

Information excerpted from
the January 2016 SIGTARP
Quarterly Report to
Congress on the Status of
TARP. For more information
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EXECUTIVE SUMMARY

This quarter, SIGTARP's investigations resulted in significant criminal prosecutions and civil fraud enforcement actions against bankers. Highlighted enforcement actions against bankers this quarter include: the first indictment of a TARP institution by the Department of Justice; SIGTARP's arrest of the former CEO of a bank still in TARP; the guilty plea of a TARP bank CEO; the conviction by a federal jury after trial of a TARP bank chairman and his wife who was also a TARP bank senior officer; the conviction by a federal jury after trial of a bank CEO for fraud involving a TARP application; the sentencing to prison of a TARP bank senior officer; the sentencing to prison of a bank CEO for fraud involving a TARP applicationⁱ; and the Securities and Exchange Commission's filing of fraud charges against 11 officers and directors of a failed TARP bank.

Already, nearly 100 bankers investigated by SIGTARP have been the subject of a government criminal prosecution or civil fraud enforcement action by DOJ, state and local prosecutors, two state Attorneys General, and the SEC. These charges related to bankers' conduct leading up to and during the financial crisis.

- The total number of bankers/banks charged with a crime investigated by SIGTARP is 75 (74 individuals + 1 bank).
- DOJ agreed to defer prosecution for criminal conduct for 2 bankers who cooperated with the investigation.
- DOJ and the New York Attorney General have brought civil fraud charges against 3 former officers of Bank of America investigated by SIGTARP.
- The SEC has brought civil fraud charges against additional bankers (in addition to SEC actions against those criminally charged) investigated by SIGTARP.

Already, 30 bank officials investigated by SIGTARP have been sentenced to prison, including 11 officials at banks that received TARP. The remaining 19 officials were at banks that applied for TARP using fraudulent bank books, but did not receive TARP.

SIGTARP has been successful in finding the evidence needed to support conviction, resulting in a 99% conviction rate of criminally-charged defendants who were investigated by SIGTARP.

Enforcement Against TARP Bankers This Quarter

Since SIGTARP last reported to Congress in October, there has been significant enforcement through DOJ prosecutions and SEC enforcement resulting from SIGTARP's investigations of officials at banks that received TARP (and a TARP bank). As of this month, 48 of the 74 bankers investigated by SIGTARP who have been charged with a crime are (or were) TARP bank officials. One TARP bank has been charged with crimes investigated by SIGTARP, and SIGTARP found criminal

ⁱ This quarter, the former President and CEO of Gateway Bank was sentenced to prison for bank fraud conspiracy to hide the bank's high number of non-performing loans and repossessed assets during the financial crisis. With the TARP application pending, this bank CEO orchestrated a fraudulent sale of non-performing loans with the bank's own money, claiming it was to appease regulators who were concerned over these bad loans.

conduct by two TARP bank officers for whom DOJ deferred prosecution. Some have pled guilty. Others have gone to trial. Some have not yet been tried. And, 40 of their co-conspirators have also been charged with crimes. Highlights this quarter include:

- ***On January 6, 2016, SIGTARP's investigation resulted in the first indictment of a TARP institution—Wilmington Trust—for concealing past due loans.*** The indictment against the bank and four senior bank officials is based on their roles in concealing from the Federal Reserve, the SEC, and the investing public, the total quantity of past due loans on the bank's books from October 2009 through November 2010 (while the bank was in TARP). The indictment also charges the defendants with making false statements in securities filings and to agencies of the United States government, and refers to reporting requirements with both the SEC and Federal Reserve about the quantity of bank loans for which payment was past due for 90 days or more. Three other bank officers have pled guilty.
- ***In December, SIGTARP agents, FBI agents, and other law enforcement arrested former TARP bank President & CEO of Saigon National Bank Bill Lu along with 10 co-conspirators for racketeering in a narcotics trafficking and international money laundering scheme.*** The majority of the defendants arrested were in relation to Operation "Phantom Bank" named in a 109-page racketeering indictment. Other indictments were unsealed bringing the total number of defendants to 20. At the center of the schemes is the lead defendant Lu. The RICO count alleges that Lu and 5 other defendants were members of a criminal organization that was involved in narcotics trafficking and international money laundering in countries that included the United States, China, Cambodia, Liechtenstein, Mexico, and Switzerland. The indictment alleges that Lu used "his insider knowledge, position as an official at Saigon National Bank, and network of connections to promote and facilitate money laundering transaction involving members and associates of the enterprise." The conduct charged is during the time Lu was President and CEO of the bank and while the bank was in TARP. Saigon National Bank is still in TARP.
- ***On January 11, 2016, the SEC brought civil fraud charges resulting from a SIGTARP investigation against 11 officers and directors of failed TARP bank Superior Bank based on schemes to conceal the extent of loan losses as the bank was faltering in the wake of the financial crisis.*** Specifically, the SEC alleges that high-ranking officers and directors schemed to mislead investors and bank regulators by propping up the bank's financial condition through straw borrowers, bogus appraisals, and insider deals. The SEC alleges that the defendants took action to avoid impairment and the need to report ever increasing allowances for loan and lease losses, resulting in overstated net income by 99 percent for 2009 and 50 percent for 2010.

SIGTARP's investigations also resulted in major progress in DOJ's prosecutions of other TARP bankers in the last quarter including:

- ***The conviction by guilty plea of the President and CEO of TARP bank Tifton Bank for his role in a bank fraud scheme in which he hid underperforming and at-risk loans from the bank and the FDIC.*** The CEO was engaged in a long running scheme to mislead the bank and loan committees about bank loans, and hide past due loans from the FDIC. When the bank failed, there was a total loss to taxpayers of the \$3.8 million TARP investment plus more than \$50,000 in missed dividends.
- ***The sentencing to prison of a senior vice president at TARP bank Front Range Bank for embezzlement.***
- ***Resolution of civil fraud claims by DOJ including payment to the Government of approximately \$85 million by TARP bank Fifth Third Bancorp.*** The civil fraud claims (FIRREA and False Claim Act) involved false representations to HUD, before and during the time Fifth Third was bailed out in TARP, that residential mortgages the bank originated were of the quality required to be insured by HUD. The bank's false representations cost HUD millions of dollars.
- ***The resolution of DOJ civil fraud claims including the return of millions of dollars from the estate of the deceased CEO of TARP recipient One Financial for diverting TARP funds for personal use.***

Juries Convict Three Bankers This Quarter in Two SIGTARP Cases

SIGTARP supported two successful trials this quarter resulting in both juries returning guilty verdicts.

On December 17, 2015, a jury returned guilty verdicts for the chairman of failed TARP bank Premier Bank and his wife (senior officer and general counsel of Premier Bank), who SIGTARP investigated. These two TARP bankers were found guilty of defrauding First Midwest Bank, which was also a TARP bank, during the crisis by submitting false information to the bank in a workout agreement after they defaulted on an \$8 million loan they obtained in 2009 from First Midwest Bank.

This quarter, following a SIGTARP investigation, a jury convicted the CEO of TierOne Bank of crimes to hide \$100 million in losses. The crime included hiding what he referred to as the bank's "death spiral" due to bad loans, in a conspiracy that included applying for \$86 million in TARP with false bank books because as the CEO wrote, the bank would be "dead without TARP." The bank had aggressively expanded pre-crisis by making loans outside the Midwest to construction projects in Las Vegas and Florida. Testimony at trial revealed that the CEO presented one picture of the bank's health to regulators and for the TARP application, when the reality was that executives tallied \$60 million to \$70 million in hidden loan losses, written on a napkin. The trial also revealed that the CEO lied to shareholders saying that the bank decided against applying for TARP, when the reality was that the bank's regulators did not support the TARP application.

Enforcement Against Larger Institutions and/or Their Officials

Although SIGTARP investigates crime at TARP institutions of all sizes, the conduct that SIGTARP investigated in many of our cases occurred at institutions of significant size. These institutions are (or were in the case of a failed bank) important to the nation's financial system and economy. The criminal charges (or in one instance DOJ's non-prosecution agreement of criminal conduct found) arising out of SIGTARP's investigations include officials who worked at the following larger institutions:ⁱⁱ

- One of the largest auto manufacturers in the world (General Motors) (deferred prosecution);
- The 17th largest bank in the nation and its subsidiary mortgage servicer who participated in the HAMP program (SunTrust Banks, Inc. and SunTrust Mortgage Inc.) (DOJ non-prosecution agreement for criminal conduct);
- One of the largest mortgage lenders in the nation (Taylor, Bean & Whitaker);
- Three global securities and investment companies/broker-dealers (Jefferies LLC, RBS Securities, Inc., Nomura Securities International);
- One of the largest 25 banks in the nation, and the 3rd largest bank failure since the financial crisis with \$25 billion in assets at the time of its failure (Colonial Bank);
- A bank with nearly \$11 billion in assets and branches in 16 states and 6 foreign countries (Wilmington Trust) that was acquired by M&T Bank (which is the 30th largest bank in the nation);
- A bank that had more than \$10 billion in assets at the time of its failure with branches throughout the United States as well as China and Taiwan – the 8th largest bank failure since the financial crisis (United Commercial Bank);
- A bank that had more than \$3 billion in assets and was the second largest Alabama-based bank – the 26th largest bank failure since the financial crisis, and the largest bank failure in the nation in 2011 (Superior Bank);
- A bank that at one time had \$3.7 billion in assets – the largest bank failure in Nebraska history, and the 27th largest bank failure in the nation since the financial crisis (TierOne Bank);
- A bank that had more than \$2.6 billion in assets at the time of its failure – the 28th largest bank failure in the nation since the financial crisis (Orion Bank);
- A bank that currently has more than \$2.2 billion in assets (Anchor Bancorp Wisconsin, Inc.);
- A bank that had more than \$1 billion in assets at the time of its failure – the 59th largest bank failure in the nation since the financial crisis (Appalachian Community Bank);
- A bank that, by December 2009 had more than \$1.3 billion in assets with branches in Virginia and North Carolina, the largest bank failure in the history

ⁱⁱ Criminal charges are not evidence of guilt. A defendant is presumed innocent until proven guilty.

of Virginia and the 62nd largest bank failure in the nation since the financial crisis (Bank of the Commonwealth); and

- A bank that at one time had almost \$1 billion in assets and branch offices in 7 states (Atlanta, Birmingham, Tampa, Chicago, Fayetteville, Houston, Dallas, and Philadelphia), the 64th largest bank failure in the nation since the financial crisis (Omni National Bank).

As SIGTARP holds institutions and their officials accountable for crime and civil fraud related to the financial crisis and TARP, we will investigate to the highest levels of an organization. We face the challenge of proving that CEOs and other top officials at large national institutions had knowledge of the facts. Where SIGTARP can prove the elements of a crime, we will refer it for prosecution every time. Often by design, large national institutions are typically structured to stop knowledge from rising to CEOs and other top officials. SIGTARP works with prosecution teams to look for the evidence that the prosecutors believe are sufficient to bring criminal charges. The lack of evidence sufficient for criminal charges will not stop SIGTARP from seeking enforcement outside of criminal charges.

DOJ civil fraud charges (including the False Claims Act and FIRREA), and civil charges by other prosecutors (the SEC and New York Attorney General), arising out of SIGTARP's investigations, include either the following larger institutions or officials at those institutions:

- The largest national bank (JP Morgan Chase) related to its mortgage servicing;
- The second largest national bank (Bank of America Corporation), and its then-CEO and CFO related to the bank's merger with one of the largest national banks and additional TARP payments (Merrill Lynch);
- One of the largest national mortgage originators (Bank of America, N.A. and its predecessor Countrywide Financial Corp., and Countrywide Home Loans, Inc.) and a bank official in two different actions one of which went to trial and one which was resolved by DOJ;
- The 21st largest bank in the nation serving 15 regions (Fifth Third Bancorp and its subsidiaries) in two different actions, one by SEC related to overstated loans and in a DOJ civil fraud action;
- A global fixed-income manager with offices in Pasadena, Hong Kong, London, Melbourne, New York, São Paulo, Singapore, Tokyo and Dubai (Western Asset Management Company, a subsidiary of Legg Mason) in contract with Treasury as a PPIP manager buying and selling mortgage-backed securities using TARP funds;
- A bank that had more than \$3 billion in assets and was the second largest Alabama-based bank – the 26th largest bank failure since the financial crisis, and the largest bank failure in the nation in 2011 (11 officers and directors of Superior Bank); and
- A bank that currently has more than \$2.2 billion in assets (Anchor Bancorp Wisconsin, Inc.).

SIGTARP's Oversight of TARP Housing Programs

Given the difference SIGTARP has been able to make in HAMP by providing insight to Treasury of obstacles to TARP program success, and recommending a change in course, SIGTARP is working to strengthen the Hardest Hit Fund against fraud, waste, and abuse, and ineffectiveness and inefficiency.

This quarter, SIGTARP alerted Treasury to the fact that HHF was being abused. In Indiana, HHF was being used to fund the demolition of homes that were lived in, rather than the abandoned eye-sore zombie houses Treasury intended. SIGTARP recommended that Treasury make clear that this is not allowed under a program designed to keep people in their homes, and Treasury agreed.

In addition, SIGTARP learned that Treasury found in its compliance reviews that 6 of the 7 largest mortgage servicers in HAMP had improperly terminated homeowners out of the program. Our finding is contained in this report. Given that Treasury found this servicer mistreatment of homeowners on a sample basis, SIGTARP has great concerns that other homeowners have been similarly mistreated, but Treasury has not caught the servicer in those instances.

Our work through law enforcement, audits, and reporting this quarter demonstrates that we are up for the critical mission Congress gave us. These are the types of crimes and civil fraud schemes that Congress created SIGTARP to investigate and bring to justice. This type of oversight ensures that ongoing TARP programs are protected and helps Treasury give TARP programs the greatest chance for success.