



# **SIGTARP**

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

ADVANCING ECONOMIC STABILITY THROUGH TRANSPARENCY, COORDINATED OVERSIGHT AND ROBUST ENFORCEMENT

# **OPPORTUNITIES TO STRENGTHEN CONTROLS TO AVOID UNDUE EXTERNAL INFLUENCE OVER CAPITAL PURCHASE PROGRAM DECISION-MAKING**

**SIGTARP-09-002  
AUGUST 6, 2009**



# SIGTARP

Office of the Special Inspector General for the Troubled Asset Relief Program

## Summary of Report: SIGTARP-09-002

### Why SIGTARP Did This Study

In October 2008, the Department of the Treasury established the Capital Purchase Program (“CPP”) to inject capital into healthy, viable U.S. financial institutions to stabilize financial markets and increase lending. The Office of Financial Stability (“OFS”) and the banking regulators—Office of the Comptroller of the Currency (“OCC”), Office of Thrift Supervision (“OTS”), Federal Deposit Insurance Corporation (“FDIC”), and Federal Reserve Board (“FRB”)—implemented a standardized process to review applications from institutions. More than 2,700 institutions have submitted applications to regulators for CPP funding, and regulators have submitted about 1,300 to Treasury for review. As of July 30, 2009, Treasury had funded 660 applications.

This audit addresses (1) the extent to which Treasury and the banking regulators have controls to safeguard against external influence over the CPP decision-making process, and (2) any indications of external parties having unduly influenced CPP decision-making.

We reviewed Treasury and regulatory policies, collected documents that recorded external communication, and interviewed officials to identify the controls over external communication. To determine possible indications of external influence, we reviewed the CPP application and supporting documents for all institutions in which SIGTARP found an external inquiry. Our work was performed in accordance with generally accepted government auditing standards.

### What SIGTARP Recommends

To further guard against outside influence and to improve transparency, SIGTARP recommends that (1) Treasury record the vote count for Investment Committee decisions; and (2) Treasury and each individual participating federal banking agency improve existing control systems to document the occurrence and nature of external oral communication about actual and potential recipients of funding under the CPP and other similar TARP assistance programs to which they may be part of the decision-making.

SIGTARP received official written responses on this report from OFS, FRB, FDIC, and OCC. OTS did not provide written comments on this report. Three agencies addressed SIGTARP’s recommendations while two did not comment on them. OFS, as the lead agency for the CPP, concurred with the recommendations, and said that it is in the process of implementing them. A fuller discussion of these responses is contained in the *Management Comments and Audit Response* section of this report.

August 6, 2009

## Opportunities To Strengthen Controls To Avoid Undue External Influence over Capital Purchase Program Decision-Making

### What SIGTARP Found

The Department of the Treasury (“Treasury”) and the federal banking agencies have various process and documentation controls in place to limit the extent to which external parties can affect the CPP decision-making process. The CPP investment approval process, for example, comprises multiple levels of review that limit any one person’s ability to influence decisions. The review process also contains several organizational and documentation controls that help prevent undue influence by facilitating objective decision-making. Although it is mostly a clear process enhanced by multiple reviews and control mechanisms, SIGTARP found two controls that should be improved to increase transparency and help mitigate the risk of any undue influence on the process. First, it was not clear from the minutes of Treasury’s Investment Committee meetings how each member voted on each application. Clearer documentation of decision-making would help strengthen the transparency of the process. Second, although Treasury and the banking agencies have processes for documenting and responding to written external inquiries, not all have processes to document oral communication, such as telephone conversations and in-person meetings. We found limitations and inconsistencies in the logging of telephone and meeting conversations regarding individual CPP applicants, for example, making it impossible to examine the impact of all potential external inquiries on the CPP process.

Available information gave little indication that external inquiries on CPP applications had affected the decision-making process. Of the 56 institutions SIGTARP identified that were the subjects of external inquiries concerning a potential or actual application, our analysis showed that, as of June 17, 2009, only 16 applications (29 percent) had been funded, 12 (21 percent) were still pending within Treasury or a banking agency, and 26 (47 percent) did not receive CPP funds because the institutions either withdrew or were recommended to withdraw their applications, failed or were acquired during the application review process. Two institutions did not formally submit applications for funds.

### Status of CPP Applications SIGTARP Reviewed Involving External Inquiries

Category	Number of Institutions	Percentage
Applications Funded	16	29
Applications Still Pending	12	21
Applications Not Funded		
<i>Withdrawn or Withdrawal Recommended</i>	19	34
<i>Institution Failed or Was Acquired</i>	7	13
Subtotal for Applications Not Funded	26	47
Institutions Did Not Apply for CPP	2	3
<b>Total</b>	<b>56</b>	<b>100%</b>

Source: SIGTARP analysis of Treasury and banking agencies data.  
Note: See page 14 of the report. Numbers affected by rounding.

SIGTARP’s analysis of the funded applications showed that 13 of the 16 clearly met all of the criteria established by Treasury. The remaining three institutions did not meet all the CPP quantitative criteria but were approved based on mitigating factors considered by Treasury and banking agency officials. For example, one application’s approval was contingent on the institution raising additional capital to bring it to a well-capitalized position, and another application’s approval focused on the bank’s management plan to address a weak ratio. These mitigating factors were not unique to institutions that were the subject of an external inquiry. SIGTARP found unique mitigating factors affecting one institution. With respect to that institution, SIGTARP’s analysis indicated that discretion afforded this applicant in its approval was greater than that accorded other applications, but still consistent with applicable statutory requirements.

Special Inspector General for the Troubled Asset Relief Program



**OFFICE OF THE SPECIAL INSPECTOR GENERAL**  
**FOR THE TROUBLED ASSET RELIEF PROGRAM**  
1801 L STREET, NW, 6<sup>TH</sup> FLOOR  
WASHINGTON, D.C. 20220

August 6, 2009

MEMORANDUM FOR: The Honorable Timothy F. Geithner, Secretary of the Treasury  
The Honorable Sheila C. Bair, Chairman of the Federal Deposit  
Insurance Corporation  
The Honorable John C. Dugan, Comptroller of the Currency  
The Honorable Ben S. Bernanke, Chairman of the Federal Reserve  
Board of Governors  
The Honorable John E. Bowman, Acting Director of the Office of  
Thrift Supervision

SUBJECT: Opportunities To Strengthen Controls To Avoid Undue External Influence over  
Capital Purchase Program Decision-Making (SIGTARP-09-002)

We are providing this audit report for your information and use. It discusses the controls in place to guard against external influences over investment decisions related to the Capital Purchase Program. The Office of the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”) conducted this audit, under the authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general of the Inspector General Act of 1978, as amended.

We considered comments from the Office of Financial Stability, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and the Federal Reserve Board of Governors when preparing the final report. The comments are addressed in the report, where applicable, and copies are included in the Management Comments appendices of this report.

We appreciate the courtesies extended to the SIGTARP staff. For additional information on this report, please contact Mr. Barry W. Holman at (202-622-4633/barry.holman@do.treas.gov).

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

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# OPPORTUNITIES TO STRENGTHEN CONTROLS TO AVOID UNDUE EXTERNAL INFLUENCE OVER CAPITAL PURCHASE PROGRAM DECISION-MAKING

SIGTARP REPORT 09-002

AUGUST 6, 2009

## Introduction

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Of the \$700 billion made available through the Troubled Asset Relief Program (“TARP”), the Department of the Treasury (“Treasury”) had invested, as of July 30, 2009, approximately \$204 billion for the purchase of preferred shares and warrants from institutions participating in the Capital Purchase Program (“CPP”). The CPP is a \$218 billion<sup>1</sup> program designed to strengthen financial markets and increase lending by making capital investments in viable, healthy financial institutions. Launched at the height of the financial crisis facing the United States in the fall of 2008, this program’s significance and the amount of investment involved suggest the need for funding decisions to be based on sound and objective criteria, free of external influences. Various press reports have raised questions about whether external influence could have had some effect on Treasury’s decision to award TARP funds to particular financial institutions.

On January 27, 2009, the Secretary of the Treasury announced plans to implement new rules designed to limit external influence over the TARP process and ensure that only objective assessments guide investment decisions. Formal rules or regulations have not yet been released.

## Background

Treasury formally announced the CPP on October 14, 2008, one day after the first nine institutions already had agreed, during a meeting with the Secretary of the Treasury, to participate in the program. Faced with a potential collapse of the financial markets, the first nine financial institutions agreed to accept funding under the CPP on an emergency basis before procedures were fully in place that would ultimately guide the program’s application review process.<sup>2</sup> After the first nine were approved for CPP funding, Treasury required financial institutions to submit an application in order to be considered for capital investments under the program. On October 20, 2008, Secretary Paulson announced that Treasury had “worked with the regulators to establish streamlined evaluations.” Further, he clarified that all regulators would “use a standardized process to review all applications to ensure consistency.”

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<sup>1</sup> Treasury originally announced that the CPP would be a \$250 billion program, but, on March 30, 2009, stated that it now forecasts only expending \$218 billion.

<sup>2</sup> SIGTARP has a separate review underway examining funding of the first nine banks with a special focus on the funding of Bank of America and Merrill Lynch. That report is expected to be issued in September 2009.

Accordingly, Treasury issued guidance on criteria to be used by the four federal banking agencies (“FBAs”) to assess the viability of institutions applying for CPP funds. These regulators are:

- Federal Deposit Insurance Corporation (“FDIC”)
- Office of the Comptroller of the Currency (“OCC”)
- Federal Reserve Board (“FRB”)
- Office of Thrift Supervision (“OTS”)

The FBAs, to date, have received and reviewed more than 2,700 applications under this guidance. Treasury officials estimated that, as of July 14, 2009, they had approximately 120 applications preliminarily approved but not funded at Treasury and 40 pending review at the regulatory level. Applications may still be submitted until November 21, 2009.

The process begins when a financial institution submits an application to its primary federal regulator. Table 1 provides the types of institutions regulated by each of the FBAs as well as some of the FBAs’ other functions.

**Table 1: Role of the Regulators**

<b>FBA</b>	<b>Regulatory Functions</b>	<b>Other Roles</b>
FDIC	Examines and supervises state-chartered banks that do not belong to the Federal Reserve System	Insures deposits of member banks and is funded by premiums that banks and thrift institutions pay for deposit insurance coverage and from earnings on investments in Treasuries
OCC	Examines and supervises all nationally chartered banks	Supervises the federal branches and agencies of foreign banks
FRB	Regulates all bank holding companies and state-chartered banks that are members of the Federal Reserve System	Conducts the nation’s monetary policy and provides official services to depository institutions, the U.S. government, and foreign financial institutions
OTS	Supervises the national thrifts, which include federal savings and loans and federal savings banks	

Source: OCC, OTS, FDIC, and FRB websites.

Upon receipt of a CPP application, the FBA provides an initial screening and determines whether to forward the application for Treasury’s review. Prior to forwarding, the regulator may send the application to an interagency CPP Council where a representative from each of the four FBAs evaluates and votes on the application. At Treasury, before receiving final approval from the Assistant Secretary for Financial Stability (the head of Treasury’s Office of Financial Stability (“OFS”)), each approved application must receive a majority vote from an Investment Committee that comprises three to five senior Treasury officials.

Eligibility for CPP funds is based on an assessment of the strength and viability of each applicant, measured by examination ratings, performance ratios, and mitigating factors, without taking into account the potential impact of TARP funds. Treasury had funded 660 institutions as of July 30, 2009.

## Objectives

This audit examines the extent to which external parties may have sought to influence Treasury or the FBAs in their considerations of and decisions on applications from individual financial institutions seeking funds from the CPP. Specifically, the report addresses these questions:

- To what extent do Treasury and the federal banking regulators have controls to safeguard against external influences over the CPP investment decision process?
- Were there indications of external parties having influenced decision-making by Treasury and the federal banking regulators regarding CPP applications?

For a discussion of the audit scope and methodology, as well as a summary of prior coverage, see Appendix A. For an overview of the levels of review throughout the CPP process, see Appendix B. For copies of documentation controls referenced throughout this report, see Appendices C–E. For the acronyms, see Appendix F. For the audit team members, see Appendix G. For a copy of comments from the FBAs and Treasury, see Appendices H–K.

# **Opportunities to Strengthen Controls to Avoid Undue External Influence on CPP Decision-Making**

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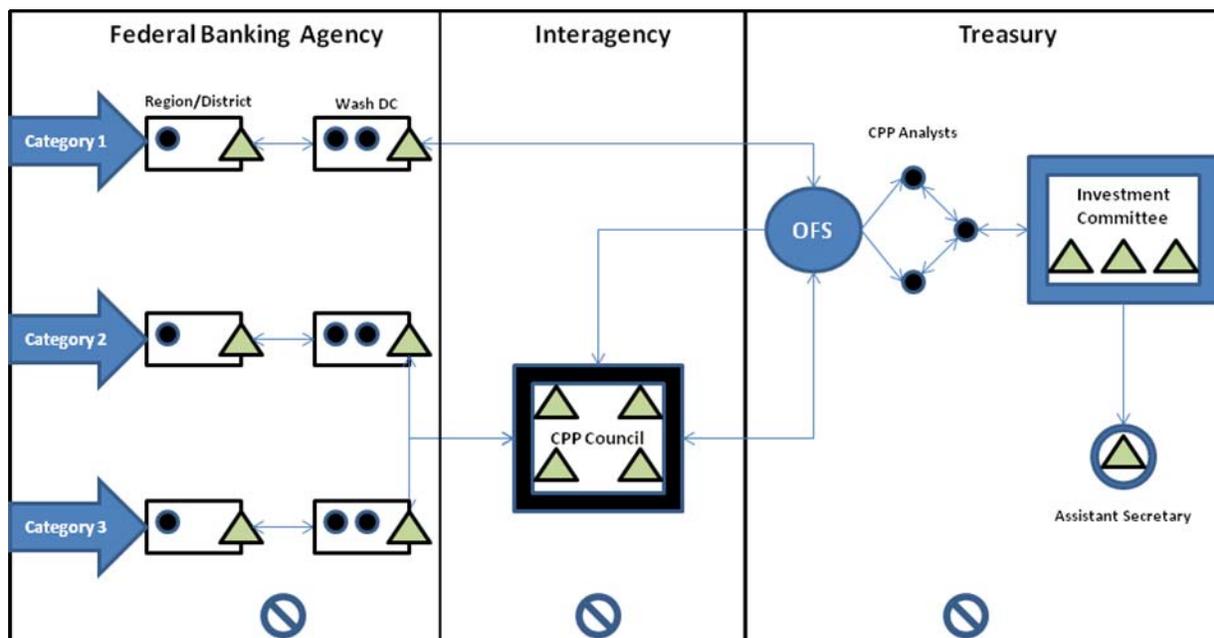
Treasury and the FBAs have various process and documentation controls in place to limit the extent to which external parties can affect the CPP decision-making process. The CPP investment approval process comprises multiple levels of review that limit any one person's ability to influence decisions. The review process also contains several documentation controls that help prevent undue influence by facilitating objective decision-making. Although it is mostly a clear process enhanced by control mechanisms, SIGTARP found two controls that should be improved to increase transparency and help mitigate the risk of any undue influence on the process.

First, it was not clear from the minutes of Treasury's Investment Committee meetings how each Investment Committee member voted on each application. Second, although Treasury and the banking agencies have processes for documenting and responding to written external inquiries, not all have procedures to document oral communications with external parties when discussing TARP funds. We found limitations and inconsistencies in the logging of oral telephone and meeting conversations regarding individual CPP applicants.

## **Regulators and Treasury Provide Multiple Levels of Review throughout the CPP Decision-Making Process**

Each financial institution applying for CPP funds submits an application to its respective regional FBA, where the review process begins prior to any consideration by Treasury for actual funding. For applications that pass this initial screening, the review process either continues at Treasury or passes through an interagency review process in which the four primary regulators provide an additional review of the case. The review process ends with the Assistant Secretary for Financial Stability, who has the final approval for all applications. Figure 1 presents a general flow of the CPP approval process, shows the different paths taken at the regulator level, and depicts the extent to which applications can move forward or be pushed back throughout the process. For a summary of the different levels of review and approvals needed to fund an application, see Appendix B.

**Figure 1: Treasury and FBA Review Process for CPP Applications**



- Analyst reviewers assist the senior decision-makers in developing the facts of the case and answering questions
- ▲ Senior decision-makers approve the recommendation before the application moves to the next stage
- Final approval for funding is made by the Assistant Secretary for Financial Stability
- ⊘ Application withdrawal (either independent or recommended by the FBA or Treasury) can occur at any stage of the process

Note: This figure presents a general flow of the CPP approval process. There are some process flow variations across the regulators before applications move to the interagency review stage. There also are process flow variations on a case by case basis depending on the unique circumstances of an application.

Source: SIGTARP interviews and analysis of process documentation provided by OFS, OCC, FDIC, OTS, and FRB.

## First Level: Regional Offices of the Regulators Prepare the Case Decision Memo

Upon receipt of an application from a financial institution, the region/district level office of an individual regulatory agency reviews the application and completes a case decision memo (“CDM”). For a template of the CDM, see Appendix C. Assessments recorded on the CDM include quantitative factors, such as the CAMELS rating,<sup>3</sup> Community Reinvestment Act (“CRA”) rating,<sup>4</sup> three performance ratios (related to classified assets, non-performing loans,

<sup>3</sup> A CAMELS rating is a nonpublic rating assigned to a financial institution by its primary regulator that measures an institution’s Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk. The lower the CAMELS rating, i.e., the closer it is to 1, the more stable an institution is.

<sup>4</sup> A Community Reinvestment Act (“CRA”) rating is a measure of financial performance in the context of information about the institution (financial condition and business strategies), its community (demographic and

other real estate owned, and construction and development loans), and three capital ratios. Using quantitative factors, each regulator classifies the applicant based on the initial assessment of strength and viability. Applicants classified as Category 1 institutions have stronger performance measures than those identified as Category 3. Table 2 provides the characteristics of each of the category classifications used by the regulators to facilitate the CPP review process.

**Table 2: Regulator Categories of Applications for CPP**

Category	Qualifying Criteria
1	<ul style="list-style-type: none"> <li>• Composite CAMELS/RFI rating of “1”</li> <li>• Composite CAMELS/RFI rating of “2” and for which the most recent examination rating is not more than 6 months old. The most recent exam should be conducted or confirmed by the regulator.</li> <li>• Composite rating of “2” or “3” and acceptable performance ratios</li> </ul>
2 <sup>a</sup>	<ul style="list-style-type: none"> <li>• Composite CAMELS/RFI<sup>b</sup> rating of “2” and for which most recent examination rating (as determined or confirmed by the regulator) is more than 6 months old and overall unacceptable ratios</li> <li>• Composite CAMELS/RFI rating of “3” with overall unacceptable performance ratios</li> </ul>
3	<ul style="list-style-type: none"> <li>• Composite CAMELS/RFI rating of “4”</li> <li>• Composite CAMELS/RFI rating of “5”</li> </ul>

Source: Treasury guidance to regulators.

Notes: This table represents the initial set of guidelines Treasury provided to the regulators. These guidelines served as a baseline for the review of institutions and were adjusted somewhat as the review process evolved.

a. Relatively early in the CPP application review process, Treasury provided the regulators informal guidance to classify all institutions with Composite CAMELS rating of “3” as Category 2 institutions for purposes of program consideration.

b. The regulators use the RFI (Risk management, Financial condition, Impact of parent company and non-depository entities on subsidiary depository institutions) rating system to assess bank and financial holding companies.

In addition to recording quantitative ratios on the CDM, the regulator reviews and documents selected qualitative aspects for each applicant. During the course of our review, a Treasury official noted that the decision-makers engage in more discussion on qualitative, mitigating factors when there are weaker quantitative measurements for a particular institution. Treasury and regulatory officials noted the following mitigating factors that weighed in favor of granting an application:

- the existence of a merger agreement involving the applicant
- possible adverse effect of write-downs<sup>5</sup> on government-sponsored entities stocks
- ability of an institution to raise outside capital

economic data), and its competitors. Upon completion of a CRA examination, each FBA rates the overall CRA performance of the financial institution using a four-tiered rating system: Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance.

<sup>5</sup> A write-down occurs when an institution reduces the value at which it records an asset on its financial statements to reflect a decline in the asset’s value. For example, the value of Fannie Mae and Freddie Mac stock dropped when the two government-sponsored entities were placed in conservatorship in September 2008. This event required institutions holding the stock to write-down the losses related to the stock’s drop in value.

- an applicant’s plans to address areas of concern
- regional considerations regarding loan concentrations
- cash position and ability of the institution to pay the CPP dividend required as a condition of receiving funds

After the analyst completes the assessment, a senior decision maker reviews the CDM before the applicant’s file moves from the region/district level to the Washington, D.C. (“D.C.”) headquarters office of the regulator.<sup>6</sup>

## **Second Level: D.C. Headquarters of the Regulators Determine Next Steps in the Application’s Review Path**

After it completes its assessment, the region/district office forwards the preliminary recommendation to approve or not approve the institution to the regulator’s D.C. headquarters. According to the regulators, there are multiple levels of review within the headquarters. Generally, D.C. headquarters staff members perform a quality-control review of the recommendation for action submitted by the region/district office, and senior decision-makers approve the recommendation for action. For example, one regulator has at least three senior reviewers approve the application before it can be sent to Treasury. From the regulator headquarters, Category 1 institutions generally are sent directly to Treasury for review.<sup>7</sup> The D.C. headquarters usually suggest Category 3 institutions withdraw their applications.<sup>8</sup> For those Category 2 and 3 institutions that are not recommended for withdrawal, the application is reviewed at the next, interagency level, where all four regulators weigh in on the viability of the applicant. Treasury also may decide to refer an application that it has received from the regulators to the interagency review process.

## **Third Level: Interagency Process Provides Additional Level of Review When Viability Is Unclear**

Category 2 and 3 applicants as well as institutions referred by Treasury receive additional reviews at the CPP Council, an interagency review committee with four senior supervisory officials who oversee institutions for their respective agencies. According to its charter, the CPP Council serves as a “deliberative body that will provide recommendations to Treasury on applicants whose condition or supervisory record pose exceptions or unique issues to the participation guidelines set forth by Treasury and the banking agencies.” A Treasury representative may observe the CPP Council discussions but cannot vote on final recommendations of the CPP Council.

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<sup>6</sup> There were variations among the regulators regarding the number of reviews at the region/district level. One regulator also conducts a review at the field level.

<sup>7</sup> One regulator official noted that, in some cases, even Category 1 applications have gone to the CPP Council. There are variations based on the circumstances of the case.

<sup>8</sup> The FBAs and OFS may recommend withdrawal at any stage beyond the region/district level. Regardless of whether it is recommended by Treasury or the regulators, applicants may voluntarily withdraw at any point in the process.

The CPP Council is intended to be a forum for expert discussion where a regulator presents an application under its purview to the other regulators. The CPP Council votes on the viability of the institution based on the quantitative and qualitative factors of the case, and it may defer this vote until additional information can be provided in support of the applicant by its primary regulator. The CPP Council forwards to Treasury a recommendation on any application with a majority vote in favor of approval. A regulatory official noted that the Treasury in practice generally does not approve applications for funding without a unanimous or 3-to-1 vote from the CPP Council. The CPP Council can send the application back to the previous level if questions regarding the institution's viability remain.

Category 2 and 3 applicants requesting less than \$50 million are eligible for notational electronic voting by the CPP Council representatives in advance of a formal Council meeting. Accordingly, each of the four regulators independently reviews the CDM and submits an electronic vote to the OCC representative, who chairs the CPP Council. The chairman determines, based on the tally of votes, whether the case is recommended for approval, denial, or remand to a formal Council meeting for further discussion. All four regulators must unanimously agree on approval during a notational vote in order for the application to move forward to Treasury.

## **Final Level: Treasury Performs Assessment and Determines Final Approval**

Upon receipt of an application from the regulators, Treasury analysts review the application and CDM and prepare applications recommended for approval to Treasury's Investment Committee, which comprises senior Treasury officials who make the final recommendation to the Assistant Secretary.<sup>9</sup> A file is assigned to a CPP team analyst when an application is received by Treasury. The analyst reviews the regulators' analysis and performs an independent evaluation of the application. The analyst then forwards the assessment to a second analyst, who performs an additional evaluation using the previous analyst's work. Before the file is prepared for the Investment Committee, a third senior analyst approves the team's collective work. According to Treasury officials, these three analysts have previous bank examination experience, which strengthens the quality of the review at the Treasury level.

After their review is complete, CPP analysts present their cases to the Investment Committee, which makes the final recommendation for funding approval to the Assistant Secretary. Although the Assistant Secretary for Financial Stability has final approval authority, he has participated at times on the Investment Committee, either in-person or through a designee. At least three committee members discuss and submit their final recommendation on whether the applicant should receive TARP funds. Applications move forward to final approval with a minimum of a 2-to-1 vote. During the Investment Committee's review, the members have the right to send a file back to the CPP analysts, the CPP Council, or the primary regulator to obtain clarification on the analysis provided.

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<sup>9</sup> The Investment Committee consists of TARP's Chief Investment Officer and senior Treasury officials from financial markets, economic policy, financial institutions, and financial stability.

After the Investment Committee votes, the Assistant Secretary makes the final approval for funding. Both regulatory and Treasury officials stressed that only the Assistant Secretary approves the application and that all decisions up to that point are recommendations. At the time SIGTARP was conducting this study, the Assistant Secretary had not rejected any recommendation forwarded by the Investment Committee for approval.

## Documentation Controls Exist Throughout the Application Review Process, But One Control Could Be Improved

Although several documentation controls throughout the review process serve as safeguards to prevent external influence and to facilitate objective decision-making, SIGTARP found one instance where an improvement should be made regarding the documentation of Treasury's decisions.

Documentation controls used to help ensure adherence to the objective criteria of the CPP review process include:

- **Case Decision Memo** – As noted above, the regulator starts a case decision memo (“CDM”) upon receipt of the application and completes the memo with information about the regulator’s recommendation before sending it to Treasury. The document records the quantitative and qualitative aspects of each applicant. By capturing the same ratios and requiring an elaboration of qualitative factors, this control helps reviewers conduct a relatively consistent assessment of applications. See Appendix C for this documentation control.
- **CPP Council Review Decision Sheet** – The CPP Council uses this sheet to record how each of the regulators voted on the viability of institutions that have been reviewed at the interagency level. The sheet also provides qualitative narratives, explaining any concerns that Council representatives would like to make known to Treasury. For a template of this documentation control, see Appendix D. In addition to the CDM, Treasury usually receives this document when the regulator forwards the case file.
- **CPP Analyst Scorecard** – Upon receipt of an application from the regulators, a Treasury analyst uses a scorecard to help ensure it meets the criteria for a forwarded application. This scorecard double checks the FBAs’ work and documents the extent to which each proposed application satisfies established objective criteria. For a template of this documentation control, see Appendix E.
- **Meeting Minutes** – These documented discussions and recommendations, made at the CPP Council and Investment Committee level, serve as a record that each application was considered based on the merits of its particular case.

Although the CPP Council records its vote on the *CPP Council Review Decision Sheet*, SIGTARP found that the Investment Committee does not document its vote count as clearly and consistently. According to informal Treasury guidance, a majority vote is needed for the

Investment Committee to recommend approval to the Assistant Secretary, so it is possible that approval is recommended for an institution with a 2-to-1 vote. Some of the Investment Committee minutes record instances of dissenting votes; however, SIGTARP could not determine the exact vote count in all cases. Treasury does not have Investment Committee members initial a voting sheet like the decision sheet used by the CPP Council to record votes. Although we did not identify any indications of external influence of Investment Committee members, clearly documenting the vote count of the Investment Committee members could strengthen the documentation of decisions and provide additional transparency as to when and why there is a dissenting vote. A more transparent, documented trail of decision-making would help minimize any appearance of external influence.

## **Controls Exist Regarding Documenting External Contacts, But Improvement Needed Regarding Oral Communications**

Additional safeguards are in place to minimize possible undue influence, including longstanding operating procedures and an organizational culture that minimizes regulators' discussions with external parties about banks' performance. Moreover, Treasury and the FBAs have various processes in place to document external communications, in particular written communications. Nonetheless, the extent to which institutions documented oral communications regarding TARP applicants varied among regulators and Treasury.

## **Culture and Operating Procedures Undergird the Process**

Some control mechanisms are part of the overall operating culture at the regulator level, which assists in minimizing the information provided to all external parties. Several regulatory officials stated that, historically, they had a strong culture of confidentiality over banking information that discourages internal personnel from discussing applications with external parties. One regulator noted that information related to bank examinations or applications is not discussed with any external parties. Another regulator commented that the regulatory culture requires employees to be careful with information. A regulator provided SIGTARP the guidance used to train employees on identifying confidential information to help prevent sensitive data related to an open institution from being released. On more than one occasion, officials reminded SIGTARP that the release of sensitive information about an open financial institution is illegal.

The operating procedures of the CPP review team and other offices within the regulator provide another layer of control to help mitigate undue external influence. Some officials stated that Congressional and public affairs personnel—the front-line individuals responsible for receiving and responding to many instances of correspondence with external parties—are shielded from having contact with the review because they are not part of the CPP application review process. Having Congressional and external affairs offices independent from the CPP teams provides a degree of separation between external inquiries and the decision-making process. Those individuals handling the responses to such inquiries generally were not involved in the review process.

## Written Inquiries Generally Documented, But Improvement Needed for Oral Communications

SIGTARP found that, for the most part, Treasury and the FBAs logged and tracked written correspondence from external parties; however, the consistency and detail in which organizations documented oral communications from external parties related to CPP applicants varied across organizations. Table 3 shows how many of the five organizations (Treasury, OCC, FDIC, OTS, and FRB) had processes in place to document external inquiries from members of Congress, as well as other external parties.

**Table 3: Number of Organizations with Processes To Document External Communication Related to CPP**

Communication Type		Number of Organizations
Written	Letters	5
	Emails	4
Oral	Telephone	3
	Meetings	1

Source: SIGTARP analysis of documentation provided by and interviews of Treasury and FBA officials regarding the existence of a documentation process for inquiries received from external parties.

Notes: The scope of this table does not include processes related to documenting inquiries from financial institutions asking about logistical details regarding a potential or existing CPP application. Organizations include the four regulators and Treasury.

The type of communications documentation varied across the regulators and Treasury:

- Letters.** Typically, the regulators and OFS document and track written letter correspondence received from external parties. Most organizations had a system in place to document the receipt, response, and approval of letters addressed to senior officials. Moreover, the responses to those written inquiries regarding CPP applications generally provided the same standard reply, which is that the application is under review and is being given due consideration. Both Treasury and regulatory officials noted that it is a general policy not to provide information regarding the specifics of an application to external parties.
- Emails.** Regulatory and Treasury officials reported minimal emails regarding CPP applicants. One regulator and Treasury had established or designated email boxes to handle logistical questions related to the CPP process. A review of emails provided by these mailboxes found mostly general and logistical inquiries from the applicants. A senior Treasury official noted an informal policy of forwarding email inquiries to the general CPP email box. During the course of our review, one regulator forwarded

inquiries related to CPP institutions directly to SIGTARP for inclusion in the study, while another regulator included emails in a written inquiry log.

- **Oral Communications (Telephone Conversations and Meetings).** SIGTARP received varying levels of documentation of phone calls and in-person meetings in response to our data request for external communications related to TARP. Three of the four regulators provided documentation of instances of telephone communication with external parties regarding TARP recipients; however, one regulator did not provide details on the nature or content of the conversation. Moreover, Treasury officials noted that they had received calls regarding specific CPP applicants; however, they did not document those calls. Regarding in-person meetings, one regulator provided documentation of instances where staff members met with members of Congress about a CPP applicant. In the course of interviews with officials, SIGTARP became aware of an additional two meetings Treasury<sup>10</sup> and regulator staff held with Congressional staff regarding institutions. However, Treasury and the regulator did not provide documentation explaining the nature and content of the meetings.

From the letters, emails, and oral communication logs made available to SIGTARP, many inquiries from external parties were requests for information on the status of individual applications but also indicated support for the application, as in these four examples:

- “I am writing on behalf of one of my constituents...to express my support of their application for assistance and support under the Troubled Asset Relief Program.”
- “I urge you to give [Bank’s] application all due and prompt consideration.”
- “Our office would like to encourage your agency to give [the Bank’s] application full and fair consideration.”
- “I respectfully request that the [FBA] give appropriate consideration to this application within the program guidelines.”

For various reasons related to the lack of documentation of oral communications, SIGTARP cannot be certain it obtained all Treasury and FBA communications regarding CPP institutions. Because an attempt to influence the process could occur via undocumented phone calls or in-person meetings, this lack of documentation significantly limits the extent to which SIGTARP may have captured all instances of potential external contacts.

To understand better how many senior officials were communicating with external parties about CPP applicants, SIGTARP interviewed the current and former Treasury Secretaries, the former Assistant Secretary of Financial Stability, and the heads of three of the four regulators. For the most part, each of the leaders commented that they did not think there was any undue influence on the decision-making process within their respective organizations. One senior regulator stated that he has never felt undue pressure to lobby in favor of a specific CPP institution, and no official stated that he or she received any inquiries regarding a specific applicant that they deemed inappropriate.

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<sup>10</sup> Based on available information, this meeting was not with officials from the Office of Financial Stability.

## **While Guidelines Restricting Lobbyist Influence over TARP Not Yet Issued, ARRA Guidelines Could Serve As a Model**

On January 27, 2009, Treasury announced the development of new rules to increase transparency and curtail potential lobbyist influence over the TARP decision-making process. The Secretary of Treasury told SIGTARP that, when he took office, he called for such guidance out of concern over media stories about the potential for external influence to affect decisions. He noted, however, that other issues had consumed Treasury's time and taken precedence over completing the guidance.

At the time of our study, Treasury was still in the process of finalizing its draft policy limiting external communications regarding TARP. A Treasury official stated that the Treasury approval (and subsequent submission to the White House) of this draft policy is awaiting White House approval on similar lobbyist guidelines submitted for American Recovery and Reinvestment Act ("ARRA") funds. A Treasury official stated that Treasury's draft policy for TARP funds is similar to the ARRA policy. The TARP policy will state that Treasury employees cannot talk to lobbyists or members of the Congress, with one exception—instances of overarching policy discussions.

On April 24, 2009, Treasury issued interim guidance that established protocol for oral and written communication with any persons external to the federal government regarding ARRA funds. Specifically, the interim guidelines for ARRA funds require Treasury employees to determine if they are communicating with federally registered lobbyists about the use of ARRA funds for a specific project or application. If they are communicating with a lobbyist regarding a specific use of funds, the employee should end the conversation and request a written submission of the inquiry. Treasury will post the written request on its public website. Communication not related to the specific use of ARRA funds is permitted; however, Treasury will still document the conversation, the name of the lobbyist and participants, and will publicly post details of the conversation on the Treasury website. Communication with lobbyists is not restricted in instances concerning general questions about logistics or implementation, public oral communications between officials and registered lobbyists at widely attended gatherings, or on communications with officials regarding the administration of awarded grants.

The guidelines also require the documentation of each in-person or telephone conversation with a registered lobbyist concerning ARRA policy matters. Treasury employees are required immediately to complete and submit a form with the date of the contact, the name of the parties, the name of the lobbyist's client, and the content of the conversation to Treasury's Ethics Department. Treasury employees are also required to forward written communication from federally registered lobbyists regarding specific projects, applications, or applicants.

# Although Most Decisions to Fund Applicants Were Clear, Some Had Mitigating Factors

Available information gave little indication that external inquiries on CPP applications had affected decision-making. SIGTARP identified 56 financial institutions that were the subject of external communication with Treasury or regulatory officials related to TARP. From the 56 cases reviewed, SIGTARP did not identify any instances of external pressure having undue influence during the application review process.

As of June 17, 2009, of the institutions about which inquiries were made, 29 percent of these institutions had been funded, 21 percent were still pending, 47 percent were not awarded CPP funds, and 3 percent did not apply for funding. Our analysis showed that 13 of the 16 funded applications met all of the quantitative criteria established by Treasury. The remaining three institutions did not meet all the CPP quantitative criteria, but were approved based on qualitative mitigating factors considered by Treasury and banking agency officials. For example, one application's approval was contingent on the institution raising non-CPP capital to bring it to a well-capitalized position; this condition was not unique to this institution. Another application's approval focused on the bank's management plan to address an area of concern. One institution had mitigating factors that were unique to the files reviewed by SIGTARP. As to that institution, the files suggest that greater flexibility was used in approving that application than had been accorded other applicants, but that the approval was consistent with applicable statutory requirements and does not appear to have been the product of external influence during the application review process. Table 4 summarizes the status of the 56 institutions, of which two did not submit an application for CPP funds.

**Table 4: Status of CPP Applications SIGTARP Reviewed Involving External Inquiries**

Category	Number of Institutions	Percentage
Applications Funded	16	29
Applications Still Pending	12	21
Applications Not Funded		
<i>Withdrawn or Withdrawal Recommended</i>	19	34
<i>Institution Failed or Was Acquired</i>	7	13
Subtotal for Applications Not Funded	26	47
Institutions Did Not Apply for CPP	2	3
<b>Total</b>	<b>56</b>	<b>100%</b>

Source: SIGTARP analysis of Treasury and banking agencies' data.

Note: Numbers affected by rounding.

The number of institutions that were the subjects of external inquiries identified by SIGTARP was relatively small when compared with the entire volume of applications received by the FBAs and Treasury. The number of financial institutions about which relevant external inquiries were reported was only 2% of total CPP applications received as of March 31, 2009.

## Funded CPP Applications Met Requirements or Had Mitigating Factors for Missed Performance Ratios

Our analysis of the funded applications showed that 13 of the 16 met all of the criteria established by the Treasury’s written guidance to the regulators. SIGTARP reviewed the case documentation for each funded application and found that most of the applications met examination ratings guidance, the four Treasury-established performance criteria, and the three capital ratios listed on the case decision memo (“CDM”). However, SIGTARP found mitigating factors affecting one institution that were unique among the ones it reviewed. SIGTARP’s analysis indicated that discretion afforded this applicant in its approval was greater than accorded other applications but still consistent with applicable statutory requirements.

Of the 16 funded institutions, 13 clearly met the requirements (CAMELS rating, performance ratios, and capitalization levels) for presumptive approval, as defined in written Treasury guidelines. As shown in Table 5, these 13 institutions were Category 1 institutions that met all quantitative factors.

**Table 5 – Analysis for 16 Funded Applications of the 56 Selected Institutions**

Institution	Category	Number of Unmet Ratios	CPP Council Vote
1	1	0	Did Not Go to Council
2	1	0	Did Not Go to Council
3	1	0	Did Not Go to Council
4	1	0	Did Not Go to Council
5	1	0	Did Not Go to Council
6	1	0	Did Not Go to Council
7	1	0	Did Not Go to Council
8	1	0	Did Not Go to Council
9	1 <sup>a</sup>	0	4-0 Approval
10	1	0	4-0 Approval
11	1	0	4-0 Approval
12	1	0	4-0 Approval
13	1	0	3-0 Approval <sup>b</sup>
14	2	1	4-0 Approval <sup>c</sup>
15	2	1	4-0 Approval
16	2	5	4-0 Approval

Source: SIGTARP analysis of case decision memoranda, Investment Committee Meeting minutes, and CPP Council Meeting minutes provided by OFS, OCC, OTS, FDIC, and FRB; OFS, *CPP Pipeline Report*, April 1, 2009.

Notes:

- According to written Treasury guidelines, this institution is a Category 1 institution because it had a composite 3 rating with acceptable performance ratios. However, according to a regulator, Treasury subsequently provided oral guidance mandating all composite 3-rated institutions be marked Category 2 to be reviewed by the CPP Council.
- One regulator abstained from voting because the limited time available to assess the institution.
- This institution was approved based on the condition to raise additional private capital.

The viability of three cases—listed as Category 2 institutions in Table 5—was not as apparent. Each of these applications failed to meet one or more performance criteria or capital ratio thresholds for presumptive approval. Accordingly, the reviewers of these applications considered mitigating factors as part of the recommendation for approval. Two of the three applications had mitigating factors that were not unique to institutions that had an external inquiry:

- **Mitigating Factor – Raising Additional Private Capital.** One application’s approval was contingent on the institution raising additional capital to bring it to a well-capitalized position. Treasury’s application of this condition was not exclusive to this particular bank and was used at other times as well. Accordingly, SIGTARP does not have information that would indicate that the review of this institution’s application was impacted by external influence.
- **Mitigating Factor – Consideration of Management’s Action Plan.** Another application failed to meet an established threshold for one ratio by a *de minimis* amount; the institution’s approval focused on the bank’s management plan to address the weak ratio. The case decision memo noted that the bank had already sold underperforming assets, ramped up collection efforts for nonperforming loans, and strengthened underwriting standards. Consideration of an applicant’s plans to address areas of concern, such as the one raised for this institution, were not uncommon during Treasury’s review nor were they unique to institutions that had an external inquiry. Accordingly, SIGTARP does not have information that would indicate that review of this institution’s application was impacted by external influence.

One institution had some mitigating factors that were unique to the 16 funded applications that SIGTARP reviewed. For this institution, its viability was assessed *with* applied-for TARP funds taken into account contrary to the way that banks are typically analyzed pursuant to the Treasury guidance. The institution reached the capitalization thresholds (identified by its regulator) only after the consideration of a private capital investment, the inclusion of deferred tax assets as part of the bank’s capital base, and the potential TARP investment. Without any of these elements included in the bank’s capital, the institution had negative capital ratios at the time Treasury and the regulators were reviewing its application for CPP funds. Without factoring in the CPP funds into the calculations, the institution was still slightly below the minimum capitalization levels communicated by the regulator to SIGTARP. This treatment suggests greater flexibility used in approving that application than accorded other applicants, but still consistent with applicable statutory provisions. Various documented statements in the institution’s CPP review file support SIGTARP’s assessment:

- **Investment Committee Meeting Minutes.** “[Investment Committee Member A] stated that he was very concerned about this bank. [Investment Committee Member B] expressed concerns over the viability of the organization without TARP funds.”
- **CPP Analyst Scorecard (Under Other Relevant Factors).** “Undercapitalized.”
- **Case Decision Memo.** “The Bank is in a precarious financial position.”

Nonetheless, the institution was recommended for approval by the Investment Committee based on the unanimous approval of the CPP Council and mitigating factors noted in the case decision memo that included a corrective program agreed to by management, the fact that the institution raised private capital outside of TARP, and that the institution met the criteria in Section 103 of the Emergency Economic Stabilization Act of 2008 (“EESA”). Based on SIGTARP’s review, it does not appear that the financial institution’s approval was based on external influence during the application review process, but on mitigating factors, one of which was legally required to be considered in the evaluation of its application. Indeed, failure to consider the relevant mitigating circumstances might have resulted in a violation of EESA.

## **Majority of Applications with an External Inquiry Are Still Pending or Did Not Receive CPP Funds**

At the time of SIGTARP’s review, 12 of the 56 applications about which inquiries were made were pending review at either the regulator or Treasury. Officials provided numerous reasons for holding applications, which include:

- Results of the most recent regulatory examination had not arrived.
- The late release of term sheets for subchapter S corporations and mutual organizations caused delays.<sup>11</sup>
- Conditions for raising additional outside capital needed to be met.
- Additional information from the applicant had not yet been provided.

One of the pending institutions from SIGTARP’s study actually had Treasury approval; however, funding was pending based on satisfying a condition to raise an additional non-TARP capital investment. A Treasury official stated that for pending applications that had been approved with conditions, Treasury proceeds to fund the institution soon after the conditions are satisfied.

Exactly half of the institutions that were reviewed in our study due to external inquiries did not receive CPP funds. The majority of these institutions did not receive CPP funds because either the regulators requested the withdrawal of the application or the institution withdrew voluntarily. Regulators recommended withdrawal for cases where the institution was not considered viable under the standards set forth by Treasury. Two institutions identified during our review of external communications did not actually submit an application for CPP funds.

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<sup>11</sup> An S Corporation is any U.S. bank, U.S. savings association, bank holding company, or savings and loan holding company organized such that it is exempt from most Federal income taxes as they are passed through to the shareholders. A mutual organization is a corporation that is owned by depositors which distributes income in proportion to the amount of business that members do with the company. Due to the different term sheets required for these institutions compared to public and private applicants, Treasury did not release guidelines until January 14, 2009, for S Corporations, and April 7 and 14, 2009, for mutual organizations.

Seven institutions in our study did not receive funds because they either failed or were acquired while their applications were pending. Some of the external inquiries for these institutions communicated a sense of urgency in the processing of their applications:

- “Given specific time-sensitive concerns facing the Bank, it has sought my assistance in obtaining an update on the status of its application.”
- “Constituent [is] requesting assistance on behalf of [the Bank that] applied for TARP funds to help banks deal with this financial emergency.”

Other options for failing institutions were discussed with regulators and Treasury. In one meeting, a regulator, a Congressman, and the bank’s executives explored an option—presented by the bank—that the use of CPP funds to keep the institution operating would cost less to the government than resolution. The regulator elevated this option to Treasury, which rejected the argument. The bank eventually failed.

# Conclusions and Recommendations

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## Conclusions

Treasury and the FBAs faced a difficult economic environment that necessitated a rapid launch of the CPP. Nonetheless, the established process contains numerous internal controls that guard against external influence. For the most part, controls are in place to limit the opportunity for external parties to exert undue influence on CPP investment decisions. The multiple levels of review and viability measures deployed in decision-making suggest a straightforward process governed by objective criteria; however, to increase transparency, Treasury should provide a more detailed and clearer record of how each Investment Committee member votes on each TARP investment decision.

Controls were also in place to document and respond to most of the written correspondence received by Treasury and the regulators from external parties; however, SIGTARP found that the level of detail and documentation of oral communications with external parties varied across Treasury and the regulators. The inconsistency in documenting these communications limits the ability to comprehensively identify and understand all external inquiries regarding CPP applications. SIGTARP believes that Treasury and the four regulators should ensure that they maintain adequate records of the occurrence and nature of oral communications with external parties regarding pending applications under the CPP and other similar TARP programs. Knowing the existence or content of phone conversations or in-person meetings regarding CPP recipients will provide another layer of transparency regarding the factors that are considered (or not considered) when the regulators and Treasury are making CPP investment decisions. Although Treasury's draft policy is similar to the guidelines issued for ARRA funds, interim or final rules regarding the documentation of external TARP communication have yet to be issued.

SIGTARP recognizes that the majority of CPP applications may already have been submitted to regulators. Nevertheless, for applications remaining in the pipeline or for those subsequently submitted prior to the application deadline, SIGTARP believes that management efforts to address issues identified in this report would add additional credibility to the existing procedures and could serve as a model for any similar TARP programs.

## Recommendations

SIGTARP makes the following recommendations:

1. To strengthen transparency related to the documentation of TARP decision-making, SIGTARP recommends that Treasury more explicitly document the vote of each Investment Committee member for all decisions related to the investment of TARP funds.
2. To provide greater transparency over external inquiries regarding TARP funds, SIGTARP recommends that Treasury and each individual participating federal banking agency improve existing control systems to document the occurrence and nature of

external phone calls and in-person meetings about actual and potential recipients of funding under the CPP and other similar TARP assistance programs to which they may be part of the decision-making. The new or improved process should document the date of the communication, the external party inquiring, the official receiving the call or attending the meeting, the actual or potential TARP recipient that is the subject of the call or meeting, and the purpose and content of the discussion. Treasury could use the guidelines similar to the interim rules recently established by Treasury for lobbyist communications regarding funds under the ARRA. Given the short timeframe remaining for the approval and distribution of CPP funds, this recommendation extends to all current and future TARP programs.

# Management Comments and Audit Response

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SIGTARP received official written responses on this report from the Office of Financial Stability (“OFS”), the Federal Deposit Insurance Corporation (“FDIC”), the Office of the Comptroller of the Currency (“OCC”), and the Federal Reserve Board (“FRB”). The Office of Thrift Supervision (“OTS”) did not provide written comments on this report. Copies of official responses are included as appendices to this report.

In commenting on a draft of this report, OFS concurred with SIGTARP’s recommendations and indicated that it is in the process of implementing them. OCC stated that it plans to review and adjust, as needed, its existing documentation methods to ensure they capture the details of oral communications suggested by SIGTARP as part of the recommendation. FRB did not comment on the recommendations in its official response, and OTS did not provide official written comments on the report.

In responding to our recommendations, FDIC commented that a process for documenting communications is in place and will consider whether additional enhancements are warranted to address existing TARP applications. FDIC commented that SIGTARP favorably regarded its documentation process. SIGTARP recognizes that the FDIC does have an existing process to record the receipt of external communications but could improve its documentation by including information on the nature and content of oral communications for current and future TARP programs where regulators are part of the decision-making process.

Four of the respondents, either as part of their official written responses or as separate technical comments, urged SIGTARP to remove an appendix from the report which included the names of the 56 financial institutions identified by SIGTARP for this study that were the subjects of external communications to either Treasury or regulatory officials regarding their participation in the CPP. Some reasons cited for requesting the deletion of the appendix included:

- “Public disclosure of the names of the entities that have not received CPP funding would impair OFS’s ability to effectively pursue its mandate to stabilize the financial system through capital investments in viable financial institutions. Specifically, future CPP applicants could be discouraged from applying to the CPP for fear of public disclosure of their unsuccessful applications.”
- “Publishing the appendix would be imprudent because of the potential for causing significant harm to institutions that were denied—or were perceived to have been denied—TARP assistance... Such perception would erode confidence in the viability of the institution and could potentially lead to a run on the bank, ultimately causing it to fail.”
- “This potential for substantial harm is the very reason why supervisory information on the condition of banks is treated by statute as confidential information and protected from public disclosure by the Freedom of Information Act (“FOIA”)...”

Three of the four agencies objecting to the public release of the institutions' names referred to exemptions of the FOIA, and one of those agencies also noted a citation from the Trade Secrets Act. The cited FOIA exemptions shield information from public disclosure for reasons such as the protection of financial information from a person that is privileged or confidential, or the protection of bank information related to a regulatory examination, among other things. Two of the agencies provided objections as part of their official responses, which can be found in Appendices J and K of this report.

SIGTARP maintains that the goal of transparency would best be met by listing the names of the 56 institutions that were the subject of external communications. However, the concerns raised by the regulators about the possible negative impact of such disclosure are serious. Although SIGTARP is not necessarily in agreement with the regulators that including the names of the institutions would cause the feared harm, from a legal and regulatory perspective, SIGTARP believes it must defer to the regulators' objections. Accordingly, this report does not include a listing of the 56 institutions.

# Appendix A – Scope and Methodology

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We performed the audit under authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended. The audit’s specific objectives were to determine (1) the extent to which Treasury and the banking agencies have controls to safeguard against external influence over the Capital Purchase Program (“CPP”) decision-making process; and (2) any indications of external parties having influenced CPP decision-making. We performed work at the Office of the Comptroller of the Currency (“OCC”), Office of Thrift Supervision (“OTS”), Office of Financial Stability (“OFS”), Department of the Treasury (“Treasury”) headquarters, Federal Deposit Insurance Corporation (“FDIC”), and the Federal Reserve Board (“FRB”) headquarters in Washington, D.C. The scope covered external inquiries regarding potential and actual CPP applicants from October 2008 through March 2009. This performance audit was performed in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We completed our review between February and July 2009. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To assess the extent to which controls are in place to safeguard against external influence, we reviewed the policies, procedures, and processes used by OFS and the four banking regulatory agencies to (1) control and document external communications (including written and oral correspondence) and (2) document the decision-making process for approving CPP applications. We also interviewed Treasury and regulatory officials within Congressional and public affairs offices to understand the processes in place to respond to external inquiries regarding CPP applicants. In addition, we interviewed the Treasury’s Ethics Division officer. To understand the process for reviewing and approving CPP applications, we reviewed Treasury’s guidance to the four banking regulatory agencies on evaluating CPP applications. We also interviewed program officials of the four banking regulatory agencies and of OFS who were responsible for reviewing and evaluating CPP applications to understand how they handled external inquiries about CPP applications.

To assess the extent to which external parties may have influenced CPP investment decision-making, we reviewed the status of CPP applications for 56 financial institutions that had an external inquiry to either OFS or one of the banking regulatory agencies between October 2008 and March 2009. To identify external inquiries related to CPP applications, we requested all written correspondence, logs recording oral communication, and emails between external parties and OFS and the banking regulatory agencies. We also interviewed senior CPP program officials with OFS and the banking regulatory agencies as well as members of the CPP Council and Investment Committee to determine the extent they received and documented telephone inquiries and meetings regarding CPP applications. We also interviewed the current and former Secretary of the Treasury, the former Assistant Secretary for Financial Stability, and the heads of three of the four federal banking agencies to understand the extent to which they received external communications regarding specific CPP applications, and the extent to which they were involved in the decision-making process. Based on the data request and interviews, we identified 56 financial institutions that had an external inquiry related or that appeared to be related to an actual or potential CPP application (excluding process-related queries from the applicant).

## **Limitations on Data**

SIGTARP was unable to collect all related oral communication logs or emails from external parties because (1) several key decision-makers in the early stages of the CPP process are no longer at Treasury, (2) some federal banking agency and Treasury officials did not keep phone logs of their telephone correspondence, and (3) not all regulators or Treasury documented instances of in-person meetings with external parties.

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

To perform this audit, we used data provided by Treasury's Assignment and Correspondence Tracking System, the Federal Reserve's Correspondence Control System, OTS's Congressional Affairs Tracking System, and FDIC's Legislative Information Tracking System and Congressional Correspondence System. The extent to which we captured the universe of external inquiries is subject to the completeness of these systems and the compliance of its users to log such information. SIGTARP observed Treasury and federal banking agency officials searching these systems to understand the scope of what they collected and stored.

Treasury and the federal banking agencies relied on CAMELS ratings as a factor to assess applications. These ratings rely on some computer-processed data to assess each financial institution's Capital, Asset quality, Management capability, Earnings quality and level, Liquidity adequacy, and Sensitivity to market risk. We reviewed an FDIC Office of Inspector General report that assessed the CAMELS rating system and found nothing material that would impede its use as decision-making factor in assessing CPP applications.

## **Internal Controls**

As part of the overall evaluation of the CPP decision-making process, we examined internal controls related to the review, recommendation, approval, and withdrawal of CPP applications at the regulators and Treasury. We also conducted an evaluation of documentation procedures regarding external TARP communications and examined internal controls as they relate to policies and procedures in place to ensure decision-making based on objectivity and not other influences.

## **Prior Coverage**

FDIC Office of Inspector General, Report No. EVAL-09-004, "Controls Over the FDIC's Processing of Capital Purchase Program Applications from FDIC-Supervised Institutions," March 2009.

Government Accountability Office, Report GAO-09-296, "Troubled Asset Relief Program: Status of Efforts to Address Transparency and Accountability Issues," January 2009.

Government Accountability Office, Report GAO-09-161, "Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency," December 2008.

# Appendix B – Review Rounds for CPP Process

Level and Minimum # of Reviewers	Type of Review	Approval Needed To Advance to Next Round
<b>FBA Region or District Office</b>	Preparation and approval of the case decision memo	<i>Regional Approval</i> – The regulator’s regional or district office must recommend approval before submitting to the regulator’s Washington D.C. headquarters.
<b>FBA Headquarters</b>	Review of recommendation from region and approval to forward to CPP Council	<i>Headquarter Approval</i> – The D.C.-based office must assess the viability of the institution and recommend approval to send the Category 1 institutions to OFS and send Category 2 and 3 applications to the CPP Council.
<b>CPP Council</b>	Meeting with representative from each FBA; institution’s regulator presents case; Treasury representatives observing meeting and asking questions	<i>CPP Council Majority Vote</i> – Although the CPP Council sends forward any application on which it has voted, a Treasury official noted that Treasury, in practice, does not approve applications that do not have either a unanimous or 3-to-1 vote from the CPP Council. The CPP Council must vote on the application and submit the application for approval to Treasury. The CPP Council can send the application back to the previous level if questions remain regarding the institution’s viability.
<b>OFS CPP Analysts</b>	Independent reviewers and approver of case decision memos provided by the FBAs for Treasury approval	<i>CPP Team Analysts’ Decision</i> – Once the application is sent forward to Treasury, OFS’s CPP team performs another assessment of the institution in addition to what was provided by the documentation forwarded by the regulators. Two analysts review the case before a third senior analyst approves it for presentation to the Investment Committee.
<b>Investment Committee</b>	Consensus meeting with a minimum of three committee members and analysts presenting cases; CPP analysts presenting information and participating in meetings	<i>Majority Approval by the Investment Committee</i> – A minimum of three Investment Committee members must be present in order to provide the final approval recommendation on a particular institution’s application. Applications move forward with a minimum of 2-to-1 vote for approval. During the Investment Committee, the members have the right to send the file back to the CPP analysts, the CPP Council, or the primary regulator to obtain clarification on the analysis provided by the CPP team or regulators.
<b>Assistant Secretary</b>	Final approval required by Assistant Secretary; Approval based on recommendation from Investment Committee	<i>Final Approval by the Assistant Secretary</i> – Both regulator and Treasury officials stressed that only the Assistant Secretary approves the application and that all decisions up to that point are recommendations for approval. As of May 1, 2009, the Assistant Secretary has not gone against any approval recommendations forwarded by the Investment Committee.

Source: SIGTARP analysis of interviews with and documentation provided by OFS, OCC, OTS, FDIC, and FRB.

Notes: This table reflects the minimum number of reviews for an individual. Reviewers include both analysts assessing the application as well as those senior officials that review and approve the recommendations provided by the analysts. Some cases require additional levels of re-review based on the circumstances of the case.

# Appendix C – Case Decision Memo Template

## TARP CAPITAL PURCHASE PROGRAM Case Decision Memo

Applicable Federal Banking Agency(ies): \_\_\_\_\_

QFI Name \_\_\_\_\_

RSSD / Holding Company Docket No. / FDIC Certificate No. \_\_\_\_\_

Date of Application Receipt \_\_\_\_\_

*(A copy of the QFI's interest/application form shall be attached to this package)*

*Summary Condition and Performance Information:*

C/CAMELS Ratings \_\_\_\_\_

CRA Rating \_\_\_\_\_

C/RFI Rating (For BHCs) \_\_\_\_\_

**For Largest Bank / Savings Association:**

**Most Recent Performance Ratios**

(as of (date): \_\_\_\_\_)

- Tier 1 Risk-Based Capital \_\_\_\_\_
- Total Risk-Based Capital \_\_\_\_\_
- Tier 1 Leverage Ratio \_\_\_\_\_
- Classified Assets/(Net Tier 1 capital + ALLL) \_\_\_\_\_
- (NPLs + OREO)/(Net Tier 1 capital + ALLL) \_\_\_\_\_
- Construction & Development Loans/ Total RBC \_\_\_\_\_

**Post Subscription Performance Ratios**

- Tier 1 Risk-Based Capital \_\_\_\_\_
- Total Risk-Based Capital \_\_\_\_\_
- Tier 1 Leverage Ratio \_\_\_\_\_
- Classified Assets/(Net Tier 1 capital + ALLL) \_\_\_\_\_
- (NPLs + OREO)/(Net Tier 1 capital + ALLL) \_\_\_\_\_
- Construction & Development Loans/ Total RBC \_\_\_\_\_

**For Bank Holding Company (FR Y-9C filers only)/Thrift Holding Company (if applicable):**

**Most Recent Performance Ratios**

(as of (date): \_\_\_\_\_)

- Tier 1 Risk-Based Capital \_\_\_\_\_
- Total Risk-Based Capital \_\_\_\_\_
- Tier 1 Leverage Ratio \_\_\_\_\_
- Classified Assets/(Net Tier 1 capital + ALLL) \_\_\_\_\_
- (NPLs + OREO)/(Net Tier 1 capital + ALLL) \_\_\_\_\_
- Construction & Development Loans/ Total RBC \_\_\_\_\_

**Post Subscription Performance Ratios**

- Tier 1 Risk-Based Capital \_\_\_\_\_
- Total Risk-Based Capital \_\_\_\_\_
- Tier 1 Leverage Ratio \_\_\_\_\_
- Classified Assets/(Net Tier 1 capital + ALLL) \_\_\_\_\_
- (NPLs + OREO)/(Net Tier 1 capital + ALLL) \_\_\_\_\_
- Construction & Development Loans/ Total RBC \_\_\_\_\_

**Applicable Federal Banking Agency(ies) Recommendation:**

Approve for CPP Participation  Disapprove for CPP Participation  Forward to Council

**For Approval Recommendations:**

- Brief Summary of Mitigating Factors:

- Brief Summary of Viability Assessment/Supervisory Strategy; including material and relevant enforcement actions:

**For Disapproval Recommendations:**

- Brief Summary of Factors that Warrant Disapproval

**For Forwards to Council:**

- Brief Description of Reason for CPP Consideration:

**Result of Council Review:**

Council Recommendation: Approve:  Disapprove:

Brief Summary of Council Recommendation:

Dissenting Recommendations (if applicable):

# Appendix D – CPP Council Voting Record

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TARP Capital Purchase Program

CPP Council Review Decision Sheet

Applicant/Case Name: \_\_\_\_\_

Council Meeting Date: \_\_\_\_\_

Result of Council Review:

Council Member Recommendation:

FDIC: Approve: \_\_\_\_\_ Disapprove: \_\_\_\_\_ Withdraw \_\_\_\_\_ Abstain \_\_\_\_\_

FRB: Approve: \_\_\_\_\_ Disapprove: \_\_\_\_\_ Withdraw \_\_\_\_\_ Abstain \_\_\_\_\_

OCC: Approve: \_\_\_\_\_ Disapprove: \_\_\_\_\_ Withdraw \_\_\_\_\_ Abstain \_\_\_\_\_

OTS: Approve: \_\_\_\_\_ Disapprove: \_\_\_\_\_ Withdraw \_\_\_\_\_ Abstain \_\_\_\_\_

Action Summary/Discussion:

# Appendix E – Analyst Scorecard Template

For Processing: (New App / New w/ Info / From Council / Return to IC)

UST# \_\_\_\_\_

## TARP Capital Purchase Team Analysis

**Applicant:**

Date Received by Team: \_\_\_\_\_

FBA Analysis Submitted by: \_\_\_\_\_

**Basic Applicant Structure:**

**Amount Requested:** \$ \_\_\_\_\_

BANK/THRIFT/BHC 03/31/2009 RWA Analysis: \$ \_\_\_\_\_ @ 3% = \_\_\_\_\_

Requested Amount: OK \_\_\_\_\_ Lower/Higher Allowable Amt: \_\_\_\_\_

**Proposal Satisfies Following Criteria:**

Satisfactory Bank Composite \_\_\_\_\_ Less than Satisfactory \_\_\_\_\_ CAMELS \_\_\_\_\_ / \_\_\_\_\_ ( \_\_\_\_\_ )

Within 6 months \_\_\_\_\_ More than 6 Months \_\_\_\_\_ Continuous Supervision \_\_\_\_\_

“3” Components No \_\_\_\_\_ Yes \_\_\_\_\_ Addressed \_\_\_\_\_

Performance Ratios Acceptable \_\_\_\_\_ / Bank Noted as Viable Yes \_\_\_\_\_ No \_\_\_\_\_

Enforcement Actions: No \_\_\_\_\_ Yes \_\_\_\_\_ Addressed \_\_\_\_\_

Satisfactory CRA rating(s): Yes \_\_\_\_\_ No \_\_\_\_\_ Addressed \_\_\_\_\_

Closing or Term Issues: No \_\_\_\_\_ Yes \_\_\_\_\_ Addressed \_\_\_\_\_

**Other Relevant Factors:**

**Disposition by Team (note dates):**

Immediate Yes/No \_\_\_\_\_ (First Review) / ( Second Review) / (Third Review)

Request Information \_\_\_\_\_ Information Received \_\_\_\_\_

Release to Inv. Committee \_\_\_\_\_ Refer to CPP Council \_\_\_\_\_

Notification of Applicant \_\_\_\_\_ Investment Committee Action \_\_\_\_\_

Revised – April 27, 2009

## Appendix F – Acronyms

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<b>Acronym</b>	<b>Definition</b>
ARRA	American Recovery and Reinvestment Act
CAMELS	Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk
CDM	Case Decision Memorandum
CPP	Capital Purchase Program
CRA	Community Reinvestment Act
D.C.	District of Columbia
EESA	Emergency Economic Stabilization Act of 2008
FBA	Federal Banking Agency
FDIC	Federal Deposit Insurance Corporation
FRB	Federal Reserve Board
OCC	Office of the Comptroller of the Currency
OTS	Office of Thrift Supervision
OFS	Office of Financial Stability
RFI	Risk management, Financial condition, Impact of parent company and non-depository entities on subsidiary depository institutions
SIGTARP	Special Inspector General for the Troubled Asset Relief Program
TARP	Troubled Asset Relief Program

# Appendix G – Audit Team Members

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This report was prepared and the review was conducted under the direction of Barry W. Holman, Audit Director, Office of the Special Inspector General for the Troubled Asset Relief Program.

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

Anne G. Blank

Michael Kennedy

Philip Mastandrea

# Appendix H – Management Comments – OFS



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

August 3, 2009

Neil M. Barofsky  
Special Inspector General  
Office of the Special Inspector General for the Troubled Asset Relief Program  
United States Department of the Treasury  
1500 Pennsylvania Ave., N.W.  
Washington, D.C. 20220

Re: SIGTARP Audit Report on External Influences (SIGTARP-09-002)

Dear Mr. Barofsky:

Thank you for giving us the opportunity to review and comment on the official draft audit report, "Opportunities To Strengthen Controls To Avoid Undue External Influence over Capital Purchase Program Decision-Making," to be issued by the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP). We welcome your comments and suggestions as Treasury moves forward in executing transactions under the Troubled Asset Relief Program (TARP) to restore liquidity and stability to the financial system.

Treasury has evaluated the description of SIGTARP's audit on the Capital Purchase Program (CPP) decision-making process, including the conclusions reached by SIGTARP, and concurs with SIGTARP's two recommendations described in SIGTARP's audit report. With regard to SIGTARP's first recommendation, Treasury issued new policies in January 2009 to bolster transparency and limit lobbyist influences in the decision-making process for transactions under the Emergency Economic Stabilization Act (EESA). Treasury is in the process of finalizing guidelines to implement those policies and expects to issue them in the near future. Treasury will also adopt SIGTARP's second recommendation and record votes to recommend approval or disapproval of proposed TARP transactions in the minutes of Treasury's Investment Committee meetings.

We appreciate the open and collaborative relationship, and look forward to continuing to work with you and your team as we move forward.

Sincerely,

Herbert M. Allison, Jr.  
Assistant Secretary for Financial Stability

# Appendix I – Management Comments – FDIC

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**Federal Deposit Insurance Corporation**  
550 17th Street NW, Washington, D.C. 20429-9990

Division of Supervision and Consumer Protection

August 3, 2009

Neil M. Barofsky, Special Inspector General  
1500 Pennsylvania Avenue NW  
Suite 104  
Washington, D.C. 20220

Dear Mr. Barofsky:

We have reviewed the draft report entitled, *Opportunities To Strengthen Controls To Avoid Undue External Influence Over Capital Purchase Program Decision-Making*, dated July 17, 2009. We appreciate that you found the TARP program to be a “clear process enhanced by multiple reviews and control mechanisms.”

Your report recommends we improve our process for documenting external oral communications concerning TARP applications. We have existing procedures and practices regarding communications, of which TARP activity has been and will continue to be an extremely small part. Moreover, it is our understanding that the FDIC’s process for handling external communications was favorably regarded by SIGTARP. We will consider whether additional enhancements to our procedures are warranted to address the TARP applications that still require processing by our agency.

In conclusion, we would like to acknowledge the professionalism of the SIGTARP team and appreciate the opportunity to comment on your report.

Sincerely,

Sandra L. Thompson,  
Director

# Appendix J – Management Comments – OCC



## MEMORANDUM

Comptroller of the Currency  
Administrator of National Banks

Washington, DC 20219

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

From: John C. Dugan, Comptroller of the Currency

A handwritten signature in blue ink, appearing to read "John C. Dugan".

Date: August 3, 2009

Subject: Comments on Draft Audit Report

We have received and reviewed your draft report titled "Opportunities To Strengthen Controls To Avoid Undue External Influence over Capital Purchase Program Decision-Making." Your overall objective was to discuss the controls in place to guard against external influences over investment decisions related to the Capital Purchase Program (CPP).

You found that available information gave little indication that external inquiries on CPP applications had affected the decision-making process. However, you found two controls that could be improved to increase transparency and help mitigate the risk of any undue influence. One of your resulting recommendations is directed to the agencies involved in the capital purchase program, one of which is the Office of the Comptroller of the Currency (OCC).

You recommend that we improve existing control systems to document the occurrence and nature of external phone calls and in-person meetings about actual and potential recipients of funding under the CPP and other similar TARP assistance programs to which OCC may be part of the decision-making.

Although we do have a system to document phone calls and meetings, by the end of August, we will formally review and adjust, as needed, our methods for documenting phone calls and meetings to be sure that we are capturing the date of the communication, the external party inquiring, the official receiving the call or attending the meeting, the actual or potential TARP recipient that is the subject of the call or meeting, and the purpose and content of the discussion.

We do not disagree with your findings and recommendations; but, as discussed with your staff previously, we are concerned about the inclusion in the report of the list of names of institutions that were subject to external inquiry. This listing, coupled with the level of detail concerning the capital purchase program statistics and processes in your report, may lead readers to reach conclusions about those institutions based on confidential supervisory information. This includes inferences that a reader may draw about an institution's confidential CAMELS rating (whether favorable or not), or about a supervisor's potential concerns about the institution's viability. In addition, revealing the names of institutions that applied but did not receive CPP

funding could also cause competitive harm in that depositors would be inclined to withdraw their deposits and potential clients would choose not to engage in a banking relationship with those institutions. Therefore, we request that you remove the list of names of institutions from your report.

Thank you for the opportunity to review and comment on the draft report. If you need additional information, please contact Timothy Long, Senior Deputy Comptroller and Chief National Bank Examiner, at 202-874-2870.

# Appendix K – Management Comments – FRB



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

SCOTT G. ALVAREZ  
GENERAL COUNSEL

July 31, 2009

Neil M. Barofsky  
Special Inspector General  
for the Troubled Asset Relief Program  
1801 L Street, N.W., 6<sup>th</sup> Floor  
Washington, D.C. 20220

Dear Mr. Barofsky:

Thank you for the opportunity to comment on your draft audit report, dated July 17, 2009, regarding controls in place to guard against external influences over investment decisions related to TARP's Capital Purchase Program (CPP).

Our primary concern with the draft report is that it includes the names of financial institutions that applied for CPP funding. Because Treasury publicly releases the names of institutions that receive CPP funding, readers of the report can easily infer the names of non-funded institutions by comparing the names of funded institutions on Treasury's public website with the names of institutions listed in your public report. As you know, CPP funding is available only to "healthy" or "viable" financial institutions.<sup>1</sup> Thus, market participants are likely to infer from the fact that an institution did not receive CPP funding that it is not healthy or viable. This negative inference or "stigma" is likely to cause substantial competitive harm to non-funded institutions. Among these likely harms are a loss of public confidence in non-funded institutions, a sudden out flow of deposits (a "run"), a loss of confidence by market analysts, a drop in the institution's stock price, a withdrawal of market sources of funding, the acceleration of existing loans to the institution or refusal to provide new loans, or, in extreme cases, closure of the institution.

Disclosing this confidential information also will jeopardize the government's ability to carry out the CPP program.<sup>2</sup> Financial institutions, fearing likely competitive harm, are unlikely

<sup>1</sup> When then-Treasury Secretary Paulson outlined the parameters of CPP, he stated the program was "designed to attract broad participation by healthy institutions ...." See October 20, 2008 Statement by Secretary Henry M. Paulson on Capital Purchase Program ("Oct. 20 Paulson Stmt"), [www.financialstability.gov/latest/hp1223.html](http://www.financialstability.gov/latest/hp1223.html). Similarly, Treasury's public website states that CPP "provide[s] capital to viable financial institutions of all sizes throughout the nation." See [www.financialstability.gov/roadtostability/capitalpurchaseprogram.html](http://www.financialstability.gov/roadtostability/capitalpurchaseprogram.html).

<sup>2</sup> See Oct. 20 Paulson Stmt.

to seek CPP funding if they know their names will be disclosed even in the event they do not receive funding. The reluctance of financial institutions to participate in CPP will impair Treasury's ability to use that program, or similar programs to maintain market confidence in financial institutions, in the future. Because this type of information can be protected from disclosure under the Freedom of Information Act (FOIA), as explained in more detail below, we strongly urge you to remove the names of non-funded institutions from your report.

FOIA exemption 4 protects trade secrets or commercial or financial information obtained from a person that is privileged or confidential.<sup>3</sup> A recent court ruling supports the Board's position that the names of non-funded institutions can be withheld under Exemption 4.<sup>4</sup> In Fox News the court held that the names of borrowers at the Discount Window and Reserve Bank emergency lending facilities could be withheld under exemption 4. The court found that the Board's concern that revealing the names of these borrowers could result in rumors about the institutions that could ultimately lead to runs on the institutions was a valid concern and was sufficient to support withholding the names of the institutions under exemption 4.<sup>5</sup> The reasons for withholding the names of borrowers at the Discount Window and emergency lending facilities are the same for withholding the names of institutions that were not funded through the CPP program. Thus, there is clear legal support for withholding under Exemption 4 the names of CPP applicants who were not funded.

Although this exemption 4 argument is sufficient standing alone to withhold the names of non-funded institutions, exemption 8 would also support withholding such names. Exemption 8 protects matters "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."<sup>6</sup> Because the Board's recommendation, and Treasury's decision, to approve or deny CPP funding is based on information contained in, or derived from, confidential examination and operating or condition reports, revealing the names of non-funded institutions would serve to reveal the underlying bank exam information on which the denial is based. Thus, exemption 8 would also support a decision to withhold the names of the non-funded institutions.

<sup>3</sup> 5 U.S.C. § 552(b)(4). Here, the names of CPP applicants (particularly non-funded institutions) are "commercial and financial," and were obtained from "a person," namely, the non-funded institutions. American Airlines, Inc. v. National Mediation Board, 588 F.2d 863, 870 (2d Cir. 1978) (broadly defining commercial or financial to mean "pertaining or relating to or dealing with commerce.")

<sup>4</sup> Fox News Network LLC v. Board of Governors, No. 00cv272 (AKH) (S.D.N.Y., July 30, 2009). A copy of this decision is provided for your convenience.

<sup>5</sup> Id. at 25.

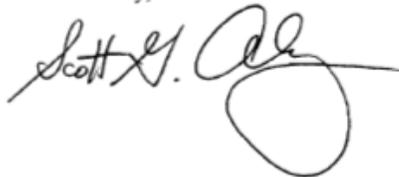
<sup>6</sup> 5 U.S.C. § 552(b)(8); see Gregory v. FDIC, 631 F.2d 896, 898 (D.C. Cir. 1980) ("[i]t is clear from the legislative history that [Exemption 8] was drawn to protect not simply each individual bank but the integrity of financial institutions as an industry"); Consumers Union, Inc. v. Heimann, 589 F.2d 531, 534 (D.C. Cir. 1978) ("the primary reason for adoption of exemption 8 was to ensure the security of financial institutions ... [and out of concern that disclosure] might undermine public confidence and cause unwarranted runs on banks").

Recently SIGTARP staff expressed the concern to Board staff that the names of non-funded institutions must be made public because certain of the non-funded institutions had contacted Congress about their CPP applications. We could find no case law to support the view that contacting Congress serves to waive otherwise applicable FOIA exemptions. In fact, to the contrary, in the context of court decisions involving individuals, exemption 6 protects from disclosure the names and addresses of individuals who petition Congress or the government for redress of grievances.<sup>7</sup> To the extent SIGTARP can show that Congress or the institution itself has already made public its request for funding, this would support releasing the names of only those specific institutions. It would not support a broad based release of names of all non-funded institutions. If SIGTARP staff believes certain non-funded institutions have made their request for CPP funding public, we ask that you provide the Board with the names of those institutions so that Board staff may verify the public nature of the disclosure before the name of the institution is released. This is particularly important in light of the fact that many of the non-funded institutions listed in the SIGTARP report have names that are very similar to those of financially viable institutions. Releasing the names as currently listed in the report would create confusion in the market and could negatively affect financially viable institutions that may become confused with unfunded institutions.

Finally, the Inspector General Act of 1978 as amended ("IG Act") has long recognized the appropriateness, in the context of audits and investigations of Treasury Department and Federal Reserve Board programs, of maintaining the confidentiality of "deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior."<sup>8</sup> Not only does FOIA permit maintaining the confidentiality of such information, in addition, it is entirely consistent with the IG Act for the Special Inspector General to give serious weight to concerns raised by Treasury and Federal Reserve staff about the market sensitivity of this information.

For the reasons outlined above we strongly urge you to not disclose in your audit report the names of financial institutions that did not receive CPP funding.

Sincerely,



Enclosure

<sup>7</sup> *Kidd v. Dep't of Justice*, 362 F. Supp. 291, 297 (D.D.C. 2005) ("when communicating with their Senators or Congressperson, these individuals did not expect that their names or home addresses would be subject to public scrutiny") (quoting DOJ argument); *Voinche v. FBI*, 940 F. Supp. 323, 329-30 (D.D.C. 1996) ("[t]here is no reason to believe that the public will obtain a better understanding of the workings of various agencies by learning the identities of ... private citizens who wrote to government officials ...").

<sup>8</sup> See 5 U.S.C. App. 3, section 8D(a)(1)(D) and 8G(g)(3).

# SIGTARP Hotline

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

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

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

By *Fax*: (202) 622-4559

By *Mail*: **Hotline: Office of the Special Inspector General  
for the Troubled Asset Relief Program**  
1801 L Street NW  
Washington, D.C. 20220

## Press Inquiries

For media inquiries, please contact our Press Office:

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

## Legislative Affairs

For Hill inquiries, please contact our Legislative Affairs Office:

Lori Hayman  
Legislative Affairs Director  
[Lori.Hayman@do.treas.gov](mailto:Lori.Hayman@do.treas.gov)  
202-927-8941

## Obtaining Copies of Testimony and Reports

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

