

Questions and Answers

Regarding the February 6, 2009 SIG TARP Letter

Use of funds

Q: The letter from the SIGTARP requests that we provide a narrative explaining our actual or anticipated use of CPP funds. Is it acceptable to respond by saying that we are using the CPP funds as a cushion against losses?

A: Yes, if that is in fact what you are doing or plan to do with the CPP funds. The goal of the requests contained in the SIGTARP letter is to collect data on how banks participating in the CPP program made use of the CPP funds. SIGTARP is collecting this information from banks to present to Congress and the American public a fair, balanced and objective report concerning the use of CPP funds. The SIGTARP recognizes that the level and type of reply will vary depending upon the size of the responding institution. What SIGTARP is looking for here is a good faith effort on the part of respondents to tell their institution's story regarding the anticipated and actual use of CPP funds, and plans for addressing executive compensation requirements. It is important to recognize that the SIGTARP is *not* the entity tasked with ongoing monitoring of whether an individual bank is compliance with TARP requirements – that task has been assigned to the Treasury Department. Nevertheless, SIGTARP does have a legislatively mandated role in reviewing the management of the program.

Supporting documentation

Q: The letter states that SIGTARP “encourages” banks to make reference to specific sources for statements regarding the use of CPP funds, such as statements to the media or shareholders, as well as internal e-mail, budgets, or memoranda describing your anticipated used of funds. Does that mean we should provide SIGTARP with (1) just a narrative, (2) the background documents as well as the narrative, or (3) *all* potentially relevant documents, whether referenced in the narrative or not, in our submission? The letter also asks the bank to “segregate and preserve all documents” that reference our use or anticipated use of CPP funds, such as internal e-mail, budgets, or memoranda regarding our anticipated or actual use of CPP funds. What documents do I have to preserve, and how long do I have to keep them?

A: The amount and type of documentation that a bank should provide to the SIGTARP in terms of support for their narrative is left up to the individual institution. The onus, however, is on the institution to provide sufficient background and support to be able to tell their story persuasively. Respondents should retain whatever documentation is relevant to their use or planned use of CPP funds, in case there is a need for follow-up by SIGTARP or even the Treasury, at some point.

Executive compensation

Q: The letter asks about our institution's specific plans for addressing executive compensation requirements associated with the funding. Is the letter referring to, the October 14, 2008, interim final rule, the interim final rule issued on January 16, 2009, (but never published in the Federal Register), the February 4, 2009, announcement outlining forthcoming restrictions on executive compensation, or those in Title VII of the American Recovery and Reinstatement Act of 2009?

A: Absent more current guidance from Treasury, responses to the letter from the SIGTARP regarding executive compensation should be submitted in accordance with the guidelines that are currently available on the Treasury Department website.

Confidentiality

Q: We are very concerned that materials and information that we deem to be confidential will be disclosed during this process. What can banks expect regarding the preservation of confidential treatment for sensitive materials?

A: The SIGTARP is very aware of the need for sensitive bank records to be afforded confidential treatment. SIGTARP will maintain the confidentiality of bank documents and information, consistent with its mission and applicable law. For example, banks will be notified if their information is responsive to a Freedom of Information Act request and controlling precedent requires notification. Banks, thus, may consider clearly identifying any information and materials that they deem to be confidential.

Certification

Q: The letter requires that the response be signed by "a duly authorized senior executive officer of your company, including a statement certifying the accuracy of all statements, representations, and supporting information provided, subject to the requirements and penalties set forth in Title 18, United States Code, Section 1001." What language is required? Are we certifying that we are in compliance with TARP?

A: The SIGTARP is *not* asking the institution official to certify that the institution is in compliance with TARP. Rather, it is asking the official to certify as to the accuracy of the statements, representations, and supporting information provided by the institution in its response. We would accept certification language such as: I [identify the certifying individual] certify that: I have reviewed this response and supporting documents, and, based on my knowledge, this response and the supporting documents do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading.