



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

January 25, 2013

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

Re: Treasury Response to SIGTARP Draft Audit Report

Dear Ms. Romero:

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

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

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

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

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

---

<sup>1</sup> The original seven exceptional assistance recipients were Ally Financial (formerly GMAC), AIG, Bank of America, Chrysler, Chrysler Financial, Citigroup, and GM. Ally Financial, AIG, and GM were still subject to OSM's determinations in 2012.

<sup>2</sup> We note that SIGTARP did not provide a copy of the report's Executive Summary.

- OSM cut average cash pay for the Top 25 executives at the seven companies that originally received exceptional assistance by more than 90 percent.
- OSM cut average total pay for the Top 25 executives by more than 50 percent. The three current CEOs also have not had any pay increase during their respective tenures.
- Each year, OSM's determinations have limited the proportion of current cash pay for Top 25 executives (generally not more than 20 percent cash). OSM has required that the majority of Top 25 executive compensation (generally more than 80 percent) be in the form of stock-based pay – the ultimate value of which will depend on the company's performance over the subsequent three-year period. OSM also has strictly limited perquisites for these executives.
- Company proposals have included decreases for individual executives from one year to the next, and companies do not always award the full target amount of incentive compensation approved by OSM. For example, Ally Financial awarded only approximately 75 percent of the total target incentive compensation approved for the Top 25 executives in 2011.
- As of today, five of the seven exceptional assistance recipients – AIG, Bank of America, Citigroup, Chrysler, and Chrysler Financial – have exited TARP entirely.
- AIG, one of the three companies covered in the Draft, is the most recent exceptional assistance recipient to repay its investments. Not only did it exit TARP, but it also repaid the Federal Reserve Bank of New York. Treasury and the Federal Reserve realized an additional positive return of \$22.7 billion.
- Taken together, the original seven companies under OSM's jurisdiction have returned the \$352 billion in total assistance provided, plus an additional positive return to date of more than \$6 billion.<sup>3</sup> We anticipate significant additional repayments, which would increase that overall positive return.<sup>4</sup>

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

---

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

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

website at [www.financialstability.gov](http://www.financialstability.gov) (click on “Executive Compensation”).

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

## **II. The Draft Report Contains Many Inaccuracies.**

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

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

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

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

---

<sup>5</sup> In this audit, SIGTARP deviated from the process it has followed for the past four years. SIGTARP (and other oversight bodies) traditionally provides Treasury two opportunities to provide technical comments, first in a fact sheet and then in a draft report. Then Treasury receives an official draft for formal comment, as here. SIGTARP’s senior leadership confirmed we would see at least one draft for technical comment in this audit; that it would never be the case that Treasury would see only a draft for formal comment. Instead, SIGTARP provided only this Draft.

<sup>6</sup> 31 C.F.R. § 30.16(b)(1).

<sup>7</sup> 31 C.F.R. § 30.16(b)(1).

<sup>8</sup> The full text is available at [www.financialstability.gov](http://www.financialstability.gov), click on “Executive Compensation.”

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

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

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

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

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

### **IV. The Draft Mischaracterizes Information OSM Provided SIGTARP.**

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

---

<sup>9</sup> 31 C.F.R. § 30.16(b)(1)(i).

<sup>10</sup> 31 C.F.R. § 30.16(b)(1)(ii).

<sup>11</sup> 31 C.F.R. § 30.16(b)(1)(iii).

<sup>12</sup> 31 C.F.R. § 30.16(b)(1)(iv).

<sup>13</sup> 31 C.F.R. § 30.16(b)(1)(v).

<sup>14</sup> 31 C.F.R. § 30.16(b)(1)(vi).

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

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

## **V. SIGTARP’s Recommendations.**

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

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

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

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

**VI. Conclusion.**

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

Sincerely,

A handwritten signature in cursive script that reads "Patricia Geoghegan".

Patricia Geoghegan  
Acting Special Master  
for TARP Executive Compensation