Bank of America

Craig R. Rosato
Chief Accounting Officer

March 9, 2009

The Honorable Neil Barofsky
Special Inspector General
U.S. Treasury Department
1500 Pennsylvania Ave, NW Suite 1064
Washington, DC 20220

Dear Inspector General Barofsky:

Below are our responses to the questions in your February 6, 2009 letter relating to the use of TARP funds and the executive compensation policies at Bank of America.

Use of TARP Funds

As you are aware, Bank of America received TARP investments in three separate transactions: an initial $15 billion investment in Bank of America in October 2008; a $10 billion investment originally designated for Merrill Lynch in October 2008, but was made in the combined companies in January 2009; and an investment of $20 billion in January 2009.

The $10 billion associated with Merrill Lynch was necessary to support the assets and on-going business of Merrill Lynch. The additional $20 billion was designed to facilitate the closing of our transaction with Merrill Lynch after its significant fourth quarter loss impacted its existing capital base.

The initial TARP investment was not segregated from other funds on Bank of America's balance sheet. Since all TARP investment funds are part of our operating capital, they cannot effectively be segregated and they cannot be "unspent." As a practical matter, we cannot state whether the next loan we make is funded by TARP preferred stock, or our approximately $32 billion of preferred stock placed with other investors, or the approximately $163 billion of common equity that we hold, or the remaining approximately $2.2 trillion of deposit and debt financing that make up the funding side of our balance sheet

The TARP preferred stock investments, along with the remainder of our capital base has been and will continue to be used to originate loans to and conduct other financial business with individuals, businesses and other organizations, increase our capital position to protect against losses, and invest in other initiatives that result in returns for our common and preferred shareholders, including the United States Treasury.

(b) (6) [redacted]
Bank of America, NC1-007-56-67
100 North Tryon Street, Charlotte, NC 28255-0001

Lending is the primary activity of Bank of America; and lending is a critical component in earning returns for our shareholders, it is how we build relationships with customers. There is no doubt that the TARP investment has allowed us to lend more than we could have without the investment. Capital can be leveraged, albeit common more so than preferred, and therefore additional capital allows us to lend more expansively than without it. Going forward, we will continue to utilize our capital position in the marketplace to make good loans and sound investments.

Nonetheless, our capacity to lend is constrained by: (1) demand for loans; (2) credit quality; (3) our ability to fund loans; and (4) regulatory and rating agency demands. All of these factors are under significant pressure. While some policymakers are encouraging banks to lend more, regulators have announced that they expect banks to maintain significantly higher capital ratios as a buffer against a potentially severe and prolonged recession. In this sense, the TARP investments have allowed us to avoid lending less. In other words, given the freezing up in capital markets, increasing one's capital ratio generally would require reducing one's balance sheet – to some extent by lending less. The TARP investments have helped to avoid this outcome.

Thus, despite many challenges, in the fourth quarter of 2008 alone, Bank of America extended more than $115 billion in <u>new</u> credit to consumers, large and small businesses, governments and other entities. This includes:

- $49 billion in commercial non-real estate;
- $45 billion in mortgages;
- nearly $8 billion in domestic card and unsecured consumer loans;
- nearly $7 billion in commercial real estate;
- more than $5 billion in home equity products;
- approximately $2 billion in consumer Dealer Financial Services, including auto loans;
- nearly $1 billion in new credit to over 47,000 new customers extended by Small Business Banking; and
- $11.3 billion in mortgages made to low- and moderate-income borrowers and areas, serving more than 77,000 borrowers.

Also, to help homeowners avoid foreclosure, Bank of America and Countrywide modified approximately 230,000 home loans during 2008.

As part of the TARP program, we provide a report, currently titled "TARP Monthly Intermediation Snapshot," to the Department of the Treasury which contains general observations on the economic environment and credit markets, as well as certain general lending activity at Bank of America during the rolling three months covered by the report. Our first report, covering the fourth quarter of 2008, is enclosed and sets forth the $115 billion in new credit extensions across the categories outlined above. Our next report, covering the month of January, will show an additional $48 billion in new credit extension across those categories.

While TARP funds are not segregated from other sources of funding, in response to the current environment Bank of America has established a new Lending & Investing Initiative Roundtable, composed of senior officers. This group will meet periodically to assess our outlook for numerous businesses and to discuss opportunities to continue to provide leadership as a provider of credit and to continue to support our communities and customers.

As you requested, we are also enclosing recent testimony and statements concerning our use of TARP funds.

Executive Compensation

Bank of America's compensation policies are intended to grow our business, enhance profitability and generate returns for investors. Our policies and practices are also designed to promote stability and retention.

Our core business is solid: in the midst of a recession, we earned more than $4 billion last year. Even so, that performance did not meet our expectations, and therefore our CEO recommended to the board of directors – and they agreed – that we would pay no annual year-end compensation to any of our most senior executives for 2008. Executives at the next tier down had their annual year-end incentive awards cut by an average of approximately 80%, exclusive of guarantees.

We made additional cuts on a progressive basis – meaning that higher-ranking managers with larger incentive targets took progressively larger pay reductions in relation to more junior associates. But even lower-ranking and lower-paid associates took significant reductions this year, as you would expect in this environment. This includes many people who worked extremely hard last year and who produced excellent business results within their area of responsibility.

Bank of America has a strong Pay for Performance philosophy designed to attract and retain the highest caliber workforce in the competitive markets in which we operate. Future compensation will be based on future performance. Risk is something that we continuously assess when making business decisions. We are constantly reviewing our strategies to ensure that we are not taking an inappropriate amount of risk and that our Pay for Performance approach results in appropriate compensation when there is success in our business models. None of our Senior Executive Officers have employment contracts, thus, none of them have golden parachutes.

October 26, 2008 Securities Purchase Agreement

Pursuant to a Securities Purchase Agreement dated October 26, 2008, the Treasury Department invested $15 billion in Bank of America. Consistent with our obligations under that Securities Purchase Agreement and Treasury's Capital Purchase Program, we amended all of our employee benefit plans and compensatory arrangements in October to incorporate the limitations on executive compensation applicable to our senior executive officers, and we obtained appropriate waivers from the affected Senior Executive Officers, which were delivered to the Department of the Treasury.

In December 2008, our Directors Compensation and Benefits Committee reviewed the incentive compensation arrangements in which our senior executive officers participated for 2008 in order to reasonably ensure that such arrangements did not encourage our senior executive officers to take unnecessary and excessive risks that threaten the value of our company. The Committee's certification regarding that review will be included in our upcoming annual proxy statement and we have included a copy of our preliminary proxy with this response.

January 9, 2009 Securities Purchase Agreement

Pursuant to a Securities Purchase Agreement dated January 9, 2009, the Department of the Treasury invested $10 billion in Bank of America under the Capital Purchase Program. This $10 billion investment had originally been designated for Merrill Lynch in October 2008, prior to Bank of America's acquisition of Merrill Lynch. The delay in receipt of these funds enabled the merger transaction to maintain its agreed-upon income tax results; i.e., tax free treatment for Merrill Lynch shareholders. The provisions of this agreement with respect to compensation are the same as provisions of the October 26, 2008 agreement.

January 15, 2009 Securities Purchase Agreement

The Department of the Treasury invested an additional $20 billion in Bank of America pursuant to a January 15, 2009 Securities Purchase Agreement under the Treasury's Targeted Investment Program, which expanded the executive compensation limitations and the number of executives covered by those limitations. In connection with that transaction, we further amended our employee benefit plans and compensatory arrangements to incorporate the expanded limitations on executive compensation required under the Targeted Investment Program and once again secured and delivered to the Treasury Department appropriate waivers from the affected executives.

We are also monitoring the limitations on severance benefits under both the Capital Purchase Program and the Targeted Investment Program when any affected executive leaves our company, and our corporate income tax return for 2008 will reflect the limitations on income tax deductions applicable to TARP-affected executives. We believe we are in compliance with all applicable limitations on executive compensation and are currently awaiting the Treasury's new compensation standards required to be issued under amended Section 111(b) of EESA.

Attached we have provided documents relating to the Treasury investments in Bank of America. Please let me know if you have any further questions or need additional information.

I have reviewed this response and the supporting documents, and, to my knowledge, I certify the accuracy of the statements, representations and supporting information provided in the response.

Respectfully,

Craig R. Rosato

Craig R. Rosato
Chief Accounting Officer

TARP MONTHLY INTERMEDIATION SNAPSHOT

#12

Name of institution: **Bank of America**
Date: **Reporting Month(s): Oct-Nov-Dec 2008 Submission Date: January 30, 2009**
Person to be contacted regarding this report: **Craig Rosato**

PART II. QUALITATIVE OVERVIEW

Please provide a brief overview of the intermediation activity during the month. This discussion should include a general commentary on the lending environment, loan demand, any changes in lending standards and terms, and any other intermediation activity.

Bank of America, headquartered in Charlotte, North Carolina, operates in 32 states, the District of Columbia and more than 30 foreign countries. The company provides a diversified range of banking and non-banking financial services and products domestically and internationally through three business segments: Global Consumer and Small Business Banking (GCSBB), Global Corporate and Investment Banking (GCIB), and Global Wealth and Investment Management (GWIM).

At December 31, 2008, Bank of America had $1.8 trillion in assets, nearly $911 billion in loans and $831 billion in deposits.

Economic Environment

2008 was a year in which the U.S. economy moved into an economic recession that deepened severely in the fourth quarter, triggered in part by the intensifying financial crisis. Housing activity and prices declined sharply throughout the year. Consumer spending in inflation-adjusted terms softened in the first half of 2008, and then declined in the second half, weighed down by the spike in energy prices that reduced real purchasing power, weaker trends in employment and personal income and the loss of household wealth resulting from sharp declines in home prices and stock market valuations. Sales of automobiles, household durables and consumer discretionary items were hit the hardest.

The stress consumers experienced from depreciating home prices, rising unemployment and tighter credit conditions resulted in a higher level of bankruptcy filings during the year as well as higher levels of delinquencies and losses in our consumer and small business portfolios. Housing value declines, a slowdown in consumer spending and the turmoil in the global financial markets also impacted our commercial portfolios where we experienced higher levels of losses, particularly in the homebuilder sector of our commercial real estate portfolio.

Credit Markets

First mortgage rates to consumers dropped substantially in December leading to increased application volume. Origination activity during the month of December was 33% higher than November activity. The increase in volume is primarily due to refinancing into conventional products. The level of FHA and VA product activity has remained relatively flat. No changes in credit standards occurred during December that would have impacted originations. The majority of the recent application volume has been refinance activity. Just over 20% of the volume is related to new purchases. Home equity demand

TARP MONTHLY INTERMEDIATION SNAPSHOT

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remains sluggish. Auto activity was up in December and into January 2009. Inconsistent market participation from the captive finance companies is driving increased volume. Marine and RV volume and bookings slowed significantly in 2008 and into 2009.

Overall new loan demand for commercial real estate is down due to the lack of new construction activity and the overall condition of the real estate market. The CMBS market remains closed and the lack of permanent financing continues to put pressure on bank deals. Large corporate demand is stable; however there is limited demand for acquisition financing and capital expenditure activity. Middle market demand remains stable.

Bank of America's Response

In response to these changing conditions, Bank of America did the following to help stabilize the U.S. economy:

Bank of America extended more than $115 billion in new credit during the fourth quarter of 2008, of which about $49 billion was in commercial non-real estate; $45 billion was in mortgages; nearly $8 billion was in domestic card and unsecured consumer loans; nearly $7 billion was in commercial real estate; more than $5 billion was in home equity products; and approximately $2 billion was in consumer Dealer Financial Services.

Bank of America lent $45 billion through its mortgage unit ($11.3 billion of that to low- and moderate-income borrowers), helping more than 200,000 Americans purchase a home or save money on the home they already own in the fourth quarter alone.

Bank of America committed to assist as many as 630,000 customers to help them stay in their homes, representing more than $100 billion in mortgage financing. In 2008, the company modified approximately 230,000 home loans - representing more than $44 billion in mortgage financing. Bank of America also modified nearly 700,000 credit card loans for borrowers experiencing financial hardship last year.

In 2008, Bank of America extended almost $4.8 billion in new credit to nearly 250,000 small business customers (defined as businesses with less than $2.5 million in revenues and less than $250,000 in credit exposure). During the fourth quarter alone, nearly $1 billion in new credit was extended to more than 47,000 new small business customers.

Bank of America extended about $49 billion in commercial non-real estate lending credit and nearly $7 billion in real estate lending during the fourth quarter to middle market and large corporate clients as well as not-for-profit organizations and governments. In 2008, the company also invested $1 billion in affordable housing development financing by using Low Income Housing Tax Credits.

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The secondary market created through mortgage-backed securities provides liquidity in the housing market, enabling lenders to provide credit to homebuyers. In the fourth quarter, Bank of America had net purchases of $20 billion in mortgage-backed securities.

BofA - 845B

TREASURY MONTHLY INTERMEDIATION SNAPSHOT

Name of institution: Bank of America | **Submission date: January 30, 2009** | **Person to be contacted regarding this report: Craig Rosato**

PART I. QUANTITATIVE OVERVIEW

SCHEDULE A: CONSUMER LENDING (Millions $)	2008 OCT	NOV	DEC	Key	Comments
1. First Mortgage					
a. Average Loan Balance (Daily Average Total Outstanding)	$255,343	$253,344	$251,712	Average balance consists of (1-4 family) residential loans held on the balance sheet, whether originated by BAC or purchased from others, but does not include discontinued products (pay option and sub prime).	**Average balance decline was due primarily to sales and the conversion of loans to securities that were subsequently retained within the Investment Portfolio. First Mortgage rates to consumers have dropped substantially in December leading to increased application volume. Origination activity during the month of December was 33% higher than November activity. The increase in volume is primarily due to refinancings into conventional products. The level of FHA and VA product activity has remained relatively flat. No changes in credit standards occurred during December that would have impacted originations.**
b. Total Originations	$17,606	$11,595	$15,410	Originations include both loans originated for the balance sheet as well as loans originated for sale.	
(1) Refinancings	$7,805	$4,951	$7,732		
(2) New Home Purchases	$9,801	$6,645	$7,678		
2. Home Equity					
a. Average Total Loan Balance	$152,434	$152,904	$150,794	Average balances represent HELOC, HELOAN and Reverse Mortgage, but do not include discontinued products (sub prime).	**Average balances declined in December due to additional principal writedowns on loans acquired from Countrywide. October and November average balances were not restated**
b. Originations (New Lines+Line Increases)	$1,821	$1,686	$1,819	Originations represent HELOC, HELOAN and Reverse Mortgage, but do not include discontinued products (sub prime).	
c. Total Used and Unused Commitments	$263,418	$260,063	$258,986	Total commitments exclude Reverse Mortgage.	
3. US Card - Managed					
a. Average Total Loan Balance - Managed	$161,122	$161,119	$163,348	Average balances represent US Domestic Card and US Small Business Card.	**Total commitments decreased during the quarter due to fewer line increases and reducing lines on riskier accounts and inactive accounts. As of December 31, 2008, US Card total commitments included $189.5B of inactive customer accounts.**
b. New Account Originations (Initial Line Amt)	$2,290	$2,022	$2,440	Originations represent US Domestic Card and US Small Business Card	
c. Total Used and Unused Commitments	$911,276	$907,970	$903,025	Commitments represent US Domestic Card and US Small Business Card.	
4. Other Consumer					
a. Average Total Loan Balance	$75,623	$76,363	$76,355	Average balances and Originations represent Dealer Financial Services (organically originated and bulk purchases), Consumer Lending and Student Lending.	**October and December originations are higher due to bulk auto purchases of $2B in October and $1.1B in December. Auto activity has been robust in December and into January 2009. Inconsistent market participation from the captive finance companies is driving increased volume. Marine & RV volume and bookings slowed signifcantly throughout 2008 and into 2009.**
b. Originations	$3,544	$1,083	$2,359	Average balances and Originations exclude Foreign Consumer, Banking Center loans, Small Business Lines & Loans and Global Wealth Investment Management non-real estate loans and other discontinued businesses.	

SCHEDULE B: COMMERCIAL LENDING (Millions $)	OCT	NOV	DEC	Key	Comments
1. C & I					
a. Average Total Loan and Lease Balance	$263,551	$262,398	$259,474	C&I is non-real estate commercial loans and leases, includes domestic and foreign loans and leases and excludes U S Small Business Card (which is included in Schedule A above).	Increased bank borrowings occurred in September '08, particularly after the dislocation in the funding markets post Lehman's bankruptcy filing, when companies also increased borrowings as a result of concern around participant lenders' funding capabilities. As the corporate bond and commercial paper markets recovered in 4Q08, our customers were able to return to their traditional funding sources. As a result, corporate clients retired bank borrowings and draws on credit facilities due to market disruptions were down compared to 3Q08.
b. Renewal of Existing Accounts	$19,519	$15,310	$18,023	Renewals represent credit facilities that expired/matured and were renewed during the period; includes funded and unfunded exposure; includes all instrument types (loans held for investment, loans held for sale, LCs, bankers acceptances and derivatives.	
c. New Commitments	$20,036	$13,472	$15,496	New commitments represent new credit facilities booked during the period; includes funded and unfunded exposure and includes all instrument types (see 1.b above). October 2008 new commitments are estimates due to legacy LaSalle system conversions.	
2. Commercial Real Estate					
a. Average Total Loan and Lease Balance	$64,092	$64,917	$64,693	Commercial Real Estate includes domestic and foreign loans primarily secured by non owner-occupied real estate which are dependent on the sale or lease of the real estate as the primary source of repayment.	The shut down of the CMBS securitization market during the second half of 2008, coupled with the commercial real estate market has resulted in a reduction in CRE lending activity.
b. Renewal of Existing Accounts	$2,563	$1,964	$3,457	Renewals represent credit facilities that expired/matured and were renewed during the period; includes funded and unfunded exposure; includes all instrument types (see 1.b above).	
c. New Commitments	$3,190	$1,730	$2,423	New commitments represent new credit facilities booked during the period; includes funded and unfunded exposure and includes all instrument types (see 1.b above). October 2008 new commitments are estimates due to legacy LaSalle system conversions.	
SCHEDULE C: OTHER INTERMEDIATION ACTIVITIES (Millions $)					
1. MBS/ABS Net Purchased Volume					
a. Mortgage Backed Securities	$40,606	-$12,012	$8,764	Mortgage-backed securities net purchases include only activity related to our Asset/liability management process, and excludes those securities related to internally originated loans which have been securitized externally and re-sold to BAC.	Gross purchases for October, November and December were $43,043, $13,679 and $9,080, respectively, while gross sales were $2,437, $25,691 and $17,844, respectively.
b. Asset Backed Securities	$0	$0	$0	Same as 1.a above.	
2. Secured Lending (Repo, PB, Margin Lending)					
a. Average Total Matched Book (Repo/Reverse Repo)[1]	$49,770	$66,191	$34,975	Matched Book Balances represent customer driven ReverseRepo activity. Monthly fluctuations driven by customer demand, ability to apply FIN41 netting and balance sheet capacity.	
b. Average Total Debit Balances[2]	$220	$296	$340	Margin Loan balances are minimal following sale of prime brokerage on 9/30/08.	
3. Underwriting					
a. Total Equity Underwriting	$1,674	$3,760	$230	Underwriting represents BAC commitment on deals closed in current periods.	
b. Total Debt Underwriting	$9,227	$7,018	$7,474	Same as 3a.	

Notes:
1. Not applicable if matched book activity does not exceed $50 billion.
2. Applicable only for institutions offering prime brokerage or other margin lending services to clients.

Notes:
* Average Total Loan and Lease Balances exclude loans held for sale
* Q408 data excludes Merrill Lynch as the acquisition was effective January 1, 2009

As filed with the Securities and Exchange Commission on October 30, 2008

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported):
October 26, 2008

BANK OF AMERICA CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**1-6523**	**56-0906609**
(State of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

100 North Tryon Street
Charlotte, North Carolina 28255
(Address of principal executive offices)

(704) 386-5681
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))