programs. Treasury considered this recommendation closed in September 2009.
- In December 2008, GAO reported that Treasury's ability to identify and address any potential problems in participants' compliance with program requirements would be limited without a consistent monitoring process.<sup>2</sup> Treasury agreed that it must continue to develop its internal controls, procedures, and policies for program activities.
- In April 2009, SIGTARP recommended that OFS significantly increase staffing levels to ensure the timely development and implementation of an integrated risk management and compliance program. In response, Treasury has consistently noted on several occasions that they continue to seek and add experienced compliance professionals and that they draw upon OFS employees from across the agency as well as contractors and financial agents to supplement the monitoring effort.
- In July 2009 Congressional testimony,<sup>3</sup> GAO noted that, although OFS has made progress in establishing its management infrastructure, continued attention to hiring remained important because some offices within OFS, including the Office of the Chief Risk and Compliance Officer, still had a number of vacancies that had to be filled as TARP programs were fully implemented. GAO recommended that OFS expedite its hiring efforts and, according to GAO, this recommendation has been implemented.

This report provides the results of SIGTARP's review of OFS's monitoring of compliance with TARP requirements by companies receiving exceptional assistance. Specifically, SIGTARP reviewed OFS's efforts to ensure that these companies comply with the conditions for receiving such assistance and OFS's progress towards developing and implementing a compliance strategy. During the course of our review, we found that, although some progress has been made, OFS's implementation of its compliance strategy has been slow and incomplete. Moreover, it relies almost exclusively on participants to identify and report compliance failures according to their own judgment and policies.

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<sup>2</sup> Government Accountability Office, Report No.09-161, "*Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency*," December 2, 2008.

<sup>3</sup> Government Accountability Office, Report No. 09-920-T, "*Troubled Asset Relief Program: Status of Efforts to Address Transparency and Accountability Issues*," July 22, 2009.

To ascertain OFS's progress in developing and implementing a compliance strategy, we met with officials from OFS's Office of Internal Review ("OFS-Compliance") and the Auto Team to discuss their compliance and monitoring efforts. We also interviewed officials from AIG, Bank of America Corporation ("Bank of America"), Chrysler, Citigroup, Inc. ("Citigroup"), GM, and GMAC, LLC ("GMAC").<sup>4</sup> We conducted this review from August 2009 to April 2010 in New York, Charlotte, Detroit, and Washington, D.C., in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. The evidence obtained provides us a reasonable basis for our findings and conclusions.

## **Audit Objectives**

This audit, which was conducted in response to a request by Senator Max Baucus, seeks to determine the extent to which Treasury follows a clear, consistent, and effective process to ensure companies receiving exceptional assistance adhere to the requirements of their TARP agreements.

This audit complements other reports previously released by SIGTARP and GAO that touch on various aspects of the Government's monitoring of compliance with TARP program requirements. However, this audit specifically focuses on the Government's monitoring of compliance with TARP contractual requirements by companies receiving exceptional assistance. We reviewed OFS's monitoring of such compliance through April 30, 2010.

## **Background**

Pursuant to SIGTARP's December 23, 2008, recommendation, Treasury has required each company receiving exceptional assistance to establish internal controls to ensure compliance with key TARP requirements and to provide OFS with certifications verifying compliance on a quarterly basis. (Appendix B provides information on the companies' efforts to comply with TARP requirements). Table 1 sets forth the types of compliance requirements imposed on companies receiving exceptional assistance.

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<sup>4</sup> In May 2010, GMAC rebranded its name to Ally Financial Inc.

**Table 1—Key Requirements in Agreements with Treasury**

<b>Key Requirements</b>	<b>Description</b>
Internal Controls and Compliance Reports <sup>1</sup>	TARP exceptional assistance recipients agree to promptly establish appropriate internal controls for compliance with certain requirements. They must report to Treasury on a quarterly basis regarding their implementation and compliance with these requirements (including any instances of non-compliance). They must also provide signed certifications, on a quarterly basis, from a senior officer attesting that, to the best of his or her knowledge, such report(s) are accurate, under the threat of criminal penalty.
Executive Compensation	In his determination letters to TARP exceptional assistance recipients, the Special Master for TARP Executive Compensation required that (A) there can be no guarantee of any “bonus” or “retention” awards among the compensation structures approved by the Special Master; (B) base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown; the majority of each individual’s base salary generally will be paid in the form of stock that will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of the date stock salary is earned, with each installment redeemable one year early if the company repays its TARP obligation; (C) total compensation for each individual must be appropriate when compared with total compensation provided to persons in similar positions or roles at similar entities and should generally target the 50 <sup>th</sup> percentile of total compensation for such similarly situated employees; (D) any and all incentive compensation paid to covered employees will be subject to recovery or “clawback” if the payments are based on materially inaccurate financial statements, any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned; and (E) “other” compensation and perquisites, and supplemental executive retirement plans must remain subject to limitations described in Special Master determinations.
Expense (to include Luxury Expenditures) Policies	TARP exceptional assistance recipients must implement and maintain an expense policy that covers the use of corporate aircraft, lease or acquisition of real estate, expenses related to office or facility renovations or relocations, expenses related to entertainment and holiday parties, hosting and sponsorship of conferences and events, travel expenses, and third-party consultations, among others. They must incorporate mechanisms for internal reporting and oversight for addressing non-compliance. Any material amendments to the policy require Treasury’s prior written consent. Material deviations should be promptly reported to Treasury.
Lobbying Policy <sup>2</sup>	TARP exceptional assistance recipients agree to implement and maintain a lobbying policy that covers lobbying of U.S. government officials, provisions of items of value to governmental officials, and political activity. They must include internal reporting and oversight, and mechanisms for addressing non-compliance. Any material amendments to the policy require Treasury’s prior written consent. Material deviations should be promptly reported to Treasury.

Note: <sup>1</sup> AIG, Chrysler, and GM’s initial agreements did not require internal control certifications. These requirements were incorporated in AIG’s April 2009 securities exchange agreement, Chrysler’s June 2009 lien credit agreement, and GM’s July 2009 secured credit agreement.

<sup>2</sup> The implementation and maintenance of a lobbying policy was not included in the original agreements for GM and Chrysler. On April 30, 2010, Treasury and Chrysler agreed to include the lobbying policy covenant in a recent loan amendment. GM and Treasury are discussing a similar agreement. In 2009, GM and Chrysler spent \$8.4 million and \$3.1 million, respectively, on lobbying.

Source: SIGTARP’s analysis of Treasury’s agreements with TARP exceptional assistance recipients. Executive compensation information was obtained from the October 2009 pay determinations issued by Treasury’s Office of the Special Master for TARP Executive Compensation (“Special Master”).

# OFS-Compliance Has Developed a TARP Monitoring Compliance Strategy, But Implementation Has Been Slow

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Within Treasury, OFS-Compliance has stated that they have developed a process to monitor exceptional assistance recipients' compliance with their requirements:

- As a first step, OFS-Compliance requests that the companies document their compliance and governance framework, including identification of TARP requirements and corresponding controls, aggregation of multiple business units/individual infractions and pattern detection, nature of independent verification of effectiveness of internal controls, and waiver processes.
- As a second step, it reviews this information and meets with company officials to discuss their risk of non-compliance and the internal controls environment.
- Finally, OFS-Compliance reviews the work of the companies' internal audit groups to validate the effectiveness of controls and the companies' compliance with TARP requirements. OFS-Compliance will perform independent assessments (if necessary) after reviewing the companies' internal audit plan and reviews.

OFS-Compliance has completed the first step of its compliance process for all six companies receiving exceptional assistance (AIG, Bank of America, Chrysler, Citigroup, GM, and GMAC),<sup>5</sup> and requested that each company document its TARP compliance framework. However, with the exception of AIG, OFS-Compliance's initial requests to obtain companies' compliance frameworks were made 6 to 14 months after TARP requirements were imposed, as shown in Table 2.<sup>6</sup> According to OFS-Compliance, it waited until a company's first quarterly certification of internal controls was received before requesting the compliance framework in

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<sup>5</sup> There were initially seven exceptional financial assistance institutions, the seventh being Chrysler Financial. Chrysler Financial was not subject to internal controls certification and paid off its direct TARP obligations on July 14, 2009. It remained an exceptional financial assistance recipient for purposes of the Special Master's jurisdiction, by reason of its common ownership with the Chrysler bankruptcy entity, until May 14, 2010, when Chrysler LLC ("Old Chrysler") repaid \$1.9 billion to Treasury. OFS-Compliance plans on reviewing Chrysler Financial's implementation of executive compensation determinations required by the Special Master as part of OFS-Compliance's executive compensation assessment. Because of repayments by Bank of America and Citigroup in December 2009, there are currently four exceptional financial assistance recipients remaining.

<sup>6</sup> SIGTARP calculated 6 to 14 months from the time Treasury and the companies entered into their respective initial agreements that contained key requirements—including establishing internal controls and submission of quarterly certifications of compliance for some of the companies—to the time OFS requested the companies' internal controls compliance framework. OFS officials told SIGTARP that they did not believe they had explicit authority to review the compliance of AIG, GM, and Chrysler with TARP requirements until internal controls provisions were added in subsequent amendments to those agreements. Given that the companies involved received massive Government infusions (infusions that ultimately resulted in majority ownership of two of the three), the idea that these companies had obligations but that Treasury could not take steps to make sure that the companies complied with those obligations is one that SIGTARP rejects unequivocally. In SIGTARP's view, OFS had, from the outset, both the responsibility and the ability to ensure that these companies adhered to key TARP requirements.



order to provide the company time to identify and implement new controls. For example, Bank of America’s first required certification (which covered the quarter that ended on March 31, 2009), was submitted to OFS-Compliance on May 11, 2009, five months after it entered into the agreement with Treasury. OFS-Compliance requested Bank of America’s TARP compliance framework two months later, in July 2009. Similarly, GM and Chrysler submitted their first certifications in October 2009 and OFS-Compliance subsequently requested those companies’ compliance frameworks four months later, in February 2010.

**Table 2—OFS-Compliance Monitoring Efforts, as of April 30, 2010**

	<b>Date of Agreement with Treasury<sup>1</sup></b>	<b>Requested Compliance Framework</b>	<b>Met with Company Compliance Officials</b>	<b>Review Audit Documentation</b>
AIG	November 2008 <sup>2</sup>	June 2009	July – December 2009	December 2009
Citigroup	December 2008	August 2009	September – November 2009	December 2009; Citigroup exited Targeted Investment Program on December 23, 2009
Bank of America	January 2009	July 2009	August – October 2009	None; Bank of America exited TARP on December 9, 2009
GMAC	May 2009	January 2010	March 2010	April 2010
Chrysler	December 2008 <sup>2</sup>	February 2010	March 2010	Expected in 3 <sup>rd</sup> Qtr. 2010
GM	December 2008 <sup>2</sup>	February 2010	April 2010	Expected in 3 <sup>rd</sup> Qtr. 2010

Note: <sup>1</sup> Refers to the dates of the agreements in which compliance with the specific requirements described in Table 1 were required.

<sup>2</sup> As discussed previously, see footnote 6.

Source: Treasury’s OFS-Compliance.

OFS-Compliance had only four staff members at the beginning of 2009 to manage reporting, oversight, conflicts, and compliance efforts for more than 300 TARP recipients, including those companies that received exceptional assistance. OFS-Compliance now has 23 staff members to conduct compliance and conflict of interest monitoring. In response to both SIGTARP’s and GAO’s ongoing recommendations regarding staffing, OFS has indicated that it continues to interview for appropriate compliance professionals, leverages other agency positions (such as Legal and the Office of the Chief Investment Officer) and uses contractors (such as PriceWaterhouseCoopers) and financial agents (such as the Office of the Federal Home Loan Mortgage Corporation’s Making Home Affordable Compliance agent) for compliance monitoring. Finally, OFS officials have stated that it plans to hire 15 additional staff members but has not yet been able to identify and hire qualified candidates.

As referenced in Table 2, OFS-Compliance has completed the second step of its process—meeting with company officials to discuss the internal control environment—for all six companies. It met with AIG, Citigroup, and Bank of America officials over a period of several months in 2009 to gain a better understanding of these companies’ internal controls framework. It conducted on-site meetings with GMAC and Chrysler officials in March 2010, 10 and 15

months, respectively, after the companies entered into their initial agreements with Treasury. OFS-Compliance conducted the initial on-site meetings with GM at the end of April 2010. OFS-Compliance officials stated that, due to significant restructuring efforts required at GM, GMAC, and Chrysler, they decided to wait until their compliance frameworks had time to mature based on their new organizational structures.

The final step of OFS-Compliance’s monitoring process involves a review of the companies’ internal audit work papers<sup>7</sup> to validate the companies’ own assessment of their compliance with TARP requirements. OFS-Compliance has performed partial work under the final step at just two of the six companies, as shown in Table 3.

**Table 3—Completed Reviews of Company Audit Documentation, as of April 30, 2010**

	AIG	Citigroup <sup>2</sup>	Bank of America <sup>2</sup>	GMAC	Chrysler	GM
Executive Compensation <sup>1</sup>	No	No	No	No	No	No
Expense/Luxury Expenditure Policies						
Aircraft Use	Yes	Yes	No	No	No	No
Real Estate Lease/Acquisition	Yes	Yes	No	No	No	No
Conferences Hosting/Sponsorship	Yes	Yes	No	No	No	No
Travel Expenses	Yes	Yes	No	No	No	No
Lobbying	No	No	No	No	No	N/A

Note: <sup>1</sup> OFS-Compliance delayed reviewing these controls until 2010 because the Office of the Special Master for TARP Executive Compensation was working with the companies to determine executive compensation from August to December 2009.

<sup>2</sup> Bank of America exited TARP and Citigroup exited Targeted Investment Program in December 2009, and OFS-Compliance subsequently ceased its planned reviews of their compliance activities as exceptional assistance recipients. However, OFS-Compliance intends to review executive compensation compliance in 2010.

Source: OFS-Compliance.

OFS-Compliance has only reviewed documentation from AIG’s and Citigroup’s internal audit groups regarding compliance with each company’s respective expense/luxury expenditure policies. To summarize the status of OFS-Compliance’s reviews to date:

- With respect to AIG, OFS-Compliance’s review of audit reports on expense policies was limited to only one of the company’s 23 major business units—the International Lease Finance Corporation (“ILFC”). After reviewing internal audit documentation relating to ILFC’s expense policies in December 2009, OFS-Compliance concluded that the audit of that unit was properly documented, the lead auditor had the necessary experience for the role, and the scope and approach of the audit was consistent with the risks associated with

<sup>7</sup> Audit work papers include a company’s internal audit report as well as all supporting documentation used for internal audit to develop their conclusion.

the business activities. Additional actions taken by OFS-Compliance regarding AIG are discussed later in this report.

- With Citigroup, OFS-Compliance focused on Citigroup’s internal audit group’s reports and processes for assessing compliance with expense policies. In December 2009, OFS-Compliance reviewed Citigroup’s audit documentation on its corporate aircraft usage and concluded that the audit was also properly documented and that controls were “detailed, thorough, and appropriate to prevent violation of TARP [requirements].”<sup>8</sup>
- In April 2010, OFS-Compliance reviewed GMAC’s audit scope for executive compensation and governance audit work papers, but has not completed its review.
- OFS-Compliance plans to complete reviews of internal audit reports at Chrysler and GM between June and September 2010.
- OFS-Compliance has not, to date, conducted its own TARP internal control review for any company receiving exceptional assistance.

By the end of December 2009, almost a year after TARP requirements were imposed, Bank of America repaid its TARP funds, and Citigroup repaid its Targeted Investment Program investment and exited the Asset Guarantee Program, and thus both had exited exceptional assistance recipient status. OFS-Compliance subsequently ceased its reviews of these companies’ compliance with the TARP requirements applicable to exceptional assistance recipients, essentially concluding that a retrospective review of such compliance was unnecessary. For Bank of America, OFS-Compliance ended its monitoring activities before performing any reviews of audit documentation regarding the effectiveness of its controls.<sup>9</sup> However, OFS-Compliance stated that they reserved the right to monitor 2009 executive compensation determinations for both Citigroup and Bank of America, because these two companies had agreed to comply with the Office of the Special Master for TARP Executive Compensation’s (“Special Master”) determination letters for the remainder of 2009.

OFS-Compliance has not completed reviews of audit documentation on executive compensation for any of the exceptional assistance recipients, nor audit documentation on lobbying compliance. Its staff explained that they were working with the Special Master on executive compensation plans from August through December 2009. Thus, OFS-Compliance decided to wait until this process was completed before conducting any detailed reviews of compliance activities.<sup>10</sup> Although the Special Master had issued its 2009 compensation determinations for all

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<sup>8</sup> In addition to work completed for Citigroup’s Targeted Investment Program agreement, from May 2009 through December 2009, OFS-Compliance worked with Citigroup’s senior management and internal audit organization regarding the governance for the Asset Guarantee Program agreement. During this time, OFS-Compliance participated in weekly meetings with Citigroup’s senior management team and had at least monthly discussions with internal audit regarding their planning, activities, and results. According to OFS-Compliance, through these discussions, it gained insights into Citigroup’s internal control environment for purposes of implementing its mandated governance plan.

<sup>9</sup> OFS-Compliance had planned to review documentation pertaining to Bank of America’s compliance with the luxury expenditure restrictions. However, this review was scheduled for the day after Bank of America exited the TARP. The review was canceled.

<sup>10</sup> SIGTARP’s Investigations Division continues to investigate instances of possible violations of executive compensation rules.

covered employees by the end of 2009, OFS-Compliance chose not to perform due diligence to determine whether the pay requirements and controls were followed until after compensation had been paid. Accordingly, OFS-Compliance has only completed a review of GMAC's executive compensation internal audit scope and anticipates completing its review of 2009 compensation plans in the second and third quarters of 2010. With respect to the lobbying requirement, OFS-Compliance did not provide a timeframe of its plans to review the companies for compliance.

# OFS-Compliance Relies on Companies to Identify Instances of Non-Compliance

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Each TARP exceptional assistance recipient must provide a self-certification of its compliance with TARP requirements, including instances of material non-compliance. OFS-Compliance has left it to the officials at each company to determine whether deviations from policy are material and therefore require disclosure. In addition, OFS-Compliance has not provided them with any written guidance on appropriate levels of materiality, thus leaving the participants broad discretion to determine whether they should report compliance failures to Treasury.<sup>11</sup> OFS-Compliance officials stated that they discussed the requirement to report material deviations with each company and made suggestions for enhancing governance frameworks and internal controls. For example, OFS-Compliance provided suggestions that AIG create a group to identify and determine the materiality of deviations identified. For Bank of America, OFS-Compliance suggested implementation of a process to approve waivers for senior management or business units from established policies.

Of the 17 self-certifications OFS-Compliance received as of March 31, 2010, only AIG has identified and reported material deviations. AIG determined that material deviations occurred in five instances:

“On October 10, 2008, AIG stated its policy on the use of the corporate aircraft in a letter circulated to all relevant employees by Richard H. Booth, Senior Vice President and Chief Administrative Officer. This policy was updated in the ‘AIG Policy on Use of Corporate Aircraft’ effective as of July 20, 2009 and was made available to all relevant employees. Pursuant to a waiver to this policy granted by a former AIG [Chief Executive Officer], ILFC, a subsidiary of AIG, did not follow AIG’s corporate aircraft policy until September 24, 2009. On September 24, 2009, AIG notified ILFC that its waiver was no longer valid. ILFC has indicated its intent to comply with the policy and has begun submitting requests for the use of corporate aircraft to the Office of the Chief Administrative Officer in accordance with the AIG Policy on Use of Corporate Aircraft.”

“The AIG Policy on Use of Corporate Aircraft strictly prohibits the use of corporate aircraft for personal matters. However, Mr. Robert Benmosche, the AIG Chief Executive Officer, inadvertently violated this policy by using the corporate aircraft for personal matters on two occasions. On August 13, 2009, Mr. Benmosche traveled on the corporate aircraft from Van Nuys, CA to Long Beach, CA and from Long Beach, CA to Boca Raton, FL at a cost of \$12,400. Mr. Benmosche will reimburse AIG in the fourth quarter 2009 for the full cost of the use of the corporate aircraft....”

“AIG is aware of certain instances where businesses and corporate functions did not adhere to the prior approval policy for meetings, events, and third party consulting services. The [Chief Administrative Officer] reviewed these events, meetings, and third-

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<sup>11</sup> In some of the companies, the same executives that were present at the time of the institutions’ need for exceptional assistance are, in fact, still present.

party consulting engagements after the fact and found them to be appropriate business-related activities....”

“AIG has become aware of variances between ILFC’s expense policies and AIG’s Expense Policy related to: real estate; travel and entertainment; employee gift and celebrations; and membership dues. ILFC is reviewing its current policies to either harmonize them with AIG’s policy or request formal waivers from AIG’s policy....”

“AIG became aware that specific clauses required to be in employee benefit plans and contracts have been implemented domestically but may not have been implemented internationally. AIG is now implementing this internationally. AIG has commenced a review and is setting up processes with outside counsel to comply globally with [AIG’s] HR requirements under the U.S. Department of Treasury agreements.”

According to AIG, it does not have a specific dollar amount threshold for purposes of the self-certifications, but instead evaluates potential exceptions on a case-by-case basis. Furthermore, AIG did not report some of these deviations in its previous certifications, even though they occurred in previous quarters, because they were not identified until the third quarter of 2009. AIG subsequently reported that they were “implementing enhanced compliance reporting and exception trends” to prevent future deviations in these areas. OFS-Compliance stated that it has conducted several discussions with AIG on these findings and communicated their expectations for remediation, including changes to policies, exception trend monitoring, and implementation of senior management reviews.

Other companies told SIGTARP that they also found deviations in their policies. However, based on their own internal review processes, the companies determined these deviations to be immaterial and therefore did not formally note them in the quarterly certifications. For example, GM identified inadequate documentation of required preapprovals for certain purchase orders, incomplete documentation of actual travel expenditures, and an omission from the tax calendar resulting in the untimely filing of a subsidiary’s state and city tax returns. According to GM, a steering committee determined that these issues were not material deviations from established company policy. Therefore, GM did not formally report them in its third quarter 2009 certification. Because OFS-Compliance had not yet met with GM, it did not know of these deviations before SIGTARP brought them to OFS’s attention in connection with this audit. GM reported that it has taken steps, such as reinforcing policies with employees and filing voluntary disclosure for omitted state and city taxes, to ensure internal remediation of the issues and that action plans were implemented to prevent future deviations in these areas. In discussions with Bank of America, officials also noted that deviations were identified, such as minor disparities from expense policy requirements, but, as with GM, these were determined to be immaterial and were not formally included in the compliance certifications. Bank of America officials stated that they use their judgment in determining the materiality of the deviations.

While other companies did not identify any deviations in their certifications, they also stated that they did not develop specific thresholds to determine materiality of a deviation from established policy. For example, a GMAC official said that the company made a conscious decision not to establish a specific dollar threshold and believed that its system of controls, monitoring, and reporting provided an appropriate structure to oversee the compliance process. According to

Citigroup, the company considers the relative dollar amount, type of deviation, and the time period of any possible non-compliance when deciding to escalate the issue for further review and determination of materiality.

# Conclusion and Recommendations

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To increase accountability and better protect taxpayer interests in those cases in which exceptional TARP assistance was necessary to stabilize particular companies—specifically, AIG, Bank of America, Chrysler, Citigroup, GM, and GMAC—Treasury mandated that those companies comply with special conditions concerning executive compensation, certain company expenses and lobbying. As the taxpayer’s primary representative with respect to TARP, Treasury bears the responsibility of ensuring that each such participant faithfully observe those obligations.

This audit has found, however, that Treasury has, so far, not adequately carried out this responsibility in a number of key respects:

- **Treasury’s compliance implementation has been too slow.** Treasury has not initiated its compliance reviews of the exceptional assistance recipients in a timely manner. Treasury took from 6 to 14 months after the companies’ obligations commenced to even request their compliance frameworks, and 7 to 15 months to meet initially with their compliance officials. To date, Treasury has only begun its review of three of the six companies’ audit documentation and does not expect to complete this final process step for the remaining three until well over a year after their entry into TARP. In the context of companies that might not have survived absent TARP’s infusion of tens of billions of taxpayer dollars, the risks (both financial and to the credibility of the Government’s stabilization efforts) posed by such companies’ failure to comply with these important conditions are too great to countenance such delays.
- **Treasury’s compliance procedures rely too heavily on the companies to detect and report requirement violations on their own.** Treasury relies entirely upon TARP participants themselves (in some cases upon the same managers who presided over the companies as they reached the brink of failure) to abide by their various requirements in a diligent and well-judged manner. Indeed, although Treasury is taking steps to review the companies’ compliance procedures, Treasury has not identified any company to review or otherwise test independently. The fact that Treasury has not provided basic guidance on how to apply standards for when departures from the requirements are sufficiently material to require reporting exacerbates this lack of objective verification. The effect of Treasury’s approach to date has been that decisions on whether a violation is serious enough to report have been left to the judgment of the companies themselves. Given the incentives (and latitude) that companies have to deem a violation immaterial, it is not surprising that (notwithstanding that other companies have discovered violations) only one, AIG, has reported violations to Treasury; even then, AIG reported the events in question months after they occurred and included an unconvincing explanation of one.<sup>12</sup>
- **Treasury’s compliance staffing levels continue to be inadequate.** Although OFS-Compliance has continued to add staff over time, shortages of qualified compliance

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<sup>12</sup> It is unclear how the Chief Executive Officer’s personal use of a corporate aircraft on two occasions could have been “inadvertent.”



personnel persist. Indeed, Treasury itself has stated that it would like to add 15 compliance staff members, but that it has been unable to do so. Twenty months into its administration of TARP, Treasury simply has no legitimate excuses as to why it has still failed to accomplish the critically important task of assembling a robust compliance staff.

In sum, Treasury has not adopted the rigorous approach or developed the professional team necessary for an adequate compliance system to ensure that companies receiving exceptional assistance under TARP adhere to the special restrictions that were imposed to protect taxpayer interests.

## **Recommendations**

In light of these findings, SIGTARP recommends that Treasury undertake the following steps to address the issues identified:

- *First, Treasury should promptly take steps to verify TARP participants' conformance to their obligations, not only by ensuring that they have adequate compliance procedures but also by independently testing participants' compliance.*
- *Second, Treasury should develop guidelines that apply consistently across TARP participants for when a violation is sufficiently material to merit reporting, or, in the alternative, require that all violations be reported.*
- *Third, SIGTARP reiterates its previous recommendation concerning the need to add enough infrastructure and staff at OFS-Compliance to ensure TARP recipients' adherence to their compliance obligations.*

## **Management Comments and Audit Response**

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SIGTARP received an official written response to this audit report from Treasury, a copy of which is reproduced in full in Appendix E. In that response, Treasury stated that it is fully committed to a robust compliance regime, and is likewise fully committed to protecting the interest of taxpayers. While Treasury did agree with a portion of SIGTARP's third recommendation regarding increasing the Office of Financial Stability's compliance staff, it disagrees with the first two recommendations in this report. Treasury indicated that it would respond more fully to the report's findings and provide a detailed description of the actions it intends to take with regard to the concerns raised in the report within 30 days.

# **Appendix A—Scope and Methodology**

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We performed this audit under the authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended. The audit's specific objective was to determine the extent of OFS-Compliance's monitoring of compliance with TARP requirements for companies that received exceptional assistance.

To research this report, we interviewed senior TARP compliance staff from AIG, Bank of America, Chrysler, Citigroup, GM, and GMAC. We also interviewed officials at Treasury, to determine how they established and implemented TARP compliance monitoring. We reviewed the legal agreements between Treasury and these six companies to understand the requirements imposed on each company. To determine how Treasury ensured compliance with TARP requirements, we reviewed relevant certifications submitted to Treasury.

We conducted this review from August 2009 to April 2010 in New York, North Carolina, Detroit, and Washington, D.C. in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions.

## **Limitations on Data**

There were two limitations on data during this review. First, in order to determine how Treasury ensured company compliance with TARP requirements, we reviewed company self-certifications submitted to Treasury, in which some companies reported material deviations from requirements. Because the companies were self-identifying these deviations, other instances of non-compliance could have been omitted. Second, we relied on the judgment of company officials to provide us with complete information regarding their internal control environment surrounding TARP requirements.

## **Use of Computer-processed Data**

We did not use computer-processed data during this review.

## **Internal Controls**

As part of this audit, we discussed internal control frameworks at each company to determine how they ensured compliance with TARP requirements. We also examined OFS-Compliance's process to review company internal controls, self-certifications, and internal audit results to ensure compliance with TARP requirements.

## Appendix B—Companies’ TARP Compliance Efforts

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According to the companies’ compliance officials, in order to comply with TARP requirements, they leveraged, among other things, their existing controls, routines, and oversight activities, such as processes and procedures used to meet requirements imposed by the Sarbanes-Oxley Act of 2002.<sup>13</sup> They also implemented additional measures to comply with TARP requirements. Each of the companies approached the compliance requirements for internal controls differently and implemented different sets of processes and oversight mechanisms. Examples of steps taken are described below.

- **AIG** expanded some processes—such as requiring that compensation reviews be conducted semi-annually rather than once a year—to meet TARP requirements. It also leveraged from processes established to comply with the requirements outlined in the agreement with the Federal Reserve Bank of New York.<sup>14</sup> In addition, AIG currently relies on its internal audit department, which is comprised of over 400 auditors, to conduct TARP-related audits.
- **Bank of America** created a TARP Compliance Committee made up of representatives from its various divisions to coordinate overall compliance activities. Its Regulatory Impact Office was also established to monitor TARP compliance efforts as well as changes in the regulatory environment.
- **Chrysler** updated an existing compliance framework and created monitoring tools to help manage compliance activities.
- **Citigroup** appointed senior compliance officers accountable for TARP coordination and dedicated staff within its existing Audit and Risk Review division to develop TARP-related audit work. Because Citigroup also participated in the Asset Guarantee Program, it established a separate Senior Oversight Committee to monitor compliance and implementation of that agreement.<sup>15</sup>
- **GM** began implementing new controls in December 2008 when it first received TARP assistance.<sup>16</sup> Some of the new controls include requiring the board of directors’ executive compensation committee review and approve all senior executive compensation plans, establishing a pre-approval policy and process for capital expenditures to prevent the

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<sup>13</sup> On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002. The Act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud, and created the Public Company Accounting Oversight Board to oversee the activities of the auditing profession.

<sup>14</sup> The credit agreement with the Federal Reserve Bank of New York implemented on September 22, 2008, required AIG to maintain and submit financial statements and reports, placed restrictions on the use of proceeds, investments, loans, and advances to other parties.

<sup>15</sup> SIGTARP is currently conducting a review on Citigroup’s participation in the Asset Guarantee Program.

<sup>16</sup> GM received \$13.4 billion in December 2008 under the original loan and security agreement with Treasury. It later received additional TARP funding, totaling \$49.5 billion.

acquisition or lease of new corporate aircraft, and requiring supervisory approval of all travel expense reports, among others.<sup>17</sup>

- **GMAC** created the Global Expense Policy (and several related sub-policies) that provided guidance for the company's overall expense management.<sup>18</sup> In addition to meeting TARP requirements, GMAC officials explained that the company has had to update and develop new policies and procedures in order to meet regulatory requirements of bank holding companies. They stated that because GMAC had recently converted from a financial services company into bank holding company, it did not have as robust a compliance framework as compared to other similar companies.

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<sup>17</sup> Other controls include requiring the Manager of Immigration to review and approve all job offers to foreign workers to ensure compliance with the Employ American Workers Act of 2009 and requiring the Capital Planning Director to review the Use of Proceeds report for accuracy prior to submission to Treasury.

<sup>18</sup> The Global Expense Policy was implemented shortly after GMAC entered into its first agreement with Treasury in December 29, 2008 when it received \$5.9 billion from the TARP. GMAC received an additional \$7.5 billion in May 21, 2009, and another \$3.8 billion on December 30, 2009.

# Appendix C—Acronyms

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<b>Acronym</b>	<b>Definition</b>
AIG	American International Group, Inc.
Bank of America	Bank of America Corporation
Citigroup	Citigroup, Inc.
Chrysler	Chrysler Group LLC
GAO	Government Accountability Office
GM	General Motors Company
GMAC	GMAC, LLC
ILFC	International Lease Finance Corporation
OFS	Office of Financial Stability
SIGTARP	Special Inspector General for the Troubled Asset Relief Program
TARP	Troubled Asset Relief Program

## **Appendix D—Audit Team Members**

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This report was prepared and the review was conducted under the direction of Kurt Hyde, Director of Audits, Office of the Special Inspector General for the Troubled Asset Relief Program.

The staff members who conducted the audit and contributed to the report include:

Michael Kennedy

Tinh Nguyen

Trevor Rudolph

Jeffrey Shue, Esq.

# Appendix E—Treasury’s Management Comments

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DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

June 29, 2010

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

RE: SIGTARP Official Draft Audit Report

Dear Mr. Barofsky:

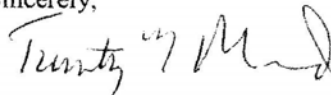
Thank you for giving the U.S. Department of the Treasury (Treasury) the opportunity to review and comment on your official draft audit report regarding compliance activities in connection with institutions receiving exceptional assistance under the Troubled Asset Relief Program (TARP). As Assistant Secretary Allison is travelling, he has asked me to respond on his behalf.

We take very seriously our responsibility to monitor compliance with TARP requirements by all recipients of TARP funds. We have carefully reviewed the statements made in your report and the recommendations based on those statements. Although we agree with a portion of your third recommendation regarding increasing the Office of Financial Stability’s compliance staff, we strongly disagree with many of the statements and two of your recommendations in this report. Treasury is fully committed to a robust compliance regime, and is likewise fully committed to protecting the interests of taxpayers.

We will respond more fully to your findings and, provide a detailed description of Treasury’s actions with regard to the concerns expressed in your report within 30 days of the final audit report’s issuance.

We share your commitment to compliance with all of TARP’s requirements. We look forward to continuing to work with you and your team as we continue our efforts to stabilize our financial system.

Sincerely,



Timothy G. Massad  
Chief Reporting Officer  
Office of Financial Stability



## SIGTARP Hotline

If you are aware of fraud, waste, abuse, mismanagement, or misrepresentations associated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline.

By *Online Form*: [www.SIGTARP.gov](http://www.SIGTARP.gov)

By *Phone*: Call toll free: (877) SIG-2009

By *Fax*: (202) 622-4559

By *Mail*:

**Hotline: Office of the Special Inspector General  
for the Troubled Asset Relief Program**  
1801 L Street., NW, 3<sup>rd</sup> Floor  
Washington, D.C. 20220

## Press Inquiries

If you have any inquiries, please contact our Press Office:

Kristine Belisle  
Director of Communications  
[Kris.Belisle@do.treas.gov](mailto:Kris.Belisle@do.treas.gov)  
202-927-8940

## Legislative Affairs

For Congressional inquiries, please contact our Legislative Affairs Office:

Lori Hayman  
Director of Legislative Affairs  
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## Obtaining Copies of Testimony and Reports

To obtain copies of testimony and reports, please log on to our website at [www.SIGTARP.gov](http://www.SIGTARP.gov).

