



United States Government Accountability Office  
Washington, DC 20548

September 18, 2012

Congressional Addressees

Subject: *Treasury Continues to Implement Its Oversight System for Addressing TARP Conflicts of Interest*

The Emergency Economic Stabilization Act of 2008 (EESA) initially authorized \$700 billion to assist financial institutions and markets, businesses, homeowners, and consumers through the Troubled Asset Relief Program (TARP).<sup>1</sup> The \$700 billion ceiling was never reached, and in July 2010 the Dodd-Frank Wall Street Reform and Consumer Protection Act reduced the amount to \$475 billion.<sup>2</sup> The program was intended to address the greatest threat the financial markets and economy had faced since the Great Depression. The Department of the Treasury (Treasury) established the Office of Financial Stability (OFS) to carry out TARP activities, which included injecting capital into key financial institutions, providing assistance to the automobile industry, and offering incentives to lenders for modifying residential mortgages, among other activities.

Since the inception of TARP in October 2008, Treasury has continued to rely on private sector sources to support TARP administration and operations. Through June 2012, Treasury has obligated over \$900 million on contracts and financial agency agreements with private sector entities.<sup>3</sup> Treasury's reliance on private sector entities to implement TARP underscores the importance of addressing and managing conflicts of interest that may arise with entities seeking or performing work under TARP.<sup>4</sup> A key focus for the program is identifying possible conflicts of interest (personal and organizational) involving private sector entities and mitigating those conflicts.

As required by EESA, we have provided oversight of TARP activities since they began in 2008.<sup>5</sup> This report assesses the extent to which Treasury has (1) established policies and processes regarding conflicts of interest, and (2) implemented its policies and processes for addressing potential conflicts. To address the first objective, we analyzed TARP conflicts of

<sup>1</sup>EESA, Pub. L. No. 110-343, 122 Stat. 3765 (codified at 12 U.S.C. §§ 5201-5261).

<sup>2</sup>Pub. L. No. 111-203, § 1302(1)(A) (2010).

<sup>3</sup>EESA authorizes Treasury to use financial institutions as "financial agents" of the federal government to perform duties needed to carry out TARP.

<sup>4</sup>Employees of Treasury's contractors and financial agents are not subject to conflict of interest laws and regulations that govern the conduct of government employees. The Federal Acquisition Regulation requires contractors to promptly disclose credible evidence of fraud and conflicts of interest to the appropriate inspector general and contracting officer. 73 Fed. Reg. 67064 (Nov. 12, 2008) (codified at 48 C.F.R. § 52.203-13(b)(3)).

<sup>5</sup>We have issued a TARP report at least every 60 days as required by EESA in Section 116 (codified at 12 U.S.C. § 5226).

interest regulations, policies, and procedures. To determine how the conflicts of interest regulation and processes are implemented, we interviewed OFS officials. We also reviewed documentation on the largest financial agency agreement and the largest contract, based on obligated value, and discussed key components of the processes with OFS officials. This documentation included initial and amended conflicts of interest mitigation plans, certifications, and quarterly feedback reports. Furthermore, we analyzed conflicts of interest inquiries from OFS's database for tracking conflicts of interest activities. In doing so, we reviewed inquiries associated with the selected entities in more detail, as well as inquiries that were coded as waivers for all retained entities in the OFS database. We determined that the data in OFS's conflicts of interest database were sufficiently reliable for the purposes of this report. Finally, we analyzed and discussed with OFS officials the on-site reviews they have conducted of contractors' and financial agents' policies, procedures, and controls for detecting and mitigating conflicts of interest. We did not assess conflicts of interest procedures and controls established by individual contractors and financial agents, nor did we assess the existence or absence of conflicts of interest involving any of these entities.

We conducted this performance audit from February 2012 to September 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **Results in Brief**

Treasury has taken a number of actions since 2008, in part in response to recommendations we made, to establish a structured system to manage potential conflicts of interest involving its contractors and financial agents. The system is based on a formal regulation Treasury issued in interim form in 2009 and final form in 2011, which prohibits organizational or personal conflicts of interest unless they have been waived or mitigated under a Treasury-approved plan. The regulation sets forth requirements to address actual and potential conflicts that may arise, establishes responsibilities for contractors and financial agents in preventing conflicts from occurring, and outlines Treasury's process for reviewing and addressing conflicts. Treasury has developed a multifaceted process to manage and oversee potential conflicts of interest, which is managed by OFS's Office of the Chief Compliance Officer. The process includes reviewing proposed contracts and financial agency agreements, approving contractor and financial agent mitigation plans, addressing conflicts of interest inquiries, reviewing conflicts of interest certifications, and preparing feedback reports for contractors and financial agents. In addition, because the monitoring of conflicts of interest was based to some degree on self-reported information submitted by contractors and financial agents, Treasury began conducting on-site design and compliance reviews in 2011 to evaluate the effectiveness of its contractors' and financial agents' internal controls and procedures for conflicts of interest. Treasury has also established an internal database to document and track financial agent and contractor conflicts of interest certifications, inquiries, and requests for waivers.

Treasury continues to implement its conflicts of interest requirements and processes. Specifically, Treasury reviews and approves conflicts of interest mitigation plans, verifies that contractors and financial agents are regularly certifying that they are preventing or properly mitigating actual or potential conflicts of interest, and responds to inquiries about

conflicts of interest from contractors and financial agents in a timely manner. Treasury also monitors compliance by administering quarterly feedback reports on contractors and financial agents, and preparing summary scorecards that provide a snapshot of how each contractor and financial agent is performing with respect to conflicts of interest requirements. In addition, since early 2011 Treasury has conducted 11 on-site design reviews and 11 on-site compliance reviews to evaluate internal controls and procedures at selected contractors and financial agents, permitting Treasury officials to identify and address specific issues or instances of non-compliance in a timely manner.

## Background

The passage of EESA resulted in the creation of a variety of programs supported with TARP funding, as shown in table 1. Some TARP programs are in various stages of winding down while other programs, notably those that focus on the foreclosure crisis, remain active.

**Table 1: Programs Supported by TARP Funding**

Program	Program description
American International Group, Inc. (AIG) Investment Program	To provide stability in financial markets and avoid disruptions to the markets from the deterioration of AIG's financial condition.
Asset Guarantee Program	To provide federal government assurances for assets held by financial institutions that were viewed as critical to the functioning of the nation's financial system.
Automotive Industry Financing Program	To prevent a significant disruption of the American automotive industry.
Capital Assessment Program	Created to provide capital to institutions not able to raise it privately to meet Supervisory Capital Assessment Program—or “stress test”—requirements. This program was never used.
Capital Purchase Program	To provide capital to viable banks through the purchase of preferred shares and subordinated debentures.
Consumer and Business Lending Initiative programs	To provide capital to certain financial institutions or liquidity to secondary markets for small business loans and other asset classes, and thereby improve access to credit for consumers and businesses.
TARP-funded housing programs	To offer assistance to homeowners at risk of foreclosure.
Public-Private Investment Program	To address the challenge of “legacy assets” by partnering with investors to purchase certain residential and commercial mortgage-backed securities.
Targeted Investment Program	To foster market stability and strengthen the economy by making case-by-case investments in institutions that Treasury deemed critical to the functioning of the financial system.

Source: GAO.

Since TARP was established in 2008, Treasury has relied on private sector sources to assist OFS with TARP administration and operations. Treasury engages with private sector firms through: (1) financial agency agreements and (2) contracts and blanket purchase

agreements.<sup>6</sup> According to OFS procedures, financial agency agreements are used for services that cannot be provided with existing Treasury or contractor resources. Specifically, Treasury has relied on financial agents for asset management, transaction structuring, disposition services, custodial services, and administration and compliance support for the TARP housing assistance programs. Treasury has awarded 19 financial agency agreements, 13 of which remained active as of June 30, 2012. Treasury uses TARP contracts for a variety of legal, investment consulting, accounting, and other services and supplies. As of June 30, 2012, Treasury has awarded or used 128 contracts and blanket purchase agreements, and about 43 percent of them remain active. As shown in table 2, the obligated value of the financial agency agreements and contracts has totaled more than \$900 million, with most of the funding going for financial agency agreements. The increase in obligations since 2010 is largely due to Treasury’s reliance on financial agents to support the oversight of TARP assets and the continued implementation of the housing programs over the last couple of years.

**Table 2: Cumulative Value of Contracts and Financial Agency Agreements in Support of TARP**

	Obligated value through fiscal year 2010	Obligated value through fiscal year 2011	Obligated value through 6/30/2012
Financial agency agreements	\$327,355,188	\$547,487,042	\$723,486,937
Contracts	108,907,207	154,934,812	180,386,781
<b>Totals</b>	<b>\$436,262,395</b>	<b>\$702,421,854</b>	<b>\$903,873,718</b>

Source: GAO analysis of Treasury data.

The vast majority of the financial agency agreement obligations shown above, approximately \$527 million, went to the Federal National Mortgage Association (commonly known as Fannie Mae) and the Federal Home Loan Mortgage Corporation (commonly known as Freddie Mac), which provide administrative and compliance services, respectively, for the TARP housing programs.<sup>7</sup> The two largest contracts are \$35 million with PricewaterhouseCoopers, LLP for internal control services and \$17 million with Cadwalader, Wickersham & Taft, LLP for legal services.

As we have previously reported, when Treasury began to quickly implement TARP initiatives in 2008, OFS had not finalized its procurement oversight procedures and lacked comprehensive internal controls for contractors and financial agents.<sup>8</sup> We made a series of recommendations in 2008 and 2009 to strengthen Treasury’s management and oversight of its vendors and improve the transparency of contracted operations.<sup>9</sup> In 2011, we reported that 1 year after implementation, Treasury had taken steps to put in place an appropriate

<sup>6</sup>A blanket purchase agreement is a method of filling anticipated repetitive needs for supplies or services through qualified sources of supply. The agreement contains the basic terms and conditions governing the types of services the firms will provide. As specific needs arise, blanket purchase agreements allow Treasury to issue task orders to the firms describing the specific services required, establishing time frames, and setting pricing arrangements.

<sup>7</sup>Congress established Fannie Mae and Freddie Mac as government entities, chartering them as for-profit, shareholder-owned corporations to stabilize and assist the U.S. secondary mortgage market and facilitate the flow of mortgage credit.

<sup>8</sup>GAO, *Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency*, [GAO-09-161](#) (Washington, D.C.: Dec. 2, 2008).

<sup>9</sup>[GAO-09-161](#) and *Troubled Asset Relief Program: Status of Efforts to Address Transparency and Accountability Issues*, [GAO-09-296](#) (Washington, D.C.: Jan. 30, 2009).

infrastructure to manage and monitor its network of financial agents and contractors.<sup>10</sup> By the end of fiscal year 2010, OFS had

- defined organizational roles and responsibilities and established written policies and procedures for the management and oversight of TARP financial agents and contractors;
- taken action to ensure that sufficient personnel were assigned and properly trained to oversee the performance of financial agents and contractors;
- issued written procedures on measuring the performance of financial agents and begun implementing performance assessments; and
- developed a contract record system for tracking information related to contracts and financial agency agreements.

### **Treasury Has Established a Structured System for Addressing TARP Conflicts of Interest**

Treasury has taken a number of actions since 2008 to establish a structured system for addressing potential conflicts of interest involving its contractors and financial agents. EESA authorized the Secretary of the Treasury to issue regulations or guidelines to address conflicts of interest that may arise in connection with the administration of the TARP programs. Accordingly, Treasury's January 2009 interim regulation established standards to manage or prohibit conflicts of interest, establishing responsibilities for contractors and financial agents to monitor and report conflicts should they arise during the performance of a contract or agreement, and outlining Treasury's process for reviewing and addressing conflicts of interest.<sup>11</sup> Treasury issued its final regulation in 2011.<sup>12</sup>

The final regulation defines two types of conflicts of interest that may arise with contracts and financial agency agreements—organizational and personal conflicts. According to the regulation, an organizational conflict of interest would occur if an entity has a business relationship that is inconsistent with the entity's obligations to Treasury or that calls into question the entity's objectivity or judgment. For example, an organizational conflict would arise if a retained entity is, or represents, a party in litigation against the Treasury relating to activities under TARP. A personal conflict of interest would be triggered by business or financial interests, such as stock ownership by an individual or certain immediate family members, which could adversely affect that person's objectivity or judgment in performing under a contract or financial agency agreement.

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<sup>10</sup>GAO, *Troubled Asset Relief Program: Status of Programs and Implementation of GAO Recommendations*, [GAO-11-74](#) (Washington, D.C.: Jan. 12, 2011).

<sup>11</sup>Treasury issued an interim TARP conflicts of interest regulation in January 2009 (effective January 21, 2009). 74 Fed. Reg. 3431 (Jan. 21, 2009).

<sup>12</sup>Treasury issued the final TARP conflicts of interest regulation in October 2011 (effective November 2, 2011). The final regulation contained the same elements as the interim regulation but clarified and revised the requirements in some cases. For example, the final rule incorporated specific references to the appearance of conflicts of interest to clarify that facts or situations that give rise to the appearance of a conflict of interest are also considered potential conflicts. The rule also provided a monetary value—\$20 or less per gift or \$50 total per calendar year—for gifts or items that can be accepted. The final regulation also deleted coverage of management officials, instead limiting its application to those individuals who are "personally and substantially" involved in providing services under an arrangement with Treasury. Management officials who perform a substantive role continue to be covered as key individuals. Treasury did not believe that the final regulation would substantially change the obligations of OFS's financial agents or contractors other than in connection with management officials that are not also key individuals. 31 C.F.R. Part 31.

The regulation establishes a continuing obligation for contractors and financial agents, collectively referred to as retained entities, to monitor and report conflicts of interest and outlines Treasury's process for reviewing and managing conflicts of interest. Among various other issues, the regulation addresses:

- limitations on the conduct of entities retained by Treasury, which include restrictions on giving and accepting gifts, making unauthorized promises, and improper uses of government property;
- obligation to keep nonpublic information confidential;
- applicability of conflicts of interest requirements to subcontractors;
- limitations on entities engaging in certain market activities while concurrently providing services to Treasury;
- the granting of waivers when a conflict cannot be adequately mitigated and a waiver is in the government's interest; and
- measures available to Treasury to enforce the regulation, including default terminations, debarments, and referrals for criminal prosecution.

Treasury established a multifaceted process for managing potential conflicts of interest, which is described in written procedures established by OFS in 2009 and managed by its Office of the Chief Compliance Officer. The process begins at the inception of a contract or financial agency agreement, when OFS officials have an opportunity to review the scope of work and to provide conflicts of interest provisions to be included in the contract solicitation, task order, or the financial agency agreement. Each potential contractor or financial agent is required to identify existing or potential conflicts of interest as well as plans to mitigate them. If there is an existing or potential conflict of interest, Treasury officials are supposed to review and discuss the mitigation plans and, if necessary, ask the entity to provide additional information or a revised mitigation plan. The selected contractor or financial agent is to certify the completeness and accuracy of its mitigation plan. The agreed mitigation plan becomes a part of the final financial agency agreement but is not incorporated into the contract. Treasury officials stated that throughout the course of the contract or financial agency agreement, contractors and financial agents are required to regularly certify—annually and quarterly, respectively—that they have no conflicts of interest or describe actions they have taken to mitigate any new conflicts of interest that have arisen.

Treasury also established an internal reporting database in 2009 to document and track all conflicts of interest activities. The database is intended to store documents related to conflicts of interest reviews of solicitations, task orders, and proposed financial agency agreements. The database also tracks financial agent and contractor conflicts of interest certifications, inquiries, and requests for waivers. Contractors and financial agents are required to search for and report any potential conflicts of interest on a continuing basis, and submit written inquiries for Treasury's review. The database facilitates monitoring of potential conflicts of interest and management of conflicts of interest certifications and inquiries, including waiver requests.

To strengthen its oversight system, Treasury introduced several additional actions in 2011. For example, OFS began preparing quarterly conflicts of interest feedback reports for contractors and financial agents. These reports are intended to describe and rate contractors' and financial agents' performance during the quarter in identifying, mitigating, and disclosing conflicts of interest to the Treasury; submitting adequate conflicts of interest

certifications in a timely manner; and expeditiously responding to requests for additional information, among other things. Treasury also put in place a formal requirement that all new contractors and financial agents, as well as Contracting Officer's Representatives<sup>13</sup> and Office of Financial Agents<sup>14</sup> personnel with similar responsibilities, receive conflicts of interest training. The training materials used were similar to those used before 2011, but the information presented became more consistent across all the training. The training covers sources of conflicts of interest requirements, such as the TARP conflicts of interest regulation; definitions of terms, such as organizational conflict of interest; and when Treasury should be contacted.

In addition, because the monitoring of conflicts of interest was based to some degree on self-reported information submitted by contractors and financial agents, Treasury began conducting two types of on-site reviews—design reviews and compliance reviews. The purpose of these on-site reviews is to test internal controls and procedures for mitigating conflicts of interest at contractors and financial agents. Design reviews ideally occur shortly after a financial agency agreement or contract is signed. An OFS official said that these are brief informal reviews used to determine whether financial agents' and contractors' policies and procedures are properly designed to detect and mitigate conflicts of interest. Compliance reviews, on the other hand, are meant to be in-depth reviews used to verify whether contractors' and financial agents' internal controls and procedures are being followed and are working effectively.

### **Treasury Continues to Implement Its TARP Conflicts of Interest Requirements and Procedures**

Our discussions with OFS officials and review of supporting documentation and data revealed that Treasury continues to implement its compliance system for conflicts of interest requirements. We found that OFS generally followed the process outlined above for monitoring and managing conflicts of interest throughout the life cycle of the largest contract with PricewaterhouseCoopers and the largest financial agency agreement with Fannie Mae. Specifically

- The selected contract and financial agency agreement contained initial mitigation plans to address actual or potential conflicts of interest. Both entities later amended their mitigation plans to reflect changing regulatory requirements and improved understanding of conflicts of interest in their organization and internal controls. In addition, the financial agent submitted initial certifications regarding organizational and personal conflicts of interest immediately after signing the financial agency agreement with Treasury, and later revised them to conform with the certification template that Treasury began using. The contractor submitted initial certifications when it amended its initial mitigation plan, as agreed with OFS, to reflect new regulatory requirements.
- OFS officials ensured that both entities regularly certify that their mitigation plans are effective and describe the actions they have taken and plan to take to mitigate any conflicts.

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<sup>13</sup>Contracting Officer's Representatives act as the contracting officer's technical experts and representatives in the administration and monitoring of contracts.

<sup>14</sup>The Office of Financial Agents, in support of the Office of the Fiscal Assistant Secretary, is responsible for the administration, day-to-day management and oversight of the financial agents supporting the implementation of EESA.

- Treasury officials have been timely in recording, responding to, and resolving conflicts of interest inquiries from the selected entities—50 from PricewaterhouseCoopers and 200 from Fannie Mae.
- Treasury officials have provided quarterly feedback reports to assess the status of these entities. These reports reveal that the entities have improved certain aspects of managing their conflicts of interest efforts over time. For instance, one of the early reports remarked that one entity was very slow in providing its past due annual certifications and had not met its regulatory obligations in a timely manner. However, Treasury officials worked with this entity and improved this deficiency.
- Treasury conducted an on-site compliance review for both entities, although one review was conducted only recently and the report was not completed and ready for our review. We saw evidence that Treasury officials followed up to ensure the entity implemented the recommendations provided in the other review.

Further, we found that OFS has operated a comprehensive system for receiving and responding to various types of inquiries from contractors and financial agents, program officials, and other agency sources. OFS classifies inquiries in its database as communications, notifications, conflict inquiries, requests for waiver, requests for extension, or general information. An inquiry may be approved, denied, or withdrawn by the retained entity, or in limited circumstances, OFS may take no action, depending on the type of inquiry. Table 3 describes and provides examples of the conflicts of interest inquiry types.

**Table 3: Conflicts of Interest Inquiry Types, Descriptions, and Examples**

Conflicts of interest inquiry type	Description	Example
Communication	Communication occurs between Treasury and an entity.	OFS conducted its quarterly call with an entity to review its certification and address any conflicts of interest questions or issues.
Notification	Entity is supplying OFS with information that does not require an OFS response.	An entity notified Treasury that an employee was transitioning to a new role and would no longer manage a TARP program.
Conflict	The entity is asking about an issue concerning a conflict of interest, which could be a vendor request, a personal conflict of interest/inquiry, or an organizational conflict of interest.	<ul style="list-style-type: none"> <li>• Vendor request—An entity requested the approval of a vendor.</li> <li>• Personal conflict of interest/inquiry—An entity requested the approval of a personal mitigation plan.</li> <li>• Organizational conflict of interest—An entity inquired about work it would like to perform for another entity that has received TARP funds.</li> </ul>
Waiver	Inquiry relates to a waiver to the conflicts of interest regulation or to a contract.	<ul style="list-style-type: none"> <li>• Regulatory waiver—An entity requested a waiver of the TARP conflicts of interest regulation regarding accepting gifts from an entity seeking official Treasury action.</li> <li>• Contractual waiver—A contractor requested a waiver of the cooling off period for a contractor employee to move from a TARP project to a non-TARP assignment.</li> </ul>
Extension	Inquiry is a request for extension of a time period for the submission of documentation.	An entity requested an extension of time to file its conflicts of interest certification.
General	This category is used for inquiries that do not fit into one of the other categories.	An entity requested Treasury’s confirmation that services related to a potential transaction with an automotive supplier were appropriately treated in its mitigation plan.

Source: GAO analysis of Treasury data.

Since 2009, OFS has reviewed and responded to over 1,570 conflicts of interest inquiries with all financial agents and contractors, as shown in table 4. In reviewing receipt and response dates in the inquiry database, we found that inquiries were handled in a timely manner and usually resolved in a matter of days.

**Table 4: Inquiries since the Beginning of TARP and Number Denied Through March 31, 2012**

Conflicts of interest inquiry type	Contractor	Financial agent	Total	Denied
Communication	37	148	185	
Notification	14	142	156	
Conflict	279	730	1,009	27
Waiver	11	28	39	
Extension		19	19	
General	47	117	164	2
Other inquiry (not coded)		2	2	
<b>Total</b>	<b>388</b>	<b>1,186</b>	<b>1,574</b>	<b>29</b>

Source: GAO analysis of Treasury data.

The 39 cases classified as waivers primarily involved administrative matters. For example, OFS waived gift and entertainment requirements in the TARP conflicts of interest regulation after ensuring that the entities' policies contained essentially the same provisions as the TARP regulation, according to an OFS official. Additionally, in several cases, OFS waived the requirement in the interim TARP conflicts of interest regulation that Office of Government Ethics Form 278 be used to report information about personal, business, and financial relationships, allowing the use of Form 450 instead. The final TARP conflicts of interest regulation now expressly permits the use of Form 450.

OFS has been preparing quarterly conflicts of interest feedback reports for contractors and financial agents since the process was established in 2011. OFS rates contractor and financial agent conflicts of interest performance on a three-category scoring system—unsatisfactory, good, and outstanding—and the scores from the feedback reports are summarized in scorecards that provide a snapshot of how each active contractor and financial agent is doing in terms of conflicts of interest compliance. In general, most scores have been in the “good” category, although a few contractors and financial agents have received unsatisfactory or outstanding scores in one or more quarters. According to an OFS official, the quarterly conflicts of interest feedback reports for contractors and financial agents are shared with the Contracting Officer’s Representatives, who are responsible for the day-to-day monitoring of contracts, and with the Office of Financial Agents, as appropriate. OFS also provides input on retained entities’ conflicts of interest performance for the monthly Contract and Agreement Review Board<sup>15</sup> report that evaluates the contractor for cost control, performance, and business relations. In the event that a contract violation occurs, OFS could choose to withhold payment or stop or reduce the contractor’s work. For financial agents, the conflicts of interest scores become a part of a comprehensive composite score that influences the incentive fees that some of the financial agents have in their agreements.

<sup>15</sup>OFS’s Contract and Agreement Review Board, which is composed of program and procurement executives, oversees OFS’s acquisition decisions. The board centralizes decisions regarding the office’s contracting and financial agency requirements, serving as the deliberative body for determining whether to perform a function in house or to outsource it. This formalized process was established in March 2009, after the urgency of the initial stages of the financial crisis had subsided.

Treasury conducts two types of on-site reviews—design reviews and compliance reviews. OFS began conducting on-site design reviews in March 2011 to determine whether financial agents' and contractors' policies and procedures are designed to detect and mitigate conflicts of interest. As of March 31, 2012, OFS had conducted 11 on-site design reviews—four reviews at financial agents and seven at contractors.

- Recommendations made to contractors included signing and/or updating non-disclosure agreements; limiting access to Treasury documents; providing, updating, or improving conflicts of interest training; documenting the results of conflicts checks; receiving annual certifications from subcontractors timed to coincide with the contractor's own annual conflicts of interest certification; and taking a more active role in verifying that subcontractors have reliable conflicts of interest processes.
- Recommendations made to financial agents included documenting procedures for clearing conflicts and ensuring there are no conflicts, creating a Restricted Persons List, and creating formal on-boarding and off-boarding processes.

At the conclusion of the design review, OFS completes a review sheet to document the review and to identify follow-up items for the entity and for OFS.

OFS started conducting on-site compliance reviews in early 2011 to determine whether financial agents' internal controls and procedures for identifying and mitigating conflicts of interest are effective. As of March 31, 2012, OFS had conducted 11 compliance reviews of financial agents. It plans to continue conducting reviews at the rate of about one per month. While the on-site compliance reviews have primarily been of financial agents thus far, OFS has conducted two reviews of contractors and plans to review additional contractors in the future, according to an OFS official. In most of the financial agents reviewed, OFS found reasonable internal controls were in place and that there were no significant problems, although OFS identified some areas for improvements. However, the review of one financial agent identified significant weaknesses in its controls and organizational management and oversight. Subsequently, the relationship with the financial agent was terminated. The following are some examples of observations that OFS provided to financial agents as a result of the on-site compliance reviews:

- The entity certified that key individuals had no personal conflicts of interest before receiving employee financial disclosure reports corroborating the assertion.
- The entity did not physically separate key individuals primarily engaged in supporting TARP-related activities from employees engaged in similar transactions that were not TARP-related.
- The entity did not formally document whether and when relevant employees performing services under TARP attended conflicts of interest training, or there was no evidence that employees/contractors received training, or the training was not timely.
- Some employee financial holdings reports were submitted late and/or contained errors, and reviews of brokerage statements were not timely.
- Non-disclosure agreements were not signed by employees having access to material non-public information, or were late being signed.
- The entity had no process in place to ensure that mitigation plans for actual or potential conflicts of interest are being fully implemented.

When it sends its report on the results of the on-site compliance review to the entity, OFS requests that the entity provide a written response, including action plans and due dates as appropriate, within 30 days. Treasury officials told us that they review the responses and discuss them with the companies after receiving the response, if appropriate, and during quarterly phone calls. As noted earlier, we saw evidence of this process for Fannie Mae, the largest financial agent. If necessary, they also conduct a second site visit to ensure the corrective action plans are in place.

### **Concluding Observations**

Since the inception of TARP, Treasury has made significant progress in establishing a structured system for addressing conflicts of interest that may arise with its contractors and financial agents. In addition, the agency continues to implement its system by reviewing and approving conflicts of interest mitigation plans, monitoring that contractors and financial agents are regularly certifying that they are preventing or properly mitigating conflicts, and responding to inquiries about conflicts from contractors and financial agents in a timely manner. Treasury also conducts on-site reviews to test the internal controls and procedures contractors and financial agents have established to mitigate conflicts. Although Treasury has a comprehensive system in place, continuing oversight will be important to avoid conflicts of interest.

### **Agency Comments and Our Evaluation**

We provided a draft of this report to Treasury for its review and comment. Treasury concurred with the report and provided written comments that we have reprinted in enclosure I. Treasury also provided technical comments that we have incorporated as appropriate.

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We are sending copies of this report to the Financial Stability Oversight Board, Special Inspector General for TARP, interested congressional committees and members, and Treasury. In addition, this report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staffs have questions about this report, please contact me at (202) 512-4841 or by email at [woodsw@gao.gov](mailto:woodsw@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were John Oppenheim, Assistant Director; Jess Drucker, Danielle Greene, Julia Kennon, John Krump, Jeff Sanders, and Erin Schoening.



William T. Woods  
Director  
Acquisition and Sourcing Management

Enclosures – 1

*List of Addressees*

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

The Honorable Tim Johnson  
Chairman  
The Honorable Richard Shelby  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Kent Conrad  
Chairman  
The Honorable Jeff Sessions  
Ranking Member  
Committee on the Budget  
United States Senate

The Honorable Max Baucus  
Chairman  
The Honorable Orrin G. Hatch  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Hal Rogers  
Chairman  
The Honorable Norm Dicks  
Ranking Member  
Committee on Appropriations  
House of Representatives

The Honorable Paul Ryan  
Chairman  
The Honorable Chris Van Hollen  
Ranking Member  
Committee on the Budget  
House of Representatives

The Honorable Spencer Bachus  
Chairman  
The Honorable Barney Frank  
Ranking Member  
Committee on Financial Services  
House of Representatives

The Honorable Dave Camp  
Chairman  
The Honorable Sandy Levin  
Ranking Member  
Committee on Ways and Means  
House of Representatives

Enclosure I: Comments from the Department of the Treasury



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 11, 2012

William T. Woods  
Director  
Acquisition and Sourcing Management  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Woods:

Thank you for sharing with the Department of the Treasury (Treasury) your draft report titled "*Treasury Continues to Implement Its Oversight System for Addressing TARP Conflicts of Interest*" (Draft Report).

We appreciate the Draft Report's conclusion that the Office of Financial Stability has established a robust system to mitigate and address conflicts of interest (COI) that may arise with contractors and financial agents who support Treasury in the management of TARP programs. This system includes: (1) reviewing proposed contracts and financial agency agreements, (2) approving mitigation plans, (3) addressing COI issues that arise during the course of the relationship, (4) reviewing periodic certifications, (5) preparing feedback reports, (6) conducting on-site compliance reviews to determine whether financial agents' and contractors' policies and procedures are designed to detect and mitigate conflicts of interest, and (7), maintaining an internal database to document and track all COI activities.

We also appreciate GAO's acknowledgement of the actions Treasury took in response to GAO's previous COI mitigation recommendations. We look forward to continuing to work with you and your team as we move forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Massad".

Timothy G. Massad  
Assistant Secretary for Financial Stability

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