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TROUBLED ASSET RELIEF PROGRAM: Status of Efforts to Address Transparency and Accountability Issues

United States Government Accountability Office

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GAO

Report to Congressional Committees

January 2009

TROUBLED ASSET RELIEF PROGRAM

Status of Efforts to Address Transparency and Accountability Issues

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GAO-09-296

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Highlights

Highlights of GAO-09-296, a report to congressional committees

January 2009

TROUBLED ASSET RELIEF PROGRAM

Status of Efforts to Address Transparency and Accountability Issues

Why GAO Did This Study

This is the second GAO report on the Troubled Asset Relief Program (TARP). It follows up on the nine recommendations from the December 2, 2008, report (GAO-09-161). It also reviews (1) the nature and purpose of activities that had been initiated under TARP as of January 23, 2009; (2) Treasury's Office of Financial Stability (OFS) hiring and transition efforts, use of contractors, and progress in developing a system of internal control; and (3) preliminary indicators of TARP's performance. To do this work, GAO reviewed signed agreements and other relevant documentation and met with officials from OFS, contractors, federal agencies, and some participating institutions.

What GAO Recommends

Treasury has taken important steps to implement all nine previous recommendations, but has yet to fully address eight. This report includes recommendations that Treasury further expand its efforts to monitor how CPP recipients are using program funds and more clearly articulate and communicate a strategic vision for the program. Addressing these and other recommendations would help ensure greater accountability and transparency and better enable Treasury to effectively manage TARP. Treasury generally agreed with the contents of the report and noted that while progress has been made in overseeing the program, it agreed that more work needs to be done.

To view the full product, including the scope and methodology, click on GAO-09-296. For more information, contact Thomas McCool at (202) 512-2642 or mccoolt@gao.gov.

What GAO Found

As of January 23, 2009, Treasury had disbursed about $293.7 billion of the $700 billion in program funds (see table). Most of the funds (about $194.2 billion) went to purchase preferred shares of 317 financial institutions under the Capital Purchase Program (CPP)—Treasury's primary vehicle under TARP for stabilizing financial markets. GAO's previous report emphasized the lack of monitoring and reporting for CPP investments and recommended stronger measures for ensuring that participating institutions use the funds to meet the program's purpose and comply with CPP requirements on, for example, executive compensation and dividend payments. In response to our recommendation, Treasury developed plans to survey the largest twenty institutions monthly to monitor lending and other activities and analyze quarterly monitoring data (call reports) for all institutions. While the monthly survey is a step toward greater transparency and accountability for the largest institutions, we continue to believe that additional action is needed to better ensure that all participating institutions are accountable for their use of program funds.

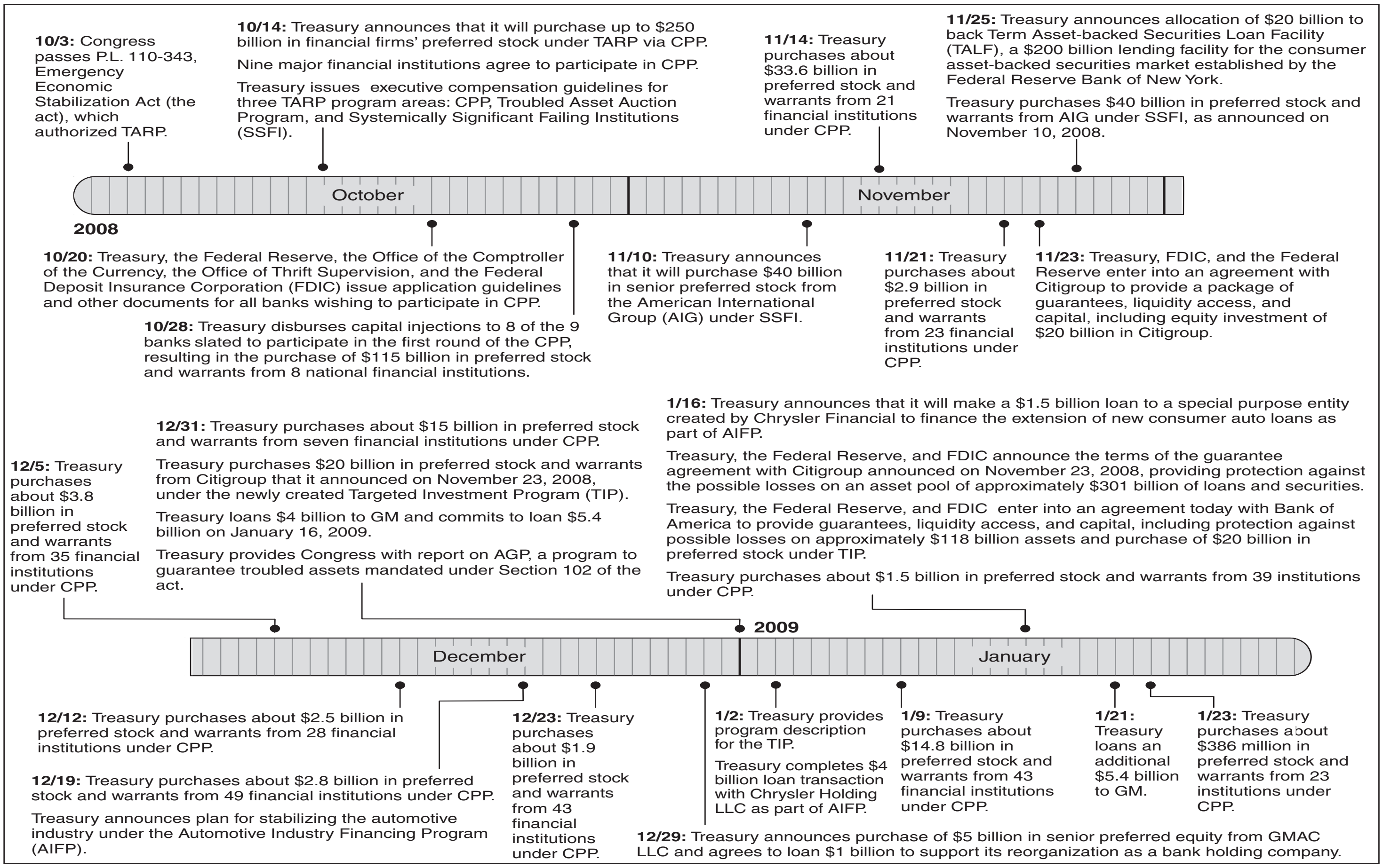
Status of TARP Funds as of January 23, 2009 (dollars in billions)

Program	Disbursed
Capital Purchase Program	$194.2
Systemically Significant Failing Institutions	40.0
Targeted Investment Program	40.0
Term Asset-backed Securities Loan Facility	0.0
Automotive Industry Financing Program	19.5
Citigroup Asset Guarantee	0.0
Bank of America Asset Guarantee	0.0
Totals	**$293.7**

Source: Treasury OFS, unaudited.

Treasury has continued to develop a system for detecting noncompliance with key requirements of the program but has not yet finalized its plans. Further, Treasury has made limited progress in formatting articulating and communicating an overall strategy for TARP, continuing to respond to institution- and industry-specific needs by, for example, making further capital purchases and offering loans to the automobile industry. In addition, it has not yet developed a strategic approach to explain how its various programs work together to fulfill TARP's purposes or how it will use the remaining TARP funds. While GAO does not question the need for swift responses in the current economic environment, the lack of a clearly articulated vision has complicated Treasury's ability to effectively communicate to Congress, the financial markets, and the public on the benefits of TARP and has limited its ability to identify personnel needs.

Timeline of Programs and Selected Actions under TARP, October 2008–January 2009



Source: GAO.

GAO's previous report also included recommendations about OFS's management infrastructure, including hiring, contract oversight, and internal controls. Treasury has taken steps to address our recommendations, but still faces several challenges. First, it took proactive steps to help ensure a smooth transition to the new administration by keeping positions filled and using an expedited hiring process, including direct hire authority. Moreover, after losing some potential candidates because of conflicts of interest, Treasury is asking candidates to address potential conflicts earlier in the recruitment process to avoid unnecessary delays in finalizing employment offers. However, it continues to face difficulty providing competitive salaries to attract skilled employees. Also, given the program's evolving nature and the likelihood of changes under the new administration, Treasury will need to identify OFS's long-term organizational needs. OFS continues to rely on detailees and contractors to carry out program functions. Second, consistent with our recommendation about contracting oversight, Treasury has enhanced such oversight by tracking costs, schedules, and performance and addressing the training requirements of personnel who oversee the contracts. As we previously recommended, Treasury needs to continue to identify and mitigate conflicts of interest in contracting. Similarly, OFS has adopted a framework for organizing the development and implementation of its system of internal control for TARP activities, which is consistent with our recommendation. OFS plans to use this framework to develop specific standards and policies, drive communications on expectations, and measure effectiveness of internal control policies and procedures. However, it has yet to implement a disciplined risk-assessment process.

Given the recency of program actions and time lags in the reporting of available data, GAO continues to believe that it is too early in the program's implementation to see measurable results in many areas. Even with more time and better data, it will remain difficult to separate the impact of TARP activities from the effect of other economic forces. Some indicators suggest that the cost of credit has declined in interbank, mortgage, and corporate debt markets since the December report. However, while perceptions of risk (as measured by premiums over Treasury securities) have declined in interbank markets, they changed very little in corporate bond and mortgage markets. Finally, as GAO also noted in December, these indicators may be suggestive of TARP's ongoing impact, but no single indicator or set of indicators can provide a definitive determination of the program's effects because of the range of actions that have been and are being taken to address the current crisis. GAO will continue to refine and monitor the indicators going forward.

Contents

Figures

Abbreviations

ABS	asset-backed security
AIG	American International Group, Inc.
AGP	Asset Guarantee Program
AIFP	Automotive Industry Financing Program
CBOE	Chicago Board Options Exchange
CDFI	Community Development Financial Institutions Fund
CICA	The Competition in Contracting Act
COP	Congressional Oversight Panel
COTR	Contracting Officer's Technical Representatives
CPP	Capital Purchase Program
FDIC	Federal Deposit Insurance Corporation
FAR	Federal Acquisition Regulation
FHFA	Federal Housing Finance Agency
FHA	Federal Housing Administration
FinSOB	Financial Stability Oversight Board
FRBNY	Federal Reserve Bank of New York
GAO	Government Accountability Office
GSA	General Services Administration
GSE	government-sponsored enterprise
GM	General Motors Corporation
HUD	Department of Housing and Urban Development

IDIQ	indefinite delivery indefinite quantity
LIBOR	London Interbank Offered Rate
MBS	mortgage-backed security
OCC	Office of the Comptroller of the Currency
OFS	Office of Financial Stability
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OTS	Office of Thrift Supervision
PEO	principal executive officer
QFI	qualified financial institution
SEO	senior executive officer
SES	Senior Executive Service
SSFI	Systemically Significant Failing Institutions
TARP	Troubled Asset Relief Program
TALF	Term Asset-backed Securities Loan Facility
TIP	Targeted Investment Program

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Congressional Committees:

On October 3, 2008, the Emergency Economic Stabilization Act of 2008 (the act) was signed into law. The act established the Office of Financial Stability (OFS) within the Department of the Treasury (Treasury) and authorized the Troubled Asset Relief Program (TARP).[1] Among other things, the act provides Treasury with broad, flexible authorities to buy or guarantee up to $700 billion in "troubled assets," which include mortgages and mortgage-related instruments, and any other financial instrument whose purchase Treasury determines is needed to stabilize the financial markets.[2]

The act also created a number of mechanisms to oversee the implementation and operations of TARP. The U.S. Comptroller General is required to report at least every 60 days on findings resulting from oversight of TARP's performance in meeting the purposes of the act; the financial condition and internal controls of TARP, its representatives, and agents; the characteristics of both asset purchases and the disposition of assets acquired, including any related commitments that are entered into; TARP's efficiency in using the funds appropriated for the program's operation; TARP's compliance with applicable laws and regulations; efforts to prevent, identify, and minimize conflicts of interest of those involved in TARP's operations; and the efficacy of contracting procedures.[3]

Since December 2, 2008, when we issued our first 60-day report on TARP, OFS has continued to take actions intended to stabilize the U.S. financial markets, such as purchasing equity in financial institutions and providing loans to the automobile industry.[4] This report, the second in response to this mandate, follows up on the nine recommendations we made in our December 2008 report and addresses (1) the nature and purpose of activities that have

[1]Pub. L. No. 110-343, 122 Stat. 3765 (2008), codified at 12 U.S.C. §§ 5201 et seq.

[2]Section 102 of the act, 12 U.S.C. § 5212, authorizes Treasury to guarantee troubled assets originated or issued prior to March 14, 2008, including mortgage-backed securities.

[3]Section 116 of the act, 12 U.S.C. § 5226.

[4]GAO, *Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency*, GAO-09-161 (Washington, D.C.: Dec. 2, 2008).

been initiated under TARP as of January 23, 2009; (2) the status of the transition to the new administration at OFS and its hiring efforts, use of contractors, and system of internal controls; and (3) preliminary indicators of TARP's performance.

Scope and Methodology

To determine the nature and purpose of TARP activities from December 2, 2008, through January 23, 2009, we reviewed documents from OFS that described the amounts, types, and terms of Treasury's purchases of preferred stocks and warrants under the Capital Purchase Program (CPP), the Systemically Significant Failing Institutions Program (SSFI), the Automotive Industry Financing Program (AIFP), and the Targeted Investment Program (TIP).[5] We reviewed documentation and interviewed officials from OFS responsible for selecting financial institutions to participate in CPP. We also contacted officials from the four federal banking regulators—the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (the Federal Reserve), and the Office of Thrift Supervision (OTS)—to identify any changes in their procedures for reviewing CPP applications and determine their plans for assessing participating institutions' compliance with TARP requirements. For the first eight institutions that received CPP funds, we followed up with senior officials to identify any changes in how they planned to use the capital injections and whether they intended to report separately on their activities associated with the capital investments. The institutions included in this review were the Bank of America Corporation (Bank of America), Bank of New York Mellon Corporation (Bank of New York Mellon), Citigroup, Inc. (Citigroup), The Goldman Sachs Group, Inc., JPMorgan Chase & Company, Morgan Stanley, State Street Corporation, and Wells Fargo & Company. We discussed with OFS and regulatory officials their plans for ensuring compliance with the requirements of the agreements between Treasury and CPP participants, including those limiting executive compensation and restricting CPP participants from increasing dividend payments or repurchasing common stock. We reviewed Treasury's proposed interim final rule and notices implementing the act's executive compensation rules. We coordinated with the Special Inspector General for TARP to discuss his planned work in this area and participated in Interagency Taskforce meetings and met with FDIC's

[5] A warrant is an option to buy shares of common stock or preferred stock at a predetermined price on or before a specified date.

Inspector General about relevant work.[6] For SSFI and TIP, we reviewed program terms and closing documentation and contacted officials from OFS.

To describe the status of Treasury's efforts to identify and implement a homeownership prevention strategy, we reviewed relevant sections of the act, reviewed reports by the Congressional Oversight Panel for Economic Stabilization and Treasury's response to the panel's first report, and gathered testimonial and documentary information from OFS's Office of Homeownership Preservation.[7] We reviewed proposals and inquiries submitted to Treasury related to the development of a homeownership preservation strategy. We also obtained documents from and held meetings with representatives of the following organizations: the Federal Housing Administration (FHA), Federal Housing Finance Agency (FHFA), Fannie Mae, Freddie Mac, FDIC, OCC, OTS, American Securitization Forum, Bank of America, JPMorgan Chase, Citigroup, Wells Fargo, HOPE NOW Alliance, NeighborWorks, Moody's Investors Service, Standard & Poor's, and Conference of State Bank Supervisors.[8] To determine OFS's progress in establishing a program to guarantee troubled assets—a program that Treasury was required to establish under section 102 of the act and has chosen to implement through OFS in conjunction with TARP—we reviewed OFS's request for public comments on potential program design and analyzed comments Treasury received from various industry stakeholders. In addition, we reviewed and summarized Treasury's mandated report on establishing a program to guarantee troubled assets and discussed the program's potential use with OFS officials. Finally, we reviewed documentation relevant to OFS's AIFP and interviewed appropriate OFS officials.

[6]As discussed below, section 121 of the act, 12 U.S.C. § 5231, established the Office of the Special Inspector General for TARP. The Special Inspector General has established an Interagency Taskforce consisting of representatives from the Offices of Inspector General at FDIC, the Federal Reserve, OCC, OTS, and Treasury, and a representative from GAO.

[7]As discussed later, section 125 of the act, 12 U.S.C. § 5233, established the Congressional Oversight Panel.

[8]HOPE NOW is an alliance between Department of Housing and Urban Development (HUD)-certified counseling agents, servicers, investors, and other mortgage market participants. It provides free assistance to prevent foreclosures. NeighborWorks is a national nonprofit organization created by Congress to provide financial support, technical assistance, and training for community-based revitalization efforts.

To determine the status of OFS's hiring and transition efforts, we reviewed interagency agreements on detailees, OFS's updated organizational chart, and a sample of position descriptions used by Treasury to recruit permanent new hires to OFS. We used our prior work on human capital flexibilities, organizational transformation, and strategic workforce planning to assess OFS's performance. In addition, we met with a variety of Treasury and OFS officials to discuss their approach to staffing the office in the short term, as well as any strategies used to recruit individuals with the set of skills and competencies needed to administer TARP. We also discussed any recent actions taken to help ensure a smooth transition to the new administration.

To assess Treasury's approaches to acquiring services in support of TARP, we reviewed the contracts Treasury awarded since our last report and all new task orders awarded under all contracts and other agreements, as well as related amendments and modifications. In addition, we reviewed Treasury's solicitations and other agency documents related to those actions. We reviewed the steps Treasury has taken to enhance oversight of contractors and move toward a greater reliance on fixed-price arrangements. We also reviewed steps Treasury has taken to promote the use of small business concerns—including those owned and controlled by women, minorities, veterans, and socially and economically disadvantaged individuals—in carrying out TARP. In addition, we examined documentation outlining actual and potential conflicts of interest identified by the contractors, as well as their proposed plans for mitigation of conflicts. We also reviewed Treasury's guidelines and interim regulation on conflicts of interest related to the authorities granted under the act and the steps Treasury has taken to enhance management and monitoring of conflicts of interest.

To assess the status of internal controls related to TARP activities, we conducted interviews with and made inquiries to officials from OFS, including the Chief Financial Officer, Deputy Chief Financial Officer, Deputy Cash Management Officer, and their representatives. We also reviewed documents provided by Treasury and those publicly available on Treasury's Web site. Finally, we conducted interviews with and reviewed documents provided by contractors, including PricewaterhouseCoopers and Ernst & Young. For this report, our work was limited to the review of OFS's documentation related to internal controls. In future, we plan to evaluate the design of the controls and their operating effectiveness.

To identify a preliminary set of indicators on the state of credit and financial markets that might be suggestive of the performance and effectiveness of TARP, we consulted Treasury officials and other experts and analyzed available data sources and the academic literature. We selected a set of preliminary indicators that offered perspectives on different facets of credit and financial markets, including perceptions of risk, cost of credit, and flows of credit to businesses and consumers.[9] We assessed the reliability of the data upon which the indicators are based and found that, despite certain limitations, they were sufficiently reliable for our purposes. The data used to construct the indicators in this report came largely from the Federal Reserve. As these data are widely used, including by GAO and the Federal Reserve, and are considered to be a reliable and often definitive source for banking sector data, we conducted only a limited review of the data but ensured that the trends we found were consistent with other research. We also relied on data from the Chicago Board Options Exchange (CBOE), Inside Mortgage Finance, and Global Insight. We have relied on CBOE and Global Insight data for past reports, and we determined that considered together, these auxiliary data were sufficiently reliable for the purpose of presenting and analyzing trends in financial markets.

We conducted this performance audit in December 2008 and January 2009 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 believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

This section provides general information about the structure and roles of the entities that oversee TARP. In addition, figure 1 provides a timeline of the evolution of the various programs created under TARP, which are discussed in detail in the first section of this report.

Congressional Oversight Panel

Section 125 of the act established the Congressional Oversight Panel (COP) as a legislative branch entity to help provide broad oversight of the financial markets and financial regulatory system and to provide various

[9] No indicator on its own provides a definitive perspective on the state of markets; collectively, the indicators should provide a broad sense of stability and liquidity in the financial system and could be suggestive of the program's impact. However, it is difficult to draw conclusions about causality.

reports to Congress on these matters.[10] More specifically, the act requires that COP submit regular reports to Congress on TARP every 30 days.

In its first regular report submitted on December 10, 2008, COP posed a series of questions to Treasury on the events that had taken place since the adoption of the act. Topics covered in these questions included the reason for Treasury's shift in strategy from purchasing mortgage-backed securities to providing capital injections to banks; the extent to which Treasury's strategies helped stabilize the markets and reduce home foreclosures; the funds spent to date and whether they were used as intended; the criteria used to determine CPP participation; and any reforms imposed by Treasury on financial institutions receiving TARP funds. On December 30, 2008, Treasury responded to COP's first report, but COP said that Treasury did not provide complete answers to several of its questions and failed to address others.

Consequently, in its second report of January 9, 2009, the panel asked Treasury to supplement its earlier responses, highlighting four areas that required additional detail. First, the panel asked Treasury to provide more information on CPP participants' use of TARP funds. The panel said that Treasury needs to make the banks receiving TARP funds accountable in order to restore investor and taxpayer confidence in the markets. COP encouraged Treasury to use its authority to make funding conditional upon banks reporting their use of funds and use of reporting to create performance benchmarks. COP said that Treasury should either establish formal procedures for voluntary reporting or create guidelines for participating institutions' use of funds. Second, the panel addressed the transparency of information that would indicate the health of banks receiving TARP funds. Third, it asked about Treasury's plans to address foreclosure mitigation. Fourth, the panel addressed the viability of Treasury's strategy to stabilize the financial markets and the broader economy.

[10]The Congressional Oversight Panel consists of five members, with the Speaker of the House, the House Republican Leader, the Senate Majority Leader, and the Senate Republican Leader each selecting one member. The Speaker of the House and the Senate Majority Leader select the fifth member jointly. The current members are Richard H. Neiman, Superintendent of Banks in New York (appointed by the Speaker of the House); Representative Jeb Hensarling (appointed by the House Republican Leader); Elizabeth Warren (Chair), Harvard Law School (appointed by the Senate Majority Leader); former Senator John Sununu (appointed by the Senate Republican Leader); and Damon Silvers, AFL-CIO Associate General Counsel (jointly appointed by the Speaker of the House and the Senate Majority Leader). Others with oversight responsibilities include the Congressional Budget Office and the Office of Management and Budget.

COP recommended that Treasury (1) provide an analysis of the origin of the credit crisis; (2) establish a set of metrics for evaluating the success of the TARP strategy; and (3) explain the rationale for making TARP funds available to all healthy banks, regardless of their lending practices or systemic significance. Moreover, COP said that it did not believe that Treasury had made significant efforts to minimize foreclosures and that it would provide recommendations on how to address this issue in an upcoming report. COP plans to submit its next report on February 10, 2009.

Financial Stability Oversight Board

Section 104 of the act created the Financial Stability Oversight Board (FinSOB), which consists of the Chairman of the Federal Reserve (who has been elected board chairman), the Secretary of the Treasury, the Director of FHFA, the Chairman of the Securities and Exchange Commission (SEC), and the Secretary of HUD.[11] FinSOB's purpose is to review Treasury's exercise of authority under the act, including the appointment of financial agents, assets to be purchased, and the structure of vehicles used to purchase troubled assets. FinSOB is to make recommendations to Treasury about use of its authority and report any suspected fraud, waste, or abuse to the Special Inspector General for TARP or the Attorney General of the United States, as appropriate. In addition, FinSOB must report quarterly on its oversight of Treasury's exercise of authority.

FinSOB's first report covered Treasury's policies to implement TARP as of December 31, 2008. FinSOB stated that the actions Treasury took to implement TARP improved the ability of financial institutions to avoid severe funding market pressures that could have led to an escalation of stresses and disorderly failures. More generally, FinSOB reported that Treasury's actions taken under TARP and the authorities granted by the act helped promote confidence in the financial markets and in U.S. financial institutions, which it noted was a critical first step to the restoration of more normal financial market and economic activity.

However, FinSOB noted that significant challenges lay ahead for TARP, particularly in light of the continuing stresses in the financial sector and the weakened outlook for the U.S. economy. Given the disproportionate consequences that instability in the nation's financial institutions and markets may have for the broader economy, the board stated that it will be

[11] 12 U.S.C. § 5214.

important for Treasury to continue to take actions under TARP to stabilize financial markets, help strengthen financial institutions, improve the functioning of the credit markets, and address systemic risks. Moreover, as additional resources become available it will be important for TARP to pursue effective strategies for providing resources in support of reducing preventable foreclosures, due to the harm that foreclosures may have on the affected borrowers, communities, the housing market, and the financial system and broader economy. Finally, FinSOB stated that as the program evolves, it will be important for TARP to pursue strategies designed to allow it to exit from its financial interests in a timely manner consistent with the objectives of the act.

Special Inspector General for TARP

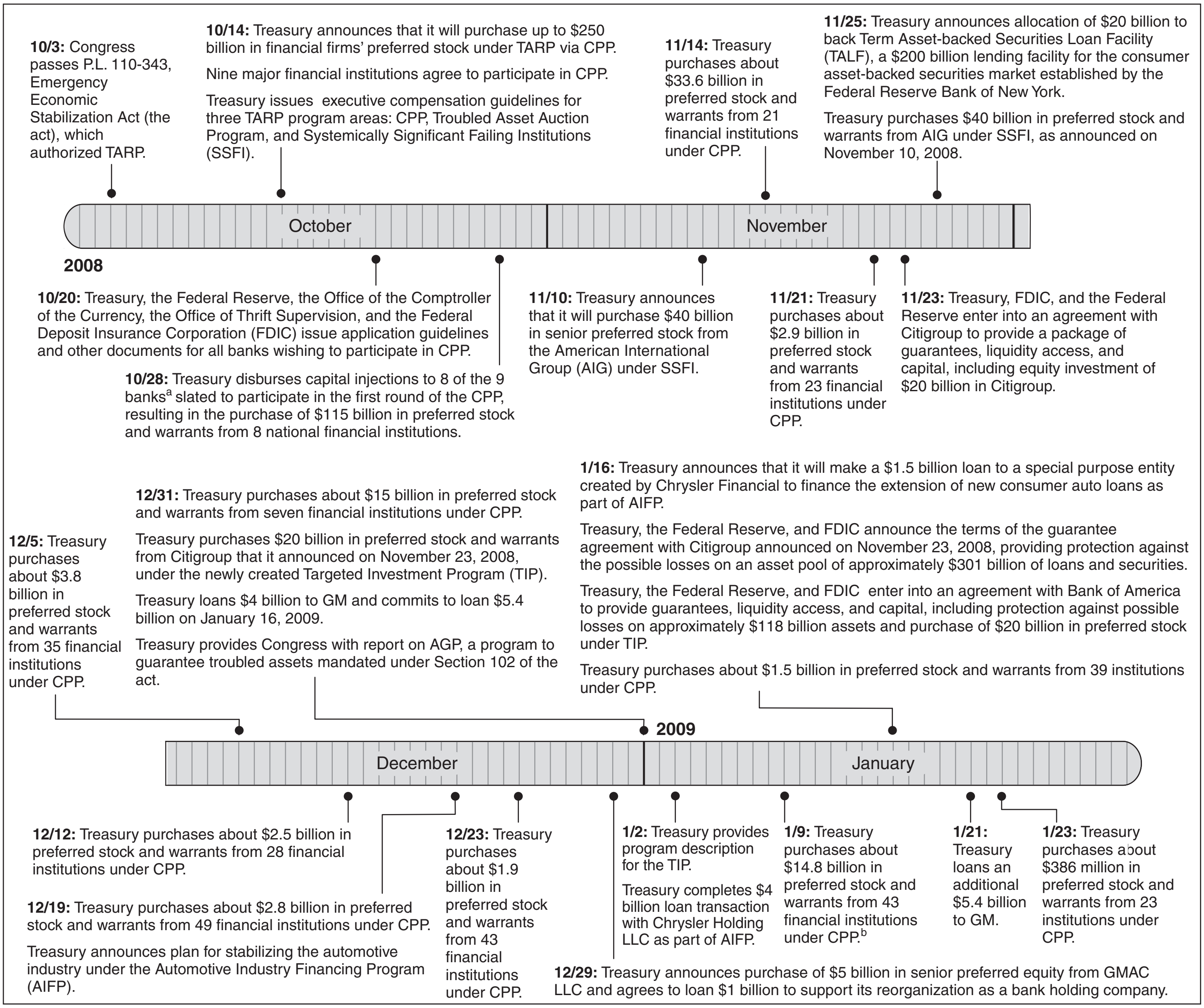
Section 121 of the act created the Office of the Special Inspector General for TARP. The Special Inspector General's responsibilities include conducting audits and investigations of the purchase, management, and sale of assets under TARP, as well as of the management of the asset guarantee program mandated under Section 102 of the act.

Additionally, the Special Inspector General must submit quarterly reports to Congress summarizing purchases, obligations, and revenues associated with the various TARP activities authorized under the act. The first report is due no later than 60 days after the confirmation of the Special Inspector General, which occurred on December 8, 2008. Therefore, the first report is due to Congress by February 6, 2009.

Summary of Program Activities under TARP

The figure below summarizes program activity under TARP for programs such as CPP, as well as newer programs such as AIFP. As noted earlier, we examine these activities in greater detail in the first section of this report.

Figure 1: Timeline of Program Activities for TARP, October 2008–January 2009



Source: GAO.

[a]The participation of the ninth institution was deferred to allow for completion of its merger with another institution.

[b]This includes funding of the institution who's funding was initially deferred pending completion of a merger. The merger was completed on January 1, 2009.

Treasury Continued to Focus on CPP, but a Variety of Other Programs Have Been Created or Are in Progress

As of January 23, 2009, Treasury had announced several programs under TARP with a projected total funding level of $387.4 billion. As shown in table 1, although the dollar amount of announced initiatives exceeded the $350 billion limit initially set by Congress, in fact Treasury has reported entering into agreements legally obligating it to purchase or guarantee troubled assets totaling only $300 billion.[12] In addition, Treasury reported making actual disbursements for completed purchases of about $293.7 billion. Officers and employees of Treasury may not obligate[13] or expend appropriated funds in excess of the amount apportioned by the Office of Management and Budget (OMB) on behalf of the President.[14] Of the funding levels announced for TARP, Treasury stated that OMB had apportioned about $339.9 billion as of January 23, 2009. Based on this information, it appears Treasury has not exceeded the troubled asset purchase limit or obligated funds in excess of those OMB has apportioned.[15] We are continuing to obtain additional information from Treasury as well as to review the controls that Treasury has in place to ensure that it complies with these restrictions. We will discuss these issues in subsequent reports.

[12]Section 115(a)(1) and (2) of the act, 12 U.S.C. §§ 5225(a)(1), (a)(2), set an initial limit of $350 billion on the amount of troubled asset purchases Treasury was authorized to make. That limit has increased to $700 billion under section 115(a)(3) of the act because the President has requested the remainder of the TARP funds from Congress and Congress has not enacted specific legislation within the specified time required by the act to disapprove the President's request.

[13]An obligation is a definite commitment that creates a legal liability of the government, such as an agreement to purchase troubled assets.

[14]31 U.S.C. §§ 1513, 1517. Under section 118 of the act, 12 U.S.C. § 5228, Treasury is authorized to issue Treasury securities and use the proceeds to pay for TARP program and administrative expenses, and the funds obligated or expended for such expenses are deemed to be appropriated. Apportionment is an action by which OMB distributes amounts available for obligation in an appropriation or fund account.

[15]The total of the asset purchase prices may not be the same as the amount of obligations.

Table 1: Status of TARP Funds as of January 23, 2009

(Dollars in billions)

Program	Announced Program Funding Level[a]	Apportioned	Asset Purchase Price	Disbursed
Capital Purchase Program	$250.0	$230.0	$194.2	$194.2
Systemically Significant Failing Institutions	40.0	40.0	40.0	40.0
Targeted Investment Program	40.0	40.0	40.0	40.0
Term Asset-backed Securities Loan Facility	20.0	0.0	0.0	0.0
Automotive Industry Financing Program	24.9	24.9	20.8	19.5
Citigroup Asset Guarantee	5.0	5.0	5.0	0.0
Bank of America Asset Guarantee	7.5	0.0	0.0	0.0
Total	**$387.4**	**$339.9**	**$300.0**	**$293.7**

Source: Treasury OFS, unaudited.

[a]Some of Treasury's announced transactions are not yet legal obligations.

As Treasury has continued to create programs in an effort to craft an effective response to challenging institution-specific developments, many observers believe that it has not effectively communicated its overall strategy or explained how the various programs work together to meet TARP's goals. For example, we noted in our December report that the shift in focus from buying troubled mortgage-related assets to making investments in financial institutions underscored the need for an effective communication strategy that would explain the reasoning behind this change. Similarly, the programs that have been created to address specific developments often have similar guidelines and terms that can make it difficult for Congress, the markets, and the public to understand the differences between programs and the rationale for each. Further, Treasury has not yet implemented a program for homeownership preservation, but according to Treasury officials, they have been in discussions with the transition team. These issues continue to highlight the importance of effective communication with participants, the Congress, and the general public.

CPP Continues to Be the Primary Vehicle under TARP for Attempting to Stabilize Financial Markets

Treasury has continued to rely on CPP as the primary vehicle under TARP for attempting to stabilize financial markets. As of January 23, 2009, Treasury had disbursed more than 75 percent of the $250 billion it had allocated for CPP to purchase more than $194 billion in preferred shares of 317 qualified financial institutions (see table 2).[16] These purchases ranged from about $1 million to $25 billion per institution. About $42.7 billion in preferred stock shares of 265 financial institutions has been purchased since our December report. Appendix II gives a detailed listing of banks that have received funds as of January 23, 2009.

Table 2: Capital Investments Made through the Capital Purchase Program, as of January 23, 2009

Closing date of transaction	Amount of CPP capital investment	Cumulative percent of allocated fund used for CPP capital investment	Number of qualified financial institutions receiving CPP capital
10/28/2008	$115,000,000,000	46.0%	8
11/14/2008	33,561,409,000	59.4	21
11/21/2008	2,909,754,000	60.6	23
12/5/2008	3,835,635,000	62.1	35
12/12/2008	2,450,054,000	63.1	28
12/19/2008	2,791,950,000	64.2	49
12/23/2008	1,911,751,000	65.0	43
12/31/2008	15,078,947,000	71.0	7
1/9/2009	14,771,598,000	76.9	43
1/16/2009	1,479,938,000	77.5	39
1/23/2009	385,965,000	77.7	23
Total	**$194,177,001,000**	**77.7%**	**317[a]**

Source: Treasury and GAO.

[a]The total number of financial institutions was reduced by two because SunTrust Banks, Inc. (SunTrust) and Bank of America both received two capital investments under CPP. SunTrust received a partial capital investment of $3.5 billion on November 14, 2008, and another of $1.35 billion on December 31, 2008. Bank of America received $15 billion on October 28, 2008, and, after merging with Merrill Lynch & Co., Inc. (Merrill Lynch), an additional $10 billion on January 9, 2008. As discussed later in this report, Treasury has made an additional purchase of $20 billion in preferred shares under TIP.

[16]For purposes of CPP, financial institutions generally include qualifying U.S.-controlled banks, savings associations, and bank holding companies and savings and loan holding companies.

Initially, Treasury approved $125 billion in capital purchases for nine of the largest public financial institutions that federal banking regulators and Treasury considered to be systemically significant to the operation of the financial system.[17] At the time, these nine institutions held about 55 percent of U.S. banking assets. Subsequent purchases were made in qualified institutions of various sizes (in terms of total assets) and types. Total assets of participating qualified institutions ranged from about $8 million to more than $2 trillion (see app. I). As of January 23, 2009, the types of institutions that received CPP capital included 226 publicly held institutions, 83 privately held institutions, and 8 community development financial institutions (CDFI).[18] These purchases represented investments in state-chartered and national banks and bank holding companies located in 43 states and Puerto Rico.

According to OFS and the bank regulators, thousands of applications are under review. As of January 16, 2009, Treasury was in the process of reviewing approval recommendations from bank regulators for less than 150 qualified financial institutions.[19] The bank regulators reported that they are reviewing applications from more than 2,000 institutions that have not yet been forwarded to Treasury. Qualified financial institutions generally have 30 calendar days after Treasury notifies them of preliminary approval for CPP funding to submit investment agreements and related documentation. According to OFS officials, there is a backlog of pending closings, largely because of the time required for institutions to obtain approval from their shareholders and boards of directors or finalize closing documents. OFS stated that more than 50 financial institutions that received preliminary approval have withdrawn their CPP applications. Moreover, according to OFS officials, some of the institutions said that

[17]While Treasury approved $125 billion to the nine largest institutions, as table 2 shows, it initially disbursed funds to eight of the nine institutions. The $10 billion to Merrill Lynch was not disbursed until January 9, 2009, after its merger with Bank of America was completed.

[18]A CDFI is a specialized financial institution that works in market niches that are underserved by traditional financial institutions. CDFIs provide a range of financial products and services such as mortgage financing for low-income and first-time homebuyers and not-for-profit developers; flexible underwriting and risk capital for needed community facilities; and technical assistance, commercial loans and investments to small start-up or expanding businesses in low-income areas.

[19]This figure excludes applications that were withdrawn by the financial institution, were referred to the bank regulators for further consideration, or were for institutions for which term sheets have not yet been issued.

their boards of directors had elected not to participate in the program for various reasons, including the cost of closing and concerns over what they viewed as onerous reporting and compliance requirements that may be imposed on participants. OFS officials also stated that some institutions want to show that they qualified for CPP funds but did not need the funds. As of January 23, 2009, Treasury had not denied an application. Institutions that are not likely to meet the requirements for funding under the CPP are encouraged not to apply by their appropriate bank regulator. In the coming months, OFS staff resources will be further strained as they continue to review and approve recommendations from the banking regulators for more than 2,000 applications that the regulators have not forwarded to OFS and, as discussed later in this report, new applications for CPP funds from other types of financial institutions, such as S corporations and mutual organizations (mutuals).[20]

Treasury Developed Additional Standard Terms to Reflect Different Ownership Structures of Financial Institutions

Early on, Treasury created standardized terms for the publicly held institutions that received CPP funds. Treasury has finalized or begun work on terms for other types of financial institutions, including privately held institutions, S corporations, and mutuals. On November 17, 2008, Treasury established standardized terms for making capital investments in privately held financial institutions, which were required to submit applications for CPP funds by December 8, 2008. The terms for privately held institutions are generally similar to those for publicly held institutions.[21] Like the terms for publicly held institutions, those for privately held institutions stipulate that

[20]An S corporation makes a valid election to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code and thus does not pay any income taxes. Instead, the corporation's income or losses are divided among and passed through to its shareholders. A mutual organization is a company that is owned by its customers rather than by a separate group of stockholders. Many thrifts and insurance companies (for example, Metropolitan and Prudential) are mutuals.

[21]For a detailed discussion of the CPP terms for publicly held institutions, see GAO-09-161, 21-22. The terms relating to dividends and rankings, as well as the limitations on executive compensation, are similar to those for publicly traded financial institutions. However, the limitations on common dividends and repurchases are generally extended until the tenth anniversary of the date of issuance. Private financial institutions are also prohibited from paying any common dividends or repurchasing any equity securities or trust-preferred securities after the tenth anniversary, unless the preferred stock has been redeemed or transferred to a third party.

- the preferred shares pay dividends at a rate of 5 percent annually for the first 5 years and 9 percent annually thereafter;
- such shares be nonvoting, except with respect to protecting investors' rights;
- financial institutions may redeem their shares at their face value after 3 years and earlier if the financial institution has received a minimum amount from "qualified equity offerings" of any Tier 1 perpetual preferred or common stock;[22] and
- Treasury generally may transfer the preferred shares to a third party at any time.

The terms of the warrants, however, differ for publicly and privately held institutions.[23] Treasury receives warrants to purchase common stock in publicly held financial institutions. But for privately held institutions, Treasury receives warrants to purchase a specified number of shares of preferred stock, called warrant preferred, that pay dividends at 9 percent

[22]Tier 1 capital is the core measure of a bank's financial strength from a regulator's point of view. It consists of the types of capital considered the most reliable and liquid, primarily common stock and preferred stock. A "qualified equity offering" is the sale and issuance of Tier 1 qualifying perpetual preferred stock, common stock, or a combination of such stock for cash. The preferred stock may be redeemed before 3 years has elapsed only if the institution's aggregate gross proceeds from "qualified equity offerings" are at least 25 percent of the stock's issue price.

[23]If Treasury purchases troubled assets under the act from a publicly traded financial institution, section 113(d) of the act, 12 U.S.C. § 5223(d), requires that it receive a warrant giving Treasury the right to receive nonvoting common stock or preferred stock, or voting stock for which Treasury agrees not to exercise voting power. In the case of any other financial institution, Treasury must receive a warrant for common or preferred stock or a senior debt instrument. The act requires that the warrant or senior debt instrument be designed to provide for the reasonable participation in equity appreciation (in the case of a warrant) or a reasonable interest rate (in the case of a debt instrument). The warrant is also to provide additional protection for taxpayers against losses from the sale of assets by Treasury and the administrative expenses of TARP. Section 113 of the act contains additional requirements that apply to conversion of warrants, required protections of the value of the securities, and requirements concerning the exercise price and the shares authorized by the financial institution to fulfill its obligations with respect the warrants. Treasury is required to establish *de minimis* exceptions to the requirements applicable to warrants and to establish appropriate alternative requirements for institutions that are legally prohibited from issuing securities or debt instruments.

annually.[24] The exercise price for the warrants is $0.01 per share unless the financial institution's charter requires otherwise. Unlike for publicly held institutions, Treasury exercised these warrants immediately for warrant preferred because there were no downside risks to exercising the warrants immediately and it can begin receiving dividends, according to OFS officials.

On January 14, 2009, Treasury established standardized terms for making capital investments in S corporations but was still crafting terms for mutuals. The deadline for S corporations to submit applications to Treasury for CPP funds is February 13, 2009. The terms for S corporations are generally similar to those for publicly held institutions, with the exception that debt (senior securities) is being issued instead of preferred stock.[25] Treasury structured the terms this way to preserve the tax status of these corporations, which would lose their tax status if they issued a second class of stock, such as preferred stock, to Treasury. In addition, the senior securities will count as Tier 1 capital when held at the holding company level and Tier 2 capital when held by a bank or savings association. Before Treasury invests in the senior securities issued by a holding company, it will be necessary for bank regulators to issue an interim final rule designating the senior securities as Tier 1 capital. The senior securities will pay interest at a rate of 7.7 percent annually for 5 years and 13.8 percent thereafter.[26] Holding companies may defer interest on the senior securities for up to 5 years, but any unpaid interest will accumulate and compound at the then-applicable interest rate in effect. In

[24]The warrant preferred shares have a 9 percent return compared to 5 percent on the preferred shares. Also, to promote participation of CDFIs in CPP, Treasury does not require those institutions to provide warrants if the size of the investment is $50 million or less. Treasury has established this exception under section 113(d)(3) of the act, 12 U.S.C. § 5223(d)(3).

[25]The term sheet for S corporations specifies that the senior securities are to be senior to the institution's common stock and that senior securities issued by a bank or savings association must be expressly subordinated to claims of depositors and to the institution's other debt obligations to its general and secured creditors, unless the debt obligations are explicitly made equal to or subordinated to the senior securities. Senior securities issued by a holding company must be subordinated to senior indebtedness in accordance with holding company regulation, unless the senior indebtedness is explicitly made equal to or subordinated to the senior securities.

[26]According to the term sheet, S corporations' senior securities have 7.7 percent and 13.8 percent interest rates. The higher rates will equate to after-tax effective rates (assuming a 35 percent tax rate) of 5 percent and 9 percent, respectively—the same rates applied to securities issued by other classes of institutions participating in CPP.

addition, these companies cannot pay dividends on shares of equity or trust preferred securities as long as any interest is deferred. Treasury is developing standardized terms for mutuals, but OFS officials noted that there are challenges associated with structuring terms for these types of organizations and they do not have an expected date for releasing final terms. While credit unions also are covered under the act, Treasury has not yet created a program that would enable them to participate in CPP.

Treasury Continues to Rely on Regulators' Recommendations for Approving CPP Applications

Qualified financial institutions seeking CPP capital continue to be directed to send their applications directly to their primary federal bank regulators, and Treasury continues to rely extensively on these regulators' recommendations in its decision to allow an institution to participate in CPP.[27] Because the program is intended to provide capital to those institutions that can demonstrate overall financial strength and long-term viability, OFS is relying on the banking regulators' examinations and experience with these institutions in making a final determination regarding their financial condition and participation.

As we noted in our December 2008 report, Treasury and the banking regulators developed a standardized process for evaluating the financial strength and viability of applicants. Banking regulators evaluate applications based on factors such as examination ratings and selected performance ratios. The regulators give presumptive approval to institutions with the higher examination ratings and recommend these institutions to OFS's Investment Committee, which makes recommendations to the Treasury Assistant Secretary for Financial Stability for final approval.[28] Institutions with lower examination ratings or other considerations requiring further review are referred to the CPP Council, which may consider other factors, such as confirmed private equity investment, that may offset the effect of lower examination ratings.[29] These institutions may also be recommended to the Investment Committee. Finally, those institutions with the lowest examination ratings

[27]The primary federal regulator is generally the regulator overseeing the lead bank of the institution. Where the institution is a bank holding company, the primary federal regulator also consults with the Federal Reserve. For a more thorough discussion of the approval process, see GAO-09-161, 22-24.

[28]The committee membership includes the OFS's Chief Investment Officer (committee chair) and the Treasury Assistant Secretaries for Financial Markets, Economic Policy, Financial Institutions, and Financial Stability.

[29]The CPP Council is made up of representatives from the four federal bank regulators, with Treasury officials as observers.

receive presumptive denials and may be encouraged to withdraw their applications.

In December 2008, we also reported that differences exist in the extent to which bank regulators provided internal guidance (in addition to Treasury's guidance) on processing CPP applications that might not be approved. For example, three bank regulators provided additional written guidance to staff on how to handle applications that were not likely to be recommended for approval, while one bank regulator did not provide any additional guidance. The bank regulators we contacted stated that no new additional guidance had been developed since our December report.

We are continuing to examine the process for accepting and approving CPP applications. Specifically, we are developing a methodology to sample CPP applications that have been funded from October 2008 through January 2009 to determine the extent to which the regulators and OFS are consistently applying established criteria for reviewing applications and adequately documenting the regulators' recommendations and OFS's final decisions. We will also continue to coordinate and leverage the work of other agencies and offices involved in the oversight of CPP, including the Congressional Oversight Panel, FDIC's Office of the Inspector General, Treasury's Office of the Inspector General, and the Office of the Special Inspector General for TARP, all of which have work underway in monitoring the implementation of CPP.

In addition, we will be examining FDIC's recent requirement that state nonmember banks implement a process to monitor their use of capital injections, liquidity support or financing guarantees obtained through financial stability programs established by Treasury, FDIC, and the Federal Reserve.[30] The monitoring process is intended to show how participation in these federal programs has assisted institutions in supporting prudent lending and efforts to work with existing borrowers to avoid unnecessary foreclosures. FDIC indicated that institutions should include a summary of this information in shareholder and public reports, annual reports, and financial statements, as applicable. While we are encouraged by FDIC's initiative, CPP would benefit from the four federal bank regulators, in collaboration with Treasury, developing a common approach to ensure that participants are treated the same. As part of our

[30]See FDIC, "Monitoring the Use of Funding from Federal Financial Stability and Guaranty Programs," FIL-1-2009, January 12, 2009.

ongoing review of this program, we will leverage work of FDIC's Office of the Inspector General, which has work underway on this issue, and coordinate our activities with the Special Inspector General for TARP. We will report our results in subsequent reports.

Treasury Has Made Some Progress in Monitoring Banks' Use of CPP Funds and Ensuring Compliance with Purchase Agreements but Has Not Finalized Its Plans

Our December 2008 report recommended that Treasury work with bank regulators to establish a systematic means of monitoring and reporting on financial institutions' activities to ensure that they are consistent with the goals of the CPP standard agreement, including expansion of the flow of credit and the modification of the terms of residential mortgages. Treasury has made some progress in responding to the recommendation, but more needs to be done to ensure an appropriate level of accountability and transparency.[31] Specifically, Treasury has taken several steps in responding to our recommendation:

- Treasury has worked with the regulators and CPP participants to develop a survey for the 20 largest institutions that will collect monthly data on loan balances, new loan originations by different categories (that is, consumer and commercial lending), and purchases of mortgage-backed and asset-backed securities. The survey will also require institutions to provide a narrative discussion of trends in their lending activities and changes in their lending standards and terms. OFS officials said that they have begun surveying these institutions.

- Working with the bank regulators, Treasury announced that it was developing an approach to analyzing quarterly call report data for all financial institutions that received CPP funds to gauge changes in lending activity and compare them with changes at nonparticipating financial institutions.

- Treasury has also taken steps to establish a team focused on monitoring and reporting issues.

Treasury's efforts will provide some useful insights on lending activities of the participating institutions, but because only the 20 largest participants will be surveyed, analysis for most of the participants will come from quarterly data submitted by the institutions and will have a significant

[31]The standard terms of the CPP Securities Purchase Agreement between Treasury and participating institutions include provisions in the "recitals" section stating "the Company agrees to expand the flow of credit to U.S. consumers and businesses on competitive terms" and "agrees to work diligently, under existing programs, to modify the terms of residential mortgages."

reporting lag, thereby limiting its usefulness as a monitoring mechanism for the vast majority of CPP participants. Depending on the results of the call report and survey analysis, Treasury said that it will also work with the regulators as they develop examination procedures to collect information about how the funds are being used by participating institutions.

During this period, we again contacted representatives of the eight large institutions that initially received funds under CPP to discuss any changes in their strategy for using and tracking CPP funds. One of the two institutions that track CPP funds reported that it had used the funds to increase interbank lending and purchase mortgage-backed securities and provided us with a report on its planned use of funds. The other institution stated that it would use CPP funds primarily to support consumer banking (for example, credit cards and mortgages) and also to purchase mortgages in the secondary market to increase market liquidity. This institution will be providing us with a management report detailing the status of the use of CPP funds. Officials from all eight institutions discussed using the funds in a manner that they viewed as generally consistent with the goals of CPP, such as increasing the flow of credit to consumers and businesses and modifying the terms of existing residential mortgages. However, as we reported previously, six of these institutions did not intend to track or report CPP capital separately. Further, the institutions continued to note that CPP capital would not be viewed any differently from other capital—that is, the additional capital would be used to strengthen the institutions' capital bases, make business investments and acquisitions, and lend to individuals and businesses—and all of the institutions stated this is what they have done. For example, officials described and have publicly reported that the additional funds have enabled them to increase or maintain lending, invest in projects (such as housing projects), increase capital base, and support secondary market activities.

Treasury also has made some progress in addressing our recommendation that it should develop a way to ensure that institutions participating in CPP are complying with key requirements of program agreements, including limitations on executive compensation, dividend payments, and repurchase of stock. OFS officials told us that certification by senior executives will be a key part of ensuring compliance. Specifically, Treasury proposed interim regulations establishing reporting and recordkeeping procedures that will require that the principal executive officers (PEO) of participating institutions certify compliance with the compensation restrictions and that the certification be provided to the TARP Chief Compliance Officer. According to Treasury officials, they have identified options for detecting noncompliance and taking enforcement actions but have not finalized their plans in this regard. In addition, Treasury is implementing a plan to ensure that financial institutions are making accurate and timely dividend payments to Treasury by reconciling anticipated dividend payments with actual amounts received from the institution. However, Treasury has not selected equity asset managers that could be responsible for monitoring these other aspects of compliance. Each of the four federal bank regulators also is developing procedures for bank examiners to monitor and assess compliance with program requirements, such as limitations and restrictions on executive compensation and dividend payments, through their bank examination process. These procedures are still in the development phase, and one of the regulators expects to complete its work before the end of the first quarter of 2009.

As noted previously, Treasury has made some progress in establishing specific guidance on executive compensation. Treasury plans to issue additional interim final rules on executive compensation that provide a technical amendment and two clarifications to the interim final rules issued in October and provide new reporting and recordkeeping requirements for the CPP executive compensation standards.[32] The new rules will require that the PEO of the financial institution provide certifications to the TARP Chief Compliance Officer regarding compliance with the CPP executive compensation restrictions applicable to senior executive officers (SEO),[33] as follows:

- Within 120 days of the purchase of securities by Treasury, the PEO must certify that the compensation committee has reviewed the SEOs' incentive compensation arrangements with the senior risk officers to ensure that these arrangements do not encourage unnecessary risk-taking that could threaten the value of the institution.

[32]The new interim final rule will amend the October rule to mandate that the required compensation committee certifications be provided in a different section of an institution's SEC filing. The new rule also will clarify that for purposes of the "clawback" or recovery requirements, bonus and incentive compensation is considered paid to a senior executive officer when the officer obtains a legally binding right to the payment, even if the payment is not made during a period when Treasury holds an interest in the financial institution. Finally, the new rule will clarify the comparison of the act's and Treasury's rules on the clawback provisions with the clawback provisions in section 304 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7243.

[33]Senior executive officers are generally the PEO, the chief financial officer, and the three most highly compensated executive officers.

- Within 135 days of the end of each fiscal year, the PEO must certify that (1) the compensation committee has met at least once during the year with the senior risk officers to review the relationship between risk management policies and practices and the SEOs' incentive compensation arrangements, and the compensation committee has certified to this review; (2) the financial institution has complied with the requirements of the interim regulations for recovery or "clawback" of SEOs' bonus or incentive compensation based on earnings, gains, or other measures that are later proven to be based on materially inaccurate performance metric criteria; (3) the financial institution has prohibited "golden parachute" payments to SEOs; and (4) the financial institution has instituted procedures to limit the income tax deduction for payments to each senior executive officer to $500,000. The PEO must also provide the names of individuals who are the financial institution's SEOs for the current fiscal year.
- Within 135 days of the completion of each annual fiscal year, the PEO must certify that the income tax deduction for payments to each SEO was in fact limited to $500,000.

If the PEO is unable to provide any of these certifications in a timely manner, the PEO must provide an explanation to the TARP Chief Compliance Officer. Financial institutions must preserve appropriate documentation and records to substantiate each certification for at least 6 years after the certification, and for the first 2 years these documents must be in an easily accessible place. Any individual providing false information or certifications to Treasury relating to a purchase under the act's executive compensation restrictions or required under the interim final rules is subject to criminal penalties.

Treasury Has Established the Auto Industry Financing Program to Stabilize Auto Makers and Auto Financing Companies

Treasury established the Auto Industry Financing Program in December 2008 to prevent a disruption of the domestic automotive industry that would pose systemic risk to the nation's economy. Treasury established the program in response to business plans that General Motors Corporation (GM) and Chrysler Holding LLC (Chrysler) submitted to congressional committees and public statements made by GM and Chrysler officials indicating that their companies needed immediate federal financial assistance to remain solvent.[34] On December 19, 2008, Treasury announced it had agreed to lend up to $18.4 billion under this program—including $13.4 billion to GM and $4 billion to Chrysler.[35]

According to program guidelines, eligibility for AIFP is determined on a case-by-case basis and takes into account the following factors:

- the importance of the institution to production by, or financing of, the American automotive industry;
- the likelihood that a major disruption of the institution's operations would have a materially adverse effect on employment and produce negative spillover effects to the overall economy;
- the likelihood that the institution is important enough to the nation's financial and economic system that a major disruption of its operations could cause major disruptions to credit markets and significantly increase uncertainty or cause a loss of confidence that would materially weaken overall economic performance; and
- the extent and probability of the institution's ability to access alternative sources of capital and liquidity.

Treasury's loan agreements with GM and Chrysler include a number of provisions to protect taxpayers' interests and put the companies on the path to financial viability. For example, the agreements limit executive compensation; require concessions from parties including management, labor, and debt holders; subject the companies to periodic reviews by government entities including GAO; require collateral for the loans; and subject business and other transactions of more than $100 million to government approval.

[34]GM, Chrysler, and Ford Motor Company (Ford) officials testified before the Senate Committee on Banking, Housing, and Urban Affairs on December 4, 2008, and before the House Committee on Financial Services on December 5, 2008. In the testimony statements and business plans submitted to the committees, the GM, Chrysler, and Ford CEOs reported that their companies needed $18 billion, $7 billion, and $9 billion, respectively, in federal assistance. Ford subsequently determined that it would not request assistance from Treasury at this time.

[35]Specifically, Treasury agreed to purchase GM and Chrysler debt securities—TARP "troubled assets" under section 3(9) of the act, 12 U.S.C. § 5202(9).

In addition, the agreements call for the appointment of a "President's Designee" to oversee the restructuring of the American auto manufacturers (an appointment not yet made). As a condition of receiving the loans, GM and Chrysler must submit restructuring plans and term sheets to the President's Designee by February 17, 2009. The restructuring plans must include a business plan for repaying the loans, evidence of the companies' ability to comply with federal corporate average fuel economy standards, evidence of a new product mix and cost structure that is competitive in the U.S. marketplace, and evidence that the companies can become financially viable. The terms sheets must include agreements between the companies and their unions, public debt holders, and voluntary employees' benefit associations on labor modifications, debt restructuring, and benefit modifications, respectively. By March 31, 2009, GM and Chrysler must report to the President's Designee on their progress in implementing these restructuring plans, including showing final agreements with union and other stakeholders. The President's Designee will then determine whether the companies have made sufficient progress in implementing the restructuring plans; if they have not, the loans are automatically accelerated and become due 30 days later.

As part of our responsibilities for providing oversight of TARP, we plan to monitor Treasury's implementation and oversight of AIFP, including the auto manufacturers' use of federal funds and development of the required restructuring plans. We plan to issue a separate report on the program early this spring.

AIFP Loans Related to GMAC

On December 29, 2008, after the Federal Reserve approved an application by GMAC LLC to become a bank holding company, Treasury committed to lend up to $1 billion of TARP funds to GM (one of GMAC's owners), to enable GM to participate in GMAC's new rights offering related to its reorganization as a bank holding company. [36] The actual level of TARP funding to GM was to depend on the level of current investor participation in GMAC's offering, and on January 22, 2009, Treasury announced the final loan amount to GM of $884,024,131. At Treasury's option, this loan can be exchanged at any time for the GMAC ownership interests acquired by GM in the new rights offering.

[36]GMAC specializes in automotive finance, real estate finance, insurance, commercial finance, and online banking. As of September 30, 2008, GMAC had $211 billion in total assets. This loan commitment is in addition to the $13.4 billion loan announced on December 19, 2008.

On December 29, 2008, Treasury purchased $5 billion of senior preferred membership interests from GMAC with an annual 8 percent dividend, payable quarterly. Under the agreement, GMAC issued warrants to Treasury to purchase, for a nominal price, additional preferred interests in an amount equal to 5 percent of the preferred interests purchased. The warrant preferred shares provide an annual 9 percent dividend payable quarterly. According to Treasury, because the exercise price for the warrants is equal to one cent per $1,000 ownership unit (equivalent to a share) and there were no downside risks to exercising the warrants immediately, Treasury exercised the warrants at closing so that it could begin receiving the dividends.[37] Under the funding agreement, GMAC must comply with all executive compensation restrictions applicable to qualifying financial institutions under CPP, except that the definition of a "golden parachute" payment is broader: it generally means any payment to an SEO on account of severance from employment. GMAC also must comply with enhanced restrictions as long as Treasury owns any preferred interests or warrant interests. In particular, GMAC

- must reduce by about 40 percent the aggregate amount of bonus compensation that may be paid to SEOs or senior employees in 2008 and 2009 from the 2007 bonus level;[38]
- cannot adopt or maintain any compensation plan that would encourage manipulation of its reported earnings to enhance the compensation of any of its employees; and
- must maintain all suspensions and other restrictions of contributions to benefit plans that are in place or initiated as of the closing date of the transaction.

Treasury also has the right to require GMAC to clawback any bonuses or other compensation (including golden parachutes) that are paid in violation of the agreement. Finally, GMAC must certify in writing to the TARP Chief Compliance Officer that the compensation committee has reviewed the compensation arrangements of the SEOs with its senior risk officers and determined that the compensation arrangements do not

[37] GMAC is a limited liability corporation, and its warrants are not publicly traded and have no ready markets.

[38] Senior employees are the 20 most highly compensated employees, other than the SEOs.

encourage these officers to take unnecessary and excessive risks that threaten the value of the company.

AIFP Loans to Chrysler

On January 16, 2009, as part of a broader program to assist the domestic automotive industry in becoming financially viable, Treasury announced that it would make a $1.5 billion loan to a special purpose entity created by Chrysler Financial Services Americas LLC (Chrysler Financial) to finance the extension of new consumer automotive loans. The loan will be payable over 5 years and will be secured by a senior secured interest in a pool of newly originated consumer automotive loans, with Chrysler serving as guarantor for certain covenants of Chrysler Financial.[39]

Under the agreement, Chrysler Financial must be in compliance with the executive compensation and corporate governance requirements of Section 111 of the act, as well as enhanced restrictions on executive compensation.[40] In lieu of warrants, the special purpose entity created by Chrysler Financial will issue additional notes to Treasury in an amount equal to 5 percent of the total size of the loan. The additional notes will vest 20 percent on the closing date and 20 percent on each anniversary of the closing date and will have other terms similar to the loan terms.

Treasury Has Established Programs to Address Problems at Specific Financial Institutions

Although CPP has remained the primary vehicle under TARP to assist financial institutions, Treasury has several other programs that target specific types of financial institutions in response to changing conditions in the markets. However, Treasury has yet to clearly articulate and communicate a vision for TARP, which has adversely affected its ability to communicate with Congress, financial markets, and the public. For example, a number of the programs established under TARP have similar guidelines and terms, which highlights the need to effectively articulate and communicate the overall strategy behind creating each program and show how the programs will work together to achieve TARP's goals.

[39]Accrued interests will be payable by the end of the five-year term on January 16, 2014. The loan's interest rate will be equal to the one-month LIBOR plus 100 basis points for the first year and one-month LIBOR plus 150 basis points for the remaining four years. LIBOR is the interest rate offered for dollar deposits in the London interbank market for 3-month, dollar-denominated loans.

[40]12 U.S.C. § 5221.

Systemically Significant Failing Institutions Program

As we previously reported, on November 25, 2008, Treasury issued guidelines for the SSFI Program. According to Treasury, this program is designed to provide stability in financial markets and prevent disruption caused by the failure of an institution of significant size that is deemed to be important to the financial system. Unlike CPP, SSFI has no deadlines for participation, which is determined on a case-by-case basis, and terms are generally more stringent. Treasury considers a variety of factors when assessing an institution for participation in SSFI, including

- the extent to which the institution's failure could threaten the viability of its creditors and counterparties because of their direct exposure to the institution;
- the number and size of financial institutions that investors or counterparties see as situated similarly to the failing institution, or that they believe would otherwise be likely to experience indirect contagion effects from the institution's failure;
- the institution's importance to the nation's financial and economic system—for example, whether a disorderly failure would, with a high probability, cause major disruptions to credit markets or payments and settlement systems, seriously destabilize key asset prices, and significantly increase uncertainty or losses of confidence, thereby materially weakening overall economic performance; and
- the extent and probability of the institution's ability to access alternative sources of capital and liquidity from either the private sector or other sources.

In November 2008, American International Group, Inc. (AIG) became the first institution assisted under this program. Treasury's concerns about AIG predated the establishment of TARP. In mid-September 2008, the Federal Reserve Board, the Federal Reserve Bank of New York (FRBNY), and Treasury agreed that the failure of AIG—a diversified financial services company that provides asset management, general insurance, life insurance and retirement services through its subsidiaries—would pose a systemic risk to the global financial markets and the economy. On September 22, 2008, FRBNY and AIG entered into a credit agreement and a guarantee and pledge agreement. Under these agreements, FRBNY established a 2-year revolving credit facility that could lend AIG up to an aggregate of $85 billion outstanding at any one time. All outstanding balances under the credit agreement were secured by a pledge of a substantial portion of the assets of AIG and its primary nonregulated subsidiaries, including its ownership in its regulated U.S. and foreign subsidiaries. AIG's obligations under the credit facility also are guaranteed by certain of AIG's domestic subsidiaries. AIG also agreed to issue 100,000 shares of a new series of convertible preferred stock to a trust that will hold the stock for FRBNY, with Treasury designated as the ultimate beneficiary. The preferred stock was originally to be convertible into 79.9 percent of the shares of AIG's common stock, later reduced to 77.9 percent. Outstanding advances made to AIG under the credit facility bore interest at a quarterly rate equal to 3-month LIBOR plus 8.5 percent.[41] On October 6, 2008, the Federal Reserve Board also authorized FRBNY to engage in securities borrowing transactions with AIG through which FRBNY could lend up to $37.8 billion to AIG in exchange for collateral in the form of investment-grade debt obligations.

On November 10, 2008, the Federal Reserve Board, acting in conjunction with Treasury, announced the restructuring of these AIG credit facilities. FRBNY restructured the credit facility established in September in three ways: by increasing the loan maturity from 2 to 5 years; by reducing the interest rate payable on outstanding advances to 3-month LIBOR plus 3 percent; and by reducing the maximum credit that AIG could have outstanding to $60 billion. The reductions went into effect after the Treasury's investment of $40 billion in TARP funds to pay down the credit facility.

The investment was made pursuant to Treasury's agreement to purchase $40 billion in perpetual senior preferred shares from AIG as part of SSFI. The senior preferred shares will accrue dividends at an annual rate of 10 percent and the dividends are payable quarterly in arrears. Treasury also will receive a warrant to purchase a number of shares of common stock equal to 2 percent of the AIG common stock on the date of Treasury's purchase. The warrant has a 10-year term and an initial exercise price of $2.50 per share. Treasury's consent will be required for increases in dividends on common stock and repurchases of certain securities until 5 years after the date of purchase. The senior preferred stock is nonvoting except for class-voting rights on certain corporate actions that may affect the value of the stock or the investors' rights. Additional restrictions include AIG's agreement to

[41] LIBOR is the interest rate offered for dollar deposits in the London interbank market for 3-month, dollar-denominated loans.

- limit any golden parachute payments to employees of AIG and subsidiaries who participate in AIG's senior partners plan to the amounts permitted under the restrictions for CPP;
- forego increases to the annual bonus pools payable to SEOs and senior partners for 2008 and 2009 beyond the average of the 2006 and 2007 annual bonus pools, with certain exclusions;
- confirm that none of the proceeds of the purchase of preferred stock will be used to pay annual bonuses or other future cash performance awards to executives or senior partners (Treasury and AIG agreed that this confirmation should be auditable);[42]
- ensure that none of the proceeds of the purchase price will be used to pay any electively deferred compensation resulting from termination of the certain deferred compensation plans by AIG;
- maintain and implement a comprehensive written policy on lobbying, government ethics, and political activity; and
- give Treasury the right to consent to material amendments to AIG's written policies on corporate expenses.

We will continue to monitor implementation of this agreement between Treasury and AIG in subsequent reports. We have recently initiated an effort to, among other things, assess any impact of the assistance to AIG on insurance markets and to determine, to the extent possible, whether the rescue package has achieved its desired goals.

Targeted Investment Program

On January 2, 2009, Treasury released the program description, eligibility considerations, and justification for TIP. According to Treasury's announcement, the program is designed to prevent a loss of confidence in financial institutions that could result in significant market disruptions, threaten the financial strength of similarly situated financial institutions, impair broader financial markets, and undermine the overall economy. Treasury will determine the forms, terms, and conditions of any

[42]The agreement requires that no funds from the stock purchase agreement or the Federal Reserve Bank of New York Credit Agreement be used to pay annual bonuses or other performance awards, and establishes a methodology for auditing and confirming compliance with this requirement, whereby the dividends from subsidiaries or net income to the company must exceed the bonus payment amounts.

investments made under this program and will consider institutions for approval on a case-by-case basis based on the threats posed by the potential destabilization of the institution, the risks caused by a loss of confidence in the institution, and the institution's importance to the nation's economy. In evaluating applications, Treasury will obtain and consider information from a variety of sources and take into account recommendations from the institution's primary federal regulator, other regulatory bodies, and private parties that could provide insight into the potential consequences if confidence in a particular institution deteriorated.

TIP Transactions with Citigroup

On January 2, 2009, Treasury stated that the previously announced purchase of senior preferred shares of Citigroup would fall under TIP. As we previously reported, on November 23, 2008, Treasury had announced that it would invest $20 billion in senior preferred shares of Citigroup. Citigroup, which already had received $25 billion on October 28, 2008, under CPP, was the first participant in this program. This investment was part of a multi-pronged federal approach to stabilizing the financial markets. Treasury also indicated that it guaranteed qualified assets under AGP as discussed later in this report. Treasury and Citigroup signed the final agreement on January 15, 2009. We are in the process of reviewing that agreement and will report on its terms and conditions in our next report.

Treasury will require any institution participating in TIP to provide Treasury with warrants or alternative consideration, as necessary, to minimize the long-term costs and maximize the benefits to the taxpayers in accordance with the act. Treasury also will require any institution participating in the program to adhere to more rigorous executive compensation standards than those required under CPP. In addition, Treasury will consider other measures to protect the taxpayers' interests, including limitations on the institution's expenditures or other corporate governance requirements. As the agreement requires, under TIP Citigroup

- will pay dividends at an annual rate of 8 percent, payable quarterly;
- can redeem shares only after the preferred shares received in the October CPP purchase have been redeemed; and
- will provide warrants to Treasury to purchase shares of common stock equal to 10 percent of the total preferred shares issued.

Citigroup also agrees to use its reasonable best efforts to account for use of the $20 billion purchase price and to report to Treasury on a quarterly basis until use of all of the purchase price has been accounted for. In addition, Citigroup will be subject to executive compensation requirements that are more stringent than those under CPP. The additional executive compensation standards include the following:

- Limits on bonus compensation. Unless all debt and equity securities owned by Treasury are redeemed, Citigroup must implement a bonus pool cap for SEOs and employees who are members of the Senior Leadership Committee for fiscal years 2008 and 2009 that may not exceed 60 percent of the prior year's bonus compensation.[43] For 2009, the bonus pool cap may be increased with Treasury's approval.[44]

- Limits on golden parachutes payable to senior leadership members. The limits on golden parachute payments that apply under CPP will apply to members of the Senior Leadership Committee.

- Clawback requirements. If any senior executive officer or senior leadership member receives a payment in contravention of the restrictions on executive compensation, Citigroup promptly must provide the individual with written notice that payment must be repaid within 15 business days and inform Treasury of the repayment.

- Restrictions on lobbying. Citigroup is required to maintain and implement a comprehensive lobbying policy that is distributed to and implemented by all company employees and lobbying firms doing business with the institution.[45]

[43]The Senior Leadership Committee includes anyone who is a member of the policy committee composed of senior officers from various Citigroup subsidiaries (covering 52 senior executives) and the SEOs.

[44]Citigroup must submit a written detailed recommendation to Treasury's Assistant Secretary for Financial Stability describing the basis for any proposed change in the bonus pool cap.

[45]The lobbying policy will be applied to Citigroup and its subsidiaries and will relate to the provision of items of value to U.S. government officials, lobbying of U.S. government officials, U.S. political activities, and contributions. The policy must provide for internal reporting, oversight, and enforcement mechanisms for non-compliance. Any material amendments to the policy require Treasury's written approval.

- Restrictions on expenses. Citigroup is required to implement and maintain a policy on corporate expenses and a wide range of company expenditures that is distributed to all employees.[46]

- Compliance certifications. Citigroup is required to submit a certification on the last day of each fiscal quarter stipulating that it has complied with and is in compliance with the executive compensation provisions set forth in the agreement. The certification will be issued to the TARP Compliance Officer by a senior executive officer of Citigroup and will commence on the last day of the first fiscal quarter of 2009.

TIP Transactions with Bank of America

On January 16, 2009, Treasury announced that Bank of America would receive $20 billion under TIP. Under CPP, Bank of America had previously received $15 billion on October 28, 2008, and $10 billion on January 9, 2009.[47] Similar to the terms for the Citigroup transaction under TIP, Bank of America will make dividend payments of 8 percent to Treasury and will comply with enhanced executive compensation restrictions.[48] We plan to provide more information on the terms of this transaction in our next report, once we obtain and review executed closing documents.

Treasury and Federal Reserve Established a Program to Improve Availability of Consumer Credit

As we previously reported, on November 25, 2008, Treasury and FRBNY announced the creation of the Term Asset-backed Securities Loan Facility (TALF) program. TALF is intended to increase the availability of credit for consumers. The Federal Reserve is setting up a $200 billion program to support consumer finance securitization markets—specifically, credit cards, auto loans, student loans, and small business loans—and Treasury would provide $20 billion of TARP funds to this facility. FRBNY believes this facility will enable a broad range of institutions to increase their

[46]The expense policy will be applied to Citigroup and its subsidiaries and will govern the hosting and sponsoring of or payment for conferences and events, the use of corporate aircraft, travel accommodations and expenditures, consulting arrangements with outside service providers, any new lease or acquisition of real estate, expenses relating to office or facility renovations or relocations, and expenses relating to entertainment or holiday parties. The policy must provide for internal reporting, oversight, and enforcement mechanisms for noncompliance.

[47]Bank of America received the additional $10 billion once its merger with Merrill Lynch was completed on January 1, 2009.

[48]In addition, Treasury announced that Bank of America's pool of specific assets (including residential mortgages) would be protected against unusually large losses. We discuss the announced guarantee program in a later section of this report.

lending and will give borrowers access to lower-cost consumer and small business loans. The credit facility is intended to support consumer credit by providing liquidity to issuers of asset-backed securities so that they can issue new consumer credit-driven securities. The credit facility may expand to include other asset classes, such as commercial and certain residential mortgage-backed assets.

Treasury and the Federal Reserve continue to develop the specific structure and terms of TALF. The program consists of two related but distinct parts: a lending facility and an asset disposition facility. Both will be established and operated by FRBNY, and through its TARP authority, Treasury will participate only in the asset disposition facility. Under the lending facility, FRBNY will make available up to $200 billion for nonrecourse loans secured by consumer asset-backed securities.[49] Borrowers will be required to pay monthly interest on loans and to repay the outstanding principal balance at the end of the loan term. If the borrower makes all interest payments and repays the loan, FRBNY will release its lien on the asset-back securities and return them to the borrower. If the borrower defaults, FRBNY will foreclose on the asset-back securities. Treasury will have no role in any of the transactions under the TALF lending facility.

The asset disposition facility is intended to purchase, hold, and ultimately liquidate asset-backed securities that were posted as collateral under the loan facility but were later foreclosed on by FRBNY. Following foreclosure, FRBNY can sell the asset-backed securities to a special purpose vehicle owned and managed by FRBNY. Treasury will make a subordinated loan to the special purpose vehicle for up to $20 billion in TARP funds, but will not have any ownership interest in it. If purchases of foreclosed assets exceed $20 billion, FRBNY will make a senior loan to the special purpose vehicle to fund the additional purchases. All cash flows from special purpose vehicle-owned assets will be used first to repay FRBNY's senior loan and then Treasury's subordinated loans.

FRBNY has agreed to impose executive compensation requirements under TALF that are comparable to those imposed on financial institutions that receive CPP investment. The requirements will be imposed on sponsors of

[49]A nonrecourse loan is one in which, in the event the loan is not repaid, the lender is repaid by taking the collateral. The unpaid balance on the loan must be absorbed by the lender.

asset-backed securities as a condition of allowing their securities to be pledged as collateral for loans made by FRBNY. Further, Treasury will require that the business records and management of the special purpose vehicle be available to Treasury and its agents, to the Comptroller of the Currency, and to the Special Inspector General for TARP. Treasury expects to have the program operational in February 2009. Unless otherwise extended, the facility will cease making new loans on December 31, 2009.

Treasury Deferred Action on a Program to Preserve Homeownership until the Incoming Administration

One of the stated purposes of the act is to ensure that the authorities and facilities provided by the act are used in a manner that, among other things, preserves homeownership. While OFS has taken steps to identify and implement a homeownership preservation strategy, as of January 20, 2009, Treasury had neither specified its strategy for preserving homeownership nor announced any specific program. According to Treasury officials, Treasury has deferred taking action on a program until the new administration was in place. The act authorized the Secretary of the Treasury to purchase and insure troubled mortgage-related assets held by financial institutions and to the extent that such assets were acquired, required Treasury to implement a plan that sought to “maximize assistance for homeowners.” When recently asked by COP to describe its strategy under TARP to reduce foreclosures, Treasury pointed to actions it has taken in collaboration with other entities outside of the TARP program—for example, working with the Federal Reserve and FHFA to prevent the failure of Fannie Mae and Freddie Mac; helping to establish the HOPE NOW Alliance, a coalition of mortgage market participants and housing counselors; and working with the HOPE NOW Alliance, FHFA, Fannie Mae, and Freddie Mac to develop the Streamlined Loan Modification Program, through which servicers can modify existing loans into a Fannie Mae or Freddie Mac loan.[50] Examples of these and other programs to preserve homeownership are described in Appendix III.

As we previously reported, OFS has established the Office of Homeownership Preservation, and efforts to hire permanent staff are ongoing.[51] Currently, the Office of Homeownership Preservation operates

[50]Department of the Treasury, *Responses to Questions of the First Report of the Congressional Oversight Panel for Economic Stabilization* (Washington, D.C.: December 30, 2008).

[51]See GAO-09-161.

with an interim chief and interim staff in all but one administrative position. According to its chief, the office has received and evaluated more than 70 proposals and inquiries related to TARP-sponsored homeownership preservation strategies or actions from private-sector, nonprofit, and governmental organizations and individuals. These proposals have covered a range of suggested approaches, including direct federal purchase of residential whole loans held by financial institutions, an insurance program to provide credit support for community development loans and securities, a proposal to identify troubled mortgages before they default, direct payments to borrowers to pay down mortgages to an affordable rate, and a federally sponsored loan modification program. According to Treasury officials, they have discussed homeownership preservation options with the transition team. The transition team has mentioned a variety of proposed actions involving homeownership preservation, including setting aside from $50 billion to $100 billion for this program. We plan to continue to monitor Treasury's actions related to homeownership preservation under TARP in subsequent reports.

Treasury Has Established the Asset Guarantee Program but Plans to Limit Its Use

As the act requires, Treasury has taken steps to establish an insurance program—AGP—to guarantee troubled assets.[52] Treasury has flexibility in structuring the insurance program but must meet several specific requirements. For example, Treasury must collect premiums from any participating financial institution and use actuarial analysis to set premium rates to ensure that the expected value of the premium is no less than the expected value of the losses to TARP from the guarantee and that taxpayers will be fully protected. The act also requires that Treasury adjust its purchase authority under TARP to reflect use of the guarantee program.[53] As required by the act, on December 31, 2008, Treasury provided a report to Congress on the establishment of its insurance

[52]Section 102 of the act, 12 U.S.C. § 5212, requires Treasury to create an insurance program to guarantee the timely payment of principal and interest for troubled assets originated or issued prior to March 14, 2008, including mortgage-backed securities. The requirement for a program to guarantee troubled assets is contingent on Treasury establishing a program to purchase troubled assets.

[53]Specifically, Treasury's purchase authority would be reduced by the total value of the outstanding guaranteed assets minus the balance of the Troubled Asset Insurance Financing Fund, or any cash premiums received. The act requires that Treasury establish this fund to collect premiums for the program. The Secretary must invest the amounts collected in Treasury securities or keep cash on hand or on deposit.

program. The report includes a proposal for the AGP's structure, including program objectives and eligibility considerations, but does not define specific terms of how a guarantee would be structured and other aspects of the program.

Based on Treasury's December 2008 report, the program appears to be limited in scope. Specifically, Treasury plans to limit participation to systemically significant institutions and other select institutions chosen to participate on a case-by-case basis. In determining which institutions will be eligible, Treasury plans to consider a variety of factors, including (1) the extent to which destabilization of the institutions could present counterparty risks; (2) whether an institution is at risk of a loss of confidence and the extent to which such stress might be caused by a portfolio of troubled assets; (3) the number and size of institutions that would likely by affected by destabilization of the institution; (4) whether the institution is sufficiently important to the nation's financial and economic system; and (5) the extent to which the institution has access to alternative forms of capital. Treasury also plans to coordinate with the institution's primary federal regulator in determining eligibility for program participation. Treasury also stated that guarantees provided under AGP may be used in coordination with other programs or with a broader guarantee involving one or more agencies of the U. S. government.

Prior to issuing its December 2008 report, Treasury sought input from the general public on how to structure the insurance program. On October 10, 2008, Treasury posted a notice inviting the general public to provide comments on the program by October 28, 2008. The notice listed specific issues on which Treasury sought comment, including what types of assets it should insure under the program, how to structure premiums, and what administrative and operational challenges the program might create. According to Treasury, it received 85 comments from a wide variety of individuals, academics, financial institutions, municipalities, and trade groups. While most respondents suggested that Treasury use the program primarily to guarantee existing individual whole loans, mortgage-backed securities, or both, other respondents suggested including asset-backed securities (including those backed by student loans, auto loans, and credit card receivables), collateralized debt obligations, auction rate securities, municipal bonds, reinsurance, and transit leasing agreements in the program.

Many respondents suggested that Treasury consider assets for the guarantee program that differed from those assets purchased under section 101 of the act (thus far, primarily capital purchases from financial institutions) and that the guarantee program could be more efficient than asset purchases under some circumstances. For example, one industry group commented that some assets that might be purchased under TARP would not be suitable for guarantees, such as loans that lack good collateral, adding that the guarantee should be used to increase confidence in the markets for buying and selling assets that generally are performing well. Also, several respondents commented that a guarantee program could offer more flexibility than an asset purchase program because it could limit the risk taken on by Treasury, such as by incorporating loss-sharing into guarantees.

Several respondents acknowledged a variety of challenges that Treasury would encounter in setting up the program. For example, while the majority of respondents recommended that Treasury set the premiums to reflect the risk assumed by insuring each asset, many stated that determining risk and pricing premiums based on risk would be very difficult. Moreover, respondents acknowledged that managing the program would itself be challenging, including the selection and monitoring of institutions and assets to be guaranteed.

Treasury used AGP for the first time to guarantee certain Citigroup assets as part of an agreement it announced on November 23, 2008. The guarantee agreement, finalized in January 2009, provides protection against the possibility of unusually large losses on an asset pool of approximately $301 billion in loans and securities backed by residential and commercial real estate and other such assets, which will remain on Citigroup's balance sheet. On January 16, 2009, Treasury announced its development of a similar agreement with Bank of America for providing protection against approximately $118 billion in loans, securities and other assets. We plan to discuss the final terms of these agreements more fully in our next report.

Efforts to Establish the Office of Financial Stability Are Ongoing

Treasury has made efforts to ensure that key leadership positions remain filled after the transition to the new administration. In our last 60-day report, we noted that soon after establishing OFS and appointing an Interim Assistant Secretary of Financial Stability as its head in October 2008, Treasury created several functional areas within the office and hired interim chiefs from across government and the private sector to manage each of the major OFS functions.[54] We recommended that Treasury

[54]See GAO-09-161, 32-34.

develop a definitive transition plan, including steps to ensure that key OFS leadership positions remain filled during and after the transition to the new administration. In general, Treasury has taken steps either to (1) confirm that the interim chief will stay for a period covering the transition to the new administration; or (2) in cases where a leader was unlikely to stay beyond the transition, to work with the interim chief to find potential candidates to serve in the role on a permanent basis. As of January 16, 2009, Treasury confirmed the following:

- The Interim Chief Investment Officer will serve in this role until the new administration identifies a permanent successor. According to Treasury, the transition team asked the Interim Chief Investment Officer to remain in his post for up to 2 months, or until Treasury hires sufficient permanent staff to help run the office. Treasury anticipates that the permanent successor may be a political appointee.

- The Interim Chief Homeownership Officer will serve in this role through the transition.[55] Treasury anticipates that the new administration will identify a permanent successor who may be a political appointee.

- The Deputy Chief Compliance Officer, who is on detail from Treasury's Bureau of the Public Debt, temporarily has assumed the role and responsibilities of the Interim Chief Compliance Officer until Treasury identifies a permanent successor.

- The Interim Chief Risk Officer may not stay in this role until a permanent successor is found. OFS has interviewed potential replacements for the Chief Risk Officer position but has not made a selection. While aggressively searching for a permanent successor, Treasury anticipates that it will take time to find a candidate with the right balance of public- and private-sector expertise to serve in this position. According to Treasury, the transition team agreed with this approach and agreed that OFS could administer risk-management functions sufficiently if the position were unfilled for a brief period, because a permanent Deputy Risk Officer has been appointed.

[55] According to Treasury officials, they were able to retain this individual in the position partly because she was already a Treasury official.

- The Interim Chief Financial Officer recently was replaced by an individual who will serve as the Chief Financial Officer on a permanent basis.

Treasury has facilitated continuity of operations through the transition for a number of other key positions. In particular, Treasury said that the Interim Assistant Secretary for Financial Stability has agreed to the transition team's request to stay on in the position until a successor is in place. Also, when Treasury replaced the interim manager for CPP with a permanent successor in early January, it was able to keep the interim manager for a short time to ensure seamless administration of the program. Treasury also identified individuals to fill a number of other senior positions within OFS. In our prior work, we have noted that key practices of successful organizations include taking steps to ensure continuity of leadership and sustain a learning environment that drives continuous improvement in performance.[56] We will continue to monitor OFS's leadership positions and OFS's efforts to establish a performance-oriented culture.

As another approach to help ensure continuity in operations, OFS continues to use staff and other existing resources from other parts of Treasury and the federal government, as well as from the private sector. In our last 60-day report, we described how Treasury employed a short-term strategy for staffing high-level officials in OFS by identifying government employees within Treasury and other federal agencies who could fill senior positions on a temporary basis. As of January 26, 2009, OFS had approximately 52 detailees and 38 permanent staff on board, indicating significant growth in the number of OFS positions filled since our last report (see table 3). Current detailees include staff from Treasury departmental offices and bureaus, including the U.S. Mint, the Bureau of the Public Debt, the Internal Revenue Service, OTS, OCC, and the Office of Domestic Finance. Also, Treasury arranged for several employees from other federal agencies—including SEC, FDIC, Federal Reserve, HUD, and the Overseas Private Investment Corporation—to serve as detailees to OFS. According to Treasury, some detailees served short-term organizational needs while others filled longer-term needs until permanent staff replaced them. According to Treasury, these staff exhibit a high level of competence in performing the work required of them and, in some

[56]GAO, *Securities and Exchange Commission: Some Progress Made in Strategic Human Capital Management*, GAO-06-86 (Washington, D.C.: Jan. 10, 2006).

cases, have accepted offers to stay in OFS permanently. Treasury officials also noted that detailees may be especially appropriate for certain OFS positions because TARP is not a permanent Treasury function and that its program activities are still evolving.

Table 3: Number of Treasury and Other Federal Employees Assigned to OFS

Type of Staff	Approximate number of positions filled as of November 21, 2008	Approximate number of positions filled as of January 26, 2009
Staff detailed to OFS from other areas of Treasury and other federal agencies (temporary)[a]	43	52
Permanent staff (includes limited-term appointments)	5	38
Total	**48**	**90**

Source: Treasury.

[a]As of January 16, 2009, Treasury reported that it had finalized interagency agreements with SEC, HUD, and OTS that provide for four employees from these agencies to support OFS for periods ranging from 30 days to 2 years. Treasury officials said that the agreements address how Treasury will reimburse the agencies for detailed employees.

In addition to detailees, numerous other Treasury employees support OFS by taking on responsibilities to help administer TARP. According to Treasury, these staff dedicate significant portions of their time to OFS activities. For example, personnel providing assistance in human resources administration, legal support, financial reporting and budgeting, and information technology spend varying amounts of time supporting OFS's day-to-day operations. While Treasury officials said that OFS is becoming more self-reliant, certain staff always will provide part-time assistance to OFS (in such areas as human resources), as they do for every office within Treasury.

OFS's financial agents and contractors also have remained in place throughout the transition, providing institutional knowledge of past practices, continuity of operations, and expertise needed to carry out OFS policies and operations. For example, Treasury awarded a contract to PricewaterhouseCoopers to help establish a comprehensive set of internal controls, and the firm will continue to support this effort.

Treasury has taken a variety of other measures to support the transition to the new administration. In our last 60-day report, we recommended that Treasury facilitate a smooth transition to the new administration by building on and formalizing ongoing activities. According to Treasury, since our last report, Treasury has continued to provide updates to the transition team on TARP developments, and the team has met with key leaders, including each of the Interim Chiefs described above. An official from the new administration's transition team confirmed that OFS officials have briefed transition team members regularly on operational and policy issues in an effective manner. In addition, and as discussed in more detail below, OFS continues to establish processes and document internal controls used to carry out the various new programs established under TARP and the associated financial transactions. Specifically, Treasury documented processes used to administer CPP and established program guidelines for TARP investments to guide the next administration's use of TARP funds. OFS management is still in the preliminary stages of developing and implementing a comprehensive set of policies and procedures to manage TARP activities.

Treasury Has Used Hiring Flexibilities to Staff the Organization, but the Hiring Process Still Presents Challenges

Although Treasury has used hiring flexibilities to expedite the process for finding permanent employees for OFS, Treasury still faces challenges in hiring the full complement of staff needed to administer the office. In our last report, we recommended that Treasury expedite OFS's hiring efforts to ensure that the office has the personnel needed to carry out and oversee TARP.

OFS officials stated that they continue to aggressively hire additional permanent staff at the highest levels of the organization to provide a corporate culture and stabilize leadership within OFS. As of January 26, 2009, Treasury had brought 38 permanent staff on board through a variety of mechanisms, including direct-hire authority, merit promotion appointments, limited-term Senior Executive Service (SES), and Schedule A appointments, and reassignments.[57] This level of staffing is a substantial increase from the five permanent hires that were in place approximately at the time of our last report. Nonetheless, according to Treasury's January 8, 2009, organizational chart for OFS, Treasury estimates that OFS will need approximately 131 staff on board to operate at full capacity, although hiring for some aspects of the projected organization will be dependent

[51]Under authorization by the Office of Personnel Management (OPM), agencies may make appointments for positions which are not of a confidential or policy-determining character, not in the SES, and not practical to examine. These are referred to as Schedule A appointments, and are exempt from examination requirements typically required for competitive service positions. *See* 5 C.F.R. §§ 213.3101-3102.

upon further program developments. Treasury may be able to fill several of these positions with detailees; however, in its organizational chart, Treasury identified a number of unfilled positions best suited for permanent staff. In order to continue to fill key vacancies within the organization, OFS has used its direct-hire authority in coordination with OPM, which Congress explicitly authorized for TARP under section 101(c) of the act.[58] Such direct-hire authority helps to expedite the hiring process by exempting OFS from certain competitive examination requirements. While Treasury is required to publicly announce all jobs for which it uses direct-hire authority, the department may interview and hire candidates without conducting a formal rating and ranking process normally required for competitive service appointments. Also, Treasury has worked with OPM to obtain specific Schedule A authority to make appointments exempt from examination requirements for positions requiring unique or highly specialized qualifications. According to Treasury, direct-hire and Schedule A authorities have permitted the department to recruit individuals from a pool of candidates who have submitted their resumes directly to Treasury via e-mail, as discussed below, as well as in response to specific vacancy announcements. In addition, Treasury has used other tools to enhance its recruitment efforts, such as its existing automated recruitment system, and is working with information technology staff to automate categorization of candidates who have submitted resumes.

Despite making use of these human capital flexibilities, Treasury continues to face challenges in hiring. First, conflict-of-interest considerations have increased the time needed to recruit and hire individuals for OFS, and, in some cases, have caused qualified candidates to withdraw their names from consideration for positions within the organization. According to Treasury, it requires all senior executives and senior-level staff to complete a form listing their financial interests to identify potential conflicts of interest. Treasury also requires all general schedule-level positions, with the exception of administrative support staff, to complete a similar form. Some qualified candidates were unaware when they applied for an OFS position that their financial investments could pose conflicts and subsequently made the decision not to pursue employment with OFS. According to Treasury, ethics reviews of this information can add substantial time to the hiring process. To avoid unnecessary delays and complications in finalizing offers of employment,

[58] 12 U.S.C. § 5211(c).

Treasury is obtaining information on potential conflicts as early as possible in the recruitment process.

Second, Treasury said that candidates with the right skills and abilities to fill positions in OFS often work for a financial regulator that can offer a more competitive salary than OFS.[59] OFS may be competing for the same candidates as the financial regulators because these organizations recruit individuals with skills and experience similar to those needed to administer TARP. For example, regulatory agencies recruit financial economists with expertise in risk measurement and quantitative analysis. Treasury's Human Resources division continues to consider other hiring flexibilities that may help them offer enhancements needed to recruit the right talent for OFS, but officials said they are limited by the terms of current law and OPM regulations.

Furthermore, Treasury has hired a contractor to provide human capital support to the organization and has used a variety of methods to recruit talent to the organization, but it is unclear when Treasury will begin to develop a more formal human capital plan for OFS. In prior work, we have noted that aligning an organization's human capital program with its mission and programmatic goals requires identification of the critical skills and competencies needed to achieve current and future programmatic results.[60] Thus far, Treasury's main strategy for identifying these skills has been to write position descriptions for key OFS vacancies, and the primary work of the human capital services contractor most recently has been writing such position descriptions for OFS. As of January 26, 2009, Treasury finalized 28 position descriptions. Treasury noted that it previously drafted other position descriptions, but because of the evolution of strategies under TARP, it determined that several of the positions were no longer relevant.

In addition, to help recruit talented individuals before position descriptions are finalized, Treasury posted information on its Emergency Economic Stabilization Act Web page requesting that individuals

[59]The financial regulatory agencies have authority to establish their own compensation programs without regard to statutory requirements on classification and pay applicable to executive branch agencies under Title 5 of the U.S. Code. See GAO, *Financial Regulators: Agencies Have Implemented Key Performance Management Practices, but Opportunities for Improvement Exist*, GAO-07-678 (Washington, D.C.: Jun. 18, 2007).

[60]GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, GAO-04-39 (Washington, D.C.: Dec. 11, 2003).

interested in working for OFS transmit their resumes directly to Treasury at a specific e-mail address, without having to respond to job announcements through OPM's Web site.[61] Treasury later refined this strategy by creating a series of e-mail boxes organized by area of expertise—such as compliance, risk management, and economic analysis—and asked individuals to transmit resumes by using the addresses that best aligned with their background and experience. Treasury officials said that this approach enhanced Treasury's recruitment efforts, but that it still did not eliminate the submission of resumes by individuals that were not qualified. They still required time to review the resumes and identify those that reflect the needed skills and abilities for OFS.

Although it is likely that OFS will continue to need both temporary and permanent staff to administer TARP, Treasury has not yet developed a formal workforce plan that balances the need for long- and short-term assistance because the program is still evolving. As noted above, some temporary staff will serve the short-term needs of the organization, while others may continue to serve long-term needs until permanent hires can replace them. As described in table 3, of the 90 staff working in OFS as of January 26, 2009, 52, or 58 percent, have been detailed to OFS from other areas of Treasury and the federal government. In addition, Treasury has relied on a number of financial agents and contractors to conduct the day-to-day operations of OFS. In prior work, we have found that temporary employees can provide the flexibility needed to effectively manage an agency's workforce by fulfilling the short-term needs of the organization.[62] Because TARP has added many new programs since it was first established in October 2008 and that the number and types of program activities may expand or change under the new administration, we recognize that Treasury may find it difficult to determine OFS's long-term organizational needs at this time. For example, it is not clear how many staff will be needed to work on CPP efforts once the transactions are all completed. However, such considerations will be vital to retaining institutional knowledge within the organization as programs evolve. We will continue to track OFS efforts to engage in workforce planning, including any workforce planning efforts undertaken by OFS's contractor.

[61]See http://www.treas.gov/initiatives/eesa/jobs.shtml, last visited on January 24, 2009.

[62]GAO, *Human Capital: Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces*, GAO-03-2 (Washington, D.C.: Dec. 6, 2002).

Treasury Has Continued to Rely on Contractor Support, While Taking Steps to Improve Contracting Practices and Enhance Oversight

Treasury has continued to award contracts in support of TARP and has taken steps to improve its contracting practices and enhance its oversight of contractors. In one recent case, Treasury awarded a contract using other than full and open competition procedures, as permitted by the Federal Acquisition Regulation (FAR), but it took steps to promote competition and received multiple offers as a result. Treasury also continues to use contract structures and pricing arrangements, such as time-and-materials pricing, that allow for flexibility in ordering the services it requires. In part because these pricing arrangements are inherently risky, Treasury has taken measures to enhance contract oversight. In addition, Treasury has continued its efforts to promote small business participation in TARP.

Additional Contracts Have Been Awarded to Help Implement TARP

Since TARP was established, Treasury has entered into one financial agency agreement and awarded a total of 14 contracts and blanket purchase agreements. It has issued a total of 10 task orders under those instruments. Since November 25, 2008, the cut-off date for our last report, Treasury has awarded a contract for legal services related to TALF,[63] one to advertise for TARP position openings, and two leases for space.[64] In addition, since November 25, Treasury issued three task orders for a range of services related to the implementation of TARP, and has modified existing contracts and task orders. Details of the agreement and all contracts, task orders, and modifications are summarized in table 4. As of December 31, 2008, Treasury had expended $8,987,153 for the financial agency agreement and contract actions.[65]

[63]As a result of this contract award, Treasury had two contracts for legal services with the same law firm (Thacher, Profitt & Wood). The first contract was for legal services related to providing TARP funds to companies in the auto industry, and the second was for services in connection with TALF. It is not unusual for the government to have multiple contracts for different purposes with the same entity. In January, 2009, Thacher, Proffitt, & Wood dissolved and its responsibilities under existing contracts were transferred to another firm (Sonnenschein, Nath & Rosenthal). Treasury agreed to this transfer through a novation agreement.

[64]Additionally, Treasury has entered into agreements with other agencies for a variety of other services, such as personnel detailees, and awarded a contract for the painting of leased space.

[65]This total excludes the interagency agreements for such services as personnel detailees and the contract for the painting of leased space.

Table 4: Financial Agency Agreement, Contracts, and Blanket Purchase Agreements Awarded, as of January 20, 2009

	Action	Purpose	Date of Action	Value/ Obligation	Period of Performance	Pricing Structure
Financial Agency Agreement						
Bank of New York Mellon	Financial Agency Agreement[a]	Custodian and cash management	10/14/2008	Estimated $20 million over 3 years	10/14/2008 – 10/14/2011	Flat fee and fixed percentage of asset values
Contracts and Blanket Purchase Agreements						
Simpson, Thacher & Bartlett, LLP	Indefinite Delivery Indefinite Quantity (IDIQ) Contract[b] TOS09007	Legal services for the implementation of TARP	10/10/2008	Maximum value of $500,000.00	10/10/2008 – 04/09/2009	Time and materials[c] or fixed-price task orders
	Task Order 0001	To initiate work[d]	10/10/2008	$300,000.00	10/10/2008 – 04/09/2009	Time and materials
	1st Modification to Task Order 0001	To add funds	11/26/2008	Net increase: $200,000.00	10/10/2008 – 04/09/2009	N/A
	1st Modification to Contract TOS09007	To increase contract ceiling	12/19/2008	Net increase: $400,000.00	10/10/2008 – 04/09/2009	N/A
	2nd Modification to Task Order 0001	To add funds	12/19/2008	$400,000.00	10/10/2008 – 04/09/2009	N/A
	2nd Modification to Contract TOS09007	To increase contract ceiling	01/09/2009	$125,000.00	10/10/2008 – 04/09/2009	N/A
	3rd Modification to Task Order 0001	To add funds	01/09/2009	$125,000.00	10/10/2008 – 04/09/2009	N/A
EnnisKnupp & Assoc., Inc.	Indefinite Delivery Indefinite Quantity (IDIQ) Contract T0S09008	Investment and advisory services	10/11/2008	$2,495,190.00	10/11/2008 – 10/11/2009	Fixed-price task orders
	Task Order 0001	To initiate work	10/11/2008	$227,387.30	10/11/2008 – 10/25/2008	Fixed price
	1st Modification to Task Order 0001	To extend the period of performance and add funds	10/26/2008	Net increase: $356,831.00	Extended period of performance: 10/11/2008 – 11/30/2008	Fixed price
	2nd Modification to Task Order 0001	To extend the period of performance and add funds	12/01/2008	Net increase: $356,831.00	Extended period of performance: 10/11/2008 – 12/31/2008	Fixed price

	Action	Purpose	Date of Action	Value/ Obligation	Period of Performance	Pricing Structure
	3rd Modification to Task Order 0001	To extend the period of performance and add funds	12/31/2008	Net increase: $178,416.00	Extended period of performance through 1//31/2009	Fixed price
Pricewaterhouse-Coopers, LLP	Blanket Purchase Agreement[e] BPA-2009-TARP-0001	Internal control services	10/16/2008	N/A	10/16/2008 – 09/30/2011	Time and materials or fixed-price task orders
	Task Order 1	To initiate work	10/16/2008	$191,469.00	10/16/2008 – 02/01/2009	Time and materials
	1st Modification to Task Order 1	To add funds and modify period of performance	11/02/2008	Net increase: $384,894.00	10/16/2008 – 11/14/2008	Time and materials
	2nd Modification to Task Order 1	To extend the period of performance	11/17/2008	N/A	Extended period of performance: 10/16/2008 – 12/05/2008	Time and materials
	Task Order 0002	To continue work	12/01/2008	$930,133.98	12/01/2008 – 01/31/2009	Time and materials
	Modification to Task Order 0002	For additional services and funding	01/08/2009	$57,490.40	12/01/2008 – 01/31/2009	N/A
Ernst & Young, LLP	Blanket Purchase Agreement BPA-2009-TARP-0002	Accounting services	10/18/2008	N/A	10/18/2008 – 09/30/2011	Time and materials or fixed-price task orders
	Task Order 1	To initiate work	10/18/2008	$492,006.95	10/18/2008 – 01/17/2009	Time and materials
	Task Order 2	To continue work	01/02/2009	$1,476,005.33	01/02/2009 – 09/30/2009	Time and materials
Regus	Lease GS-11B-02059	Property lease	10/23/2008	$168,308 (negotiated settlement agreement)[f]	10/27/2008 – 12/10/2008	
Turner Consulting Group, Inc.	Interagency Agreement with General Services Administration (GSA) 08PA224	For process mapping consultant services	10/23/2008	$9,000.00	10/24/2008 – 11/07/2008	Time and materials

	Action	Purpose	Date of Action	Value/ Obligation	Period of Performance	Pricing Structure
Hughes Hubbard & Reed, LLP	Blanket Purchase Agreement 09BPA002	Legal services	10/29/2008	$5,645,161.75	10/29/2008 – 04/28/2009	Time and materials or fixed-price task orders
	Task Order 01	To initiate work	10/29/2008	$1,411,300.00	10/29/2008 – 04/28/2009	Time and materials
Squire Sanders & Dempsey, LLP	Blanket Purchase Agreement 09BPA001	Legal services for the Capital Purchase Program	10/29/2008	$5,520,000.00	10/29/2008 – 04/28/2009	Time and materials or fixed-price task orders
	Task Order 01	To initiate work	10/29/2008	$1,380,000.00	10/29/2008 – 04/28/2009	Time and materials
Lindholm & Associates	DO-TARP-2009-0003, under GS-15F-0056M	Human resources services	10/31/2008	$710,528.00 total value including options	10/31/2008 – 09/30/2010	Labor hours
	Task Order DO-TARP-2009-0003	Base period	10/31/2008	$174,720.00	10/31/2008 – 04/29/2009	Labor hours
Sonnenschein, Nath & Rosenthal, LLP I	Contract TOS09010	Legal services related to auto industry loans	11/07/2008	$233,662.84	11/07/2008 – 02/28/2009	Labor hours
	1st Modification to TOS09010	To incorporate statement of work and contractor's proposal into contract and to add funds	12/10/2008	Net increase: $223,662.84	12/10/2008 – 02/28/2009	N/A
	2nd Modification to TOS09010	To clarify language in Modification 1 to increase contract ceiling price	12/11/2008	Increase in contract ceiling price to: $457,325.68	N/A	N/A
	3rd Modification to TOS09010	Increase contract ceiling amount	12/31/2008	Increase in contract ceiling price to: $1,457,325.68	N/A	N/A
Washington Post	Purchase Order TD009040	Human resources advertisement	12/05/2008	$395.00	12/07/2008 – 01/07/2009	Fixed price
Sonnenschein, Nath & Rosenthal, LLP II	IDIQ contract TOS09014B	Legal services for the purchase of asset-backed securities	12/12/2008	1,300 hours ceiling	12/10/2008 – 06/09/2009	Time and materials or fixed-price task orders

	Action	Purpose	Date of Action	Value/ Obligation	Period of Performance	Pricing Structure
	Task Order 0001	To initiate work	12/12/2008	$249,999.00	12/10/2008 – 03/10/2009	Time and materials
	1st Modification to TOS09014B	To incorporate novation agreement and new conflict-of-interest disclosures	12/31/2008	N/A	N/A	N/A
Eleven Eighteen LLP c/o Cushman & Wakefield	GSA Lease, GS-11B-02075	Property lease, 9-month term	12/16/2008	$1,047,672	12/30/2008– 09/30/2009	Fixed price
		Property lease for expanded space, 1-year term	12/16/2008	$3,028,642	10/01/2009 – 09/30/2010	Fixed price per annum plus annual operating costs
Colonial Parking	Contract with Options, TOS09017	Lease of parking spaces	01/07/2009	$75,850.00	01/02/2009 – 09/30/2009	Fixed price

Source: GAO analysis of Treasury documents.

[a]This agreement has been amended five times to add additional responsibilities as the different TARP programs, such as CPP, SSFI, TALF, TIP, and AIFP, were established.

[b]Indefinite-delivery/indefinite-quantity contracts provide for an indefinite quantity, within stated limits, of supplies or services during a fixed period. These contracts establish the basic terms of the contracts in advance, enabling agency personnel to issue subsequent task or delivery orders for specific services or goods expeditiously. Orders must be within the contract's scope, issued within the period of performance, and be within the contract's maximum value.

[c]A time-and-material pricing mechanism provides for payments to the contractors based on set labor rates and the number of hours worked, plus the cost of any materials. Our prior work on such contracts recognized both the inherent flexibility of such arrangements and the need for close government supervision to ensure that costs are contained. Specifically, time-and-materials contracts are considered high-risk for the government because they provide no positive incentive to the contractor for cost control or labor efficiency. Thus, the onus is on the government to monitor contractors to ensure that they are performing the work efficiently and controlling costs.

[d]The initial task order initiates the contract work.

[e]A blanket purchase agreement is a method of filling anticipated repetitive needs for supplies or services by establishing charge accounts with qualified sources of supply. The agreement contains the basic terms and conditions governing the types of services the firms will provide. As specific needs arise, blanket purchase agreements allow Treasury to issue task orders to the firms describing the specific services required, establishing time frames, and setting pricing arrangements.

[f]This contract has been terminated. The Government has agreed to a one-time lease termination settlement of $168,308.

Treasury Has Continued to Use Expedited Contract Award Procedures and Has Taken Steps to Ensure Competition

The Competition in Contracting Act (CICA) requires, with certain limited exceptions, that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding government contracts.[66] The process is intended to permit the government to rely on competitive market forces to obtain needed goods and services at fair and reasonable prices. Treasury has continued to expedite the award of contracts using other than full and open competition based on one of the limited exceptions provided for by statute. The statutory exception Treasury generally utilizes is “unusual and compelling urgency.” Since our last report, it cited this authority as a basis for awarding a contract for legal services.

CICA and FAR provide that, even when agencies meet the requirements for other than full and open competition, such as in the case of unusual and compelling urgency, they nonetheless are required to request offers from as many potential sources as is practicable under the circumstances.[67] To aid in the solicitation of offers, agencies conduct market research to identify potential sources.[68] Treasury has conducted market research to identify potential vendors to solicit, which resulted in the receipt of multiple offers for each solicitation, including the most recent solicitation for legal services. In addition, Treasury generally used a best-value approach for evaluating offers received, based on a number of technical evaluation factors such as experience, management and staffing plans, small business utilization, and mitigation of identified conflicts of interest. These factors were reviewed by technical evaluation panels and, taken together, were considered by Treasury as more important than price. Treasury also generally sought and received from its contractors discounts from their standard commercial prices. Furthermore, where it has awarded contracts using other than full-and-open competition procedures, Treasury has stated its intention to procure future requirements using full and open competition. Treasury intends to transition ongoing services to more competitively awarded contracts, if feasible, within 3–6 months after award.

[66]CICA authorizes agencies to limit competition when an unusual and compelling urgency precludes the use of full and open competition and delaying the contract would result in serious financial or other harm to the government. 10 U.S.C. § 2304; 41 U.S.C. § 253.

[67]41 U.S.C. § 253(c)(2); 48 C.F.R. § 6.302-2(c)(2) (2008).

[68]48 C.F.R. § 10.001 (2008).

Treasury Has Continued to Use Flexible Contract Arrangements

Treasury has continued to use contract structures and pricing arrangements designed to allow for flexibility in ordering the services required. For example, Treasury awarded an indefinite delivery/indefinite quantity contract for legal services, allowing it to issue task orders as specific needs arise. In addition, Treasury has continued to use time-and-materials pricing arrangements for most of the task orders it awards. Because of the inherent risk in such pricing arrangements, we recommended in our prior report that Treasury move toward greater reliance on fixed-price arrangements, whenever possible, as program requirements were better defined over time. A Treasury procurement official stated that Treasury plans to convert work requirements to fixed-priced orders where appropriate and when the extent of the work involved becomes more predictable. Since our last report, Treasury has yet to issue any new task orders on a fixed-price basis.

Treasury Has Taken Initial Steps to Enhance Contract Management

In part because of Treasury's use of time-and-materials pricing arrangements, we recommended in our last report that Treasury ensure that sufficient personnel were assigned and appropriately trained to oversee contractor performance. In addition to a number of planned hiring actions, ranging from contracting officer to senior management positions, Treasury has taken steps to improve its oversight of contractors during the implementation of TARP. For example, Treasury convened a Procurement Summit in early December 2008 on a number of contract management issues, including training requirements and the initiation of contract management reviews to address the use of time-and-materials pricing arrangements.

Treasury originally assigned a number of its executive-level officials as Contracting Officer's Technical Representatives (COTR).[69] In addition to their other responsibilities, Treasury's internal guidance requires that COTRs be trained in their acquisition-related responsibilities prior to their appointment, with certain limited exceptions. While not all of the COTRs have received formal training (certification), given the limited time frame for executing the program, a Treasury procurement official believes the current COTRs have the experience necessary to perform their duties. Treasury has begun to replace the executive-level COTRs with certified COTRs, and we plan to continue to monitor Treasury's efforts in this area.

[69]COTRs act as the contracting officer's technical experts and representatives in the administration and monitoring of contracts.

To facilitate the COTRs' oversight of contracts, Treasury developed and has begun to use a Contract Management Reporting Form to track the cost, schedule, and performance of the contracts awarded under TARP. The forms are prepared by the COTRs and submitted to the contracting officers at the middle and end of each month. These forms cover a number of issues we raised in the last report, including the status of COTR certification, the use of fixed-price pricing arrangements, and the review of contractor conflicts of interest. At the end of the second contract management reporting period, which ran through December 31, 2008, Treasury determined that the majority of contracts were performing on schedule and within budget, but it identified COTR certification, the move toward fixed-price requirements, and higher-than-anticipated costs on two contracts as issues in need of additional attention by Treasury.

Treasury Has Continued Efforts to Promote Small Business Participation

As we noted in our previous report, for its financial agency agreement and some of its contracts, Treasury considered offerors' efforts to utilize small businesses as part of its contract award selection criteria in an effort to promote the use of small businesses in carrying out TARP. As of January 20, 2009, Treasury has contracted directly with two small businesses—one for human resources support and another for a budget formulation model—while other entities have become involved through subcontracting opportunities with Treasury contractors and its financial agent. Specifically, Treasury's financial agent engaged the support of two individual consultants to provide advice on asset purchase protocols, and one of Treasury's legal services contractors subcontracted legal support to a minority- and women-owned small disadvantaged business. Treasury's financial agent also has identified several disadvantaged or minority-owned small businesses to provide temporary services if necessary.

Treasury currently is reviewing proposals from the firms that responded to its solicitation for equity asset managers. Treasury officials noted that they developed an inclusive approach to acquiring the services of equity asset managers to allow both large and small firms to compete for business, including minority- and women-owned firms. Specifically, Treasury's solicitation requires prospective asset managers to have an existing portfolio of at least $100 million in assets under management, a threshold that Treasury officials say is high enough to ensure that an asset manager can handle a large portfolio, but not so high as to preclude participation by institutions of modest size. Treasury also announced that in connection with its original solicitations for managers of troubled mortgage-backed securities and whole loans, it may decide to issue separate notices targeted at smaller institutions that would serve as submanagers within a portfolio of assets.

Treasury Has Been Addressing Conflicts of Interest Issues and Plans to Continue That Effort

In our prior report, we noted that Treasury had issued guidelines on conflicts of interest but had not yet issued a related regulation. We recommended that Treasury issue regulations on conflicts of interest involving its agents, contractors, and their employees and related entities as expeditiously as possible. On January 21, 2009, Treasury issued an interim regulation on TARP conflicts of interest, which was effective immediately.[70] The notice in the Federal Register solicits public comments by March 23, 2009, and says that Treasury will consider all comments before issuing a final regulation.

Treasury's interim regulation outlines the process for reviewing and addressing actual or potential conflicts of interest reported by the entities retained to perform services in connection with the act. The interim regulation covers only contractors and financial agents. Among various other issues, the regulation addresses the following:

- organizational conflicts of interest, which can arise when, for example, an entity has a business relationship potentially inconsistent with the entity's obligations to Treasury or that calls into question the entity's objectivity or judgment;
- personal conflicts of interest, which can be triggered by stock ownership or other financial interests on the part of an entity's management officials, key individuals, or certain immediate family members, and which could adversely affect an individual's objectivity or judgment;
- limitations on the conduct of entities retained by Treasury, which include restrictions on giving and accepting gifts, making unauthorized promises, and improper uses of government property;
- the obligation to keep nonpublic information confidential;
- the applicability of conflict-of-interest requirements to subcontractors;
- the criteria for granting waivers of the application of the conflict-of-interest restrictions where a conflict cannot be adequately mitigated; and

[70] 74 Fed. Reg. 3431 (Jan. 21, 2009) (to be codified in 31 C.F.R. Part 31).

- measures available to Treasury to enforce the regulation, including default terminations, debarments, and referrals for criminal prosecution.

The interim regulation establishes a continuing obligation to monitor and report conflicts should they arise during the performance of a contract or agreement. We plan to monitor Treasury's implementation of this regulation.

The interim regulation became effective on January 21, 2009, and will apply to all actions occurring on or after that date. In our first report, we recommended that Treasury review and renegotiate as necessary existing mitigation plans to ensure conformity with the new regulation once issued. We continue to believe that such a review and renegotiation would be appropriate, and Treasury officials informed us that they intend to conduct such a review.

The regulation does not cover some administrative services, as identified by the TARP Chief Compliance Officer, because they do not involve "substantial decision-making authority." The Chief Compliance Officer said such administrative services include, for example, the design of office space for OFS. In addition, as noted in Treasury's supplemental information to the interim regulation, the regulation does not address post-employment restrictions on Treasury employees because Treasury believes this issue is already adequately covered by existing law.[71] We note that section 207 of title 18 of the U.S. Code imposes restrictions on post-federal employment for certain former federal employees.[72] These restrictions apply to all covered federal employees, including those formerly employed by Treasury or detailed to Treasury from other agencies to work on TARP.[73]

In response to another recommendation from our prior report, Treasury has taken some steps to institute a system to manage and monitor conflicts of

[71]74 Fed. Reg. 3431 (Jan. 21, 2009).

[72]GAO, *Defense Contracting: Post-Government Employment of Former DOD Officials Needs Greater Transparency*, GAO-08-485 (Washington, D.C.: May 21, 2008).

[73]These and other restrictions that apply to federal employees do not apply to contractor employees. See GAO, *Defense Contracting: Additional Personal Conflict of Interest Safeguards Needed for Certain DOD Contractor Employees*, GAO-08-169 (Washington, D.C.: Mar. 7, 2008). Nevertheless, Treasury's TARP contracts impose post-employment restrictions on contractor employees in areas such as nondisclosure of nonpublic information.

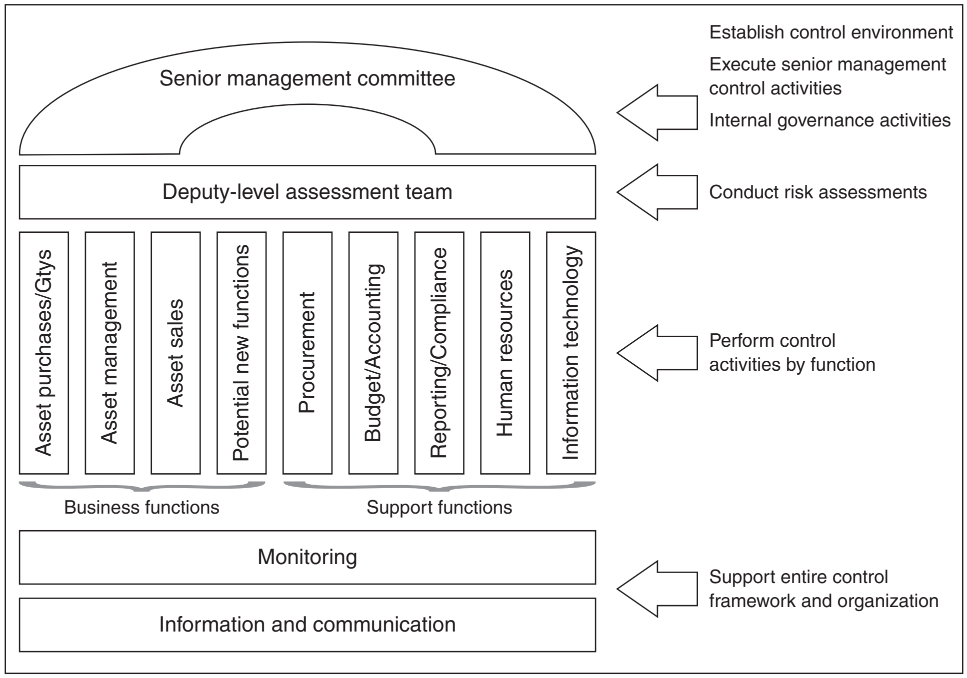
interest. Treasury has focused many of its efforts to date on preventing potential conflicts from becoming actual conflicts requiring mitigation. For example, Treasury contracted with two legal firms to conduct closings under CPP. If one legal firm has a potential conflict related to the institution involved in the closing, Treasury may assign the other legal firm to conduct the closing. If both legal firms have a potential conflict of interest with the institution involved, Treasury may assign a third legal firm to conduct the closing. In addition, the TARP Chief Compliance Officer has assigned staff to review TARP contracts with all legal firms to ensure that confidentiality agreements and conflict-of-interest disclosures are in place, and ensure that required ethics training is being delivered. As it brings new staff on board, Treasury intends to perform the same review for other contracted services. Treasury also is developing a set of internal procedures for its compliance personnel to apply if conflicts arise as contractors or agents are carrying out their responsibilities.

OFS's Internal Control System Continues to Evolve

Since our last report, OFS has taken some important steps toward developing a system of internal control over TARP activities. Effective internal control is a major part of managing any organization to achieve desired outcomes and manage risk. Internal controls include the program's policies, procedures, and guidance that help management ensure effective and efficient use of resources; compliance with laws and regulations; prevention and detection of fraud, waste, and abuse; and the reliability of financial reporting. Using GAO's standards for internal control and the guidance in OMB Circular No. A-123, *Management's Responsibility for Internal Control*, OFS has adopted a framework for organizing the development and implementation of its system of internal control for TARP activities.[74] OFS anticipates that this framework will continue to evolve as new programs are added and as its internal control infrastructure matures. OFS plans to use this framework to develop specific policies, drive communications on expectations, and measure compliance with internal control standards and policies. As shown in figure 2, this framework currently includes three identified business functions and five support functions. Figure 2 also depicts how the OFS framework incorporates the five key elements of internal control that are defined in GAO's standards for internal control: control environment, risk assessment, control activities, information and communication, and monitoring.

[74]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

Figure 2: OFS's Framework for Internal Control



Source: Treasury.

Table 5 defines these five key elements of internal control. The progress OFS has made in each of these elements of internal control is discussed below.

Table 5: GAO's Standards for Internal Control in the Federal Government

Control environment—creating a culture of accountability by establishing a positive and supportive attitude toward improvement and the achievement of established program outcomes.
Risk assessment—performing comprehensive reviews and analyses of program operations to determine if risks exist and the nature and extent of risks have been identified.
Control activities—taking actions to address identified risk areas and help ensure that management's decisions and plans are carried out and program objectives are met.
Information and communication—using and sharing relevant, reliable, and timely financial and nonfinancial information in managing programs.
Monitoring—tracking improvement initiatives over time and identifying additional actions needed to further improve program efficiency and effectiveness.

Source: GAO.

Control environment: OFS has developed an organizational structure that defines lines of authority and hired permanent staff to fill most of its key management positions, including a permanent Chief Financial Officer, who has experience with government internal controls and credit reform accounting. At the recommendation of PricewaterhouseCoopers, contracted by OFS to assist in the design and implementation of a system of internal control for TARP, OFS is creating a Middle Office function (under the Chief Operating Officer) to segregate important reconciliation controls.[75] OFS believes this separation will enhance the current control environment for the different types of investment program transactions (for example, CPP, SSFI, TIP). Middle Office responsibilities include validating transaction approvals, reconciling daily transaction activities, and monitoring Bank of New York Mellon activities concerning the securing of the government's shares of stock and related warrants. OFS officials told us an informal Middle Office function has been in place and maturing since the initial CPP transaction was completed on October 28, 2008. OFS acknowledges that a key action item for OFS senior management will be to develop and implement comprehensive policies and procedures for the office that will include provisions for training and periodic assessment.

Risk assessment: OFS officials told us that they recognize the need for an effective risk-management process, but that the process has not yet been documented. OFS has established an Office of the Chief Risk Officer and has begun to fill the senior-level positions in that office. As shown in figure 2, OFS also has established a Senior Management Committee and the Deputy-level Senior Assessment Team (OFS indicated that the name of this group will likely change). The management committee includes the Assistant Secretary for Financial Stability and all chiefs (and others as deemed appropriate). OFS officials stated that they anticipate establishing responsibilities and authorities for the committee more formally in the coming months. The Deputy-level Assessment Team will include all deputy chiefs and others if deemed appropriate. This team is charged with planning and executing OFS's A-123 review process. OFS stated that this

[75]According to PricewaterhouseCoopers, it is using the Committee of Sponsoring Organizations of the Treadway Commission's—Enterprise Risk Management–Integrated Framework as the basis for providing assistance in developing the internal control model. The committee is a voluntary private-sector organization whose purpose is to help businesses and other entities assess and enhance their internal control systems. As of January 24, 2009, this framework was consistent with GAO's Standards for Internal Control.

working group will be formalized with a charter and will become active in the next few months as more deputy positions are filled and the A-123 process gets underway. If properly structured and implemented, these two groups will be essential to establishing a disciplined approach to TARP's overall risk-assessment process and will complement the activities of its Office of the Chief Risk Officer. Since OFS recently adopted its framework for organizing the development and implementation of its system of internal control, it is still too early to assess whether OFS's risk assessment process for using TARP funds include consideration of all significant interactions between OFS and other parties (including banks receiving funds under CPP and the custodian for TARP activities), as well as internal factors that increase risk, which were concerns we raised in our last report.

A key component to managing risk within TARP is determining how to implement Treasury's $700 billion troubled asset purchase authority and ensure that the department does not exceed the authorized amount. OFS officials told us that they have mechanisms to ensure that TARP purchases do not exceed the $700 billion limit. One mechanism that OFS officials provided to us was a tracking spreadsheet that, they asserted, maintains current data of the status of TARP funds. One aspect of an effective risk assessment process would be to establish and re-evaluate, as needed, the original estimates and funding levels for the various programs. Early on, OFS decided to apply $250 billion of the initially authorized $350 billion to CPP, but there was no documented methodology followed to establish that targeted amount, and no subsequent estimates or updates to address whether that amount will be sufficient to achieve the objectives of CPP. OFS officials told us that the combination of applications submitted from several large insurance and bank holding companies, S corporations and mutuals may require additional funding that exceeds the $250 billion already estimated and allocated to CPP. It is important that OFS develop and implement a well-defined and disciplined risk-assessment process because such a process is essential to monitoring program status and identifying any risks of potentially inadequate funding of announced programs. We will begin evaluation and testing of key elements needed in OFS's risk-assessment process, including controls and procedures that OFS has in place to help ensure that OFS programs do not exceed their authorized funding amounts.

Control activities: OFS initially identified three business functions and five support functions that constitute TARP's control activities. The business functions include asset purchases/guarantees, asset management, and asset sales. An OFS official told us that, given the quick time frames associated with TARP initiatives, one of OFS's goals and challenges in establishing and implementing internal controls is working in a just-in-time environment as business decisions are made and implemented. Consequently, because the business functions are at various stages of activity, so is the development of control activities for each of these business functions. For example, most of OFS's activity to date has occurred in the asset purchase/guarantee function and control activities associated with the asset purchase/guarantee function are the most developed. Although OFS still needs to develop written policies and procedures governing asset purchases, OFS officials informed us that they have established alternative mechanisms or controls over the purchases until such policies and procedures can be developed. For example, OFS, in close coordination with PricewaterhouseCoopers, has developed or is developing desk procedures, key control points, risk matrixes, and process flows for CPP acquisition activity and the monitoring and receipt of dividends. OFS officials told us they were confident that internal controls over the asset purchase transactions have been identified and documented. OFS officials also told us that for asset purchases, OMB has approved the cash flow models for all credit reform initiatives to date, and Investment Committee decisions, such as approving institutions and the equity purchase amounts in CPP, have been reconciled to completed transactions.[76] OFS officials noted they are addressing other activities related to the asset purchases, including developing budget and accounting controls, coordinating with Treasury on internal control requirements under OMB Circular No. A-123, and filling management and staff Middle Office positions.

Ernst & Young, contracted by OFS to perform accounting support functions, is preparing position papers on the accounting methodology and policies for equity investments in financial institutions and other entities and on credit reform accounting. Accounting position papers are a first step in assisting OFS in determining accounting policies that will govern financial reporting for TARP. For the functional areas of asset management, OFS officials told us that they are hiring asset managers and are drafting or have drafted the corporate actions and dividend process flows and controls. OFS is scheduled to receive significant dividend payments in February 2009. We plan to evaluate and test OFS's controls and procedures for this process as part of our next review. As the asset

[76]Accounting for troubled assets under the Federal Credit Reform Act, 2 U.S.C. § 661c, involves the estimation of cash flows over time.

manager positions are filled, it will be important that the valuation of previous transactions be completed promptly and future transactions valued on a timely basis. At this time, there has been no activity related to the business function pertaining to asset sales. Accordingly, OFS has deemed this area a lower priority and has not addressed it. OFS currently is relying primarily on Treasury's departmental offices for the support functions of procurement, budget/accounting, reporting/compliance, human resources, and information technology.

Information and communication: OFS has put in place mechanisms for communicating internal control matters and the ongoing development of internal control policies. For example, internally, OFS conducts informal weekly meetings with PricewaterhouseCoopers and Ernst & Young to discuss progress in establishing and documenting internal controls and financial accounting processes. Externally, OFS officials told us they are in constant communication with OMB and Treasury officials on the availability of TARP funds prior to incurring an obligation. OFS also has met with officials from FinSOB on various topics including internal controls. In addition, OFS posts information on Treasury's Web site, speaks at industry events, and testifies at congressional hearings. According to OFS, as of January 23, 2009, they have issued all reports required under the act.

Monitoring: OFS officials stated they are in the planning stage of developing and implementing comprehensive policies and procedures for monitoring. OFS plans to include provisions for periodic assessments by management to determine if the policies, procedures, and established controls are operating effectively. They expect this will occur formally through the A-123 review and assurance statement process and informally on an ongoing basis through information provided during the course of normal business operations. In addition, OFS officials told us they are continuing to leverage the work of PricewaterhouseCoopers to actively monitor the execution of controls by OFS in relation to each CPP transaction. OFS believes such active monitoring results in a regular evaluation of control design and effectiveness, which is necessary to ensure controls are appropriate and working as intended.

Continuing to develop a comprehensive system of internal control is a key challenge facing OFS because it has had to develop internal controls while simultaneously reacting quickly to financial market events and implementing TARP initiatives. OFS recognizes there may be situations in which the organization will be unable to fully execute the controls as designed. Therefore, OFS plans for its internal control design to include compensating controls for such situations. By adopting a framework for organizing the development and implementation of its system of internal control, OFS has made an important start to providing a common understanding of, and clear structure for, that system. This framework, although still evolving, should provide OFS with the ability to communicate expectations and measure performance on internal controls and develop mechanisms for compliance with internal control standards. Our ongoing monitoring efforts will focus on the steps OFS is taking to develop and implement an effective internal control structure. We also plan to test the design, implementation, and operating effectiveness of internal controls over TARP activities, such as the approval and recording of CPP transactions and the receipt of dividends on preferred stock.

Measuring the Impact of TARP on Credit Markets and the Economy Continues to Be Challenging

TARP's activities could improve market confidence in banks that choose to participate and have beneficial effects on credit markets, but several factors will complicate efforts to measure any impact. If TARP is having its intended effect, a number of developments might be observed in credit and other markets over time, such as reduced risk spreads, declining borrowing costs, and lending activity higher than it would have been in the absence of TARP. Credit market indicators we have identified suggest that the cost of credit has declined since our last report in interbank, mortgage, and corporate debt markets, while perceptions of risk (as measured by premiums over Treasury securities) have declined in interbank markets, but changed very little in corporate debt and mortgage markets. Several factors will make isolating and measuring the impact of TARP challenging, including changes in monetary and fiscal policy, other programs introduced by Treasury, the Federal Reserve, FDIC, and FHFA, and general market forces. For example, the Federal Reserve's announcement that it will purchase mortgage-backed securities has been associated with a large drop in mortgage rates. As a result, any changes in capital markets cannot be attributed solely to TARP. Similarly, slow recovery does not necessarily reflect its failure because of the effects of market forces and economic conditions. We have identified a number of other indicators that we are monitoring and may include in future reports.

TARP Could Have a Number of Effects on Credit Markets and the Economy

TARP activities as of January 22, 2009—specifically CPP—could continue to improve market confidence in participating banks by improving their balance sheets, cash flows, and capital positions; reducing their perceived risk; and allowing them to borrow and raise capital at more favorable rates. To the extent that confidence in participating banks improves, the banks should be able to pass on some of their lower funding costs to their own customers in the form of lower rates. Moreover, the capital infusions also could increase the willingness and ability of participating banks to increase lending to creditworthy businesses and consumers rather than hoarding the capital or using it to purchase low-risk assets.

Some tension exists between the goals of improving banks' capital positions and promoting lending—that is, the more capital banks use for lending, the less their overall capital positions will improve. The current crisis involves issues of liquidity and solvency and it is difficult to determine which factor most challenges the viability of a given financial institution, especially since the values of the underlying mortgage-related securities at the root of the turmoil are unknown. A financial institution experiencing liquidity problems may have adequate capital (the value of its assets significantly outweighs liabilities) and therefore might be expected to use CPP capital to increase lending. Some institutions likely would use CPP capital to improve their capital ratios by holding the additional capital as Treasuries or other safe assets, rather than leveraging new capital to support additional lending. Using the capital in this manner could allow institutions to absorb losses or write down troubled assets.

Since the onset of the crisis, it appears that banks have experienced liquidity and capital adequacy problems, complicating expectations about the immediate impact of TARP on lending. While Treasury has stated that CPP funds are intended for healthy institutions, continued uncertainty in financial markets, deteriorating economic conditions, and difficulty determining solvency suggest that some apparently healthy institutions may not leverage new capital at the expense of their own capital adequacy. For example, while Citigroup received $25 billion in CPP funds in October 2008, Treasury, the Federal Reserve, and FDIC provided additional capital in November 2008 and insured a pool of approximately $300 billion in assets against large losses, amidst concerns about Citigroup's viability. Similarly, it was announced on January 16, 2009, that Bank of America would receive an additional $20 billion in TARP funds as well as additional insurance assistance from Treasury and FDIC on an asset pool of $118 billion. However, if CPP funds contribute to improving solvency rather than increasing lending, overall financial stability likely still would improve in the near term, as systemic or disruptive institutional failures could be prevented.

As discussed in our last report, if TARP does have its intended impact, a number of effects should appear in credit and other markets over time, including declining risk premiums (the difference between risky and risk-free interest rates, such as rates on U.S. Treasury securities) for interbank lending and bank debt and lower borrowing costs for business and consumers. While these developments may raise volumes of consumer and business lending and permit some households to avoid foreclosures, the impact on overall lending could be diminished by the decline in the creditworthiness of borrowers or a tightening of lending standards. Given that credit quality in the economy is deteriorating and confidence remains low, banks may remain cautious about extending credit, lending only to low-risk borrowers and converting the additional funds into low-yield, safe assets. Similarly, with confidence low, consumers and business will remain cautious about taking on new loans. Under these circumstances, low interest rates and lower premiums may not translate into increased lending. Additionally, as Treasury has acknowledged, it may take more time before the injections have the desired effect. According to a Treasury statement on January 13, 2009, $189 billion of the initial $250 billion allocated to CPP has been invested. Because the economy is experiencing a downturn, during which lending and borrowing levels normally drop, lending may not occur immediately but may occur faster than would be the case if the equity injections had not taken place. Overall, determining the specific effect of TARP will be a challenge, because no one can know with confidence what would have happened in its absence.

Changes in credit market conditions may not provide conclusive evidence of TARP's effectiveness, as other important policies and interventions can influence these markets. We discussed the collaborative efforts government agencies have undertaken to restore financial stability, as well as the general market forces that also will complicate a determination of TARP's specific effectiveness. Both factors continue to affect markets. For example, since our last report the Federal Reserve lowered the federal funds target and the discount rate partially in response to strained financial markets and tight credit conditions. Additionally, on November 25, 2008, the Federal Reserve announced that it would begin to purchase up to $500 billion in mortgage-backed securities guaranteed by Fannie Mae, Freddie Mac, and Ginnie Mae and $100 billion in government-sponsored enterprise debt to support the mortgage and housing markets and foster improved conditions in financial markets more generally.[77] Moreover, FHFA, in partnership with Treasury, continues to implement a supplemental loan modification program for at-risk borrowers to prevent foreclosures and mitigate default-related losses. To these ends, Fannie

[77]The relevant government-sponsored enterprises are Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.

Mae and Freddie Mac—under FHFA conservatorship—announced that they would extend the suspension of foreclosure sales and evictions from some single-family properties through January 31, 2009.[78] Moreover, housing values may continue to fall to levels consistent with incomes and rents in local areas, possibly leading to additional foreclosures, asset write-downs, and an increase in the perceived risk of banks and other financial institutions with exposure to mortgage assets.

Changes in Select Indicators Suggest Improvement in Credit Market Conditions, but These Changes Cannot Be Attributed Exclusively to TARP

We considered a number of indicators that, although imperfect, may be suggestive of TARP's impact on credit and other markets. Currently, we have identified preliminary indicators that are likely to capture interbank, mortgage, and nonbank lending activity as well as financial market risk perceptions and variables that are predictive of future real economic activity. At the very least, improvements in these measures would indicate improving conditions in credit markets. Further, given that CPP's goal is to improve the capital position of banks and promote lending, we expect to monitor indicators that can provide some insight into the potential effects of the plan on capital ratios, the structure of liabilities, and net changes in lending at participating institutions. We continue to consider a variety of additional indicators, and as more data become available and economic and credit conditions evolve, we plan to include them in future reports.

Treasury-London Interbank Offered Rate Spread

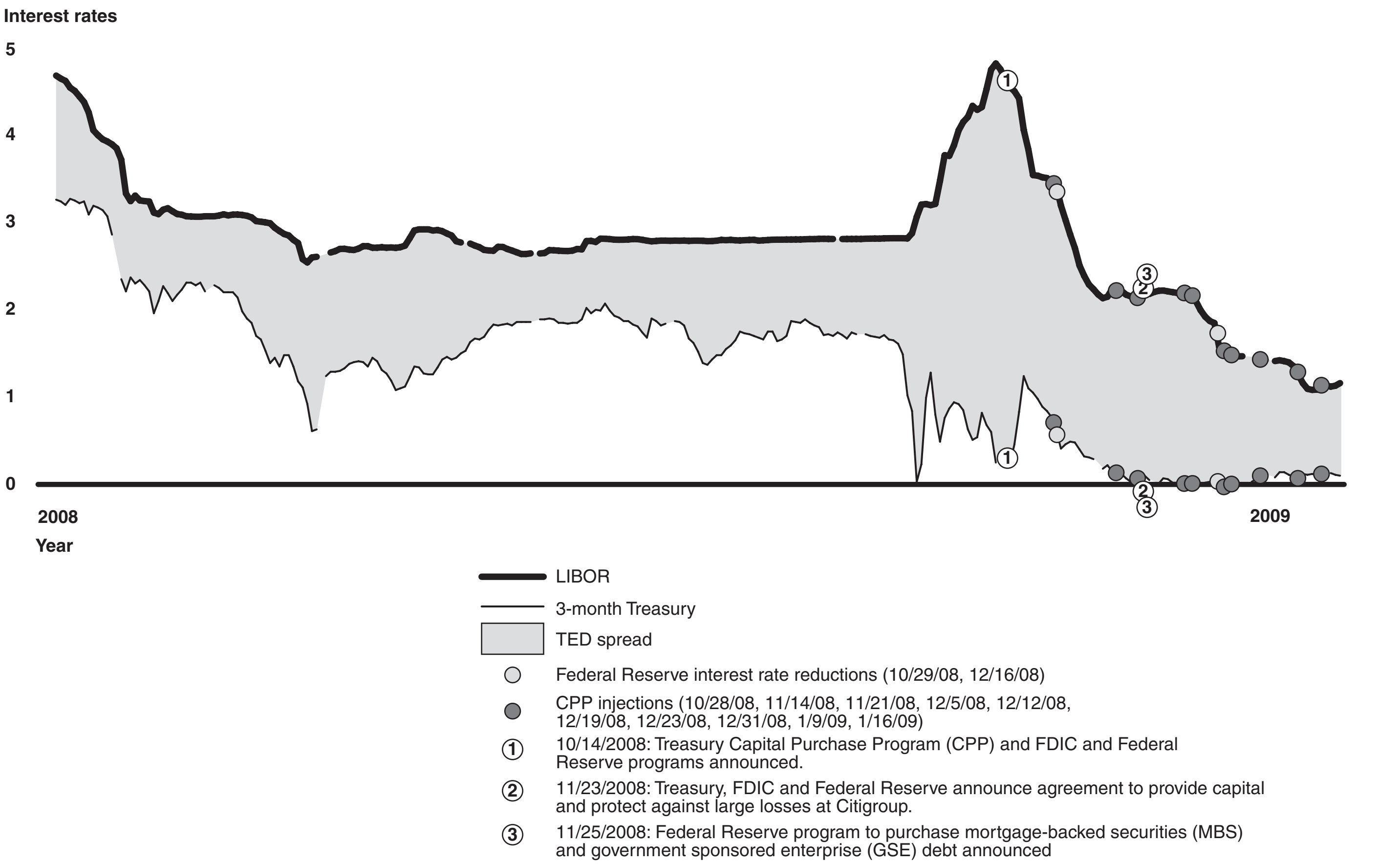
As noted in our last report, the TED spread is the difference between an average of LIBOR and the interest rate on U.S Treasury bills with the same maturity. It is considered a key indicator of credit risk that gauges the willingness of banks to lend to other banks. Increases in the TED spread imply a bigger aversion to risk. That is, investors have a preference for safe investments (such as Treasury securities) and charge a higher premium for loans to other institutions to compensate for greater perceived default risk. Figure 3 shows the 3-month LIBOR, 3-month Treasury, and TED spread. The daily TED spread peaked at more than 450 basis points on October 10, 2008.[79] Between October 13, 2008 (the day before the announcement of the creation of CPP), and January 20, 2009, the spread declined by more than 350 basis points to its lowest level since

[78]The original announcement occurred on November 20, 2008, suspending foreclosures and evictions through January 9, 2009.

[79]A basis point is a common measure used in quoting yield on bills, notes, and bonds and represents 1/100 of a percent of yield. It should be noted that while the spread is large, the actual LIBOR rate is lower than the average rate from 2005 through mid-2007.

August 2008. Decreases in the TED spread could reflect that banks are more willing to lend to other banks on terms that reflect greater confidence in the banking system (that is, without demanding a large interest rate premium) for the time being. LIBOR itself has declined to levels not seen since 2004. These declines could be attributed to TARP, the collaborative efforts government agencies have undertaken to restore financial stability, or both. Since falling below 100 basis points on January 20, the TED spread has begun to rise somewhat reaching 1.06 percent as of January 22, 2009.

Figure 3: TED Spread, 3-Month LIBOR, and 3-Month Treasury Bill Yield, as of January 22, 2009



Source: Global Insight and Federal Reserve System.

Note: Rates and yields are daily percentages. Area between LIBOR and Treasury yield is the TED spread. The Federal Reserve announced an early January start for MBS and GSE debt purchases on December 30, 2008.

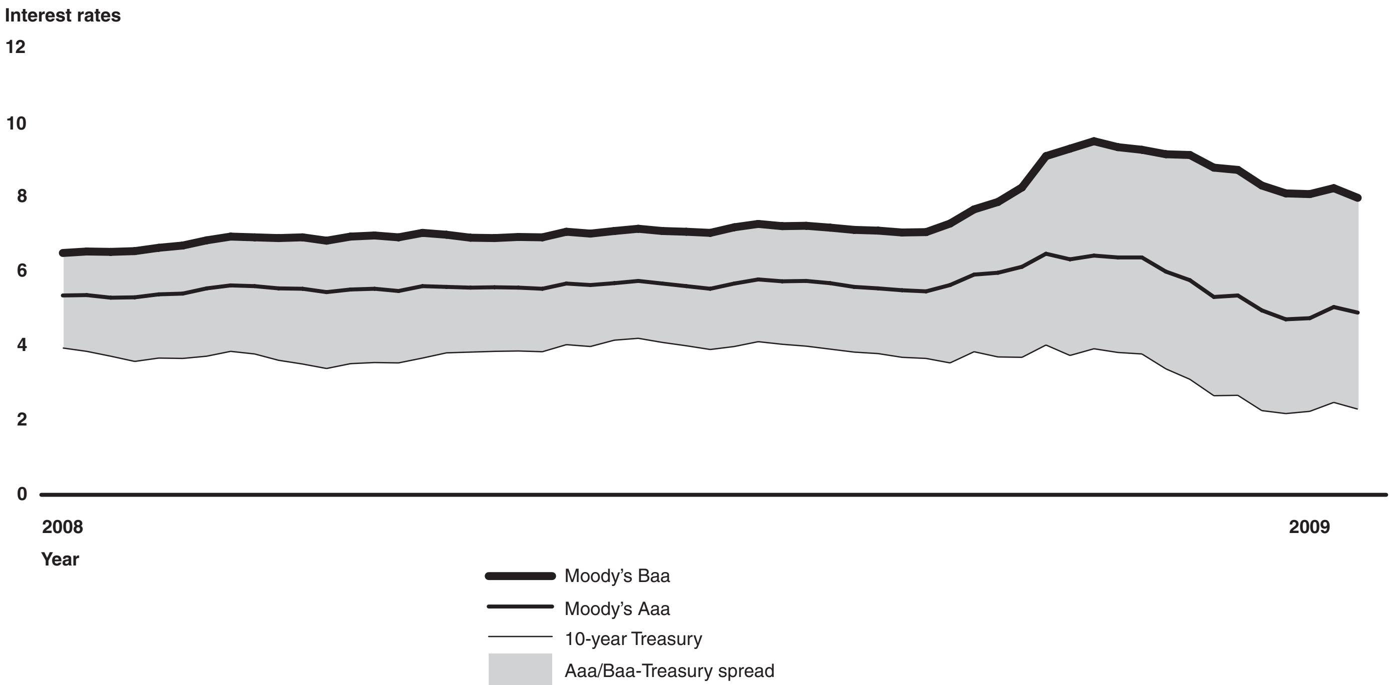
Corporate Spreads

The economy-wide risk premium is measured in a number of ways, most commonly as the spread between Moody's Investors Service (Moody's) Baa bond rate and Moody's Aaa rate or between these rates and the relevant government bond yield.[80] These spreads represent a premium lenders demand for taking on risk—that is, when spreads are high, market participants perceive more risk, warranting a higher rate of return. When credit market conditions improve, some narrowing of these spreads would be expected.[81] Moody's describes Aaa bonds as "of the highest quality, with minimal credit risk" and Baa bonds as "subject to moderate credit risk" that "may possess certain speculative characteristics." As shown in figure 4, the various interest rate spreads show a common pattern—an increase in negative perceptions about risk, resulting in increasing spreads as seen over the past year. Declines in these spreads would be indicative of improving credit conditions, but because these spreads may have been too narrow during the period leading up to the credit market turmoil (risk was underpriced), it is not clear that these premiums would decline to those previous levels. Since our last report, which reported data as of the week of November 21, 2008, perceptions of risk (represented by the Aaa- and Baa-Treasury spreads) in corporate debt markets have declined modestly (roughly 10-35 basis points), while the cost of credit has fallen more markedly (roughly 90-115 basis points).

[80]Moody's Investors Service performs financial research and analysis on commercial and government entities. It also ranks the creditworthiness of borrowers using a standardized rating scale. These spreads also can reflect a liquidity or prepayment premium.

[81]Moreover, economic research also suggests that such interest rate spreads have predictive power for several real economy variables, such as industrial production, durable orders, the unemployment rate, personal income, capacity utilization, and consumption.

Figure 4: Yields on Corporate Bonds (Aaa and Baa) Relative to 10-year Treasury, as of January 16, 2009



Sources: Federal Reserve System.

Note: Rates and yields are weekly percentages.

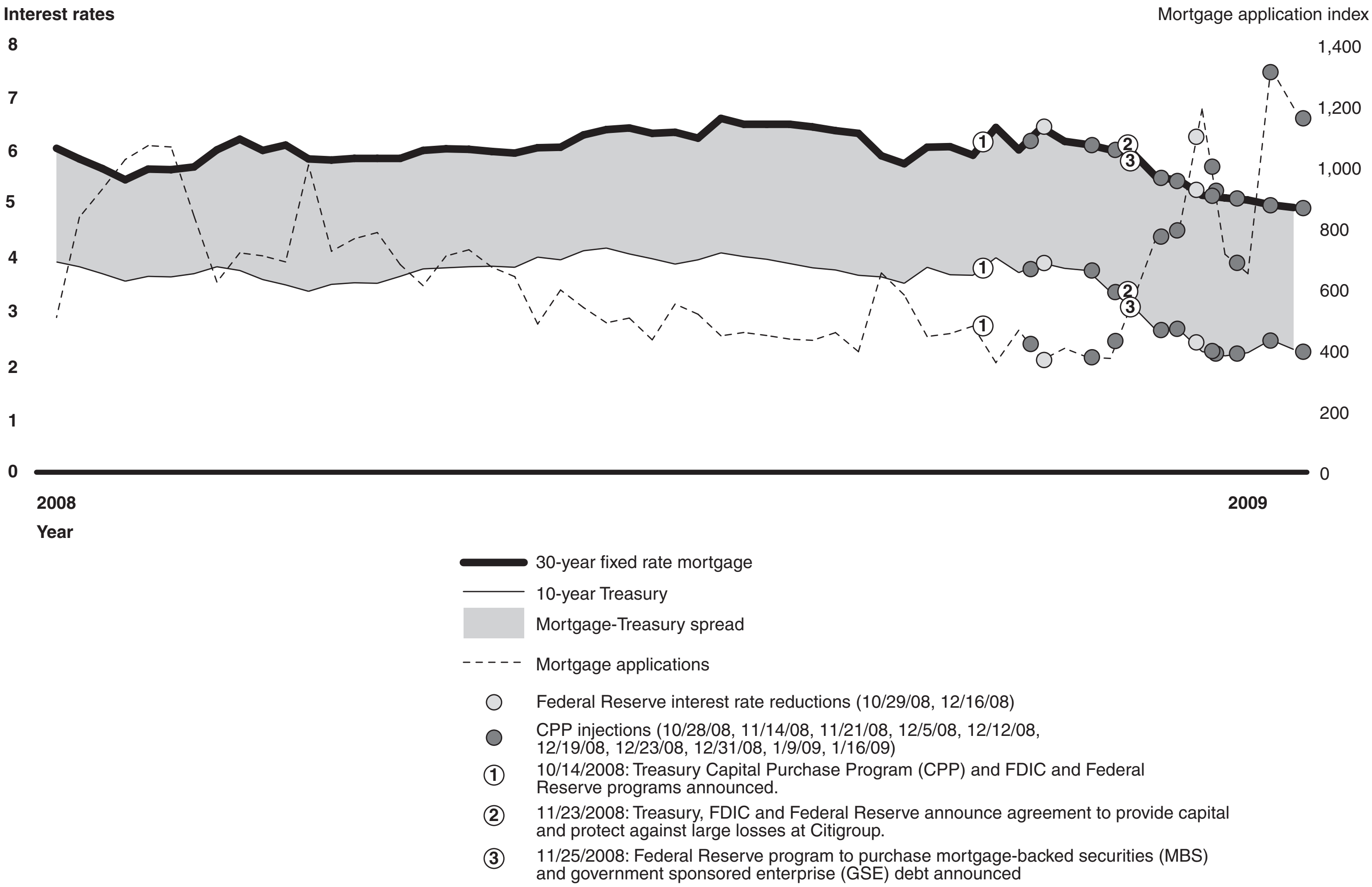
Mortgage Rates

The credit turmoil has raised concern about consumers' abilities to obtain funds, including mortgages, at rates consistent with economic fundamentals and individual risk characteristics. One of TARP's explicit goals is to enhance liquidity and promote lending to consumers, but high spreads between mortgage rates and Treasury yields indicate relatively high risk and low liquidity. Therefore, to the extent that credit and economic conditions improve, these spreads would narrow. Figure 5 shows that since our last report, which reported data as of the week of November 21, 2008, perceptions of risk (represented by the mortgage-Treasury spread) in mortgage markets are unchanged. However, conforming mortgage rates have fallen dramatically—by more than 90 basis points.[82] As figure 5 shows, a significant drop in mortgage rates

[82]Conforming mortgages are mortgage loans that can be purchased by Fannie Mae and Freddie Mac.

occurred shortly after the Federal Reserve's announcement that it would purchase mortgage-backed securities, suggesting that stabilization policies outside of TARP may have been an important force behind this significant decline. The figure also illustrates that mortgage applications increased significantly after mortgage rates declined. However, the biggest increase in applications was for borrowers attempting to refinance existing properties rather than purchase new homes. Although not illustrated here, the refinance application index grew roughly 418 percent from November 21, 2008, to January 16, 2009, while the purchase application index rose by approximately 16 percent.

Figure 5: Mortgage Rates (30-Year Fixed Rate, Conforming), Mortgage Applications Index, and Treasury Yields, as of January 16, 2009



Sources: Federal Reserve System and Global Insight.

Note: Rates and yields are weekly percentages. The Federal Reserve announced an early January start for MBS and GSE debt purchases on December 30, 2008.

Mortgage Originations

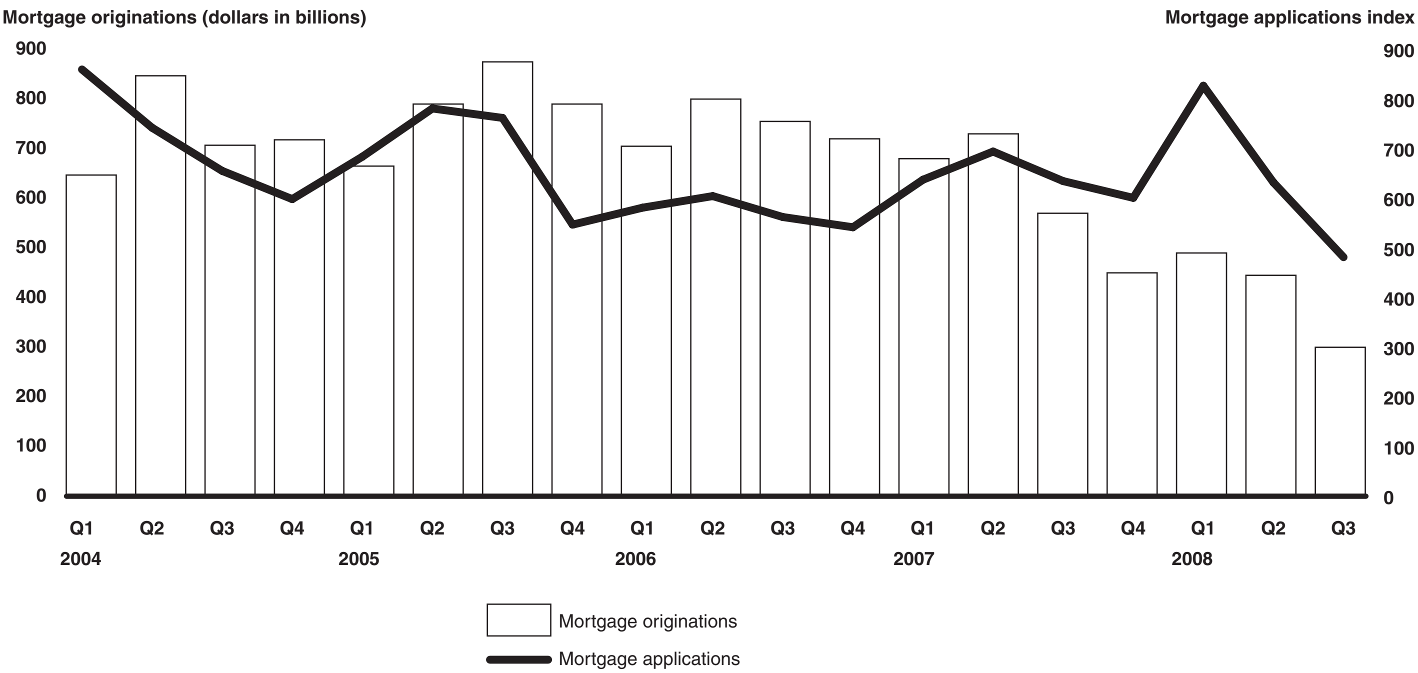
Like other bank interest rates, mortgage rates may reflect the customers to whom banks choose to lend, rather than the cost of credit for all potential customers. As such, the volume of new mortgage lending also may indicate the availability of credit, changes in credit risk, or demand for credit. As shown in figure 6, quarterly mortgage originations in the United

States have fallen by more than 50 percent since 2005.[83] While mortgage interest rates have fallen, mortgage lending has decreased. To the extent that credit and economic conditions improve over time and interest rates remain stable, we would expect mortgage originations to stop declining and eventually rise, although it is not clear that this measure would or should return to the level seen in the period leading up to the credit market turmoil. As figure 6 shows, the decline in origination was associated with a decline in mortgage applications—from the first quarter to the third quarter of 2008 both the average applications index and mortgage originations declined by 39 percent. While mortgage applications increased significantly during the fourth quarter of 2008, we do not have recent data on originations for comparative purposes. In subsequent reports, we will provide an update on mortgage originations as the quarterly data become available.[84]

[83]This dropoff is consistent with the change in household mortgage debt as measured by the Federal Reserve's flow of funds data.

[84]The mortgage application index is not seasonally adjusted here to provide a more appropriate comparison to the unadjusted mortgage origination data. Because the seasonal patterns in the data might be different for each series, we also analyzed year-over-year changes. Originations were roughly 47 percent lower in the third quarter of 2008 than in the third quarter of 2007, while the average mortgage application index fell 24 percent.

Figure 6: Mortgage Originations and Mortgage Applications Index, as of September 30, 2008



Sources: *Inside Mortgage Finance* estimates and Global Insight.

Note: Estimates of originations are based on information from the Federal Housing Administration, Veterans Administration, and mortgage-backed securities and lenders and include refinances.

Mortgage Foreclosures and Defaults

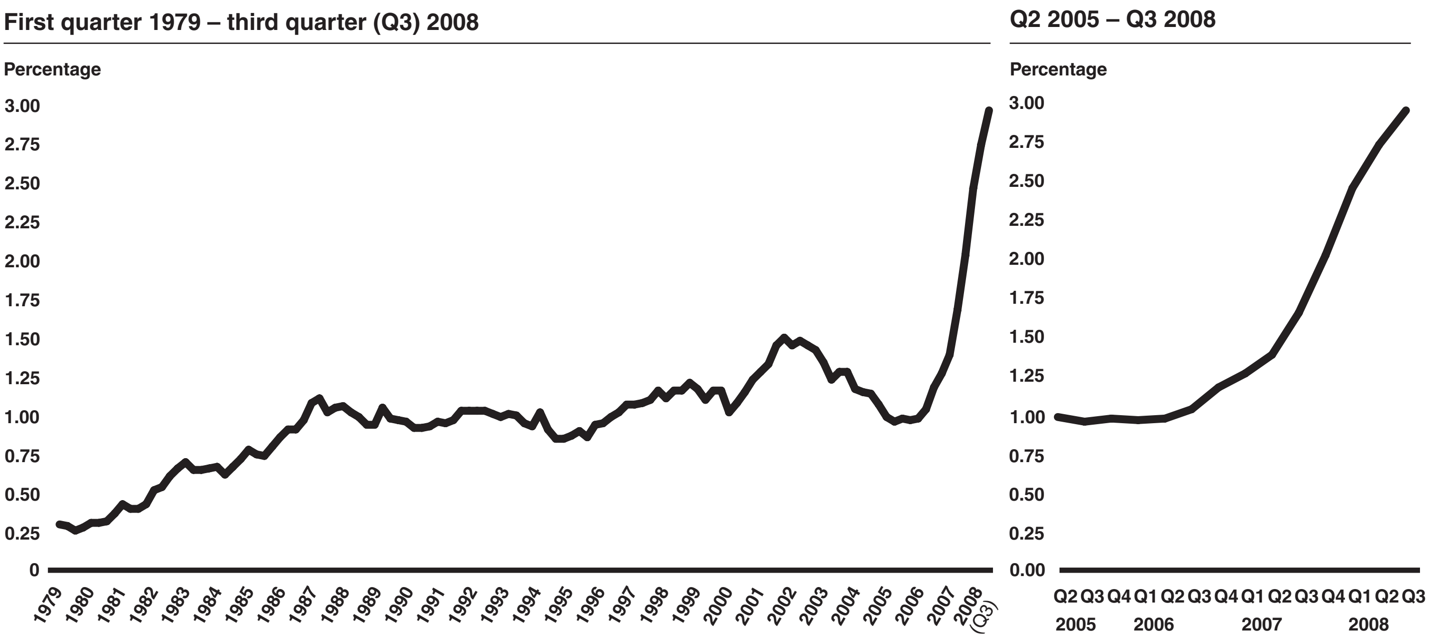
We will continue to report on trends in foreclosures and delinquencies. As we have testified, foreclosures not only affect those losing their homes but also their neighborhoods, and have contributed to increased volatility in the financial markets.[85] Treasury officials have urged banks to modify and restructure loans whenever reasonable to avoid preventable foreclosures.[86] Moreover, if TARP is effective, banks may be more able to refinance mortgage loans for creditworthy borrowers to keep monthly payments

[85]GAO, *Troubled Asset Relief Program: Status of Efforts to Address Defaults and Foreclosures on Home Mortgages*, GAO-09-231T (Washington D.C.: Dec. 4, 2008).

[86]FDIC, Treasury, and the Federal Reserve have stated that lenders and servicers should (1) determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure; and (2) ensure that loans currently in foreclosure have been subject to such analysis.

affordable. While it is too early to expect material changes in foreclosures, and the most recent data preclude an assessment of trends since TARP began, figure 7 establishes the historical context for continued monitoring. As the figure shows, the percentage of total loan foreclosures reached 2.97 percent at the end of the third quarter of 2008—a level unseen in the 29 years for which complete data on defaults and foreclosures have been kept. As noted earlier, a variety of parties outside of TARP are taking actions to address the rising foreclosure rate.

Figure 7: Percentage of Loans in Foreclosure, as of September 30, 2008



Source: GAO analysis of Global Insight data.

In addition to the preliminary indicators previously identified, we continue to evaluate the potential usefulness of other indicators. This list is not definitive or exhaustive, and we expect to add new indicators and modify or drop others as we engage with Treasury, the Federal Reserve, and other informed market participants. Moreover, some measures included may become more appropriate indicators as time progresses. The indicators we are monitoring include the federal funds and prime lending rates, the Federal Reserve's survey of lending standards, commercial paper interest rates, changes in assets held by commercial banks, changes in household and business debt, stock prices and volatility, and housing prices. Many data sources are updated only on a quarterly basis and with a lag (for example, the Federal Reserve's flow of funds); thus, we are not yet able to assess the impact of TARP from many of these sources.

Conclusions

Treasury has taken important steps to implement all nine recommendations in our previous report. In particular, our recommendation calling for Treasury to facilitate a smooth transition to the new administration largely has been completed. However, due in part to the short time frame since our last report, continued action is needed to fully address the remaining eight. Appendix IV provides a high-level summary prepared by Treasury of the progress it has made on each recommendation since our last report as well as some planned next steps.

During this period, Treasury has begun to take a number of important steps toward better reporting and monitoring of CPP, in accordance with our prior recommendations that Treasury bolster its ability to determine whether institutions were using the proceeds consistent with the purposes of the act and that it establish mechanisms to monitor compliance with program requirements, but more needs to be done. First, while Treasury has announced plans to survey the largest institutions monthly to monitor their lending and other activities by collecting qualitative and quantitative information, Treasury plans to rely on quarterly financial (call report) data from the other participating institutions. While the monthly survey is a step toward greater transparency and accountability for the largest institutions, we continue to believe that additional action is needed to better ensure that all participating institutions are accountable for their use of the funds. Without more frequent information on all participants, Treasury will have little timely information about the effectiveness of the overall program and the changing condition of the institutions and may limit the ability of its newly created team of analysts to analyze how the infusions are being used by the institutions and the effectiveness of the program. In addition, without ensuring that future CPP agreements include a mechanism that will better enable Treasury to track the use of capital infusions and seeking to obtain similar information from existing CPP participants, Treasury may have difficulty taking action should it later determine that an institution has not used the funds in a manner consistent with the intent of the program.

Second, Treasury has continued to take steps to increase its planned oversight of compliance with terms of agreements such as executive compensation and limitations on dividends and stock repurchases, including plans to issue new interim final rules that amend and clarify the past interim rules on executive compensation and naming an Interim Chief Compliance Officer. However, Treasury has not yet finalized these plans.

Without a more structured mechanism in place to ensure compliance with all CPP requirements, including limitations on dividends and stock repurchases—and as more institutions continue to participate in the program— ensuring compliance with these aspects of the program will become increasingly important and challenging.

Treasury has made less progress in improving the transparency of the program and has not yet articulated a clear strategic vision for TARP. In our December 2008 report, we raised questions about the effectiveness of Treasury's communication strategy for TARP with Congress, the financial markets, and the public. These questions were further heightened in COP's January report, which also raised questions about Treasury's strategy for TARP. In response to our recommendation about its communication strategy, Treasury noted numerous publicly available reports, testimonies, and speeches. However, even after reviewing these items collectively, Treasury's strategic vision for TARP remains unclear. For example, early on Treasury outlined a strategy and approach to purchase whole loans and mortgage-backed securities from financial institutions, but changed direction to making capital investments in qualifying financial institutions as the global community opted to move in this direction. Moreover, once Treasury determined that capital infusions were preferable to purchasing whole mortgages and mortgage-backed securities, Treasury did not clearly articulate how the various programs (such CPP, SSFI, and TIP) would work collectively to help stabilize financial markets. For instance, Treasury has used similar approaches—capital infusions—to stabilize healthy institutions under CPP as well as SSFI and TIP, albeit with more stringent requirements. Moreover, with the exception of institutions selected for TIP being viewed as able to raise private capital, both SSFI and TIP share similar selection criteria. Finally, the same institution may be eligible for multiple programs—at least two institutions currently participate in more than one program—and this has added to confusion about Treasury's strategy and vision for the implementation of TARP.

Other actions have raised additional questions about Treasury's strategy. First, the funding of the first institution to receive funding under TIP was announced weeks before the program was established. Similarly, the Asset Guarantee Program was established after Treasury announced that it would guarantee assets under such a program, and many of the details of the program have yet to be worked out. Second, Treasury's efforts to mitigate residential foreclosures, which have contributed to increased volatility in financial markets, remain in the design phase with no clearly articulated strategy. Finally, while Treasury has continued to publicly report on individual issues, testify, and make speeches about the program, it continues to struggle to convey a clearly articulated and overarching message about its efforts, potentially hampering TARP's effectiveness and underscoring ongoing questions about its communication strategy. Without a clearly articulated strategic vision, Treasury's effectiveness in helping to stabilize markets may be hampered.

Treasury also has made progress in establishing its management infrastructure, which included hiring, contracting oversight, and internal controls.

- In the hiring area, Treasury took steps to help maintain leadership within OFS during and after the transition to the new administration, one of the areas we highlighted in our first report. Specifically, Treasury ensured that interim chief positions would be filled to ensure a smooth transition and used direct-hire and various other appointments to bring a number of career staff on board quickly. While making progress since our last report in establishing the TARP organization, the number of temporary and contract staff who will be needed to serve long-term organizational needs remains unknown. Because TARP has added many new programs since it was first established in October and the number and types of program activities may expand or change under the new administration, we recognize that Treasury may find it difficult to determine OFS's long-term organizational needs at this time. However, such considerations will be vital to retaining institutional knowledge within the organization as programs evolve.

- Treasury's use of existing contract flexibilities has enabled it to enter into agreements and award contracts quickly in support of TARP. However, Treasury's use of time-and-materials contracts, although authorized when flexibility is needed, can increase the risk of wasted government dollars without adequate oversight of contractor performance. Although Treasury has improved its oversight of contractors, the department itself has identified COTR certification and the use of time-and-materials pricing to be high-risk issues that still need attention. In addition, while Treasury has taken the important step of recently issuing an interim regulation outlining the process for reviewing and addressing conflicts of interest among new contractors and financial agents, it is still reviewing contracts or agreements that existed prior to issuance to ensure conformity with the new regulation. We believe this is a necessary component of a comprehensive and complete system to ensure that all conflicts are fully identified and appropriately addressed.

- In the area of internal controls, Treasury has taken some important steps, including OFS adopting a framework for organizing the development and implementation of its system of internal control for TARP activities. OFS plans to use this framework to develop specific policies, drive communications on expectations, and measure compliance with internal control standards and policies. However, it has yet to develop comprehensive written policies and procedures governing TARP activities or implement a disciplined risk-assessment process.

Finally, because TARP is still in the early stages of implementation as well as other complicating factors, isolating its impact on credit markets continues to be difficult. However, some indicators demonstrate that since our last report, the cost of credit has declined in interbank, mortgage, and corporate debt markets. Conversely, while perceptions of risk (as measured by premiums over Treasury bonds) have declined in interbank markets, they appear to have changed little in the corporate bond and mortgage markets. Attributing any of these changes directly to TARP continues to be problematic because of the range of actions that have been and are being taken to address the current crisis. For example, a large drop in mortgage rates occurred shortly after the Federal Reserve announced it would purchase up to $500 billion in mortgage-backed securities, highlighting that policies outside of TARP may have important effects on credit markets. While these indicators may be suggestive of TARP's ongoing impact, no single indicator or set of indicators will provide a definitive determination of the program's impact.

Recommendations for Executive Action

As with our previous 60-day report, we continue to identify a number of areas that warrant Treasury's ongoing attention concerning TARP. Therefore, we recommend that Treasury take the following nine actions to further improve the integrity, transparency, and accountability of the program and more clearly articulate and communicate a strategic vision:

- Expand the scope of planned monthly CPP surveys to include collecting at least some information from all institutions participating in the program.

- Ensure that future CPP agreements include a mechanism that will better enable Treasury to track the use of the capital infusions and seek to obtain similar information from existing CPP participants.

- Establish a process to ensure compliance with all CPP requirements, including those associated with limitations on dividends and stock repurchase restrictions.
- Communicate a clearly articulated vision for TARP and how all individual programs are intended to work in concert to achieve that vision. This vision should incorporate actions to preserve homeownership. Once this vision is clearly articulated, Treasury should document needed skills and competencies.
- Continue to expeditiously hire personnel needed to carry out and oversee TARP.
- Expedite efforts to ensure that sufficient personnel are assigned and properly trained to oversee the performance of all contractors, especially for contracts priced on a time-and-materials basis, and move toward fixed-price arrangements whenever possible as program requirements are better defined over time.
- Develop a comprehensive system of internal control over TARP activities, including policies, procedures, and guidance that are robust enough to ensure that the program's objectives and requirements are met.
- Develop and implement a well-defined and disciplined risk-assessment process, as such a process is essential to monitoring program status and identifying any risks of potential inadequate funding of announced programs.
- Review and renegotiate existing conflict-of-interest mitigation plans, as necessary, to enhance specificity and conformity with the new interim conflicts of interest regulation, and take continued steps to manage and monitor conflicts of interest and enforce mitigation plans.

Agency Comments and Our Analysis

We provided a draft of this report to the Department of the Treasury for review and comment. We also provided segments of the draft to the Federal Reserve, FDIC, OCC, and OTS for review and comment. In written comments, Treasury generally agreed with the report and noted that the recommendations were constructive (see app. I). They also noted that while TARP has only been in existence for 120 days, Treasury had made significant progress implementing internal controls, promulgating regulations, hiring staff, and communicating its activities to the public. Moreover, they noted that Treasury has taken steps to measure lending activities of the banks that have received TARP capital. However, they agreed that more work remains to be done in each of the areas highlighted in the report. Treasury also mentioned its recent actions involving the auto industry and additional investments in Citigroup and Bank of America. While we describe the programs established to make these investments, we have not evaluated the need for any of the programs. In subsequent reports we plan to focus on the process used to make the decisions to establish those programs, whether Treasury has systems in place to ensure that the institutions are complying with the terms and conditions of the agreements, and whether the programs are achieving their stated goals. Treasury and three of the federal regulators also provided technical comments that we incorporated, as appropriate.

We are sending copies of this report to the Special Inspector General for TARP and interested congressional committees and members, Treasury, the federal banking regulators, and others. The report also is available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact Richard J. Hillman at (202) 512-8678 or hillmanr@gao.gov, Thomas J. McCool at (202) 512-2642 or mccoolt@gao.gov, or Orice M. Williams at (202) 512-8678 or williamso@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.

Gene L. Dodaro
Acting Comptroller General
of the United States

List of Congressional Committees

The Honorable Daniel K. Inouye
Chairman
The Honorable Thad Cochran
Vice Chairman
Committee on Appropriations
United States Senate

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Kent Conrad
Chairman
The Honorable Judd Gregg
Ranking Member
Committee on the Budget
United States Senate

The Honorable Max Baucus
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The Honorable Charles E. Grassley
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The Honorable Jerry Lewis
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Committee on Appropriations
House of Representatives

The Honorable John M. Spratt, Jr.
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The Honorable Paul Ryan
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Committee on the Budget
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The Honorable Barney Frank
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The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
House of Representatives

The Honorable Charles B. Rangel
Chairman
The Honorable Dave Camp
Ranking Member
Committee on Ways and Means
House of Representatives

Appendix I: Comments from the Department of the Treasury

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

ASSISTANT SECRETARY

January 28, 2009

Mr. Thomas J. McCool
Director, Center for Economics,
Applied Research and Methods
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. McCool:

Thank you for the opportunity to review GAO's draft report on the Treasury Department's Troubled Assets Relief Program (TARP).

In its previous report, GAO made nine recommendations for building this very young program into a mature and highly effective organization. The program is still very young – less than 120 days old – and we therefore welcome GAO's conclusion that "Treasury has taken important steps to implement all nine recommendations in the previous report." As described in our *Summary Response to Recommendations in the December 2008 GAO Report,* included in your latest report, Treasury has made significant progress implementing internal controls, promulgating regulations, hiring staff, and communicating its activities to the public. The Treasury Department has also initiated a program to measure the lending activities of the banks that have received TARP capital. GAO's latest report tells us that we are on the right path. We agree that more work remains to be done in each of these areas, and Treasury's dedicated team will continue to move the program forward rapidly.

The Treasury Department made important progress in addressing GAO's recommendations while taking extraordinary actions to stabilize the financial system. Since its inception in October 2008, the Capital Purchase Program (CPP) has strengthened regional, small and large financial institutions, as well as Community Development Financial Institutions, through total investments of $194.2 billion in 317 institutions in 43 states and Puerto Rico. To date, the largest investment is $25 billion and the smallest investment is approximately $1 million. With additional capital, banks are better able to meet the lending needs of their customers and businesses have greater access to the credit they need to keep operating and growing.

When faced with imminent, disorderly bankruptcies of major auto companies, the Treasury Department made emergency loans under the TARP, stabilizing the sector to put the companies on a path to achieve long-term viability. Treasury also made significant necessary investments in Citigroup and Bank of America. GAO's thoughtful and very constructive report does not question the necessity for these investments. It does recommend better communication about Treasury's strategy and better information about how financial institutions are using taxpayer funds. Treasury made progress in both areas since GAO's last report, and more will be done in the coming months.

Thank you for the opportunity to comment on this draft report and for its very constructive recommendations. We look forward to continuing our active dialogue with the GAO's team.

Sincerely,

Neel Kashkari

Interim Assistant Secretary
for Financial Stability

Appendix II: CPP Transactions as of January 23, 2009

Date	Bank	State	Capital Purchase	Total assets as of 9/30/08
10/28/08	Bank of America Corporation	NC	$15,000,000,000	$1,831,000,000,000
10/28/08	Bank of New York Mellon Corporation	NY	3,000,000,000	268,000,000,000
10/28/08	Citigroup Inc.	NY	25,000,000,000	2,050,000,000,000
10/28/08	JPMorgan Chase & Co.	NY	25,000,000,000	2,251,000,000,000
10/28/08	Morgan Stanley	NY	10,000,000,000	987,000,000,000
10/28/08	State Street Corporation	MA	2,000,000,000	286,000,000,000
10/28/08	The Goldman Sachs Group, Inc.	NY	10,000,000,000	1,082,000,000,000
10/28/08	Wells Fargo & Company	CA	25,000,000,000	1,371,000,000,000
	Subtotal		**115,000,000,000**	**10,126,000,000,000**
11/14/08	1st FS Corporation	NC	16,369,000	670,000,000
11/14/08	Bank of Commerce Holdings	CA	17,000,000	651,000,000
11/14/08	BB&T Corp.	NC	3,133,640,000	137,041,000,000
11/14/08	Broadway Financial Corporation	CA	9,000,000	$404,000,000
11/14/08	Capital One Financial Corporation	VA	3,555,199,000	154,803,000,000
11/14/08	Comerica Inc.	TX	2,250,000,000	65,153,000,000
11/14/08	First Horizon National Corporation	TN	866,540,000	32,804,000,000
11/14/08	Huntington Bancshares	OH	1,398,071,000	54,661,000,000
11/14/08	KeyCorp	OH	2,500,000,000	101,290,000,000
11/14/08	Marshall & Ilsley Corporation	WI	1,715,000,000	63,501,000,000
11/14/08	Northern Trust Corporation	IL	1,576,000,000	79,244,000,000
11/14/08	Provident Bancshares Corp.	MD	151,500,000	6,410,000,000
11/14/08	Regions Financial Corp.	AL	3,500,000,000	144,292,000,000
11/14/08	SunTrust Banks, Inc.	GA	3,500,000,000	174,777,000,000
11/14/08	TCF Financial Corporation	MN	361,172,000	16,511,000,000
11/14/08	U.S. Bancorp	MN	6,599,000,000	247,055,000,000
11/14/08	UCBH Holdings, Inc.	CA	298,737,000	13,044,000,000
11/14/08	Umpqua Holdings Corp.	OR	214,181,000	8,328,000,000
11/14/08	Valley National Bancorp	NJ	300,000,000	14,288,000,000
11/14/08	Washington Federal Inc.	WA	200,000,000	11,795,000,000
11/14/08	Zions Bancorporation	UT	1,400,000,000	53,974,000,000
	Subtotal		**33,561,409,000**	**1,380,696,000,000**
11/21/08	Ameris Bancorp	GA	52,000,000	2,258,000,000
11/21/08	Associated Banc-Corp	WI	525,000,000	22,487,000,000
11/21/08	Banner Corporation	WA	124,000,000	4,650,000,000
11/21/08	Boston Private Financial Holdings, Inc.	MA	154,000,000	7,022,000,000
11/21/08	Cascade Financial Corporation	WA	38,970,000	1,552,000,000

Date	Bank	State	Capital Purchase	Total assets as of 9/30/08
11/21/08	Centerstate Banks of Florida Inc.	FL	27,875,000	1,235,000,000
11/21/08	City National Corporation	CA	400,000,000	16,331,000,000
11/21/08	Columbia Banking System, Inc.	WA	76,898,000	3,105,000,000
11/21/08	First Community Bankshares Inc.	VA	41,500,000	1,967,000,000
11/21/08	First Community Corporation	SC	11,350,000	634,000,000
11/21/08	First Niagara Financial Group	NY	184,011,000	9,008,000,000
11/21/08	First PacTrust Bancorp, Inc.	CA	19,300,000	846,000,000
11/21/08	Heritage Commerce Corp.	CA	40,000,000	1,512,000,000
11/21/08	Heritage Financial Corporation	WA	24,000,000	905,000,000
11/21/08	HF Financial Corp.	SD	25,000,000	1,128,000,000
11/21/08	Nara Bancorp, Inc.	CA	67,000,000	2,598,000,000
11/21/08	Pacific Capital Bancorp	CA	180,634,000	7,689,000,000
11/21/08	Porter Bancorp Inc.	KY	35,000,000	1,596,000,000
11/21/08	Severn Bancorp, Inc.	MD	23,393,000	964,000,000
11/21/08	Taylor Capital Group	IL	104,823,000	4,075,000,000
11/21/08	Trustmark Corporation	MS	215,000,000	9,086,000,000
11/21/08	Webster Financial Corporation	CT	400,000,000	17,516,000,000
11/21/08	Western Alliance Bancorporation	NV	140,000,000	5,229,000,000
	Subtotal		**2,909,754,000**	**123,393,000,000**
12/5/08	Bank of Marin Bancorp	CA	28,000,000	985,000,000
12/5/08	Bank of North Carolina	NC	31,260,000	1,263,000,000
12/5/08	Blue Valley Ban Corp.	KS	21,750,000	788,000,000
12/5/08	Cathay General Bancorp	CA	258,000,000	11,055,000,000
12/5/08	Central Bancorp, Inc.	MA	10,000,000	542,000,000
12/5/08	Central Federal Corporation	OH	7,225,000	281,000,000
12/5/08	Coastal Banking Company, Inc.	FL	9,950,000	441,000,000
12/5/08	CVB Financial Corp.	CA	130,000,000	6,422,000,000
12/5/08	Eagle Bancorp, Inc.	MD	38,235,000	1,458,000,000
12/5/08	East West Bancorp, Inc.	CA	306,546,000	11,722,000,000
12/5/08	Encore Bancshares, Inc.	TX	34,000,000	1,478,000,000
12/5/08	First Defiance Financial Corp.	OH	37,000,000	1,922,000,000
12/5/08	First Financial Holdings, Inc.	SC	65,000,000	2,974,000,000
12/5/08	First Midwest Bancorp, Inc.	IL	193,000,000	8,247,000,000
12/5/08	FPB Bancorp, Inc.	FL	5,800,000	231,000,000
12/5/08	Great Southern Bancorp, Inc.	MO	58,000,000	2,528,000,000
12/5/08	IBERIABANK Corporation	LA	90,000,000	5,351,000,000

Date	Bank	State	Capital Purchase	Total assets as of 9/30/08
12/5/08	Manhattan Bancorp	CA	1,700,000	72,000,000
12/5/08	MB Financial, Inc.	IL	196,000,000	8,359,000,000
12/5/08	Midwest Banc Holdings, Inc.	IL	84,784,000	3,583,000,000
12/5/08	Oak Valley Bancorp	CA	13,500,000	490,000,000
12/5/08	Old Line Bancshares, Inc.	MD	7,000,000	286,000,000
12/5/08	Popular, Inc.	PR	935,000,000	40,390,000,000
12/5/08	Sandy Spring Bancorp, Inc.	MD	83,094,000	3,195,000,000
12/5/08	Southern Community Financial Corporation	NC	42,750,000	1,798,000,000
12/5/08	Southern Missouri Bancorp, Inc.	MO	9,550,000	429,000,000
12/5/08	Southwest Bancorp, Inc.	OK	70,000,000	2,832,000,000
12/5/08	State Bancorp, Inc.	NY	36,842,000	1,593,000,000
12/5/08	Sterling Financial Corporation	WA	303,000,000	12,623,000,000
12/5/08	Superior Bancorp Inc.	AL	69,000,000	3,104,000,000
12/5/08	The South Financial Group, Inc.	SC	347,000,000	13,695,000,000
12/5/08	TIB Financial Corp.	FL	37,000,000	1,563,000,000
12/5/08	United Community Banks, Inc.	GA	180,000,000	8,073,000,000
12/5/08	Unity Bancorp, Inc.	NJ	20,649,000	864,000,000
12/5/08	Wesbanco Bank Inc.	WV	75,000,000	5,150,000,000
	Subtotal		**3,835,635,000**	**165,787,000,000**
12/12/08	Bank of the Ozarks, Inc.	AR	75,000,000	3,071,000,000
12/12/08	Capital Bank Corporation	NC	41,279,000	1,594,000,000
12/12/08	Center Financial Corporation	CA	55,000,000	2,035,000,000
12/12/08	Citizens Republic Bancorp, Inc.	MI	300,000,000	13,116,000,000
12/12/08	Citizens South Banking Corporation	NC	20,500,000	823,000,000
12/12/08	Fidelity Bancorp, Inc.	PA	7,000,000	727,000,000
12/12/08	First Litchfield Financial Corporation	CT	10,000,000	507,000,000
12/12/08	HopFed Bancorp	KY	18,400,000	843,000,000
12/12/08	Independent Bank Corporation	MI	72,000,000	3,139,000,000
12/12/08	Indiana Community Bancorp	IN	21,500,000	943,000,000
12/12/08	LNB Bancorp Inc.	OH	25,223,000	1,110,000,000
12/12/08	LSB Corporation	MA	15,000,000	729,000,000
12/12/08	National Penn Bancshares, Inc.	PA	150,000,000	9,317,000,000
12/12/08	NewBridge Bancorp	NC	52,372,000	2,108,000,000
12/12/08	Northeast Bancorp	ME	4,227,000	605,000,000
12/12/08	Old National Bancorp	IN	100,000,000	7,568,000,000
12/12/08	Pacific International Bancorp	WA	6,500,000	247,000,000

Date	Bank	State	Capital Purchase	Total assets as of 9/30/08
12/12/08	Pinnacle Financial Partners, Inc.	TN	95,000,000	4,338,000,000
12/12/08	Signature Bank	NY	120,000,000	6,699,000,000
12/12/08	Sterling Bancshares, Inc.	TX	125,198,000	4,947,000,000
12/12/08	Susquehanna Bancshares, Inc.	PA	300,000,000	13,636,000,000
12/12/08	SVB Financial Group	CA	235,000,000	8,071,000,000
12/12/08	The Bancorp, Inc.	DE	45,220,000	1,781,000,000
12/12/08	TowneBank	VA	76,458,000	3,016,000,000
12/12/08	Valley Financial Corporation	VA	16,019,000	643,000,000
12/12/08	Virginia Commerce Bancorp	VA	71,000,000	2,662,000,000
12/12/08	Wilmington Trust Corporation	DE	330,000,000	12,134,000,000
12/12/08	Wilshire Bancorp, Inc.	CA	62,158,000	2,387,000,000
	Subtotal		**2,450,054,000**	**108,796,000,000**
12/19/08	Alliance Financial Corporation	NY	26,918,000	1,347,000,000
12/19/08	AmeriServ Financial, Inc.	PA	21,000,000	911,000,000
12/19/08	Bancorp Rhode Island, Inc.	RI	30,000,000	1,490,000,000
12/19/08	BancTrust Financial Group, Inc.	AL	50,000,000	2,089,000,000
12/19/08	Berkshire Hills Bancorp, Inc.	MA	40,000,000	2,566,000,000
12/19/08	Bridgeview Bancorp, Inc.	IL	38,000,000	1,428,000,000
12/19/08	Citizens First Corporation	KY	8,779,000	360,000,000
12/19/08	CoBiz Financial Inc.	CO	64,450,000	2,606,000,000
12/19/08	Community Bankers Trust Corporation	VA	17,680,000	695,000,000
12/19/08	Community Financial Corporation	VA	12,643,000	491,000,000
12/19/08	Community West Bancshares	CA	15,600,000	640,000,000
12/19/08	Enterprise Financial Services Corp.	MO	35,000,000	2,236,000,000
12/19/08	Exchange Bank	CA	43,000,000	1,666,000,000
12/19/08	FCB Bancorp, Inc.	KY	9,294,000	353,000,000
12/19/08	FFW Corporation	IN	7,289,000	316,000,000
12/19/08	Fidelity Financial Corporation	KS	36,282,000	1,854,000,000
12/19/08	Fidelity Southern Corporation	GA	48,200,000	1,760,000,000
12/19/08	First California Financial Group, Inc	CA	25,000,000	1,125,000,000
12/19/08	Flushing Financial Corporation	NY	70,000,000	3,617,000,000
12/19/08	Hawthorn Bancshares, Inc.	MO	30,255,000	1,285,000,000
12/19/08	Heartland Financial USA, Inc.	IA	81,698,000	3,446,000,000
12/19/08	Horizon Bancorp	IN	25,000,000	1,189,000,000
12/19/08	Intermountain Community Bancorp	ID	27,000,000	1,049,000,000
12/19/08	Marquette National Corporation	IL	35,500,000	1,644,000,000

Date	Bank	State	Capital Purchase	Total assets as of 9/30/08
12/19/08	Mid Penn Bancorp, Inc.	PA	10,000,000	552,000,000
12/19/08	Monadnock Bancorp, Inc.	NH	1,834,000	111,000,000
12/19/08	Monarch Financial Holdings, Inc.	VA	14,700,000	595,000,000
12/19/08	NCAL Bancorp[a]	CA	10,000,000	407,000,000
12/19/08	OneUnited Bank	MA	12,063,000	625,000,000
12/19/08	Pacific City Finacial Corporation	CA	16,200,000	566,000,000
12/19/08	Patapsco Bancorp, Inc.	MD	6,000,000	262,000,000
12/19/08	Patriot Bancshares, Inc.	TX	26,038,000	934,000,000
12/19/08	Plains Capital Corporation	TX	87,631,000	3,343,000,000
12/19/08	Santa Lucia Bancorp	CA	4,000,000	254,000,000
12/19/08	Seacoast Banking Corporation of Florida	FL	50,000,000	2,225,000,000
12/19/08	Security Federal Corporation	SC	18,000,000	905,000,000
12/19/08	StellarOne Corporation	VA	30,000,000	2,986,000,000
12/19/08	Summit State Bank	CA	8,500,000	350,000,000
12/19/08	Synovus Financial Corp.	GA	967,870,000	34,339,000,000
12/19/08	Tennessee Commerce Bancorp, Inc.	TN	30,000,000	1,106,000,000
12/19/08	The Connecticut Bank and Trust Company	CT	5,448,000	223,000,000
12/19/08	The Elmira Savings Bank, FSB	NY	9,090,000	463,000,000
12/19/08	Tidelands Bancshares, Inc.	SC	14,448,000	668,000,000
12/19/08	Tri-County Financial Corporation	MD	15,540,000	677,000,000
12/19/08	Union Bankshares Corporation	VA	59,000,000	2,448,000,000
12/19/08	VIST Financial Corp.	PA	25,000,000	1,182,000,000
12/19/08	Wainwright Bank & Trust Company	MA	22,000,000	980,000,000
12/19/08	Whitney Holding Corporation	LA	300,000,000	10,987,000,000
12/19/08	Wintrust Financial Corporation[a]	IL	250,000,000	9,865,000,000
	Subtotal		**2,791,950,000**	**113,216,000,000**
12/23/08	1st Constitution Bancorp	NJ	12,000,000	514,000,000
12/23/08	BCSB Bancorp, Inc.	MD	10,800,000	567,000,000
12/23/08	Bridge Capital Holdings	CA	23,864,000	855,000,000
12/23/08	Cache Valley Banking Company[a]	UT	4,767,000	200,000,000
12/23/08	Capital Bancorp, Inc.[a]	MD	4,700,000	198,000,000
12/23/08	Capital Pacific Bancorp[a]	OR	4,000,000	136,000,000
12/23/08	Cecil Bancorp, Inc.	MD	11,560,000	457,000,000
12/23/08	Central Jersey Bancorp	NJ	11,300,000	555,000,000
12/23/08	Citizens Bancorp[a]	CA	10,400,000	366,000,000
12/23/08	Citizens Community Bank	VA	3,000,000	150,000,000

Date	Bank	State	Capital Purchase	Total assets as of 9/30/08
12/23/08	Community Investors Bancorp, Inc.[a]	OH	2,600,000	143,000,000
12/23/08	Emclaire Financial Corp.	PA	7,500,000	357,000,000
12/23/08	Financial Institutions, Inc.	NY	37,515,000	1,946,000,000
12/23/08	First Community Bank Corporation of America	FL	10,685,000	476,000,000
12/23/08	First Financial Bancorp	OH	80,000,000	3,512,000,000
12/23/08	First Sound Bank	WA	7,400,000	267,000,000
12/23/08	Fulton Financial Corporation	PA	376,500,000	16,136,000,000
12/23/08	Green Bankshares, Inc.	TN	72,278,000	3,012,000,000
12/23/08	HMN Financial, Inc.	MN	26,000,000	1,129,000,000
12/23/08	International Bancshares Corporation	TX	216,000,000	11,545,000,000
12/23/08	Intervest Bancshares Corporation	NY	25,000,000	2,181,000,000
12/23/08	Leader Bancorp, Inc.[a]	MA	5,830,000	240,000,000
12/23/08	M&T Bank Corporation	NY	600,000,000	65,247,000,000
12/23/08	Magna Bank	TN	13,795,000	530,000,000
12/23/08	Mission Valley Bancorp[a]	CA	5,500,000	220,000,000
12/23/08	MutualFirst Financial, Inc.	IN	32,382,000	1,399,000,000
12/23/08	Nicolet Bankshares, Inc.	WI	14,964,000	641,000,000
12/23/08	Pacific Coast Bankers' Bancshares	CA	11,600,000	555,000,000
12/23/08	Pacific Commerce Bank	CA	4,060,000	165,000,000
12/23/08	Park National Corporation	OH	100,000,000	6,800,000,000
12/23/08	Parkvale Financial Corporation	PA	31,762,000	1,828,000,000
12/23/08	Peoples Bancorp of North Carolina, Inc.	NC	25,054,000	964,000,000
12/23/08	Saigon National Bank	CA	1,549,000	55,000,000
12/23/08	Seacoast Commerce Bank	CA	1,800,000	75,000,000
12/23/08	Sterling Bancorp	NY	42,000,000	2,117,000,000
12/23/08	TCNB Financial Corp.[a]	OH	2,000,000	96,000,000
12/23/08	Tennessee Valley Financial Holdings, Inc.	TN	3,000,000	204,000,000
12/23/08	The Little Bank, Incorporated	NC	7,500,000	317,000,000
12/23/08	Timberland Bancorp, Inc.	WA	16,641,000	682,000,000
12/23/08	United Bancorporation of Alabama, Inc.	AL	10,300,000	464,000,000
12/23/08	Uwharrie Capital Corp.	NC	10,000,000	425,000,000
12/23/08	Western Community Bancshares, Inc.[a]	CA	7,290,000	323,000,000
12/23/08	Western Illinois Bancshares Inc.[a]	IL	6,855,000	346,000,000
	Subtotal		**1,911,751,000**	**128,395,000,000**
12/31/08	CIT Group Inc.	NY	2,330,000,000	80,845,000,000
12/31/08	Fifth Third Bancorp	OH	3,408,000,000	116,294,000,000

Date	Bank	State	Capital Purchase	Total assets as of 9/30/08
12/31/08	First Banks, Inc.	MO	295,400,000	10,833,000,000
12/31/08	Hampton Roads Bankshares, Inc.	VA	80,347,000	918,000,000
12/31/08	SunTrust Banks, Inc.	GA	1,350,000,000	174,777,000,000
12/31/08	The PNC Financial Services Group Inc.	PA	7,579,200,000	145,610,000,000
12/31/08	West Bancorporation, Inc.	IA	36,000,000	1,464,000,000
	Subtotal		**15,078,947,000**	**530,741,000,000**
1/9/09	American Express Company	NY	3,388,890,000	127,218,000,000
1/9/09	American State Bancshares, Inc.	KS	6,000,000	271,000,000
1/9/09	Bank of America Corporation	NC	10,000,000,000	1,831,177,000,000
1/9/09	C&F Financial Corporation	VA	20,000,000	846,000,000
1/9/09	Cadence Financial Corporation	MS	44,000,000	1,985,000,000
1/9/09	Carolina Bank Holdings, Inc.	NC	16,000,000	591,000,000
1/9/09	Center Bancorp, Inc.	NJ	10,000,000	1,043,000,000
1/9/09	Central Pacific Financial Corp.	HI	135,000,000	5,504,000,000
1/9/09	Centrue Financial Corporation	MO	32,668,000	1,342,000,000
1/9/09	Codorus Valley Bancorp, Inc.	PA	16,500,000	650,000,000
1/9/09	Colony Bankcorp, Inc.	GA	28,000,000	1,215,000,000
1/9/09	Commerce National Bank	CA	5,000,000	639,000,000
1/9/09	Community Trust Financial Corporation	LA	24,000,000	945,000,000
1/9/09	Congaree Bancshares, Inc.	SC	3,285,000	131,000,000
1/9/09	Crescent Financial Corporation	NC	24,900,000	956,000,000
1/9/09	Eastern Virginia Bankshares, Inc.	VA	24,000,000	1,031,000,000
1/9/09	F.N.B. Corporation	PA	100,000,000	8,457,000,000
1/9/09	Farmers Capital Bank Corporation	KY	30,000,000	2,154,000,000
1/9/09	First Bancorp	NC	65,000,000	2,701,000,000
1/9/09	First Financial Service Corporation	KY	20,000,000	991,000,000
1/9/09	First Security Group, Inc.	TN	33,000,000	1,282,000,000
1/9/09	FirstMerit Corporation	OH	125,000,000	10,685,000,000
1/9/09	GrandSouth Bancorporation	SC	9,000,000	377,000,000
1/9/09	Independence Bank	RI	1,065,000	66,000,000
1/9/09	Independent Bank Corp.	MA	78,158,000	3,477,000,000
1/9/09	LCNB Corp.	OH	13,400,000	667,000,000
1/9/09	MidSouth Bancorp, Inc.	LA	20,000,000	917,000,000
1/9/09	Mission Community Bancorp	CA	5,116,000	219,000,000
1/9/09	New York Private Bank & Trust Corporation	NY	267,274,000	13,693,000,000
1/9/09	North Central Bancshares, Inc.	IA	10,200,000	475,000,000

Date	Bank	State	Capital Purchase	Total assets as of 9/30/08
1/9/09	Peapack-Gladstone Financial Corporation	NJ	28,685,000	1,369,000,000
1/9/09	Redwood Financial Inc.	MN	2,995,000	141,000,000
1/9/09	Rising Sun Bancorp	MD	5,983,000	236,000,000
1/9/09	Security Business Bancorp	CA	5,803,000	215,000,000
1/9/09	Security California Bancorp	CA	6,815,000	238,000,000
1/9/09	Shore Bancshares, Inc.	MD	25,000,000	1,037,000,000
1/9/09	Sound Banking Company	NC	3,070,000	127,000,000
1/9/09	Sun Bancorp, Inc.	NJ	89,310,000	3,425,000,000
1/9/09	Surrey Bancorp	NC	2,000,000	206,000,000
1/9/09	Texas National Bancorporation	TX	3,981,000	166,000,000
1/9/09	The First Bancorp, Inc.	ME	25,000,000	1,311,000,000
1/9/09	The Queensborough Company	GA	12,000,000	848,000,000
1/9/09	Valley Community Bank	CA	5,500,000	211,000,000
	Subtotal		**14,771,598,000**	**2,031,235,000,000**
1/16/2009	Bank of Commerce	NC	3,000,000	125,000,000
1/16/2009	Bar Harbor Bankshares/Bar Harbor Bank & Trust	ME	18,751,000	942,000,000
1/16/2009	BNCCORP, Inc.	ND	20,093,000	838,000,000
1/16/2009	Carver Bancorp, Inc.	NY	18,980,000	791,000,000
1/16/2009	Centra Financial Holdings, Inc./Centra Bank, Inc.	WV	15,000,000	1,204,000,000
1/16/2009	Citizens & Northern Corporation	PA	26,440,000	1,289,000,000
1/16/2009	Community 1st Bank	CA	2,550,000	97,000,000
1/16/2009	Community Bank of the Bay	CA	1,747,000	69,000,000
1/16/2009	Dickinson Financial Corporation II	MO	146,053,000	5,602,000,000
1/16/2009	ECB Bancorp, Inc./East Carolina Bank	NC	17,949,000	768,000,000
1/16/2009	First BanCorp	PR	400,000,000	19,304,000,000
1/16/2009	First Bankers Trustshares, Inc.	IL	10,000,000	489,000,000
1/16/2009	First Manitowoc Bancorp, Inc.	WI	12,000,000	768,000,000
1/16/2009	Home Bancshares, Inc.	AR	50,000,000	2,651,000,000
1/16/2009	Idaho Bancorp	ID	6,900,000	239,000,000
1/16/2009	MainSource Financial Group, Inc.	IN	57,000,000	2,867,000,000
1/16/2009	MetroCorp Bancshares, Inc.	TX	45,000,000	1,594,000,000
1/16/2009	Morrill Bancshares, Inc.	KS	13,000,000	660,000,000
1/16/2009	New Hampshire Thrift Bancshares, Inc.	NH	10,000,000	829,000,000
1/16/2009	OceanFirst Financial Corp.	NJ	38,263,000	1,876,000,000
1/16/2009	Old Second Bancorp, Inc.	IL	73,000,000	2,950,000,000
1/16/2009	Pacific Coast National Bancorp	CA	4,120,000	138,000,000

Date	Bank	State	Capital Purchase	Total assets as of 9/30/08
1/16/2009	Puget Sound Bank	WA	4,500,000	154,000,000
1/16/2009	Pulaski Financial Corp	MO	32,538,000	1,304,000,000
1/16/2009	Redwood Capital Bancorp	CA	3,800,000	147,000,000
1/16/2009	S&T Bancorp, Inc.	PA	108,676,000	4,461,000,000
1/16/2009	SCBT Financial Corporation	SC	64,779,000	2,767,000,000
1/16/2009	Somerset Hills Bancorp	NJ	7,414,000	287,000,000
1/16/2009	Southern Bancorp, Inc.	AR	11,000,000	586,000,000
1/16/2009	State Bankshares, Inc.	ND	50,000,000	1,969,000,000
1/16/2009	Syringa Bancorp	ID	8,000,000	293,000,000
1/16/2009	TCB Holding Company, Texas Community Bank	TX	11,730,000	432,000,000
1/16/2009	Texas Capital Bancshares, Inc.	TX	75,000,000	4,743,000,000
1/16/2009	The Baraboo Bancorporation	WI	20,749,000	781,000,000
1/16/2009	Treaty Oak Bancorp, Inc.	TX	3,268,000	122,000,000
1/16/2009	United Bancorp, Inc.	MI	20,600,000	815,000,000
1/16/2009	United Financial Banking Companies, Inc.	VA	5,658,000	227,000,000
1/16/2009	Washington Banking Company/ Whidbey Island Bank	WA	26,380,000	912,000,000
1/16/2009	Yadkin Valley Financial Corporation	NC	36,000,000	1,469,000,000
	Subtotal		**1,479,938,000**	**67,559,000,000**
1/23/2009	1st Source Corporation	IN	111,000,000	4,410,000,000
1/23/2009	AB&T Financial Corporation	NC	3,500,000	174,000,000
1/23/2009	Alarion Financial Services, Inc.	FL	6,514,000	254,000,000
1/23/2009	BankFirst Capital Corporation	MS	15,500,000	672,000,000
1/23/2009	California Oaks State Bank	CA	3,300,000	123,000,000
1/23/2009	Calvert Financial Corporation[a]	MO	1,037,000	47,000,000
1/23/2009	CalWest Bancorp Rancho[a]	CA	4,656,000	208,000,000
1/23/2009	Commonwealth Business Bank	CA	7,701,000	296,000,000
1/23/2009	Crosstown Holding Company	MN	10,650,000	N/A
1/23/2009	Farmers Bank	VA	8,752,000	345,000,000
1/23/2009	First Citizens Banc Corp.	OH	23,184,000	1,100,000,000
1/23/2009	First ULB Corp.	CA	4,900,000	247,000,000
1/23/2009	FPB Financial Corp.[a]	LA	3,240,000	155,000,000
1/23/2009	Fresno First Bank	CA	1,968,000	96,000,000
1/23/2009	Liberty Bancshares, Inc.	AR	57,500,000	2,573,000,000
1/23/2009	Midland States Bancorp, Inc.	IL	10,189,000	409,000,000
1/23/2009	Moscow Bancshares, Inc.[a]	TN	6,216,000	248,000,000
1/23/2009	Pierce County Bancorp	WA	6,800,000	272,000,000

Date	Bank	State	Capital Purchase	Total assets as of 9/30/08
1/23/2009	Princeton National Bancorp, Inc.	IL	25,083,000	1,124,000,000
1/23/2009	Seaside National Bank & Trust	FL	5,677,000	243,000,000
1/23/2009	Southern Illinois Bancorp, Inc.[a]	IL	5,000,000	233,000,000
1/23/2009	Stonebridge Financial Corp.	PA	10,973,000	493,000,000
1/23/2009	WSFS Financial Corporation	DE	52,625,000	3,255,000,000
	Subtotal		**385,965,000**	**16,977,000,000**
	Grand total		**$194,177,001,000**	**$14,792,795,000,000**

Sources: Treasury, SEC (10-Qs, 10-Ks), iBanknet.com (Call Reports) and company press releases.

[a]Total assets were reported from the related bank rather than the banking holding company.

Appendix III: Examples of Programs to Preserve Homeownership

Institution	Program or Effort	Selected Program Characteristics
Federal Government		
Federal Deposit Insurance Corporation (FDIC)	IndyMac Loan Modification Program[a]	Eligible borrowers are those with loans owned or serviced by IndyMac Federal Bank • Affordable mortgage payment achieved for the seriously delinquent or in default borrower through interest rate reduction, amortization term extension, and principal forbearance • Payment must be no more than 38 percent of the borrower's monthly gross income • Losses to investor minimized through a net present value test that confirms that the modification will cost the investor less than foreclosure
	FDIC Loss Sharing Proposal	Proposal is designed to promote wider adoption of a systematic loan modification program by paying servicers $1,000 to cover expenses for each loan modified according to the required standards; and sharing up to 50 percent of losses incurred if a modified loan should subsequently default again • Eligible borrowers need to have loans secured by owner-occupied properties • Government loss sharing would be available only after the borrower has made six payments on the modified mortgage • Affordability standards are provided based on a 31 percent borrower mortgage debt-to-income ratio • For loan-to-values (LTV) above 100 percent, the government loss share will be progressively reduced from 50 percent to 20 percent as the current LTV rises. If the LTV for the first lien exceeds 150 percent, no loss sharing would be provided. • The loss sharing guarantee ends 8 years after the modification
Federal Housing Administration (FHA)	Hope for Homeowners	Borrowers can refinance into an affordable loan insured by FHA • Eligible borrowers are homeowners who did not intentionally default, do not have an ownership interest in other residential real estate, have not been convicted of fraud in the last 10 years under federal and state law, and have not provided false information to obtain the mortgage • Eligible borrowers are those who, as of March 2008, had total monthly mortgage payments due of more than 31 percent of their gross monthly income • New insured mortgages cannot exceed 96.5 percent of the current LTV for borrowers whose mortgage payments do not exceed 31 percent of their monthly gross income and total household debt not to exceed 43 percent; alternatively, the program allows for a 90 percent LTV for borrowers with debt-to-income ratios as high as 38 (mortgage payment) and 50 percent (total household debt) • Requires lenders to write down the existing mortgage amounts to either of the two LTV options mentioned above • Simplifying the process to remove subordinate liens by permitting up-front payments to lien holders • Allowing lenders to extend mortgage terms from 30 to 40 years
	FHASecure	FHASecure is a refinancing option that gives homeowners with non-FHA adjustable rate mortgages (ARM), current or delinquent and regardless of reset status, the ability to refinance into a FHA-insured mortgage • If the borrower is delinquent, the default must have been due to the payment shock of an interest rate reset or, in the case of an option ARM, the recasting of the mortgage to fully amortizing • Program ended December 31, 2008

Institution	Program or Effort	Selected Program Characteristics
Federal Housing Finance Agency (FHFA)	Streamlined Loan Modification Program[b]	Eligible borrowers are those who have missed three payments or more, own and occupy their property as a primary residence, and are not in active bankruptcy • Servicers can modify existing loans into a Freddie Mae or Fannie Mac loan, or a portfolio loan with a participating investor • An affordable mortgage payment, of no more than 38 percent of the borrower's monthly gross income, is achieved for the borrower through reducing the mortgage interest rate, extending the life of the loan, or deferring payment on part of the principal • The borrower will be required to remit the proposed affordable payment for a three-payment trial period prior to the modification of the mortgage, to demonstrate his or her capacity and desire to sustain those payments under the modified mortgage
Private Sector		
HOPE NOW Alliance	Foreclosure prevention assistance programs	HOPE NOW is an alliance between Department of Housing and Urban Development (HUD) certified-counseling agents, servicers, investors, and other mortgage market participants that provides free assistance for foreclosure prevention • Forms of assistance include hotline services to provide information on foreclosure prevention, and access to HUD approved housing counselors for debt management, credit, and overall foreclosure counseling. According to HOPE NOW, the hotline receives an average of more than 8,000 calls per day • Coordinates a nationwide outreach campaign to at-risk borrowers and states that it has sent nearly 3 million outreach letters • According to HOPE NOW, since March 2008, it has hosted workshops in 27 cities involving homeowners, lenders, and HUD-certified counselors

Source: Publicly available information from agencies and organizations listed above.

[a]On December 31, 2008, FDIC signed a letter of intent to sell the banking operations of IndyMac Federal Bank to a thrift holding company controlled by IMB Management Holdings LP.

[b]This program was created in consultation with Fannie Mae, Freddie Mac, HOPE NOW and its 27 servicer partners, the Department of the Treasury, FHA, and FHFA.

Appendix IV: Treasury's Summary Response to Prior Recommendations

The U.S. Treasury Department

Summary Response to Recommendations in the December 2008 GAO Report

January 16, 2008

Introduction: The Treasury Department (Treasury) welcomes the 9 recommendations on the TARP made by the GAO in its December 2008 report. Treasury has attempted to keep the GAO apprised of all of its progress on these recommendations. The goal of this report is to provide a written, high level summary of Treasury's progress on the GAO recommendations and to identify the next steps that Treasury is taking in these areas.

The report is structured as follows:

- Identification of the GAO recommendation
- Summary of Treasury's status on that issue at the time of the report's issuance
- High level illustration of Treasury's progress on the issue
- Identification of next steps Treasury will take.

GAO Recommendation 1: Work with bank regulators to establish a systematic means of monitoring and reporting on whether financial institutions' activities are consistent with the purposes of CPP and help ensure an appropriate level of accountability and transparency.

Status at first GAO report:

- No regular processes were in place to capture and analyze data from financial institutions participating in the CPP.

High Level Summary of Progress since First GAO Report:

- Treasury has been working constructively with the banking regulators to design a program to monitor the activities of banks that have received TARP capital. Treasury plans to use quarterly call report data to analyze changes in the balance sheets, loan provisioning, and intermediation activities of institutions we have invested in, and compare their activities to a comparable set of institutions that have not received TARP capital investments. Because call report data is infrequent, Treasury will augment that analysis with a monthly survey of the 20 largest recipients of Capital Purchase Program (CCP) capital. This monthly survey, which Treasury sent on January 16, 2009, focused on lending and intermediation activities and included both financial data and commentary from the banks.
- Treasury has received clearance from OMB on its survey for the 20 largest investments and distributed the survey to those institutions on January 16, 2009. Treasury will collect data through December 31, 2008. The initial responses are due January 31, 2009. Going forward, each survey will be due to Treasury within 30 days of the end of each reporting period.
- Depending on the results of the monthly survey and call report analysis, Treasury may also ask the four bank regulators to gather information directly from CPP-recipient banks during their periodic on-site examinations. The FDIC has recently initiated its own monitoring program covering state non-member banks use of TARP capital injections, Fed liquidity

Page 1 of 10

support and FDIC financing guarantees. It may make sense for the four banking agencies to collaborate with Treasury on a developing a common approach.

- Treasury has explored commissioning research from the banking agencies on bank lending patterns during previous recessions. This analysis might provide an historical perspective and would help provide a context for the lending results coming out of the surveys described above.

- The Office of Financial Stability (OFS) has continued to fill key positions related to monitoring and reporting. A financial analyst has been hired to analyze call report data on a quarterly basis as well as analyze the monthly survey of the 20 largest CPP participants. In addition, the OFS has created a position for a Director of Analytics and Mission Metrics and is currently interviewing candidates.

Next steps:

- Treasury is continuing to design appropriate metrics to measure the effectiveness of the various programs under TARP. This includes coordinating with the banking regulatory agencies to determine how Treasury can leverage information that is already collected as well as designing new data and tracking mechanisms.

- The OFS is building its capacity to design and track performance measures.

Recommendation 2: Develop a means to ensure that institutions participating in CPP comply with key requirements of program agreements, including those covering limitations on executive compensation, dividend payments, and the repurchase of stock.

Status at first GAO report:

- At the time GAO issued its first report under section 116(a) of EESA, Treasury had put in place an Interim Chief Compliance Officer (CCO) to lead the compliance function within the OFS and had started recruiting individuals to support the Office of the CCO. Additionally, Treasury had issued an interim final rule in Part 31 CFR 30, providing guidance on the executive compensation limitations applicable to participants in the CPP. Treasury had also issued guidance on the executive compensation restrictions applicable to institutions participating in the program for Systemically Significant Failing Institutions (Notice 2008-PSSFI) and to institutions whose troubled assets might be purchased by Treasury through an auction purchase (Notice 2008-TAAP).

High Level Summary of Progress since First GAO Report:

- Since the first GAO report, the Office of the CCO has hired a Director of Compliance and two Compliance Analysts. Treasury reviewed public comments on its interim final rule for executive compensation and prepared a second interim rule that was published on Treasury's web site on January 16, 2009. This interim final rule provides further guidance on the executive compensation limitations applicable to CPP participants and includes reporting and recordkeeping requirements for participating institutions, requiring an institution's primary executive officer to certify annually to Treasury regarding compliance with compensation

Page 2 of 10

restrictions. The Office of the CCO is in the early stages of developing a program to oversee and enforce compliance with the executive compensation restrictions set forth in EESA, Treasury guidance, and contracts. The first certifications pertaining to executive compensation for CPP participants are due in mid-February.

Next steps:

- The Office of the CCO will continue to develop and will implement a rigorous compliance program for the TARP. With regard to executive compensation by CPP participants, the program will include receipt, review, and necessary follow-up of executive compensation certifications, including those certifications required by the interim final rule for the CPP, which was released on January 16, 2009. In appropriate cases, Treasury will also consider the use of other mechanisms to oversee and enforce compliance with the executive compensation requirements, including in depth reviews of compensation practices by individual institutions receiving CPP funds, litigation to enforce the securities purchase agreements and the regulations, referrals to the Special Inspector General, and publicizing the identity of institutions who violate executive compensation restrictions. In addition, the Office of the CCO is continuing to focus on recruiting and interviewing highly qualified candidates to fill positions within the compliance program.

Recommendation 3: Formalize the existing communication strategy to ensure that external stakeholders, including Congress and the public, are informed about the program's current strategy and activities as well as the rationale for changes in this strategy to avoid information gaps and shocks.

Status at first GAO report:

- Treasury had used reports to Congress, Congressional testimony, and speeches and interviews by senior Treasury officials as a means to keep all stakeholders informed of the program's status and strategy.

High Level Summary of Progress since First GAO Report:

- Treasury has continued to meet all of its reporting requirements on time, and has posted all reports, speeches and testimony on the EESA website: http://www.treas.gov/initiatives/eesa/. Treasury has increased its outreach to ensure that all stakeholders are informed of TARP program developments as they occur.
- Since the December 2008 GAO report, Treasury has issued the following reports:
  - 8 transaction reports: http://www.treas.gov/initiatives/eesa/transactions.shtml
  - 2 tranche reports: http://www.treas.gov/initiatives/eesa/tranche-reports.shtml
  - 2 section 105 reports: http://www.treas.gov/initiatives/eesa/congressionalreports.shtml
  - 1 section 102 report: http://www.treas.gov/initiatives/eesa/congressionalreports102.shtml

Page 3 of 10

- 1 response to questions from the Congressional Oversight Panel: http://www.treas.gov/press/releases/hp1336.htm

- Treasury officials also participated in Congressional hearings regarding the TARP on December 4 and December 10:
  - http://www.treas.gov/press/releases/hp1312.htm
  - http://www.treas.gov/press/releases/hp1322.htm
- Treasury officials also made public remarks on the program's status on 6 occasions:
  - http://www.treas.gov/press/releases/hp1301.htm
  - http://www.treas.gov/press/releases/hp1314.htm
  - http://www.treas.gov/press/releases/hp1321.htm
  - http://www.treas.gov/press/releases/hp1332.htm
  - http://www.treas.gov/press/releases/hp1347.htm
  - http://www.treas.gov/press/releases/hp1349.htm

Next steps:

- OFS leadership will work closely with the new Administration to develop a coordinated and effective communications strategy for the program to ensure all stakeholders are informed of program developments.

Recommendation 4: Develop a definitive transition plan by building on and formalizing ongoing activities to facilitate a smooth transition to the new administration, including ensuring that key OFS leadership positions are filled during and after the transition to the new administration.

Status at first GAO report:

- Immediately after the election, Treasury began updating and consulting with the Transition team to keep them informed of our actions and progress. The Transition team responded by encouraging Treasury to continue executing our programs and building our operations, while keeping them informed.

High level summary of progress since first GAO report:

- Since the GAO report, Treasury has continued to post the Transition team on TARP developments, including new programs and operational progress. The Transition team has met with TARP leadership, including each of the Chiefs.
- TARP leadership has been very focused on making sure the transition to the next Administration is seamless, especially due to the on-going program execution requirements, such as weekly CPP investments. The most effective way to ensure a seamless transition is to ensure that the staff running the program is in place throughout the Transition.

Page 4 of 10

- TARP leadership worked hard to find long-term leaders to run the program throughout the Transition and beyond. For example, TARP's interim Chief Financial Officer (CFO) was scheduled to return to his agency in early January. Treasury believed it was a high priority to identify a permanent CFO and provide time for the two to overlap to ensure continuity of operations and a seamless transition. Treasury hired a new, permanent CFO who overlapped with the interim CFO and has now successfully transitioned into the new position.
- Similarly, our interim CPP program manager was due to return to Chicago in early January. We identified a permanent CPP program manager who joined in early January, providing an opportunity for overlap with the interim manager and a smooth hand-off of a critical and complex operation.
- The Assistant Secretary role and possibly the role of CIO are political positions. As such, it was difficult for the current Treasury leadership to identify long-term leaders for those positions. Recognizing the importance of continuity, the Transition team asked the current Interim Assistant Secretary and Interim CIO to remain in their posts for some time after inauguration. Both have agreed, providing strong continuity in these roles to ensure a smooth transition.
- The only leadership posts that are not currently occupied by people who plan to remain after inauguration are the Chief Risk Officer (CRO) and Chief of Homeownership Preservation. In both cases, very strong teams have been assembled in those offices. The Homeownership Preservation role may end-up being a political position given the likely foreclosure mitigation policies that will be developed. In addition, the CRO role is an important role, but the Transition team has encouraged us to take our time to find the right candidate, ideally with a mix of public and private sector expertise. Given the strong team in the Risk Office, and the strong leadership of the other Chiefs, the current Treasury and the Transition team agreed that a brief period potentially between CROs would be manageable.

High Level Summary of Progress since First GAO Report:

- We are aggressively continuing our search for a permanent CRO. In addition, we continue to post the Transition team on program developments. Given that virtually the entire TARP team will now remain in place for some time beyond inauguration, we are confident the Transition will be seamless.

Recommendation 5: Continue OFS hiring efforts in an expeditious manner to ensure that Treasury has the personnel needed to carry out and oversee TARP.

Status at first GAO report:

- Treasury was in the process of recruiting and hiring well-qualified career staff that will be able to stay on in their positions on a long-term basis. The OFS had about 48 employees, including 5 permanent employees, assigned to TARP as of November 21, 2008. Treasury was prioritizing its hiring process by filling senior career positions first.

High Level Summary of Progress since First GAO Report:

Page 5 of 10

- The OFS has filled or selected candidates for key leadership positions, including Chief Operating Officer, Chief Financial Officer, Director of Compliance Program, Equity Program Director, Deputy Chief Risk Officer, Director of Financial Agents, and Contracts Administration Manager. Other senior appointments have included the Executive Secretariat, the Internal Controls Program Leader, and Deputy Director for the Equity Program. Appointments are pending for the Middle Office Manager and a senior position in the Risk Office.
- Treasury has been operating TARP with a staff of approximately140 people, including long-term TARP employees, detailees, and other Treasury employees. Over time, TARP is shifting from reliance on Treasury staff to long term OFS staff, and we have a robust pipeline of outstanding new people joining OFS each week. As of January 15, the OFS had a staff of 88 employees, including 28 long-term staff. By the end of January, the OFS will have a staff of approximately 100 employees, including 40 long-term staff. In addition, the OFS continues to benefit from broad support across the Department of the Treasury. Finally, a number of individuals detailed to the OFS from within Treasury or other federal organizations have expressed interest in staying with the program. These detailees are expected to remain with the program until they transition into OFS positions or until permanent staff is identified.
- While the OFS has moved quickly to add staff, Treasury has exercised appropriate caution to ensure a thorough and rigorous ethics vetting process. This has marginally increased the time it takes to on-board employees after selection.

Next steps:

- The OFS continues to attract interest from excellent private and public sector candidates. The OFS has established effective processes for reviewing applications and there is broad involvement of the OFS staff in the recruitment and interviewing process. The OFS is continuing to interview candidates for leadership and staff positions and expects to increase the hiring rate, while remaining mindful that TARP is a program created to fill a temporary need.

Page 6 of 10

Recommendation 6: Ensure that sufficient personnel are assigned and appropriately trained to oversee the performance of all contractors, especially those performing under contracts priced on a time and materials basis, and move toward greater reliance on fixed-price arrangements, whenever possible, as program requirements are better defined over time.

Status at first GAO report:

- Treasury had exercised its authority under the act to retain financial agents to provide services on its behalf, as well as entering into a variety of contracts and blanket purchase agreements under the Federal Acquisition Regulation for legal, investment consulting, accounting, and other services that are generally available in the commercial sector.

High Level Summary of Progress since First GAO Report:

- The OFS has been adding additional procurement management, procurement services, and financial agent management personnel to effectively manage TARP contracts and financial agents.
- The OFS has created a new SES Contracts Administration Manager position, which the department expects to fill by the end of January. The contract administration manager will report to the TARP Chief Operating Officer and will oversee TARP's long range requirements planning, apply contract management best practices to TARP's contracts and financial agent agreement, and provide contract management leadership and guidance to TARP's Contracting Officer Technical Representatives (COTRs) and financial agent management personnel.
- The OFS also has created an SES Director for Financial Agents to help oversee a Manager of the Custodian/Infrastructure Provider and a Manager of the Asset Managers, both of whom will in turn supervise a team of staff-level vendor managers. Two of these three management positions should be filled in January, and an experienced vendor manager will start on January 31. In addition, after the asset managers are selected, Treasury's investment consultant, Ennis Knupp, will have an ongoing responsibility to provide advice and assistance in ensuring proper performance by the asset managers.
- Treasury's Procurement Services Division is currently reviewing over 40 applicants for two high level Supervisory Contract Specialists positions that will form the leadership core of the procurement team to support OFS full time.
- The TARP has continued to recruit a number of experienced COTRs into the OFS to ensure effective contract management at the staff level. In the meantime, executives in the OFS and the Office of the General Counsel continue to carefully manage our contracts.
- In addition, contracting staff continues to work closely with requirements owners to identify opportunities for greater use of firm fixed price contracts, where such contracts will maximize value for the taxpayer, as well as minority- and women-owned small business participation.
- Finally, while the transition to permanent and more experienced COTRs has been underway, the Procurement Services Division (PSD) has instituted a twice per month contract

Page 7 of 10

performance report requirement for each OFS procurement. These reports facilitate contract cost and quality control. PSD analyzes these reports and prepares a COTR Reports Analysis for OFS, which is discussed in a bi-weekly meeting with the Chief Operating Officer. The COTR Reports Analysis report helps to identify and resolve contract performance and compliance issues at an early stage. The OFS also has carefully monitored its financial agent agreements, through monthly meetings with the financial agent's senior management and regular analysis of scope and performance.

- In addition, the OFS continues to host periodic "procurement summit" meetings that include broad representation from employees across the Treasury Department with a role in OFS procurement and financial agent agreements. The summits facilitate communication and coordination with respect to requirements planning and contract management. PSD also has provided interim training, support and recommendations to the OFS with respect to OFS contracts.

Next steps:
- The OFS will complete these planned hiring actions, and add to the staff of vendor managers as additional firms are selected as asset managers over time.

Recommendation 7: Continue to develop a comprehensive system of internal control over TARP, including policies, procedures, and guidance for program activities that are robust enough to ensure that program's objectives and requirements are being met.

Status at first GAO report:

- When GAO completed its first report, the OFS had hired external support (PricewaterhouseCoopers) to support the development of internal controls. A number of key controls had been established for the program active at that time - the CPP.

High Level Summary of Progress since First GAO Report:

- The OFS has approached the development of internal controls with both a short term and long term vision. The short term vision is to have controls in place for the highest financial risk activities first. To this end, the OFS has developed core controls for the programs currently operating: CPP, SSFI, TIP and AIFP. The weekly CPP deal closings have been completely documented. The OFS is relying on existing Treasury operations and controls for many of the support functions (e.g. budget, human resources and procurement), but has also made progress developing controls for OFS specific functions. A document provided to GAO by OFS this past week- "OFS Internal Control Status as of 1/14/09"- provides a list of controls and control related activity to date.

- The OFS has also made progress on developing a long term vision for internal controls. An Internal Control Framework (previously provided by the OFS) has been created and the management team is using it to focus discussions on a range of organizational issues including internal controls. We anticipate the framework will continue to evolve as the organization continues to grow and mature.

Page 8 of 10

Next Steps:

- The OFS will develop an implementation plan for the Internal Control Framework. An area of initial focus will be financial reporting as the OFS develops its financial statement processes and prepares for the financial statement audit GAO will be conducting this year

Recommendation 8: Issue final regulations on conflicts of interest involving Treasury's agents, contractors, and their employees and related entities as expeditiously as possible, and review and renegotiate mitigation plans, as necessary, to enhance specificity and compliance with the new regulations once they are issued.

Status at first GAO report:

- When GAO published its first report on the TARP, Treasury had in place several measures to address conflicts of interest. Treasury had published and was implementing interim guidelines for addressing conflicts of interest that may arise with vendors seeking work under the Troubled Asset Relief Program. These guidelines supplemented the conflicts provisions applicable through the Federal Acquisition Regulation. Treasury was also drafting interim final regulations on conflicts of interest

High Level Summary of Progress since First GAO Report:

- After an extensive review process within Treasury and interested agencies, Treasury has completed interim final conflicts regulations and sent them to the Federal Register on January 14 for publication. The regulations describe information that Treasury will require vendors to provide when bidding for contracts, the conflicts reviews they must undertake during the life of the contract, and the certifications they must provide to demonstrate compliance, among other measures. A copy has been sent to GAO under separate cover.
- While these regulations were being finalized, Treasury continued to apply the interim guidelines and to scrutinize its vendors for conflicts. As part of the process for hiring asset managers, for example, Treasury has obtained and is reviewing very detailed information about potential conflicts, mitigation strategies, codes of ethics, and other compliance policies and practices from each candidate. Treasury has also obtained guidance from its consultant, Ennis Knupp, on evaluating the potential for conflicts and possible mitigation measures in the asset manager program.

Next steps:

- Treasury has already begun a review of its contracts to determine whether changes or additional requirements are necessary in light of the new conflicts regulations, and this work will continue. Because Treasury has been implementing conflicts requirements under its interim guidelines and the Federal Acquisition Regulation, we do not anticipate that this review will reveal the need for fundamental changes in our contracts

Page 9 of 10

Recommendation 9: Institute a system to effectively manage and monitor the mitigation of conflicts of interest going forward.

Status at first GAO report:

- When GAO issued its first report, Treasury was taking several measures to address conflicts of interest for TARP vendors. As mentioned above, Treasury routinely considered conflicts as part of its procurement process, based on requirements in Treasury's interim guidelines and the Federal Acquisition Regulation. Through these measures, Treasury was able to identify vendors who may have conflicts, obtain information about those conflicts, and impose contractual requirements relating to conflicts. Among these vendors are law firms whose lawyers are bound by professional codes of ethics, enforced by state bars, to identify, manage, and prevent conflicts of interest. These measures – regulatory, contractual, and professional codes – have been part of Treasury's system for managing potential conflicts among is vendors.
- Also at the time of GAO's first report, Treasury was implementing a system for managing potential conflicts with the law firms that handle CPP closings. Treasury regularly used two law firms to handle these closings. Before a firm was assigned to close a transaction, Treasury would send both firms a list of approved institutions as part of a conflicts review process. If a firm had a conflict, the pertinent transaction was assigned to the other law firm for closing. If both firms had a conflict, the work would be assigned to a third firm. This system prevented conflicts from arising, thereby avoiding the need for mitigation measures.

High Level Summary of Progress since First GAO Report:

- As discussed above, Treasury has sent interim final regulations on conflicts of interest to the Federal Register. These regulations describe more formal processes for identifying, monitoring, and mitigating conflicts of interest during procurement and the contract term. For law firms handling CPP closings, Treasury continues to implement its system for addressing potential conflicts at law firms handling CPP closings. Treasury evaluates potential conflicts at law firms handling other transactions before hiring, and imposes conflicts requirements in their contracts as well. In general, Treasury has avoided the need to design and monitor mitigation programs by hiring vendors who do not have conflicts.

Next steps:

- Treasury will implement the conflicts regulations for new vendors and review existing contracts to determine what changes are needed. Treasury is currently designing conflicts provisions for the asset manager agreements, and when these are finalized, will be designing and implementing systems to monitor conflicts in this important area. As new staff is hired for the Office of the CCO, Treasury will design and implement additional measures to monitor existing vendors for conflicts.

Page 10 of 10

Appendix V: GAO Contacts and Staff Acknowledgments

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