

March 4, 2009

**FOIA Exemption Request**

**VIA ELECTRONIC SUBMISSION**

***SIGTARP.response@do.treas.gov***  
***Originals mailed concurrently***

Mr. Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program  
1500 Pennsylvania Avenue, N.W., Suite 1064  
Washington, D.C. 20220

Dear Mr. Barofsky,

I am writing you in response to your letter of February 6, 2009, regarding the sale of 95,000 shares of Series A Preferred Stock to the U.S. Department of the Treasury pursuant to the Treasury's Capital Purchase Program ("CPP"). In connection with that sale, we received \$95 million on December 12, 2008, which approximated the maximum amount available to us under the CPP. The following is in response to your request.

- (1) Our anticipated use of \$95 million in CPP funds was to fund loan growth through leveraging the CPP funds with other borrowings (b) (4) [REDACTED]. We are a one-bank holding company located in Nashville, Tennessee with two offices in Knoxville, Tennessee. We were formed in 2000 and, in less than nine years, have successfully grown our balance sheet to \$4.75 billion in assets (\$3.38 billion in loans) and now have a work force of 759 employees.

Although the \$95 million is segregated in the equity section of our balance sheet, for capital measurement and deployment purposes, these funds were commingled with our other capital sources.

Our market focus is primarily commercial businesses and their owner/operators and real estate professionals. As a result, our loan portfolio is primarily composed of commercial and industrial and commercial real estate loans. We do have a meaningful portfolio of 1-4 family residential loans primarily as a result of owner/operators financing their homes with us or business owners using their homes as collateral for their business loans.

We do not have a significant retail banking presence as we compete with several large regional banks in our footprint, (b) (4) [REDACTED]. (b) (4) [REDACTED] The large regionals have a larger branch network as well as focused

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retail products and services which we believe is required to operate a meaningful retail banking segment. Accordingly, we do not have a significant amount of consumer loans on our balance sheet. We have no credit card loans. We do originate conforming mortgages for sale into the secondary market. We sell these loans servicing-released to such mortgage companies (b) (4)

(b) (4)

As of December 12, 2008 (the date we received the CPP funds), our net loan balances were \$3.335 billion. As of February 27, 2009, our net loan balances were \$3.428 billion or approximately 2.7 percent higher in 2.5 months. Our net loan growth during this period was \$93 million. We anticipate we will continue to increase our loan balances for the foreseeable future. We grew our loan portfolio by \$600 million during the 2008 fiscal year, a growth rate of 22%.

We also have closed approximately \$119.4 million in mortgage loans which have been sold into the secondary market to such firms (b) (4)

(b) (4) since December 12, 2008. Most of these originations were for customers refinancing existing mortgages, thus the Federal Reserve's various programs to lower interest rates have had a definite impact on these home owners.

During this same time, our headcount has grown from 753 at December 12, 2008 to 759 at February 27, 2009. (b) (4)

The CPP funds have allowed us to not only grow our loan portfolio but continue to hire new associates for our firm.

As noted above, our anticipated use of the CPP funds coupled with our current capital base is to deploy the combined capital into loans. However, we continue to believe there is escalating weakness in our economy, particularly in residential construction and land development loans. (b) (4)

(b) (4)

(b) (4)

We believe the above remarks are consistent with our statements in various public filings, media releases and internal releases, as follows:

*Pinnacle January 20, 2009, Fourth Qtr. 2008 earnings release excerpt -*  
"Furthermore, although the capital we obtained through the CPP will be dilutive to our earnings for the next several quarters, we believe that we will be able to rapidly leverage this capital in Nashville and Knoxville as the CPP provided us the additional lending capacity in our markets," said Carpenter. (The press release is Attachment A).

*Pinnacle Financial Partners, Inc. - Form 10-K.* Attached to this document as Attachment B are excerpts from our annual report on Form

10-K filed with the SEC on February 17, 2009 describing our participation in the TARP.

*Excerpt from our Pinnacle E-Letter to Clients and Friends, February 2009 –*

**Why did Pinnacle take TARP funds?**

Confusion abounds about the government “bailout” of banks. While it remains an emotionally charged issue for many, the Troubled Asset Relief Program (TARP) is anything but a government give-away. Pinnacle participated in one of the TARP initiatives known as the Capital Purchase Program (CPP). The goal was to focus exclusively on healthy banks like Pinnacle to promote the availability of credit and eliminate the credit freeze many consumers and businesses are experiencing. More than \$190 billion has been invested so far in over 250 banks. More than 1,000 banks are expected to participate. In return for a \$95 million capital infusion from the CPP, Pinnacle issued 95,000 shares of preferred stock and 534,910 common stock warrants to the U.S. Treasury. Like any investor, the U.S. Treasury expects to receive its principal back with dividends at a 5 percent per annum coupon rate and participate through warrants in any increase in Pinnacle’s share price between the time of its investment and when it is repaid. Although it is impossible for banks to identify and track loans made using TARP proceeds separately from those using other bank funding, the TARP funds assure that Pinnacle will have additional resources to make loans that meet our soundness criteria. Pinnacle continues to experience very high loan demand and loan portfolio growth. At the end of 2008, Pinnacle had \$3.35 billion in loans, 22 percent more than the previous year. In the fourth quarter alone, when Pinnacle received the \$95 million in TARP funds, we increased our loans outstanding by \$152 million. Pinnacle believes that by participating in the TARP program, the funds can be leveraged to facilitate even greater loan availability for clients in the Nashville and Knoxville markets while producing a satisfactory return for shareholders. The U.S. Treasury, on behalf of the taxpayers, should receive a handsome return on its investment.

- (2) As to executive compensation, we have obtained the required agreements from our senior executive officers concerning such matters as “clawback” provisions. Our Chief Risk Officer has also performed a risk assessment of our incentive plans. This risk assessment was presented to and discussed with the Human Resources and Compensation Committee (the “Committee”) of the Board of Directors of our firm on January 9, 2009. The following are excerpts from our preliminary proxy materials for our 2009 Annual Meeting filed with the SEC on March 3, 2009, in which, among other proposals, we seek the non-binding

approval of our shareholders on our compensation programs and policies in accordance with the American Recovery and Reinvestment Act of 2009 (the “ARRA”).

Excerpt #1 (Page 34 of the Preliminary Proxy Statement – Attachment C)

The duties and responsibilities of the Committee include, among other things, overseeing the Company’s overall executive compensation philosophy; measuring performance with respect to established goals and objectives; designing the components for all executive compensation; and establishing compensation for the Chief Executive Officer and the other Named Executive Officers. The Committee is currently composed of four independent directors.

Compensation Philosophy - The attraction and retention of experienced and high-achieving senior executives that can enhance the Company’s performance and shareholder returns is an essential element of the Company’s long term strategy. This strategy has resulted in the Company’s growth from a start up institution to the second largest banking organization headquartered in Tennessee in less than nine years, despite intensifying competition for experienced bankers in the Company’s markets. The Committee believes that consistent with the Company’s need to continue to retain executives who can drive high performance by the organization, it should provide significantly above peer overall compensation if the Company’s performance is significantly above that of peer financial institutions. Thus, the Company’s compensation system is designed to reward executive officers for superior performance. Conversely, overall compensation levels should be reduced if high performance financial and strategic objectives as compared to peer financial institutions are not met. The Company’s ability to compensate its executives in a manner that provides for significantly above peer compensation for significantly better performance against peer financial institutions may be limited by the provisions of the ARRA described in more detail below, which are applicable to the Company because of its participation in the United States CPP established under the TARP.

Components of Executive Compensation - The Committee has determined that it can accomplish its executive compensation objectives by utilizing three primary elements of executive compensation:

- Base Salary
- Annual Cash Incentive; and
- Long-term Equity Compensation.

**Base Salary** - Base salary is designed to provide appropriate levels of compensation to the executive. Salaries for the Company's executive officers are reviewed annually and are based on:

- Job scope and responsibilities;
- Competitive salaries for similar positions at peer institutions; and
- Other factors, including corporate and individual performance.

**Annual Cash Incentive Plan** - The Committee is responsible for administering the Company's annual cash incentive plans. All non-commissioned associates of the Company are eligible for participation in the Company's annual cash incentive plans which provide targeted cash incentive plan payments to the participants at various levels. For the Named Executive Officers, the targeted annual cash award typically ranges from 70% to 100% of the officer's base salary. Awards are based on achievement of performance goals established by the Committee, with all participants typically receiving the same percentage of their targeted cash award based on the Company's actual results when compared to the performance goals. The Company believes that a single plan with the same performance goals for both executives and all other associates promotes a strong sense of teamwork within the firm. Furthermore, the annual cash incentive plan utilizes a combination of performance goals which the Committee believes creates sufficient balance in the plan such that future performance is not sacrificed for the benefit of current period results.

Under the ARRA, the Company may be prohibited from paying or accruing bonuses, retention awards or incentive compensation to the Company's top five most highly compensated employees, except for long-term restricted stock that does not fully vest until after the Company has repaid the Treasury the amounts invested under the CPP, is less than one third of the executive's annual compensation and that complies with other requirements imposed by the Treasury. These restrictions do not apply to bonuses required to be paid pursuant to employment agreements in place prior to February 11, 2009. Although regulations under the ARRA have not yet been promulgated, these provisions may significantly limit the Company's ability to pay cash incentive payments to the Company's Named Executive Officers under the Company's annual cash incentive plan and may result in the Committee deciding to increase the Named Executive Officers' base salaries until the Treasury has been repaid.

**Long-term Equity Compensation Incentive Plans.** In 2004, the Company's Board adopted, and the Company's shareholders approved, the Company's 2004 Equity Incentive Plan, as amended on April 19, 2005, May 17, 2006 and November 27, 2007 (the "2004 Plan"). Under the terms of the 2004 Plan, the Company's associates are eligible to receive equity-based

incentive awards including stock options, stock appreciation awards, restricted shares of the Company's common stock, restricted stock units, performance shares or units and performance-based cash compensation.

The Committee believes that equity-based, long-term compensation programs link the interests of senior management, both individually and as a team, to the long-term interests of the Company's stockholders. In 2008, the Committee granted awards to the Company's Named Executive Officers, as follows:

Stock Options. Named Executive Officers received stock option awards during 2008. All such stock options are ten year options that vest ratably over a five-year period after grant and have value only to the extent that the Company's common stock price is above the grant price during the exercise period after vesting. This compensation element is totally at-risk in the event that the stock price falls below the grant price over the exercise period. Conversely, the more the stock price increases, the greater the compensation to the executives. Stock options were granted at the Committee's meeting in January 2008 when the overall annual compensation for the Named Executive Officers is determined and shortly after the public announcement of the Company's fourth quarter and prior year annual financial results. Options are usually granted to new employees at the Committee meeting following the date that employment begins.

Restricted Stock. Consistent with previous periods, the Committee also granted shares of restricted stock to the Named Executive Officers in 2008. For 2008, one half of the restricted stock awards were time-vested awards that vest ratably over a ten-year period for each Named Executive Officer other than Mr. McCabe and Mr. McMahan whose awards vest ratably over the period from grant until the executive's 65<sup>th</sup> birthday. The other half of the restricted share awards were performance-based. The forfeiture restrictions of these shares awarded in January 2008 were tied to the achievement of the soundness and profitability performance goals for the Company's 2008 Annual Cash Incentive Plan and the performance goals for 2009 and 2010 as set forth in the Company's three-year strategic plan which was approved by the Company's Board of Directors in July of 2008.

Excerpt #2 (Page 46 of the Preliminary Proxy Statement – Attachment C)

As a result of the Company's participation in the CPP, the Company is required to comply with certain limits and restrictions concerning executive compensation throughout the time that the U.S. Treasury holds any equity or debt securities acquired from the Company pursuant to the CPP, including a

requirement that any bonus or incentive compensation paid to the Company's executive officers during the period that the U.S. Treasury holds any equity or debt securities issued by the Company in the CPP be subject to "clawback" or recovery if the payment was based on materially inaccurate financial statements or other materially inaccurate performance metrics and a prohibition on making any "golden parachute" payment (as originally defined in Section 111(b)(2)(c) of the EESA) during that same period to any Named Executive Officer. As described in more detail below, the prohibition on "golden parachute" payments has been expanded under the ARRA to prohibit any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued, although the U.S. Treasury has yet to issue regulations regarding this expansion of the prohibition of making "golden parachute" payments.

In connection with our sale of preferred stock to the U.S. Treasury in connection with the CPP, each of our Named Executive Officers executed letter agreements with the Company on December 12, 2008 in which each officer agreed that (i) the Company is prohibited from paying any "golden parachute" payment (as originally defined in Section 111(b)(2)(c) of the EESA) to the officer during any period that the executive is a senior executive officer of the Company and the U.S. Treasury holds any equity or debt securities of the Company issued in the CPP; (ii) any bonus or incentive compensation paid to the Named Executive Officer during any period that the officer is a senior executive officer of the Company and the U.S. Treasury holds any equity or debt securities of the Company issued in the CPP is subject to recovery or "clawback" by the Company if the payments were based on materially inaccurate financial statements or performance metric criteria; and (iii) each of the Company's benefit plans were amended with respect to the Named Executive Officer to the extent necessary to give effect to the limitations described above in this paragraph. As described in the following paragraph, the ARRA includes certain additional restrictions and limits concerning executive compensation of companies that participated in the CPP and any regulations or guidance proposed by the U.S. Treasury may require the Company to seek additional modifications to the agreements that it has entered into with its Named Executive Officers.

On February 17, 2009, President Barack Obama signed into law the ARRA which amended the executive compensation provisions of EESA to require the Secretary of the Treasury to adopt regulations which must include significant additional restrictions on executive compensation of recipients of TARP funds, including the Company. The statutory restrictions generally would be applicable during the period any obligation arising under TARP remains outstanding. However, ARRA also provides that, subject to the

Treasury's consultation with the recipient's appropriate regulatory agency, TARP recipients may repurchase the preferred stock issued under the CPP prior to December 12, 2011 without the need to have previously raised new Tier 1 capital. As of February 27, 2009, it is unclear how these executive compensation standards will relate to the similar standards announced by the Department of the Treasury in its guidelines on February 4, 2009, or whether the standards will be considered effective immediately or only after implementing regulations are issued by the Department of the Treasury. The new standards include (but are not limited to) (i) prohibitions on bonuses, retention awards and other incentive compensation, other than restricted stock grants which do not fully vest during the TARP period and which do not exceed one-third of an employee's total annual compensation, (ii) prohibitions on any payments to senior executives (other than payments for services performed or benefits accrued) for departure for any reason from a company, (iii) an expanded clawback of bonuses, retention awards, and incentive compensation if payment is based on materially inaccurate statements of earnings, revenues, gains or other criteria, (iv) prohibition on compensation plans that encourage manipulation of reported earnings, (v) retroactive review of bonuses, retention awards and other compensation previously provided by TARP recipients if found by the Treasury to be inconsistent with the purposes of TARP or otherwise contrary to public interest, (vi) required establishment of a company-wide policy regarding "excessive or luxury expenditures," and (vii) inclusion in a participant's proxy statements for annual shareholder meetings of a nonbinding "Say on Pay" shareholder vote on the compensation of executives. The Company is reviewing these legislative and regulatory matters to determine what impact they will have on the Company's executive compensation program for 2009 and beyond. After regulations are proposed or adopted by the Department of the Treasury, the Committee may determine to revise certain elements of 2009 compensation to its executive officers, including the Named Executive Officers, and/or make other changes to its executive compensation programs, and the Company may take other actions, including repurchasing the preferred stock issued under the CPP in response to these legislative and regulatory matters.

We continue to evaluate the impact of the CPP and the most recent guidelines on executive compensation and may make additional changes to our compensation arrangements in response to additional legislative changes or regulatory guidance.

Please note that in the interests of attempting to fully respond to your letter of February 6, 2009, Pinnacle Financial Partners, Inc. (the "Company") has provided detailed information, including information that it believes is confidential. Accordingly, please treat this response, including all attachments hereto, as confidential. In addition to the Company's request for confidential treatment of this information, the Company requests that this response be withheld from public availability under the Freedom of Information



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Act ("FOIA"), 5 U.S.C. § 552 (1988), pursuant to Exemption 4 and 8 of the FOIA (5 U.S.C. §552(b)(7)(A) and (b)(8)).

By providing this information, the Company is not waiving any attorney-client privilege or other recognized privilege, nor does it intend to waive any such privilege it may have. To the extent you intend to treat this response as other than confidential or if you receive a request from a third party seeking this response, the Company requests that you please inform it prior to any disclosure of the contents of this response so that it has the opportunity to object to such disclosure and seek a protective order or any other remedy available to it as a matter of law or equity. If privileged materials are inadvertently disclosed, the Company will not regard that as a waiver of the privilege as to SIGTARP, the United States Department of the Treasury, the Office of the Comptroller of the Currency or any third party. It is the Company's position that in the event of an inadvertent production of a confidential or privileged document, neither SIGTARP nor the United States Department of the Treasury or the Office of the Comptroller of the Currency may make the claim later that a waiver of privilege has occurred.

This response is being provided to SIGTARP by the Company in response to your letter of February 6, 2009 and is being submitted to you on the expectation that it will be kept in a nonpublic file and that access to it by any third party not an employee of SIGTARP or the United States Department of the Treasury will be denied. Should SIGTARP or the United States Department of the Treasury receive any request to inspect or copy these materials, either pursuant to the FOIA or otherwise, the Company requests that it be given an opportunity to object to such disclosure. Should SIGTARP or the United States Department of the Treasury be inclined to disclose these documents to any third party, the Company requests that it be given ten (10) business days advance notice of any such decision to enable it to pursue any remedies that may be available to it. In this regard, the Company asks that you telephone the undersigned rather than rely on the mail for such notice. Further, if SIGTARP or the United States Department of the Treasury is not satisfied that the information included herein is exempt from disclosure pursuant to the FOIA, the Company hereby requests notice and an opportunity to be heard on this claim of exemption.

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Please advise if you believe the information above does not appropriately respond to your request. If you should have any questions, please do not hesitate to call.

Very truly yours,

**CERTIFICATION:**

I certify to the best of my knowledge and belief that the above statements, representations and supporting information is accurate as of the date hereof.



Harold R. Carpenter  
Executive Vice President and Chief Financial Officer

cc: (b) (6) Office of the Comptroller of the Currency, Brentwood, TN

Attachments:

- A. Pinnacle Financial Partners, January 20, 2009 earnings release
- B. Pinnacle Financial Partners 2008 Form 10-K, filed with the SEC on February 17, 2009
- C. Preliminary Proxy Statement of Pinnacle Financial Partners for 2009 Annual Meeting of Shareholder filed with the SEC on March 3, 2009