Treasury Continues Approving Excessive Pay for Top Executives at Bailed-Out Companies

Special Inspector General for the Troubled Asset Relief Program

SIGTARP 13-001

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OFFICE OF THE SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM
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January 28, 2013

MEMORANDUM FOR: The Honorable Timothy F. Geithner – Secretary of the Treasury

FROM: Ms. Christy L. Romero – Special Inspector General for the Troubled Asset Relief Program

SUBJECT: Treasury Continues Approving Excessive Pay for Top Executives at Bailed-Out Companies (SIGTARP 13-001)

We are providing this report for your information and use. It discusses Treasury's 2012 executive compensation decisions for Top 25 employees of American International Group, Inc., General Motors Corporation, and Ally Financial Inc.

The Office of the Special Inspector General for the Troubled Asset Relief Program conducted this evaluation (engagement code 003), under the authority of the Emergency Economic Stabilization Act of 2008 and 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 report. Treasury's comments are addressed in the report, where applicable.

We appreciate the courtesies extended to our staff. For additional information on this report, please contact me or Mr. Bruce Gimbel, Acting Assistant Deputy Special Inspector General for Audit and Evaluation (Bruce.Gimbel@treasury.gov / 202-927-8978).

Summary

When Congress passed the Troubled Asset Relief Program ("TARP") and subsequent economic stimulus legislation, it placed limitations on executive compensation for TARP recipients, and left it to the U.S. Department of the Treasury ("Treasury") to implement the limitations. Treasury created the Office of the Special Master for TARP Executive Compensation ("OSM"). Kenneth R. Feinberg served as the Special Master – often called the pay czar – and was succeeded by Patricia Geoghegan. OSM has jurisdiction over compensation at companies that stood out from the more than 700 TARP recipients because of the amount and nature of their exceptional bailout. OSM sets pay for Top 25 employees at these TARP exceptional assistance recipients.

In January 2012, the Office of the Special Inspector General for TARP ("SIGTARP"), issued a report finding that, from 2009 to 2011, the Special Master could not rein in excessive compensation at the seven companies that received exceptional TARP assistance because he was under the constraint that his most important goal was to get the companies to repay TARP. SIGTARP reported that despite reducing some pay, OSM approved pay packages worth $5 million or more for 49 individuals. SIGTARP reported that OSM did not establish meaningful criteria for granting exceptions to what Feinberg called "prescriptions" – that total compensation should target the 50th percentile for similarly situated employees at similarly situated entities and that cash salaries should not exceed $500,000, except for good cause. SIGTARP made recommendations for Treasury to improve these pay-setting processes.

SIGTARP initiated this evaluation to assess OSM's pay-setting process for 2012 for Top 25 employees of the remaining TARP exceptional assistance companies, AIG, GM, and Ally in light of the findings and recommendations in SIGTARP's earlier report.

What SIGTARP Found

SIGTARP found that once again, in 2012, Treasury failed to rein in excessive pay. In 2012, OSM approved pay packages of $3 million or more for 54% of the 69 Top 25 employees at American International Group, Inc. ("AIG"), General Motors Corporation ("GM"), and Ally Financial Inc. ("Ally," formerly General Motors Acceptance Corporation, Inc.) – 23% of these top executives (16 of 69) received Treasury-approved pay packages of $5 million or more, and 30% (21 of 69) received pay ranging from $3 million to $4.9 million. Treasury seemingly set a floor, awarding 2012 total pay of at least $1 million for all but one person. Even though OSM set guidelines aimed at curbing excessive pay, SIGTARP previously warned that Treasury lacked robust criteria, policies, and procedures to ensure those guidelines are met. Treasury made no meaningful reform to its processes. Absent robust criteria, policies, and procedures to ensure its guidelines were met, OSM's decisions were largely driven by the pay proposals of the same companies that historically, and again in 2012, proposed excessive pay. With the companies exercising significant leverage, the Acting Special Master rolled back OSM's application of guidelines aimed at curbing excessive pay.

The guidelines originally created by former Special Master Feinberg were aimed at

fixing the material role executive compensation played in causing the financial crisis by encouraging excessive risk taking. By not holding the line on large cash salaries (awarding $500,000 or more to 70% of the executives under OSM's pay-setting jurisdiction, and allowing 94% of employees to be paid cash salaries of $450,000 or more), and removing long-term, incentive-based stock as requested by the companies, OSM is effectively relinquishing some of OSM's authority to the companies, which have their own best interests in mind. The Office of the Special Master's job is to look out for the interests of taxpayers, which it cannot do if it continues to rely to a great extent on the companies' proposals and justifications without conducting its own independent analysis.

Given OSM's overriding goal to get the companies to repay TARP, as in prior years, the companies in 2012 had significant leverage over OSM by proposing and negotiating for excessive pay, warning that if OSM did not provide competitive pay packages, top executives would leave and go elsewhere. By proposing and negotiating for excessive 2012 pay, these executives continue to lack an appreciation for their extraordinary situations and fail to view themselves through the lenses of companies substantially owned by the U.S. Government ("Government"). For example, by the companies requesting pay raises for 18 employees, the companies evidenced a lack of appreciation that they continued to be funded by taxpayers. GM CEO Dan Akerson even asked Treasury Secretary Geithner to relieve GM from OSM's pay restrictions, which was denied.

OSM awarded $6.2 million in pay raises to 18 of the 18 employees for whom the companies proposed raises. Treasury approved a $1 million pay raise for AIG's CEO of its subsidiary, Chartis, a $200,000 pay raise for an employee of its subsidiary, Residential Capital, LLC ("ResCap") – weeks before ResCap filed for bankruptcy – and a $100,000 pay raise for an executive at GM's European unit, despite that unit experiencing significant losses. OSM's written explanations for the pay raises lacked substance, largely parroting what each company asserted to OSM without any independent analysis by OSM.

In 2012, OSM did not follow its own guidelines aimed at curbing excessive pay by having total compensation generally not exceed the 50th percentile for similarly situated employees. Treasury awarded total pay packages exceeding the 50th percentile by more than $37 million for approximately 63% of the Top 25 employees of AIG, GM, and Ally. The Acting Special Master appears to have rolled back the 50th percentile guideline, telling SIGTARP, for example, that she set total compensation for all of Ally's Top 25 employees between the 50th and 75th percentiles.

Feinberg previously told SIGTARP that he limited cash salaries to $500,000 and shifted compensation more toward stock to reduce excessive risk and keep employees' "skin in the game." Feinberg testified before Congress that "base cash salaries should rarely exceed $500,000, and only then for good cause shown, and should be, in many cases, well under $500,000." Never have there been so many exceptions to the $500,000 cash salary guideline for the number of people under the Acting Special Master's jurisdiction as there was in 2012. The Acting Special Master increased the number of employees with Treasury-

approved cash salaries greater than $500,000 from 22 employees in 2011 to 23 employees in 2012, a number that has quadrupled since 2009.

OSM also allowed 25 employees to have cash salaries exactly at the $500,000 limit. OSM allowed cash salaries of $500,000 or more for 70% (48 of 69) of Top 25 employees at AIG, GM, and Ally. OSM allowed cash salaries of $450,000 or more for 94% (65 of 69) of Top 25 employees at AIG, GM, and Ally. In stark contrast, the 2011 median household income of U.S. taxpayers who fund these companies was approximately $50,000.

Similar to OSM's explanations for approving pay raises, OSM's "justifications" for good cause for cash salaries to exceed $500,000 largely parrot what each company asserted to OSM without an OSM independent analysis. The Acting Special Master told SIGTARP that it would be "utterly normal" for these individuals in the Top 25 to expect over $500,000 in cash salary. That might be true if the companies had not been bailed out and were not still significantly owned by taxpayers. Acting Special Master Geoghegan said she did not think that when the $500,000 guideline was formulated, it would take an "independent little project" to determine when someone should go above $500,000. If the pay czar is not even willing to independently analyze high cash salaries for 23 employees, who else will protect taxpayers?

Feinberg testified before Congress that he used long-term restricted stock tied to performance metrics to correct problems with executive compensation practices at these companies. In 2012, the Acting Special Master removed long-term restricted stock from some executives' pay and used it only in half of the pay packages, effectively removing a key OSM guideline aimed at reducing excessive risk by tying individual compensation to long-term company success. She also removed long-term restricted stock for senior executives, including the CEOs of AIG, GM, and Ally

There are two lessons to be learned from OSM's 2012 pay-setting process and decisions:

First, guidelines aimed at curbing excessive pay are not effective, absent robust policies, procedures, or criteria to ensure that the guidelines are met. This is the second report by SIGTARP to warn that the Office of the Special Master, after four years, still does not have robust policies, procedures, or criteria to ensure that pay for executives at TARP exceptional assistance companies stays within OSM's guidelines. Perhaps the Acting Special Master thinks that OSM has already succeeded in achieving its mission by limiting compensation for these executives from pre-TARP levels or believes that OSM's existing processes are sufficient. The question is whether it is sufficient for taxpayers. Treasury continues to award excessive pay packages, including large guaranteed cash salaries. Meaningful reform is still possible because GM and Ally remain under OSM's jurisdiction. Without meaningful reform, including independent analysis by OSM, Treasury risks that TARP companies could potentially misuse taxpayer dollars for excessive executive compensation.

Second, while historically the Government has not been involved in pay decisions at private companies, one lesson of this financial crisis is that regulators should take

an active role in monitoring and regulating factors that could contribute to another financial crisis, including executive compensation that encourages excessive risk taking. According to OSM, OSM's authority to set pay for AIG executives has ended. SIGTARP previously reported that AIG CEO Benmosche told SIGTARP that the Special Master's practices would have no lasting impact. He also said, however, that pay and performance must be linked, and if the majority of income is fixed, or guaranteed, then pay is not linked to performance. Given AIG's considerable pushback on OSM's limitations on pay as reported in SIGTARP's prior report, it is highly likely that AIG could return to past compensation practices. The responsibility shifts to the Federal Reserve Board to ensure that AIG does not encourage excessive risk taking through compensation.

What SIGTARP Recommended

In this report, SIGTARP recommended that each year Treasury should reevaluate compensation for employees in the Top 25 from the prior year; develop policies, procedures, and criteria for approving pay in excess of Treasury guidelines; independently analyze whether good cause exists to award a pay raise or cash salary over $500,000; and return to using long-term restricted stock for employees, particularly for senior employees such as CEOs.

Treasury provided an official written response to a draft of this report in a letter dated January 25, 2013, which is produced in full in Appendix H. Treasury did not agree to implement any of the recommendations contained in the report. A fuller discussion of Treasury's response can be found in the Management Comments section of the report.

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Introduction

In April 2012, with Americans throughout our country still feeling the effects of the financial crisis, the U.S. Department of the Treasury ("Treasury") approved multimillion-dollar pay packages for top executives at the three largest bailed-out companies remaining in the Troubled Asset Relief Program ("TARP"): American International Group, Inc. ("AIG"), General Motors Corporation ("GM"), and Ally Financial Inc. ("Ally," formerly General Motors Acceptance Corporation, Inc.).

When Congress passed TARP and subsequent economic stimulus legislation, it placed strict limitations on executive compensation for TARP recipients. Treasury Secretary Timothy F. Geithner said that executive compensation played a material role in causing the financial crisis because it encouraged excessive risk taking. Congress left it to Treasury to implement limitations on executive compensation on TARP recipients. Treasury created TARP Standards for Compensation and Corporate Governance; Interim Final Rule ("IFR," or "Treasury's Rule"). Treasury's IFR created the Office of the Special Master for TARP Executive Compensation ("OSM") and set forth six principles under which OSM operates. Kenneth R. Feinberg, who served as the Special Master – often called the pay czar – until September 2010, called the principles inherently inconsistent. The Special Master's primary mission is to set individual pay packages for the Top 25[1] employees at those companies whose amount and nature of their TARP bailout were considered "exceptional." Feinberg was succeeded by Acting Special Master Patricia Geoghegan.

On January 23, 2012, the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP") published "The Special Master's Determinations for Executive Compensation of Companies Receiving Exceptional Assistance Under TARP." SIGTARP found that, from 2009 to 2011, the Special Master could not effectively rein in excessive compensation at the seven companies that received exceptional assistance under TARP because he was under the constraint that his most important goal was to get the companies to repay and exit TARP.[2] SIGTARP reported that

[1] The Top 25 includes the 5 senior executive officers and the next 20 most highly compensated employees. Members of the Top 25 may vary from year to year.

[2] The seven companies were American International Group, Inc. ("AIG"), Citigroup Inc. ("Citigroup"), Bank of America Corporation ("Bank of America"), Chrysler Holding LLC ("Chrysler"), General Motors Corporation ("GM"), Ally Financial Inc. ("Ally," formerly General Motors Acceptance Corporation, Inc.), and Chrysler Financial Services Americas LLC ("Chrysler Financial").

under conflicting principles and pressures, despite reducing some pay, OSM approved pay packages worth $5 million or more for 49 individuals.

In addition, SIGTARP reported that OSM did not establish meaningful criteria for granting exceptions to what Feinberg called "prescriptions" – that total compensation should target the 50th percentile for similarly situated employees at similarly situated entities, and that cash salaries should not exceed $500,000, except for good cause. SIGTARP reported that the companies proposed that their employees be paid cash salaries higher than $500,000, claiming that their employees were crucial, and that for 10 employees in 2009, and 22 employees in both 2010 and 2011, GM, Chrysler Financial Services Americas LLC, Ally, and AIG convinced OSM to approve cash salaries greater than $500,000. SIGTARP recommended that OSM substantiate good cause to pay an employee more than $500,000 in cash. SIGTARP reported that it was unable to analyze whether OSM consistently applied the 50th percentile criteria because OSM did not maintain records of the market data showing how it determined the 50th percentile and recommended that OSM better document its use of market data. SIGTARP further recommended that OSM develop more robust policies, procedures, or guidelines for setting pay.

SIGTARP began a second evaluation, to assess OSM's pay-setting process for 2012 for Top 25 employees at AIG, GM, and Ally, in light of the serious and significant findings and recommendations in SIGTARP's report.[3]

SIGTARP conducted this evaluation in accordance with the "Quality Standards for Inspection and Evaluation" established by the Council of the Inspectors General on Integrity and Efficiency. For a discussion of the evaluation's scope and methodology, see Appendix A.

[3] In December 2012, Treasury sold its remaining AIG common stock.

Background

In June 2009, Treasury issued an IFR, or Treasury's Rule, which consolidated all TARP executive compensation restrictions into a single rule and created OSM. OSM has jurisdiction over compensation at companies that stood out from the more than 700 TARP recipients because of the amount and nature of their "exceptional" bailouts. Originally, seven companies fell under OSM's jurisdiction.[4] In 2012, AIG, GM, and Ally were the three companies remaining subject to OSM's review, until December 2012, when AIG repaid Treasury. OSM's primary responsibility is to set pay for each of the Top 25 employees at the TARP exceptional assistance recipients.[5]

Under Treasury's Rule, the Special Master must determine whether compensation structures and payments are inconsistent with the law or are otherwise contrary to the public interest. Special Master Feinberg testified before the U.S. House of Representatives Committee on Financial Services that this public interest standard is satisfied when a compensation package appropriately balances two competing obligations: Pay packages should not be excessive, to "protect the public good," but should be sufficient, to "maximize the public's investment in the financial industry." In meeting this standard, the Special Master must apply six principles and use discretion to determine the appropriate weight or relevance of those principles depending on the facts and circumstances or when principles conflict.

According to Feinberg, who served as Treasury's Special Master from June 15, 2009, until September 10, 2010, the principles in Treasury's Rule under which OSM operates are inherently inconsistent. Three OSM principles illustrate this inconsistency: The principle on "comparable structures and payments" states that compensation should be consistent with that of persons in similar positions or roles at similar entities, while principles on "appropriate allocation" and "risk" call for a significant portion of compensation to be paid over the long term and for compensation to avoid incentives to take excessive risks. Therefore, compensation paid over the long term may avoid excessive risk and may not reflect compensation of an employee's peers, particularly in industries where compensation practices have historically encouraged excessive risk taking.

[4] As reported by SIGTARP in its January 23, 2012, report, OSM's work had little effect on Citigroup and Bank of America, which quickly exited TARP, in part to avoid OSM's restrictions.

[5] OSM also approves compensation structures (rather than setting individual pay packages) for certain executive officers and the next 75 most highly compensated employees.

As SIGTARP previously reported, Feinberg told the Congressional Oversight Panel that the single most important thing he could do was to get the seven companies to repay the taxpayer. Feinberg said that TARP companies pressured him to let the companies pay executives enough to keep them from quitting, and that Treasury officials pressured him to let the companies pay executives enough to keep the companies competitive and on track to repay TARP.

The Process Developed by Special Master Feinberg To Approve Pay Packages

Feinberg tried to shift compensation for Top 25 employees away from large guaranteed cash salaries and toward stock using what he called "prescriptions." In trying to keep the companies competitive, Feinberg told SIGTARP that the 50th percentile was an "obvious" starting point and an "appropriate" level of compensation. According to Feinberg, his decision to limit cash salaries to $500,000 and to increase the proportion of compensation in the form of stock struck a balance between reducing excessive risk and providing enough compensation to keep employees' "skin in the game."

Under Feinberg's determination process, the companies submit market data that indicate the market pay for each Top 25 employee. OSM uses Equilar's *ExecutiveInsight Total Compensation Report*,[6] among other resources, to assess the reasonableness of that market data.

Attempting to keep employees' "skin in the game" and rejecting guaranteed income, OSM apportioned total pay between cash salary, stock salary, and long-term restricted stock using a "prescription" that cash salaries should not exceed $500,000 per year, except for good cause. Under the process Feinberg developed, OSM determines cash salary by assessing the market data, the prior year's compensation, the importance of the position and individual, the risk that an employee would leave, and any unique circumstances. OSM's letters to the companies, which set the pay packages for Top 25 employees, state that cash salaries should target the median cash salaries for persons in similar positions or roles at similar entities and should generally not exceed $500,000. OSM determines how much of the remaining compensation would

[6] Equilar's *ExecutiveInsight Total Compensation Report* is an executive compensation benchmarking tool.

be paid in stock salary earned immediately versus long-term restricted stock. OSM used this process for 2009, 2010, and 2011 pay.[7]

In his final recommendation, Special Master Feinberg made recommendations to his successor. Feinberg recommended that his successor "limit guaranteed cash," "demand a performance component for most compensation," and "hold the line on cash salaries."

SIGTARP Publishes Its Report on the Office of the Special Master's Process

On January 23, 2012, SIGTARP published its report on executive compensation in which SIGTARP found that the Special Master failed to rein in excessive pay and pointed to significant issues with OSM's process to set pay. SIGTARP's report recommended that OSM (1) substantiate good cause for cash salaries greater than $500,000; (2) better document its use of market data to determine the 50th percentile; and (3) develop more robust policies, procedures, or guidelines to help ensure that the pay packages it approves are evenhanded.

Treasury's formal response to SIGTARP's report came from Acting Special Master Geoghegan, who stated: "…OSM has succeeded in achieving its mission. Our office was effective at limiting compensation at the seven companies over which it had authority, while ensuring the companies were well-positioned to pay back the taxpayers' investments." The Acting Special Master also stated that OSM reduced pay for the companies' Top 25 executives.

Acting Special Master Sets 2012 Pay Packages with Input from Companies and Senior Treasury Officials

The companies submitted their pay package proposals in early February 2012, along with market data of compensation of persons in similar positions or roles at peer group entities selected by each company. Each company hired a compensation consultant to prepare its market data. Under Treasury's Rule,

[7] On October 22, 2009, OSM issued its first compensation determinations for 137 employees of 7 companies that had received TARP exceptional assistance. In December 2009, Bank of America and Citigroup repaid their exceptional assistance and were no longer subject to the Special Master's rulings. On March 23, 2010, OSM issued 2010 pay determinations for 121 employees of the 5 remaining companies. In May 2010, Chrysler Financial exited TARP. On April 1, 2011, OSM issued compensation determinations for 98 employees of the remaining 4 companies. In July 2011, Chrysler exited TARP.

OSM has 60 days to issue determinations on individual pay packages when the company proposals are received by OSM and considered "substantially complete." In late February or early March, company officials came to Washington, D.C., to meet with the Acting Special Master, who told SIGTARP that she wanted to hear what the companies thought was important.

The Acting Special Master told SIGTARP that she also met at least twice each with each of four senior Treasury officials, including Deputy Secretary Neal S. Wolin and Assistant Secretary for Financial Stability Timothy Massad. The Acting Special Master told SIGTARP that she wanted to get Assistant Secretary Massad's view on whether the companies were doing well or had any challenges and that they talked about specific employees' pay. The Acting Special Master told SIGTARP that, from a practical point of view, she reports to Assistant Secretary Massad.

Prior to the Acting Special Master's final decisions on the pay packages, she met with Deputy Secretary Wolin to brief him so that he would know what OSM was presenting in the determination memorandums. When asked about her meetings with Wolin, the Acting Special Master told SIGTARP that the purposes of the meetings were to inform her decisions, but no one said she had to do anything differently.

On April 6, 2012, OSM issued pay determinations to the three remaining companies under OSM's jurisdiction – AIG, GM, and Ally – setting pay for each Top 25 employee.[8] Just prior to that date, Treasury owned a 70% stake in AIG, a 32% stake in GM, and a 74% stake in Ally. Treasury set pay for 69 employees of these companies (fewer than 25 employees per company because some employees had left their company during the year).

[8] AIG received $67.8 billion under the Systemically Significant Failing Institutions Program. Ally received $17.2 billion under the Automotive Industry Financing Program. GM received $49.5 billion under the Automotive Industry Financing Program, $400 million under the Auto Warranty Commitment Program, and $300 million under a program aimed at supporting auto suppliers.

Treasury Approved Pay Packages Worth $3 Million or More for 54% of the 69 Top 25 Employees, with 16 Pay Packages Worth at Least $5 Million

Treasury approved pay packages worth $5 million or more for 23% of the Top 25 employees at AIG, GM, and Ally.[9] This equaled 16 out of 69 employees (9 AIG employees, 3 GM employees, and 4 Ally employees). In addition, Treasury approved pay ranging from $3 million to $4.9 million for 21 out of the 69 employees (12 AIG employees, 4 GM employees, and 5 Ally employees).

[9] SIGTARP previously reported that, from 2009 to 2011, Treasury approved pay packages worth $5 million or more for 49 Top 25 employees of the 7 companies that had received exceptional TARP assistance.

Table 1 below shows Treasury-approved pay packages of $5 million or more.

TABLE 1

2012 OSM-APPROVED COMPENSATION PACKAGES VALUED AT $5 MILLION OR HIGHER

Employees Identified	Company Name	Title	Cash Salary ($)	Stock Salary ($)	Long-Term Restricted Stock ($)	Total Direct Compensation ($)
1	AIG	CEO	3,000,000	7,500,000	0	10,500,000
2	Ally	CEO	0	9,500,000	0	9,500,000
3	GM	Chairman and CEO	1,700,000	7,300,000	0	9,000,000
4	Ally	CEO Mortgage and CM	600,000	7,403,449	0	8,003,449
5	AIG	CEO Chartis	1,800,000	5,200,000	1,000,000	8,000,000
6	AIG	President and CEO SAFG	495,000	5,315,000	1,190,000	7,000,000
7	AIG	EVP, Chief Financial Officer	495,000	4,734,000	1,071,000	6,300,000
8	AIG	EVP, Investments and Financial Services	450,000	5,550,000	0	6,000,000
9	AIG	[1]	500,000	5,500,000	0	6,000,000
10	Ally	[1]	600,000	5,024,828	0	5,624,828
11	AIG	[1]	495,000	4,070,234	934,766	5,500,000
12	AIG	[1]	975,000	4,425,000	0	5,400,000
13	GM	Vice Chairman [2]	600,000	3,300,000	1,500,000	5,400,000
14	Ally	Chief Administrative Officer	600,000	4,587,357	0	5,187,357
15	GM	Senior Vice President and Chief Financial Officer	750,000	2,600,000	1,650,000	5,000,000
16	AIG	[1]	700,000	3,050,000	1,250,000	5,000,000
Totals			**$13,760,000**	**$85,059,868**	**$8,595,766**	**$107,415,634**

Source: SIGTARP analysis of OSM's determination memorandums.

[1] Information not publicly available.

[2] Corporate Strategy, Business Development, Global Product Planning and Global Purchasing and Supply Chain.

In 2012, Treasury Approved Pay Packages Worth at Least $1 Million for Every Employee Except One Under the Special Master's Pay-Setting Jurisdiction, and Approved All but One AIG Employee To Receive Pay Packages Worth at Least $2 Million

Treasury seemingly set a floor, awarding 2012 total pay of at least $1 million.[10] Treasury also approved pay ranging from $2 million to $2.9 million for 19 employees (4 GM employees, 12 Ally employees, and 3 AIG employees). Treasury approved pay ranging from $1.2 million to $1.9 million for 12 GM employees. Moreover, Treasury approved 24 of AIG's Top 25 employees to receive pay packages worth at least $2 million.

Treasury Failed To Take Sufficient Meaningful Action in Response to SIGTARP's Prior Report

Despite SIGTARP's January 2012 report identifying serious concerns with OSM's pay-setting process, Treasury continued to use the same process for setting 2012 pay without significant change. According to Acting Special Master Geoghegan, the process OSM used to set 2012 pay packages has not changed. She told SIGTARP that this was OSM's fourth year and the companies were not proposing anything out of the ordinary.

Even though SIGTARP recommended that OSM develop more robust policies, procedures, or guidelines, to date, OSM has not done so. Moreover, despite SIGTARP finding that OSM had no criteria for determining good cause for an employee to be paid a cash salary exceeding $500,000, OSM still lacks such criteria. In 2012, OSM did not independently analyze the basis for awarding cash salaries greater than $500,000. The only changes that OSM has made to its process in response to SIGTARP's recommendations relate to documentation. OSM has begun to document explanations for cash salaries exceeding $500,000 on an eight-page spreadsheet and document market data it used for validating market estimates provided by each company.[11]

[10] Only one employee received Treasury-approved pay under $1 million. Treasury awarded this AIG employee a guaranteed cash salary of $700,000.

[11] OSM documented its procedures to evaluate the reasonableness of company-supplied market rates. OSM documented how it reviewed company-supplied market data, its method for sampling jobs from the Top 25 positions that it would test, its selection of market comparator peer groups, and its matching of rates at both the median and the 75th percentile. OSM included in its pay decisions an overview about the market data supplied by each company. The overviews disclose which compensation firms were employed by AIG, Ally, and GM, and the market data the firms used. The overviews also summarize the methods the firms employed to determine market compensation rates.

However, SIGTARP recommended that OSM substantiate, not just document, good cause for cash salaries greater than $500,000.

Despite Creating Guidelines Aimed at Curbing Excessive Pay, Treasury Approved Approximately $37 Million in Executive Compensation for Top 25 Employees at AIG, GM, and Ally that Exceeded Its Own Guidelines

In SIGTARP's last report, SIGTARP found that then-Special Master Feinberg could not effectively rein in excessive compensation because he was under the constraint that his most important goal was to get the companies to repay and exit TARP. This appears to be the case for Acting Special Master Geoghegan as well, who told SIGTARP that the companies should be competitive in their industry so they can pay back the taxpayer.

For example, OSM's written "justification" for AIG CEO Robert Benmosche's $3 million cash salary reads, "under executive's leadership, company has repaid 75% of total government assistance." However, the justification is questionable because OSM has approved Benmosche's $3 million cash salary under his $10.5 million total pay package for four consecutive years.

Despite Special Master Feinberg's "prescriptions" aimed at curbing excessive pay by shifting pay away from large cash salaries and toward stock, Acting Special Master Geoghegan, who set pay in 2011 and 2012, considered one of his prescriptions (limiting cash salaries to $500,000) to be a discretionary guideline and made a significant number of exceptions to it. Without appropriate criteria to implement the guidelines, in 2012, the Acting Special Master approved compensation that was largely driven by the three companies' proposals. For example:

- The Acting Special Master approved pay packages exceeding the 50th percentile by approximately $37 million for 43 of 68 employees (63%) proposed by the 3 companies.
- OSM approved all 18 pay raises requested by the companies.
- OSM approved cash salaries above $500,000 for 23 of 26 employees, proposed by the companies, the highest number of employees under

OSM's pay-setting jurisdiction to receive cash over $500,000 compared to any other year. The companies proposed that 41 out of 68 (approximately 60%) of the Top 25 employees be paid cash salaries over the market median, and OSM approved this for 38 (approximately 56%) of the employees.

- Despite one key principle set forth in Treasury's Rule calling for performance-based pay, upon the companies' requests, OSM did not use long-term incentive stock tied to meeting performance criteria for half of the executives (9 AIG, 4 GM, and all of Ally's 21 Top 25 employees for a total of 34 employees). Moreover, Acting Special Master Geoghegan removed long-term restricted stock from 24 of the 34 employees' pay packages, and for all but 1 of the 24 employees, replaced it with stock salary, as requested by the companies.

As illustrated in Table 2 below, OSM approved 43 pay packages (approximately $37 million) and 38 cash salaries (approximately $6 million) exceeding market medians. OSM also approved 23 cash salaries (approximately $8.5 million) exceeding $500,000.

TABLE 2

2012 OSM-APPROVED PAY FOR 69 TOP 25 EMPLOYEES

OSM Guideline	Within Guideline	Exceeded Guideline	% Exceeding Guideline	Total Pay Exceeding Guideline
Guideline 1: Total Pay Should Target Market Median [1]	25	43	63%	**$37,426,547**
Guideline 2: Cash Salary Should Target Market Median[1]	30	38	56%	**$6,026,800**
Guideline 3: Cash Salary Should Not Exceed $500,000	46	23	33%	**$8,476,000**

Source: SIGTARP analysis of OSM's 2012 determination memorandums.
[1] For 1 of the 69 employees, OSM did not receive market data from the employee's company. Therefore, there were 68 employees in SIGTARP's sample.

To Curb Excessive Compensation, Treasury Guidelines Provided that an Employee's Total Compensation Generally Should Not Exceed the 50th Percentile for Similarly Situated Employees at Similarly Situated Companies. However, in 2012, Treasury Set Pay Greater than the 50th Percentile for 63% of Top 25 Employees at AIG, GM, and Ally

In 2012, OSM did not follow its own guidelines aimed at curbing excessive pay by having total compensation generally not exceed the 50th percentile for similarly situated employees. According to OSM, the 50th percentile was "appropriate" and "reasonable" and allowed employees to be paid similarly to those in other financially distressed companies, while keeping the companies competitive.

SIGTARP previously reported that companies pushed back on OSM by claiming that their compensation should be higher than the 50th percentile. In 2012, companies continued to push for pay packages exceeding the 50th percentile. The 3 companies (AIG, GM, and Ally) proposed that 43 of 68 of their Top 25 employees (approximately 63%) receive total pay packages exceeding the 50th percentile, and that was what Treasury approved.

Acting Special Master Geoghegan told SIGTARP that, as a group, total pay for Ally's employees was between the 50th and 75th percentiles. Geoghegan also stated that Ally hired the vast majority of its employees within the past three to four years. She reasoned that these individuals should receive pay between the 50th and 75th percentiles so that Ally could attract employees for short-term positions. However, SIGTARP is unaware of an OSM prescription or guideline calling for total pay to exceed the 50th percentile to attract employees for short-term positions.

Moreover, OSM approved pay packages exceeding the 50th percentile by approximately $1.7 million, $1.2 million, and $850,000 for three employees of Ally's mortgage subsidiary, Residential Capital, LLC ("ResCap"), including the CEO of ResCap, despite knowing that ResCap was planning to file for bankruptcy (which it did, weeks after OSM set pay packages).[12]

[12] On May 14, 2012, Ally announced that its mortgage subsidiary, Residential Capital, LLC, filed for bankruptcy relief under Chapter 11 of the U.S. Bankruptcy Code.

Treasury Approved All 18 Pay Raises for Top 25 Employees at AIG, GM, and Ally Requested by the Companies, Including a $1 Million Raise for an AIG Senior Official

OSM approved all 18 of the raises proposed by the companies in 2012. These pay raises ranged from $30,000 to $1 million (1% to 23%), over the employees' 2011 OSM-approved total pay. GM and Ally each proposed nine pay raises, and AIG proposed one pay raise – a raise worth $1 million.

The Acting Special Master approved the $1 million raise for Peter Hancock, CEO of AIG's Chartis subsidiary,[13] which the Acting Special Master called "a significant raise" for one of the most important people at AIG after discussing it with senior Treasury officials including the Deputy Secretary.[14] OSM approved an increase in cash salary from $500,000 to $550,000 for a ResCap employee, knowing that ResCap was planning for bankruptcy, with OSM noting that the executive was "critical to successful restructuring."[15] OSM approved a $100,000 raise for an executive at GM's European unit, knowing that unit was experiencing significant financial losses that dragged down the company's earnings, with OSM noting, "losses in Europe are a significant challenge."

[13] Peter Hancock was named chief executive officer of Chartis, AIG's global property casualty business, in March 2011, when Chartis was reorganized into two major global groups, commercial and consumer.
[14] The Acting Special Master told SIGTARP that AIG decreased proposed pay raises for other employees.
[15] GM Europe reported earnings before interest and taxes adjusted loss of $400 million in the second quarter of 2012. GM Chairman and CEO Dan Akerson said that, despite solid results in some areas, the company has to offset the headwinds it faces in Europe and South America.

Table 3 below illustrates 2012 OSM-approved pay raises for the 18 employees.

TABLE 3

2012 OSM-APPROVED PAY INCREASES (SORTED BY PAY INCREASE, IN DOLLARS)

Employees Identified	Company Name	Title	2011 Total Pay Package ($)	2012 Total ($)	Pay Increase ($)	Pay Increase (%)
1	AIG	CEO Chartis	$7,000,000	$8,000,000	$1,000,000	14%
2	GM	[1]	3,500,000	4,300,000	800,000	23
3	GM	Senior Vice President and Chief Financial Officer	4,200,000	5,000,000	800,000	19
4	GM	[1]	3,500,000	4,250,000	750,000	21
5	GM	[1]	4,200,000	4,850,000	650,000	15
6	GM	[1]	2,550,000	2,925,000	375,000	15
7	Ally	President	3,647,280	3,991,000	343,720	9
8	GM	[1]	1,900,000	2,150,000	250,000	13
9	Ally	[1]	3,000,000	3,200,000	200,000	7
10	Ally	[1]	2,603,414	2,800,000	196,586	8
11	Ally	[1]	2,606,436	2,800,000	193,564	7
12	Ally	[1]	2,414,252	2,600,000	185,748	8
13	Ally	Chief Financial Officer	2,855,738	3,000,000	144,262	5
14	GM	Vice Chairman [2]	5,300,000	5,400,000	100,000	2
15	Ally	SEVP, Finance and Corporate Development	4,343,678	4,397,892	54,214	1
16	GM	[1]	2,050,000	2,100,000	50,000	2
17	Ally	[1]	3,603,830	3,642,944	39,114	1
18	GM	[1]	1,900,000	1,930,000	30,000	2
Totals			**$61,174,628**	**$67,336,836**	**$6,162,208**	

Source: SIGTARP analysis of OSM's determination memorandums.

[1] Information not publicly available.

[2] Corporate Strategy, Business Development, Global Product Planning and Global Purchasing and Supply Chain.

OSM's written explanations for the pay raises lack substance, some of which parroted what each company asserted to OSM. For example, OSM approved one pay raise on the basis that "company reports executive is successfully leading the transformation of the company's largest subsidiary," which is essentially what the company stated in its proposal. Other OSM explanations

stated that employees were "retention risks" (people at risk of leaving), were crucial, or were strong performers, but provided no analysis to justify the raise. OSM approved raises of 15% to 23% without any further detail or analysis for four employees on the basis that they were among the individuals that GM's CEO most relied on, and they had received significant promotions or increased job responsibilities.

OSM officials told SIGTARP that OSM follows up when it doubts a company's assertion and they were not suspicious of any assertion by the company. OSM officials told SIGTARP that they approved the pay raises after assessing information provided by each company, speaking with company officials, and reviewing publicly available information and employee market data. In addition, the company's statements get a general check from Assistant Secretary Massad and Treasury's Chief Investment Officer. For example, if a company claims that an employee took on additional responsibilities, OSM may ask for additional information, but does not challenge the company.

In 2012, Treasury Allowed 70% of the Top 25 Employees at AIG, GM, and Ally To Be Paid Cash Salaries of $500,000 or More, with 33% Paid Cash Salaries of More than $500,000

Treasury aimed to curb excessive pay by setting a guideline that cash salaries generally should not exceed $500,000. The President announced a $500,000 salary cap for top executives at TARP companies that had received exceptional assistance, with any further compensation to be paid in stock that could not be cashed out until TARP was repaid. OSM staff told SIGTARP that the $500,000 cash salary cap was based partially on the President's statement. As discussed earlier in this report, Special Master Feinberg told SIGTARP that he decided to limit cash salaries to $500,000, and to increase the proportion of compensation in the form of stock to strike a balance between reducing excessive risk and providing enough compensation to keep employees' "skin in the game." Feinberg, in testimony before the U.S. House of Representatives Committee on Financial Services, stated, "…base cash salaries should rarely exceed $500,000, and only then for good cause shown, and should be, in many cases, well under $500,000."

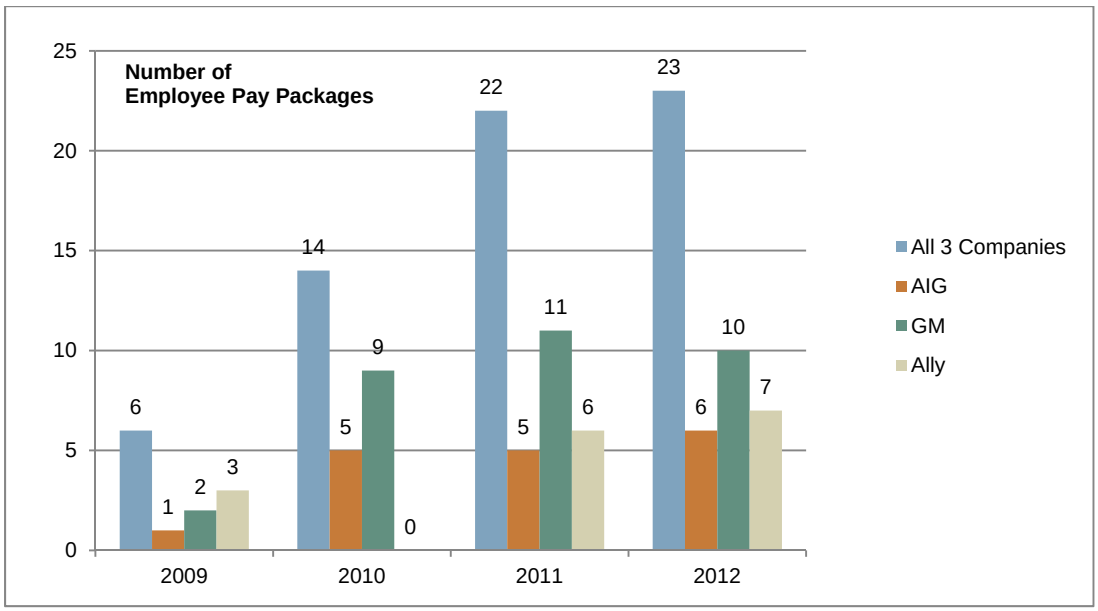
Despite Acting Special Master Geoghegan's public memorandums to the companies that state that, other than exceptional cases for good cause shown, cash salary should not exceed $500,000, the Acting Special Master told SIGTARP there is no cash salary cap. She also said that Feinberg's governing "prescription" of $500,000 is a "discretionary guideline" and OSM has always allowed exceptions. She described the $500,000 guideline as useful but told SIGTARP that there is no law or regulation that says that she needs a memo to permit a company to go above $500,000.

Never have there been so many exceptions to the $500,000 cash salary guideline for the amount of people under the Acting Special Master's jurisdiction as there were in 2012. Despite the fact that the number of companies under OSM's jurisdiction decreased from 4 in 2011 to 3 in 2012, the Acting Special Master increased the number of employees with cash salaries greater than $500,000 from 22 to 23 in those years, respectively. This increase has significance. OSM approved 2012 cash salaries exceeding $500,000 for one-third of the employees within OSM's pay-setting jurisdiction (23 of 69 Top 25 employees at AIG, GM, and Ally). In 2012, the companies had requested that 26 employees be paid cash salaries exceeding $500,000.

As illustrated in Figure 1 below, the number of employees earning Treasury-approved cash salaries greater than $500,000 has nearly quadrupled – from 6 in 2009 to 23 in 2012 – despite the fact that the number of companies receiving exceptional assistance under TARP continues to decrease as the companies repay and exit TARP.

FIGURE 1

2009-2012 OSM-APPROVED CASH SALARIES EXCEEDING $500,000



Source: SIGTARP analysis of OSM's determination memorandums.

In addition to questioning the approval of cash salaries greater than $500,000 for one-third of the employees, SIGTARP questions whether OSM is following the spirit of its $500,000 cash salary guideline. Notably, in addition to approving 23 employees to receive cash salaries of more than $500,000, OSM allowed 25 employees to have cash salaries exactly at the $500,000 guideline. Accordingly, OSM allowed cash salaries of $500,000 or more for 70% (48 of 69) of Top 25 employees at AIG, GM, and Ally. OSM allowed cash salaries of $450,000 or more for 94% (65 of 69) of Top 25 employees at AIG, GM, and Ally.

Lacking Criteria and an Effective Decision-Making Process, Treasury Risks Continuing To Give Employees of Bailed-Out Companies Excessive Cash Compensation Without Good Cause

Despite SIGTARP warning in its January 2012 report on executive compensation that OSM did not establish meaningful criteria for good cause

for a cash salary of more than $500,000 and that OSM approved cash salaries greater than $500,000 with limited justifications, Treasury did not establish criteria in response to SIGTARP's report. After SIGTARP's report, when SIGTARP asked the Acting Special Master what criteria OSM used to determine good cause for cash salaries exceeding $500,000, she told SIGTARP that Treasury's Interim Final Rule is OSM's criteria. However, the IFR does not contain criteria for limiting cash salaries. Unless OSM establishes and follows meaningful criteria to determine good cause to pay an employee more than $500,000 in cash, OSM risks continuing to give employees of bailed-out companies excessive cash compensation without good cause and cloaking its decisions in vague generalities.

Similar to OSM's explanations for approving pay raises, OSM's "justifications" for excessive cash salaries parrot what each company asserted to OSM. Some of the companies' justifications of good cause for a $500,000 cash salary were in oral statements to OSM officials.

By using only Treasury's 60-day process to set pay packages for Top 25 employees, OSM missed an opportunity to limit the employee cash salaries to $500,000. Acting Special Master Geoghegan told SIGTARP that OSM does not perform an independent analysis, instead choosing to use data and assertions supplied by the companies. For example, if a company claims that an employee should be paid cash salary of more than $500,000 because of added duties, OSM does not look to see what duties the employee previously had in comparison. Acting Special Master Geoghegan explained to SIGTARP that, if OSM worked along those lines, it would take a year to conduct the determinations, but OSM asks for the information in January and cannot ask for the information before then because OSM needs the companies to finish the year. Acting Special Master Geoghegan said OSM does not spend that much time on a "small decision" like whether to continue to give an individual $600,000.

The Acting Special Master's explanation raises concerns as to why OSM does not perform substantive analysis related to the Top 25 employees earlier in the year, particularly because most of the Top 25 employees stayed the same from 2011. Instead, OSM officials have chosen to conduct all of their work for their primary mission of setting Top 25 pay within the 60-day process. OSM could have been identifying specific Top 25 employees' duties and value to the company throughout the year, and then use the end of the year information in the company's proposals to supplement their existing information.

More importantly, the Acting Special Master appears to have no desire to dig into a company's justification of good cause for cash salaries greater than

$500,000. For example, in 2012, OSM approved cash salaries exceeding $500,000 for 19 of 23 employees with the explanation that the same number had been approved the previous year. The Acting Special Master told SIGTARP that it would be normal for these individuals in the Top 25 to expect more than $500,000 in cash salary, and said there was no doubt that these people are making a large amount of money. The Acting Special Master told SIGTARP, "OSM would not normally reopen from scratch a determination that it made when you have executive compensation determinations from year to year" because it would be "incredibly disruptive," and it was relatively easy for OSM to keep things the way they were. She described taking an extra two hours to look at a person's justification of added responsibility as a waste of time. She said that she did not think that when the $500,000 guideline was formulated, it would take an "independent little project" to determine when someone should go above $500,000. The Acting Special Master told SIGTARP that OSM is not the compensation committee.

The Acting Special Master told SIGTARP that a lot of pay determinations were based on prior years pay, and absent a change in circumstances, OSM would not change pay. However, in 2012, Treasury approved cash salaries greater than $500,000 for GM's troubled European unit, even though that unit experienced significant financial losses and dragged down the company's earnings.[16] OSM approved one employee's salary at $600,000, the same as in 2011, but awarded him an increase in stock salary of $100,000 while noting that "losses in Europe are a significant challenge." OSM also approved a cash salary of $600,000, the same as in 2011, for one ResCap employee, and a cash raise from $500,000 to $550,000 for another ResCap employee.

Treasury Awarded Cash Salaries Exceeding $500,000 for Five Additional Employees, Four of Whom Exceeded the 50th Percentile

In 2012, Treasury approved cash salaries exceeding $500,000 for five additional employees. Because SIGTARP, in its prior evaluation, had already assessed OSM's decisions to approve salaries in excess of $500,000 for 18 employees of the 23 paid $500,000+ in cash, SIGTARP evaluated the five additional employees:

[16] Stephen J. Girsky, Vice Chairman, Corporate Strategy, Business Development, Global Product Planning and Global Purchasing and Supply Chain. In 2011, OSM approved an $800,000 cash salary for David N. Reilly, GM Vice President and President, GM Europe. However, he retired on April 1, 2012, and did not receive an OSM 2012 determination.

- SIGTARP found that four of the five employees who received cash salaries greater than $500,000 exceeded OSM's guideline to target cash salaries at the 50th percentile by an aggregate $654,000.

- OSM approved a salary for a GM employee of $950,000, which on its face was excessive, when compared to OSM's $500,000 cash salary guideline. The salary was $316,000 higher than the median cash salary of the employee's peers. The employee came to GM in 2010 as part of an acquisition. The employee's employment contract stipulated that his compensation, upon transitioning to GM, is subject to the Special Master's restrictions. However, instead of limiting the employee's salary to $500,000, or to the 50th percentile ($634,000), OSM approved the employee's cash salary, set by the subsidiary before GM acquired it. OSM did not justify why an individual's pay at an acquired subsidiary is relevant or why the pay could not be modified in 2012, given that the position was covered under the restrictions of the Acting Special Master.

- OSM approved a salary for a GM employee of $580,000, which exceeded the 50th percentile by $160,000. OSM told SIGTARP that the employee was considered by GM to be a retention risk and was considered crucial in managing GM's supply chain. OSM provided no further analysis.

- OSM's written justification documenting its rationale states that there was good cause for a $650,000 cash salary for an AIG employee, in part because of a counteroffer agreement between AIG and the employee in December 2008, when the employee was reportedly offered a job with an AIG competitor. However, OSM did not explain why a purported agreement at AIG from 2008 would justify a 2012 cash salary that exceeded the median cash salary of the employee's peers by $135,000.

- OSM approved a cash salary for an Ally employee of $550,000, which exceeded the 50th percentile by $43,000. OSM's justification stated that Ally considered the employee to be critical. However, OSM did not provide an analysis or show it performed due diligence to substantiate Ally's assertion.

In addition, for one employee who received a cash salary of $600,000 in 2011, OSM approved an additional $50,000 in cash in 2012. When asked why the employee received the raise, the Acting Special Master told SIGTARP that GM wanted to retain the employee and "do a little extra for him."

Treasury Did Not Use Incentive Compensation Tied to Performance Metrics for Approximately 50% of the Top 25 Employees

Acting Special Master Geoghegan did not use incentive compensation (long-term restricted stock) contingent on meeting performance standards for half of the executives, as requested by the companies.

By removing long-term restricted stock, Acting Special Master Geoghegan removed the tie of individual compensation to long-term company success for several employees. This is different from how OSM, under former Special Master Feinberg used long-term restricted stock contingent on the employee receiving specific performance criteria in order to tie individual compensation to long-term company success.

Treasury's Rule, under which OSM operates, provides that an appropriate portion of the compensation should be performance based over a relevant performance period, determined through tailored metrics that encompass individual performance and/or the performance of the TARP recipient or a relevant business unit, taking into consideration specific business objectives.[17]

Special Master Feinberg testified before the U.S. House of Representatives Committee on Financial Services, "Compensation of key officials at these companies that owe so much to the American taxpayer should depend on performance…What you earn, other than your base cash salary, should depend on long-term performance, objective metrics..." Feinberg testified before the House Committee on Oversight and Government Reform that OSM offered up the notion of long-term, incentive-based stock that cannot be sold until and unless the taxpayers get their money back, stating, "That's the formula we tried to use to correct what we thought in our report were the problems with executive compensation practices in these seven companies."

Despite Treasury's Rule calling for appropriate allocations of pay to be performance based, and as illustrated in Table 4 below, 34 Top 25 employees did not receive long-term restricted stock in 2012 (9 AIG employees, 4 GM employees, and all 21 of Ally's Top 25 employees). After making her decisions on pay in April 2012, she subsequently removed long term

[17] Long-term restricted stock may be granted only if the employee meets performance criteria and generally only if an employee continues to provide services to the company for three years following the date of grant. The awards are redeemable only in 25% installments for each 25% of TARP obligations that are repaid. Unlike long-term restricted stock, stock salary immediately vests upon grant, and may be redeemed in three equal annual installments.

restricted stock for all of Ally's Top 25 employees on the basis that the company's subsidiary ResCap, had filed bankruptcy, and that the company had announced it was exploring strategic alternatives such as a possible sale of international operations. However, only three employees in Ally's Top 25 worked at ResCap and OSM knew in April that ResCap was planning a restructuring. In addition, both GM and AIG were selling international operations.

TABLE 4

EMPLOYEES WHO RECEIVED NO LONG-TERM RESTRICTED STOCK UNDER THE 2012 DETERMINATIONS

Company Name	Employee ID #	2011 Long-Term Restricted Stock	2012 Long-Term Restricted Stock
AIG	1	$0	$0
AIG	133	0	0
AIG	206	2,000,000	0
AIG	208	[1]	0
AIG	261	0	0
AIG	265	0	0
AIG	1076	0	0
AIG	1087	1,200,000	0
AIG	1105	[1]	0
GM	4859	2,000,000	0
GM	2986	1,165,000	0
GM	3348	250,000	0
GM	4894	0	0
Ally	280677	1,500,000	0
Ally	102645	1,729,119	0
Ally	104428	986,989	0
Ally	105336	750,000	0
Ally	141296	801,826	0
Ally	197253	1,162,163	0
Ally	265967	1,393,678	0
Ally	272446	666,000	0
Ally	339212	2,667,816	0
Ally	354392	724,943	0
Ally	391076	780,919	0
Ally	468046	[1]	0
Ally	513416	[1]	0
Ally	546145	1,215,760	0
Ally	567303	803,414	0
Ally	682168	1,841,495	0
Ally	707713	951,913	0
Ally	725547	868,812	0
Ally	805106	1,300,000	0
Ally	931656	836,958	0
Ally	960277	1,000,000	0

Source: SIGTARP analysis of OSM's determination memorandums.
[1] These employees were not among the Top 25 in 2011.

Acting Special Master Geoghegan told SIGTARP that there are no criteria for taking away long-term restricted stock. When asked about individuals who did not receive long-term restricted stock in 2012, the Acting Special Master explained to SIGTARP that in general, when OSM takes away long term restricted stock, it is because the individual may be very senior, may wish to retire, or will be leaving. Referring to one employee, the Acting Special Master told SIGTARP that long-term restricted stock would be of no value unless the employee would stay at the company. She explained that the companies would tell OSM if they thought long-term restricted stock was inappropriate for an employee and that OSM's decision usually starts with the company's request. The Acting Special Master told SIGTARP that these were employees who had large amounts of long-term restricted stock, but none in 2012 because the firms do not expect these employees to remain at the company for the next two years and the employee cannot cash in the stock for two years.

The Acting Special Master told SIGTARP that senior employees who are retiring do not benefit from long-term restricted stock and it is a burden to compensate them with long-term restricted stock. She explained, when talking about someone very senior, such as a company executive, it is not wise to give them large chunks of compensation that has no value. However, as stated earlier, Treasury's Rule, under which OSM operates, provides that the appropriate allocation and the appropriate performance metrics may be different for different positions and for different employees, but generally a significant portion of total compensation should be performance-based compensation, and generally that portion should be greater for those in positions exercising higher levels of responsibility.

In 2012, AIG, GM, and Ally Failed To Take into Account Their Exceptional Situations that Resulted in Taxpayer Bailout

SIGTARP previously reported that in proposing high pay packages based on historical pay prior to their bailouts, the TARP companies failed to take into account the exceptional situations they had gotten themselves into that necessitated the need for financial rescues. In evaluating OSM's 2012 determinations, SIGTARP found that firms again failed to appreciate the extraordinary assistance provided by U.S. taxpayers.

Companies continue citing employee retention to justify excessive pay. SIGTARP's prior report said that, given OSM's overriding goal of getting TARP companies to repay the Government, the seven companies had leverage over OSM by proposing and negotiating for excessive pay packages. The report also said that the companies warned then-Special Master Feinberg that if he did not provide competitive pay packages, top executives would leave the companies. Feinberg found the claims dubious, and even reported that despite such claims, 85% of the executives who threatened to leave in 2009 remained at their companies in 2010. In 2012, the companies also used retention as a justification for high pay. For 10 employees, the companies asked OSM to approve cash salaries, ranging from $610,000 to $1.4 million, in part to keep the executives from departing the companies.

AIG:
SIGTARP previously reported that AIG pushed for excessive raises in cash salaries and pushed against pay in AIG stock. SIGTARP's report laid out how AIG CEO Benmosche felt that OSM penalized AIG with very low salaries. SIGTARP also reported that AIG proposed not to receive any incentive awards in long-term restricted stock tied to achievement of performance measures and that Benmosche enlisted the help of other Treasury officials, asking them to talk to Feinberg.

AIG's failure to take into account the exceptional situation it was in is echoed by comments by AIG CEO Benmosche to *New York* Magazine in 2012:

> …it wasn't a free lunch…we now have succeeded in getting the Fed back all of their money, and we're close to getting the Treasury paid back. And do you know…neither of them have ever said Thank you? We have done all the right things. Somebody should say, by golly, those AIG people made a promise and they are living up to a promise! We're left with a major part of the economy in America; they're going to make a profit on top of everything else they've got…God bless America. And God bless AIG. And God bless Tiny Tim.

In 2011 and 2012, AIG's pay proposals reflect the company's request for excessive compensation. AIG's CEO continued to receive the single largest Treasury-approved pay package of any employee – $10.5 million. In 2011, the Acting Special Master removed Benmosche's incentive stock tied to meeting performance criteria, shifting it to stock salary that immediately vests. In 2012, she removed long-term restricted stock for two other AIG Top 25 employees. Moreover, six other AIG Top 25 employees' pay packages did not contain long-term restricted stock. Nine of the 16 Treasury-approved pay packages of $5 million or more were for AIG employees. Treasury approved pay from $3 million to less than $5 million for 12 AIG employees, the largest number of pay packages for any employees of the 3 companies. Only one AIG Top 25 employee was paid less than $2 million in 2012.

Meanwhile, even though taxpayers are still owed a combined $36.2 billion[18] for the investments in GM and Ally, both companies have attempted to get around the rules established to protect taxpayers by limiting excessive compensation for companies that are partially Government owned, and both companies have failed to appreciate how much pay they have already received under OSM.

GM:
GM officials complained about the pay restrictions in their 2012 proxy statement and in a meeting with the Treasury Secretary. In March 2012, weeks before the Acting Special Master set the 2012 pay packages, GM CEO Akerson met with Treasury Secretary Geithner, without the Acting Special Master, asking Treasury to release GM from OSM's pay limits by lifting the more onerous TARP exceptional assistance pay restrictions that led to OSM's jurisdiction.[19] Secretary Geithner rejected GM's request. On April 26, 2012, GM filed a proxy statement stating that pay for GM's CEO was not high enough and that the TARP pay restrictions restrict GM from paying its executives sufficiently. In the proxy statement, GM complained about being limited to long-term restricted stock for incentive pay, rather than cash bonuses, and claimed that its inability under TARP to offer a competitive mix of cash and stock became an area of increasing concern. In particular, GM noted concerns with using restricted stock for several senior executives, including CEO Akerson, the chief financial officer, an executive of GM Europe, and others. GM noted in the proxy statement that it had discussed its

[18] As of December 31, 2012.
[19] Companies remain under OSM's jurisdiction as long as they are receiving TARP exceptional assistance. According to the proxy statement, CEO Akerson's total compensation for 2011 "falls in the lowest quartile of compensation for CEOs of comparable companies" and that the TARP pay restrictions are keeping GM from delivering compensation for critical personnel in a manner that will drive sustained long-term growth.

concerns with the Acting Special Master. When OSM set pay packages for GM for 2012, it removed the long-term restricted stock from four employees' pay packages, including the pay package of CEO Akerson.

In February 2012, GM proposed that nine employees receive cash salary increases, one of which was a cash salary increase from $600,000 to $900,000 for a GM Europe employee, despite that unit's losses. OSM approved approximately 70% of GM's Top 25 employees to receive cash salaries exceeding market medians and almost 60% to receive total pay packages worth more than the 50th percentile. OSM also removed from GM CEO Akerson's pay package incentive compensation tied to meeting performance criteria, shifting the same amount to stock salary that is earned immediately.

Ally:
SIGTARP previously reported that Ally's CEO complained to SIGTARP about reducing the cash salary of one of his employees to $500,000. Ally executives pushed for high pay for their employees, despite knowing that then-Special Master Feinberg was concerned that most of Ally's Top 25 employees contributed to Ally's need for a bailout.

Despite OSM having approved Ally's request that approximately 90% of Ally's Top 25 employees receive total pay packages exceeding the 50th percentile, Ally requested a cash salary increase of $50,000 for an employee of ResCap, and a $91,000 cash salary increase for another Ally employee, both of which OSM approved. ResCap asked a bankruptcy judge to approve two compensation plans. The judge denied one of the compensation plans that provided for the award of between $4.1 million to $7 million in incentive payments for 17 ResCap employees. However, the judge approved a retention plan making 174 ResCap employees eligible to receive an aggregate $10.8 million in retention payments.

Conclusions and Recommendations

While taxpayers struggle to overcome the recent financial crisis and look to the U.S. Government ("Government") to put a lid on compensation for executives of firms whose missteps nearly crippled the U.S. financial system, the U.S. Department of the Treasury ("Treasury") continues to allow excessive executive pay. American International Group, Inc. ("AIG"), Ally Financial Inc. ("Ally"), and General Motors Corporation ("GM") executives continue to rake in Treasury-approved multimillion-dollar pay packages that often exceed guidelines from the Office of the Special Master for TARP Executive Compensation ("OSM").[20]

The Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP") reported in January 2012 that the Special Master could not effectively rein in excessive compensation at companies that received exceptional assistance from the Troubled Asset Relief Program ("TARP") from 2009 through 2011: The Special Master was under the constraint that his most important goal was to get the companies to repay and exit TARP, a goal that gave the companies leverage.[21] Treasury's formal response to SIGTARP's report came from Acting Special Master Patricia Geoghegan, who stated that "OSM has succeeded in achieving its mission" by reducing pay for the Top 25 executives at these companies from the pay they received prior to TARP.

Treasury's success should not be judged based on reductions in pay from a time when these companies stood on their own without taxpayer assistance. If that is the definition of success, the work of OSM was effectively over when Special Master Kenneth R. Feinberg set the first pay packages in 2009, and there is no longer a need for a Special Master. Rather, Treasury's success should be based on whether Treasury awards appropriate pay for executives while taxpayers continue to fund these companies' bailouts.

SIGTARP found that once again, in 2012, Treasury failed to rein in excessive pay. In 2012, OSM approved pay packages of $3 million or more for 54% of the 69 Top 25 employees at AIG, GM, and Ally – 23% of these top executives

[20] OSM's primary responsibility is to set pay packages for the Top 25 employees at companies whose amount and nature of their TARP bailout were labeled "exceptional." At the end of 2012, only three companies receiving exceptional assistance under TARP remained: AIG, GM, and Ally.

[21] SIGTARP previously reported that, for 2009 through 2011, the Special Master approved multimillion-dollar compensation packages for Top 25 employees and approved pay packages worth $5 million or more over the 2009 to 2011 period for 49 individuals of 7 companies.

(16 of 69) received Treasury-approved pay packages of $5 million or more, and 30% (21 of 69) received pay ranging from $3 million to $4.9 million. Treasury seemingly set a floor, awarding 2012 total pay of at least $1 million.[22]

Taxpayers deserve transparency on Treasury's decisions to award multimillion-dollar pay packages to executives at companies that had been stuck in TARP for four years. First, even though OSM set guidelines aimed at curbing excessive pay, SIGTARP previously warned that Treasury lacked robust criteria, policies, and procedures to ensure those guidelines are met. Treasury made no meaningful reform to its processes. Second, absent robust criteria, policies, and procedures to ensure its guidelines were met, OSM's decisions were largely driven by the pay proposals of the same companies that historically, and again in 2012, proposed excessive pay. Third, with the companies exercising significant leverage, the Acting Special Master rolled back OSM's application of guidelines aimed at curbing excessive pay.

Despite SIGTARP's previous warning that Treasury lacked robust criteria, policies, and procedures to ensure that Treasury's guidelines to curb excessive pay are met, Treasury made no meaningful reform to its processes.

Former Special Master Feinberg developed guidelines aimed at curbing excessive pay and reducing excessive risk taking. Treasury Secretary Timothy F. Geithner testified that executive compensation played a material role in causing the financial crisis because it encouraged excessive risk taking. Feinberg previously told SIGTARP that he limited cash salaries to $500,000 and shifted compensation more toward stock to reduce excessive risk and keep employees' "skin in the game." Feinberg also previously told SIGTARP that he targeted total compensation at the 50th percentile for similarly situated employees at similarly situated entities to keep the companies competitive. Feinberg testified before Congress that he used long-term restricted stock tied to performance metrics to correct problems with executive compensation practices at these companies.

Although SIGTARP previously reported serious problems with OSM's pay-setting process and recommended fixes for those problems, Treasury failed to take any meaningful action in response. SIGTARP reported that OSM approved multimillion-dollar compensation packages, trying to shift these

[22] Only one employee received Treasury-approved pay under $1 million. Treasury awarded this AIG employee a guaranteed cash salary of $700,000.

packages away from large cash salaries and toward stock, but that OSM did not have any criteria for applying its guidelines. SIGTARP reported that OSM awarded cash salaries greater than $500,000 without OSM substantiating good cause. The only action Treasury took in response to SIGTARP's findings and recommendations was to document its use of market data on the 50th percentile and, in an eight-page spreadsheet, document limited explanations for cash salaries exceeding $500,000.

Despite SIGTARP's previous warnings, Treasury did not establish meaningful criteria for having good cause to award cash salaries greater than $500,000. In 2012, OSM did not independently analyze the basis for awarding cash salaries greater than $500,000. Without this analysis, OSM put itself in the position of relying heavily on justifications by the companies – companies that historically have pushed back on the Special Master's limitations on compensation, in particular, on cash salaries. By not making substantive changes, Treasury is clinging to the status quo of awarding multimillion-dollar pay packages.

OSM's decisions were largely driven by the companies' pay proposals, the same companies that historically, and again in 2012, proposed excessive pay, failing to appreciate the extraordinary situation they were in, with taxpayers funding and partially owning them.

Many believe that AIG, Ally, and GM would not exist except for the Government assistance each so desperately requested. SIGTARP previously reported that, given OSM's overriding goal to get the companies to repay TARP, the companies had significant leverage over OSM by proposing and negotiating for excessive pay, warning that if OSM did not provide competitive pay packages, top executives would leave and go elsewhere. This was also the case for 2012 pay. For 2012, AIG negotiated for Treasury-approved pay of approximately $108 million for 25 employees, GM negotiated for Treasury-approved pay of $64 million for 23 employees, and Ally negotiated for Treasury-approved pay of approximately $78 million for 21 employees.

By proposing and negotiating for excessive 2012 pay, these executives continue to lack an appreciation for their extraordinary situations and fail to view themselves through the lenses of companies substantially owned by the Government. Other company actions or statements in 2012 shed light on the companies' lack of appreciation for their extraordinary situation. AIG CEO Robert Benmosche, who has raked in the most compensation of any employee under OSM – $42 million in four years, with a cash salary exceeding by 200% the median salary of his peers – was quoted in *New York* Magazine as stating

that neither Treasury nor the Federal Reserve Board has thanked him for repaying AIG's rescue package. GM CEO Dan Akerson asked Treasury Secretary Geithner to relieve GM from OSM's pay restrictions, a move Akerson said would ultimately benefit taxpayers, and issued a proxy statement complaining about the pay restrictions. Ally executives sought pay raises for the president of its subsidiary, Residential Capital, LLC ("ResCap"), despite the fact that ResCap filed bankruptcy in 2012 and sought extra pay for ResCap employees from the bankruptcy court.

Absent robust policies, procedures, or criteria to implement OSM's guidelines, in 2012, the Acting Special Master approved compensation largely driven by the three companies' proposals. For example, OSM awarded $6.2 million in pay raises to 18 employees. Treasury approved a $1 million pay raise for the CEO of AIG's Chartis subsidiary, a $200,000 pay raise for a ResCap employee – weeks before ResCap filed for bankruptcy – and a $100,000 pay raise for an executive at GM's European unit, despite that unit experiencing significant losses. OSM's written explanations for the pay raises lacked substance, largely parroting what each company asserted to OSM without any independent analysis by OSM. By requesting these pay raises, the companies failed to appreciate that they continued to be funded by taxpayers.

With the companies having significant leverage, the Acting Special Master appears to have rolled back OSM's application of guidelines.

<u>50th Percentile Guideline</u>: In 2012, OSM did not follow its own guidelines aimed at curbing excessive pay by having total compensation generally not exceed the 50th percentile for similarly situated employees. Treasury awarded total pay packages exceeding the 50th percentile by approximately $37 million for approximately 63% of the Top 25 employees of AIG, GM, and Ally. The Acting Special Master appears to have rolled back the 50th percentile guideline, telling SIGTARP, for example, that she set total compensation for all of Ally's Top 25 employees between the 50th and 75th percentiles.

<u>Cash Salaries Limited to $500,000</u>: OSM's lack of meaningful criteria and independent analysis contributed to OSM's rolling back its guideline to limit cash salaries to $500,000. In 2012, OSM approved cash salaries greater than $500,000 for one-third of the employees within OSM's pay-setting jurisdiction (23 of 69 Top 25 employees at AIG, GM, and Ally).

Acting Special Master Geoghegan is not following former Special Master Feinberg's final recommendation that she "limit guaranteed cash," "demand a

performance component for most compensation," and "hold the line on cash salaries." Feinberg testified before Congress that "…base cash salaries should rarely exceed $500,000, and only then for good cause shown, and should be, in many cases, well under $500,000…" However, Acting Special Master Geoghegan told SIGTARP there is no cash salary cap, and $500,000 is a "discretionary guideline that is useful," but there is no law or regulation that says she needs "a memo to permit a company to go above $500,000."

Never have there been so many exceptions to the $500,000 cash salary guideline for the number of people under the Acting Special Master's jurisdiction as there were in 2012. The Acting Special Master increased the number of employees with Treasury-approved cash salaries greater than $500,000 from 22 employees in 2011 to 23 employees in 2012. The number has quadrupled from six employees in 2009, despite the fact that the number of companies OSM reviews decreased as companies repaid and exited TARP.

In addition to questioning the approval of cash salaries in excess of $500,000 for one-third of the employees, SIGTARP questions whether OSM is following the spirit of its $500,000 cash salary guideline. Although OSM guidelines target salaries greater than $500,000, notably in 2012, OSM allowed 25 employees to have cash salaries exactly at the $500,000 limit (falling outside OSM's guideline by $1). Accordingly, OSM allowed cash salaries of $500,000 or more for 70% (48 of 69) of Top 25 employees at AIG, GM, and Ally. OSM allowed cash salaries of $450,000 or more for 94% (65 of 69) of Top 25 employees at AIG, GM, and Ally. In stark contrast, the 2011 median household income of U.S. taxpayers who fund these companies was approximately $50,000.

Similar to OSM's explanations for approving pay raises, OSM's "justifications" for good cause for cash salaries to exceed $500,000 largely parrot what each company asserted orally or in writing to OSM. Acting Special Master Geoghegan told SIGTARP that OSM does not perform an independent analysis, in part due to the 60-day constraint to issue a decision on the companies' proposals (which come in February). OSM uses data supplied by the companies, talks to company officials and other Treasury officials, and looks at publicly available data. Because many of the same employees remained in the Top 25 from 2011 to 2012, OSM could have analyzed those employees' responsibilities and value to the company throughout the year, and then could have used the end of the year information to supplement its existing information. OSM should not limit itself to perform its primary mission from February to early April, when it issued its determination memorandums. By using only the 60 days, OSM missed an

opportunity to conduct an independent analysis that could have limited pay raises and high cash salaries.

More importantly, the Acting Special Master appears to have no desire to independently analyze whether good cause exists to award an employee a cash salary greater than $500,000. The Acting Special Master told SIGTARP that it would be "utterly normal" for these individuals in the Top 25 to expect over $500,000 in cash salary. That might be true if the companies had not been bailed out and were not still significantly owned by taxpayers. Acting Special Master Geoghegan said OSM "does not spend that much time on a small decision like whether to continue to give this person $600,000." She described taking an extra two hours to look at this person's pay justification to see whether there was "added responsibility" as a "waste of time." She said she did not think that when the $500,000 guideline was formulated, it would take an "independent little project" to determine when someone should go above $500,000. If the pay czar is not even willing to independently analyze high cash salaries for 23 employees, who else will protect taxpayers?

The Acting Special Master told SIGTARP that OSM would not normally reopen executive compensation from year to year because it would be disruptive, and it is "relatively easy for OSM to keep things the way they were." The Acting Special Master largely based her decisions on prior years' pay, telling SIGTARP that OSM would not change pay absent a change in circumstances. However, even where there was a negative change such as ResCap filing bankruptcy or GM Europe suffering significant losses, OSM did not reduce the compensation for the employees in charge of those entities.

Long-Term Restricted Stock: By removing long-term restricted stock from some executives' pay and using it only in half of the pay packages, the Acting Special Master is effectively removing a key OSM guideline aimed at reducing excessive risk by tying individual compensation to long-term company success. She also removed long-term restricted stock for senior executives, including the CEOs of AIG, GM, and Ally, calling it "a burden" to compensate them with long-term restricted stock "that has no value." However, Treasury's Rule states that the portion of performance-based compensation compared to total compensation should be greater for positions that exercise high levels of responsibility. After making her decisions on pay in April 2012, she subsequently removed long-term restricted stock for all of Ally's Top 25 employees on the basis that the company's subsidiary, ResCap, had filed bankruptcy, and that the company had announced it was exploring strategic alternatives such as a possible sale of international operations. However, only three employees in Ally's Top 25 worked at ResCap and OSM

knew in April that ResCap was planning a restructuring. In addition, both GM and AIG were selling international operations.

The guidelines originally created by former Special Master Feinberg were aimed at fixing the material role executive compensation played in causing the financial crisis by encouraging excessive risk taking. By not holding the line on large cash salaries (awarding $500,000 or more to 70% of the executives under OSM's pay-setting jurisdiction, and allowing 94% of employees to be paid cash salaries of $450,000 or more), and removing long-term, incentive-based stock as requested by the companies, OSM is effectively relinquishing some of OSM's authority to the companies, which have their own best interests in mind. The Acting Special Master told SIGTARP that OSM is not the compensation committee. SIGTARP agrees – the compensation committee looks out for the interest of the company. The Office of the Special Master's job is to look out for the interests of taxpayers, which it cannot do if it continues to rely to a great extent on the companies' proposals and justifications without conducting its own independent analysis.

There are two lessons to be learned from OSM's 2012 pay-setting process and decisions:

First, guidelines aimed at curbing excessive pay are not effective, absent robust policies, procedures, or criteria to ensure that the guidelines are met. This is the second report by SIGTARP to warn that the Office of the Special Master, after four years, still does not have robust policies, procedures, or criteria to ensure that pay for executives at TARP exceptional assistance companies stays within OSM's guidelines. Perhaps the Acting Special Master thinks that OSM has already succeeded in achieving its mission by limiting compensation for these executives from pre-TARP levels or believes that OSM's existing processes are sufficient. The question is whether it is sufficient for taxpayers. Treasury continues to award excessive pay packages, including large guaranteed cash salaries. Meaningful reform is still possible because GM and Ally remain under OSM's jurisdiction. Without meaningful reform, including independent analysis by OSM, Treasury risks that TARP companies could potentially misuse taxpayer dollars for excessive executive compensation.

Second, while historically the Government has not been involved in pay decisions at private companies, one lesson of this financial crisis is that regulators should take an active role in monitoring and regulating factors that could contribute to another financial crisis, including executive compensation that encourages excessive risk taking. According to OSM, OSM's authority to set pay for AIG executives has ended. SIGTARP previously reported that

AIG CEO Benmosche told SIGTARP that the Special Master's practices would have no lasting impact. He also said, however, that pay and performance must be linked, and if the majority of income is fixed, or guaranteed, then pay is not linked to performance. Given AIG's considerable pushback on OSM's limitations on pay as reported in SIGTARP's prior report, it is highly likely that AIG could return to past compensation practices. The responsibility shifts to the Federal Reserve Board to ensure that AIG does not encourage excessive risk taking through compensation.

Recommendations

SIGTARP recommends:

1. Each year, Treasury should reevaluate total compensation for those employees at TARP exceptional assistance companies remaining in the Top 25 from the prior year, including determining whether to reduce total compensation.

2. To ensure that Treasury effectively applies guidelines aimed at curbing excessive pay and reducing risk taking, Treasury should develop policies, procedures, and criteria for approving pay in excess of Treasury guidelines.

3. Treasury should independently analyze whether good cause exists to award a Top 25 employee a pay raise or a cash salary over $500,000. To ensure that the Office of the Special Master has sufficient time to conduct this analysis, Treasury should allow OSM to work on setting Top 25 pay prior to OSM's receiving the company pay proposals, which starts the 60-day timeline.

4. To be consistent with Treasury's Interim Final Rule that the portion of performance-based compensation compared to total compensation should be greater for positions that exercise higher levels of responsibility, Treasury should return to using long-term restricted stock for employees, particularly senior employees such as CEOs.

Management Comments and SIGTARP's Response

Treasury provided an official written response to a draft of this report in a letter dated January 25, 2013, which is produced in full in Appendix H. OSM's letter states, in part, that "Although we disagree with [SIGTARP's] findings and conclusions, OSM benefitted from the audit review."

OSM's response set forth what OSM considers its accomplishments since 2009. OSM stated that the draft report contained many inaccuracies, and that it provided "500 comments and edits" showing that OSM "disagrees with numerous issues" in the report. OSM responded that its decisions on 2012 pay were consistent with guidelines and Treasury's Interim Final Rule. OSM responded that it has criteria for not using long-term restricted stock.

SIGTARP considered OSM's comments (which were significantly less than 500 and largely repetitive) and addressed the comments in the report, as necessary and appropriate. OSM did not to point to specific factual inaccuracies in the report; rather, OSM took a different view of the relevance of the facts raised by SIGTARP and SIGTARP's conclusions. For instance, OSM did not have any written criteria on the use of long-term restricted stock prior to setting pay for 2012. Instead, the Acting Special Master told SIGTARP the reasons why she stopped using this important guideline for half of the employees.

Treasury did not agree to implement any of the recommendations contained in the report, only to consider the recommendations. As we concluded in the report, OSM's job is to look out for the interests of taxpayers, which it cannot do if it continues to rely to a great extent on executive compensation proposals and justifications submitted by the same companies that historically have proposed excessive pay, without conducting its own robust, independent analyses of appropriate pay for TARP exceptional assistance companies.

Appendix A – Objectives, Scope, and Methodology

SIGTARP performed this evaluation under the authority of the Emergency Economic Stabilization Act of 2008 and 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. SIGTARP evaluated the Special Master's decisions on executive compensation at AIG, Ally, and GM, the three companies remaining in TARP that had received exceptional financial assistance.[23]

Our specific objectives were to assess OSM's process and determinations for 2012 pay packages for the Top 25 most highly compensated AIG, Ally, and GM employees, and to evaluate OSM's progress in implementing SIGTARP's recommendations set forth in SIGTARP evaluation report 12-001, "The Special Master's Determinations for Executive Compensation of Companies Receiving Exceptional Assistance Under TARP," issued January 23, 2012.

The scope of the evaluation covered the Acting Special Master's 2012 determination process and included the Top 25 most highly compensated employees. The evaluation began in March 2012 and ended in January 2013, and was performed in Washington, D.C. To evaluate OSM's decisions and its progress in implementing our recommendations, SIGTARP interviewed OSM officials and reviewed OSM's 2012 determinations and supporting documentation for 69 Ally, AIG, and GM Top 25 employees.

SIGTARP evaluated whether OSM followed its guidelines to limit cash and total compensation. To identify criteria that OSM used to evaluate executive compensation, SIGTARP reviewed the Emergency Economic Stabilization Act of 2008, the American Recovery and Reinvestment Act of 2009, TARP Standards for Compensation and Corporate Governance; Interim Final Rule, and Congressional testimony.

SIGTARP conducted this evaluation in accordance with the "Quality Standards for Inspection and Evaluation" established by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that SIGTARP plan and perform the evaluation to obtain evidence sufficient to provide a reasonable basis for findings and conclusions based on the evaluation objectives. SIGTARP believes that the evidence obtained provides a reasonable basis for the findings and conclusions based on the evaluation objectives.

Limitations on Data

SIGTARP relied upon Treasury to identify and provide email communication and documents related to the executive compensation determination process. It is possible that the

[23] AIG repaid its Government assistance in December 2012.

documentation provided by Treasury did not reflect a comprehensive response to SIGTARP's documentation requests, potentially limiting SIGTARP's review.

Use of Computer-Processed Data

SIGTARP did not use computer-processed data during this evaluation. SIGTARP obtained data from determination memorandums that are available to the public on Treasury's website.

Internal Controls

To assess internal controls over OSM's determination process, SIGTARP interviewed OSM staff and requested OSM's policies and procedures to determine the extent to which policies and procedures existed, and whether internal controls were reasonable and effective.

Prior Coverage

On January 23, 2012, SIGTARP issued evaluation report 12-001, "The Special Master's Determinations for Executive Compensation of Companies Receiving Exceptional Assistance Under TARP." This report addresses the process OSM designed to set pay packages and OSM's decisions on compensation for the Top 25 employees at the companies that received exceptional assistance under TARP. Under this evaluation, SIGTARP assessed the criteria used by OSM to evaluate and make determinations on each company's executive compensation packages and whether OSM consistently applied criteria for the determinations made in 2009, 2010, and 2011.

On October 14, 2009, SIGTARP issued audit report 10-002, "Extent of Federal Agencies' Oversight of AIG Compensation Varied, and Important Challenges Remain." This report addresses the extent of knowledge and oversight by Federal Reserve and Treasury officials over AIG compensation programs and, specifically, payments to retain employees in the AIG Financial Products ("AIGFP") unit. The report also addresses the extent to which executive compensation restrictions or preexisting contractual obligations governed AIGFP retention payments, the outstanding AIG compensation issues requiring resolution, and Government actions to address them.

On August 19, 2009, SIGTARP issued audit report 09-003, "Despite Evolving Rules on Executive Compensation, SIGTARP Survey Provides Insights on Compliance." This report addresses the efforts of TARP recipients to comply with executive compensation restrictions and plans to comply with subsequently enacted changes in requirements.

Appendix B – AIG Determinations

EXHIBIT I
COVERED EMPLOYEES
2012 Compensation

Company Name: American International Group, Inc.

Employee ID	Cash Salary	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal, annual installments beginning on the first anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Generally vests after 3 years of service. Transferability dependent on TARP repayment).	Total Direct Compensation (Cash salary + stock salary + long term restricted stock).
1	$3,000,000	$7,500,000	$0	$10,500,000
101	$500,000	$2,087,500	$862,500	$3,450,000
108	$500,000	$1,750,000	$750,000	$3,000,000
133	$450,000	$5,550,000	$0	$6,000,000
134	$700,000	$3,050,000	$1,250,000	$5,000,000
135	$650,000	$1,600,000	$750,000	$3,000,000
161	$500,000	$2,125,000	$875,000	$3,500,000
163	$495,000	$4,734,000	$1,071,000	$6,300,000
169	$500,000	$1,750,000	$750,000	$3,000,000
206	$700,000	$0	$0	$700,000
208	$500,000	$1,890,000	$0	$2,390,000
219	$500,000	$1,937,500	$812,500	$3,250,000
236	$500,000	$2,500,000	$1,000,000	$4,000,000
237	$495,000	$4,070,234	$934,766	$5,500,000
261	$475,000	$3,525,000	$0	$4,000,000
265	$500,000	$2,750,000	$0	$3,250,000
267	$495,000	$5,315,000	$1,190,000	$7,000,000
465	$500,000	$1,191,250	$563,750	$2,255,000
602	$500,000	$1,750,000	$750,000	$3,000,000
742	$500,000	$1,937,500	$812,500	$3,250,000
1076	$500,000	$5,500,000	$0	$6,000,000
1077	$1,800,000	$5,200,000	$1,000,000	$8,000,000
1087	$975,000	$4,425,000	$0	$5,400,000
1105	$500,000	$2,100,000	$0	$2,600,000
1112	$500,000	$2,200,000	$900,000	$3,600,000

Comparison of 2012 compensation to prior year compensation for the employees listed above

- **Overall**: Overall cash decreased $5.6 million or 24.5% and total direct compensation decreased $14.8 million or 12.2%.
- **The 15 executives remaining in the top 25 from 2011**: Cash remained flat and total direct compensation decreased $7.3 million or 8.6% from 2011. (This comparison is to target total direct compensation for 2011; the amount of long-term restricted stock actually awarded may have been lower than the target amount.)
- **The ten executives new to the top 25 in 2012**: Overall cash compensation decreased $5.6 million or 52.1% and total direct compensation decreased $7.5 million or 19.5% from 2011.

Note 1: The terms of stock salary delivered to Employee 1, the CEO, are provided in a letter agreement the Office of the Special Master approved in a determination dated October 2, 2009. This stock salary may not be redeemed until the fifth anniversary of the effective date of the agreement.

Note 2: The total number of Covered Employees may be less than 25 because of separations from service since January 1, 2012.

E1

Appendix C – Ally Determinations

The following table is from Ally's April 6, 2012 Determination memorandum. After Ally subsidiary ResCap filed for bankruptcy, OSM removed long-term restricted stock from all Ally employee pay packages, not just ResCap employees, replacing long-term restricted stock with stock salary, which vests immediately.

EXHIBIT I
COVERED EMPLOYEES
2012 Compensation

Company Name: Ally Financial Inc.

Employee ID	Cash Salary	**Stock Salary** (Performance based: The stock vests at grant and is redeemable in three equal, annual installments beginning on the first anniversary of grant.)	**Long-Term Restricted Stock** (Performance based: Awarded based on achievement of objective performance goals. Generally vests after 3 years of service. Transferability dependent on TARP repayment).	**Total Direct Compensation** (Cash salary + stock salary + long term restricted stock).
280677	$0	$8,000,000	$1,500,000	$9,500,000
102645	$600,000	$2,858,238	$1,729,119	$5,187,357
104428	$491,000	$840,000	$660,000	$1,991,000
105336	$500,000	$1,000,000	$750,000	$2,250,000
141296	$491,000	$1,112,652	$801,826	$2,405,478
197253	$500,000	$1,941,667	$1,201,277	$3,642,944
265967	$600,000	$2,350,000	$1,447,892	$4,397,892
272446	$491,000	$810,000	$633,667	$1,934,667
339212	$600,000	$4,735,633	$2,667,816	$8,003,449
354392	$450,000	$1,000,000	$724,943	$2,174,943
391076	$500,000	$1,250,000	$850,000	$2,600,000
468046	$475,000	$865,000	$660,000	$2,000,000
513416	$491,000	$1,075,000	$755,000	$2,321,000
546145	$591,000	$2,071,000	$1,329,000	$3,991,000
567303	$500,000	$1,375,000	$925,000	$2,800,000
682168	$600,000	$3,183,333	$1,841,495	$5,624,828
707713	$550,000	$1,450,000	$1,000,000	$3,000,000
725547	$500,000	$1,375,000	$925,000	$2,800,000
805106	$500,000	$2,208,333	$0	$2,708,333
931656	$491,000	$1,182,915	$836,958	$2,510,873
960277	$550,000	$1,600,000	$1,050,000	$3,200,000

Comparison of 2012 compensation to prior year compensation for the employees listed above

- **Overall**: Overall cash decreased $1.07 million or 9.3% and total direct compensation decreased $2.6 million or 3.3%.
- **The 19 executives remaining in the top 25 from 2011**: Cash salaries increased $241,000 or 2.6% and total direct compensation decreased $1.2 million or 1.6% from 2011. (This comparison is to target total direct compensation for 2011; the amount of long-term restricted stock actually awarded may have been lower than the target amount.)
- **The two executives new to the top 25 in 2012**: Cash compensation decreased $1.3 million or 57.7% and total direct compensation decreased $1.4 million or 24.7% from 2011.

Note 1: The total number of Covered Employees may be less than 25 because of separations from service since January 1, 2012.

E1

Appendix D – GM Determinations

EXHIBIT I
COVERED EMPLOYEES
2012 Compensation

Company Name: General Motors Company

Employee ID	Cash Salary	**Stock Salary** (Performance based: The stock vests at grant and is redeemable in three equal, annual installments beginning on the first anniversary of grant.)	**Long-Term Restricted Stock** (Performance based: Awarded based on achievement of objective performance goals. Generally vests after 3 years of service. Transferability dependent on TARP repayment).	**Total Direct Compensation** (Cash salary + stock salary + long term restricted stock).
4859	$1,700,000	$7,300,000	$0	$9,000,000
0094	$950,000	$1,187,500	$1,000,000	$3,137,500
0135	$500,000	$750,000	$519,500	$1,769,500
2346	$485,000	$845,000	$500,000	$1,830,000
2387	$495,000	$835,000	$600,000	$1,930,000
2986	$750,000	$3,500,000	$0	$4,250,000
3199	$500,000	$407,500	$425,000	$1,332,500
3348	$650,000	$1,450,000	$0	$2,100,000
4374	$495,000	$705,000	$575,000	$1,775,000
4696	$380,000	$456,250	$400,000	$1,236,250
4844	$500,000	$555,000	$525,000	$1,580,000
4894	$495,000	$2,430,000	$0	$2,925,000
5021	$600,000	$3,300,000	$1,500,000	$5,400,000
5434	$580,000	$1,120,000	$300,000	$2,000,000
5555	$750,000	$2,500,000	$1,600,000	$4,850,000
5697	$750,000	$2,150,000	$1,400,000	$4,300,000
6447	$580,000	$890,000	$400,000	$1,870,000
6524	$495,000	$700,000	$555,000	$1,750,000
6847	$360,000	$462,500	$375,000	$1,197,500
7305	$360,000	$462,500	$375,000	$1,197,500
7459	$750,000	$2,600,000	$1,650,000	$5,000,000
9195	$475,000	$725,000	$600,000	$1,800,000
9635	$500,000	$950,000	$700,000	$2,150,000

Comparison of 2012 compensation to prior year compensation for the employees listed above

- **Overall**: Overall cash decreased $2.3 million or 14% and total direct compensation decreased $8.8 million or 12% from 2011.
- **The 14 executives remaining in the top 25 from 2011**: Cash salaries increased $50,000 or 0.5% and total direct compensation increased $3.8 million or 8.4% from 2011. (This comparison is to target total direct compensation for 2011; the amount of long-term restricted stock actually awarded may have been lower than the target amount.)
- **The nine executives new to the top 25 in 2012**: Cash compensation decreased $2.4 million or 34.0% and total direct compensation decreased $12.6 million or 45.5% from 2011.

Note 1: The total number of Covered Employees may be less than 25 because of separations from service since January 1, 2012.

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Appendix E – Principles of TARP Standards for Compensation and Corporate Governance; Interim Final Rule

Principle	Definition
Risk	The compensation structure should avoid incentives to take unnecessary or excessive risks that could threaten the value of the TARP recipient, including incentives that reward employees for short-term or temporary increases in value, performance, or similar measure that may not ultimately be reflected by an increase in the long-term value of the TARP recipient. Accordingly, incentive payments or similar rewards should be structured to be paid over a time horizon that takes into account the risk horizon so that the payment or reward reflects whether the employee's performance over the particular service period has actually contributed to the long-term value of the TARP recipient.
Taxpayer Return	The compensation structure, and amount payable where applicable, should reflect the need for the TARP recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the TARP recipient's future success, and ultimately to be able to repay TARP obligations.
Appropriate Allocation	The compensation structure should appropriately allocate the components of compensation such as salary, short-term and long-term incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. The appropriate allocation may be different for different positions and for different employees, but generally, in the case of an executive or other senior-level position, a significant portion of the overall compensation should be long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers.
Performance-Based Compensation	An appropriate portion of the compensation should be performance based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the TARP recipient or a relevant business unit, taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an

	adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. The appropriate allocation and the appropriate performance metrics may be different for different positions and for different employees, but generally a significant portion of total compensation should be performance-based compensation, and generally that portion should be greater for positions that exercise higher levels of responsibility.
Comparable Structures and Payments	The compensation structure, and amount payable where applicable, should be consistent with, and not excessive, taking into account compensation structures, and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization.
Employee Contribution to TARP Recipient Value	The compensation structure, and amount payable where applicable, should reflect the current or prospective contributions of an employee to the value of the TARP recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the TARP recipient.

Appendix F – Acronyms and Abbreviations

Acronym or Abbreviation	Definition
AIG	American International Group, Inc.
Ally	Ally Financial Inc. (formerly General Motors Acceptance Corporation, Inc.)
GM	General Motors Corporation
IFR	TARP Standards for Compensation and Corporate Governance; Interim Final Rule (also "Treasury's Rule")
OSM	Office of the Special Master for TARP Executive Compensation
ResCap	Residential Capital, LLC (Ally Financial Inc.'s mortgage subsidiary)
SIGTARP	Office of the Special Inspector General for the Troubled Asset Relief Program
TARP	Troubled Asset Relief Program
Top 25	the five senior executive officers and the next 20 most highly compensated employees
Treasury	U.S. Department of the Treasury

Appendix G – Evaluation Team Members

This evaluation was conducted and the report was prepared under the direction of Kurt W. Hyde, Deputy Special Inspector General for Audit and Evaluation, and Bruce Gimbel, Acting Assistant Deputy Special Inspector General for Audit and Evaluation, Office of the Special Inspector General for the Troubled Asset Relief Program.

Staff members who conducted the evaluation and contributed to the report include Craig Meklir, Vonda Batts, Jennifer Principe, Meredith McDaniel, Brandon Crowder, Michelle Mang, Janice Turner, Yusuf House, Tracy Davis-Ross, and Cynthia Broome.

Appendix H – Management Comments

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

January 25, 2013

The Honorable Christy L. Romero
Special Inspector General
for the Troubled Asset Relief Program
1801 L Street, NW, 4th Floor
Washington, D.C. 20036

Re: Treasury Response to SIGTARP Draft Audit Report

Dear Ms. Romero:

I write in response to your draft audit report of January 10, 2013 (Draft), pertaining to your review of the 2012 determinations of the Office of the Special Master for TARP Executive Compensation (OSM). Specifically, your team reviewed OSM's 2012 compensation determinations for the Top 25 most highly compensated executives (Top 25) at the three remaining companies that received "exceptional assistance" under the Troubled Asset Relief Program (TARP).[1] This letter provides Treasury's response to the Draft.[2]

I. A Summary of the Facts Regarding OSM's Achievements.

The facts show that OSM continues to fulfill its regulatory requirements. OSM has limited excessive compensation while at the same time keeping compensation at levels that enable the "exceptional assistance" recipients to remain competitive and repay TARP assistance. Specifically, in 2012, OSM's determinations regarding the three companies that still had "exceptional assistance" outstanding were as follows:

- AIG's average total compensation for the Top 25 was at the 48th percentile of similar positions at similar companies.
- GM's average total compensation for the Top 25 was at the 50th percentile of similar positions at similar companies.
- Ally's average total compensation for the Top 25 was mid-way between the 50th and the 75th percentiles of similar positions at similar companies, which is consistent with its average since 2009 and is due to its unique circumstances.

These determinations continue what OSM has accomplished since its inception in 2009.

[1] The original seven exceptional assistance recipients were Ally Financial (formerly GMAC), AIG, Bank of America, Chrysler, Chrysler Financial, Citigroup, and GM. Ally Financial, AIG, and GM were still subject to OSM's determinations in 2012.
[2] We note that SIGTARP did not provide a copy of the report's Executive Summary.

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- OSM cut average cash pay for the Top 25 executives at the seven companies that originally received exceptional assistance by more than 90 percent.

- OSM cut average total pay for the Top 25 executives by more than 50 percent. The three current CEOs also have not had any pay increase during their respective tenures.

- Each year, OSM's determinations have limited the proportion of current cash pay for Top 25 executives (generally not more than 20 percent cash). OSM has required that the majority of Top 25 executive compensation (generally more than 80 percent) be in the form of stock-based pay – the ultimate value of which will depend on the company's performance over the subsequent three-year period. OSM also has strictly limited perquisites for these executives.

- Company proposals have included decreases for individual executives from one year to the next, and companies do not always award the full target amount of incentive compensation approved by OSM. For example, Ally Financial awarded only approximately 75 percent of the total target incentive compensation approved for the Top 25 executives in 2011.

- As of today, five of the seven exceptional assistance recipients – AIG, Bank of America, Citigroup, Chrysler, and Chrysler Financial – have exited TARP entirely.

- AIG, one of the three companies covered in the Draft, is the most recent exceptional assistance recipient to repay its investments. Not only did it exit TARP, but it also repaid the Federal Reserve Bank of New York. Treasury and the Federal Reserve realized an additional positive return of $22.7 billion.

- Taken together, the original seven companies under OSM's jurisdiction have returned the $352 billion in total assistance provided, plus an additional positive return to date of more than $6 billion.[3] We anticipate significant additional repayments, which would increase that overall positive return.[4]

In addition, OSM maintains a high level of transparency in its determinations. All its letters include OSM's procedures and guidelines, as well as a breakdown of the exact dollar amount of cash salary, stock salary, and long-term restricted stock for each Top 25 executive. A new feature in the 2012 Top 25 determination letters, in response to SIGTARP's recommendation, is an overview of the market data that OSM reviews in making its determinations. All this information, along with the compensation regulation itself, is publicly available on OSM's

[3] The $352 billion total includes commitments to AIG of $69.8 billion by Treasury and $112 billion by the Federal Reserve Bank of New York for a total of approximately $182 billion. It does not include the other assistance provided by the Federal Reserve or the Federal Deposit Insurance Corporation, including their commitments under the Asset Guarantee Program.

[4] Although the total investment in Ally Financial, Chrysler, Chrysler Financial and GM was always expected to produce a loss, the current outstanding investment is already more than offset by the profits from the investments in Citigroup, Bank of America, and AIG, and Treasury's remaining shares in Ally Financial and GM have significant value.

website at www.financialstability.gov (click on "Executive Compensation").

OSM's work also has helped lay the foundation for broader reforms to executive compensation by Congress, federal regulators (including the Federal Reserve and the Securities and Exchange Commission), and global financial leaders. Effective implementation of the reforms required by the Dodd-Frank Wall Street Reform and Consumer Protection Act will be crucial to help prevent irresponsible financial sector risk-taking in the future.

II. The Draft Report Contains Many Inaccuracies.

Treasury is committed to transparency in all its programs, including TARP. Our cooperation with your team in this audit was no different. We participated in ten interviews, produced all requested documents, and provided detailed written responses to questions. Nonetheless, the Draft is inaccurate in numerous ways. Indeed, we provided 500 comments and edits to address those inaccuracies, and we also met with your team to explain our concerns.

The next day, your team informed us that you had considered all 500 comments and edits and had declined to make any material changes.[5] We therefore disagree with numerous issues in the Draft. Our overarching concern is that SIGTARP appears to disregard OSM's responsibilities under the law. As such, we believe it is helpful to review those responsibilities before further addressing the Draft's inaccuracies.

The Emergency Economic Stabilization Act of 2008 (EESA), as amended, includes certain limits on executive compensation. Those limits apply to senior executives at companies that received TARP assistance, for as long as that assistance is outstanding. An Interim Final Rule (IFR) implementing those restrictions created OSM, and gives it the responsibility to review – and either approve or modify – proposed pay packages for the Top 25 at the TARP recipients that received "exceptional assistance." While there were originally seven such companies, only three were still subject to OSM's review during your audit.

Under the IFR, OSM's review of compensation for the Top 25 is supposed to determine that pay package proposals are not "inconsistent with the purposes of" EESA ("including the maximization of overall returns to the taxpayers of the United States and providing stability and preventing disruptions to financial markets"[6]) or "otherwise contrary to the public interest."[7] The IFR instructs OSM to apply six principles to fulfill those purposes.[8] The IFR provides OSM discretion to weigh the principles based on the circumstances unique to each company and executive.

[5] In this audit, SIGTARP deviated from the process it has followed for the past four years. SIGTARP (and other oversight bodies) traditionally provides Treasury two opportunities to provide technical comments, first in a fact sheet and then in a draft report. Then Treasury receives an official draft for formal comment, as here. SIGTARP's senior leadership confirmed we would see at least one draft for technical comment in this audit; that it would never be the case that Treasury would see only a draft for formal comment. Instead, SIGTARP provided only this Draft.
[6] 31 C.F.R. § 30.16(b)(1).
[7] 31 C.F.R. § 30.16(b)(1).
[8] The full text is available at www.financialstability.gov, click on "Executive Compensation."

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OSM has sought the appropriate balance between these sometimes competing considerations in making all our determinations. Those principles include determining that compensation "avoid incentives to take … excessive risks;"[9] that it reflect "the need for the TARP recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the TARP recipient's future success, and ultimately to be able to repay TARP obligations;"[10] that components of compensation be "appropriately" allocated;[11] that an "appropriate portion" be performance-based pay;[12] that compensation "be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities;"[13] and that compensation "should reflect the current or prospective contributions of an employee to the value of the TARP recipient."[14]

III. The Draft Criticizes OSM for Balancing the Objectives in the IFR.

The Draft criticizes OSM for approving "excessive" pay packages. The IFR requires that OSM strike a balance between limiting compensation and approving pay packages consistent with comparable positions at comparable companies. Therefore, in evaluating the companies' pay package proposals, OSM reviews market data surveying compensation for comparable positions in comparable entities. As noted above, based on the relevant market data for 2012, AIG's average total compensation for the Top 25 was at the 48th percentile of similar positions at similar companies and GM's was at the 50th. Ally, which has historically been higher due to its unique circumstances, was nevertheless mid-way between the 50th and the 75th percentiles.

The Draft highlights the number of pay packages above the 50th percentile benchmark as inconsistent with OSM's guidelines. The 50th percentile is merely a benchmark. It is not a specific limitation on each individual; it is a consideration in relation to the overall objectives noted above. The compensation of some individuals may be above that benchmark, whereas others may fall below.

In 2012, while some packages at each company were above the benchmark, 13 AIG packages (or more than half), were at or below the benchmark; 11 GM packages (or almost half) were at or below the benchmark; and nine Ally packages (or almost half) were at or below the benchmark. But the goal is for each company's set of compensation packages, as an average, to approach the 50th percentile of similar positions at similar companies (or, in the case of Ally, its historical range). On average, OSM's 2012 determinations were consistent with its guidelines and the IFR.

IV. The Draft Mischaracterizes Information OSM Provided SIGTARP.

The Draft criticizes OSM for having "no criteria" for allowing pay packages without any long-term restricted stock. This is misleading. As we explained several times, OSM has approved

[9] 31 C.F.R. § 30.16(b)(1)(i).
[10] 31 C.F.R. § 30.16(b)(1)(ii).
[11] 31 C.F.R. § 30.16(b)(1)(iii).
[12] 31 C.F.R. § 30.16(b)(1)(iv).
[13] 31 C.F.R. § 30.16(b)(1)(v).
[14] 31 C.F.R. § 30.16(b)(1)(vi).

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such requests in limited circumstances – typically (1) where the executive is very senior and may retire in the next few years; or (2) where, due to particular circumstances, the executive's position may disappear in the near future (e.g., the planned disposition of a subsidiary or other corporate changes).

In those limited circumstances, approving pay packages without long-term restricted stock is reasonable and consistent with the IFR. This is because the IFR requires the executive to forfeit the long-term restricted stock if the executive does not continue to provide services for an additional two years after the date of the award – regardless of the reason. So, for executives who may retire, or whose future is uncertain due to corporate changes, any long-term restricted stock awarded to them would have no value and thus would not serve the IFR principle of designing compensation so as to retain talented employees.

V. SIGTARP's Recommendations.

The Draft makes four recommendations. The first recommendation is that OSM should reevaluate both total compensation each year and whether to reduce total compensation. OSM generally agrees with this idea. While we believe our existing procedures achieve this – OSM reevaluates total compensation each year and our due diligence process is designed to alert us to any developments that suggest compensation should be reduced – we will review whether there are additional ways to improve our process.

The second recommendation is that OSM should develop more policies, procedures, and criteria, without which "Treasury risks that TARP companies could potentially misuse taxpayer dollars for excessive executive compensation." Although we are not aware of any facts that support such an assertion, we will review whether there are any policies or procedures in addition to those we already have in place that could help to prevent any such activity.

The third recommendation is that OSM should "independently analyze" a company's justification in requesting a pay package with cash salary in excess of $500,000. SIGTARP's concern appears to be that companies may provide inaccurate information in their submissions. While we believe our existing procedures are rigorous, we will consider whether any changes are appropriate. Among other things, OSM currently analyzes each company's public securities law filings; consults with Treasury officials responsible for managing Treasury's investments in the companies; reviews public reports about the companies and their top personnel; and analyzes the companies' established performance goals for their executives. In addition, each company's CEO and CFO certify their pay proposals under penalties of perjury.

The fourth recommendation is that OSM should "return" to the use of long-term restricted stock in the compensation packages. As explained above and in our discussions with you, long-term restricted stock continues to be a central element in most compensation packages. There are circumstances that we believe warrant exception, and we will continue to make sure any such exception is justified.

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VI. Conclusion.

Thank you for the opportunity to respond to the Draft. Although we disagree with your findings and conclusions, OSM has benefitted from the audit review. I look forward to working with you in the future as Treasury completes the wind down of its TARP investments.

Sincerely,

Patricia Geoghegan
Acting Special Master
for TARP Executive Compensation

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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 *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, 3rd Floor
Washington, D.C. 20220

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