



Treasury Significantly Loosened Executive Pay Limits Resulting in Excessive Pay for Top 25 Employees at GM and Ally (GMAC) When the Companies Were Not Repaying TARP in Full and Taxpayers Were Suffering Billions of Dollars in Losses

Special Inspector General for the Troubled Asset Relief Program



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September 24, 2014

MEMORANDUM FOR: The Honorable Jacob J. Lew – Secretary of the Treasury

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

SUBJECT: Treasury Significantly Loosened Executive Pay Limits Resulting
in Excessive Pay for Top 25 Employees at GM and Ally (GMAC)
When the Companies Were Not Repaying TARP in Full and
Taxpayers Were Suffering Billions of Dollars in Losses
(SIGTARP 14-001)

We are providing this report for your information and use. It discusses Treasury's 2013 executive compensation decisions for Top 25 employees of General Motors Corporation and Ally Financial Inc.

The Office of the Special Inspector General for the Troubled Asset Relief Program conducted this evaluation (engagement code Evaluation 005) under the authority of the Emergency Economic Stabilization Act of 2008 and Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended.

We considered comments from the Department of the Treasury when preparing the report. Treasury's comments are addressed in the report, where applicable.

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

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Summary

When Congress passed the Troubled Asset Relief Program (“TARP”) and subsequent economic stimulus legislation, it placed limitations on executive compensation for TARP recipients, and left it to the U.S. Department of the Treasury (“Treasury”) to implement the limitations. Treasury created the Office of the Special Master for TARP Executive Compensation (“OSM”). Kenneth R. Feinberg served as the Special Master – often called the pay czar – and was succeeded by Patricia Geoghegan, currently serving as the Acting Special Master. OSM has jurisdiction over compensation at companies that stood out from the more than 700 TARP recipients because of the amount and nature of their exceptional bailout. OSM sets pay for the Top 25 employees at these TARP exceptional assistance recipients. The Top 25 includes the 5 senior executive officers and the next 20 most highly compensated employees.

In January 2012 and January 2013, the Office of the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”) reported on the results of its evaluations of compensation set by Treasury for Top 25 employees at companies that received TARP help deemed exceptional. SIGTARP’s reports highlighted that Treasury had failed to rein in excessive pay and failed to implement meaningfully SIGTARP’s recommendations to develop robust criteria, policies, and procedures to ensure it could meet its own pay-setting guidelines.

In April 2013, shortly before the Acting Special Master approved compensation for Top 25 employees of the two remaining companies that received exceptional TARP assistance – Ally Financial Inc. (“Ally”) and General Motors Corporation (“GM”) – Representative Jim Jordan, Chairman of the U.S. House Committee on Oversight and Government Reform Subcommittee on Economic Growth, Job Creation, and

Regulatory Affairs, requested that SIGTARP determine the number and value of pay raises requested by Ally and GM and approved by Treasury, and the company-proposed and Treasury-approved compensation that exceeded Treasury’s pay-setting guidelines. Shortly after receiving Congress’ request, SIGTARP initiated this evaluation with the specific objective to assess the 2013 pay packages proposed by the companies and the decisions made by Treasury for compensation for the Top 25 employees at Ally and GM.

What SIGTARP Found

Overall, SIGTARP found Treasury significantly loosened executive pay limits, resulting in excessive pay for Top 25 employees at GM and Ally while the companies were not repaying TARP in full and taxpayers were suffering billions of dollars in losses. Treasury also made limited progress implementing recommendations previously made by SIGTARP. These were designed to promote good Government practices, improve transparency, consistency, and accountability and ultimately protect taxpayers from subsidizing excessive compensation at TARP companies. In 2013, OSM continued awarding excessive pay raises and only put back a minimal amount of long-term restricted stock as part of pay packages and eliminated it altogether again in 2014 from pay packages. In June 2013, OSM created for the first time a written policy and procedures. However, OSM’s policy merely recites TARP legislation and the TARP Standards for Compensation and Corporate Governance; Interim Final Rule (“IFR,” or “Treasury’s Rule”), both in existence prior to the establishment of OSM, leaving OSM as an office of Treasury that operates without formal written policies developed by that office. SIGTARP found that Treasury still lacks robust policies, procedures, or criteria to ensure that OSM’s guidelines are met.

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Both GM and Ally stood out from the other five companies previously under OSM's jurisdiction. At the time OSM set pay for the Top 25 employees at GM and Ally in April 2013, SIGTARP found that pay set by Treasury for Ally's and GM's top employees did not reflect that those companies were not repaying TARP in full after four years, resulting in billions of dollars in taxpayer losses. Moreover, at the time of Treasury's pay determinations, it was public knowledge that the companies were not repaying TARP in full and Treasury had already suffered an \$8.2 billion loss in GM, and Ally had made no repayments of the principal TARP investment. While Ally was under a March 2013 failed stress test, taxpayers suffered a loss of \$845 million when Treasury sold Ally common stock in the market. While SIGTARP was conducting this evaluation, Treasury sold its remaining TARP shares of GM in the market to arrive at a total loss to taxpayers of \$11.159 billion, and sold some additional Ally common stock in the market to arrive at total losses of \$1.8 billion.

In 2013, OSM approved cash salaries over \$500,000 for more than one-third (16 of 47) of the top employees of GM and Ally. Year after year, Treasury has loosened executive pay limits, getting further and further away from the President's announced pay reforms and pay limits used by Treasury in 2009, even as taxpayer losses mount. The President announced that top executives at firms receiving extraordinary help from U.S. taxpayers would have their compensation capped at \$500,000, with any additional compensation in the form of stock that can't be paid up until taxpayers are paid back for their assistance. Treasury, however, did not limit additional compensation beyond \$500,000 to "stock that cannot be paid up until taxpayers are paid back," as the President announced. For example, in 2013, OSM approved effectively only 5% of Ally employees' compensation in the form of long-term restricted stock and then eliminated it entirely from Ally employees' pay packages in 2014.

Treasury's mounting exceptions to its own guideline restrictions on executive compensation resulted by 2013 in OSM moving further and further away from the President's announcement and OSM's prior guidelines. Instead of making meaningful reforms to its process, OSM rolled back its application of guidelines aimed at curbing excessive pay, whereby approving high pay driven by Ally and GM's excessive pay proposals without independent analysis and under an ill-defined, pay-setting process that lacked objective criteria.

SIGTARP found several examples delineating OSM's rolling back of guidelines. For example, Treasury approved at least \$1 million in pay for every Top 25 employee in 2013 and increased compensation by 28% for GM and Ally Top 25 employees from 2009 to 2013. Treasury tripled the number of GM and Ally employees who received cash salaries exceeding \$500,000 from 2009 to 2013 and allowed 89% of the employees to be paid cash salaries of \$450,000 or more in 2013. Treasury approved \$3 million in pay raises, ranging from 4% to 20%, for nine GM employees in 2013, most of whom received raises in consecutive years. Treasury also continued to loosen time restrictions by a full year for employees to cash out company stock received as pay.

Additionally, in 2009, Treasury's guideline was to set pay to "generally not exceed the 50th percentile of total compensation for similarly situated employees." The pay Treasury awarded most of the employees in 2013 exceeded the market median based on comparable positions and companies as determined by Treasury. Treasury set pay for 88% (30 of 34 employees) of these proposed employees, which exceeds market medians. On an individual basis, these pay packages exceeded market medians by amounts ranging from \$17,700 to \$2.7 million, for a total of \$22.9 million. Of the 30, Ally received 18 and GM received 12. Treasury appears now to have done away with this guideline because by 2014,

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Treasury set most of Ally's pay between the 50th and 75th percentiles.

The pendulum in OSM's pay decisions has swung too far in the direction of keeping companies competitive, without regard for the fact that the reason to keep companies competitive is so that they can repay taxpayers in full, but GM and Ally were not repaying taxpayers in full. Rather, taxpayers have suffered billions of dollars in losses on those TARP investments.

Two aspects of Treasury's pay-setting process and pay decisions serve as important lessons learned. First, loosening limits on executive compensation for companies unable to repay TARP subjects Treasury to criticism that is rewarding top executives at companies that are losing taxpayers' money over the interests of the taxpayers already shouldering billions of dollars in losses on those investments.

Second, by setting pay further and further away from the President's and Treasury's announced limitations on executive compensation for TARP company officials, Treasury is missing an opportunity for critical reforms to a material cause of the financial crisis and a strong deterrent to future bailouts.

What SIGTARP Recommends

In this report, SIGTARP made 11 recommendations aimed at enhancing OSM's pay-setting process and pay decisions. These recommendations include maintaining improved documentation of OSM and Treasury's communications regarding compensation, performing and documenting independent analyses before OSM approves company requests for cash salaries exceeding \$500,000, cash salaries exceeding market medians, and annual pay increases. SIGTARP also recommended OSM use long-term restricted stock as part of each employee's compensation package to ensure compensation is tied to both the employee's and the company's performance, and the full repayment of TARP funds. Finally, SIGTARP recommended OSM enhance its written procedures regarding targeting median total compensation.

Treasury provided an official written response to a draft of this report in a letter dated September 21, 2014, which is produced in full in Appendix I. Treasury did not clearly agree to implement any of the report's recommendations, which were intended to improve transparency and program performance.



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Background

When Congress authorized the Troubled Asset Relief Program (“TARP”), it required that TARP recipients abide by certain rules on executive compensation, rules that it left to the U.S. Department of the Treasury (“Treasury”) to promulgate. Limits on executive compensation at TARP recipients are important for several reasons. First, limits on executive compensation for TARP companies are a tradeoff for the bailout because taxpayers are subsidizing TARP companies. As stated by former Treasury Special Master for TARP Executive Compensation (“Special Master”) Kenneth R. Feinberg in his book, *Who Gets What: Fair Compensation after Tragedy and Financial Upheaval* (“*Who Gets What*”):

Congress could not stand idly by and accept a one-way bargain with Wall Street. There would have to be a price to pay for such Congressional largesse....If Main Street was required to come to Wall Street’s rescue, there would be a price to pay: leaders in Congress and the new Obama administration didn’t want to see headlines discussing how financial “fat cats” were collecting outrageous salaries from companies supported by taxes of ordinary citizens.

Second, limits on executive compensation at TARP companies serve as important reforms to a material cause of the financial crisis and a possible deterrent to future bailout requests. Former Treasury Secretary Timothy F. Geithner said that executive compensation played a material role in causing the financial crisis because it encouraged excessive risk taking. Congress specifically required in the TARP authorizing legislation that institutions in TARP abide by certain rules on executive compensation intended to avoid excessive risks.

On February 4, 2009, the President held a press conference with former Treasury Secretary Timothy F. Geithner announcing reforms, including new limits on pay, stating:

We are going to be demanding some restraint in exchange for federal aid so that when firms seek new federal dollars, we won’t find them up to the same old tricks. As part of the reforms we’re announcing today, top executives at firms receiving extraordinary help from U.S. taxpayers will have their compensation capped at \$500,000, a fraction of the salaries that have been reported recently. And if these executives receive any additional compensation, it will come in the form of stock that can’t be paid up until taxpayers are paid back for their assistance.

Seven companies had received TARP help deemed “exceptional” – because the amount and nature of their bailouts stood out from the more than 700 other TARP recipients. Those were American International Group, Inc. (“AIG”), Bank of America Corporation (“Bank of America”), Citigroup Inc. (“Citigroup”), Chrysler Financial Services Americas LLC (“Chrysler Financial”), Chrysler Holding LLC (“Chrysler”), General Motors Corporation (“GM”), and Ally Financial Inc. (“Ally”), formerly General Motors Acceptance Corp. (“GMAC Inc.”). Thirteen days after the President’s announcement, Congress enacted the American Recovery and Reinvestment Act of 2009 (“the Recovery Act”), which among other things, limited bonuses for the Top 25¹ employees at TARP institutions (depending on the amount of TARP investment) unless paid in restricted stock that did not exceed one-third of total compensation.

Responsible for promulgating rules limiting executive compensation for TARP companies, Treasury, through a rule known as the TARP Standards for Compensation and Corporate Governance; Interim Final Rule (“IFR,” or “Treasury’s Rule”), created the Office of the Special Master for TARP Executive Compensation (“OSM”), but gave it limited scope. OSM sets the annual pay for the Top 25 most highly paid employees at the seven TARP exceptional assistance companies, until the company is no longer in TARP.² Treasury’s Rule articulated the following six principles for OSM:

- **Risk** – the compensation structure should avoid incentives to take unnecessary or excessive risks that could threaten the value of the TARP recipient;
- **Taxpayer Return** – the compensation amount and structure should reflect the need for the TARP recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the TARP recipient’s success, and ultimately, its ability to repay TARP obligations;
- **Appropriate Allocation** – the compensation structure should appropriately allocate compensation between components such as salary and short-term and long-term incentives;
- **Performance-based Compensation** – an appropriate portion of the compensation should be based on performance metrics over a relevant period;
- **Comparable Structures and Payments** – the compensation amount and structure should be consistent with those for persons in similar positions or roles “at similar entities that are similarly situated”; and
- **Employee Contribution to TARP Recipient Value** – the compensation structure and amount should reflect the current or prospective contributions of an employee to the value of the TARP recipient.

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

² The Special Master also approves compensation structures, rather than individual pay, for the next 75 most highly compensated employees.

SIGTARP's January 2012 Report Found that Treasury Approved Excessive Compensation for TARP Recipients

On January 23, 2012, the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP") issued a report over how Treasury's OSM set pay for the Top 25 employees at the seven TARP companies under OSM's jurisdiction. SIGTARP reported that Former Special Master Kenneth R. Feinberg, who served as Treasury's Special Master from June 15, 2009, to September 10, 2010, stated that the six principles contained in Treasury's Rule are inherently inconsistent, and therefore he determined pay for Top 25 employees in a three-step methodology using what he called "prescriptions," or guidelines.

OSM Determined Pay for the Top 25 Employees in a Three-Step Methodology

First, OSM sets total compensation on the OSM prescription that it should generally not exceed the 50th percentile of total compensation for similarly situated employees. The first step in the formula was to determine each employee's total compensation by basing it on the 50th percentile compensation level for the employee's position, scope, and responsibilities relative to what their peers in comparable positions are earning. To determine the 50th percentile, OSM uses the U.S. Mercer Benchmark Database and Equilar's *ExecutiveInsight Total Compensation Report* to determine whether the market data submitted by the TARP companies were reasonable.

Second, OSM sets cash salaries using an OSM prescription that salaries generally should not exceed \$500,000 per year, except for good cause shown. As reported in SIGTARP's January 2012 report, OSM staff told SIGTARP that the \$500,000 cash salary limit was based partially on President Obama's statement that salaries should be limited to \$500,000. Former Special Master Feinberg told SIGTARP that he made the decision to limit cash salaries to \$500,000 and to increase the proportion of compensation in the form of stock to strike a balance between reducing excessive risk and providing enough compensation to keep employees' "skin in the game."

Third, OSM determines how much of the remaining compensation would be paid in stock salary with a value dependent on the company's future success and long-term restricted stock. OSM determined the amount of stock salary and long-term restricted stock by deducting the cash salary from total compensation. The Recovery Act limited long-term restricted stock to one-third of the employee's total pay. Under the process set up by former Special Master Feinberg, OSM calculated the amount of long-term restricted stock, and the remainder of the compensation package was salary in the form of company stock (called "stock salary"), which vests immediately upon grant.

As reported in SIGTARP's January 2012 report, to tie individual compensation to long-term company success, OSM used long-term restricted stock contingent on the employee achieving specific performance criteria. Long-term restricted stock does not fully vest until the repayment of TARP financial assistance. As reported in SIGTARP's January 2012 report, OSM officials then told SIGTARP that companies were very hesitant to pay long-term restricted stock because there was no certainty that some of the companies would ever be free of TARP.

SIGTARP concluded in its January 2012 report that the Special Master could not effectively rein in excessive compensation because he was under the constraint that his most important goal was to get the companies to repay TARP. Given OSM's overriding goal, the seven companies had significant leverage over OSM by proposing and negotiating for excessive pay packages, warning Special Master Feinberg that if he did not provide competitive pay packages, top officials would leave and go elsewhere, a claim that he said, at that time, did not come true as 85% of the people were still at the companies.³ SIGTARP reported that, although generally OSM limited cash compensation and made some reductions in pay, OSM still approved total compensation in the millions. SIGTARP found that, although the Special Master created a prescription that cash salaries should not exceed \$500,000 except for good cause, OSM was inconsistent in approving cash salaries in excess of \$500,000.

SIGTARP also reported that getting out from under the Special Master's purview was a factor for repayment of TARP exceptional assistance by Bank of America and Citigroup. Both companies were subject to OSM's determinations only from October 2009 to December 2009. Citigroup officials told SIGTARP that, from the beginning, Citigroup's perspective was that it would be subject only to the Special Master's determinations for 2009. SIGTARP's September 29, 2011, audit report, "Exiting TARP: Repayments by the Largest Financial Institutions," reported that Citigroup's CEO told SIGTARP that the desire to escape management compensation restrictions was a factor motivating Citigroup's desire to exit TARP. Two of Bank of America's former executives also told SIGTARP that executive compensation was an important factor in the firm's decision to repay TARP. One of the executives told SIGTARP that executive compensation was a major factor behind the firm's repayment decision and that the company did everything possible to get out from under the executive compensation rules. Once these two banks exited the exceptional assistance TARP programs and OSM's jurisdiction, salaries and bonuses climbed.

³ Former Special Master Feinberg wrote in his book that it was not clear that the departure of the 15% who left was tied to compensation.

SIGTARP made three formal recommendations in the January 2012 report:

- To ensure that OSM consistently grants exceptions to the \$500,000 cash salary cap, OSM should substantiate each exception requested and whether the requests demonstrate or fail to demonstrate “good cause.”
- OSM should better document its use of market data in its calculations.
- OSM should develop more robust policies, procedures, or guidelines to help ensure that its pay determination process and its decisions are evenhanded. These measures will improve transparency and help OSM consistently apply Treasury’s principles of “appropriate allocation,” “performance-based compensation,” and “comparable structures and payments.”

SIGTARP’s January 2013 Report Found that Treasury Continues Approving Excessive Compensation for TARP Recipients

After issuing the January 2012 report and three formal recommendations, SIGTARP conducted a follow-up review, issuing a report in January 2013, finding that Treasury had again failed to rein in excessive pay. In January 2013, SIGTARP reported that, even though OSM set guidelines aimed at curbing excessive pay, SIGTARP previously warned that Treasury lacked robust criteria, policies, and procedures to ensure those guidelines are met. Despite SIGTARP’s prior report, Treasury made no meaningful reform to its process. Absent robust criteria, policies, and procedures to ensure its guidelines were met, OSM’s decisions were largely driven by the pay proposals of the same companies that historically, and again in 2012, proposed excessive pay.

With the companies exercising significant leverage, Acting Special Master Patricia Geoghegan rolled back OSM’s application of guidelines aimed at curbing excessive pay. SIGTARP reported that OSM awarded \$6.2 million in pay raises to 18 of the 18 employees for whom the companies proposed raises. SIGTARP reported that OSM awarded cash salaries of \$500,000 or more to 70% of the executives under OSM’s pay-setting jurisdiction and allowed 94% of the top employees to be paid cash salaries of \$450,000 or more. SIGTARP reported that OSM removed long-term, incentive-based stock as requested by the companies. SIGTARP found that, although OSM bettered its documentation of the employees awarded more than a \$500,000 cash salary, OSM did not “substantiate” that high cash salary, but instead listed a justification that largely parroted what each company asserted to OSM without an OSM independent analysis.

SIGTARP reported in January 2013 that OSM is effectively relinquishing some of OSM’s authority to the companies that have their own best interests in mind. OSM’s job is to look out for the interests of taxpayers, which it cannot do if it continues to rely to a great extent on the company’s proposals and justifications.

In January 2013, SIGTARP reported that guidelines aimed at curbing excessive pay are not effective, absent robust policies, procedures, or criteria to ensure that the guidelines are met; however, OSM still did not have robust policies, procedures, or criteria to ensure that pay for executives at TARP exceptional assistance companies stays within OSM guidelines. SIGTARP reported that perhaps the Acting Special Master thinks that OSM has already succeeded in achieving its mission by limiting compensation for these executives from pre-TARP levels, but the question is whether OSM's existing policies are sufficient for taxpayers.

SIGTARP found in January 2013 that Treasury continues to award excessive pay packages, including large guaranteed cash salaries, but meaningful reform was still possible because GM and Ally remained under OSM's jurisdiction. SIGTARP ended the report with a warning that without meaningful reform, including independent analysis by OSM, Treasury risks that TARP companies could potentially misuse taxpayer dollars for excessive executive compensation.

SIGTARP made four recommendations in the January 2013 report:

- Each year, Treasury should reevaluate total compensation of executives at TARP exceptional assistance companies remaining in the Top 25 from the prior year, including determining whether to reduce total compensation.
- To ensure that Treasury effectively applies guidelines aimed at curbing excessive pay and reducing risk taking, Treasury should develop policies, procedures, and criteria for approving pay in excess of Treasury guidelines.
- Treasury should independently analyze whether good cause exists to award a Top 25 employee a pay raise or a cash salary over \$500,000. To ensure that OSM has sufficient time to conduct this analysis, Treasury should allow OSM to work on setting Top 25 pay prior to OSM's receiving the company pay proposals, which starts the 60-day timeline.
- To be consistent with Treasury's Rule that the portion of performance-based compensation compared to total compensation should be greater for positions that exercise higher levels of responsibility, Treasury should return to using long-term restricted stock for employees, particularly senior employees such as CEOs.

Representative Jim Jordan, Chairman of the U.S. House Committee on Oversight and Government Reform Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs, requested that SIGTARP evaluate the 2013 company-proposed and Treasury-approved pay packages for the two remaining companies in TARP that had received exceptional financial assistance – Ally and GM. Chairman Jordan specifically asked SIGTARP to determine the number and value of pay raises requested by Ally and GM and approved by Treasury, and the company-proposed and Treasury-approved compensation that exceeded

Treasury's pay-setting guidelines. In April 2013, shortly before the Acting Special Master approved compensation for Ally and GM employees, SIGTARP initiated this evaluation with the specific objective to assess the 2013 pay packages proposed by the companies and the decisions made by Treasury for compensation for the Top 25 employees at Ally and GM. SIGTARP conducted this evaluation between April 2013 and September 2014 in accordance with the "Quality Standards for Inspection and Evaluation" established by the Council of the Inspectors General on Integrity and Efficiency. For a discussion of the evaluation's scope and methodology, see Appendix A.

While SIGTARP was conducting this review, in December 2013, GM exited TARP, but not by repaying TARP. Instead, Treasury decided to sell its remaining shares of GM common stock at a loss. Taxpayers suffered an \$11.159 billion loss on its TARP investment in GM. In November 2013, Ally repurchased from Treasury certain securities called mandatorily convertible preferred shares. In January 2014, Treasury sold shares of Ally common stock in the market at a loss of \$845 million. On April 2, 2014, Treasury's OSM issued 2014 pay decisions for the Top 25 employees at Ally, the last company under OSM's jurisdiction. Days later, on April 15, 2014, Treasury sold additional Ally stock in the market at a loss of \$918 million.

Treasury Made Limited Progress Since SIGTARP's Last Report, but Did Not Make the Meaningful Reforms Needed

Treasury made some progress after SIGTARP's last report, which SIGTARP credits, although much more is needed to implement six of SIGTARP's seven recommendations, which are designed to protect taxpayers from subsidizing excessive compensation at TARP companies and through reforms of executive compensation practices that contributed to the financial crisis.

- **Awarding Pay Raises:** After SIGTARP raised concerns that OSM awarded pay raises to 18 of the 18 employees for whom the companies had requested raises for 2013 pay, OSM did not award pay raises to every employee for whom the companies requested. OSM denied pay raises to three GM employees new to GM's Top 25 for whom the company had requested a raise, and denied pay raises to three Ally employees where the company had requested a raise. However, in 2013, OSM still awarded pay raises to each of the nine GM employees for whom GM had requested a raise and where the employee was in the Top 25 the prior year, and one GM employee in 2013 (after OSM issued GM's determination letter).
- **Removing Long-Term Restricted Stock:** After SIGTARP raised concerns that in 2012 OSM had removed long-term restricted stock as part of pay for all Ally employees and for some GM employees and made a recommendation that Treasury return to using long-term restricted stock, in 2013 OSM put back long-term restricted stock, but only by a small amount (effectively 5%), then eliminated it from all pay packages in 2014.
- **Lacking Robust Policies, Procedures, Guidelines, and Criteria:** After SIGTARP raised concerns about OSM's lack of written policies, procedures, guidelines, and criteria, for the first time in the history of OSM, in June 2013, Treasury created a written policy and procedures (including guidelines). However, SIGTARP found that this policy and those procedures were not robust or complete and failed to address all of the concerns raised by SIGTARP in prior reports or all of SIGTARP's recommendations. They appeared instead to be an attempt at some documentation of what OSM had done historically without meaningful change as recommended by SIGTARP.
 - OSM's policy consists of 2½ pages that merely recite TARP legislation and Treasury's Rule (the IFR), both in existence prior to the existence of OSM, rather than recite any of the office's policies. Accordingly, OSM is an office of Treasury that operates without meaningful formal written

policies that should have been developed by the office. By any measure of oversight, that should not be acceptable.

- OSM's policy and procedures better document how the companies provide OSM market data and information and that OSM reviews the company-provided market data for accuracy (as SIGTARP recommended), but fails to address whether OSM continues to follow prior OSM guidance to set total compensation to generally not exceed the 50th percentile. OSM's determination letters instead discuss targeting cash compensation (not total compensation) at the 50th percentile; however, OSM's policy and procedures are silent on this issue.
- OSM's written policy and procedures (including guidelines) are silent on how OSM evaluates company requests for pay raises, a concern previously raised by SIGTARP with no meaningful reform. There appears to be no consistent criteria for who gets a pay raise and who does not. SIGTARP found that Treasury documentation was only slightly better than last year when OSM essentially parroted the company's explanation for the pay raise. OSM's documentation does not rise to the level of what SIGTARP recommended because it does not show that Treasury conducted independent analysis on whether good cause exists to award a pay raise beyond the company's explanation and where the person's pay falls in relation to the median.
- OSM's policy and procedures do not include independent analysis that OSM conducts or criteria that OSM considers to award cash salaries greater than \$500,000.
- OSM's policy and procedures do not include criteria that OSM considers to remove long-term restricted stock, how much long-term restricted stock to award, or whether Treasury would award a greater portion of long-term restricted stock for positions that exercise higher levels of responsibility (as stated in Treasury's Rule and SIGTARP's recommendation).
- After SIGTARP raised concerns that Treasury should reconsider pay each year, including whether to reduce pay rather than maintain or increase pay as OSM had done in the past, OSM included in its policy and procedures that OSM may reduce pay; however, OSM did not address guidelines or criteria it would consider in reducing pay.

The Acting Special Master continues to state that OSM has implemented SIGTARP's recommendations, and SIGTARP continues to tell Treasury and Congress in every SIGTARP Congressional report published quarterly that

SIGTARP considers only one of its recommendations to OSM to be implemented (better documentation of OSM's use of market data), why that is the case, and what SIGTARP would expect to see for implementation of its recommendations. The Acting Special Master simply cannot unilaterally determine that the recommendation has been implemented in the face of SIGTARP disagreement.

Treasury has not taken sufficient meaningful action to address serious concerns raised by SIGTARP of excessive Treasury-approved pay and to implement SIGTARP recommendations. OSM continues to lack robust policies, procedures, and criteria, which would hold OSM accountable to its guidelines that OSM created in the public interest. SIGTARP is extremely concerned that Treasury is allowing OSM to not fully implement SIGTARP's recommendations. OSM has started to document its process and procedures.⁴ However, it is clear, based on statements by OSM officials to SIGTARP and OSM's determination letters, that OSM continues to use criteria for decision making not captured in its formal policy and procedures. It is unclear whether this is objective or subjective criteria proposed by the companies.

Why this matters:

OSM is supposed to be acting in the public interest to limit excessive compensation at these two TARP companies. OSM meets with company officials and senior Treasury officials, all of which is undocumented, before making its decisions on pay. The importance of oversight over this process is critical to protect taxpayers. SIGTARP's reports and recommendations represent another voice, the voice of taxpayers who fund TARP. SIGTARP's recommendations are designed to promote good Government practices, improving transparency, consistency, and accountability, and ultimately ensure that taxpayers are not subsidizing excessive pay at TARP companies. SIGTARP believes a lack of robust criteria, policies, and procedures to ensure that OSM's guidelines are met leads to a lack of transparency, inconsistency, and ultimately a lack of accountability to taxpayers because pay decisions are made more based on the company proposals and assertions rather than independent objective criteria designed to protect taxpayers. That is what OSM is doing, deciding which of the company's proposals it will accept, with the companies each year requesting more and more pay with fewer and fewer restrictions. That may be how compensation committees work at private companies, but it is not good Government practice. Good Government requires objective criteria and procedures to ensure that guidelines designed to protect taxpayers are adhered to, rather than gutted by exception after exception.

⁴ Acting Special Master Geoghegan told SIGTARP that OSM told SIGTARP that it used the same pay-setting process for 2013 that it had used in prior years.

Treasury-Approved Pay for Top Employees at GM and Ally Does Not Reflect that Those Companies Were Not Repaying TARP in Full After Four Years, Resulting in Billions of Dollars in Taxpayer Losses

By 2013, Treasury's OSM had an incredibly narrow job: (1) to set individual pay for the Top 25 most highly paid employees at the only two major companies left in TARP – GM and Ally; and (2) to set compensation structures, rather than individual pay, for the next 75 most highly paid employees at GM and Ally. Both GM and Ally stood out from the other five companies previously under OSM's jurisdiction because they were still in TARP after four years, they were not repaying TARP in full, resulting in taxpayer losses on the TARP investment and Government estimates of billions of dollars in losses. At the time OSM set pay for top employees at GM and Ally in April 2013, Treasury had already written off \$8.2 billion in losses on the TARP investment, and Ally had not repaid any principal. Instead, Treasury had sold some securities in a March 2011 public offering. However, OSM's documentation of its process for setting pay, and the pay OSM set for GM and Ally for 2013, do not reflect the differences. At the time OSM set pay for top Ally employees in April 2014, Ally had repurchased some mandatorily convertible preferred stock from Treasury, and taxpayers had suffered more than an \$845 million loss on selling Ally stock in the market.

One of the six broad principles under which OSM operates is taxpayer return, and OSM has consistently touted as a measure of OSM's success the positive returns to taxpayers from the other five TARP exceptional assistance recipients. For example, in February 2013, at a hearing of the House Committee on Oversight and Government Reform, Acting Special Master Patricia Geoghegan testified:

In December 2012, AIG exited TARP, and the Federal Reserve and Treasury received back the entire \$182 billion of assistance that AIG had received...with a total positive return of \$22.7 billion. So, it is that kind of result that we are working for when we set our pay packages in our determination letter process.

Despite Treasury's articulating six principles, according to OSM, return to taxpayers of the TARP funds is OSM's primary objective. On October 21, 2010, at a hearing of the Congressional Oversight Panel, former Special Master Feinberg testified that Treasury's primary objective was to get taxpayers' money back when setting compensation. He testified before the Congressional Oversight Panel on October 21, 2010:

Congress felt that the single most important thing I could do is get those seven companies to repay the taxpayer....Secretary Geithner made that clear. Congress made that clear. The Administration made that clear. And we succeeded, with three of those companies already repaying.

Former Special Master Feinberg recounts in his book:

[T]he secretary made clear that my primary goal as Treasury's special master for TARP executive compensation was to determine payments for senior corporate officials that would maximize the likelihood that the designated companies would repay TARP loans as quickly as possible. The taxpayers had to be made whole. This was the top priority.

Although OSM measures success on a company fully repaying TARP, it is silent when taxpayers have not been made whole, have suffered losses, and are estimated by the Government to take future billions of dollars in losses, as was the case with GM and Ally in 2013 and continues with Ally in 2014. OSM's April 2013 letter to GM setting 2013 pay states: "Including proceeds from the sale of GM common stock held by Treasury, GM's repayments totaled approximately \$30.4 billion as of the end of March 2013." However, Treasury selling stock into the market does not constitute repayment by GM nor does selling back to GM at a substantial loss constitute a repayment in full of the debt by GM. Moreover, Treasury sold that stock at a loss of billions of dollars. Unlike prior OSM press releases touting returns to taxpayers, OSM's press release highlights that GM exited TARP without highlighting the cost at which GM exited TARP – an \$11.2 billion loss to taxpayers. OSM's April 2, 2014, press release discusses that Ally has repaid \$15.3 billion, or 89%, of the \$17.2 billion investment to Ally, without disclosing that these did not fully consist of repayments of the principal by the company and that taxpayers had suffered \$845 million in losses from stock sales during this time period by Treasury on the Ally TARP investment.

OSM cannot use repayment of the TARP investment to tout its success without taking responsibility for the lack of repayment by the company and TARP losses to taxpayers by companies under OSM's jurisdiction. Treasury's sale of company stock into the market is not the same as repayment by the company of its debt in full. It was public knowledge when OSM set 2013 pay and 2014 pay that the Government estimated a loss on the remaining GM stock and Ally stock held by Treasury in exchange for the TARP investment. When OSM set pay for 2013, the Congressional Budget Office and the Office of Management and Budget estimated that Treasury's losses on the auto bailout were at \$20 billion and \$25 billion, respectively. Given that, as of March 31, 2014, taxpayers saw a

\$2.9 billion loss in Chrysler and no loss from Chrysler Financial, losses from Treasury's investments in GM and Ally would account for most of Treasury's \$14.9 billion loss for the auto industry bailout. In 2013, Treasury continued to sell its GM stock well below its break-even prices and ultimately made its final sale in December 2013, which left taxpayers losing a total of \$11.2 billion in GM. In 2014, Treasury continued to sell Ally stock at a loss, including days after OSM set 2014 pay. Taxpayers have already suffered a loss of approximately \$1.8 billion on the TARP investment in Ally.

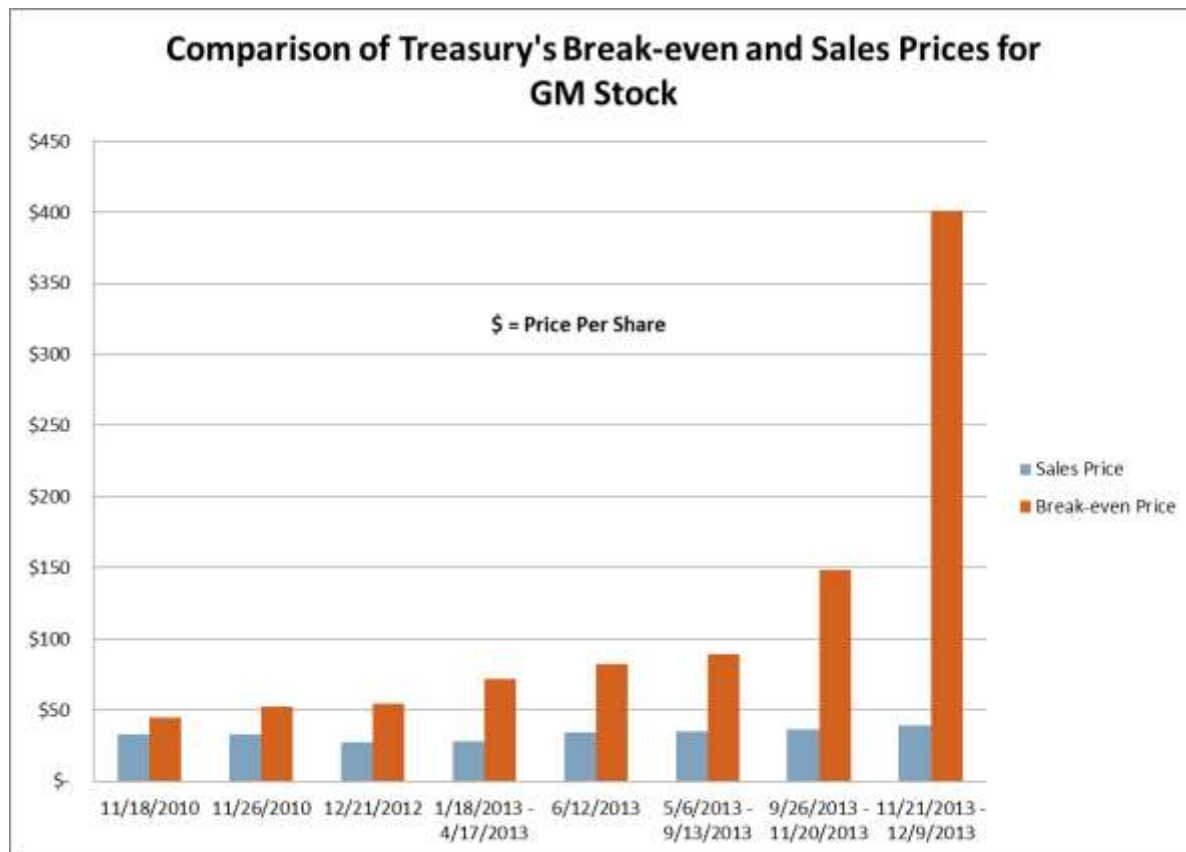
OSM's policy and procedures do not provide any guidelines or criteria for taking into account a company's lack of repayment of the initial TARP investment or whether Treasury was taking a loss on that investment. If return to taxpayers is the primary objective of Treasury's OSM and a key metric of success, then policies, procedures, and guidelines should reflect how Treasury treats a lack of repayment by the company, as well as actual and estimated losses to taxpayers on the principal TARP investment. Moreover, despite being bound by a principle that compensation amount and structure should be consistent with those for persons in similar positions or roles "at similar entities that are similarly situated," OSM's policy, procedures, and guidelines do not reflect GM's and Ally's unique situation as the last two large TARP recipients that remained in TARP in 2013, or that Ally is the last large TARP recipient in 2014.

When OSM set 2013 pay for GM's Top 25 employees in April 2013, it was public knowledge that GM was not repaying TARP in full and that Treasury had already suffered a loss of more than \$8.2 billion on its TARP investment in GM.

In November 2010, Treasury made two sales of GM stock into the market, selling 412.3 million shares at a loss of \$4.3 billion. Treasury sold the shares at an average price of \$32.75 per share despite the fact that Treasury's break-even price was \$44.59 and \$52.27 per share for the two sales, respectively. In December 2012, Treasury agreed to allow GM to buy back 200 million shares at a \$3.2 billion loss to taxpayers. GM paid \$27.50 per share despite the fact that Treasury's break-even price at that time was \$53.98 per share. Between January and April 2013, Treasury continued to sell GM stock into the market and continued losing money on the investment, losing more than \$900 million. As shown in the following table, Treasury continued to take losses for taxpayers by selling its GM common shares at prices well below Treasury's break-even prices from November 18, 2010, the date of GM's initial public offering, until Treasury sold its last remaining shares of GM common stock on December 9, 2013.

FIGURE 1

COMPARISON OF TREASURY'S BREAK-EVEN AND SALES PRICES FOR GM STOCK



Source: SIGTARP analysis of Treasury's February 19, 2014, *Transaction Report*.

When OSM set 2013 pay for Ally's Top 25 employees in April 2013, it was public knowledge that Ally was not repaying TARP in full, and soon after taxpayers suffered significant losses.

Treasury continued to approve Ally's requests for excessive pay in 2013 despite Ally's failing the Federal Reserve Board's ("FRB") stress test and not repaying taxpayers. On March 7, 2013, while Treasury was determining Ally's 2013 compensation, FRB announced Ally had insufficient capital to withstand a severe economic downturn and, therefore, Ally failed FRB's stress test. Ally was the only company of 18 of the largest bank holding companies (those with \$50 billion or more in total consolidated assets) to fail FRB's capital adequacy test. In March 2011, Treasury generated approximately \$2.7 billion in proceeds from selling Ally trust preferred securities in the market, not from a repayment by Ally. As of March 31, 2013, when OSM was setting pay for Ally, Ally had not made any repayments on the TARP principal investment. When OSM was setting pay

for Ally for 2014, taxpayers had already taken significant losses of more than \$845 million from Treasury selling Ally stock into the market.

Why this matters:

Treasury's pay decisions suggest that the principle of "repayment of TARP" inures to the benefit of top executives at TARP companies when Treasury sets pay. According to Feinberg's book, taxpayer return was Secretary Geithner's primary concern, described as:

[C]ompensation should reflect the need for the company to recruit and retain key employees so the company ultimately could repay every cent borrowed. Pay back the taxpayers – with interest. Every company subject to my jurisdiction, and much of the Treasury bureaucracy, referenced this variable in urging the special master to be generous when it came to compensation.

If Treasury wants to use "repayment of TARP" as a factor to approve "generous" pay, then the lack of repayment of every cent borrowed of TARP by GM and Ally should likewise be reflected by Treasury to limit or maintain pay, but not to loosen restrictions on pay. The goal, according to both Special Masters, was repayment in full to taxpayers, not losses. When Treasury was taking losses on its investment in GM, and Ally had not repaid taxpayers and was failing the stress tests, Treasury was rewarding the most highly paid GM and Ally employees with multimillion-dollar pay, pay raises, high guaranteed cash salaries, and little to no pay tied to long-term individual performance metrics. Taxpayers are already subsidizing losses on TARP investments in these companies and should not be forced by Treasury to subsidize excessive executive compensation.

Treasury Has Loosened Executive Pay Limits Year After Year, Getting Further and Further Away from the President's Announced Pay Reforms and Pay Limits Used by Treasury in 2009, Even as Taxpayer Losses Mount

Year after year, OSM is awarding pay to top executives at TARP companies that gets further and further away from the President's 2009 announced reforms:

The President's Announcement:

As part of the reforms we're announcing today, top executives at firms receiving extraordinary help from U.S. taxpayers will have their compensation capped at \$500,000, a fraction of the salaries that have been reported recently. And if these executives receive any additional compensation, it will come in the form of stock that can't be paid up until taxpayers are paid back for their assistance.

Treasury approved cash salaries over \$500,000 in 2013 for more than one-third (16 of 47) of the top employees of GM and Ally.

In addition, the President announced that additional compensation would come in the form of stock that could not be paid up until taxpayers are paid back for their assistance. That form of stock is long-term restricted stock. However, in 2012, OSM removed long-term restricted stock from the pay packages of all Ally employees and some GM employees. After SIGTARP reported on OSM's removal of that stock and Congress held a hearing on SIGTARP's report, OSM gave extremely limited long-term restricted stock in 2013 (effectively 5% to Ally employees), only to eliminate it in 2014. Treasury is not limiting additional compensation beyond \$500,000 to "stock that cannot be paid up until taxpayers are paid back," as the President announced.

Why this matters:

OSM's continued position that there is nothing requiring it to follow the President's announcement misses the point because the President's announcement was just as he stated – a reform – an important reform designed to combat one of the material causes of the financial crisis and provide a possible deterrent to future bailout requests. As stated by the President: "We are going to be demanding some restraint in exchange for federal aid so that when firms seek new federal dollars, we won't find them up to the same old tricks." First, it does raise the

question of who OSM believes is responsible for implementing the President's announcement, if not OSM. The bigger issue is that OSM's failure to follow reforms could have the unfortunate effect of ending up in the same place that required reforms in the first place.

OSM's Guidelines:

The pay awarded by OSM also appears to no longer follow Treasury's 2009 and 2010 guidelines created by former Special Master Feinberg. In SIGTARP's 2012 report, given that OSM did not have robust policies and procedures, SIGTARP reported on OSM's methodology called "prescriptions," or guidelines, as described by OSM officials to SIGTARP as follows:

First, OSM sets total compensation on the OSM prescription that it should generally not exceed the 50th percentile of total compensation for similarly situated employees.

Second, OSM sets cash salaries using an OSM prescription that generally salaries should not exceed \$500,000 per year, except for good cause shown.

Third, OSM determines how much of the remaining compensation would be paid in stock salary with a value dependent on the company's future success and long-term restricted stock.

OSM no longer appears to follow these three guidelines.

50th Percentile: OSM's prior guideline was to determine each employee's total compensation by generally **not exceeding** the 50th percentile compensation level for the employee's position, scope, and responsibilities relative to what their peers in comparable positions are earning.⁵ As SIGTARP reported in its 2012 report, OSM officials told SIGTARP that companies pushed back on the 50th percentile but, "if they were better than the 50th percentile, they wouldn't be having discussions with OSM in the first place." OSM appears to have abandoned its guideline that pay generally not exceed the 50th percentile of total compensation for similarly situated employees. The 50th percentile does not appear anywhere in OSM's June 2013 policy and procedures.

⁵ The companies supply the market data to OSM, which determines the 50th percentile. OSM checks this data for accuracy.

OSM no longer appears to be following Treasury's guideline that total compensation generally not exceed the 50th percentile. In 2013 and 2014, OSM set pay for most of the Top 25 employees at Ally above the 50th percentile. Given that Ally is the only company remaining under OSM's jurisdiction, OSM no longer follows the original guideline that total pay generally not exceed the 50th percentile.

SIGTARP found OSM's policy and procedures to be confusing and applied inconsistently, making oversight difficult and lending to a lack of accountability of OSM. Cash salaries are a prime example of how a lack of robust policies, procedures, guidelines, and criteria can lead to Treasury going along with company requests for excessive pay without adhering to OSM's own objective criteria. For example, although OSM's policy and procedures are silent as to the 50th percentile previously used by OSM under Special Master Feinberg to determine total compensation, OSM's April 2013 pay determination letters to the companies state that OSM has concluded that cash salaries generally should target the 50th percentile as compared to persons in similar positions or roles at similar entities. With respect to cash salaries, GM proposed 12 and Ally proposed 9 employees to receive a cash salary exceeding cash salary medians for a total of \$1.5 million exceeding median cash salary, and OSM agreed to 90% of those requests.

OSM further appears to have eliminated the requirement that good cause be shown before authorizing a cash salary over \$500,000, thereby loosening a check and balance available to limit excessive compensation.

Why this matters:

Without any criteria to ensure that it consistently applies its own "conclusion" to target cash salaries at the 50th percentile, OSM approaches it on a case-by-case determination as proposed by the company. SIGTARP found that OSM approved 90% of the company's proposals (19 of 21 employees) for salaries to exceed cash market medians. Some of these cash salaries exceed the 50th percentile significantly. Treasury approved these cash salaries to exceed market medians by amounts ranging from \$6,800 to \$187,000 for a total of \$1.3 million without a specific link to the establishment of good cause. Following is a detailed list of each approved cash salary that exceeded market medians:

TABLE 1

OSM-APPROVED 2013 CASH SALARIES EXCEEDING MARKET MEDIANS				
Employee ID Number	Company	Market Median Cash Salary	OSM-Approved Cash Salary	Amount of Cash Salary OSM Approved over Market Median
931656	Ally	\$304,000	\$491,000	\$187,000
197253	Ally	\$324,000	\$500,000	176,000
104428	Ally	\$398,000	\$491,000	93,000
5046	GM	\$390,000	\$475,000	85,000
3774	GM	\$402,500	\$485,000	82,500
2387	GM	\$416,000	\$495,000	79,000
682168	Ally	\$525,000	\$600,000	75,000
105336	Ally	\$425,000	\$500,000	75,000
1565	GM	\$420,000	\$495,000	75,000
1223	GM	\$425,000	\$495,000	70,000
6524	GM	\$435,000	\$495,000	60,000
9859	GM	\$475,000	\$525,000	50,000
380289	Ally	\$342,000	\$391,000	49,000
9074	GM	\$378,000	\$425,000	47,000
7537	GM	\$566,000	\$600,000	34,000
707713	Ally	\$525,000	\$550,000	25,000
725547	Ally	\$485,000	\$500,000	15,000
567303	Ally	\$485,000	\$500,000	15,000
0230	GM	\$488,200	\$495,000	6,800
Total				\$1,299,300

Source: SIGTARP analysis of OSM's 2013 determination memorandums and company proposals.

\$500,000 Cash Salary: OSM's prior "prescription," or guideline, was that generally salaries should not exceed \$500,000 per year, except for good cause shown – a guideline much stronger than what OSM currently follows. OSM's newly written procedures dated June 2013 state: "Base salary paid in cash should in most cases not exceed \$500,000." OSM appears to have changed OSM's standard to one where a majority of cash salaries not exceed \$500,000 and removed the requirement that tied the increase to "for good cause shown."

Stock Salary and Long-Term Restricted Stock: OSM previously determined the amount of stock salary and long-term restricted stock by deducting the cash salary from total compensation. Under the methodology set up by former Special Master Feinberg, because the Recovery Act limited long-term restricted stock to

one-third of the employee's total pay, OSM first calculated the amount of long-term restricted stock, and the remainder of the compensation package was stock salary. As reported in SIGTARP's 2012 report, to tie individual compensation to long-term company success, OSM previously used long-term restricted stock contingent on the employee achieving specific performance criteria. Long-term restricted stock does not fully vest until the repayment of TARP financial assistance – the very type of stock referenced in the President's announcement.

SIGTARP previously reported that, for 2012 pay, OSM removed long-term restricted stock based on the companies' requests. When setting pay for 2013, OSM included an extremely limited amount of long-term restricted stock (effectively 5%), and when setting pay for 2014, OSM removed it altogether on Ally's request. Therefore, Treasury has approved that none of the Top 25 employees have pay that is tied to individual performance metrics related to the long-term performance of the company, or that cannot be paid until taxpayers are paid back. This removes an incentive for individuals to work toward repaying TARP.

Why this matters:

By moving further and further away from the President's announced pay reforms and prior Treasury pay limits, OSM has moved closer and closer to the TARP companies' proposed pay, and in doing so has cut back an important incentive that previously existed in pay limits and motivated Bank of America and Citigroup to repay TARP. As with SIGTARP's earlier reports, SIGTARP found once again that these TARP companies receiving exceptional assistance failed to take into account the exceptional situations that necessitated their financial rescues. Their lack of appreciation is evident in Ally's and GM's proposed excessive compensation for their employees in asking for pay raises, higher cash salaries, and removal of long-term restricted stock, even though the companies were not repaying taxpayers in full, resulting in billions in losses.

Staying in TARP well beyond all other large TARP recipients does not mean that the return to taxpayers (OSM's overriding principle) is getting better. At last year's Congressional hearing on SIGTARP's report, former Special Master Feinberg submitted for the record a letter in which he states that the market and economy have changed since OSM was established and that the initial pay prescriptions promulgated during his tenure may still be valid and credible, but waivers and exceptions are to be more frequent and expected in light of changing market conditions. Changes in the market should already be taken into account in OSM-approved pay through the use of a market median (the 50th percentile). Good Government requires objective standards and criteria set by the Government, rather than a standard of how many excessive pay requests by companies Treasury grants. Treasury must hold the line, or risk that exception

will give way to another exception subjecting Treasury to criticism of rewarding top employees at a company unable to repay TARP at the expense of taxpayers already suffering losses and at the expense of cutting back on needed financial crisis reforms and a possible deterrent to future bailout requests.

In 2013, Treasury Approved at Least \$1 Million in Pay for Every Top 25 Employee at GM and Ally, and Approved Total Compensation that Was More Than 28% Higher Than 2009 Pay

By 2013, Treasury significantly loosened restrictions on total compensation. Last year, SIGTARP reported that, for 2012 pay, Treasury approved that all but one employee be paid at least \$1 million. For 2013, Treasury approved pay packages worth at least \$1 million for every Top 25 executive at GM and Ally. That means that Treasury approved that every employee for whom it sets pay in 2013 be paid \$1 million or more, significantly more than pay approved in 2009 and 2010.

While \$1 million was the floor for Treasury-approved pay for top employees at GM and Ally in 2013, Treasury approved many to be paid much more, with an average pay of \$3 million per employee.⁶ In 2009, Treasury approved \$101 million in total compensation for 43 GM and Ally Top 25 employees, for an average of \$2.4 million. Despite GM and Ally being the last two large companies in TARP in 2013, Treasury increased pay by 28% over 2009 pay amounts. In 2013, Treasury approved \$142 million in total compensation for 47 GM and Ally Top 25 employees, for an average of \$3 million. Treasury approved total compensation of more than \$5 million (\$5.2 million to \$9.5 million) for seven employees at GM and Ally. Treasury approved total compensation packages ranging from \$3 million to \$4.71 million for 9 additional GM and Ally employees, and 31 pay packages ranging from \$1 million to \$2.9 million.

The pay Treasury awarded most of these employees in 2013 exceeded the market median based on comparable positions and companies as determined by Treasury. GM proposed 16 and Ally proposed 18 employees to receive total compensation exceeding market medians by a total of \$24.5 million. Treasury set pay for 88% (30 of 34 employees) of these proposed employees, which exceeds market medians. On an individual basis, these pay packages exceeded market medians by amounts ranging from \$17,700 to \$2.7 million, for a total of \$22.9 million. Of the 30, Ally received 18 and GM received 12. For a detailed list of the pay packages that exceeded market medians, see Appendix E.

⁶ The 2013 pay determinations are located in Appendices B and C.

Why this matters:

Former Special Master Feinberg recounts in his book *Who Gets What* that Congress wanted **limitations on pay at TARP recipients because constituents would be appalled at the idea of Congress using public funds to rescue private companies headed by corporate chieftains earning millions of dollars. SIGTARP has serious concerns that Treasury is rewarding top employees** with increased multimillion-dollar pay at companies that were not repaying TARP, leaving Treasury to sell the shares into the market at a significant loss to taxpayers. This leaves Treasury subject to criticism that it rewards top executives of companies unable to repay their bailouts over the very taxpayers who lost billions of dollars on those bailouts.

Treasury Tripled the Number of GM and Ally Employees Paid More than \$500,000 in Guaranteed Cash Salaries from 2009 to 2013 and Allowed 89% of the Employees To Be Paid Cash Salaries of \$450,000 or More

Former Special Master Feinberg recounts in his book one principle he followed was “Guaranteed cash salary would be limited to \$500,000 per year; any additional amount would require special master approval. (In the end, fewer than 10 percent of the officials in the seven companies received such approval.)” OSM loosened the restriction threefold in 2013, giving more than one-third (34%) of employees under OSM’s pay-setting jurisdiction guaranteed cash salaries of more than \$500,000.

In 2009, Treasury held the line on guaranteed cash salaries over \$500,000 to two GM employees and three Ally employees using the Treasury guideline that cash salaries should generally not exceed \$500,000. By 2013, Treasury tripled the number of GM and Ally employees paid more than \$500,000 in cash from the 5 employees in 2009 to 16 employees.

SIGTARP in its two prior reports raised serious concerns about how Treasury was approving more and more employees to be paid guaranteed cash salaries of more than \$500,000 without objective criteria, then allowing more and more employees to fall just under that threshold. In 2013, OSM approved 84% (16 of 19) company-proposed cash salaries exceeding \$500,000. These salaries exceeded \$500,000 by an aggregate \$3.6 million.⁷

Beyond this Treasury guideline, SIGTARP also found that OSM was not following the spirit of the guideline to limit guaranteed cash salaries. OSM allowed 89% (42 of 47) of all Top 25 employees at GM and Ally to be paid guaranteed cash salaries of \$450,000 or more, including 8 employees paid cash salaries of exactly \$500,000. A detailed list of each cash salary that exceeded \$500,000, ranging from \$525,000 to \$1,700,000, follows:

⁷ Of the 16 approved cash salaries that exceeded \$500,000, Ally received 6 and GM received 10.

TABLE 2

APPROVED CASH SALARY FOR 2013 OVER \$500,000

Company Name	Employee ID	Approved Annual Base Salary (cash)
GM	4859	\$1,700,000
GM	94	950,000
GM	2986	750,000
GM	7459	750,000
GM	5555	750,000
GM	5697	750,000
GM	3348	650,000
Ally	265967	600,000
Ally	102645	600,000
Ally	339212	600,000
Ally	682168	600,000
GM	5021	600,000
GM	7537	600,000
Ally	546145	591,000
Ally	707713	550,000
GM	9859	525,000

Source: SIGTARP analysis of OSM's 2013 determination memorandums.

To ensure consistent and objective decision making, SIGTARP previously recommended that Treasury substantiate decisions on whether company requests demonstrate or fail to demonstrate “good cause” for approving cash salaries exceeding \$500,000 and for approving pay raises. SIGTARP also recommended that Treasury develop policies, procedures, and criteria for approving pay in excess of Treasury’s guidelines. OSM’s documentation of its justifications has changed from last year, but continues to lack a showing of OSM’s independent analysis as SIGTARP recommended. The justifications include the company’s assertions and statements about where the employee’s compensation fell compared to peers (as determined by data provided by the company). The justifications do not show that OSM conducted independent analysis (as recommended by SIGTARP) to verify some of the assertions companies made, such as that employees were retention risks or crucial or analyzed beyond discussing the assertions with the companies and/or other Treasury officials or reading about the employees in newspaper articles.

Why this matters:

OSM's job is to look out for the interests of taxpayers, which it cannot do if it continues to rely so heavily on the company's justifications and requests without independent analysis. OSM's continued argument that there is no \$500,000 cash salary cap (as the President announced) misses the bigger risk of guaranteed high cash salaries. As SIGTARP reported in its 2012 report, according to OSM, OSM's prior restriction that generally salaries should not exceed \$500,000 per year was based in part on the President's statement. SIGTARP also reported that former Special Master Feinberg said the decision to limit cash salaries to \$500,000 and to increase the proportion of compensation in the form of stock was to strike a balance between reducing excessive risk and providing enough compensation to keep employees' "skin in the game." The President's announced cap was a reform based on a material cause of the financial crisis. Weakening that restriction on executive compensation could have the very dangerous effect of not providing enough skin in the game and could tip the balance toward excessive risk. Treasury's Rule states that compensation structures should avoid incentives to take unnecessary or excessive risks that could threaten the value of the TARP recipient.

In 2013, Treasury Approved \$3 Million in Pay Raises for Nine GM Employees, Most of Whom Received Pay Raises in Consecutive Annual Years

In 2013, Treasury approved a pay raise for each of the nine employees previously in the Top 25 for whom GM had requested a pay raise. These raises were worth approximately \$3 million in 2013, as shown in the following table:

TABLE 3

GM EMPLOYEE PAY RAISES				
GM Employee	2012 Total Pay	Pay Raise		2013 Total Pay
		(\$)	(%)	
1	\$4,850,000	\$490,000	10	\$5,340,000
2	4,250,000	460,000	11	4,710,000
3	5,400,000	450,000	8	5,850,000
4	4,300,000	410,000	10	4,710,000
5	5,000,000	325,000	7	5,325,000
6	2,925,000	300,000	10	3,225,000
7	1,332,500	267,500	20	1,600,000
8	2,150,000	250,000	12	2,400,000
9	2,100,000	75,000	4	2,175,000
Total	\$32,307,500	\$3,027,500		\$35,335,000

Source: SIGTARP analysis of OSM's 2012 and 2013 determination memorandums.

By several measures, the 2013 pay raises were excessive. First, Treasury raised the employees' pay by an average of 9.4% as a group (from \$32.3 million in 2012 to \$35.3 million in 2013). This exceeded the June 2013 Consumer Price Index ("CPI") of 1.8%, which is a measure of inflation in the prices of goods/services, by 422%. On an individual basis, each of the nine raises also exceeded the CPI, with the lowest raise 4% and the highest raise 20% more than the employees' 2012 compensation.

Average total compensation for the nine individuals before the pay raises was \$3.6 million, or approximately 7,000% higher than median household income in 2012, which was approximately \$51,000, according to the U.S. Census Bureau. The nine employees' average total pay after the raises exceeded 2012 median household income by approximately 7,600%.

Eight of the nine employees also received raises in 2012 (two consecutive years), and five of these employees also received raises in 2011 (three consecutive years). The following table shows these pay raises:

TABLE 4

GM EMPLOYEE PAY RAISES FOR 2013					
GM Employee	2010 Total Pay	2011 Total Pay <i>Pay Raise</i>	2012 Total Pay <i>Pay Raise</i>	2013 Total Pay <i>Pay Raise</i>	<i>Total Pay Raises</i>
Employees Who Received Three Consecutive Annual Raises					
5697*	\$2,436,900	\$3,500,000 <i>\$1,063,100</i>	\$4,300,000 <i>\$800,000</i>	\$4,710,000 <i>\$410,000</i>	<i>\$2,273,100</i>
2986*	\$2,778,850	\$3,500,000 <i>\$721,150</i>	\$4,250,000 <i>\$750,000</i>	\$4,710,000 <i>\$460,000</i>	<i>\$1,931,150</i>
4894*	\$2,120,050	\$2,550,000 <i>\$429,950</i>	\$2,925,000 <i>\$375,000</i>	\$3,225,000 <i>\$300,000</i>	<i>\$1,104,950</i>
9635*	\$1,800,000	\$1,900,000 <i>\$100,000</i>	\$2,150,000 <i>\$250,000</i>	\$2,400,000 <i>\$250,000</i>	<i>\$600,000</i>
3348*	\$2,024,750	\$2,050,000 <i>\$25,250</i>	\$2,100,000 <i>\$50,000</i>	\$2,175,000 <i>\$75,000</i>	<i>\$150,250</i>
Employees Who Received Two Consecutive Annual Raises					
5555	**	\$4,200,000 <i>n/a</i>	\$4,850,000 <i>\$650,000</i>	\$5,340,000 <i>\$490,000</i>	<i>\$1,140,000</i>
5021	**	\$5,300,000 <i>n/a</i>	\$5,400,000 <i>\$100,000</i>	\$5,850,000 <i>\$450,000</i>	<i>\$550,000</i>
7459	**	\$4,200,000 <i>n/a</i>	\$5,000,000 <i>\$800,000</i>	\$5,325,000 <i>\$325,000</i>	<i>\$1,125,000</i>
Employee Who Received One Raise					
3199	**	** <i>n/a</i>	\$1,332,500 <i>n/a</i>	\$1,600,000 <i>\$267,500</i>	<i>\$267,500</i>
Total Raises		<i>\$2,339,450</i>	<i>\$3,775,000</i>	<i>\$3,027,500</i>	<i>\$9,141,950</i>

Source: SIGTARP analysis of OSM's 2010 through 2013 determination memorandums.

*Denotes these GM employees were not in the Top 25 in 2009.

**Denotes the GM employee was not among the Top 25 in that year.

OSM has not established meaningful criteria for the approval of pay raises or conducted independent analysis on pay raise requests for each employee as SIGTARP previously recommended. When SIGTARP asked Acting Special Master Geoghegan why she approved these pay raises, she told SIGTARP that almost all of them were below median. And these are people who have enormous responsibilities with regard to GM. And it is important, as you know, that GM remain competitive so that it can retain and recruit employees and so that it can maximize the return to taxpayers of the amounts owed under TARP. Geoghegan also said that some employees had “expanded responsibilities.”

The reasons the Acting Special Master gave to justify pay raises are the very things historically cited by the companies to justify proposals for excessive pay. In 2012, SIGTARP reported that, given OSM’s overriding goal (of TARP repayment), the seven companies had significant leverage over OSM by proposing and negotiating for excessive pay packages, warning Special Master Feinberg that if he did not provide competitive pay packages, top officials would leave and go elsewhere, a claim that he said, at that time in October 2010, did not

come true as 85% of the people were still at the companies.⁸ Worse yet, unlike in 2009 and 2010, this is not the same situation because GM and Ally are not repaying taxpayers in full. After these companies did not repay taxpayers in full during these years, Treasury made the decision not to hold the stock but instead to sell it into the market (and some back to GM) at substantial losses.

Given the lack of any meaningful criteria and lack of any documentation of independent analysis for each employee, it is not transparent how OSM makes decisions on pay raises separate from the company's assertions. If OSM followed its own process, pay for all employees should generally not exceed the market median (as determined by the companies). Therefore, it is unclear if OSM now is using pay raises to get the person to the market median.

Why this matters:

Without objective criteria, OSM is making decisions on pay raises based on the company's requests and threats about retention. The question should not be how many of the company-requested pay raises should be allowed, but rather should OSM be granting any pay raises for these companies that have been stuck in TARP and, if so, what is the justification for doing so. The companies continue requesting pay raises and Treasury keeps granting pay raises without regard for the fact that these companies are not repaying TARP in full and taxpayers are suffering losses. OSM cites the possibility of repayment to taxpayers for justification of pay raises, but these companies are not repaying taxpayers in full. Instead, Treasury is selling the stock into the market, and incurring billions of dollars in losses. Moreover, Treasury is awarding pay raises in excess compared to average households that continue to fund these very companies, raising some employees' pay year after year.

⁸ Former Special Master Feinberg wrote in his book that it was not clear that the departure of the 15% who left was tied to compensation.

Treasury Has Eliminated Long-Term Restricted Stock Tying Pay to Individual Performance and TARP Repayment, Which Was Typically One-Third of Compensation Packages in 2009, and Loosened Time Restrictions When Employees Can Cash Out Company Stock

In his book, former Special Master Feinberg described Treasury's principle of performance-based compensation as "the heart and soul of the regulations." He wrote:

Only an executive's base salary is guaranteed. The remainder of the compensation package depends on individual and corporate performance over at least three years. Short-term corporate success should not trigger additional compensation; instead the regulations focus on extended corporate growth. Corporate officials and the companies they manage should be joined at the hip when it comes to compensation.

OSM historically had used two types of stock in pay. The first is company stock, which accrues at the same time as cash salary paid and which is not contingent on an employee meeting individual performance metrics. Although the stock vests each pay cycle, it is generally redeemable (can be cashed out) only in three equal installments, beginning on the second anniversary of the grant date. The second is long-term restricted stock that is contingent on the employee meeting individual performance metrics and remaining at the company for three years. Long-term restricted stock vests after the three years, but can only be redeemed by the employee in 25% installments for each 25% of TARP obligations that are repaid. OSM cut back on both of these important pay limits.

Treasury accelerated when top employees can cash out company stock as part of salary:

The impact of OSM cutting long-term restricted stock to little to nothing is that the pay that historically came in the form of long-term restricted stock would come in the form of company stock, which is earned by employees in every paycheck. Along with significantly increasing the amount of this company stock, in 2013 OSM continued its practice of loosening restrictions on when employees at GM and Ally could cash out this stock, giving yet again another benefit to those companies' employees and cutting back on a retention tool. SIGTARP reported in 2012: "In testimony to the House Committee on Oversight and Government Reform, the Special Master [Feinberg] said that he used stock salary to encourage

senior executives to remain at the companies to maximize their benefit from the profitability of the company.” In 2013, OSM made the decision that “because GM has made significant repayments of the Company’s TARP obligations, each redemption date of 2009, 2010, 2011, 2012, and 2013 stock salary may be accelerated by one year.” Acting Special Master Geoghegan did something similar for Ally.

Why this matters:

SIGTARP has serious concerns about OSM’s decision to accelerate when employees can cash out company stock. First, not only did OSM continue its practice to loosen this restriction on pay, which removes a retention tool, but OSM made a decision that has the impact of giving the top employees the opportunity to get cash quicker than they ever would have. In other words, OSM just gave more guaranteed cash and removed more of employees’ “skin in the game.” Second, SIGTARP questions OSM’s rationale to allow Ally and GM employees to redeem stock salary early. OSM’s policies, procedures, guidelines, and determination letters state stock salary can be redeemed early (after the first anniversary as opposed to after the second anniversary of when the stock salary is earned) if the company has begun to repay its TARP obligations. OSM, under these vague guidelines, permitted Ally and GM employees to receive accelerated stock salary, even though both companies’ TARP repayments, which largely constituted Treasury’s sales of Ally and GM common stock, left taxpayers shouldering billions of dollars in losses. Third, although there are some written criteria for accelerating stock redemption based upon companies beginning to repay TARP, some of the repayments were actually Treasury’s sale of stock in the open market, which led to billions of dollars in losses. This seems to be a perfect example of how OSM’s lack of policies, procedures, guidelines, and criteria for decision making led to OSM being swayed by a company request that serves to reward top employees and remove limits on pay.

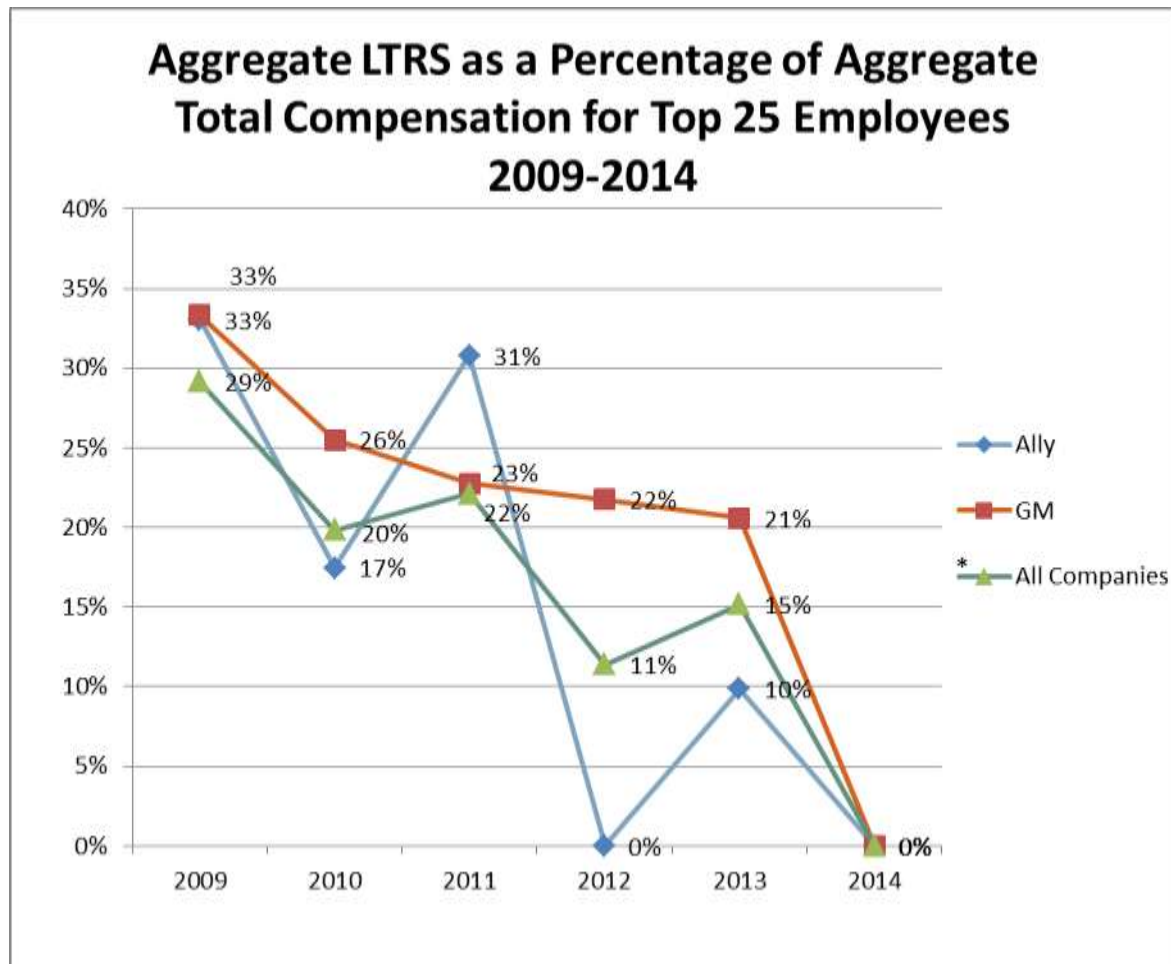
Treasury removed long-term restricted stock from pay:

In addition, over the last three years, OSM got further and further away from using long-term restricted stock as a limit on pay – previously the “heart and soul” of Treasury’s limits on pay – eliminating it in 2014 as shown by the following chart.⁹

⁹ The Acting Special Master did not approve long-term restricted stock for Ally employees in 2012 and 2014.

FIGURE 2

AGGREGATE LTRS AS A PERCENTAGE OF AGGREGATE TOTAL COMPENSATION FOR TOP 25 EMPLOYEES 2009-2014



Source: SIGTARP analysis of OSM's determination memorandums.

*There were seven companies in 2009 receiving TARP exceptional assistance (AIG, Ally, Bank of America, Citigroup, GM, Chrysler, Chrysler Financial; five companies in 2010 (AIG, Ally, Chrysler, Chrysler Financial, GM); four companies in 2011 (AIG, Ally, Chrysler, GM); three companies in 2012 (AIG, Ally, GM); two companies in 2013 (Ally and GM); and one company in 2014 (Ally).

After raising serious concerns that Treasury removed long-term restricted stock for every Ally employee in 2012, SIGTARP recommended that Treasury return to using long-term restricted stock. Treasury's response was paltry at best. In 2013, Treasury approved five GM employees to not receive any long-term restricted stock as a limit on pay (one more than in 2012), and Treasury effectively approved a blanket 5% of the Ally employees' pay in long-term restricted stock.¹⁰

¹⁰ In 2013, Treasury approved 10% of Ally employees' total pay in the form of long-term restricted stock, but effectively it was only half of that amount (5%) because it was pro rata as of July 1, 2013, meaning that prior to that date it was delivered as stock salary.

OSM's blanket award of 5% is inconsistent with Treasury's Rule that the portion of performance-based compensation should be greater for positions in which employees exercise higher levels of responsibility.¹¹ OSM's decision to allocate effectively only 5% of Ally employees' pay in the form of long-term restricted stock is also inconsistent with OSM's 2013 determination memorandum, which states: "In most circumstances a large proportion of compensation should be held or deferred for a period of at least three years." A 5% allocation of long-term restricted stock is not by any measure a "large portion."

SIGTARP reported in 2013 that OSM had no documented criteria for taking away long-term restricted stock, leading to a lack of accountability and transparency. SIGTARP reported that Acting Special Master Geoghegan told SIGTARP at that time that when OSM takes away long-term restricted stock, it is because the individual may be very senior, may wish to retire, or otherwise will be leaving. In September 2013, under this evaluation, the Acting Special Master told SIGTARP that long-term restricted stock is not appropriate when the employee is nearing retirement or when the company is in the process of restructuring and possibly disposing of divisions in which case executives may have their jobs eliminated. She also told SIGTARP that she eliminated long-term restricted stock for top Ally employees in 2012 because a lot of these executives were at risk of losing their jobs. This is a perfect example of a lack of written objective criteria by which Treasury makes decisions, with OSM parroting the reason Ally gave OSM for its request to eliminate this pay limit. It is also an example of a lack of independent analysis by OSM to verify what the company told her. SIGTARP's 2013 report found that OSM removed this important pay limit for all Top 25 Ally employees in 2012, even though only three of those employees worked at Residential Capital, LLC (Ally's financial mortgage subsidiary that filed for bankruptcy on May 14, 2012). Moreover, most of Ally's Top 25 employees in 2012 remained among Ally's Top 25 in 2013.

When asked why OSM approved so little long-term restricted stock for Ally employees in 2013, the Acting Special Master told SIGTARP that she wanted to keep in place Ally's 2012 compensation structure (where none of the employees had long-term restricted stock) while moving to a more standard pay structure. In May 2013, Ally requested that OSM revise 2013 pay to eliminate all long-term restricted stock and replace it with stock salary, citing the company's ongoing restructuring and difficulty with retention. OSM declined the request in June 2013, only to eliminate all long-term restricted stock 10 months later, under the 2014 determinations, at the request of Ally.

¹¹ OSM's determination memorandum states that Ally's long-term restricted stock for 2013 is effective pro rata as of July 1, 2013, and prior to that date will be delivered as stock salary.

Why this matters:

In 2012, and again in 2014, Treasury completely removed long-term restricted stock from every Ally employee's pay package, removing a key incentive for individual employees to work toward repaying taxpayers and important limits and reforms on executive pay at TARP companies. Treasury's removal of long-term restricted stock contradicts two of the six principles outlined in Treasury's Rule: 1) performance-based compensation – an appropriate portion of the compensation should be based on performance metrics; and 2) appropriate allocation – the compensation structure should appropriately allocate compensation between components such as salary and short-term and long-term incentives. While OSM has kept stock salary as part of pay packages, the value of that stock is based on the company's performance, not on individual performance metrics. Long-term restricted stock is based on individual performance related to metrics tied to the long-term success of the company and repaying taxpayers. In SIGTARP's 2012 report, SIGTARP reported that OSM used long-term restricted stock to tie individual compensation to long-term company success. Now that Treasury has removed it from pay packages, no individual has to meet any performance metric to receive their pay or wait until taxpayers are paid back, just as Ally wanted.

Conclusion

Former Treasury Secretary Timothy F. Geithner said that executive compensation played a material role in the financial crisis. As restraint in exchange for taxpayer bailouts, Congress and the President announced that Troubled Asset Relief Program (“TARP”) recipients would be required to abide by certain rules on executive compensation, rules that the U.S. Department of the Treasury (“Treasury”) was required to promulgate. In February 2009, the President announced “reforms” that “top executives at firms receiving extraordinary help from U.S. taxpayers will have their compensation capped at \$500,000, a fraction of the salaries that have been reported recently. And if these executives receive any additional compensation, it will come in the form of stock that can’t be paid up until taxpayers are paid back for their assistance.” After the President’s announcement, Treasury promulgated a rule that listed six principles to keep pay for TARP companies in the interest of taxpayers, principles that Treasury’s former Special Master for TARP Executive Compensation (“Special Master”) Kenneth R. Feinberg found inherently inconsistent. Therefore, he developed a three-step methodology using what he called “prescriptions,” or guidelines, that Treasury’s Office of the Special Master for TARP Executive Compensation (“OSM”) used to set pay for the Top 25 employees at seven companies that had received exceptional assistance under TARP.

In 2012, the Office of the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”) reported that it found that the Special Master could not effectively rein in excessive compensation because he was under the constraint that his most important goal was to get the companies to repay TARP (one of Treasury’s six principles). Given OSM’s overriding goal, the companies had significant leverage by proposing and negotiating for excessive pay, warning that if he did not provide competitive pay packages, top officials would leave and go elsewhere, a claim that he said did not come true. The former Special Master recounts in his book, *Who Gets What: Fair Compensation after Tragedy and Financial Upheaval* (“*Who Gets What*”) that the primary goal in determining payments for corporate officials was to maximize the likelihood that the companies would repay TARP as quickly as possible because the taxpayers had to be made whole. SIGTARP reported in 2012 that, although OSM limited cash compensation and made some reductions in pay, OSM still approved total compensation in the millions. In 2013, SIGTARP published a second report that Acting Special Master Patricia Geoghegan rolled back OSM’s application of guidelines aimed at curbing excessive pay, effectively relinquishing some of OSM’s authority by relying to a great extent on the companies’ pay proposals or justifications rather than robust policies, procedures, or criteria to ensure that OSM’s guidelines are met.

By April 2013, when Treasury's OSM set 2013 pay, it found itself with an incredibly narrow and limited job because there were only two companies left in its jurisdiction. OSM touted as the ultimate metric of success for its pay decisions the fact that the other five companies had exited TARP with taxpayers being made whole (even though some of those companies did not repay but Treasury sold their stock in the market). General Motors Corporation ("GM") and its prior auto financing arm General Motors Acceptance Corp. ("GMAC Inc.," rebranded as Ally Financial Inc. ("Ally")) were not only the last two companies under OSM's jurisdiction, they were the last two large companies still in TARP after four years. GM and former GMAC were having trouble repaying TARP in full, taxpayers had suffered losses on both investments, and the Government estimated final losses of \$20 billion to \$25 billion on the auto bailout (including losses on GM, Ally, and the \$2.9 billion loss taxpayers suffered from the TARP investment in Chrysler Holding LLC ("Chrysler")).

Having not received TARP repayments in full from GM and Ally, Treasury made the decision to sell the TARP stock in GM into the market and allowed GM to buy back some of the stock, both at significant losses. When Treasury's OSM set 2013 pay, taxpayers had already lost \$8.2 billion on the TARP investment in GM. Ally had made no repayments of the principal TARP investment. While Ally was under a March 2013 failed stress test, taxpayers suffered a loss of \$845 million when Treasury sold Ally common stock in the market. SIGTARP evaluated Treasury OSM's determinations of 2013 pay for GM and Ally Top 25 employees. While SIGTARP was conducting this evaluation, Treasury sold its remaining TARP shares of GM into the market to arrive at a total loss to taxpayers of \$11.159 billion, and sold some of its Ally common stock into the market to arrive at total losses of \$1.8 billion. In April 2014, OSM's job got even narrower as it set 2014 pay for the Top 25 employees at only one company, Ally.

SIGTARP found that Treasury continued to award excessive pay by approving some of the companies' requests for pay raises and high guaranteed cash salaries, and approving the companies' requests to accelerate the time limit for corporate officials to cash out company stock received as pay, and to eliminate pay tied to individual performance metrics and the repayment of TARP (long-term restricted stock). SIGTARP found that after making the pay determinations in April 2013, Treasury made limited progress since SIGTARP's last report but did not make the meaningful reforms needed and previously recommended by SIGTARP. In June 2013, OSM created for the first time a written policy and procedures. However, these appear to be an attempt to document what OSM had done historically without meaningful change as SIGTARP recommended. OSM's policy merely recites TARP legislation and the Treasury Rule, both in existence prior to the establishment of OSM, leaving OSM as an office of Treasury that operates without formal written policies developed by that office. SIGTARP found that Treasury did not have robust policies, procedures, or criteria to ensure

that OSM's guidelines are met. Two aspects of Treasury's pay-setting process and pay decisions serve as important lessons learned.

First, loosening limits on executive compensation for companies unable to repay TARP subjects Treasury to criticism that it is rewarding top executives at companies that are losing taxpayers' money over the interests of the taxpayers already shouldering billions of dollars in losses on those investments.

SIGTARP found the same thing that it reported in 2012 – that it continues to be the case that, given OSM's overriding goal of repayment to taxpayers, GM and Ally had significant leverage by proposing and negotiating for excessive pay, warning that if OSM did not provide competitive pay packages, top officials would leave and go elsewhere. We note that this is a claim that Feinberg said did not come true. GM and Ally continued to lack an appreciation for their situation and were notably persistent in proposing more and more pay with fewer and fewer restrictions for their top officials. Every year they sought exception after exception to OSM's guidelines. Bowing to the scare tactics of companies that employees would leave if OSM did not approve their proposed pay, in 2013 OSM continued to make pay decisions in a process that was ad hoc and inconsistent. OSM made decisions based on which of the company's proposals it would approve, rather than using independent objective criteria designed to adhere to OSM's pay guidelines. The result has been that, every year, Treasury awarded corporate officials at TARP companies more and more exceptions to Treasury's pay guidelines, which appears to have encouraged the companies to propose more exceptions each year.

Treasury-approved exceptions to its own guideline restrictions on executive compensation added up incrementally such that by OSM's fifth year, 2013, OSM had gotten further and further away from the President's announcement and OSM's prior guidelines, even as taxpayer losses mount. SIGTARP found the following:

- In 2009, Treasury's guideline was to set pay to "generally not exceed the 50th percentile" of what their peers made. Treasury appears now to have done away with this guideline and by 2014 set most of Ally's pay between the 50th and 75th percentile.
- Treasury-approved pay increased 28% for GM and Ally Top 25 employees from 2009 to 2013.
- Treasury awarded average pay of \$3 million in 2013 to GM and Ally Top 25 employees.
- In 2013, Treasury approved \$3 million in aggregate pay raises for nine GM employees, most of whom received pay raises in consecutive annual years. Those raises were excessive. The pay raises ranged from 4% to 20%, averaging 9.4%, which exceeded the June 2013 1.8% Consumer Price Index

(a measure of inflation) by 422%. Treasury awarded these nine employees pay that exceeded the 2012 median household income, according to the U.S. Census Bureau, by 7,600%.

- In 2013, Treasury approved 19 of 21 (90%) of the employees for whom GM and Ally had requested cash salaries that would exceed the median.
- By 2013, Treasury had loosened its guideline that guaranteed cash salary would be limited to \$500,000 per year, which was based on the President's statement that cash salaries not exceed that threshold. Treasury's June 2013 guideline states: "Base salary paid in cash should in most cases not exceed \$500,000."
- In 2009, Treasury awarded fewer than 10% of the officials in the seven companies to be paid cash salary in excess of \$500,000, which tripled (34%) by 2013.
- In 2009, Treasury awarded 5 employees of GM and Ally cash salaries greater than \$500,000, which tripled to 16 employees by 2013.
- In 2013, Treasury allowed almost all of the remaining Top 25 employees at GM and Ally to be paid cash salaries of \$450,000 or more.
- Typically one-third of compensation in 2009 for Ally and GM, Treasury has eliminated long-term restricted stock as part of pay for Ally in 2012 and 2014, which is the type of stock referred to by the President, and the only stock tying individual performance to TARP repayment.
- Treasury loosened time restrictions by a full year for employees to cash out company stock received as pay.

Just as SIGTARP found in its January 2013 report, SIGTARP found that Acting Special Master Patricia Geoghegan continued to roll back OSM's application of guidelines aimed at curbing excessive pay, effectively relinquishing some of OSM's authority by relying to a great extent on the company's pay proposals or justifications rather than robust policies, procedures, or criteria to ensure that OSM's guidelines are met. OSM is granting many company requests without independent analysis but instead based on the companies' justification that the employees had enormous responsibilities and these exceptions are needed to retain the employees. While compensation committees at corporations may work like this, it is not good Government practice to get further and further away from important guidelines by approving exception after exception. Treasury has allowed OSM to not implement six of seven SIGTARP recommendations that were designed to keep OSM accountable to guidelines limiting excessive pay. A lack of robust criteria, policies, and procedures to ensure that guidelines are met leads to a lack of transparency, inconsistency, and ultimately a lack of accountability to taxpayers.

The pendulum in OSM's pay decisions has swung too far in the direction of keeping companies competitive, without regard for the fact that the reason to keep companies competitive is so that they can repay taxpayers in full, but GM and

Ally were not repaying taxpayers in full. Rather, taxpayers have suffered billions of dollars in losses on those TARP investments. There should be no expectation on the part of the companies or Treasury that pay should increase as companies get farther in time from the crisis because that theory does not take into account the fact that four years have not led these companies to repay taxpayers fully. GM's stock price never rose near to Treasury's break-even price, but Treasury continued to award pay raises, cash in excess of \$500,000, and multimillion-dollar pay.

Treasury's pay decisions suggest that OSM's overriding objective/principle of "repayment of TARP" inures to the benefit of top executives at TARP companies when Treasury sets pay. According to Feinberg's book, Secretary Geithner's primary concern was "compensation should reflect the need for the company to recruit and retain key employees so the company ultimately could repay every cent borrowed. Pay back the taxpayers – with interest. Every company subject to my jurisdiction, and much of the Treasury bureaucracy, referenced this variable in urging the special master to be generous when it came to compensation." Feinberg was referring to his role in 2009 and 2010, but since then GM and Ally have had much trouble repaying TARP fully, which is not reflected in OSM's pay decisions. If Treasury wants to use "repayment of TARP" as a factor to approve "generous" pay, the lack of full repayment of TARP by GM and Ally should likewise be reflected by Treasury to limit or maintain pay, but not to loosen restrictions on pay more and more each year. Taxpayers are already subsidizing losses on TARP investments in these companies and should not be forced by Treasury to subsidize excessive executive compensation.

Second, by setting pay further and further away from the President's and Treasury's announced limitations on executive compensation for TARP company officials, Treasury is missing an opportunity for critical reforms to a material cause of the financial crisis and a strong deterrent to future bailouts.

Even though six of the seven TARP exceptional assistance companies are no longer in TARP, having strong restrictions on executive compensation at TARP companies remains critical for the future. Should a future bailout occur, it is important to have two playbooks. The first playbook the public needs would describe how Treasury and other Government officials actually made decisions in the TARP bailout, which requires transparency through written policies and procedures and good documentation. SIGTARP's reports bring as much transparency to this decision making as is possible, but ultimately we are limited due to the lack of robust policies and procedures, and the ad hoc nature by which OSM makes decisions. The second playbook the public needs would describe how the Government could have improved, as determined by oversight agencies such as SIGTARP, so that future Government officials faced with the possibility of a bailout with limited time, have a go-to guide for best practices in decision

making. In the height of the crisis, when the Government was making much of its decisions, a lack of some documentation or some objective criteria was to be expected for first-of-their-kind decisions. It was one thing in 2009 for OSM to operate without written policies, procedures, and criteria when OSM officials were just trying to get their hands around a wealth of information on pay at these companies. However, there is no excuse now for OSM to not have objective criteria to keep OSM accountable to strong limits on pay at TARP companies.

Moreover, OSM loosening restrictions on pay could have the effect of loosening incentives for individual corporate executives to work toward their company repaying TARP. Bank of America Corporation and Citigroup Inc. told SIGTARP that the limits on executive compensation motivated them to get out of TARP's exceptional assistance programs as soon as they could in 2009. Ally is still in TARP today, and the Government should be keeping every incentive it has to get Ally to repay TARP. Now no individual at Ally has to meet any performance metric to receive their pay or wait until taxpayers are paid back (as the President announced). This is just what Ally wanted. Removing ties between individual pay and the long-term success of the company and the repayment of TARP by the company could have the dangerous effect that Ally executives with no stake in TARP repayment would not work toward repayment but instead watch the Government sell Ally common stock into the market at further losses to taxpayers.

In addition, by loosening restrictions on pay, OSM could be sending the message that the much-needed reforms coming out of the financial crisis are no longer necessary or required in exchange for Federal dollars. In 2009, the President announced restraints on pay at TARP companies as reforms, stating: "so that when firms seek new federal dollars, we won't find them up to the same old tricks." By getting further and further away from the President's announced reforms and Treasury's own guidelines, our nation may find the firms up to their same old tricks.

OSM's position that there is nothing requiring it to follow the President's announcement misses the point because the President was announcing reforms designed to combat one of the material causes of the financial crisis. OSM's own guidelines were created as reforms because leading up to the crisis, corporate officials at TARP companies were paid with high guaranteed cash salaries with "no skin in the game." OSM's guideline under former Special Master Feinberg that cash salaries generally not exceed \$500,000 was about giving an employee "skin in the game." Feinberg also used a significant amount of pay in the form of long-term restricted stock to "join at the hip" the individual and corporation, through individual performance focused on extended corporate growth over at least three years, not just short-term corporate success.

Weakening restrictions on executive compensation could have the very dangerous effect of not providing employees enough skin in the game, and could tip the balance toward excessive risk. In 2013, OSM tripled the number of corporate officials paid guaranteed cash salaries over \$500,000 in 2009, and put almost everyone else just under that cash threshold. OSM accelerated by one year the prior time restriction for corporate officials to cash out corporate stock received as pay from 2009 to 2014, effectively guaranteeing more cash pay and reducing an employee's skin in the game even further. OSM gave a tiny (effectively 5%) portion of pay to Ally employees in long-term restricted stock in 2013 tied to long-term corporate success and TARP repayment, only to remove it entirely in 2014. Eroding reforms coming out of the financial crisis could have the dangerous effect of allowing companies to end up in the same place that required reforms in the first place.

Finally, should this nation face the possibility of a future bailout, strong limitations on executive compensation on this still-existing TARP bailout could have a deterrent effect on companies asking the Government for Federal dollars. No one employee, no matter how valuable to his or her company, is important enough to risk weakening a deterrent to future bailouts.

Recommendations

According to the Government Accountability Office's Standards for Internal Control in the Federal Government, commonly referred to as the green book, internal control is an integral component of an entity's management that provides reasonable assurance that the objectives of an entity are being achieved. Moreover, the green book states internal control, which comprises among other things, policies and procedures, helps management achieve desired results through effective stewardship of public resources.

As discussed throughout this report, OSM's lack of robust policies, procedures, and guidelines have contributed to why OSM continues to approve excessive compensation and why OSM continues to make exceptions to its own guidelines. More robust policies and procedures would help ensure OSM's determinations are not excessive and will help OSM to reject company requests for excessive compensation. Specifically, SIGTARP recommends:

1. The Secretary of the Treasury should require OSM to maintain documentation of the substance of all OSM communications with TARP companies.
2. The Secretary of the Treasury should require all Treasury employees to maintain documentation of all communications with TARP companies regarding compensation.
3. The Secretary of the Treasury should require OSM to maintain documentation of OSM's communications with Treasury officials regarding compensation at TARP companies.
4. The Secretary of the Treasury should require OSM to use long-term restricted stock as part of each TARP company's employee's compensation package to ensure compensation is tied to both the employee's and the company's performance, and the full repayment of TARP funds.
5. The Secretary of the Treasury should direct OSM to conduct an analysis, independent of company proposals and assertions, for an employee of a TARP exceptional assistance company to be paid a cash salary exceeding \$500,000.
6. The Secretary of the Treasury should direct OSM to document its independent analyses regarding the decision that a TARP exceptional assistance company employee be paid a cash salary exceeding \$500,000.
7. The Secretary of the Treasury should direct OSM to conduct an analysis, independent of company proposals and assertions, for an employee of a TARP

exceptional assistance company to receive an increase in annual compensation.

8. The Secretary of the Treasury should direct OSM to document its independent analyses regarding the decision that a TARP exceptional assistance company employee will receive an increase in annual compensation.
9. The Secretary of the Treasury should direct OSM to conduct an analysis, independent of company proposals and assertions, for an employee of a TARP exceptional assistance company to be paid a cash salary that exceeds the market median cash salary for similar positions in similar companies.
10. The Secretary of the Treasury should direct OSM to document its independent analyses regarding the decision that a TARP exceptional assistance company employee be paid a cash salary exceeding market medians.
11. The Secretary of the Treasury should direct OSM to include in its written procedures whether it will target, for each Top 25 employee of a TARP exceptional assistance company, median total compensation for similar positions in similar companies.

Management Comments and SIGTARP's Response

Treasury provided an official written response to a draft of this report in a letter dated September 21, 2014, which is produced in full in Appendix I. Overall, Treasury disagrees with the draft report, as it has with our two previous reports. While Treasury's letter states our report contains inaccuracies and omissions, we believe OSM disagrees with our conclusions. Treasury has not clearly agreed to implement any of the report's recommendations, which were intended to improve the program. SIGTARP considered and addressed OSM's comments in the report as necessary and appropriate.

Appendix A – Objective, Scope, and Methodology

SIGTARP performed this evaluation under the authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended. SIGTARP evaluated the Special Master's decisions on executive compensation at Ally and GM, the two companies remaining in TARP that had received exceptional financial assistance. Our specific objective was to evaluate the 2013 pay packages proposed by Ally and GM and the decisions made by Treasury for compensation of the Top 25 at Ally and GM.

The scope of the evaluation covered Ally's and GM's 2013 Top 25 compensation proposals and OSM-approved pay packages. The evaluation began in April 2013 and ended in September 2014 and was performed in Washington, D.C. To evaluate OSM's decisions on the company-proposed pay packages of the Top 25 employees, SIGTARP interviewed OSM officials and reviewed the company proposals, OSM's 2013 determinations and supporting documentation for 47 Ally and GM Top 25 employees. During the evaluation, OSM issued in April 2014 its 2014 pay determinations for the Top 25 employees at Ally. Although SIGTARP did not open the evaluation to cover all decisions made by OSM, where applicable it has referred to the public results.

SIGTARP evaluated OSM's decision making on pay and whether OSM implemented changes in response to SIGTARP's earlier reports and recommendations. SIGTARP reviewed the Emergency Economic Stabilization Act of 2008, the American Recovery and Reinvestment Act of 2009, TARP Standards for Compensation and Corporate Governance; Interim Final Rule, Congressional testimony, OSM's June 2013 written policy, OSM's June 2013 written procedures as well as OSM pay determination letters. SIGTARP also reviewed former Special Master Kenneth R. Feinberg's discussion of his work at OSM in his book, *Who Gets What*.

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

Limitations on Data

SIGTARP relied upon Treasury to identify and provide email communication and documents related to the executive compensation determination process. It is possible that the documentation provided by Treasury did not reflect a comprehensive response to SIGTARP's documentation requests, potentially limiting SIGTARP's review.

Use of Computer-Processed Data

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

Internal Controls

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

Prior Coverage

On January 28, 2013, SIGTARP issued evaluation report 13-001, "Treasury Continues Approving Excessive Pay for Top Executives at Bailed-Out Companies." This report assesses OSM's pay-setting process for 2012 for the Top 25 employees of the remaining TARP exceptional assistance companies – AIG, GM, and Ally – in light of the findings and recommendations in SIGTARP's previous report, issued January 23, 2012.

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

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

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

Appendix B – Treasury 2013 Pay Determinations for Ally

EXHIBIT I COVERED EMPLOYEES 2013 Compensation

Company Name: Ally Financial Inc.				
Employee ID	Cash Salary	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal,	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance	Total Direct Compensation (Cash salary + stock salary + long-term
280677	\$0	\$8,550,000	\$950,000	\$9,500,000
101512	\$500,000	\$1,480,000	\$220,000	\$2,200,000
102645	\$600,000	\$4,068,621	\$518,736	\$5,187,357
104428	\$491,000	\$1,975,900	\$274,100	\$2,741,000
105336	\$500,000	\$1,525,000	\$225,000	\$2,250,000
141296	\$491,000	\$1,673,930	\$240,548	\$2,405,478
159613	\$421,008	\$1,157,741	\$175,416	\$1,754,165
197253	\$500,000	\$2,778,650	\$364,294	\$3,642,944
265967	\$600,000	\$3,358,103	\$439,789	\$4,397,892
339212	\$600,000	\$400,000	\$0	\$1,000,000
353403	\$416,000	\$1,398,400	\$201,600	\$2,016,000
380289	\$391,000	\$1,310,900	\$189,100	\$1,891,000
391076	\$500,000	\$1,840,000	\$260,000	\$2,600,000
398005	\$450,000	\$1,233,000	\$187,000	\$1,870,000
513416	\$491,000	\$1,597,900	\$232,100	\$2,321,000
542135	\$250,000	\$2,270,000	\$280,000	\$2,800,000
546145	\$591,000	\$3,000,900	\$399,100	\$3,991,000
567303	\$500,000	\$2,020,000	\$280,000	\$2,800,000
673894	\$490,988	\$1,120,912	\$179,100	\$1,791,000
682168	\$600,000	\$4,462,345	\$562,483	\$5,624,828
707713	\$550,000	\$2,150,000	\$300,000	\$3,000,000
725547	\$500,000	\$2,020,000	\$280,000	\$2,800,000
931656	\$491,000	\$1,768,786	\$251,087	\$2,510,873

Comparison of 2013 compensation to prior year compensation for the employees listed above

- Overall: Overall cash decreased \$5.0 million, or 31.3%, and total direct compensation decreased \$18.8 million, or 20.8%.
- The 16 employees remaining in the Top 25 from 2012: Cash salaries remained the same and total direct compensation decreased \$6.5 million, or 10.2%, from 2012. (This comparison is to target total direct compensation for 2012.)
- The seven employees new to the Top 25 in 2013: Cash compensation decreased \$5.0 million, or 62.9%, and total direct compensation decreased \$12.3 million, or 46.1%, from 2012.

Note 1: The total number of Covered Employees may be fewer than 25 because of separations from service since January 1, 2013.

Note 2: The amounts set forth in Exhibit I were to be effective January 1, 2013, except that the amounts in the “Long-Term Restricted Stock” column were to be effective pro rata as of July 1, 2013, and prior to that date were to be delivered as stock salary.

Redemption of stock salary awarded to the CEO will be as described above. Redemption of stock salary awarded to other Covered Employees will be in three installments as described in the Determination Memorandum. In addition, prior to July 1, 2013, the amount indicated in the stock salary column for employee 339212 was to be paid at an annualized rate of \$1.4 million.

Source: Treasury. 2013 approved pay determination for the Top 25 executives at Ally as of April 26, 2013.

Appendix C – Treasury 2013 Pay Determinations for GM

EXHIBIT I COVERED EMPLOYEES 2013 Compensation

Company Name: General Motors Company				
Employee ID	Cash Salary	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal,	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals.	Total Direct Compensation (Cash salary + stock salary + long-term restricted stock.)
4859	\$1,700,000	\$7,300,000	\$0	\$9,000,000
0094	\$950,000	\$1,187,500	\$1,000,000	\$3,137,500
0230	\$495,000	\$840,000	\$665,000	\$2,000,000
1223	\$495,000	\$626,000	\$515,000	\$1,636,000
1565	\$495,000	\$660,000	\$525,000	\$1,680,000
2346	\$485,000	\$845,000	\$500,000	\$1,830,000
2387	\$495,000	\$835,000	\$600,000	\$1,930,000
2986	\$750,000	\$3,960,000	\$0	\$4,710,000
3178	\$460,000	\$618,000	\$450,000	\$1,528,000
3199	\$500,000	\$600,000	\$500,000	\$1,600,000
3348	\$650,000	\$1,525,000	\$0	\$2,175,000
3774	\$485,000	\$1,015,000	\$200,000	\$1,700,000
4894	\$495,000	\$2,730,000	\$0	\$3,225,000
5021	\$600,000	\$4,250,000	\$1,000,000	\$5,850,000
5046	\$475,000	\$480,000	\$320,000	\$1,275,000
5555	\$750,000	\$2,840,000	\$1,750,000	\$5,340,000
5697	\$750,000	\$2,410,000	\$1,550,000	\$4,710,000
6386	\$490,000	\$1,137,000	\$0	\$1,627,000
6524	\$495,000	\$700,000	\$555,000	\$1,750,000
7459	\$750,000	\$2,825,000	\$1,750,000	\$5,325,000
7537	\$600,000	\$1,400,000	\$1,000,000	\$3,000,000
9074	\$425,000	\$312,500	\$325,000	\$1,062,500
9635	\$500,000	\$1,150,000	\$750,000	\$2,400,000
9859	\$525,000	\$545,000	\$475,000	\$1,545,000

Comparison of 2013 compensation to prior year compensation for the employees listed above

- Overall: Overall cash decreased \$6.6 million, or 30.7%, and total direct compensation decreased \$3.0 million, or 4.1%, from 2012.
- **The 14 employees remaining in the Top 25 from 2012:** Cash salaries remained the same and total direct compensation increased \$3.0 million, or 6.1%, from 2012. (This comparison is to target total direct compensation for 2012; the amount of long-term restricted stock actually awarded may have been lower than the target amount.)
- **The 10 employees new to the Top 25 in 2013:** Cash compensation decreased \$6.6 million, or 57.0%, and total direct compensation decreased \$6.0 million, or 26.1%, from 2012.

Note 1: The total number of Covered Employees may be fewer than 25 because of separations from service since April 1, 2013.

Source: Treasury. 2013 approved pay determination for the Top 25 executives at GM as of April 26, 2013.

Appendix D – Treasury 2014 Pay Determinations for Ally

EXHIBIT I COVERED EMPLOYEES 2014 Compensation

Company Name: Ally Financial Inc.

Employee ID	Cash Salary	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal, annual installments)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Generally vests after three years of service. Transferability dependent on TARP)	Total Direct Compensation (Cash salary + stock salary + long-term restricted)
280677	\$0	\$9,500,000	\$0	\$9,500,000
101512	\$500,000	\$1,700,000	\$0	\$2,200,000
102645	\$600,000	\$4,587,357	\$0	\$5,187,357
105336	\$500,000	\$1,750,000	\$0	\$2,250,000
129881	\$400,000	\$1,041,000	\$0	\$1,441,000
141296	\$491,000	\$1,914,478	\$0	\$2,405,478
159613	\$491,000	\$1,850,000	\$0	\$2,341,000
178067	\$450,000	\$916,000	\$0	\$1,366,000
197253	\$500,000	\$3,142,944	\$0	\$3,642,944
265967	\$600,000	\$3,797,892	\$0	\$4,397,892
305789	\$491,000	\$1,300,000	\$0	\$1,791,000
353403	\$416,000	\$1,600,000	\$0	\$2,016,000
354392	\$500,000	\$1,674,943	\$0	\$2,174,943
380289	\$391,000	\$1,500,000	\$0	\$1,891,000
391076	\$500,000	\$2,100,000	\$0	\$2,600,000
398005	\$450,000	\$1,420,000	\$0	\$1,870,000
491397	\$391,000	\$1,050,000	\$0	\$1,441,000
513416	\$491,000	\$1,830,000	\$0	\$2,321,000
546145	\$591,000	\$3,400,000	\$0	\$3,991,000
567303	\$500,000	\$2,300,000	\$0	\$2,800,000
673894	\$490,988	\$1,300,012	\$0	\$1,791,000
725547	\$500,000	\$2,300,000	\$0	\$2,800,000
921597	\$500,000	\$1,649,872	\$0	\$2,149,872
931656	\$491,000	\$2,019,873	\$0	\$2,510,873

Comparison of 2014 compensation to prior year compensation for the employees listed above

- **Overall:** Overall cash decreased \$3.8 million or 25.2% and total direct compensation decreased \$3.3 million or 4.7%.
- **The 18 executives remaining in the top 25 from 2013:** Cash salaries remained the same and total direct compensation increased \$150,000 or 0.27% from 2013. (This comparison is to target total direct compensation for 2013.)
- **The six executives new to the top 25 in 2013:** Cash compensation decreased \$3.8 million or 58.1% and total direct compensation decreased \$3.4 million or 24.8% from 2013.

Note 1: The total number of Covered Employees may be less than 25 because of separations from service since January 1, 2014.

Note 2: Redemption of stock salary awarded to the CEO will be as described above. Redemption of stock salary awarded to other Covered Employees will be in three installments as described in the Determination Memorandum.

Source: Treasury. 2014 approved pay determination for the Top 25 executives at Ally as of April 2, 2014

Appendix E – OSM-Approved Total Pay over Market Medians in 2013

OSM-APPROVED TOTAL PAY OVER MARKET MEDIANS IN 2013				
Employee ID Number	Company Name	Market Median Total Pay in 2013	OSM-Approved Total Pay in 2013	Amount of OSM-Approved Total Pay over the Median
682168	Ally	\$2,960,000	\$5,624,828	\$2,664,828
102645	Ally	\$3,455,000	\$5,187,357	1,732,357
265967	Ally	\$2,672,000	\$4,397,892	1,725,892
280677	Ally	\$8,152,000	\$9,500,000	1,348,000
391076	Ally	\$1,381,000	\$2,600,000	1,219,000
542135	Ally	\$1,616,000	\$2,800,000	1,184,000
931656	Ally	\$1,338,000	\$2,510,873	1,172,873
105336	Ally	\$1,096,000	\$2,250,000	1,154,000
197253	Ally	\$2,505,000	\$3,642,944	1,137,944
104428	Ally	\$1,616,000	\$2,741,000	1,125,000
141296	Ally	\$1,381,000	\$2,405,478	1,024,478
7537	GM	\$2,094,000	\$3,000,000	906,000
101512	Ally	\$1,361,000	\$2,200,000	839,000
2387	GM	\$1,189,000	\$1,930,000	741,000
707713	Ally	\$2,271,000	\$3,000,000	729,000
1565	GM	\$1,094,000	\$1,680,000	586,000
380289	Ally	\$1,355,000	\$1,891,000	536,000
513416	Ally	\$1,810,000	\$2,321,000	511,000
6524	GM	\$1,353,000	\$1,750,000	397,000
3774	GM	\$1,335,400	\$1,700,000	364,600
3178	GM	\$1,195,000	\$1,528,000	333,000
0230	GM	\$1,675,000	\$2,000,000	325,000
1223	GM	\$1,327,600	\$1,636,000	308,400
546145	Ally	\$3,765,000	\$3,991,000	226,000
5046	GM	\$1,054,100	\$1,275,000	220,900
353403	Ally	\$1,833,000	\$2,016,000	183,000
9074	GM	\$932,000	\$1,062,500	130,500
398005	Ally	\$1,833,000	\$1,870,000	37,000
4894	GM	\$3,199,000	\$3,225,000	26,000
0094	GM	\$3,119,800	\$3,137,500	17,700
Total				\$22,905,472

Source: SIGTARP analysis of OSM's 2013 determination memorandums and company proposals.

Appendix F – Status on Each of SIGTARP’s Seven Recommendations

SIGTARP’s Recommendation	Status on Each of SIGTARP’s Recommendations
<p>1. To ensure that the office of the Special Master for TARP Executive Compensation consistently grants exceptions to the \$500,000 cash salary cap, the Office of the Special Master should substantiate each exception requested and whether the requests demonstrate or fail to demonstrate “good cause.”</p>	<p>Not Implemented. While Treasury’s documentation of granting these cash salaries has improved in that it includes some additional information beyond the company’s assertions, that information is primarily market data that the company provides. The recommendation was not to document better, but instead to “substantiate,” which requires some criteria for granting exceptions as well as independent analysis beyond the company’s assertions. Treasury’s policy and procedures do not contain any criteria for approving cash salaries exceeding \$500,000 or any discussion of any analysis by Treasury.</p>
<p>2. The Office of the Special Master should better document its use of market data in its calculations. At a minimum, the Office of the Special Master should prospectively document which companies and employees are used as comparisons in its analysis of the 50th percentile of the market, and it should also maintain records and data so that the relationship between its determinations and benchmarks is clearly understood.</p>	<p>Implemented. In 2012, Treasury began retaining records of the market data provided by the company and a description of how it validates the data.</p>
<p>3. The Office of the Special Master should develop more robust policies, procedures, or guidelines to help ensure that its pay determination process and its decisions are evenhanded. These measures will improve transparency and help the Office of the Special Master consistently apply the Interim Final Rule principles of “appropriate allocation,” “performance-based compensation,” and “comparable structures and payments.”</p>	<p>Not Implemented. Although Treasury created a written policy and procedures in June 2013, OSM’s policy only contains Treasury’s Rule and language from the statute, all of which existed prior to OSM’s creation. Therefore, OSM has not created its own formal policies. OSM’s written procedures are merely a documentation of some of OSM’s existing practices and guidelines, but not others as contained in the pay determination letters, and were not a new development of robust policies, procedures, or guidelines. They do not establish meaningful criteria Treasury can follow for approving cash salaries exceeding \$500,000, pay exceeding market medians, pay raises, or the use of long-term restricted stock.</p>
<p>4. Each year, Treasury should reevaluate total compensation for those employees at TARP exceptional assistance companies remaining in the Top 25 from the prior year, including determining whether to reduce total compensation.</p>	<p>Not Implemented. Treasury’s new procedures state that OSM may reduce pay; however, OSM did not address any guidelines or criteria that it would consider in doing so.</p>

<p>5. To ensure that Treasury effectively applies guidelines aimed at curbing excessive pay and reducing risk taking, Treasury should develop policies, procedures, and criteria for approving pay in excess of Treasury guidelines.</p>	<p>Not Implemented. Treasury has not established clear policies, procedures, and criteria for approving pay in excess of Treasury's guidelines such as the 50th percentile, cash salaries greater than \$500,000, or use of long-term restricted stock.</p>
<p>6. Treasury should independently analyze whether good cause exists to award a Top 25 employee a pay raise or a cash salary over \$500,000. To ensure that the Office of the Special Master has sufficient time to conduct this analysis, Treasury should allow OSM to work on setting Top 25 pay prior to OSM's receiving the company pay proposals, which start the 60-day timeline.</p>	<p>Not Implemented. Treasury has not established criteria for awarding an employee a pay raise or a cash salary exceeding \$500,000. Such criteria are important for independently analyzing the basis for awarding pay raises or cash salaries greater than \$500,000 and ensuring consistency in decision making. Treasury's documentation of its justification does not evidence independent analysis, but instead sets forth the company's assertions and market data supplied by the company.</p>
<p>7. To be consistent with Treasury's Interim Final Rule that the portion of performance-based compensation compared to total compensation should be greater for positions that exercise higher levels of responsibility, Treasury should return to using long-term restricted stock for employees, particularly senior employees such as CEOs.</p>	<p>Not Implemented. In 2013, Treasury allowed some GM employees not to have long-term restricted stock and effectively approved only 5% of all Ally employees' pay in long-term restricted stock and failed to consider positions and levels of authority on an individual basis, as called for by Treasury's Rule. In 2014, Treasury eliminated long-term restricted stock for Ally employees.</p>

Appendix G – Acronyms and Abbreviations

Acronym or Abbreviation	Definition
AIG	American International Group, Inc.
AIGFP	AIG Financial Products
Ally	Ally Financial Inc. (formerly General Motors Acceptance Corporation, Inc.)
Chrysler	Chrysler Holding LLC
Chrysler Financial	Chrysler Financial Services Americas LLC
CPI	Consumer Price Index
GM	General Motors Corporation (name changed from Corporation to Company after bankruptcy in 2009)
IFR	TARP Standards for Compensation and Corporate Governance; Interim Final Rule (also “Treasury’s Rule”)
OSM	Office of the Special Master for TARP Executive Compensation
the Recovery Act	American Recovery and Reinvestment Act of 2009
SIGTARP	Office of the Special Inspector General for the Troubled Asset Relief Program
Special Master	Special Master for TARP Executive Compensation
TARP	Troubled Asset Relief Program
Top 25	the five senior executive officers and the next 20 most highly compensated employees
Treasury	U.S. Department of the Treasury

Appendix H – Evaluation Team Members

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

Staff members who conducted the evaluation and contributed to the report include Jenniffer Wilson, Craig Meklir, Vonda Batts, Brandon Crowder, Michelle Mang, Janice Turner, and Cynthia Broome.

Appendix I – Management Comments



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 21, 2014

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

Re: Treasury Response to SIGTARP Draft Audit Report

Dear Ms. Romero:

I write in response to the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) draft report of September 5, 2014 (Draft), pertaining to the 2013 and 2014 determinations of the Office of the Special Master for Troubled Asset Relief Program (TARP) Executive Compensation (OSM).¹ Taxpayers invested \$352 billion in the seven original companies under OSM's jurisdiction. Taxpayers have now recovered \$377.6 billion from that group, \$25.6 billion more than the total amount invested.

When SIGTARP's current evaluation began, two companies remained under OSM's jurisdiction. Today OSM is responsible for reviewing pay packages at just one company. We have appreciated the opportunity to work with your office as Treasury completes the wind-down of its TARP investments. At the same time, we are concerned about the Draft's inaccuracies and omissions with respect to OSM's record of limiting compensation while keeping compensation at levels that have enabled the companies to remain competitive and repay TARP assistance. This letter provides Treasury's response to the Draft.

I. OSM has Balanced Limiting Executive Compensation with Allowing Companies to Repay Taxpayer Assistance.

The facts show that OSM continues to fulfill its regulatory requirements. Seven companies received "exceptional assistance" under TARP. Pay packages for the top 25 employees at each of those companies have been restricted so long as the company remained in TARP. Since 2009, OSM has had responsibility for reviewing – and either approving or modifying – those annual pay packages proposed by the companies to be paid by the companies. Through this process, OSM has sought the balance contemplated by its governing statutes and regulations – to limit compensation paid by the companies while at the same time keeping compensation at levels that enable "exceptional assistance" recipients to both remain competitive (by attracting and keeping key employees) and repay TARP assistance.

With respect to limiting compensation, OSM's first determinations resulted in significant changes to compensation levels at the companies under OSM's jurisdiction. Those changes

¹ We note that the Draft was not produced in accordance with the Generally Accepted Government Auditing Standards, which the Inspector General Act of 1978 requires for audits by an Inspector General. We also note that, unlike audits by other oversight bodies, we were not provided a statement of facts prior to the Draft.

served as the model for the companies' proposed pay packages for the years they remained under OSM's purview. In 2009, for example, OSM:

- Cut average cash pay for the top 25 employees at the seven companies by more than 90 percent, and cut average total pay for that same group by more than 50 percent.
- Restructured the top 25 pay packages so that most are primarily stock-based (generally including stock salary that vests immediately but is payable over time), with a relatively small percentage of cash pay (in most cases not exceeding \$500,000). This means that the ultimate value of most top executive pay depends on the future performance of the company, generally over a three-year period.
- Provided that, when a pay package includes incentive compensation, it is in the form of long-term restricted stock awarded upon the achievement of pre-established performance metrics and paid out generally over a three-year period.
- Significantly limited executive perks and fringe benefits.

OSM has taken a consistent approach to evaluating pay packages proposed by the companies since 2009. Additional information is available on our website at www.financialstability.gov, where we post all of our determination letters and related fact sheets.

With respect to repayment, taxpayers invested \$352 billion in the original seven companies.² As a group, the seven companies have repaid \$377.6 billion – the full amount of the investment, plus an additional \$25.6 billion.³ In addition, six of the original seven companies have exited TARP – AIG, Bank of America, Chrysler, Chrysler Financial, Citigroup and GM – and OSM is no longer responsible for reviewing their pay packages. The lone remaining company is Ally Financial (formerly GMAC), for which Treasury has recovered the full \$17.2 billion taxpayer investment, plus an additional amount of approximately \$874 million. Today, Treasury retains roughly a 13.8 percent ownership interest in the common stock of Ally Financial, valued at approximately \$1.58 billion. Treasury is in the process of winding down its investment, currently through a pre-defined written trading plan.

II. OSM Follows Regulatory Requirements in Evaluating Company Proposals for Executive Compensation.

OSM was created under the TARP compensation regulations.⁴ Those regulations require OSM to consider six principles in making its determinations: (1) avoid incentives to take excessive risk; (2) maximize the company's ability to be competitive, retain and recruit employees, and repay taxpayers; (3) appropriately allocate the components of compensation; (4) use performance-based compensation; (5) employ pay structures and amounts that are consistent

² The \$352 billion includes commitments to AIG of \$69.8 billion by Treasury and \$112 billion by the Federal Reserve Bank of New York for a total of approximately \$182 billion to AIG.

³ These figures are as of September 17, 2014.

⁴ TARP Standards for Compensation and Corporate Governance, 31 C.F.R. Part 30 (June 15, 2009), available at www.financialstability.gov.

with – and not excessive taking into account – those for similar positions at similar companies; and (6) base pay on the employee’s contribution to the value of the company.⁵

Beginning with the initial determinations in 2009, OSM has reviewed compensation proposed to be paid by the companies with the aim that pay generally should not exceed the levels paid for similar positions at similar companies. OSM’s aim also has been that pay packages should consist mostly of stock (rather than cash) so that compensation is tied to the long-term performance of the company and executives are not focused on short-term results or encouraged to take excessive risks.

Since SIGTARP’s last report on OSM, we have issued two rounds of determination letters, both of which were consistent with the principles and standards described above.

A. A Summary of the Facts Regarding OSM’s 2014 Achievements.

OSM’s determinations for the one company under its jurisdiction in 2014 reflect the following:

- On average, the Ally Financial top 25 compensation packages are 17 percent cash and 83 percent stock, whereas the market median for similar positions at similar companies is 51 percent cash and 49 percent stock.
- Ally Financial’s average top 25 pay packages are closer to the median compensation for persons in similar positions at similar companies than in prior years, and the total direct compensation for the executives covered by the 2014 determinations is more than seven percent lower than the total for the executives covered by the 2013 determinations.⁶
- The current Ally Financial CEO has not received an increase in cash compensation or total direct compensation since he joined the company in late 2009.
- Cash compensation for Ally Financial’s top 25 employees is on average four percent below the median cash salaries and 62 percent below the median total cash compensation for similar positions at similar companies.
- For the group of 18 Ally Financial employees in the top 25 in both 2013 and 2014, cash compensation remained the same and total direct compensation increased 0.27 percent. For the group of six Ally Financial employees new to the top 25 for 2014, cash compensation decreased 58.1 percent as compared to their cash pay in 2013, and total direct compensation decreased 24.8 percent as compared to their total pay in 2013.⁷
- All of the top 25 pay packages contain a majority of stock compensation (rather than cash).

⁵ See 31 C.F.R. Part 30.16(b)(1).

⁶ In part, this reflects changes in the top 25 group related to the 2013 sale of the company’s international operations.

⁷ The number of employees is less than 25 because of a separation from service between the first of the year and the date of the determination.

B. A summary of the Facts Regarding OSM's 2013 Achievements.

OSM's determinations regarding the two companies under its jurisdiction in 2013 reflect the following:

- On average, 81 percent of pay at GM and Ally is in the form of stock compensation (rather than cash), which means that the ultimate value of the majority of the pay of top executives will depend on the future performance of the company, generally over a three-year period.
- Cash compensation for the top 25 employees at the two companies as a group is on average four percent below the median for cash salaries and 56 percent below the median for total cash compensation for similar positions at similar companies.
- Overall, the 2013 cash compensation for the top 25 executives at the two companies decreased 30.9 percent and their total direct compensation decreased 13.3 percent from 2012 levels.
- Ninety-eight (98) percent of the top 25 pay packages contain a majority of stock compensation (rather than cash), up from 74 percent for the employees covered by top 25 determination letters in 2010.⁸
- Like the Ally Financial CEO, the GM CEO also did not receive an increase in cash compensation or total direct compensation while under OSM's jurisdiction.⁹
- Twenty-eight (28) cash salaries (that is, more than half) were at or below median, and at each of GM and Ally Financial the average cash salary was below median. Put another way:
 - the sum of the cash salaries for the top 25 at GM in 2013 was less than the total would have been if each GM top 25 employee had a cash salary equal to median, and
 - the sum of the cash salaries for the top 25 at Ally Financial in 2013 was less than the total would have been if each Ally Financial top 25 employee had a cash salary equal to median.
- The 2013 GM pay packages are on average below the median total direct compensation for similar positions at similar companies, as was also the case for the 2012 GM and AIG pay packages. In 2013 (as in 2012) the average pay package at Ally Financial was midway between the 50th and the 75th percentiles, which is the benchmark that OSM has traditionally used for Ally Financial because of its unique historical circumstances. While some pay packages at each company are above the applicable benchmark, others are below it. For example, in 2013, half the GM pay packages were at or below the applicable benchmark.¹⁰

⁸ This illustrates OSM's ongoing commitment to the principle that most pay packages should be primarily stock-based and thus aligned with the interests of taxpayers.

⁹ Both CEOs were hired to lead their companies after the companies received their taxpayer assistance.

¹⁰ For additional statistics, see the annual top 25 determination letters and accompanying fact sheets at www.financialstability.gov.

III. The Draft Contains Many Inaccuracies and Omissions.

The Draft contains many inaccuracies and omissions about OSM's work and about TARP generally. In particular, SIGTARP misstates the extent to which TARP has been repaid and taxpayer dollars are no longer at stake. In addition, we are concerned the report does not accurately reflect how Ally and GM's top 25 compensation packages compare with similarly situated executives at similar companies.¹¹ We identified many of these misstatements and omissions for SIGTARP staff during our recent exit conference. In response, SIGTARP staff said that it was unlikely to correct the noted inaccuracies or address the identified omissions. We have summarized some of our comments below in the hope of addressing these issues.

For example, the Draft incorrectly refers to "mounting losses" in the TARP investment program. This is not correct. Treasury's financial statements will show that taxpayers have recovered \$440 billion on all TARP investments – including the sale of Treasury's shares in AIG – compared to \$425.3 billion disbursed.¹² These disbursements include \$13.5 billion disbursed to date through Treasury's housing programs, which were never intended to be recovered as they were designed to help struggling families avoid foreclosure.

In addition, the Draft repeatedly misstates that repayments through stock sales (whether to the companies themselves, to third parties, or to the public) do not constitute repayments of TARP assistance. This also is not correct. In various TARP investments, Treasury received preferred stock, and sometimes debt or common stock or both, in return for providing cash or other financial assistance to the TARP recipient (or in some cases pursuant to a restructuring of prior obligations).¹³ The sale of the stock to third parties or to the public was contemplated at the time investments in common stock were made and, necessarily, results in taxpayer recovery of the initial TARP investment. Indeed, the main reason for using pay packages that are primarily stock-based is to incentivize executives to improve the equity value of the exceptional assistance companies and thus increase taxpayer recoveries.

Aside from these accounting inaccuracies, as in the case of SIGTARP's last report on OSM, the Draft also disregards OSM's responsibilities under the law. OSM reviews compensation for the top 25 executives under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and corresponding TARP regulations. Congress included severe restrictions on executive compensation in the Recovery Act, but Congress declined to incorporate a cap among those

¹¹ The Draft also omits important facts about the contemporaneous progress of the companies that formed the backdrop to the 2013 and 2014 determinations. OSM's fact sheets dated April 26, 2013, April 2, 2014, and September 10, 2014, at www.financialstability.gov, provide that detail.

¹² Treasury's financial statements follow GAAP, promulgated by the Federal Accounting Standards Advisory Board – the same accounting standards that the Congressional Budget Office, the Government Accountability Office (GAO), and other Federal entities use in their financial reporting. Treasury's Office of Financial Stability (OFS) has received an unqualified audit opinion from the GAO each year since TARP began. OFS also has received a Certificate of Excellence in Accountability Reporting from the Association of Government Accountants each of those years. These accomplishments demonstrate the broad acceptance and validity of Treasury's reporting of TARP's financial condition.

¹³ In recent years, Treasury's only outstanding investment in GM (as well as in AIG prior to December 2012), and its primary investment in Ally Financial, has been common stock.

restrictions. Rather, OSM's review is supposed to determine that pay package proposals are not "inconsistent with the purposes of" the Emergency Economic Stabilization Act of 2008 ("including the maximization of overall returns to the taxpayers of the United States and providing stability and preventing disruptions to financial markets"¹⁴) or "otherwise contrary to the public interest."¹⁵ OSM is instructed to apply six principles to fulfill those purposes,¹⁶ and OSM has discretion to weigh the principles based on the circumstances unique to each company and executive.¹⁷

In addition, the Draft contains a chart totaling the amount by which 19 cash salaries at GM and Ally Financial exceed the median cash salaries. The Draft omits the remaining 28 cash salaries at GM and Ally Financial that fall below the median. The amount by which the 28 cash salaries are less than median is greater than the amount by which the 19 cash salaries exceed the median. The Draft also contains a chart with corresponding omissions for total direct compensation. Failure to include a complete record of how all executives at these companies were or are currently being compensated results in an inaccurate description of OSM's work.

Further, the Draft provides that "Taxpayers . . . should not be forced by Treasury to subsidize excessive executive compensation." Treasury provides no subsidy – the companies make the proposals for their pay packages, and the companies make the payments for those packages. Moreover, as most of the top 25 pay packages consist of stock compensation, the overall value of the pay package increases and decreases in accordance with the value of the company stock. Taxpayer interests are thus aligned with those of the companies' other shareholders, as both benefit as the value of the stock increases.

The Draft also omits the results of recent shareholder say-on-pay votes pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). OSM has shared these results with SIGTARP repeatedly over the past two years. Through these votes, public shareholders tell the company board whether or not they believe the prior year's compensation for top executives at the companies in which the shareholders have invested is sound and appropriate.¹⁸

For example, GM's 98.8 percent shareholder say-on-pay approval rate in June 2012 was higher than any of the 2012 approval rates achieved by the 18 companies in its peer group.¹⁹ GM's 98.7

¹⁴ 31 C.F.R. § 30.16(b)(1).

¹⁵ 31 C.F.R. § 30.16(b)(1).

¹⁶ The full text is available at www.financialstability.gov.

¹⁷ See 31 C.F.R. Part 30.16(b)(1).

¹⁸ Note that the shareholder say-on-pay vote results were not affected by reason of Treasury's then-stock ownership in GM, Ally Financial or AIG; Treasury casts its say-on-pay votes in proportion to the "for" or "against" votes cast by the other shareholders. Also, at the time of the 2013 AIG vote and the 2014 GM vote, Treasury no longer held any AIG or GM stock, respectively. In addition, the executive compensation disclosure approved by AIG shareholders in 2013 and by GM shareholders in 2014 included both TARP-period pay and post-TARP-period pay for top executives.

¹⁹ Source for the shareholder say-on-pay vote percentages is www.equilar.com. Note that the 2012 shareholder say-on-pay votes took place after SIGTARP issued its first report on TARP executive compensation (in January 2012), and that the 2013 and 2014 shareholder say-on-pay votes took place after issuance of that report as well as SIGTARP's second report on TARP executive compensation (in January 2013). The first and second SIGTARP

percent shareholder say-on-pay approval rate in June 2013 was also higher than any of the 2013 approval rates achieved by the 18 companies in its peer group, and GM's 96.9 percent shareholder say-on-pay approval rate in June 2014 was higher than all but one of the 2014 approval rates achieved by the 17 of its 18 peer group companies that have held their 2014 shareholder say-on-pay votes.²⁰ Ally Financial, meanwhile, first became subject to a say-on-pay vote in 2014 when it became a publicly traded company. In July 2014, Ally Financial achieved a 99.7 percent shareholder say-on-pay approval rate, which was higher than any of the 2014 shareholder say-on-pay approval rates achieved by the ten companies in its peer group.²¹

IV. SIGTARP Makes 11 Recommendations for OSM's Work on One Company.

The Draft makes 11 new recommendations for OSM's work related to the lone remaining company under its jurisdiction.

Three of these recommendations suggest that OSM, and other Treasury staff, should maintain additional documentation of communications with TARP companies or other Treasury staff regarding compensation at TARP companies. We agree that records retention and transparency are important aspects of good government. For records, Treasury's existing policies and procedures address any concern related to retention and preservation.²² Regarding transparency, all determination letters include a description of OSM's procedures and standards, as well as a breakdown of the exact dollar amount of cash salary, stock salary, long-term restricted stock, and total direct compensation for each top 25 executive. Starting in 2012, each determination letter has also contained an overview of the market data that OSM reviews in making its determinations. All determination letters, related fact sheets, and TARP compensation regulations are publicly available on our website at www.financialstability.gov.

Six of the eleven recommendations suggest that OSM should conduct various independent analyses of proposed pay packages and document those analyses. SIGTARP's concern is that OSM relies exclusively on the company's assertions in issuing the OSM determination letters. We agree that the company assertions should not be the lone factor in OSM's analysis, and our existing work protects against that concern. First, each pay package proposed by a company includes market data with respect to the structure and amount of pay packages for similar positions at similar companies, compiled in accordance with OSM instructions, and under the

reports looked closely, among other things, at pay packages at AIG, which exited TARP in December 2012. AIG's 99.2 percent shareholder say-on-pay approval rate in May 2012 was higher than any of the 2012 approval rates achieved by the 24 companies in its peer group, which ranged from 45.2 percent to 98.3 percent. AIG's 98.2 percent shareholder say-on-pay approval rate in May 2013 was tied for second place compared to the 2013 approval rates achieved by the 24 companies in its peer group, which ranged from 77.8 percent to 98.9 percent. For a list of AIG's, GM's and Ally Financial's peer group companies, see their 2012 or 2013 top 25 determination letters at www.financialstability.gov. OSM's September 10, 2014 fact sheet, "OSM Update on TARP Executive Compensation," contains an overview of the GM, Ally Financial and AIG shareholder say-on-pay votes. It is available at www.financialstability.gov.

²⁰ The shareholder say-on-pay approval rates for GM's peer companies ranged from 56.8 percent to 97.1 percent in 2012, from 75.0 percent to 96.4 percent in 2013, and from 75.1 percent to 97.6 percent in 2014.

²¹ The shareholder say-on-pay approval rates for Ally Financial's peer companies ranged from 87.6 percent to 97.9 percent.

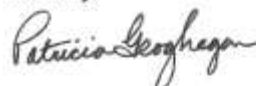
²² See Treasury Directive 80-05, available at <http://www.treasury.gov>.

supervision of an independent compensation consultant retained by the company. Second, OSM staff conducts its own research by evaluating that market data using independent, subscription-based databases of executive compensation, and by meeting with the independent compensation consultants as necessary. Third, OSM documents this work. Finally, OSM performs independent due diligence on the factual assertions underpinning the company proposals, and each year rejects or modifies numerous company requests.²³ Nevertheless, while we believe our existing procedures are rigorous, we will continue to consider whether any changes are appropriate.

The remaining two recommendations address OSM's use of long-term restricted stock and the median total direct compensation for each top 25 employee. SIGTARP believes OSM should adopt a rigid, formula-based process for reviewing the annual top 25 company proposals for executive compensation. We do not agree, and such a process would contradict the TARP compensation regulations that govern OSM. The clear instructions contained in the regulations provide that OSM must evaluate pay packages proposed by the companies on a basis that takes into consideration the facts and circumstances of each individual employee and each company.²⁴ In addition, OSM has "discretion to determine the appropriate weight or relevance" of each of the six principles in making individual pay determinations.²⁵ The statistics and results cited above reflect the balance OSM works to achieve when applying the six principles to diverse individuals at different companies.

Thank you for the opportunity to respond to the Draft. OSM has benefitted from SIGTARP's oversight. We look forward to working with you as TARP continues to wind down.

Sincerely,



Patricia Geoghegan
Acting Special Master
for TARP Executive Compensation

²³ For example, one company requested an increase in total direct compensation for an executive who received a significant promotion. OSM independently verified the promotion, but only approved an increase of less than half the requested amount, and required the increase to be totally in stock rather than in cash. Also, in 2013, OSM declined to accept any of GM's requests for increases in cash salary for top 25 employees. All such decisions are documented.

²⁴ See 31 C.F.R. Part 30.16(a)(1), (b)(1).

²⁵ 31 C.F.R. Part 30.16(b)(1).

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